

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

**Present:**

Mr. Justice Salahuddin Panhwar.

Mr. Justice Fahim Ahmed Siddiqui.

C.P.No.D- 446 of 2015

1. For orders on office objection.
2. For Katcha Peshi.

Date of hearing: 18.09.2017.

Date of order: 18.09.2017.

Syed Tarique Ahmed Shah, Advocate for petitioner.

Mr. Muhammad Aslam Khan, Survery files Vakalatnama for petitioner, taken on record.

Mr. Allah Bachayo Soomro, Additional A.G.

**ORDER**

***SALAHUDDIN PANHWAR, J:*** Through instant petition, the petitioner has prayed that:-

***“(a) That this Honourable Court may kindly be pleased to direct the respondents that the petitioner may be regularized from the date when he has completed his five years service.***

***(b) That, this Honourable Court may kindly be pleased to direct the respondents to extend the pensionary benefits to the petitioner without any discrimination and he may be given his lawful earnings in the shape of monthly salaries.”***

2. Precisely, the relevant facts, as pleaded by the petitioner, are that he was appointed as Helper on work charge basis in Public Health Engineering Department through appointment order No.1616 of 1991 dated

31.12.1991. Since the joining, petitioner reached on superannuation, however his services were not regularized despite of length of service which exceeds the period, provided in the policy, wherein any work-charge employee, on completion of five years, is to be regularized; that some of the employees who were appointed on work charge basis in same department filed C.P.No.D-742/2010. Pursuant to that, those petitioners were regularized; that in the year 2002 some of the officials committed theft with regard to the government property, such fact was reported by the petitioner to high-ups as well he lodged FIR bearing No.53 of 2002 at P.S Bulri Shah Karim; as well 25 other persons in the same department who were on work charge filed C.P.Nos.D-650, 801, 862 of 2007 at Sukkur Bench, were also regularized; thereafter new enactment was brought on the book of statute, whereby all contract employees and the persons who were on work charge / contingency were regularized, therefore, the petitioner is also entitled to the same relief.

3. Respondents filed comments, wherein appointment of the petitioner and length of his service is not disputed rather the same is admitted; further it is the claim of official respondents that the petitioner's case was also recommended for regularization, meanwhile he has been retired and that summary is pending before the concerned authority. At this juncture learned counsel for the petitioner referred to C.P.No.D-1204 of 2010 and contends that on similar circumstances in the same department persons who were working on the menial posts were regularized.

4. Heard and perused the record.

5. There can be *legally* no cavil that where a question of law stood determined the principles of *equity* as well *administration of justice* would

always demand to extend the same principle if one succeeds in bringing his case within such determined principle of law.

6. Having said so, it would be conducive to refer the relevant paragraph of order dated 22.03.2016 passed in the referred petition which is that:-

*“5. We have also had a glance over a circular dated 10.03.1994 heavily relied upon by learned A.A.G. to oppose the case of the petitioners, it does not even remotely suggest that 1.7.1994 is to be considered as **a cut-off date for the contingent employees having 5 years of service to seek regularization.** It merely denotes that regularization of the verified employees was to be effected from 1.7.1994 and for such verification a Committee was constituted which was tasked to submit the list of eligible workers to Finance Department who had rendered five years or more continuous service and were in possession of valid NICs. Mr. Abdul Nisar Soomro, Assistant Engineer, Public Health Department, Tando Allahyar, who is present alongwith Manohar Kumar XEN Public Health Engineering, Tando Allahyar, has confirmed that the petitioners are continuously performing their duties since the date of their appointment (from 1987 to 1997), he has not raised any doubt either over the identification of any of the petitioner to be employee of the department. Although learned A.A.G. has strongly opposed the case of the petitioners for regularization but has not been able to show as to why the petitioners, who are low paid work charged employees and are in continuous service, **have not been provided the same benefit, in terms of the Government policy contained in letter dated 10.03.1994, already extended to similarly placed employees.** Learned A.A.G. and the officials present do not deny either that previously the contingent/work charged employees of the department have been regularized in compliance of decision of this Court. We are of the view that when this court has already decided a point of law in respect of other similarly placed employees of the department, the department ought to have taken into consideration the case of other employees including the petitioners as well who due to some reasons could not take any legal proceedings to seek their right. For obvious reason, the rule of good governance would demand that the benefit of decision of this Court ought to have been extended to other employees of the department, who were not party to the earlier litigation, instead of compelling them to approach this court for the same relief, which has already been extended by this Court to other employees. We have not been informed that the case of the petitioners was placed before the Committee for scrutiny in terms of the policy contained in letter dated 10.03.1994, or if so, whether any decision in this regard was made or not.”*

7. As well it would also be conducive to refer the order dated 27.07.2010 passed in C.P.No.D-742 of 2010. Relevant paragraphs are hereby reproduced:-

*“6. The petitioners have been discharging their duties since 1986 to 1997 as Chowkidars, Beldar, Pump Operators, Helpers and Work Mistri but the service benefits in terms of the policy of the Government, uniformly followed by the present regime, have not been extended to them nor were they at all considered for regularization by the Committee headed by the Additional Secretary, Public Health Engineering Department. We take serious exceptions to the Scrutiny made by the said Committee on 7.7.2010, which has singled out the petitioners without any plausible reason. The petitioners were appointed on work charged/contingent basis in the year 1986 till 1997 but they have not been extended the service benefits of the regularization policy of the Government and the Chairman of the Committee i.e. the Additional Secretary, Public Health Engineering Department, Government of Sindh, has given a very strange justification for the exclusion that the petitioners did not apply for regularization nor their CNIC were available with the Department. There is no material placed before us to establish that those who have been found eligible and regularized by the Committee have ever applied for regularization or the petitioners have refused to provide the copies of their CNIC to the Committee though asked for. The policy of the government has to be implemented uniformly and not application is required for its benefit.*

*7. We are clear in our mind that the Committee has not undertaken the scrutiny with clean hands as the petitioners, who are low paid work charged/contingent employees of the Public Health Engineering Department, having rendered more than five years continuous duties and, in law, were eligible for regularization have been left out.*

*8. We for the aforesaid reasons have allowed this petition with the direction to the respondents that the petitioners shall be regularized from the date when they have completed their five years continuous services, within four weeks from the date of short order i.e. 27.7.2010 and compliance report be sent through Additional Registrar of this Court.”*

8. Since, *prima facie*, it is not disputed that the case of the present petitioner *squarely* falls within four corners of decided question of law

hence the petitioner cannot be denied or deprived of same treatment which *otherwise* was / is demand of the *equity*. It may be added that it is *categorically* held in the case reported as 2009 SCMR-1 that:

*“Administration of justice---If a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum. “*

Therefore, following the principles of *equity* as well administration of justice, the instant petition merits and is allowed accordingly. As a result of petitioner shall be treated as a regular employee on the day when he completed five years as work charge employee, and all benefits including pension shall be awarded to the petitioner. Office shall communicate this order to all concerned.

JUDGE

JUDGE

Tufail