

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

CP No. D- 282 of 2013

Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Muhammad Kazim Larik and others ----- Petitioners

Versus

Government of Sindh and others ----- Respondents

Date of Hearing : 15.01.2019

Mr. Irfan Ahmed Qureshi, advocate for Petitioners

Mr. Ayatullah Khowaja, advocate for Respondent No.2 / SIDA along with
Mr. Khurram A. Shaikh, Secretary SIDA and Mr. Naeem Memon, G.M.
Finance

Mr. Allah Bachayo Soomro, Addl.A.G.

ADNAN-UL-KARIM MEMON, - The case of the petitioners is that they are serving in Sindh Irrigation Drainage Authority for last several years, they are performing their duties on contingent basis and till today, they have not been regularized on budgetary posts.

2. Mr. Irfan Ahmed Qureshi, learned counsel for the petitioners has submitted that that the case of the Petitioners falls within the ambit of Section 3 of the Sindh Regularization (Ad-hoc and contract) Employees Act 2013. In support of his contention, he relied upon the order dated 01.06.2016 passed by this Court in C.P. No. D-5100 of 2013. He next contended that the Petitioners are entitled for their job protection in accordance with law; therefore their cases may be placed before the Competent Authority for consideration of regularization of their services in terms of the order passed by this Court in the aforesaid matter. He further added that the case of the Petitioners needs to be treated at par with the colleagues of the Petitioners, whose services have already been regularized. Since the (SIDA) is a statutory body constituted under Sindh Water Management Ordinance, 2002; that directions may be issued to the respondents to regularize the services of the petitioners; that the Finance Department is bound under the law to accept the SNE and sanction posts occupied by the petitioners in order to bring the petitioners at par with their other colleagues who were appointed on contract basis and were regularized by the order of this court passed in CP No. D- 5100 of 2013.

3. Mr. Ayatullah Khowaja learned counsel for SIDA has supported the stance of the learned counsel for the Petitioners and argued that SIDA has already recommended the case of the Petitioners for regularization of their services to the Competent Authority and the only issue is with regard to the disbursement of amount to SIDA by Finance Department to pay salaries to the petitioners.

4. Learned A.A.G. has controverted the stance of the learned counsel for the Petitioners and argued that the case of the Petitioners needs to be initiated by the Board of Directors of SIDA, which is an Autonomous Authority. He next added that the Finance Department Government of Sindh had already provided funds to SIDA as per their demand; therefore the Irrigation department has nothing to do with the regularization of services of the Petitioners as it is the job of their parent department. Learned A.A.G. has pointed out that since the Respondents No. 1 and 3 have not acted for and against the Petitioners and the present matter pertains to SIDA, which is a project (through ongoing development scheme) the staff working in the said project is meant only for the project execution; therefore question of regularization of their services does not arise at their end without completion of project. At this stage, the learned A.A.G. has filed statement with regard to the comments filed on behalf of the Finance Department, Government of Sindh. An excerpt of the same statement is reproduced as under:-

“ The Finance Department has filed comments through learned A.A.G. whereby it is submitted that during last financial year 2017-18, an amount of Rs.98.661 million was earmarked for Sindh Irrigation and Drainage Authority as a single line grant-in-aid under the relevant Head of Account, which has been enhanced up to Rs.130.000 million with the condition that Rs.98.661 million will be released in a regular manner and the balance / enhanced amount of Rs.31.339 million will be released as per estimated expenditure to be incurred after regularization of daily wages / work charged / contingent employees of SIDA as per law.

An amount of Rs.49.330,500/- being 1st and 2nd quarters of Rs.98.661 million has so far been released in favour of Sindh Irrigation & Drainage Authority. As regards release of Rs.31.339 million, it will be released in proportion to the estimated expenditure to be incurred after the regularization of daily wages / worked charged / contingent-paid employees paid by Sindh Irrigation & Drainage Authority as per law / rules. So far no information regarding the regularization of such employees and the estimated expenditure to be incurred thereon has been received from the Administrative Department (i.e. Irrigation Department). Finance Department undertakes to release the amount of Rs.31.339 million in proportion to the estimated expenditure to be incurred after the regularization of such employees.”

5. We have heard the learned counsel for the parties at some length and perused the material available on record.

6. Record reflects that this Court vide order dated 01.06.2016 passed in C.P. No. D-5100 of 2013, directed the Competent Authority of SIDA to decide the subject issue of regularization of services of the employees of SIDA in accordance with SIDA Ordinance 2002.

7. Learned AAG has pointed out that the matter of the Petitioners is akin to those Petitioners in C.P. No. D-5100 of 2013, therefore their case may be placed before the SIDA Board for initiating the process of regularization of the Petitioners as well as other issues. Learned counsel for the Petitioners has objected to the aforesaid proposal and argued that in terms of paragraph 10 of the Judgment rendered by this Court in the case of Dr. Iqbal Jan vs. Province of Sindh & others (PLC (CS) 1153), all the Petitioners shall be deemed to have been validly appointed on regular basis, in view of Section 3 of the Sindh (Regularization of Ad hoc and Contract Employees) Act 2013, thus the case of the Petitioners may be decided in accordance with the terms of aforesaid Act 2013 and the Judgment passed by this Court in the case of Dr. Iqbal Jan. We do not agree with the assertion of the learned counsel for the petitioners for the simple reasons that there is much difference with contract employees and staff appointed on contingency basis. Admittedly the petitioners are contingent employees; therefore, their case is quite distinguishable from the aforesaid case.

8. To appreciate the above contention of the learned counsel on the aforesaid issue, it is expedient to have a look at the relevant para of the judgment pronounced by this Court in the case of Dr. Iqbal Jan. An excerpt of the same is reproduced as under:-

“10. Learned Counsel for the petitioners pointed-out and learned A.A.G both extensively argued the matter and agreed that this petition may be disposed of at Katcha Peshi stage. In view of the above, this petition is admitted to regular hearing and disposed of in the following terms: -

- (1) All the petitioners shall deem to have been validly appointed on regular basis in view of section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013.
- (2) The Honorable Supreme Court in its order passed in Civil Appeals Nos.84-K to 86-K of 2012 left it open to the government to take appropriate action against the respondents, against whom they have reservation about their fitness and eligibility. If in this case, the competent authority has any such reservation regarding the fitness of eligibility of any petition, they may take appropriate action but

such exercise should be taken strictly in accordance with law.”

9. The moot point involved in the present petition is interpretation of Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 which provides that;-

“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 ad-hoc 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.”

10. Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 provides that employees appointed on Ad-hoc and contract basis shall be deemed to have been validly appointed on regular basis immediately before the commencement of the Act. Hence, no ambiguity is left that all employees, who fall within the ambit of law shall be regularized in service with effect from the promulgation of the Act, 2013, excluding the employee appointed on daily wages and work-charged basis.

11. As per record, before the commencement of the said Act, Petitioners were not working against the sanctioned budgetary posts but on a fixed period project posts in Respondent-SIDA (on contingent basis), which is an Autonomous Statutory Authority is governed under Sindh Water Management Ordinance, 2002.

12. In our view the Respondent-SIDA is competent to initiate the process of regularization of the Petitioners for the simple reason that Petitioners are their employees and not the employees of the Respondent No 3, thus we do not concur with the assertion of the learned counsel for the Petitioners on the aforesaid pleas, on the contrary the proposal of the learned AAG seems to be fair and reasonable.

13. In view of the facts and circumstances of the case and for the reasons alluded above, this Petition is disposed of in the terms of order dated 01.06.2016 passed by this Court in C.P. No- 5100 of 2013 with direction to the Competent Authority of SIDA to initiate the process of regularization of the Petitioners, strictly in accordance with law, subject to availability of vacancies and budgetary posts, if all the prerequisites are fulfilled then the same may be placed before the Board of SIDA, who in turn consider the case of the Petitioners for regularization of their

services in accordance with law within a period of 90 days from the date of receipt of this Order.

14. In view of such facts and circumstances of the case, the instant petition stands disposed of in the aforesaid terms.

JUDGE

JUDGE

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