

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

**C.P. No. D-4577 of 2015**

**Present**

**Mr. Justice Irfan Saadat Khan**

**Mr. Justice Adnan-ul-Karim Memon**

Bashir Ahmed & 18 others ..... Petitioners

V E R S U S

Province of Sindh and others ..... Respondents

**Date of hearing: 26.01.2017**

Mr. Abdul Salam Memon, Advocate for Petitioners

Mr. Mushtaq A. Memon and Mr. Asif Ahmed Memon, Advocates for the Respondent No. 3.

Mr. Abdul Jalil Zubedi, A. A. G., Sindh.

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**JUDGMENT**

**ADNAN-UL-KARIM MEMON-J.** The petitioners are employees of Sindh Judicial Academy (“the Academy”) governed by the Sindh Judicial Academy Establishment (Appointment and Condition of Service) Regulations, 2015 (“the Regulations”). The Petitioners are inter alia, claiming entitlement to salary, allowances and service benefits at par with staff members of the Federal Judicial Academy and the Provincial Judicial Academies of others Provinces as well as seeking grant of the status of a Civil Servant and to be regularized with retrospective effect.

02. The Petitioners are low grade employees and were appointed against the following posts.

S.No.	Name of the Petitioners	Date of Appointment	Nature of Appointment	Post/BPS
1.	Bashir Ahmed	01.01.2005	Two years probation	Naib Qasid-01
2.	Muhammad Ramzan	20.01.2003	Temporary	Gardener - 01
3.	Ali Muhammad	01.12.2004	Two years probation	Messenger-01
4.	Imran Ali	05.12.2007	Two years probation	Chowkidar -01
5.	Parkash	-	-	Sweeper
6.	Syed Muhammad Ali Johar Siddiqui	21.02.2008	Two years probation	Peon-2
07	Zubair son of Bashir Ahmed	03.11.2011	Temporary for one year	Chowkidar-02
08.	Muhammad Habib	14.12.2007	Two years probation	Chowkidar-02
09	Nadir Hussain	17.06.2009	Temporary	Chowkidar-02
10	Muhammad Suleman Saleem	25.08.2012	Temporary for one year	Chowkidar-02
11.	Muhammad Akram	25.08.2012	Temporary for one year	Chowkidar-02
12	Ghulam Murtaza	25.08.2012	Temporary for one year	Chowkidar-02
13.	Jamil Bahadur	25.08.2013	Temporary for six months	Chowkidar-02
14.	Abdul Waheed	-	-	-
15.	Muhammad Farooq	16.03.2013	Temporary for six months	Attendant-02
16.	Azizuddin	16.08.1995	Probation three months	Assistant Accountant
17.	Imtiaz Ali Ujjan	01.01.2005	Probation Two Years	Cook-05
18.	Suresh Kumar	25.02.2013	Temporary for six months	Sweeper-02
19.	Muhammad Ghufraan	16.03.2013	Temporary for six months	Attendant-02

03. The Petitioners asserted that they have been performing their duties in the Academy on temporary/contract basis for the last maximum 15 years and a minimum of 3 years, with full dedication, devotion and to the entire satisfaction of their superiors. Most of the Petitioners were deputed in lower scales but still their services have not been regularized and that due to which the future of their employment is at stake. In addition, they are aggrieved by the fact

that unlike the members of other Judicial Academies, they have not been provided with benefits, perks, enhancement of salary etc.

04. The Respondent No.1 has chosen not to participate in the instant proceedings, whereas, learned counsel for the Respondents No. 3 has filed Counter Affidavit and, Respondent No. 2 has filed statement to the effect that its department has been impleaded merely as a pro forma party.

05. The learned counsel for the Petitioners contended that the case of the Petitioners squarely falls within the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 (“the Act”) as such the services of the Petitioners are liable to be regularized under the Act.

06. The learned counsel for the Petitioners further contended that the staff of the Academy is appointed to manage training of all the judicial officers and their salary package should reasonably be brought at par with the staff of Federal Judicial Academy and other Provincial Judicial Academies, in order to remove the discrimination. He further contended that the Petitioners have been deprived of their vested right of being regularized in service which is in violation of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. (“the Constitution”)

07. Per learned counsel, the services of 17 employees of the Academy had already been regularized and their salary was fixed in accordance with the scale approved under the Regulations, but the Respondents are not regularizing the services of the remaining Petitioners.

08. Per learned counsel, the Petitioners have a good case for regularization under the Regulations as they meet the requisite criteria. Therefore, the Petitioners are entitled to have their jobs regularized as per the Regulations.

09. The learned counsel appearing on behalf of the Respondent No. 3 invited our attention to his counter affidavit and argued that the Petition is not maintainable as the Petitioners were appointed on contractual basis for a temporary period. The learned counsel further contended that no vested right has been created in favour of the Petitioners for regularization of their services and that there is no law providing for the said regularization.

10. The learned counsel for the Respondent No. 3 has further argued that the Academy has no statutory rules of service and its employees are not Civil Servants as such the Constitutional Petition is not maintainable.

11. The learned counsel next contended that the Academy cannot afford to fix the salary of its employees beyond the availability of financial resources as the Academy is receiving limited grant from the Government of Sindh, as such the Petitioners being temporary/contractual appointees cannot seek regularization.

12. The learned counsel for the Respondent No.3 further contended that the Petitioners assertion with respect to the entitlement of the salaries, benefits etc., as that of staff of other Judicial Academies in other Provinces is not tenable under the law as the Petitioners cannot claim treatment and fixation of their salaries on the basis of scale prevalent for the staff of other Judicial Academies of the respective Provinces, as the conditions of service and salary have to be determined on the basis of availability of the finances provided to each Judicial Academy by their respective Provinces and for the Federal Judicial Academy by the Federation.

13. The learned counsel further argued that the Respondent No.3 that the issue of bringing the salaries of employees of the Academy at par with those of Sindh Government Employees is under consideration. In lieu of the same, he filed a statement to the effect that an Office Order No. SJA/5347 dated 15.7.2015, was

issued and the services of seventeen (17) employees of the Academy had already been regularized by the Respondent No.3, so far as the case of Petitioners No.2 and 17 is concerned, it is already in process and their salaries were fixed in accordance with the scale approved via the Regulations. Thereafter, vide letters dated 16.6.2016 and 29.8.2016, the other employees, excluding Petitioner No.1 and Hassan Gul, opted for fixation and adjustment of their salaries in terms of the Regulations and the same were also considered, on purely humanitarian grounds, vide Office Order dated 01.09.2016.

14. The learned counsel lastly argued that the Petitioners have not been discriminated and the Act is not applicable to the employees of the Academy and prayed for dismissal of the instant petition.

15. The learned Assistant Advocate General, Sindh has adopted the arguments of the learned counsel for the Respondent No. 3.

16. We have considered the submissions of the parties and have also gone through the entire record carefully with their assistance.

17. Apropos, the maintainability of the instant petition is concerned, we are of the opinion that the Regulations are not statutory as the same were framed by the Board of Governors of the Academy, pursuant to Section 16 of the Sindh Judicial Academy Act, 1993 (Act No. IX of 1994). Admittedly, the employees of the Academy are not civil servants as defined under Section 2(I)(b)(ii) of the Sindh Civil Servants Act, 1973 and are temporary employees being on Contract. In this regard, the law has already been settled in the case of Pakistan Defence Housing Authority vs Lt. Col. Javed Ahmed (2013 SCMR 1707) wherein it has been held that:-

“50. The principles of law which can be deduced from the foregoing survey of the precedent case- law can be summarized as under:-

- (i) Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.
- (ii) Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant.'
- (iii) In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.
- (iv) Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered within writ jurisdiction.
- (v) That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its an aggrieved person can invoke the constitutional jurisdiction of this Court against a public authority. However, the same cannot be invoked by contractual employees. As such, we do not have the jurisdiction to entertain the instant Petition under Article 199 of the Constitution.

18. Now, we would like to address the question raised by the learned counsel for the Petitioners with respect to the applicability of the Sindh (Regulation of Adhoc and Contract Employees) Act, 2013, suffice to say that this Act is not applicable to the facts and circumstances of the present case of the Petitioners, the relevant portion of which is reproduced hereunder:-

“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-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.” (Emphasize added).

19. We, therefore, are of the view that the Petitioners cannot take shelter of the Act 2013 and its applicability in their cases for regularization.

20. Now, we would like to address the next plea taken by the learned counsel for the Petitioners that similar treatment may be provided to the Petitioners as to the entitlement to the staff Members of the Federal Judicial Academy and other Provincial Academies. It may be pointed out that the Judicial Academy in each Province is empowered to make its own decision regarding the subject that fall within their respective domain in accordance with their own circumstances and it is upto them to decide the terms and conditions in respect of their employees so similar treatment cannot be asked for and provided.

21. Insofar as question of regularization of the services of the Petitioners with retrospective effect is concerned, this plea taken by the learned counsel for the Petitioners is also not tenable in the eyes of the law as it is a well settled proposition of law that no appointment can be made retrospectively.

22. We are of the firm view that contract employees do not have a vested right for regularization of their services retrospectively. It is for the Respondent No.3 to decide the issue of regularization of the Petitioners in accordance with law on a case to case basis.

23. In view of the foregoing, we are of the considered view that the instant Petition is neither maintainable nor could be entertained under Article 199 of the Constitution. the same is dismissed. The listed application is also dismissed. There shall no orders as to cost.

**JUDGE**

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