

# IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-7964 of 2017

**Present:**

Mr. Justice Irfan Saadat Khan  
Mr. Justice Adnan-ul-Karim Memon

Ashiq Ali Shaikh .....Petitioner

Sindh through Chief Secretary Sindh  
Secretariat and others ..... Respondents

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Petitioner Present in person.  
Mr. Shahryar Mehar AAG along with

**Date of hearing: 20.04.2018**

## **JUDGMENT**

**Adnan-ul-Karim Memon, J.** Petitioner is seeking regularization of his service under section 3 of the Sindh (Regularization of Adhoc and Contact Employees) Act, 2013 as Director (Architect and Planner) in BPS-18, in the Peoples Housing Cell, Government of Sindh. Petitioner seeks further declaration that his service was wrongly dispensed with from 07.09.2014, which act of the Respondent-Cell is illegal, void ab-initio.

2. Brief facts of the case are that the Petitioner was appointed on 06.09.2008 as Director (Architect and Planner) in BPS-18, in the Peoples Housing Cell, Government of Sindh. He asserted that he performed the duties assigned to him with keen interest and devotion without any complaint, therefore his service may be regularized. Petitioner has submitted that after continuous devoted and successful performance, the Respondent-Department is required under the law to regularize the service of the Petitioner.

Petitioner has submitted that he has given his youth time to the Respondent-Department by serving for more than six years and thus has earned the right of legitimate expectancy for consideration and regularization of his service under the beneficial instrument i.e Sindh (Regularization Adhoc and Contract Employees) Act, 2013, and added that the Service of the Petitioner is required to be regularized from the date of the promulgation of the aforesaid Act, 2013. Petitioner submitted that the coercive action of termination of service was agitated by him in C.P. No. D-4579 of 2014 before this Court, which was disposed of vide order dated 04.05.2016 with the following direction:-

***“The Petition is disposed of accordingly. Scrutiny Committee will complete the exercise within three months and forward their recommendation to the Competent Authority in accordance with law.”***

Petitioner has submitted that due to non-compliance of the order passed by this Court Petitioner filed Contempt application and this Court vide order dated 11.04.2017 dismissed the same on the premise that the Respondent-Department has substantially complied with the order of this Court referred to hereinabove and no Contempt was committed by them. Petitioner has further submitted that the Respondent-Department sent the case of the Petitioner to the Scrutiny Committee in compliance of the orders of this Court in the aforesaid Constitution Petition. The Scrutiny Committee vide its minutes of the meeting regarding Regularization of the Contract employee of Shaheed Benazir Bhutto Housing Cell under the Sindh (Regularization of Adhoc and Contract Employee) Act, 2013 has declined the candidature of the Petitioner, with false notion, an excerpt of the same is reproduced as below:-

***“The scrutiny committee observed that Mr. Ashique Ali Shaikh was appointed on contract basis on 06.09.2008 and extended up to 07.09.2014. As per provision of Sindh Regularization of Adhoc and Contract Employees Act, 2013, he was in service in Government Department immediately before the commencement of this Act, therefore, considered his case for regularization under this Act.***

***The Government of Sindh in order to give effect to provision in Section 3 of the Act “who is otherwise eligible” for appointments. The Scrutiny Committee considered the case like other regularization cases under the TORs of the scrutiny committee eligibility for regularization of such employees under this Act.***

***The scrutiny committee observed that the post was advertised on 08.07.2008 in daily “Dawn” Karachi and others newspapers. According to the advertisement the post was advertised with the required qualifications (age limit was not given) as under:-***

- i. Degree with 1<sup>st</sup> Division in Architecture/ Town Planning.***
  - ii) Must be a member of PCATP.***
  - iii) 10 years’ experience in relevant filed.***
- 6. The Scrutiny Committee also observed that Shaheed Benazir Bhutto Housing Cell provided only Degree in City & Regional Planning with 1<sup>st</sup> Division and some experience certificates of the employee. But the department has not provided Notification for the Selection Committee and minutes of the selection committee. Moreover, his degree was issued in August 2002 whereas, he was born on 15.03.1978. Thus, there is no likelihood that he could have experience of ten (10) years as required for the post as he was appointed on 2008.***
  - 7. The Scrutiny Committee observed that from the perusal of record it shows that a Summary to Chief Minister, Sindh was moved by Special Assistant to Chief Minister Sindh / Chairman, Shaheed Benazir Bhutto Housing Cell which mentioned that the interviews of the candidates were conducted by the committee on 02.09.2008 and on the approval of Honourable Chief Minister, Sindh Mr. Ashique Ali Shaikh was appointed as Director/Architecture/Town Planning (BS-18).***
  - 8. Looking at required qualification scrutiny committee observed that Mr. Ashique Ali Shaikh having B.SC degree in City & Regional Planning with six years post qualification experience in various companies/ departments, no copy of membership PCATP provided by SBBHC. However, certificate issued by the Town Planning Department mention about his registration with PCATP vide dated 01.03.2008 registration no. P.0558.***
  - 9. It was also observed that the post of Director was re-designated on 04.05.2009 as Deputy Director Architecture/Planner, but it is not clear from the record whether it has same qualification and experience.***
  - 10. Scrutiny Committee also noted that there are reports from Chairman, Shaheed Benazir Bhutto Housing Cell on mismanagement of the cell and alleged misappropriation of funds whereby NAB references are pending against Mr. Ashique Ali Shaikh, therefore the Chairman, Shaheed Benazir Housing Cell described his performance as unsatisfactory and questionable. The same is reproduced as under:-***

**The NAB Sindh has filed (04) four references against Mr. AshiqueAli Shaikh & other SBBHC officers as well as representatives of Civil Society organization namely FIZA Social Welfare Organization alleging the misappropriation of Government funds. Reportedly, two more references are in the offing against Mr. AshiqueAli Shaikh. During his association with this Cell his performance remained most un-satisfactory and questionable.**

**It is appropriate to mention here that the post against which the petitioner was engaged/ posted and all other posts in the Cell are still temporary which are even not shown in the budget book by the Finance Department. However, the lump sum provision for the salary components is being sanctioned every year. Further, though the petitioner was employed on the recommendation for the recruitment Committee but he did not possess the experience as required in the advertisement.**

**Decision:**

**The Scrutiny Committee considered all the above facts and available record, after the thorough deliberation decided not to recommend the case of Mr. Ashique Ali Shaikh, Director (Architecture)/ Planner, Shaheed Benazir Bhutto Housing Cell for his regularization of service in terms of Regularization of Adhoc and Contract Employees Act, 2013 because at the time of appointment he did not fulfill the requirements of the post advertised and serious reservations put forth by the Department i.e. SBBHC upon his performance.**

**12. The meeting ended with a vote of thanks.**

**(Muhammad SiddiqueAbbasi)  
Additional Secretary  
Law Department/ Member**

**(AtharHussainMirani)  
Additional Secretary  
(Admin/Sr)  
Finance Department/ Member**

**(Muhammad Nawaz Sohoo  
Additional Secretary (Coord.)  
SGA&C Department/Member**

**(Dr. Khalil-ur-Rehman)  
Additional Secretary (Reg)  
Chief Minister's Secretariat/ Member**

Petitioner being aggrieved by and dissatisfied with the decision of the Scrutiny Committee has filed the instant Petition on 22.11.2017.

3. Upon notice the Respondent Nos. 1, 2 and 4, have filed para wise comments.

4. Petitioner present in person has stated that he was appointed in a transparent manner and served the department for more than 6 years and the post of the Petitioner was re-designated

as Deputy Director Architect/ Planner in BPS-18, vide office order dated 18.12.2008; that the Contract of the Petitioner was extended from time to time till 7<sup>th</sup> September 2014; that Petitioner is entitled for regularization of his service under section 3 of the Sindh (Regularization and Adhoc and Contract Employee), Act 2013; that Petitioner's Petition No. D-4579 of 2014 was disposed of with directions to the Scrutiny Committee to scrutinize the matter of the Petitioner in accordance with law vide order dated 04.05.2016 but the Scrutiny Committee did not follow the basic spirit of the order passed by this Court and decided the matter contrary to the law and the facts of the case; that the plea taken by the Scrutiny Committee in its decision is not only against the law but against the provisions of the Constitution; that Petitioner possesses the qualification and experience required for the post of the Director (Architect / Planner) as per the advertisement dated 28.07.2008; that once the Competent Authority sanctioned the approval for the post of the Petitioner the Scrutiny Committee cannot deviate from the decision of the Competent Authority and decide it contrary; that the Respondents cannot decide the matter against the Petitioner without providing him an opportunity of hearing; that the Respondent cannot deny to issue Notification of the regularization of the service of the Petitioner under the Act, 2013. He has placed reliance upon the case of Province of Punjab through Secretary, Agriculture Government of Punjab and others Vs. Zulfiqar Ali in (2006 SCMR 678). He lastly prayed for allowing the instant Petition.

5. On the other hand Barrister Shahryar Mehar, learned AAG has contended that the Petitioner was appointed in Shaheed Benazir Bhutto Housing Cell on contract basis; that the Petitioner

does not possess the qualification and experience required for the post applied for; that the Scrutiny Committee has rightly decided the case against the Petitioner; that Petitioner is facing NAB references for grave irregularities and misappropriation of the public funds in Shaheed Benazir Bhutto Housing Cell, he thus was not entitled for regularization in his service; that the case of the Petitioner does not fall within the ambit of Act 2013; that Petition is not maintainable for enforcement of contractual obligations. He lastly prayed for dismissal of the instant Petition.

6. We have heard the Petitioner in person and the learned AAG, perused the material available on record and the case law cited by the parties.

7. First of all, we address the question of the maintainability of the instant Petition under Article 199 of the Constitution.

8. The primordial question in the present proceedings is whether the Petitioner possesses the required qualifications for the post of Director (Architect and Town Planner) in BPS-18?

9. Record reflects that the aforesaid post was advertised on 08.07.2008 in daily "Dawn" Karachi and other newspapers. As per the advertisement the post was required to be filled as under:-

- i. Degree with 1<sup>st</sup> Division in Architecture/ Town Planning.**
- ii) Must be a member of PCATP.**
- iii) 10 years' experience in relevant filed.**

10. We are cognizant of the fact that there are certain basic requirements for the initial recruitment as provided under the Sindh Civil Servants Act, 1973 and Rules framed there under.

11. Upon perusal of the Scrutiny Committee report which explicitly show that it has been submitted in compliance of the order dated 04.05.2016 passed by this Court in the Constitution Petition No. D-4579 of 2014 filed by the Petitioner in earlier round of litigation. The Scrutiny Committee has opined that there is no Notification for the Departmental Selection Committee for the appointment of the aforesaid post, which is prerequisite as provided under the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974. Scrutiny Report further reveals that the Petitioner lacks experience of ten (10) years as required for the post and membership with PCATP.

12. We have noticed that the post of Director was re-designated on 04.05.2009 as Deputy Director (Architecture/Planner). The law requires that the post can be redesigned with concurrence of Finance Department Government of Sindh if there are Recruitment Rules for the post and in this regard Scrutiny Report reflects that the Petitioner lacks qualification and experience.

13. Record further reflects that the post against which the Petitioner was engaged was temporary, which not even is shown in the budget-book by the Finance Department, Government of Sindh and that cannot be regularized without concurrence of the Finance

Department and other concerned departments even otherwise it required budgetary allocation for such regularization.

14. We are of the considered view that no post in the Government Service can be filled without framing of the Recruitment Rules as provided under the law and a candidate for appointment for initial recruitment must possess the educational qualification and experience and be within the age limit laid down for that appointment. The advertisement dated 28.07.2008 does not show the age limit, which creates anomaly in the appointment of the Petitioner for the post of (Architect / Planner) in Peoples Housing Cell, Government of Sindh.

15. Now, we would like to address the question raised by the Petitioner with respect to the applicability of the Sindh (Regulation of Adhoc and Contract Employees) Act, 2013, suffice to say that no document has been placed on record by the parties regarding the legal status of Shaheed Benazir Bhutto Housing Cell, therefore we are of the considered view that in absence of the above this Act is not applicable to the facts and circumstances of the present case of the Petitioner, the relevant portion of section 3 is reproduced hereunder:-

***“3. Notwithstanding anything contained in the Act or rules made there under 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-changed 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.”***



16. We, therefore, are of the view that the Petitioner cannot take shelter of the Act, 2013 and its applicability in his case for regularization of his service in BPS-18. It is a well settled law that the Post in BPS-17 and above can only be filled through competitive process and not otherwise. We are fortified by the decision rendered by the Honorable Supreme Court of Pakistan in the case of Ali Azhar Khan Baluch vs. Province of Sindh and others (2015 SCMR 456).

17. Reverting to the claim of the Petitioner that he has given his youth time to the Respondent-Department by serving more than six years and thus has earned the right of legitimate expectancy for consideration for regularization of his service under the Act, 2013, suffice to say that Chairman, Shaheed Benazir Bhutto Housing Cell has described his performance as unsatisfactory and questionable for the following reasons:-

***“The NAB Sindh has filed (04) four references against Mr. Ashique Ali Shaikh & other SBBHC officers as well as representatives of Civil Society organization namely FIZA Social Welfare Organization alleging the misappropriation of Government funds. Reportedly, two more references are in the offing against Mr. Ashique Ali Shaikh. During his association with this Cell his performance remained most un-satisfactory and questionable.”***

18. We have perused the Appointment Order dated 06.09.2008 of the Petitioner, which is a contractual appointment for a period of one year. Record does not reflect that the service of the Petitioner was regularized by the Respondent-Department.

19. We are of the view that such appointment could be terminated on the expiry of the contract period or any extended period on the choice of the Employer or Appointing Authority. The case of the Petitioner thus is governed by the principle of "Master and Servant", therefore, the Petitioner does not have any vested right to seek reinstatement in the service. It is a well settled law that contract employee cannot claim any vested right, even for the regularization of the service.

20. As per record, the post of the Petitioner was temporary, in view of the above, an opportunity of Show Cause can only be issued to the employee, who is holding a permanent post, whereas the record does not reflect that the Petitioner was permanent employee of the Respondent-Department, therefore in our view, the Petitioner cannot claim any vested right to be reinstated or regularized in the service. It is a well settled law that the service of temporary employee can be terminated on 14 days' notice or pay in lieu thereof. The members of the Scrutiny Committee have no ostensible reason to put false allegations against the Petitioner.

21. In the present case, there is no material placed before us by which, we can conclude that the Impugned report of Scrutiny Committee is erroneous and has been wrongly issued by them.

22. The Petitioner has failed to establish that he has any fundamental/ vested right to remain on the temporary /contractual post. Therefore, the argument of the Petitioner that he was not heard before issuance of Impugned Scrutiny Report is not tenable in the eyes of law. Reliance is placed upon the case of Contempt Proceedings against Chief Secretary and others (2013 SCMR 1752).

23. The case law cited by the Petitioner is distinguishable from the facts and circumstances of the case.

24. In view of the foregoing, the Constitutional Petition in hand is meritless and not maintainable, hence, is dismissed along with the listed application(s) with no order as to cost.

Karachi  
Dated: .04.2018.

JUDGE

JUDGE