

Regulation is not a right esp. for Contract Employees 308

CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No. D-5543 of 2023

Muhkamudin & others

Vs.

The Province of Sindh & Another

HIGH COURT OF SINDH

Composition of Bench.

D/B.

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Adnan Karim Memon

Dates of hearing : 24-12-2024

Decided on : 24 -12-2024

(a) Judgment approved for Reporting

Yes



CERTIFICATE.

Certified that the judgment */Order is based upon or enunciates a principle of law
*/decides a question of law which is of first impression/distinguishes/. Over-rules/
reverses/explains a previous decision.

* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

①

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition NO: D- SS43 of 2023

14-11-2023
Presented on

Additional Registrar (Writ)

1. **MUHKUMUDDIN S/O WAHID BUX**
Muslim, Adult, R/o Village Abdul Aziz Khan,
Taluka & District Kashmore
2. **PEERAL S/O SHAZADO**
Muslim, Adult, R/o Village Golimar, PO Wakroo, Kandhkot,
Taluka Kandhkot, District Kashmore
3. **SHAH BUX S/O SHAHZADO**
Muslim, Adult, R/o Village Sahid Khan Lashari,
Taluka Kandhkot, District Kashmore.....**PETITIONERS**

VERSUS

1. **PROVINCE OF SINDH**
Through Chief Secretary,
Govt. of Sindh, Karachi
2. **SECRETARY (PWDS)**
Population Welfare Department,
Govt. of Sindh, Sindh Secretariat, Karachi
3. **DIRECTOR GENERAL (PWDS)**
Population Welfare Department,
Govt. of Sindh, Sindh Secretariat,
Karachi.....**RESPONDENTS**

CONSTITUTIONAL PETITION UNDER
ARTICLES 199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN, 1973

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P No.D-5543 of 2023
(Mulikumuddin and others v. Province of Sindh and others)

Date	Order With Signature Of Judge
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Before:
Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:- 24.12.2024

Mr. Samiullah Soomro, advocate for the petitioners.
Mr. Ali Safdar Depar, Assistant Advocate General Sindh, and Shoaib Siddiqui,
Deputy Director Population Welfare Department, Government of Sindh.

ORDER

Muhammad Karim Khan Agha, J:- Through this constitutional petition, petitioners have prayed as follows:-

- a. *This Hon'ble Court may be pleased to direct respondents No.1 to 3 to regularize the services of the petitioners on their respective posts i.e. Family Assistant Welfare (Male) (BPS-05) & Chowkidar (BPS-02) so also release their salaries immediately under the Act known as The Sindh (Regularization of Adhoc & Contract Employees) Act 2013.*
- b. *All the respondents should be directed to pay all outstanding salaries to the petitioners.*
- c. *To grant interim injunction thereby directing respondents No.1 to 3 not to take any adverse action about the services of the petitioners, till the final disposal of the instant petition.*

2. Petitioners were appointed as Family Welfare Assistant (BPS-05) and Chowkidar (BPS-02) in 2011-2012, served for years, and received regular salaries. Despite other employees' regularization under the 2013 Act, petitioners were declared "excess" employees, and their wages were stopped. They allege this decision was politically motivated to deny them regularization. The regularization of the service of the Petitioners is based upon their length of service they have worked for the Respondents since 2011 and it is on the above principle that the Petitioners have approached this Court for regularization of their service under Articles 9 and 25 of the Constitution of the Islamic Republic of Pakistan. They relied upon the observation made by the Supreme Court of Pakistan in the case of *Khawaja Muhammad Asif Vs. Federation of Pakistan & others* (2013 SCMR 1205), and asserted that under Article 5 of the Constitution, it is an imperative obligation of the functionaries of the State to abide by the Constitution and the law. Counsel for the petitioners further urged that petitioners are impoverished due to high inflation, making survival difficult. Despite diligently performing their duties, respondents declared them "over-strength" to justify service termination, likely to favor other individuals. This action is illegal, malicious, and

covered by the Judgment rendered in the case of the Government of Khyber Pakhtunkhwa and others Vs. Adnanullah and others (2016 SCMR 1375), Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257), the case of Abdul Ghafoor and others Vs. The President of the National Bank of Pakistan and others (2018 SCMR 157) and (2018 SCMR 325).

3. Learned Assistant A.G. has opposed the petition, arguing that excess employees cannot be regularized as in the present case no public advertisement for the posts was made; and there were no recommendations from a selection committee. Besides, there was/is no approval from the competent authority, and the appointments were made without sanctioned strength or vacancies. He said that the domicile certificates of some of the petitioners were/are from other districts. He next argued that the Police verification of appointees was not conducted. He submitted that the petitioners have not performed their duties since 2016. Lastly, he stressed the point that all appointments exceeded sanctioned strength and lacked proper recruitment procedures, and an inquiry was conducted in January 2017. However, the petitioners did not participate and their salary was stopped in 2016 due to excess appointments. Similar cases (C.P No.1226/2017 and D-721/2017) were previously reviewed, and this Court directed to refer their case to the Scrutiny Committee No.1. The committee also found that all appointments exceeded sanctioned strength and lacked proper procedures. He prayed for the dismissal of the petition.

4. We have heard the learned counsel for the parties and perused the record with their assistance.

5. Employees generally have no inherent right to regularization. Regularization requires a legal or statutory basis, such as a law, rule, or policy. The process must adhere to these provisions and government policies. Without such a basis, contractual employees cannot claim regularization. Reference in this regard may be made to the cases of Vice Chancellor Agriculture University, Peshawar v Muhammad Shafiq 2024 SCMR 527, Federation of Pakistan through Secretary, Ministry of Law and Justice Islamabad and another v. Fazal-e-Subhan and others (PLD 2024 SC 515); Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others v. Sher Aman and others (2022 SCMR 406); and Messrs. State Oil Company Limited v. Bakht Siddique and others (2018 SCMR 1181).

6. The Act 2013 was intended to benefit all long-serving contract employees. The government has a responsibility to apply this law fairly and equally to all eligible employees, without discrimination. Unbiased and nondiscriminatory implementation is crucial. Beneficial laws for civil servants and laborers should be implemented promptly and effectively to avoid delays and unnecessary Court

challenges. Timely implementation reduces the burden on the Courts. Regularization refers to appointing a qualified contract employee to a permanent position, effective immediately, as per the Sindh (Regularization of Adhoc & Contract Employees) Act 2013. The Act emphasizes that all contract employees, regardless of their appointment method or any procedural shortcomings, are deemed validly appointed and their employment cannot be challenged.

7. However, at the same time, it cannot be ignored that the Regularization of contractual employees requires a fair assessment of the employee's performance and qualifications and the fulfillment of codal formalities required for the subject positions. Without these, employees cannot claim regularization of service. The differences between a contractual employee and a regular employee are material for both the employee and the employer and, inter alia, include as:- (i) A contractual employee is usually employed for a specific period or task, with a set end date. (ii) Contractual employees generally do not receive the same benefits or statutory protection as regular employees. (iii) The contractual employee is engaged for a specific project or task. (iv) The contractual employee often has more flexibility in terms of work hours and location. (v) A contractual employee can be less costly in the short term as it does not require benefits and other long-term financial commitments, and (vi) Hiring regular employees is often a long-term commitment, so organizations opt for contractual workers to manage risks associated with fluctuating market demands.

8. It appears from the record that two similar constitutional petitions (CP No.D-322/2014 & CP No.D-950/2018) were filed by the petitioners' colleagues against the same respondents. Both petitions were disposed of, directing the scrutiny committee to consider the cases and file a compliance report. Current Petitioners were appointed in the same manner and under the same terms as petitioners in the prior cases. However, petitioners have been denied regularization of services in the Population Welfare Department Sindh. Their Salaries remain unpaid because they were declared "excess" employees and those who hired them proceeded under the Anti-corruption laws. At this stage, we have been informed that this Court in C.P No.D-1226/2017 and D-721/2017 based on the report of the DPWO and DAO Ghotki observed that there were 25 excess employees and the DPWO had already stopped their salaries. However, the employees who did not appear before the Enquiry Officer were given another chance to do so, along with all relevant appointment documents, to allow for further investigation and resolution of their cases and the final decision was made to dispense with their services on the aforesaid analogy.

9. In our view, every citizen has the inalienable right to equal protection of the law, as guaranteed by Article 4 of the Constitution. Public officials must act within their powers, fairly, and in good faith, ensuring equal treatment for all.

This aligns with the constitutional principles of non-exploitation as provided under Article 3 of the Constitution and the state's duty to secure the well-being of its people by ensuring equitable rights between employers and employees, raising living standards, and reducing income disparity as provided under Article 25 of the Constitution, which is further fortified under Article 38 of the Constitution (Principles of Policy).

10. We have noted that the basic concept of Adhoc and Contract appointments against the regular posts is a stopgap arrangement which is not a permanent character. In our view, every post is required to be filled through the method prescribed by law not otherwise. In the present case, the petitioners are admittedly Adhoc and contractual employees of the respondent department and thus have no vested right for regular appointment. So far as contract employment is concerned, in our view, a contract employee, whose period of contract employment expires by efflux of time, carries no vested right to remain in employment and this Court cannot force the respondents to regularize or extend the contract period of the petitioners in writ jurisdiction when their services were dispensed with in 2016 based on the inquiry report; and they approached this Court in 2023. The respondents are required to advertise the posts to be filled through a competitive process, which is a requirement of law.

11. It is well-settled now that regularization of the services of contract employees is always subject to the availability of posts and fulfillment of recruitment criteria. the petitioners have not initially been appointed openly and transparently through the prescribed competitive process as the vacancies were not advertised in the newspaper. Besides it is well-settled law that a contract employee is debarred from approaching this Court in constitutional jurisdiction, in the light of the law laid down by the Supreme Court of Pakistan in the cases of Qazi Munir Ahmed v. Rawalpindi Medical College and Allied Hospital through Principal and others 2019 SCMR 648, Province of Punjab through Secretary Agriculture Department, Lahore, and others v. Muhammad Arif and others 2020 SCMR 507 and Miss Naureen Naz Butt v. Pakistan International Airlines and others 2020 SCMR 1625.

12. That in view of the following judgments of the Supreme Court of Pakistan, there is no occasion for the detailed discussion by us on the question of maintainability of the instant Petition: Government of Balochistan v. Zahida Kakar (2005 SCMR 642), PIA v. Tanweer-ur-Rehman (PLD 2010 SC 676), Federation of Pakistan v. Muhammad Azam Chattha (2013 SCMR 120), Muzaffar Khan v. Government of Pakistan (2013 SCMR 304), Abdul Wahab v. HBL (2013 SCMR 1383), PDOA v. Col. Javed Ahmed (2013 SCMR 1707), PIA v. Syed Suleman Alam Rizvi (2015 SCMR 1545), PIA v. Aziz-ur Rehman Chaudhary (2016 SCMR 14), PDHA v. Mrs. Itrat Sajjad Khan (2017 SCMR

2010), *PIA v. Zaeem Aziz Qureshi* (2019 PLC (C.S) 194) and *Pakistan Airline Pilots Association v. PIA* (2019 SCMR 278).

13. We may observe that the Provincial Cabinet is well within its powers to frame policy, however, subject to law. It is well-settled that if a policy is manifestly inconsistent with the Constitutional commands, retrogressive in nature, and discriminatory inter se the populace is not immune from judicial review. Prima facie the decision of the respondents has taken care of the law under the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, as their appointment is excess appointments.

14. The petitioners, in our view, have failed to make out their case for regularization of their service as their case is neither covered under Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 nor falls within the ambit of Policy of Government of Sindh.

15. Prima facie the respondents misused the authority of law and made recruitments against the subject posts without adopting the codal formalities as required under the law. We have also noticed that respondents have filled the posts without following the procedure provided under the law for fulfilling such posts based on open merit through a competitive process. Therefore, the respondents are directed to ensure that no such appointment is made in the future that may violate the law settled by the Supreme Court regarding appointment, etc.

16. The petition and listed applications are disposed of with no order as to costs in terms of the direction given in paragraphs 14 and 15 above.