

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D- 21 of 2014

Date	Order with signature of Judge	
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Present

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Abdul Ghani Soomro

Mrs. Fozia Ashraf Petitioner

V E R S U S

Federation of Pakistan & others Respondents

Date of hearing 22.09.2016

Petitioner is present a/w her counsel Syed Saulat Rizvi advocate.

Shaikh Liaqat Hussain Standing Counsel

Mr. Abdul Jalil Zubedi A.A.G

Hadi Bux Zardari, Additional Secretary Women Development Department, Government of Sindh.

Mohammad Ashraf Focal Person, Women Development Department, Government of Sindh.

Mohammad Bux Jokhio, Section Officer, Women Development Department, Government of Sindh.

Muhammad Ali Mazhar, J: The brief facts of the case are that against the vacancy of Manager B.S-18 in Shaheed Benazir Bhutto Women Center, Hyderabad, the petitioner applied for the job and after fulfilling all codal formalities, she was appointed as Manager B.S-18 on 11.03.2008 on contract basis for one year which was subsequently extended from time to time. Since earlier her contract was not being extended, therefore, she filed a C.P No.D-612 of 2010 but during pendency of that petition, the department in which she was performing duties devolved to the Province of Sindh by virtue of 18th amendment in the Constitution. The case of the petitioner

is that she is continuously performing her duties on contract basis and under the provisions of Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 she is entitled to be regularized.

2. Learned counsel for the petitioner referred to CMA No. 15083 of 2016 with which the minutes of Regularization Committee are attached as annexure "A". At Serial No. 1, the case of the petitioner was discussed by the Committee and they observed that at the time of appointment she was 37 years old, however, the age limit for the post of Manager was 35 years, and she was found overage by two years. After discussing her case in detail including the complement that she is performing her duties very well in Shaheed Benzazir Women Development Center, Hyderabad, the Committee advised the administrative department that her case may be submitted to the Chief Minister, Sindh for condonation of over age by two years.

3. Learned A.A.G submits that the matter was referred to the Chief Minister for condonation but it was declined. While learned counsel for the petitioner on the contrary, argued that by a general order, the Chief Minister has already granted relaxation in age up to 15 years and from time to time Notifications are being issued. He has shown us a Notification issued in the year 2012 and submits that for the year 2015 and 2016 similar Notifications have already been issued but no copy has been provided nor learned AAG shown his knowledge to any such notification. Learned A.A.G submitted a copy of letter dated 20.09.2016 which has been handed over to him by the Additional Secretary, Women Development Department, Government of Sindh which shows that the Secretary, Women Development Department has referred to a note to Secretary SGA&CD with the request to resubmit the Summary for obtaining the clear order of the Chief Minister for condonation of upper age limit of the officers mentioned in para-4 and 5 of the summary and the counsel for the petitioner as well as

Additional Secretary both have jointly confirmed that name of the petitioner is mentioned in the Summary. Even the Scrutiny Committee has recommended that the cases of being over age as listed at serial No. D-1 and E-1 can be regularized subject to condonation granted by the Chief Minister for the period indicated against each.

4. We have examined Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 in which certain parameters have been provided under Section 3 for regularization of service of the employees which is reproduced as under:-

“3. Notwithstanding anything contained in the Act or rules made thereunder or any decree, order or judgment of a court, but subject to other provisions of this Act, an employee appointed on adhoc and contract basis or otherwise (excluding the employee appointed on daily-wages and work-charged basis), against the post in BS-1 to BS-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.”

5. What we have found out that no age limit is mentioned in the Act for regularizing any employee. We are also of the view that under the Act, the paramount consideration is to regularize the employee who is performing his/her duties on contract basis and at the verge of his/her regularization under the Act, no exact required age can be strictly observed on the post on which a person is already performing his/her duties for the last considerable time on contract basis (off course, we do not mean to say the regularization should be made even after crossing the age of superannuation in this case). No exact age of Manager, Women Development Department is mentioned and the Scrutiny Committee remarked that at the time of initial appointment of the petitioner when she was employee of the Federal Government before devolution, the required age was 35 years but she was at that time aged about

37 years. So in our view, the question of age cannot be considered at the stage of regularization under the Act with retrospective effect when at the time of initial appointment by Federal Government no such objection was taken by the competent authority. Since the Additional Secretary as well as learned A.A.G both have confirmed that the Summary is going to be resubmitted for the same purpose, therefore, this petition is disposed of with the directions to the Respondents to immediately resubmit the Summary before the worthy Chief Minister, Sindh with this order so that the age relaxation may be considered in view of the observation given by us in the order as well as prevailing Notification of age relaxation already issued by the Chief Minister, Sindh. Learned counsel for the petitioner further argued that there is some issue of unpaid salaries. The Additional Secretary, Women Development Department, Government of Sindh present in court shall examine the matter and if the salary for any period is found to have been unpaid, the same shall be paid to the petitioner in accordance with law.

JUDGE

JUDGE

Aadil Arab