

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

**Mr. Justice Muhammad Shafi Siddiqui**

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

**C.P. No. D- 5479 of 2019**

**Muhammad Kalemullah,**

Petitioner through:

Mr. Muzaffar Ali advocate

Date of hearing:

30.08.2019

Date of order:

30.08.2019

## **ORDER**

Petitioner has filed this petition with the following prayers:-

- a) That this Hon'ble Court may graciously be pleased to call the respondents and to ask them with regard to no issuing appointment order to the petitioner in the line of extension of his contract for further period in SMBBT Project as Assistant Director as the petitioner has experienced and the competent authorities also satisfied from his performance but the petitioner has been deprived from his legal and legitimate right without any lawful reason.
- b) To direct the respondents to issue appointment order to the petitioner as all the requisite qualification / experience has been fulfilled by the petitioner and the competent authorities has also commented in favour of the petitioner in the manner that petitioner is hard worker and competent and they are satisfied with his performance but the respondents without any lawful authority deprived the petitioner from the legal and legitimate right.
- c) To direct the respondents to release the salaries of the petitioner since the year 2016 to 2019 as the petitioner verbally removed from his services in the manner that his contract is expired, therefore, he may not continue his services but without any removal order, which act is illegal and unlawful as the petitioner without any reason or plausible cause has been deprived from his legal right and to continue his services.

2. Basically the petitioner is seeking renewal of his contractual period as Assistant Director Land, Shaheed Mohtarma Benazir Bhutto Town Project, which was finally discontinued by the Respondent-Senior Member Board of Revenue Government of Sindh. Petitioner claims that Senior Member Board of Revenue Sindh forwarded the case of the petitioner for fresh contract but the same has not yet been materialized rather the same has been withheld and in his place one Adil Umar Lashari working in the aforesaid project has been re-hired on contract basis, this caused the petitioner to institute the caption petition for renewal of his contract on the point of parity. We asked the learned counsel to satisfy this Court with regard to the maintainability of the instant petition on the ground that contract

employee is debarred from approaching this Court in Constitution Petition as the contract employee cannot ask for reinstatement to serve for the left over period.

3. Mr. Muzaffar Ali Dharejo, learned counsel for the petitioner has replied that petitioner was engaged as Assistant on Contract basis vide letter dated 01.06.2013 and his services were placed at the disposal of Chief Engineer, Shaheed Mohtarma Benazir Bhutto Town/Project. Per learned counsel his contractual period was extended from time to time and finally the same was discontinued w.e.f. 2016, however, his case for renewal of contract was processed by the respondent-department but no decision has yet been taken by the Project Director Shaheed Mohtarma Benazir Bhutto Town/Project. Learned counsel has emphasized and placed reliance on the letter dated 04.03.2019 available at page 65 to 67 that approval was sought from the Minister, Revenue Department, Government of Sindh for hiring the services of the petitioner as Assistant Director Land in SMBBT for the period of one year in lieu of the terms and condition on the consolidated remuneration of Rs.40,000/- per month; that nothing has been done compelling the petitioner to approach this Court for redressal of his grievances.

4. We have heard the learned counsel for the petitioner on the point of maintainability of the instant petition and has perused the material available on record.

5. First of all we address the question of maintainability of the instant petition under Article 199 of the Constitution.

6. The primordial question in the present proceedings is whether the petitioner possesses the required qualification for the post of Assistant Director Land in SMBBT. Record reflects that the aforesaid post was never advertised only the services of the petitioner were hired on the contingency / contract basis. The period of contract of the petitioner has already been expired.

7. We are of the considered view that no post in Government Service or Project can be filled without framing of the recruitment rules as provided under the law and the candidate for appointment for initial recruitment must possess the

educational qualification and experience and be within age limit laid down for that appointment. This practice of the government functionaries by engaging the services of candidates against the post on contract basis without fulfillment of requisite formalities and subsequently recommend for regularization of their services cannot be appreciated. Per petitioner he has done his Masters in International Relations and Specialization in Economics, if this being the status of the petitioner then he should have applied for the post through transparent manner and competitive process. He also emphasis that he has given his youth time to the respondent department by serving more than four years and thus has earned the right of legitimate expectancy for consideration of regularization of his service, suffice is to say that the respondents have discontinued the services of the petitioner and have not either regularized him nor his contractual period has been extended, thus prima-facie his performance is under shadow. This is the reason his case has not been considered since 2016.

8. We have perused the appointment order dated 01.06.2013 of the petitioner which is a contractual appointment for a period of four months. Record does not reflect that the services of the petitioner were regularized by the respondent department. 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 the appointing authority. The case of the petitioner thus 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 well settled law that the contract employee cannot claim any vested right even for the regularization of the service. We are fortified with the decision rendered by the Hon'ble Supreme Court in the case of *Qazi Munir Ahmed v. Rawalpindi Medical College and others* (2019 SCMR 648).

9. In the present case there is no material placed before us by which we can conclude that non-extension of contractual period of the petitioner is erroneous or tainted with malafide.

10. The petitioner has failed to establish that he has any fundamental / vested right to remain on the temporary / contractual post, therefore, the arguments of the learned counsel for the petitioner that his contract ought to have been renewed and he should have been heard before removal from his service. This ground is not sustainable under the law.

11. In view of the foregoing, the constitution petition in hand is meritless and not maintainable and is accordingly dismissed along with listed applications with no order as to cost. However, the petitioner is at liberty to avail an appropriate remedy in accordance with law.

12. These are the reasons of our short order dated 30.8.2019, whereby we have dismissed the captioned petition in *limine*.

**JUDGE**

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