

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

**Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon**

C.P. No. D- 3756 of 2012

Anisur RehmanPetitioner

Versus

Federation/Government of Pakistan
& 04 othersRespondents

Date of hearing: 20.08.2019

Date of Order: 20.08.2019

Syed Shoa-un-Nabi, Advocate for the Petitioner.

Mr. Khalid Mehmood Siddiqui, Advocate for Respondent No.2.

Mr. Muhammad Nishat Warsi, DAG.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- The petitioner has filed the captioned petition for regularization of his service in the light of Cabinet Sub-Committee decision dated 12.8.2011.

2. The petitioner's case is that he was appointed in Civil Aviation Authority (CAA) against the post of the General Manager Finance (PG-10) vide letter dated 03.12.2010 on contract basis and he has been performing his duties honestly with due diligence. The petitioner's further assertion is that he is eligible to be regularized under Office Memorandum dated 12.8.2011 and decision dated 9.4.2012 of Cabinet Sub-committee, Cabinet Secretariat, Establishment Division, Government of Pakistan; but the Respondent-Authority is not regularizing his services.

3. We have gone through the aforesaid Office Memorandums and the Cabinet Sub-Committee decision dated 9.4.2012 regarding regularization of the contract/daily wages employees in the Ministries/Divisions/ Attached Departments/Autonomous Bodies/Organizations, etc. We inquired from the learned Counsel for the petitioner that the petitioner is a regular employee as Deputy Manager Finance (PG-8) in Civil Aviation Authority (CAA) and he holds the post of General Manager (PG-10), a temporary post, on contract basis, how he could claim regularization of his service against contractual post.

4. Syed Shoa-un-Nabi, learned Counsel for the petitioner, replied that name of the petitioner appeared in the list at Sr. No.11 of candidates recommended for regularization of their services vide letter dated 09th April, 2012 (page-197 of Memo of Petition); but, the Respondent No.1 vide letter dated 08th June, 2012 directed the Secretary, Ministry of Defence, Government of Pakistan to delete name of the petitioner with malafide intention; that aforesaid decision is erroneous one and liable to be set-a side. He next submitted that other persons have been regularized and the petitioner has been discriminated without assigning any reason; that it was incumbent upon Respondent No.4 to comply with the aforementioned directives of the Cabinet Sub-Committee, as well as, Establishment Division and Ministry of Defence and petitioner ought to have been regularized, whose case is at par with other regularized contract employees of CAA; that a vested right has been created in favour of the Petitioner for regularization; that the non-regularization of the Petitioner's service amounts to gross miscarriage of justice. He lastly prayed for allowing the instant Petition.

5. Mr. Khalid Mehmood Siddiqui learned Counsel for Respondent No.2 raised question of maintainability of the petition and placed on record a copy of letter dated 03rd July, 2019 whereby letter dated 31.5.2019 was withdrawn, in compliance with the order dated 13.6.2019 passed by this Court in the aforesaid Petition, by the Competent Authority of CAA and the petitioner continued against the contract appointment. He further argued

that the regularization ordered by the Cabinet Sub-Committee was for the contract employees in BPS-1 to 15; that Contractual employee of statutory organizations cannot invoke constitutional jurisdiction of this Court under Article 199 of the Constitution. In support of his contention, the learned Counsel relied upon the cases of *Abdul Shakoor Shaikh vs. Federation of Pakistan through Secretary, Ministry of Aviation, Civil Aviation Division, Islamabad and 6 others (2019 PLC (C.S) 25 Lahore High Court (Multan bench)*, *Ameer Solangi and others vs. WAPDA and others (2016 PLC (C.S) 406)*, *Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs vs. Muhammad Azam Chattha (2013 SCMR 120)*, *Tebsil Municipal Officer, TMA Kabuta vs. Gul Fraḡ Khan (2013 SCMR 13)*, *Board of Intermediate and Secondary Education, Faizlabad vs. Tanveer Sajid (2018 SCMR 1405)*, *Abdul Ghafoor vs. the President National Bank of Pakistan (2018 SCMR 157)*, *Government of Khyber Pakhtunkhwa vs. Adnanullah (2017 PLC (C.S) 307)*, *Unreported Judgment dated 06.04.2017 passed in Civil Appeal No.181/13 and Unreported judgment dated 13.07.2017 passed in Civil Petition No.344-K/17*. He lastly prayed for dismissal of the instant Petition.

6. We have heard learned Counsel for the parties, perused the material available on record and case laws cited at the bar.

7. Basically, the petitioner is a regular employee against the post of Deputy Manager Finance (PG-8) in Civil Aviation Authority as spelt out in his appointment letter dated 03.10.2010, whereby he was allowed to work against the temporary post of General Manager (PG-10) approved for Mega Project on one year contract basis (extendable) in Civil Aviation Authority on the terms and conditions specified in the appointment letter referred hereinabove and that period of his contract appointment was extended up to 02.12.2013. Before expiry of the aforesaid contract employment, the petitioner filed the instant petition on 20.10.2012 and succeeded in obtaining ad-interim order dated 3.12.2012 from this Court and till date he is working against the post of General Manager (PG-10). The aforesaid appointment letter dated 03.10.2010 very clearly spells out status of the petitioner; wherein, it has been mentioned in the appointment letter that the petitioner would retain lien on his regular post (Deputy Manager Finance PG-8) during period of his employment against the temporary post (General Manager Finance PG-10) as per rules and his temporary appointment would be governed by the Contract. The extension in the contract period up to 02.12.2013 does not create right of the petitioner to claim regularization sought through the instant petition. Contention of the learned Counsel for the petitioner stands duly answered in the judgment of the Honorable Supreme Court in the case of *Anwar Ali Sabto v. Federation of Pakistan (PLD 2002 Supreme Court 101)*, wherein it has been held that "The contractual appointments of the appellants could not be transformed into regular appointments". On the aforesaid proposition, we are further fortified by the decisions rendered by the Honorable Supreme Court of Pakistan in the cases of *Chairman NADRA through Chairman, Islamabad and another vs. Muhammad Ali Shah and others (2017 SCMR 1979)*, *Maj. (Retd.) Syed Tanveer Abbass and others Vs. Federation of Pakistan and others (2019 SCMR 984)* and *Qazi Muneer Ahmed Vs. Rawalpindi Medical College and allied Hospital and others (2019 SCMR 648)*.

8. We have also noticed that the dispute between the parties related to contract employment. The Honorable Supreme Court has in various pronouncements settled the law that a contract employee is debarred from approaching this Court in its constitutional jurisdiction. The only remedy available to a contract employee is to file a Suit for damages alleging breach of contract or failure to extend the contract. Reference in this behalf may be made to *Federation of Pakistan v. Muhammad Azam Chattha (2013 SCMR 120)*, where it has been held that it is a cardinal principle of law that a contract employee cannot press for reinstatement to serve for the left over period and can at the best claim damages to the extent of unexpired period of his service.

9. For the foregoing reasons, the petition, being devoid of merits, stand dismissed along with pending application(s)

10. These are the reasons of our short order dated 20.8.2019, whereby we have dismissed the captioned petition.

JUDGE

JUDGE