

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No. D-1638 of 2022

(Syed Muhammad Jamshed and others v/s Province of Sindh and others)

1. For order on office objection
2. For hearing of CMA No 7371 of 2022
3. For hearing of main case

PRESENT:

MR. JUSTICE MUHAMMAD KARIM KHAN AGHA

MR. JUSTICE NISAR AHMED BHANBHRO

Petitioners: Muhammad Jamshed & others
Through Mr. Samiullah Soomro, Advocate

Respondents: Province of Sindh & others
Through Mr. Ali Safdar Depar, AAG.

Date of Hearing: 10.06.2025

Date of Order: 13 .06.2025

ORDER

Nisar Ahmed Bhanbhro, J. Through instant Petition, the Petitioners have claimed following relief:

- a) To direct the Respondents to regularize the services of Petitioners on the post on which they are working since last many years shown in Para No 3 of the Petition.
- b) To direct the Respondents No 1 and 2 to issue notification in favor of Petitioners as in continuation of the earlier notification dated 19.11.2019.

2. Petitioners asserted that they were appointed as Male Mobilizers in Population Welfare Department Government of Sindh on contract basis in the year 2011 – 12, initially for a contract period of one year, which was extendable. Per claim of the Petitioners, the contract was renewed on year-to-year basis, and they are still working in the Population Welfare Department since last about 14 years against permanent vacancies. During the intervening period, similarly placed Male Mobilizers were regularized in services by Respondent No 2 through notification dated 19.11.2019, which was issued pursuant to the order dated 12.03.2018 passed by this Court in Constitution Petition No D 1303 of 2016. Petitioners claim that they were discriminated by Respondents in process of regularization without any reasonable cause, hence this petition.

3. On Notices, the Secretary to Government of Sindh, Population Welfare Department submitted reply, wherein asserted that appointment of Petitioners was done in violation of laws. Petitioners were appointed without observing codal formalities. Advertisement inviting applications for recruitment was not published, merit list was not prepared, recommendation of District Selection Committee was not sought and appointment orders were issued without getting approval from competent authority. Petitioner Syed Muhammad Jamshed was appointed without observing codal formalities, Petitioner Ghulam Murtaza was appointed in District Tharparkar @ Mithi but he possessed Domicile of District Ummerkot, petitioners Abid Qadir, Abdul Samad, Javed Ahmed, Mushtaq Hussain did not possess domicile of District Tharparkar so also they did not possess the minimum required academic qualification of Bachelor Degree (Graduation). Petitioners Sohail Ahmed, Abdul Majid and Rafiq Ahmed Samo had placed on record incorrect orders as they were inducted in contract service after enactment of Sindh (Regularization of Adhoc and contract Employees) Act, 2013. Petitioners cannot be regularized in service as the Petitioners' induction in service was not done in accordance with law.

4. Mr Samiullah Soomro Learned Counsel for the Petitioners contended that the Petitioners were appointed on contract basis after adopting a due process of law in the year 2011. Petitioners were employed on contract basis in a project of Government of Sindh and by virtue of section 3 of Sindh (Regularization of Adhoc and Contract Employees), Act 2013 services of the Petitioners stood regularized. He contended that the Petitioners were discriminated as other similarly placed Male Mobilizers were inducted into regular service through notification dated 19.11.2019 pursuant to the orders dated 12.03.2018 passed by this Court in CPD No 1303 of 2016. He contended that case of the Petitioners was at par with the employees already regularized by the Respondent No 2, Petitioners were discriminated without any rational cause, he prayed for allowing the Petition.

5. Conversely Mr Ali Safdar Depar, Learned Assistant Advocate General Sindh strongly opposed the Petition, contending that the appointment of Petitioners lacked transparency, they were inducted in contractual service without observing codal formalities. The appointment of Petitioner was not sustainable under the law as they were appointed without publication of advertisement, preparation of merit list. Moreover Petitioners did not possess required minimum qualifications and they were not domiciled in the district wherefrom they sought appointment orders. Petitioners have filed this Petition with unclean hands, which merits dismissal with costs.

6. We have heard Learned Counsel for Petitioners, Learned Assistant Advocate General and examined the record.

7. Case of the Petitioners involves a controversy of regularization in service. Petitioners intend to seek benefit of order dated 12.03.2018 passed by Learned Division Bench of this Court in CPD 1303 of 2016. The perusal of the order dated 12.03.2018 revealed that this Court disposed of the Petition by consent of the parties, with an observation that Secretary Population Welfare Department Government would move a summary to the Chief Secretary Sindh for regularization of services of the Petitioners in accordance with law, rules and regulations. The Secretary Population Welfare Department scrutinized the record of appointment of the Petitioners in CPD 1303 of 2016 and found the recruitment process in accordance with law, thus a notification dated 19.11.2019 was issued regularizing the services of Male Mobilizers. Benefit of the order passed by this Court in CPD 1303 of 2016 would not be available to the Petitioners in the present petition as the said order was passed by consent of the parties without adjudication on merits. Case of the Petitioners stood at a different pedestal, as their very appointment on contract basis has been disputed by the Respondent No 2.

8. Contention of the Petitioners that they were discriminated against compared to the other employees who were appointed on contract basis and inducted in a regular service later on. No doubt article 25 of the Constitution obligated the State to provide equal treatment to the citizens and article 27 of the Constitution provided a safeguard against discrimination in services. However, the law provides for reasonable classification within the cadres of civil services. For induction in civil service as a regular or contract employee, it is mandatory that the appointments are made in a fair and transparent manner. The argument that other similarly placed Male Mobilizer were given relief and were taken into regular service, therefore, the Petitioners be given same treatment by regularizing them in service as they cannot be discriminated against those other employees is misconceived. Article 25 of the Constitution has no application to a claim based upon unlawful and illegal acts. It comes into operation when some persons are granted a benefit in accordance with law but others, similarly placed and in similar circumstances, are denied that benefit. Since the appointment process of Petitioners was not fair and transparent, therefore, the ground of discrimination cannot survive, because in order to establish discrimination it is important to show that the case of the Petitioners fell in the purview of earlier act granting benefit to similarly placed employees, which has not been the case here. Petitioners were inducted into service bypassing the merit, through backdoor channel, process of recruitment lacked merit and transparency, the case of the Petitioners thus was not at par with the case of employees who were inducted into regular service, as such they cannot claim the right of equal treatment, as prima facie no case of discrimination stood established to tilt balance in favor of Petitioners.

9. In the case of Vice Chancellor Agriculture University Peshawar and others Versus Muhammad Shafiq and others reported in 2024 S C M R 527 Honorable Supreme Court of Pakistan has held as under:

6. It is well settled that there is no vested right to seek regularization for employees hired on contractual basis unless there is any legal or statutory basis for the same.⁴ The process of regularization requires backing of any law, rules or policy.⁵ It should adhere to the relevant statutory provisions and government policies.⁶ In the absence of any of the same, a contractual employee cannot claim regularization. Applying the principles settled by this Court to the proposition at hand, it becomes clear that the Respondents have no automatic right to be regularized unless the same has specifically been provided for in law or policy which in the present case is not available. Any regularization without the backing of law offends the principles of fairness, transparency and meritocracy and that too at the expense of public exchequer.

10. The Sindh Civil Servants Act 1973 (SCSA) and Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 (SCSAPTR) are governing laws regulating recruitment in civil service in province of Sindh. Rule 3 of the SCSAPTR lays down the methods of appointment either by way of promotion or transfer or by initial appointment in accordance with part III. Rule 3 reads as under:

3. (1) Appointments to posts shall be made by any of the following methods, namely (a) by promotion or transfer in accordance with Part II of these rules; and (b) by initial appointment in accordance with Part III of these rules.

(2) The method of appointment and the qualifications and other conditions applicable to a post shall be as laid down by the Department concerned in consultation with the Services and General Administration Department.

Rule 3 of the SCSAPTR empowers the concerned department to lay down method, qualification and other conditions applicable to a post in consultation with the Services and General Administration Department. The method and qualification of appointment to a post in civil service may vary from department to department and it will be devised keeping in view the job description of the post.

11. In order to achieve the goal of fair and transparent recruitment, Rule 5 of the SCSAPTR obligates department concerned to constitute a District Selection Committee (DSC) at District Level for recommendation of suitable candidates for recruitment to the

post in BS – 01 to 15. Rule 6 binds the appointing authority to accept the recommendations of DSC, in case of refusal, appointing authority shall record reasons for the same and shall obtain orders of next higher authority. Rule 5 and 6 of SCSAPTR read as under:

5. (1) In each Department or Office of Government, there shall be one or more Departmental Promotion Committees and Departmental Selection Committees, the composition of which shall be determined by the Department concerned in consultation with the Services and General Administration Department.

(1-A) In each District, there shall be one or more Departmental Promotion Committees appointed by the District Coordination Officer concerned.

(2) Each such Committee shall consist of at least three members, one of whom shall be appointed as Chairman.

6. Where an appointing authority for Basic Scale 15 and below does not accept the recommendation of a departmental Selection or Departmental Promotion Committee, it shall record reasons therefor and obtain orders of the next higher authority.

This provision of subordinate legislation decentralizes the selection / appointment / recruitment process for positions in grade 1 to 15 from province to District Level. The decentralization of appointment process saddles a responsibility upon the officers managing affairs of the department at District Level to ensure fair and transparent recruitment with strict adherence to laws and rules framed thereunder.

12. Petitioners were inducted in service on contract basis through initial appointment; therefore, Rules incorporated in Part III of SCSAPTR will govern the appointment of Petitioners. Rule 10 of SCSAPTR envisaged that the Initial appointments to posts in Basic Scales 16 to 22, shall be made through Sindh Public Service Commission if the posts were falling within the purview of the Commission, on the basis of examination or test to be conducted by the commission; and if do not fall within the purview of the Commission, in the manner as may be determined by Government. Rule 11 of SCSAPTR provided that the initial appointment to posts in Basic Scales 3 to 15 shall be made on the recommendations of the DSC after the vacancies in these Basic Scales have been advertised in newspapers and Rule 12 of SCSAPTR enunciated that a candidate competing for appointment by initial recruitment must possess the educational qualifications and experience required for the post and be within the age limit laid down for that appointment. Rule 14 of SCSAPTR provided that Posts in Basic Scales 16 and above; and Posts in Basic Scales 3 to 15 in offices which serve only the whole Province, shall be filled on Provincial basis, in

accordance with the merit and regional or district quota as determined by Government from time to time. Rule 15 of SCSAPTR embodied that Posts in Basic Scales 3 to 15 in offices which serve only a particular region or district shall be filled by appointment of persons domiciled in the region or district concerned, per Rule 16 of SCSAPTR Posts in Basic Scales 1 and 2 shall ordinarily be filled on local basis. Rule 20 of SCSAPTR holds that short-term vacancies in the posts falling within the purview of the Commission and vacancies occurring as a result of creation of temporary posts for a period not exceeding six months, may be filled by the appointing authority otherwise than through the Commission on a purely temporary basis after advertising the vacancy. Any of the appointments in Civil Service has to undergo the process articulated under SCSA and SCSAPTR, deviation of the law and rules would make recruitment process a nullity.

13. The Service laws and rules regulating recruitment in civil services make it crystal clear that the process of recruitment shall start by a public notice inviting applications through advertisement, competitive examination, preparation of merit list, interview by District Selection Committee in case of recruitment in Basic Scale 1 to 15 and recommendation of Sindh Public Service Commission in case of recruitment in Basic Scale 16 and above. It is mandatory that the candidate must possess a minimum academic qualification and domicile of the concerned district if the post advertised pertained to a particular district or region. The Petitioners failed to submit any document lending support to their claim of appointment on merits, contrary the Respondent No 2 placed on record sufficient material to demonstrate that mandatory requirements of law and rules were not followed in the appointment process of Petitioners. It is well settled canon of law that when the basic order is without lawful authority, then the entire superstructure raised thereon falls to the ground automatically.

14. Admittedly, Petitioners were employed on contract for a period of one year, The relevant portion clause 1 which is common in all of the appointment orders of the Petitioners reads as follows:

***“Your appointment will be according to the conditions of this Contract. Contract is valid till June 2012. However, this post/job is very likely to continue to future subject to the availability of Funds in the year 2011-2012. In that situation a new contract will be effective after July 2012.*”**

Perusal of the aforementioned terms of the appointment of the Petitioners makes it clear that the employment was rendered on contract basis for a term of one year. However, the term was extendable subject to the availability of funds. Clause 6 of the appointment letter clarified that the job of the Petitioners was purely temporarily and appointment letter could be cancelled at any time without assigning any reasons. The Petitioners might have served

the department for a period of more than 14 years but in the absence of any law or order or policy providing for regularization of services. No vested right accrued in favor of the Petitioners to seek regularization of services even on the basis of length of service rendered on contract basis.

15. In the case of Mohsin Raza Gondal and others Versus Sardar Mehmood and others reported in 2025 S C M R 104 Honorable Supreme Court of Pakistan has held as under:

14. Even otherwise, any institution opting for regularization of its employees must be either mandated by law or must carry out regularization through a well-thought-out policy of the institution concerned laying down the criteria and the process for regularization; performance evaluation of the contractual employee must be assessed to determine if the employee meets the standards required for a regular position; there must be availability of positions that match the skills and experience of the contractual employee; the budgetary considerations and financial implication of a regular employee be weighed and considered. There must be a fair assessment of the employee's qualifications, performance and merit, so as to ensure only competent and committed employees be granted permanent employment status. Reference in this regard may be made to the cases of 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). In the instant case, the regularization process of the petitioners lacks the backing of law, rules, or policy. In the absence of any of the same, an employee cannot claim regularization.

16. Contention of the Learned Counsel for the Petitioner that services of the Petitioners stood regularized automatically by the operation of The Sindh (Regularization of Adhoc and Contract Employees) Act 2013 (the Act). Per contention of the Learned Counsel section 3 of 'the Act' takes effect automatically for regularization of the services of the Adhoc and Contract Employees. For academic purposes Section 3 of 'the Act' is reproduced below:

3. Regularization of services of employees: *Notwithstanding, anything contained in the Act or rules made therein or any decree, order or judgment of a court but subject to other provisions of this Act, an employee appointed on ad-hoc and contract basis or otherwise, (excluding the employee appointed on daily wages and work-charge basis), against the post in BPS 1 to BPS 18 or equivalent basic scales, who is otherwise eligible for appointment on such post and is in service in the government department*

and it's project in connection with the affairs of the province immediately before the commencement of this Act, shall be deemed to have been validly appointed on regular basis.

This piece of legislation was enacted to benefit the contract and adhoc employees who were eligible for induction in regular. By no stretch of imagination, the Act provides a blanket cover to the appointments made in violation of laws and rules. The peculiar and important aspect of this beneficial legislature is that it did not provide a separate mechanism for appointment in civil service but provisions of 'the Act' granted relief to the adhoc and contract employees who were eligible to be appointed against such. The criteria for eligibility has not laid down under 'the Act' but it is the criteria enacted through SCSA and SCSAPTR. For seeking benefit of regularization in service through 'the Act', it is mandatory that the appointment has been made following the due process of law enunciated under Sindh Civil Servants Act 1973 and Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. The reasons rendered by the Department for not extending the benefit of 'the Act' are well founded and rationalized that the appointment of Petitioners lacked transparency and most of the Petitioners were appointed on contract after the promulgation of 'the Act.' The perusal of appointment record of the Petitioners demonstrated that it was faulty and not in accordance with law, therefore, relief of regularization cannot be sought on the basis of any appointment made in violation of laws. To seek regularization of service, it is incumbent upon the beneficiary employee to demonstrate that his appointment did not suffer from any deficiency provided under the appointment rules.

17. In the case of Muhammad Suleman Versus Chief Secretary Government of Khyber Pakhtoonkhwa Civil Secretariat Peshawar and others reported in 2023 S C M R 1932 Honorable Supreme Court of Pakistan has been pleased to hold as under:

4. It is not disputed that the petitioner had not been appointed through a competitive transparent process. Moreover, the appointment was made by the Principal of the College against a fixed remuneration paid from the Agency Development Fund. The appointment had not been made by the "Government" nor a "Government Department" as defined under clauses 'c' and 'd' respectively, of the Act of 2009. The expression 'employee' has been defined in clause 'b' ibid as meaning an ad hoc or a contract employee appointed by the Government on ad hoc or contract basis or second shift/night shift but excluded the employees of project post or appointed on work charge basis or who were paid out of contingencies. The petitioner, therefore, did not fall within the definition of the expression 'employee' for the purposes of section 3 of the Act of 2009.

This Court has consistently held that appointments of any nature, whether initial or ad hoc, permanent or temporary, if made in violation of the principle of transparency and competitive process, inter alia, without inviting applications from the public is in violation of the Constitution and are, therefore, void. Selecting a qualified, eligible and most deserving person is a sacred trust which is to be discharged honestly and fairly in a just and transparent manner and in the best interest of the public.¹²³⁴ As already noted above, the petitioner was not eligible to be regularized under the Act of 2009 and therefore, the decision of the competent authority communicated vide notification, dated 09.01.2020 was unassailable. In the circumstances, no substantial question of law has arisen for consideration of this Court and therefore, leave is refused and consequently, the petition stands dismissed.

18. The process of regularization of service of a contract employee is a policy matter and falls within the domain and authority of the Executive which cannot be interfered with by the Courts; however, judicial review of a policy can be done if it is framed in violation of the fundamental rights guaranteed under the Constitution. The wisdom behind non-interference of courts in policy matters is based on the concept of institutional autonomy, self-governance, necessary for effective decision making by institutions itself. Institutional autonomy is usually determined by the level of capability and the right of an institution to decide its course of action about institutional policy, planning, financial and staff management, without any interference. The Petitioners joined services on contract basis and by accepting the contract they cannot agitate any claim beyond the terms and conditions of the contract. This Court cannot amend the terms and conditions of the contract in exercise of its constitutional jurisdiction under Article 199 of the Constitution. The remedy available to an aggrieved employee falls before a Civil Court for breach of contract based on the principle of master and servant.

19. We are surprised rather shocked to see that the Petitioners have been appointed in Tharparkar District against the positions falling in the category of BS 1 to 15, such positions by mandate of Rule 15 and 16 of SCSAPTR were required to be filled by appointing persons domiciled in District Tharparkar but none of the Petitioners are domiciled from said District, even they lacked minimum required academic qualification. We are constrained to observe that the recruitment process in government department should be done by maintaining high standards of transparency and merit. The appointments in the government departments marred by corruption, nepotism, favoritism, lack of due process, and misuse of authority affect smooth function of office. Good

governance has remained for long a significant issue in our country. The unfair practices in appointment process undermine the principles of fairness and equality, erode public trust and must be discouraged.

20. The High Court as a Constitutional Court is saddled with a balancing responsibility to ensure that public sector Institutions operate within the bounds of law and actions on their part safeguard public interest and do not infringe rights of citizens. The Population Welfare Department in the case of Petitioners have acted within the bounds of law and no transgress of powers has surfaced on record. The Petitioners have failed to make out a case for regularization of the services, point out any illegality or irregularity in the actions taken by the Respondents warranting interference by this Court under its writ jurisdiction. This Petition therefore fails being devoid of merits, accordingly dismissed with listed applications if any. It is clarified that this order shall not operate as a bar for the Petitioners in case department announces fresh vacancies and Petitioners apply for participation in the competitive process for recruitment.

Judge

Head of the Constitutional Benches