

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

CP No D-5276 of 2021

(Zeeshan Ahmed v. Province of Sindh & others)

Petitioner : through Mr. Waqas Shaikh, advocate
Respondent Nos. 1 to 5 : Mr. Ali Safdar, Depar Assistant Advocate
General

Date of hearing : 20-06-2025

Date of order : 20-06-2025

ORDER

Adnan-ul-Karim Memon, J The petitioner requests that Respondent No. 1 regularize his service employment as Planning Officer in the IT Cell Development Wing of the Health Department, Government of Sindh, effective March 20, 2013, and grant him all associated back benefits and seniority.

2. The petitioner was appointed as a Planning Officer (BPS-17) under a two-year contract from June 4, 2011, to June 4, 2013, in the IT Cell Development Wing of the Health Department, Government of Sindh. Before the promulgation of the Sindh (Regularization of Adhoc and Contractual Employees) Act, 2013 (the "Act, 2013") on March 20, 2013, the Secretary of Health, Government of Sindh, had already submitted a summary to the Chief Minister requesting the regularization of the petitioner from July 1, 2012, citing satisfactory service. The petitioner asserted that his contract was still active when the Act 2013 came into effect on March 20, 2013. This, according to the petitioner, entitled him to regularization under Section 3 of the Act, 2013. However, the Scrutiny Committee No. III initially concluded incorrectly that the petitioner's case did not fall under the Act, claiming that the contract had expired before its promulgation in 2013. The petitioner challenged this decision by filing a representation, which led to a re-evaluation of his case. The petitioner submitted that during the re-evaluation, Scrutiny Committee No. III directed the Administrative Department to obtain a legal opinion from the Law Department regarding whether his case is covered by the Act, 2013. Despite this clear directive, significant delays and a lack of action have occurred. He noted that communications between various respondents (Respondent No. 2 and Respondent No. 3) have highlighted missing documents and procedural issues, yet no substantial steps have been taken. The petitioner alleges intentional delay tactics and bad faith by the respondents, particularly Respondent No. 3, who he believed was/is deliberately obstructing his career due to a personal grudge. The petitioner emphasized that his case clearly

met the criteria outlined in Section 3 of the Act, 2013, and he is being unlawfully denied his right to regularization. He has been repeatedly instructed to wait, and despite numerous representations and reminders (including one in 2019 and a referral to the Law Department in 2021), the issue remained unresolved, jeopardizing the petitioner's career due to the alleged negligence and apathy of the respondents.

3. The learned counsel for the petitioner asserted that the Respondents are acting unlawfully and contrary to the principles of fair play and justice. It is evident from the facts that the petitioner was/is being discriminated against, and the Respondents' failure to act on their case demonstrated mala fide intention, which was/is legally unsustainable. The counsel contended that the petitioner's case unequivocally falls within the ambit of Section 3 of the Act, 2013. However, due to bureaucratic red tape and the Respondents' lethargic approach, the petitioner is needlessly suffering and being unlawfully denied their rightful regularization under the Act. Furthermore, the counsel argues that the Respondents are legally obligated to act under the law. Yet, in this instance, they have deliberately kept the matter in abeyance since 2017 to deprive the petitioner of their lawful right. The counsel stresses that the Respondents must be held accountable for their non-performance, as their inaction is causing irreparable pecuniary and non-pecuniary loss to the petitioner.

4. The learned AAG informed the Court about a significant legal development. He submitted that the High Court, in its judgment dated April 8, 2021, across several Constitution Petitions (specifically D-6241, D6229, D-2732, D-4271/2017, D-5995, D-9016/2018, D-4107, D-7376/2019, D-4292 and 4902/2020), had previously ruled that regularizing employees in BPS-16 and above under Section 3 of the 2013 Act without a mandatory selection process by the Commission violated the Constitution and Supreme Court directives. However, this Court's judgment was subsequently challenged before the Supreme Court in Civil Appeal Nos. 26-K to 38-K 2021. The Supreme Court, on December 29, 2023, set aside this Court's judgment and remanded the cases back to the High Court for a fresh decision after hearing all parties involved.

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

6. Regularization of employment hinges on legal backing. Without a specific law, policy, or rules governing regularization, an individual cannot simply petition the High Court for this relief. Both parties acknowledged that the petitioner was hired for temporary, contract-based position, as explicitly stated in his employment contract, which expired just before the promulgation of the law. This contract also stipulated that he could not claim regularization. This crucial details cannot be basis of principle to grant

relief as he already been nonsuited due to efflux of time as the current petition was filed in 2021 whereas the alleged cause of action accrued to the petitioner in 2012/2013. The application of the law applied by the respondents while scrutinizing the case of the petitioner is correct appreciation of law and supported by both regularization policy and existing legal precedents, rendering the decision of scrutiny committee valid and sustainable as the present issue of qualification to hold BS-17 post rest with Sindh Public Service Commission (SPSC), which has also been raised as this Court cannot change the contractual terms by allowing the petitioner to continue with his contractual post after expiry of the period. On the aforesaid proposition we are supported by the decision of the Supreme Court in the case of Government of Khyber Pakhtunkhwa v. Sher Aman (2022 SCMR 406).

7. In view of the above facts and circumstances we do not see any reason to entertain this petition as it is badly hit by laches; whereas, no case for exercising our discretion has been made out; hence the Petition, being misconceived and hit by laches, is hereby dismissed.

JUDGE

Head of the Const. Benches

Shafi