

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.D-1883 of 2023

[Abdul Jabbar vs. Province of Sindh and others]

Before:

Mr. Justice Arbab Ali Hakro
Mr. Justice Riazat Ali Sahar

Petitioner by : Mr. Mumtaz Ahmed Lashari, Advocate
Respondents No.3 to 5 by : Mr.Rajesh Kumar Khagaija, Advocate
Mr.Muhammad Ismail Bhutto Additional
Advocate General, Sindh
Dates of Hearing : **06.3.2025 & 25.3.2025**
Date of Decision : **15.4.2025**

JUDGMENT

ARBAB ALI HAKRO J:- The Petitioners, invoking Article 199 of the Constitution of Pakistan, 1973, respectfully beseech this Court to adjudicate the Respondents' act of depriving the Petitioner of regular and permanent employment within STEVTA, despite an unblemished service record, as void ab initio, ultra vires, and devoid of lawful authority. The Petitioner seek directives for the reinstatement of the Petitioner to his prior position of Naib Qasid/Workshop Assistant/Dispatch Rider, highlighting the miscarriage of justice caused by the impugned termination, as well as consideration of his application dated 16.06.2022 for appointment as Dispatch Rider, given his exemplary 14-year service without complaint.

2. The facts succinctly outlined in the petition reveal that the Petitioner was initially appointed Naib Qasid upon the recommendation of the District Officer Education (Technical), Karachi, pursuant to a letter dated 18.12.2006. The appointment placed the Petitioner at the Government Monotechnic Institute of Technology, Memon Goth, Malir, Karachi, effective 01.12.2006, on a fixed salary of Rs. 3,000/- per month. Over the years, the Petitioner underwent multiple re-designations and transfers, demonstrating commendable service across various posts such as Junior Clerk, Librarian, Shop Assistant (Workshop Assistant), and Coordinator, with incremental salary enhancements. Despite an unblemished service record spanning 14 years, the Petitioner was arbitrarily terminated, allegedly in contravention of due process, without lawful justification. The Petitioner has applied for regularization and appointment to permanent posts under STEVTA, including

the position of Dispatch Rider, but his application remains pending, reflecting an apparent disregard for his preferential rights and equitable considerations.

3. Notices were duly issued to the respondents, whereupon respondents Nos. 3 to 5 filed their comments, vigorously contesting the maintainability of the petition. They contended that the instant petition is hit by the doctrine of laches, as the alleged cause of action arose in 2014, whereas the petition was filed belatedly on 07.12.2023. Furthermore, they asserted that this Court lacks jurisdiction to entertain matters pertaining to contractual services, as the Petitioner's appointment was temporary and terminable at will. While partially conceding to the Petitioner's claim, they averred that his services were engaged intermittently for varying durations across different institutions strictly temporarily under the Self-Help Basis Evening Program (SHBEP). They clarified that the SHBEP was exclusively self-financed, with remuneration disbursed from funds collected from students, and all appointments under the program, including that of the Petitioner, were limited to a tenure of 89 days. Additionally, they submitted that no new appointments have been made under the program since 2012. Although advertisements for recruitment were issued, they were retracted, and no appointments were made thereunder.

4. At the very outset, the learned counsel for the Petitioner has argued that the Respondent's failure to appoint the Petitioner to any regular or permanent post, despite his 14 years of commendable service, is inherently malicious and *void ab initio*. He has further contended that the verbal orders issued by Respondents Nos. 3 to 6, depriving the Petitioner of his vested rights, are arbitrary, illegal, and unsustainable both in law and in fact. It has been urged that the actions of the Respondents infringe upon the fundamental rights of the Petitioner, specifically the guarantee of equality before the law, as enshrined in the Constitution. Learned counsel has additionally asserted that disregarding the Petitioner's vested rights constitutes a confiscatory act, antithetical to the spirit and mandates of the Constitution. He pointed out that the Petitioner's name was duly included in the list of STEVTA employees eligible for regularization under the Self-Help Basis program, appearing at Serial No. 2, supported by his 14 years of unblemished service across various posts. In substantiating these arguments, reliance has been placed on the case law reported as **2012 PLC (CS) 130 Lahore, 2011 PLC (CS) 419 Lahore, 2010 SCMR 253, 2020 PLC (CS) 285 Lahore, 2020 PLC (CS) Note 33, 2021 PLC (CS) Note 30, 2011 PLC (CS) 367, 2015 PLC (CS) 1487 SC, 2015 SCMR 1257, and 2005 PLC (CS) 915 SC.**

5. Conversely, learned Additional Advocate General Sindh, assisted by counsel for Respondents Nos. 3 to 5, contended that the petition is barred by the doctrine of laches, as the cause of action accrued in 2014 upon the Petitioner's termination, whereas the present petition was filed belatedly on 07.12.2023. They further asserted that the Petitioner's engagement was under the Self-Help Basis Evening Program (SHBEP), a program exclusively self-financed through fees collected from students, operating independently without any statutory or legal provision for regularizing appointments made under its ambit. It was further argued that the Petitioner was employed strictly on a temporary and contractual basis for a defined duration of 89 days, with no promise of permanency, and his engagement was entered into with full knowledge of its terms and limitations. Accordingly, the Respondents emphasized that the Petitioner's contractual appointment does not confer any vested rights and maintained that the instant petition is devoid of merit and thus liable to be dismissed.

6. Having meticulously heard the erudite arguments advanced by learned counsel for the respective parties and comprehensively scrutinized the records, including the case law cited and relied upon by the parties.

7. The objection raised by learned counsel for the Respondents regarding the doctrine of laches warrants serious consideration. It is an established principle of law that undue delay without adequate explanation renders a petition non-maintainable under Article 199. In the instant case, the cause of action accrued in 2014 upon the termination of the Petitioner's services, yet the present petition was filed almost a decade later, on 07.12.2023. The doctrine of laches, rooted in the equitable maxim that equity aids the vigilant and not those who sleep on their rights, is central to ensuring judicial interventions are timely and not disruptive of settled administrative orders. Given the absence of any cogent explanation for the delay, we find that the petition is prima facie barred by laches.

8. The record reveals that the Petitioner was engaged under the Self-Help Basis Evening Program (SHBEP), a scheme designed as an extension of Technical Education and Vocational Training (TEVT) institutions during evening shifts to optimize the utilization of available human resources and infrastructure. This program operates independently and is self-financed through fees collected from trainees/students to meet its operational expenses. The relevant provisions governing SHBEP, specifically Para 14 regarding the Hiring/Engagement of Staff, are unequivocal in stating that "the staff shall be hired on a co-terminus basis" (Para 14.4). The term "co-

terminus” explicitly denotes that the continuation of employment is contingent upon the program's existence. Furthermore, the Petitioner's appointment orders clearly state that his engagement was temporary, liable to termination at any time without assigning a reason, and subject to extension solely based on satisfactory performance. In view of these express terms, the Petitioner's claim for regularization or permanency is fundamentally at odds with the contractual and temporary nature of his appointment under SHBEP.

9. The Petitioner's appointment orders have been carefully reviewed, and they explicitly outline his engagement's temporary and contingent nature. The orders stipulate that the Petitioner's services were liable to termination without prior notice from either side, and any extension of engagement was contingent upon satisfactory performance. The Petitioner inherently agreed to these conditions during his appointment and subsequent re-designations. It is also pertinent to note that SHBEP operates independently, funded through student fees. As such, it is not governed by the same employment rules applicable to regular government employees. The absence of statutory provisions for regularization within the framework of SHBEP reinforces the contractual nature of employment under this program. The Petitioner's reliance on his 14 years of service across various posts does not alter the temporary nature of his engagement, as the terms of employment delineate the non-permanent character of such appointments.

10. The Supreme Court of Pakistan has consistently reiterated that regularization is the prerogative of the Executive and cannot be arbitrarily interfered with by the judiciary. In the case of **the Province of Punjab**¹ it was held that the regularization of employees is subject to the discretion of the competent authority and cannot be claimed as a matter of right in the absence of statutory provisions. Similarly, the case of **the Government of Khyber Pakhtunkhwa**², the Supreme Court held that contractual employees possess no vested right to regularization. The Court emphasized that regularization cannot transpire without statutory backing and that any legal framework, policy, or rules cannot entertain such a claim. The principles established in the case of **Vice-Chancellor, Bacha Khan University**³, further underscores that contractual employees cannot claim regularization based solely on the duration of their service. The Supreme Court of Pakistan unequivocally held that the efflux of time does not create a right to regularization, nor can it be sought through judicial intervention in the

¹ Province of Punjab vs. Prof. Dr. Javed Iqbal (2022 SCMR 897)

² Government of Khyber Pakhtunkhwa vs. Sher Aman (2022 SCMR 406)

³ Vice-Chancellor, Bacha Khan University vs. Tanveer Ahmad (2021 SCMR 1995)

absence of statutory authority. These precedents unequivocally affirm that regularization requires explicit legal sanction and cannot be predicated upon administrative recommendations or prolonged service alone.

11. The Petitioner has sought directions to consider his application for the post of Dispatch Rider, submitted under the Respondents' advertised recruitment process. While the Petitioner's 14 years of service under SHBEP may reflect his experience, the terms of SHBEP do not create any preferential right to future appointments. The Supreme Court, in the cases of the **Government of Khyber Pakhtunkhwa** and **Vice-Chancellor, Bacha Khan University** (supra), has emphasized that contractual employees cannot claim regularization or future appointments as a matter of right. The recruitment for public service positions must adhere to principles of merit, transparency, and due process, as mandated by the Constitution.

12. Learned counsel for the Petitioner argued that the actions of the Respondents violate the Petitioner's fundamental rights, particularly the guarantee of equality before the law under Article 25 of the Constitution. However, it is trite law that equality under Article 25 pertains to rights conferred under the law. Without any statutory provision, policy, or rule providing for regularization, the Petitioner cannot claim a violation of Article 25. The Respondents' actions remain within the scope of their lawful authority under the framework of SHBEP, which explicitly precludes any claim to permanency. Therefore, no fundamental right of the Petitioner has been infringed.

13. In light of the above analysis and the binding precedents of the Supreme Court of Pakistan, we find that the instant petition is devoid of merit. The doctrine of laches bars relief in this matter, and the Petitioner's engagement under SHBEP was governed by clear terms that precluded any claim to regularization or permanency. Accordingly, the petition is **dismissed**.

JUDGE

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