

IN THE HIGH COURT OF SINDH, KARACHI
C.P No.D-2018 of 2016

Present

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Muhammad Siddiq and others Petitioners

V E R S U S

Market Committee & others Respondents

Dates of hearing: 26.09.2018

Mr. Ansari Abdul Latif Advocate for the Petitioners.

Mr. Pervez Ahmed Memon Advocate for Respondent No. 1 & 2.

Mr. Shehryar Mehar, AAG along with Abdul Samad Shaikh Focal Person,
Agriculture Department.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - Through the instant Petition, the
Petitioners have prayed for the following relief(s).

- i) ***Hold and declare that petitioners are Regular Employees of Market Committee Karachi/ Respondent No.1 and further declare that annexures "B" to B 14" are valid, legal and bonafide for all intents & purposes;***
- ii) ***Hold and Declare that their Regularization is not subject to availability or non-availability of Budget;***
- iii) ***Direct the Respondents to recall and withdraw all the impugned orders above-detailed against all the 15 petitioners;***
- iv) ***Declare that Omni Bus impugned orders are not sustainable in law as such the same are ab-initio void unwarranted;***
- v) ***Declare all the Respondents to treat all the 15 Petitioners above named as bonafide, regular and lawful employees of Respondent Market committee Karachi.***
- vi) ***Direct the Respondents to perform their law full duties as Public Functionaries according to law and not to harass the petitioners;***

2. Brief facts of the case in nutshell are that the Petitioners were engaged on contingency basis in the office of the Market Committee

Karachi against various posts ranging from BPS-2 to BPS-10. Petitioners have averred that their contingent service was converted into regular service with effect from the year 2003 to 2015 by the order of the Competent Authority, in view of the powers conferred under Section 16 read with section 25-A of Agricultural Produce Market Act 1939 and Rules, 1940 as well as Sindh Market Committees Unified Grade Service Rules, 1983. Petitioners have submitted that they are regular employees of the Market Committee Karachi, thus their status/cadre could not be converted/ changed into contingency. Petitioners have submitted that all of sudden the Administrator Market Committee changed his mind and took unilateral decision by recalling the order of regularization of service of the Petitioners vide letter dated Nil of 2015. An excerpt of the same is reproduced as under:-

Sub: Same position (contingent) Employee of Market committee Karachi.

Ref: Director General Agriculture Extension Sindh Hyderabad Vide No. DD(MO)/ Agri/B&A/1(01)757 of 2014 dated 30.12.2014 (annual Budget 2014-15) of Market committee Karachi.

It is to inform you that you have been appointed / regularized/ in placed in Market Committee Karachi in past.

Moreover that your cases were sent in the annual budget as well as individually to the worthy Director General Agriculture Extension Sindh Hyderabad for necessary approval of the budget.

The budget of Market committee Karachi for the year 2014-15 have been received (name-wise) and your post have not been allowed/sanctioned by the competent authority and directed to the undersigned not to allow any employee on regular basis.

Therefore in the light of above referred letter you cannot entertained in the regular establishment in Market committee Karachi w.e.f. 01.05.2015 (F.N) and you will remain on previous position (Contingent basis) till the matter of budget may not be solved.”

**Administrator
Market Committee Karachi**

Petitioners further added that the Administrator Market Committee Karachi issued another letter dated 12.02.2016 regarding the termination of services of the employees due to non-sanction of budget from the regular strength of employees of Market Committee Karachi i.e. 01.01.2016 on the premise that there were directives given by the Directorate of Agriculture Marketing Hyderabad. Petitioners further averred that the Administrator Market committee Karachi issued another office order dated 19.12.2016 changing the status of the Petitioners from regular strength of Market Committee into contingency basis on fixed pay with effect from 01.01.2016 to 31.03.2016. Petitioners being aggrieved by and dissatisfied with the aforesaid impugned orders issued by the Respondent No.2 have filed the instant petition on 07.4.2016.

3. Mr. Ansari Abdul Latif, learned counsel for the Petitioners has argued that the Petitioners were confirmed and regular employees of the Market Committee Karachi and their service could not be de-regularized by the Administrator Market Committee Karachi without assigning any cogent reason; that the regular status of the Petitioners could not be converted into contingency status, which amounts to punishment without hearing, hence the impugned orders are nullity in the eyes of law. Petitioners are regular employees of the Respondent-Department, thus their service is liable to be treated as regular employee without discrimination; that since the service of the Petitioners were regularized in the year 2003 to 2015, therefore the Respondent-department cannot cancel the regularization of service of the Petitioners unilaterally and arbitrarily and treat them as contingency employees for certain period; that the Petitioners have been condemned unheard without holding

proper inquiry into the factum of budgetary sanction or any other allegations if any leveled against the Petitioners, which is unwarranted under the law; that the Petitioners appointed on regular basis, are entitled to a fair opportunity in terms of Article 4, 10-A and 25 of the Constitution of Islamic Republic of Pakistan 1973; that this Court has jurisdiction to interfere in the matters involving denial of such rights of citizens of this Country by the State Functionaries. He next contended that the Respondent-department has created chaos amongst employees, who were rendering their services on regular basis but have been considered as contingency employees. However, Respondent-department extended the benefit of regularization to colleagues of the Petitioners and other employees and the Petitioners have been singled out on false assertion. He lastly prayed for allowing the instant petition.

4. Mr. Pervez Ahmed Memon, learned counsel for the Respondent No. 1 and 2 has raised the question of maintainability of the captioned petition and has argued that the basic regularization of the Petitioners were conditional i.e. subject to budgetary sanction from Director General Agriculture Extension Sindh; that the Respondents withdrew the regularization order by invoking the powers conferred upon the Competent Authority under Section 35 of the Agricultural Produce Market Act 1939; that the Petitioners' status is now contingent employees and not regular employees; that the Ex-Administrator Market Committee Karachi regularized the service of the Petitioners without approval of the Competent Authority and budgetary sanction; that Petitioners cannot claim vested right for regularization of their service

being contingent employee under the law. He lastly prayed for dismissal of the instant petition.

5. Mr. Shehryar Mehar, representing the Respondent No. 3 to 6 adopted the argument of learned counsel for Respondent No. 1 & 2.

6. We have heard the learned counsel for the parties and perused the material available on record.

7. First of all, we address the question of maintainability of the instant Petition under Article 199 of the Constitution. Prima-facie, it appears that Market Committee is established in terms of Section 7 of the Agricultural Produce Market Act 1939 as amended up to date and Rules framed thereunder, which has statutory status and under section 27 of the Act 1939 rules are required to be framed by the Provincial Government, apparently the aforesaid rules have been framed. Respondent-department is performing functions in connection with the affairs of the Province within the meaning of Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution and therefore this Court has jurisdiction to entertain this Petition and decide the same on merits.

8. To resolve the controversy on the issue of regularization of the service of the Petitioners and their subsequent reversion/change of status into contingent, we deem it appropriate to shed light on the legal position of the case. As per section 16 of the Agricultural Produce Market Act 1939 as amended upto date, which provides as under:-

“Section 16 Appointment and Salaries of Officers and Servants of Market Committee:-

(1) Subject to such rules as may be made by the Government in this behalf, a market committee may employ such persons as may be necessary for the management of the market may pay such persons such salaries as it may think, fit and shall have power to control and punish them. The payment to its employees of such leave compassionate and medical allowances, gratuities and pensions as it deems proper; and may contribute to any provident fund which may be established for the benefit of such employees.

(2) The Committee shall, in the case of any Government servant whom it employs, pay to Government such contribution towards the pension and leave allowances of such servant as may be payable under any regulations in force.

(3) Notwithstanding the provision of sub-section-(1), Government may constitute a service to be known as the Sind Market committees Unified Grade consisting of all posts in the Market Committee is grades 11 and above, and all appointments to the said service shall be made by such authority in such manner and on such terms and conditions as may be prescribed.

(4) Government or any officer or authority empowered by Government in this behalf may transfer any person in the said service from one market committee to other.

(5) All persons in the said service shall be liable to such disciplinary action and penalties as may be prescribed.

(6) The salary allowances and other benefits except retirement benefits of the persons in the said service shall be disbursed from the funds of the market committee concerned.

(7) A Market Committee shall in addition to the contributions made to the Pool Fund under Section-19, make further contribution in the prescribed manner towards its share of retirement benefits in relation to all persons in the said services for the period of such service in such Committee."

9. We have noticed that in Section 16 supra there was amendment called as SINDH ORDINANCE NO. XIII of 1980 THE AGRICULTURAL PRODUCE MARKETS (AMENDMENT) ORDINANCE 1980, which provides as under:-

"8. In the said Act, in section 16, the following sub-section shall be added:-"

(3) Notwithstanding the provisions of sub-section (1), Government may constitute a service to be known as the Sind Market committees Unified Grade consisting of all posts in the Market committees in grades 10

and above, and all appointments to the said service shall be made by Government in such manner and on such terms and conditions as may be proscribed.

(4) Government may transfer any person in the said service from one market committee to the other.

(5) All persons in the said service shall be liable to such disciplinary action and penalties as may be prescribed.

(6) The salary, allowances and other benefits except the leave salary and retirement benefits of the persons in the said service shall be disbursed from the funds of the market committee concerned.

(7) A market committee shall in addition to the contributions make to the pool fund under section 19, make further contribution in the prescribed manner towards its share of the leave salary and retirement benefits in relation to all persons in the said service for the period of such service in such committee”

10. Section 25-A of the Act 1939 provides Emergency Powers to the Market Committee as under:-

25-A, If at any time Government are satisfied that a situation has arisen in which the purposes of this act cannot be carried out in accordance with the provisions thereof, Government may by notification.

(a) Declare that the functions of the market committee shall to such extent as may be specified in the Notification be exercised by Government or such person as they may direct; and such notification may contain such incidental and consequential provisions as may appear to Government to be necessary or desirable for giving effect to the objects of the notification.

(b) Assume to themselves all or any of the powers vested in or exercisable by any market committee.”

11. There is also amendment in Section 25 of the Act 1939 called as SINDH ORDINANCE NO. XIII of 1980 THE AGRICULTURAL PRODUCE MARKETS (AMENDMENT) ORDINANCE 1980, which provides as under:-

“15. In the said Act, in section 25, in subsection (4) (b) (i), after the words "be longer than three years," the

commas and the words "but where no new committee has been constituted to succeed the authority, it shall, unless Government otherwise directs, continue to hold office until a new committee is constituted" shall be added."

12. In view of the foregoing legal position of the case we are of the considered view that the Government of Sindh is competent to take decision on the service issue of the Petitioners including regularization of their service. Prima facie the post cannot be regularized without budgetary sanction under the law.

13. On merits, the foremost question in the present proceedings is whether the Petitioners were initially appointed on contingency basis and/or on work charge/casual basis and consequently their service cannot be regularized? Admittedly, the Petitioners were initially appointed on contingence/contract basis in the year 2003 & 2015, where after pursuant to the policy decision dated Nil of 2015 as discussed supra, the Petitioners and other contract employees were converted into regular employees by the order of the Administrator Market Committee Karachi without budgetary sanction. As per the record the regularization of the Petitioners remained for short period and was reversed in the year 2015 vide order Nil of 2015. In the meanwhile the Petitioners performed their duties in various offices of the Respondent-department as regular employees.

14. We address the main objection of the Respondent-department that Petitioners were hired on contingency basis and they are not eligible for regularization under Section 35 of the Agricultural

Produce Markets Rules 1940. The said provision is reproduced as follows:

35. Budget: ---

(1) "For the purpose if these rules the Agricultural Produce Market Year shall commence on 1st July every year and end on 30th June, following".

(2) A market committee shall annually hold a special meeting not later than 30th April, to prepare and adopt the budget of income and expenditure for the ensuing year.

(3) A duplicate copy of Budget so adopted shall be submitted to the Commissioner in the case of the Karachi Market Committee and in other cases, the Deputy Commissioner who shall after such scrutiny as he may consider necessary forward the same with his comments, if any to the Director General, by the 15th May, who shall have power to sanction it with such modifications as he may consider proper whereupon the market committee shall strictly regulate its expenditure in accordance with the sanctioned Budget.

(4) An expenditure for which no provision exists in the Budget may be met by the market committee by re-appropriation from saving under other heads or by supplementary grant sanctioned by the Director General.

(5) If the Budget is not prepared and got sanctioned by before the commencement of any financial year, the Director General shall have the necessary statement prepared and certified and such certified statement shall be deemed to be the sanctioned Budget of the market committee.

(6) At any time before the expiry of the financial year to which the Budget relates a revised or supplementary budget may be prepared and sanctioned by the Director General."

15. We have noted that Respondent-department has converted regular posts into daily wages, which ex-facie appears to deprive the Petitioners from regularization of their service. This procedure adopted by the Respondent-department by converting the regular appointment in the

categories of daily wages (work charge), is against the basic spirit of terms and conditions of regular appointment letters as due to that policy, the Petitioners have been placed on daily wages and there is no protection to them under the said policy, so far as regularization of their service is concerned. We have further noted that the management of the Respondent-department has attempted to regularize some of the employees working on contingent posts under the garb of Section 35 supra, where the aforesaid cases of those employees is at par with the case of the Petitioners. We find this treatment discriminatory. We are cognizant of the fact that all appointments in the Respondent-department are made either by promotion or by initial recruitment or on contract basis or on daily wages basis. Except daily wages all other appointments are deemed to be appointed in the Regular Service of the department, therefore, only the employee working on daily wages have been singled out without any reasonable classification. Thus, in our view the Petitioners are entitled to be considered for regularization along with their colleagues and other employees of the Respondent-department as per law.

16. Record reflects that the terms and conditions of service of the Petitioners were changed from regular appointment against Contingency position, which legally could not be done. We are of the considered view that regularization of service is not an initial appointment but it is a confirmation of an existing employment. The objection of the Respondents that Petitioners are now working against contingency would be of no legal effect for the simple reason that once the service of the

Petitioners were confirmed on the subject posts, the Respondents cannot take a U-turn and convert the regular service into contingent service.

17. In view of the peculiar facts and circumstances of the present case, while invoking the jurisdiction conferred upon this Court under Article 199 of the Constitution, we hereby declare the impugned action/orders of the official Respondents No.1 to 4 to be in violation of strict and prohibitory command as contained under Article 25 of the Constitution, because the Petitioners have been treated with sheer discrimination, which cannot be approved on any premise whatsoever.

18. In this view of the matter, the decision taken by the Respondent-department by converting the regularized service into contingent service is found to be erroneous and of no legal effect.

19. In the light of facts and circumstances of the case discussed above the instant Petition is hereby disposed of with directions to the Competent Authority of the Respondent-department to take a fresh decision so far as the matter of the Petitioners is concerned for regularization of their service, without discrimination, in accordance with law subject to budgetary sanction, the entire exercise shall be completed within a period of two months from the date of receipt of this Judgment.

20. Petition stands disposed of along with the listed application in the above terms.

Karachi
Dated:

JUDGE

JUDGE