

**IN THE HIGH COURT OF SINDH, AT KARACHI**

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

**C.P No.D-5871 of 2014**

Allana Mousa & 163 others .....Petitioners

Versus

Federation of Pakistan and others.....Respondents

**C.P No.D-68 of 2015**

Sherbaz Khan Rind and 13 others .....Petitioners

Versus

Federation of Pakistan and another.....Respondents

**C.P No.D-1116 of 2015**

Muhammad Yasin .....Petitioner

Versus

Federation of Pakistan and others.....Respondents

**Date of hearing: 16.05.2018**

Syed Shoa-un-Nabi, Advocate for all the Petitioners.  
 M/s. Asim Iqbal and Farmanullah Advocate  
 for M/s Sui Southern Gas Company Ltd/Respondent No.2 & 3.  
 Mr. Moin Azhar Siddqui Advocate for alleged contemnors  
 in C.P. No. D-5871 of 2014.  
 Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

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**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J: -** In the above captioned Petitions similar points of law and facts are involved, hence all these petitions are disposed of by this common judgment.

2. Petitioners have approached this Court for regularization of their service in Sui Southern Gas Company Ltd. (hereinafter referred to as “**SSGCL**”). Their case is that they were appointed on wages in lower grade in different vacant posts from 1992 to 2012 and onwards in different years. They have been performing their duties honestly with due diligence and such Performance/ Experience; Training Certificates are attached with the Memo of Petitions. Petitioners’ further assertion is that they are eligible to be regularized under Office Memorandum dated 29.08.2008 as amended up to date issued by Government of Pakistan, Cabinet Secretariat, Establishment Division, but the Respondent-Company is not regularizing them on the premise that they are not their employees but employees of third party contractor.

3. Syed Shoa-un-Nabi, learned counsel for Petitioners has argued that the Petitioners are seeking regularization of their service in Respondent-Company and on identical points, facts and law, this Court vide order dated 11.01.2013 has allowed Constitutional Petition

No.D-3882/2011 with directions to the Pakistan State Oil Company to give benefits as contained in the Office Memorandum dated 29.08.2008. He next contended that the issue of Regularization of service of the contract Employees or employees of third party contractor has already been settled by this Court more particularly, the decision rendered in case of M/s Hadeed Welfare Trust & another Vs. Syed Muhammad Shoaib & others by the Honorable Supreme Court of Pakistan in Civil Petitions No.121-K and 122-K of 2017, wherein the Honorable Supreme Court has maintained the Judgment dated 15.12.2016 passed by this Court against M/s Hadeed Welfare Trust (A subsidiary of Pakistan Steel Mills) reported in 2017, PLC (C.S.) 1020, whereby contract employees of Pakistan Steel Cadet College were regularized. He next contended that this Court vide Order dated 11.01.2013 has allowed Constitutional Petition No.D-3882/2011 and Pakistan State Oil Company filed Civil Petition for Leave to Appeal No.95-K of 2013 before Hon'ble Supreme Court of Pakistan, which was declined and Order of this Court was upheld vide Order dated 17.05.2013. Learned counsel much emphasized on the Judgment of this Court dated 01.6.2017 passed in the Constitution Petitions No.D-3199, D-4605 and D-5079 of 2013, D-509, D-2034, and D-1091 of 2014 respectively (SBLR 2018 Sindh 134), whereby Pakistan State Oil Company was directed to regularize the services of third party contractor/"outsourced employees" similar point of law is involved in the present proceedings. The said Judgment was assailed before the Honorable Supreme Court of Pakistan in Civil Petitions No.409-K to 414-K of 2017, which maintained the aforesaid Judgment of this Court. Learned counsel for the Petitioners has vigorously argued that the Petitioners have been continuously working

on permanent posts in the Respondent-Company and not that of third party contractor. He lastly prayed for allowing the instant Petitions by giving similar treatment/benefits as given in the aforesaid petitions.

4. Mr. Asim Iqbal, learned counsel for SSGCL/Respondent No.2 & 3 has argued that instant Petitions are not maintainable against Respondent-Company under Article 199 of the Constitution. He next contended that there is no relationship of employment of the Petitioners with the Respondent-Company in any manner of whatsoever in nature. In support of his contention he has drawn our attention that the Petitioners are employees of M/s Basit & Brothers and other private companies and the Petitioners have been drawing their salaries and other perks and privileges from their respective private companies from time to time. He stressed that the Respondent-Company has nothing to do with the employment of the Petitioners. He next contended that the Petitioners have an adequate remedy in the shape of grievance Petition under the labour laws before appropriate forum, which is not availed. He next contended that so far Judgment of this Court dated 01.6.2017 passed in the Constitution Petitions No.D-3199, D-4605 and D-5079 of 2013, D-509, D-2034, and D-1091 of 2014 respectively (SBLR 2018 Sindh 134) was challenged before the Hon'ble Supreme Court in Civil Petitions No.409-K to 414-K of 2017, which maintained the Judgment of this Court. According to him, the case of those Petitioners was quite distinguishable from the facts of the present case. In support of his arguments, he relied upon the case of Muhammad Hashim & 30 others Vs. G.M. Human Resources, SSGCL and 3 others (2015 PLC (C.S) 195), which according to him was upheld by the Hon'ble Supreme Court and

its review also was dismissed by the Hon'ble Apex Court and argued that the facts and circumstances of the above referred case are similar to the instant case, hence these petitions to meet the same fate. Learned counsel further relied upon the cases of Farid Ahmed Vs. Pakistan Burma Shell and others (1987 SCMR 1463), Syed Ashraf Ali Shah and others Vs. Pakistan Telecommunication Company Ltd (2008 SCMR 314), Naseer-ud-Din Ghorri Vs. Federation of Pakistan and others (2010 PLC 323) and PIA and others Vs. Tanveer-ur-Rehman and others (PLD 2010 SC 676). He concluded by stressing that the instant petitions may be dismissed.

5. Mr. Moin Azhar Siddiqui, learned counsel appearing on behalf of M/s Basit & Brothers "Outsourcing" Pvt. Ltd, (not party in the present proceedings) the alleged contemnors in C.P. No. D-5871 of 2014 has adopted the arguments advanced by Mr. Asim Iqbal, learned counsel for the SSGCL. He further argued that M/s Basit & Brothers "Outsourcing" Pvt. Ltd executed an Agreement with SSGCL and in pursuance of the said Agreement; Respondent-SSGCL engaged them to discharge their contractual obligations. The salaries and monthly wages are being paid to the Petitioners by M/s Basit & Brothers and not by the Respondent-SSGCL. He next contended that M/s Basit & Brothers is responsible for the salaries, other liabilities and ancillary work. Per learned counsel, the Petitioners are employees of the Private Company and not that of the Respondent-SSGCL. He next contended that the Petitioners have no cause of action to claim regularization of their service in Respondent-SSGCL. He next contended that the Petitioners are employees of the private company and are taking

all benefits of increment, salaries insurance, and sickness and receiving workers participation fund as employees of the contractors. Learned counsel for the Petitioners has objected and refuted the claim of M/s Basit and Brothers and argued that the Respondent-Company in connivance with M/s Basit & Brothers Outsourcing Pvt. Ltd is playing fraud upon the Petitioners by bringing third party contractor in the picture just to defeat the very purpose of filling of the instant petitions, however Respondent-Company has dispensed with the service of some of the Petitioners during operation of the stay order passed by this Court as such they are required to be hauled up under the contempt proceedings. Be that as it may, we are of the considered view that this Court cannot determine the claim and counter claim of the parties at this stage, our intention is to decide the lis on merits.

6. We have heard the learned counsel for the Parties and perused the material available on record and the case law cited at the bar.

7. In the first place, we examine the issue of maintainability under Article 199 of the Constitution of the Islamic Republic of Pakistan. Perusal of pleadings and arguments advanced by the learned counsel for both the Parties establish that SSGCL is a Company Limited by shares with effect from the date of incorporation with the Securities and Exchange Commission of Pakistan under the Companies Ordinance, 1984 (XLVII of 1984). As per Section 2 (g) of Public Sector Companies, (Corporate Governance) Rules, 2013 'Public Sector Company' is defined as follows:-

**(g) “Public Sector Company” means a company, whether public or private which is directly or indirectly controlled, beneficially owned or not less than fifty percent of the voting securities or voting power of which are held by the Government or any instrumentality or agency of the Government or a statutory body, or in respect of which the Government or any instrumentality or agency of the Government or a statutory body, has**

**Otherwise power to elect, nominates or appoint majority of its directors, and includes a public sector association not for profit, licensed under Section 42 of the Ordinance.”**

8. The Respondent No.2 indeed is a Company, which is performing function in connection with the affairs of the Federation and as such, is amenable to the Constitutional jurisdiction of this Court. Mere fact that it is a Company limited by shares and registered under the Companies Ordinance, 1984 is not sufficient to hold that Constitutional petition against it is not maintainable. The registered companies funded by the Federation or Province fall under the dominative control of the State and Constitutional jurisdiction under Article 199 of the Constitution, 1973 could be invoked against them. We are fortified by the decision rendered by the Honorable Supreme Court in the case of Ramna Pipe and General Mills (Pvt.) Ltd v. Sui Northern Gas Pipe Lines (Pvt.) (2004 SCMR 1274), in which it is settled that a Constitutional Petition against a Public Limited Company is maintainable.

9. In view of the facts stated above, the status of SSGCL can ordinarily be regarded as a ‘Person’ performing functions in connection with the affairs of the Federation under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution. Thus, this Court has jurisdiction to entertain the Constitutional Petition against SSGCL, as SSGCL is a Body Corporate and performing its functions in connection with the affairs of

the State. The functions of the Company have element of Public Authority, as such the same will be amenable to the Writ Jurisdiction. Guidance has also been taken from the decision of the Hon'ble Supreme Court in the case of Abdul Wahab and others Vs. HBL and others (2013 SCMR 1383). In this case, the Honorable Supreme Court has held that two factors are most relevant i.e. the extent of financial interest of the State/Federation in an Institution and the dominance in the controlling affairs thereof. Reference may also be made to the decision of the Hon'ble Supreme Court in the case of Salahuddin Vs. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244).

10. On merits, the case of the Petitioners is that they are working with Respondent-SSGCL for several years, but are not being regularized in the service.

11. We have noted that Office Memorandum dated 29.08.2008 issued by the Prime Minister of Pakistan, entitles regularization of all contract employees, who are working in Autonomous and Semi-Autonomous bodies, corporations and were employed up to June 2008. Petitioners are also claiming benefits of the said Office Memorandum.

12. Reverting to the contention of the Respondent-SSGCL that the Petitioners had no lien or right over the Respondent company, being not their employees but were employees of the private contractor (third party), who was engaged by the Respondent No.2 to perform various functions. It may be mentioned that this issue of "Outsource" third party contractor has been settled by the Hon'ble Supreme Court in the case of Fuji Fertilizer Company Ltd Vs. National Industrial Relations

Commissions and others (2013 SCMR 1253), the Hon'ble Supreme Court at Paragraph No.17 and 18 has held as follows:-

**“17. Normally, the relationship of employer and employee does not exist between a company and the works employed by the Contractor; however, in the case where an employer retains or assumes control over the means and method by which the work of a Contractor is to be done, it may be said that the relationship of employer and employee exists between him and the employees of the contractor. Further, an employee who is involved in the running of the affairs of the company; under the direct supervision and control of the company; working within the premises of the company, involved directly or indirectly in the manufacturing process, shall be deemed to be employees of the company.**

**18. In the instant case, the employees of the contractor were involved in running the affairs of the company such as filling and loading of urea bag as well as cleaning of machines and floors, therefore, for all intents and purposes, they are employees of the company through the contractor.” (Emphasis added)**

13. It may be observed that in case the Petitioners are continuously performing their duties with the Company/Respondent No.2 from 1992 and other different years (as per documents/initial appointment letters, furnished by the Petitioners in the present proceedings), through separate bunch of documents ranging from page No. 1 to 284 that they were paid salaries and issued Passes directly by the Respondent No.2 or at the behest of Respondent company, then in our view, the Office Memorandum dated 29.08.2008 as amended up to date is fully applicable to the Petitioners.

14. We are of the view that the Petitioners are fully entitled to get benefits contained in the Office Memorandum dated 29.08.2008 because they are in continuous service from 1992 and other different years respectively and have drawn salary from the Respondent-Company because they are regularly working on the posts of a permanent nature

since their initial appointments. It may be noted that on the issue of “Outsourcing” (third party contractor), some of the Employees of the Pakistan State Oil Company filed Constitutional Petition No. D-3882/2011 before this Court, which was allowed vide order dated 11.01.2013 and the same was upheld by the Hon’ble Apex Court vide Order dated 17.05.2013 in CPLA No. 95-K 2013 M/s PSO Vs. Ghulam Ali and others, has held as follows:

**“Through these proceedings petitioners have challenged the judgment of the Sindh High Court passed on 11.1.2013 for regularization of the respondents in their organization.2.We have heard the learned counsel for the petitioner company and according to him they outsourced the services of the respondents to a contractor and therefore, the High court of Sindh by impugned judgment was in error to allow the petition of the respondents.3.We have perused the record, which shows that the respondents were employed by the petitioner and working there since years. Respondents were issued security cards by the Civil Aviation Authority on the recommendation of the petitioner company. The entire material was placed before the High court and the High Court by impugned judgment has recorded correct findings. It is contended that the issue ought to have been raised before the National industrial Relations Commission (“NIRC”). We are not persuaded by the contention of the learned counsel on this score as well. NIRC cannot determine nor can order regularization of the respondents as it has limited scope.**

**For the aforesaid reasons we do not find any infirmity in the impugned judgment, which could warrant interference by this Court. Petition merits dismissal. Leave refused.”**

15. On the issue of regularization in the service, our view is further strengthened by the Judgment of this Court dated 01.6.2017, passed in Constitutional Petitions No.D-3199, D-4605 and D-5079 of 2013 respectively and D-509, D-2034, and D-1091 of 2014 (SBLR 2018

Sindh 134) respectively, whereby Pakistan State Oil Company was directed to regularize the services of third party contractor/ “outsourced employees”.

16. The aforesaid Judgment was assailed before the Honorable Supreme Court of Pakistan in Civil Petitions No.409-K to 414-K of 2017, which maintained the Judgment dated 01.6.2017 passed by this Court, vide order dated 08.12.2017 and review Petitions No. 3-K to 8-K of 2018 were also dismissed vide order dated 17.02.2018 and held as under: -

***“As regards the question that the respondents were not the employees of the petitioner but the contractor, suffice it to say that it is a normal practice on behalf of such industries to create a pretence and on that pretence to outsource the employment of the posts which are permanent in nature and it is on the record that the respondents have been in service starting from as far back as 1984. This all seems to be a sham or pretence and therefore it being not a case of any disputed fact and no evidence was required to be recorded. Moreover, we have seen from the order under challenged that in such like cases where the orders have been passed by the Labour Tribunals, the employees, even those who were under the contractors’ alleged employment, have been regularized by the petitioner. And thus keeping in view the rule of parity and equity, all the respondents even if considered to be the employees of the contractor, which is not correct, they having been performing duties of permanent nature should have been regularized. However, at this stage, we would like to observe that the employment of the respondents shall be regularized with effect from the date when they approached the learned High Court through the Constitution petition but for their 13 pensionery benefit and other long terms benefits, if any, available under the law, they would be entitled from the date when they have joined the service of the petitioner. All the petitions are accordingly dismissed.”***

17. From what has been discussed above, we have reached to the conclusion that submissions of the Respondent-Company on the

issue of “Outsource” (3<sup>rd</sup> party contractor) are misconceived and not well founded.

18. It is now well settled that the issue of regularization of the employees is not part of the terms and conditions of service of the employees for which statutory rules are required, but it depends upon the length of service. And, it is on the above principle that Petitioners have approached this Court for regularization of their service under Article 9 and 25 of the Constitution of Islamic Republic of Pakistan 1973. We are fortified by the observation made by the Hon’ble Supreme Court of Pakistan in the case of Khawaja Muhammad Asif Vs. Federation of Pakistan & others (2013 SCMR 1205).

19. Record shows that performance of the Petitioners in the Respondent-Company has not been called in question throughout their service period by the Respondent-Company.

20. We are of the considered view that the Petitioners are entitled to similar treatment, which was given to their similarly placed employees for their regularization more particularly the relief granted to the Petitioners in Constitutional Petitions No.D-3199, D-4605 and D-5079 of 2013 respectively and D-509, D-2034, and D-1091 of 2014 (SBLR 2018 Sindh 134).

21. In view of the forgoing, we are of the considered view that the Respondent-Company cannot act whimsically while making the fresh appointments against the posts already held by the Petitioners, who were appointed in a transparent manner and nothing adverse in terms of the qualification and character and/or inefficiency in the subject field was

observed by the Competent Authority of the Respondent-Company during their entire period of service.

22. We have noted that the Petitioners served the Respondent-Company for a period ranging from in years 1992 and 2012 and onwards. The said period of service is more than sufficient to acquire expertise in the respective fields. Therefore, considering others while ignoring the Petitioners is unjustified and against the principles of natural justice and equity.

23. We have gone through the Office Memorandum dated 11th May, 2017 issued by the Government of Pakistan, Cabinet Secretariat, Establishment Division an excerpt of the same is reproduced herein below: -

**Government OF PAKISTAN  
CABINET SECRETARIAT  
ESTABLISHMENT DIVISION**

**No.F-53/1/2008-SP**

**Islamabad the 11th May, 2017**

**OFFICE MEMORANDUM**

**Subject: - Amendment in the Recruitment Policy/Mechanism to Ensure Merit Based Recruitment in the Ministries/Divisions/Subordinate Offices/Autonomous/ Semi Autonomous, Bodies/Corporations/Companies/Authorities.**

**The undersigned is directed to state that the Federal Cabinet in its meeting held on 12th April, 2017 has accorded approval of the subject amendment to be inserted as para 1(e) in the Recruitment Policy/Mechanism issued vide this Division's O.M. No.531/2008-SP dated 16th January, 2015 as under: -**

**16 "(e) Appointment on Regular Basis of Contract/ Contingent/ Paid/ Daily Wages/Project Employees For the purpose of appointment on regular basis of Contract/Contingent/Paid/Daily Wages/Project employees the following criteria shall be observed: -**

**(i) All Contract/Contingent/Paid/Daily Wages/ Project employees who have rendered a minimum of one year of service in continuity, as on 1.1.2017 (hereinafter referred to as eligible employees) may apply for appointment on regular basis in the manner prescribed hereinafter provided that the condition of continuity shall not be applicable in case of person(s) employed on daily wages who have completed at least 365 days service.**

(ii) For initial appointment to posts in BS-16 and above, the employees shall apply direct to FPSC against relevant/suitable vacancies as and when arising for which they are eligible.

(iii) For initial appointment to posts in BS-1 to BS-15, the eligible employees may apply as per criteria given vide this Division's O.M. No.531/2008-SP dated 16.1.2015 and 3.3.2015 shall be adopted.

(iv) The eligible employees shall be awarded extra marks in interview at the rate of one (01) mark for each year of service rendered up to a maximum of five (05) marks, on the recommendation of the respective selection authorities.

(v) The period served as Contract, /Contingent/Paid/Daily Wages/Project employees shall be excluded for the purpose of determination of upper age limit in addition to relaxation of upper age limit as per existing rules.

(vi) Qualifications prescribed for a post shall be strictly followed in case a person does not possess the prescribed qualifications/experience for the post he/she is applying for he/she shall not be considered for the same.

(vii) The employees must be in good mental and bodily health and free from any physical defect likely to interfere with the discharge of his duties unless appointed against disability quota. 17

(viii) The advantage of para 1(e) is a one-time dispensation for all Contract/Contingent/Paid/Daily Wages/Project employees for their eligibility to regular appointment.

2. This Division's O.M. of even number dated 16th January, 2015 is modified to the above extent. All Ministries/Divisions are requested to take further action accordingly.

(Attiq Hussain Khokhar)  
Director General  
Tel: 051-9103482

**All Ministries/Divisions  
Rawalpindi/Islamabad"**

24. The above Memorandum dated 11th May, 2017 is issued in pursuance of the decision of the Cabinet Sub-Committee for regularization vide which the Federal Government has directed Ministries/ Divisions / Sub-ordinate Offices / Autonomous / Semi-Autonomous Bodies / Corporations / Companies / Authorities to regularize all Contract employees who have rendered a minimum of one year of service in continuity as on 01.01.2017.

25. We are of the view that the Petitioners are fully entitled to the benefit contained in the aforesaid Office Memorandums because they

are in continuous service of the Respondent-Company for long time and are paid salary as well.

26. Looking through the above perspective and keeping in view the factual position of the case, we hereby infer that the Petitioners ought to have been considered for regularization by the Respondent-Company in the light of the aforesaid Office Memorandums. In our view the issue in hand is fully covered by the order rendered by Hon'ble Supreme Court in the case of M/s. Pakistan State Oil Company Limited Vs. Ghulam Ali and others (CPLA No. 95-K 2013) and Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257), wherein the Hon'ble Supreme Court has held at Paragraph 13 that:-

**“looking through the above constitutional prism and keeping in view the facts that the federal government which owns, controls, manages and finances TIP has directed TIP to regularize the appellants, and that admittedly the appellants have initially been appointed in an open and transparent manner and after the vacancies were advertised in the newspapers, one cannot escape the conclusion that the appellants ought to have been regularized.”**

27. We are further fortified with the similar principle referred to by the case law decided by a five Member Bench of Hon'ble Supreme Court in the case of Government of Khyber Pakhtunkhwa and others Vs. Adnanullah and others (2016 SCMR 1375), wherein the Hon'ble Supreme Court has held at Paragraph 31 as follows:-

**“The record further reveals that the Respondents were appointed on contract basis and were in employment/service for several years and Projects on which they were appointed have also been taken on the regular Budget of the Government, therefore, their status as Project employees has ended once their services were transferred to the different attached Government Departments, in terms of Section 3 of the Act. The Government of KPK was also obliged to treat the Respondents at par, as it cannot adopt a policy of cherry picking to regularize the employees of certain Projects while terminating the services of other similarly placed employees.”**

28. We have also reached to the conclusion that the case of the Petitioners is also on the same footing as the case decided by the Honorable Supreme Court in the case of State Oil Company Ltd Vs. Bakhat Siddique and others in Civil Petitions No.409-K to 414-K of 2017 and M/s. Pakistan State Oil Company Limited Vs. Ghulam Ali and others (CPLA No. 95-K 2013) (supra), Pir Imran Sajid and others (supra) and in the case of Government of Khyber Pakhtunkhwa and others and M/s Hadeed Welfare Trust & another (supra).

29. The counsel for the Respondent SSGCL has laid much emphasis on the decision authored by one of us namely Irfan Saadat Khan J in Muhammad Hashim & 30 others Vs. G.M. Human Resources, SSGCL and 3 others (2015 PLC (C.S) 195), which according to him was upheld by the Hon'ble Supreme Court and its review also was dismissed by the Hon'ble Apex Court. Suffice to state that the facts of that case were totally different from the facts obtaining in the instant petition as that was a case of Security Guards who were deployed at different destinations by the Security Company.

30. The other case law cited by the learned counsel for the Respondents are also found to be distinguishable from the facts and circumstances of the present case.

31. Keeping in view the foregoing, the Petitions are disposed of in the terms whereby Chief Executive Officer of Respondent-Company/Respondent No.2 is directed to consider the case of the Petitioners for regularization of their service without discrimination, in accordance with law and the dicta laid down by Hon'ble Supreme Court

of Pakistan in the cases referred to hereinabove within a period of two months from the date of receipt of this judgment. The listed application(s) also stand disposed of accordingly.

JUDGE

Karachi:  
Dated: 23.05.2018.

JUDGE