

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No.D-4930 of 2015

Present: Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Musheer Ahmed & othersPetitioners

Versus

Province of Sindh & others.....Respondents

Date of hearing: 17.08.2018

Petitioners are present in person.

Mr. Shehryar Mehar, Assistant Advocate General along with Dhani Bux Bhutto, SO Legal, Planning & Development Department.

ORDER

ADNAN-UL-KARIM MEMON,J:- The Petitioners are seeking regularization of their service from the date of their initial appointment in different Projects of Government of Sindh.

2. Brief facts of the case in nutshell are that Petitioners were appointed as Naib Qasid and Chowkidar in the year ranging from 2005 to 2011 in different Projects of the Government of Sindh. They have asserted that they performed duties assigned to them with keen interest and devotion without any complaint therefore they may be regularized in the service from the date of their initial appointment. They have further asserted that employment is basic necessity of life, particularly for the educated youth and the State is responsible to provide transparent working environment and the employers are required to provide opportunity for grooming and exploitation of abilities and talent by the employees. They

contended that after continuous devoted and successful performance, the Respondent-Department regularized the service of the Petitioner No.1 and 2 with immediate effect and dispensed with the service of the Petitioner No.3 on the premise that he is a contingent employee. They further contended that the Petitioners and other employees of the Respondent-Department deserved regularization of their service from the date of their initial appointment in the departments of Government of Sindh and not from the date of promulgation of the Sindh Regularization of Ad-hoc and Contract Employees) Act 2013. Petitioner No.3 has averred that his service has been dispensed with without Regularization whereas his other colleagues have been regularized in service who were appointed along with the Petitioners on 28.01.2005 on contingent basis. Petitioners have submitted that persons who are appointed on ad-hoc or contract basis before the commencement of the Act-2013 are deemed to have been validly appointed on regular basis from the date of their initial appointment. They next added that in pursuance of the above enactment, this Court passed several orders including the Judgment (Dr. Iqbal Jan & others Vs. Province of Sindh & others) reported as PLC 2014 (C.S.) 1153, as such 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. It is further submitted that to utter shock and dismay of the Petitioners No. 1 and 2 instead of notifying regularization from the date of the joining on contract or ad hoc basis, as envisaged in Section 3 of Act, 2013 the Respondents have notified the Petitioners No. 1 and 2 to be regularized not from the aforesaid date but with immediate

effect which is against the law. It is next submitted that the Petitioners were supposed to be regularized from the date of joining on contract or Ad-hoc basis. It is further contended that in all other departments, including the Law Department as well as the Forest Environment and Wildlife Department, employees have been regularized in terms of Section 3 ibid with seniority to be maintained from the date of joining on contract basis. They lastly submitted that in light of the above, all the Petitioners seek the similar treatment as meted out to the employees of the Respondent-Department; that any other/different interpretation of Section 3 ibid for the employees of the Respondent- Department would not be only in violation of Article 25 of the Constitution, but also in violation of the aforesaid Judgment passed by this Court on the issue of Regularization. They lastly prayed for allowing the instant Petition.

3. Mr. Shehryar Mehar, learned A.A.G, Sindh has contended that the instant Petition is not maintainable under the law; that the petition is based on false allegations and misconceived, hence liable to be dismissed with cost on the ground that the issue of seniority was not raised by the Petitioners No. 1 & 2 when they accepted the terms and conditions of their service at the time of their regularization. It is further contended that the services of the Petitioner No.1 and 2 is not required to be regularized from the date of appointment on contract basis. It is next contended that their seniority will be determined in the light of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975; that the service of the Petitioner No.3 has been dispensed with having

been appointed on contingent basis. He prayed for dismissal of the instant Petition.

4. We have heard the Petitioners who are present in person as well as learned AAG and perused the material available on record.

5. The fundamental query that finalizes the controversy in hand is: -

Whether the seniority of the Petitioner can be reckoned from the date of their induction in service as an adhoc and contract appointment or from the date of regular appointment under Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013?

In the above context, we refer to Sub-Section (4) of Section 8 of the Sindh Civil Servants Act, 1973 reproduced herein below: -

“Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment of such civil servant to that post, service cadre:

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter seniority as in the lower post.”

6. Perusal of the Order dated 21.12.2017 passed by this Court in C.P. No. D- 1899 & 4433 of 2012 explicitly show that service of Petitioners No. 1 and 2 ought to have been regularized from the date of promulgation of the Sindh Regularization of Ad-hoc and Contract Employee Act, 2013 and not from the date of their initial appointment.

7. 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 adhoc 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.”(Emphasis Added)

8. Learned Assistant Advocate General referred to the comments and argued that the service of the Petitioners No. 1 and 2 has been regularized i.e. promulgation of the Act 2013. So far as Petitioner No.3 is concerned his service has been dispensed with for the reasons discussed in the preceding paragraph.

9. Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 provides that employee 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 the Petitioners No. 1 & 2 shall be regularized in service with immediate effect i.e. from the date of issuance of Notification under the Act, 2013, as before the commencement of the said Act, Petitioners were not working against the sanctioned budgetary posts but on a fixed period project posts. The pivotal question remains to be answered as to whether Petitioners No. 1 & 2 can be awarded seniority retrospectively from the date of initial appointment or Ad-hoc / contract basis?

10. Looking through the above perspective and keeping in view the position of the case, we refer to Section 2(b) (ii) of the Sindh Civil Servants Act, 1973 which provides as under: -

2.(b) “civil servant’ means a person who is a member of an All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connect with defence, but does not include –

(ii) A person who is employed on contract, or on work-charged basis or who is paid from contingencies; [emphasize added].

11. In view of the above provision of law, the contract employee cannot be termed as civil servant. It is an admitted fact that the Petitioners No. 1 & 2 before regularization of their service were not Civil Servants as they were working on particular project on contract basis. We are further fortified by Rule 10(1) and (2) of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975, which provides as under: -

“10 (1) subject to the provision of rule 11, the seniority of a civil servant shall be reckoned from the date of his regular appointment.

(2) No appointment made on adhoc basis shall be regularized retrospectively.”

12. The above provision of law clarifies the legal proposition that the seniority of the civil servant shall be reckoned from the date of his regular appointment. The word “Ad-hoc” has been used in Section 2(b) and (d) of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013.

13. In order to further elaborate the issue of Ad-hoc appointment, we refer to Section 2(a) of the Sindh Civil Servants Act, 1973 which reads as under: -

(a) “adhoc appointment” means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending the recruitment in accordance with such method;

14. In the light of above provisions of law, we are of the considered view that no appointment made on ad-hoc basis shall be regularized retrospectively and the contract/Ad-hoc period of service cannot be counted in seniority of a Civil Servant as seniority can be reckoned from the date of regular appointment. Thus, the question of regularization from the date of contract employment is misconceived.

15. We have also scrutinized the comments submitted on behalf of the Respondents, which prima facie suggest that the service of the Petitioners No. 1 and 2 has been regularized with immediate effect, which ought to have been regularized from the date of the promulgation of the Act-2013.

16. We are cognizant of the fact that the service of the Petitioner No.3 has been dispensed with on the premise that his case does not fall within the ambit of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013.

17. In view of the facts and circumstances of the case and for the reasons alluded above, we are of the considered view that the service of the Petitioners No. 1 and 2 is required to be regularized with effect from promulgation of Act 2013, therefore the case of the Petitioners No. 1 and 2 so far as claiming regularization

with effect from their initial appointment on contract basis is misconceived, thus not sustainable in law.

18. Prima facie the case of the Petitioner No.3 is identical to the case of his colleagues appointed along with him in the year 2005.

19. Now, we would like to address the question raised by learned AAG with respect to the applicability of the Sindh (Regularization of Adhoc and Contract Employees) Act 2013, in the case of the Petitioner No.3. In our view prima-facie this Act seems to be applicable to the facts and circumstances of the present case of the Petitioner No.3 as this Act 2013 is relevant for those employees, who held the posts in Government Department and includes the post in a Project of such Department in connection with the affairs of the Province as he was appointed on work charged basis.

20. As regards the next question raised before this Court that whether the Petitioner No.3 can be regularized along with Petitioner No. 1 and 2 in the Respondent-Department? We have sought guidance in this regard from the decision of the Hon'ble Supreme Court rendered in the case of Rana Aamer Raza Ashfaq and another v. Dr. Minhaj Ahmed Khan and another (2012 SCMR 6), wherein the Hon'ble Supreme Court has held at paragraph 39 that:-

“This Court would not interfere in the judgment of the High Court on yet another salutary principle of equity i.e. if in the exercise of Constitutional jurisdiction it has passed an order to remedy a manifest wrong. In Messrs Norwich Union Fire Insurance

Society Limited v. Muhammad Javed Iqbal (1986 SCMR 1071), it was observed as follows:-

“In this view of the matter, as laid down in Raunaq Ali v. Chief Settlement Commissioner PLD 1973 SC 236, the High Court was within its power to refuse relief in writ jurisdiction, where the impugned order before it had the effect of fostering justice and righting a wrong, even though the authority concerned had acted clearly without jurisdiction. The High Court having acted in consonance with this higher principle of justice laid down by this Court, there is no justification for taking exception to the impugned judgment. The other question of law need not, therefore, be examined.”

21. We, therefore, are of the considered view that issue in hand is fully covered by para above of the judgment passed by the Hon’ble Apex Court referred to hereinabove, which provides that the Constitutional Jurisdiction of this Court can be invoked against the Respondent-Department. Respondents can be directed for regularization of his contractual service as on that issue the Hon’ble Apex Court has already enunciated the principles in the case of Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257), wherein the Hon’ble Supreme Court has held at paragraph 13 that:-

“looking through the above constitutional prism and keeping in view the facts that the federal government which owns, controls, manages and finances TIP has directed TIP to regularize the appellants, and that admittedly the appellants have initially been appointed in an open and transparent manner and after the vacancies were advertised in the newspapers, one cannot escape the conclusion that the appellants ought to have been regularized.”

22. We are further fortified on the similar principle by the case law decided by five Member Bench of Hon'ble Apex Court in the case of Government of Khyber Pakhtunkhwa and others Vs. Adnanullah and others (2016 SCMR 1375), wherein the Hon'ble Supreme Court has held at paragraph 31 that:-

“The record further reveals that the Respondents were appointed on contract basis and were in employment/service for several years and Projects on which they were appointed have also been taken on the regular Budget of the Government, therefore, their status as Project employees has ended once their services were transferred to the different attached Government Departments, in terms of Section 3 of the Act. The Government of KPK was also obliged to treat the Respondents at par, as it cannot adopt a policy of cherry picking to regularize the employees of certain Projects while terminating the services of other similarly placed employees.”

23. We are of the view that the case of Petitioner No.3 is also on the same footing as decided by the Honorable Supreme Court in the case of Pir Imran Sajid and others (supra) and in the case of Government of Khyber Pakhtunkhwa and others (supra) as well as Judgment dated 01.06.2017 passed by this Court in Constitution Petitions No.D-3199, D-4605 and D-5079 of 2013 and D-509, D-2034, D-1091 of 2014 upheld by the Hon'ble Supreme Court vide order dated 08.12.2017 in Civil Petitions No. 409-K to 414-K of 2017.

24. In the light of above the facts and circumstances of the case, the instant Petition is hereby disposed of in the following terms:-

- a. ***The service of the Petitioners No. 1 and 2 is required to be regularized with effect from promulgation of the Sindh (Regularization of***

Ad-hoc and Contract Employees) Act, 2013, therefore the case of the Petitioners No. 1 and 2 so far as claiming regularization with effect from their initial appointment on contract basis is not sustainable in law.

- b. The Competent Authority/Respondent-Department is directed to consider the case of the Petitioner No.3 without any discrimination for regularization of his service in accordance with law and the dicta laid down by the Hon'ble Supreme Court of Pakistan in the cases referred to hereinabove within a period of two months from the date of receipt of this judgment.**

25. The Petition stands disposed of in the above terms along with the pending application(s).

JUDGE

JUDGE