



Judicial Review of Contractual Employees in Pakistan: Constitutional Rights, Administrative Discretion and the Need for Legal Reforms

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Received: February 27, 2026 Revised: March 10, 2026 Accepted: March 24, 2026 Available Online: April 09, 2026 Keywords: <i>Judicial Review, Contractual Employees, Public Employment, Administrative Law, Due Process, Administrative Discretion, Fundamental Rights, Legitimate Expectation, without jurisdiction</i> Corresponding Author: Usama Saleem Dogar Email: usamasaleemdogar@gmail.com	Contractual employment has recently become a popular modus operandi for the recruitment in the public sector of Pakistan. Government departments employ contractual employees for both indefinite as well as definite periods, particular projects, professional services and other administrative needs. However, the legal protection available to these employees remains uncertain and ambiguous. Contractual employees are generally excluded from the statutory framework applicable to regular civil servants, while their employment is mainly governed by appointment policies and the terms of their contracts. This creates alarming legal issue when a public authority terminates a contractual employee, or refuses an extension, or takes any adverse decision in circumstances involving arbitrariness, discrimination, mala fide, without jurisdiction or denial of due process irrespective of the fact that the administrative law is in the field at the time of such action, so it becomes a mingled question of law concerning the principles of administrative and contract law or the relevant policy. Pakistani courts have often treated contractual employment disputes as matters of private contract governed by the traditional master-servant relationship. This approach may be appropriate where the dispute concerns only the enforcement of contractual terms. However, difficulties arise when contractual power is exercised by a government department or public authority in a manner that allegedly violates constitutional or public-law obligations. This article examines the legal position of contractual public employees in Pakistan through constitutional law, administrative law, service laws, appointment policies and judicial decisions. It particularly considers the role of Articles 4, 8, 10-A, 25 and 199 of the Constitution of Pakistan. Comparative jurisprudence and relevant international standards are also examined to understand the wider development of judicial review in public employment. The article argues that contractual status should not itself exclude judicial review. Where an administrative decision involves a public-law wrong, constitutional courts should be able to examine the legality of the exercise of administrative power. The article concludes that clearer legislation and a more consistent judicial approach are necessary to balance administrative flexibility with constitutional protection.

Introduction

Contractual employment has become an important feature of Pakistan's public administration, enabling government departments to recruit specialised persons for definite or indefinite periods while promoting administrative flexibility,

efficiency and cost-effectiveness. Unlike regular civil servants, contractual employees are excluded from the Civil Servants Act, 1973, and their service conditions are governed primarily by contractual terms and government policies. The Supreme Court has consistently recognised this distinction, holding that contractual appointments are separate from regular service and do not automatically confer statutory service rights.

Despite this distinction, contractual employment raises significant legal concerns when public authorities exercise their powers arbitrarily or unlawfully. While ordinary contractual disputes should generally be resolved through private-law remedies, judicial review becomes relevant where administrative actions involve mala fide, discrimination, lack of jurisdiction, without jurisdiction violation of statutory obligations or denial of procedural fairness. Thus, the focus should not merely be on the contractual nature of employment but on whether the administrative authority has exercised its powers lawfully. The constitutional framework, particularly Articles 4, 8, 10-A, 25 and 199 of the Constitution of Pakistan, provides important safeguards against unlawful administrative action by protecting fundamental rights, equality before law, due process and judicial oversight. However, Pakistani courts have adopted inconsistent approaches. In some cases, they have declined constitutional relief by treating contractual employment as a master-servant relationship, while in others they have intervened where statutory rights or public-law principles were violated.

Provincial regularisation laws, such as the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 and the Punjab Regularization of Service Act, 2018, further demonstrate that contractual public employment is governed not only by contract but also by constitutional principles and statutory obligations. International human rights instruments and comparative jurisprudence from India and the United Kingdom similarly recognise that although contractual employees do not have an automatic right to permanent employment, public authorities remain accountable for unlawful administrative actions. Accordingly, this article argues that contractual status and judicial review address two distinct legal questions. Contractual status determines the nature and duration of employment, whereas judicial review examines the legality of administrative action. A contractual employee may therefore have no right to permanent employment but may still challenge decisions that are arbitrary, discriminatory, mala fide or otherwise contrary to law. The article examines Pakistan's constitutional and statutory framework, judicial decisions and comparative jurisprudence to develop a coherent framework for determining when disputes involving contractual public employees should attract judicial review.

Contractual Public Employment and the Problem of Legal Protection in Pakistan

Contractual public employment has become an important mechanism for recruiting specialised personnel and meeting temporary administrative needs in Pakistan. Unlike regular civil servants, contractual employees are appointed for fixed periods under specific contractual terms and are excluded from the definition of a civil servant under the Civil Servants Act, 1973. Consequently, their rights arise primarily from their contracts, appointment letters and government policies rather than statutory service rules. While this distinction promotes administrative flexibility, it also creates legal uncertainty when contractual appointments are used for permanent governmental functions or to avoid the protections available to regular employees.

The Contract Appointment Policy, 2004 reinforces the contractual nature of such employment by permitting termination through notice or salary in lieu of notice and by denying any automatic right to regularisation or extension. However, because continuation of service is linked to performance assessment and prescribed procedures, administrative authorities are required to exercise their discretion fairly and in accordance with the policy. Judicial review, therefore, focuses not on enforcing contractual expectations but on ensuring that public authorities exercise their powers lawfully, reasonably and without arbitrariness.

The existing framework nevertheless suffers from structural weaknesses. Although contractual employment serves legitimate administrative purposes, broad discretionary powers may result in unequal treatment, arbitrary refusals of extension and procedural unfairness. Delayed or inconsistent decisions regarding continuation of service further undermine transparency and accountability. Accordingly, contractual employment should provide administrative flexibility without exempting public authorities from the principles of Administrative Law.

Provincial regularisation laws, including the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 and the Punjab Regularization of Service Act, 2018, demonstrate that contractual public employment cannot be understood solely through private contract principles. While these statutes do not grant an automatic right to regularisation, they create a legal entitlement to fair consideration where statutory conditions are fulfilled. Judicial decisions such as *Mst. Nabila Niaz v Secretary Health and Nemtullah v Chairman Governing Body, Workers Welfare Board* further emphasise that long-term contractual employment against permanent posts and failure to comply with statutory requirements may justify judicial scrutiny. Therefore, contractual employment should remain limited to genuine temporary or specialised needs, while

administrative authorities must exercise their powers consistently, fairly and in accordance with constitutional and statutory requirements.

From Contract to Public Law: Constitutional Limits on Administrative Discretion The central legal question is not whether the Government can employ people on contract. It clearly can. Nor is the question whether every contractual employee has a constitutional right to continuation, extension or regularisation. Such a broad proposition would remove the basic distinction between contractual and regular employment.

The more important question is whether the Government, after choosing contractual employment as its mode of recruitment, can exercise its powers without the constitutional limitations normally applicable to public authorities.

Constitutional Limits on Administrative Discretion

Although contractual employees are not recognised as a separate protected class under the Constitution of Pakistan, they remain entitled to fundamental rights. Their contractual status determines their service conditions but does not exempt public authorities from constitutional obligations. Article 4 of the Constitution of Pakistan states that every action shall be in accordance with the law, meaning thereby in the letter and spirit of law. Under Article 8, administrative policies and contractual terms must operate within the Constitution, meaning that contractual provisions cannot justify arbitrary, discriminatory or mala fide exercise of public power. Judicial review therefore examines the legality of administrative action rather than rewriting employment contracts. Article 25 guarantees equality before law and equal protection of law, requiring public authorities to exercise their discretion fairly and without unreasonable discrimination. While contractual employees are not entitled to the same benefits as regular civil servants, similarly situated contractual employees should not be treated differently without a lawful and rational justification. Administrative decisions based on personal preference or irrelevant considerations may therefore attract judicial review.

Article 10-A further strengthens constitutional protection by guaranteeing due process in the determination of civil rights and obligations. However, procedural fairness does not require every fixed-term contract to be renewed or every non-extension to be preceded by formal proceedings. A distinction must be maintained between the natural expiry of a contract and punitive termination based on allegations of misconduct or other adverse findings. In the latter situation, fairness may require notice of the allegations and an opportunity of hearing.

Judicial review is also available where public authorities act mala fide, exceed their lawful authority or fail to comply with mandatory statutory requirements. Contractual clauses permitting termination cannot shield decisions motivated by personal hostility, discrimination or improper purposes. Likewise, where legislation prescribes a particular procedure or assigns decision-making authority to a specific official, administrative authorities must act within those legal limits. Challenges based on violation of statutory duties therefore raise public-law issues rather than ordinary contractual disputes. Importantly, recognising judicial review in appropriate cases does not create a general right to permanent public employment. Courts should not ordinarily extend contracts, order regularisation contrary to law or substitute their own administrative judgment. Instead, judicial review is confined to examining whether the decision-maker acted within jurisdiction, complied with legal requirements, observed procedural fairness and exercised discretion lawfully. This approach preserves the distinction between contractual and regular employment while ensuring that public authorities remain accountable under the Constitution.

Judicial Review of Contractual Employment: The Pakistani Courts' Approach

Pakistani courts have adopted an inconsistent approach towards judicial review of disputes involving contractual public employees. While they consistently recognise that contractual employment is legally distinct from regular civil service, they differ on the extent to which contractual employees may invoke constitutional remedies. The central issue is whether a dispute concerns only contractual rights or involves the unlawful exercise of public authority.

A restrictive judicial approach, based on the traditional master-servant doctrine, treats contractual employment as a relationship governed primarily by contractual terms. Decisions such as *Nasir Ali v Pakistan Atomic Energy Commission* and *Mst. Saima Naz v Government of Punjab* emphasise that contractual employees have no automatic right to extension or continuation of service and that constitutional jurisdiction should not be used to enforce ordinary contractual claims. However, this approach is inadequate where the challenge relates not to the contract itself but to arbitrary, discriminatory or unlawful administrative action.

Conversely, Pakistani courts have intervened where disputes involve a clear public-law element. In cases such as *Muhammad Ashraf v State Life Insurance Corporation*, *Engineer Naraindas v Federation of Pakistan* and *Rizwan Javed v Secretary*

Agriculture Livestock, the courts examined the legality of administrative decisions, ensured equal treatment of similarly placed employees and, in appropriate circumstances, granted relief. These decisions demonstrate that contractual status does not automatically bar judicial review when statutory rights, constitutional principles or administrative fairness are at issue.

The Supreme Court has also expressed concern over the prolonged use of contractual appointments against permanent or sanctioned posts. In *Nemtullah v Chairman Governing Body, Workers Welfare Board*, it criticised the practice of repeatedly retaining employees on contract where regular appointments should have been made. Likewise, regularisation cases distinguish between an automatic right to regularisation and a statutory right to fair consideration. Courts have recognised that where legislation creates eligibility for regularisation, administrative authorities must exercise their powers in accordance with the law rather than treating the matter as purely contractual. Overall, the case laws suggest that judicial review should depend on the nature of the legal claim rather than the contractual status of the employee. Pure contractual disputes relating to interpretation or enforcement of contract should ordinarily remain within private law. However, disputes involving statutory duties, constitutional rights, mala fide, discrimination, lack of jurisdiction or procedural unfairness raise public-law issues that justify judicial scrutiny. A clearer distinction between contractual rights and public-law obligations would promote consistency in Pakistani jurisprudence while preserving both administrative flexibility and constitutional accountability.

Comparative and International Perspective and Proposed Framework

Comparative jurisprudence demonstrates that the challenges surrounding contractual public employment are not unique to Pakistan. Although foreign decisions cannot be applied directly, they provide valuable guidance for external interpretation of law in distinguishing private contractual disputes from matters involving the unlawful exercise of public power. Indian, British and American jurisprudence, together with international human rights standards, consistently emphasise that the existence of a contract does not automatically exclude judicial review where a public authority acts unlawfully.

Indian courts have developed a balanced approach by recognising that contractual disputes generally belong to private law, but State action remains subject to constitutional scrutiny where it involves arbitrariness, illegality or abuse of power. Decisions such as *Life Insurance Corporation of India v Escorts Ltd*, *State of U.P. v Johri Mal* and *State of U.P. v Kumari Shrilekha Vidyarthi* establish that while contractual employees have no automatic right to renewal or continuation of service, they may challenge administrative decisions that are arbitrary, discriminatory or contrary to law. Similarly, *Dr. Jaya Thakur v Union of India* reaffirmed that judicial review is concerned with illegality, irrationality and procedural impropriety rather than the merits of administrative decisions. The United Kingdom follows a comparable approach. British courts distinguish disputes arising solely from contractual obligations from those involving public-law rights. Employment by a public authority alone does not justify judicial review unless the dispute concerns the exercise of public power. At the same time, statutory employment protections demonstrate that contractual rights may coexist with legal safeguards against unfair administrative action. The United States further reinforces the broader constitutional principle, established in *Marbury v Madison*, that governmental authority remains subject to judicial review and cannot be exercised beyond limits.

International human rights instruments also support this approach. The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and International Labour Organization standards recognise the rights to work, equality, dignity and fair conditions of employment. Although these instruments do not guarantee permanent public employment or automatic renewal of fixed-term contracts, they emphasise that contractual employees should not be subjected to arbitrary or discriminatory treatment.

Drawing on these comparative experiences, the article proposes a coherent framework for Pakistan based on the nature of the dispute rather than the contractual status of the employee. Courts should first determine whether the employer is exercising public authority and whether the employee's claim arises from contractual rights or from constitutional, statutory or administrative-law obligations. They should distinguish between the natural expiry of a contract, termination during its currency and punitive termination based on allegations of misconduct. Judicial review should remain confined to examining the legality of administrative action, including jurisdiction, procedural fairness, compliance with statutory requirements, good faith and non-discrimination, without substituting the court's own decision for that of the competent authority. The article further recommends comprehensive legislation governing contractual public employment. Such legislation should define the circumstances in which contractual appointments may be made, regulate appointment, extension and termination procedures, provide minimum procedural safeguards, ensure transparency and equal treatment, and prevent the misuse of contractual appointments for permanent governmental functions. Finally, the article proposes a structured judicial test under which constitutional jurisdiction should depend on the existence of a recognised public-law wrong rather than the mere existence of a contractual relationship. This approach preserves administrative flexibility while ensuring that public authorities remain accountable under the Constitution and the law.

Conclusion

Contractual employment has become an essential component of Pakistan's public administration, providing flexibility for temporary and specialised appointments. However, the legal protection available to contractual public employees remains uncertain because contractual status is often treated as excluding effective judicial review. The article argues that contractual employment and judicial review involve two distinct legal questions: contractual status determines the employee's service rights, whereas judicial review examines the legality of the exercise of public power. A contractual employee does not automatically acquire the rights of a regular civil servant and cannot ordinarily claim extension, regularisation or permanent appointment without a legal basis. Nevertheless, public authorities remain bound by constitutional and statutory obligations. Where administrative decisions are made without jurisdiction, in bad faith, discriminatorily or in violation of statutory or procedural requirements, they raise public-law issues that may justify judicial review.

The study demonstrates that Pakistani courts have not always consistently distinguished between contractual disputes and administrative-law disputes. While the master-servant doctrine appropriately limits constitutional intervention in ordinary contractual matters, it should not prevent judicial scrutiny where the alleged wrong concerns the unlawful exercise of public authority. Constitutional provisions, particularly Articles 4, 8, 10-A, 25 and 199, together with comparative jurisprudence and international standards, support a balanced approach that preserves both administrative flexibility and constitutional accountability.

Accordingly, judicial review should not depend solely on the contractual status of the employee but on the nature of the power exercised, the source of the right asserted, the character of the alleged illegality and the remedy sought. This approach avoids both extremes of converting every contractual dispute into a constitutional case and treating all contractual employment disputes as purely private matters, thereby ensuring that public authorities remain accountable under the rule of law.

Recommendations

1. Enact comprehensive legislation specifically regulating contractual public employment, covering appointment, duration, extension, performance evaluation, termination and available remedies.
2. Limit contractual appointments to genuine temporary, project-based and specialised positions, while permanent governmental functions should ordinarily be filled through regular recruitment.
3. Ensure merit-based recruitment for permanent posts and prevent the misuse of repeated contractual appointments as a substitute for regular employment.
4. Provide minimum procedural safeguards in cases of punitive termination by ensuring notice of allegations and a reasonable opportunity to be heard.
5. Adopt transparent and objective criteria for decisions regarding extension or continuation of contractual service, based on performance and departmental needs.
6. Guarantee equal treatment of similarly situated contractual employees, ensuring that any differential treatment is based on lawful and rational considerations rather than personal preference or arbitrariness.
7. Develop a consistent judicial approach by distinguishing purely contractual disputes from disputes involving public-law violations.
8. Confine judicial review to questions of legality, including jurisdiction, mala fide, discrimination, procedural fairness and compliance with statutory duties, rather than reviewing the merits of employment decisions.
9. Avoid routine judicial orders for renewal, reinstatement or regularisation unless specifically authorised by the applicable legal framework.
10. Recognise contractual employment as a legitimate form of public service, balancing administrative flexibility with adequate legal protection for employees.
11. Maintain constitutional accountability by ensuring that contractual status does not exempt public authorities from compliance with constitutional and statutory obligations.
12. Apply appropriate remedies by resolving purely contractual disputes through private-law forums while allowing judicial review where unlawful exercise of public power is alleged.

13. Promote the rule of law by ensuring that public authorities exercise contractual powers fairly, transparently and within constitutional limits.
14. Legislation for punitive action and damages to be made for the administrative authority acting without jurisdiction. The administrative authority shall be questioned and punished for the wrongs committed instead of merely remedying their orders by Courts.
15. The principle of legitimate expectation shall be considered and ensured.

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