

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 4935 of 2019

Asad Akram & Junaid Aslam,

Petitioners through:

Mr. Zahid Farooq Mazari advocate

Date of hearing:

02.09.2019

Date of order:

02.09.2019

ORDER

By the above Constitution Petition, the Petitioners have challenged the validity of the letter bearing No.721 dated 18.7.2019, whereby their services were terminated, as Cantonment (Cantt) Engineer BS-17 and Cantonment Overseer BS-11 by the Respondent No. 3 . It has been prayed that the notification of their termination be declared illegal, null and void. It has further been prayed that the Petitioners may be allowed to resume their office and perform their functions in the aforesaid capacity till regularization of their services as policy of Government of Pakistan. The Petitioners have submitted that they were appointed in the aforesaid capacity on 1.4.2017, for a term ending on 30.9.2019.

2. During the course of arguments, we queried from the learned counsel for the Petitioners as to how the instant Petition is maintainable against the aforesaid Termination Order before this Court.

3. Mr. Zahid Farooq learned Counsel for the petitioners in reply to the query has submitted that the impugned letter bearing No.721 dated 18.7.2019 has been issued by the Respondent No.3 without allowing the Petitioners to complete the tenure of thier service; that the Petitioners have been condemned unheard on the allegation leveled against them if any; that the impugned letter bearing No.721 dated 18.7.2019 is arbitrary, fanciful, capricious and repugnant of the morality; that since no departmental proceedings are pending against the Petitioners, therefore, their service ought not to have been terminated by the Respondents; that Impugned letters are arbitrary and capricious in nature, perverse completely, hence void-ab initio, the same may be declared an order passed with coercion, malafide and highhandedness on the part of the respondent No.3 and against the principles of

natural justice, spirit of the Constitution of Pakistan 1973, section 24 of General Clauses Act as well as equity law and the same may be set aside; that the petitioners may be reinstated at their respective posts/positions from the date of their unlawful termination with all back benefits; that the respondents may be directed to send the names of the petitioners to the Ministry of Finance in view of their letter bearing No.FNO-5(3)Imp/2019-733 dated 5th July 2019 being the serving contract employees with the respondent No.3 as per their designation; that the respondents may be directed to confirm the employment of the petitioners as permanent employees as per law keeping in view the previous personal record of the petitioners as well as their previous continuous tenure of employment in the light of established law for confirming the contract employees of different departments of the governments from the status of contract employees to permanent employees on the basis of serving more than 2 years continuous service.

4. We have heard the learned counsel for the Petitioners and have gone through the relevant provisions of the law and Constitution. It may be stated that in view of urgency shown by learned counsel for the Petitioners on the last date of hearing viz. 6.7.2019, this petition was fixed today on the issue of maintainability of the instant petition. Today the learned counsel for the Petitioners has argued the entire case on merits.

5. Basically the Petitioner No.1 was initially appointed as Cantt Overseer in BPS-11 and Petitioner No.2 as Cantt Engineer in BPS-17 in Cantonment Board Korangi Creek on contract basis.

6. We asked another question to 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.

7. Mr. Zahid Farooq, learned counsel for the petitioner has replied that the impugned order is in contravention of the fundamental rights as well as Article 2-A, 4, 9 and 10-A, specifically against the right of fair trial and right to access the justice in terms of doctrine of process of law; that neither any show cause notice was served nor the basis of impugned termination was supplied. Learned counsel has

placed reliance on the cases of *Government of Khyber Pakhtunkhwa vs. Adnanullah* (2016 SCMR 1375), *Zarai Tarqati Bank Ltd. vs. Muhammad Asim Rafique and others* (2016 SCMR 1756), *Qayyum Khan vs. Divisional Forest Officer, Mardan and others* (2016 SCMR 1602), *Pir Imran Sajid and others vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others* (2015 SCMR 1257), *Board of Intermediate and Secondary Education, Multan and another vs. Muhammad Sajid and others* (2019 PLC (C.S) 539, unreported judgment dated 27.4.2018 passed by the Lahore High Court in Writ Petition No.25833/17 and *Punjab Food Authority vs. Zeeshan Munawar and others* (2019 PLC (C.S) 681) and argued that the instant petition is maintainable.

8. We again asked him that the aforesaid decisions related on the issue of Regularization of service and the case in hand is quite different in its nature, he replied that this is hardship case and this court can hear and decide the matter on merits.

9. We have heard the learned counsel for the petitioner on the point of maintainability of the instant petition and have perused the material available on record and case law cited at the bar.

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

11. The primordial question in the present proceedings is whether the petitioners possess the required qualification for the posts applied for. Record does not reflect that the aforesaid posts were advertised only the services of the petitioners were hired on the temporary basis. The period of contract of the petitioners is going to expire at the end of this month.

12. 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 petitioners they have done their graduation and Specialization, if this being the status of the petitioners then they should have applied for the post through transparent manner and competitive process. They also emphasis that they have given their youth time to the respondent-department by serving more than one year and thus have earned the right of legitimate expectancy for consideration of regularization of their service, suffice is to say that the respondents have discontinued the services of the petitioners and have not either regularized them nor their contractual period has been extended, thus prima-facie their performance is under shadow. This is the reason their case has not been considered and finally terminated.

13. We have perused the appointment orders dated 01.04.2017 of the petitioners which is a contractual appointment for a period of six 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 petitioners thus governed by the principle of *Master and Servant* therefore, the petitioners do 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).

14. In the present case there is no material placed before us by which we can conclude that termination of contractual period of the petitioners is erroneous or tainted with malafide.

15. The petitioners have failed to establish that they have any fundamental / vested right to remain on the temporary / contractual post, therefore, the arguments of the learned counsel for the petitioners that their contract ought to have been renewed and they should have been heard before removal from their service. This ground is not sustainable under the law for the reason that the General

Clauses Act, 1897 also gives power to the Competent Authority to make appointment or to dismiss any person appointed in exercise of that power.

16. In view of the foregoing provision of law, in our view, since the basis of appointment of the Petitioners were contractual and the Respondents have terminated their contract of the Petitioners.

17. Reverting to the claim of the Petitioners that they have been condemned unheard by the Respondents before issuing the impugned letters dated 18.7.2019. Therefore, the argument of the Petitioners that they were not heard before issuance of Impugned termination of contract is not tenable in the eyes of law.

18. In the light of above facts and circumstances of the case the instant Petition is found to be devoid of merits and is accordingly dismissed in limini along with the listed application(s). However, the petitioners are at liberty to avail an appropriate remedy in accordance with law.

JUDGE

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