

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

**Mr. Justice Irfan Saadat Khan**

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

**C.P No. D- 5331 of 2015**

Petitioner: Through Mr. Ali Asadullah Bullo,  
Advocate.

Respondents: Through Sheikh Liaquat Hussain,  
Assistant Attorney General a/w  
Mr. Waheed Akhtar, Assistant Director  
(Admn.) NIM, Karachi.

**Date of hearing: 25.10.2018**

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** Through the captioned Constitution Petition, Petitioner has invoked the Constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The Petitioner has sought the following reliefs:-

- i. Declare the services of the Petitioner as regular against the post of Assistant Librarian since the recommendation and approval of the cabinet sub-committee.**
- ii. Direct the Respondent No.3 to issue Notification of regularization of the Petitioner since 2013 and release the arrears as admissible to other regular employees.**
- iii. Direct the Respondents, not to threaten the Petitioner in any way, and they should act strictly in accordance with law.**

2. The case of the Petitioner in nutshell is that a post of Research Associate in Information Technology (I.T) was advertised on 23.05.2001 and after adopting proper recruitment procedure, Petitioner was appointed as Research Associate (I.T) in BPS-17 on contract basis against vacant post, for a period of 01 year, with effect from. 01.09.2001. His contract period was extended from time to time till today. Petitioner has submitted that during his appointment as Research Associate (I.T), he performed his duties with commitment, devotion and to the entire satisfaction of his superiors. Petitioner has added that he had been conducting various I.T related training courses in National Institute of Public Administration (NIPA) efficiently now National Institute of Management (NIM). He further added that he is also assisting as Instructor/Programmer in conducting the IT sessions/modules in the advances courses in Public Sector Management. Petitioner has submitted that he requested for regularization of his services and for his absorption in the permanent cadre of NIPA Karachi, where he has served for about five years on contract basis. Petitioner has submitted that the Director General, NIPA vide letter dated 10<sup>th</sup> May, 2006 recommended his case for regularization of service, which was later on approved by the Cabinet Sub-Committee for regularization vide letter dated 29.11.2012. The basic grievance of the Petitioner is with regard to the enforcement of the order passed by the Cabinet Sub-Committee for regularization which has not been enforced yet. Petitioner being aggrieved by and dissatisfied with the aforesaid inaction on the part of the Respondents has filed the instant petition on 03.09.2015.

3. Mr. Ali Asadullah Bullo, learned counsel for the Petitioner has drawn our attention to the Paragraph-59 of the minutes of the meeting of the Cabinet sub-committee, whereby it was decided as under:-

**“59. The Cabinet Sub-Committee further discussed and approved the regularization of the service of Mr. Shafqat Hussain Shah Assistant Librarian /IT Officer (BS-17) of NIM, Karachi subject to availability of post and fulfillment of recruitment criterion and completion of more than one year of services”**

Learned counsel has argued that the case of the Petitioner ought to have been considered for regularization of his service however the Respondent No.3 instead of issuing regularization order issued another office order dated 07.10.2013 whereby the contract of the Petitioner was extended on the post of Assistant Librarian / I.T. Officer for one year, which is entirely different from the referred decision of the Cabinet sub-committee as the case of the Petitioner has already been examined and approved for regularization, but the Respondents have committed gross violation of the directions by extending the period of employees on contractual basis; that the Respondents have failed to follow and act upon the clear directions and order of the Cabinet sub-committee; that due to the impugned action on the part of Respondents, the Petitioner is continuously suffering financial loss as he is still serving on contractual position against a permanent post, for which, he is not only eligible but fit to hold the same; that the Respondents are reluctant to regularize the services of the Petitioner, who has acquired requisite qualification and due to his satisfactory performance, his services are continuously being retained in the department, that the impugned omission and commission on their part, by not complying with the direction and

approval of the lawful authority who are required to act in accordance with law. He lastly prayed for allowing the instant petition.

4. Sheikh Liaquat Hussain, learned Assistant Attorney General has argued that the Petitioner was appointed as Research Associate (I.T) in BS-17 by the then Director General NIPA Karachi who was the competent authority for appointment up to BPS-17; that the Government of Pakistan converted NIPA into National Institute of Management (NIM) and no new post with the nomenclature of I.T Officer (BS-17) was given under the organogram of NIM. The Petitioner was accommodated against an equivalent post in NIM and his contract period has been extended by the National School of Public Policy (NSPP) from time to time; that the recommendations of the Cabinet Sub-Committee were conditional and subject to fulfillment of criteria for regularization of service of the Petitioner. The NSPP considering the required criteria has been allowing him to work on contract basis from time to time as his last contract period was extended by NSPP vide Notification dated 16.12.2014; that he applied for regularization of his service from time to time and his case was forwarded to the Establishment Division vide letter dated 10<sup>th</sup> May, 2006, however his case was turned down vide letter dated 23.06.2006. Learned AAG has pointed out that Petitioner has been taking sessions of I.T in MCMC & SMC, therefore, NIM Karachi needs his services. His case was again forwarded to the NSPP for extension of his contract from time to time and the NSPP extended the said period accordingly; that the Establishment Division vide letter dated 10.06.2015 is committed to consider the case of the Petitioner as per criteria set

forth under the regularization policy accordingly. He lastly prayed for dismissal of the instant petition.

5. We have heard the learned counsel for the parties, perused the entire material available on record.

6. Admittedly, the Petitioner has been serving in NIM in his respective position since about last more than 17 (seventeen) years, on contract basis, however, renewal of his contract clearly shows that the nature of his job/duty is of permanent nature and not casual or temporary. Record reflects that the Petitioner has been performing his function/duty to the satisfaction of the Respondent-institute and he has remained useful for and beneficial to the institute. There is no allegation of any misconduct or incompetence against the Petitioner; rather he has been appreciated from time to time. Record does not reflect that the post held by the Petitioner and the work carried out by him was of a temporary nature. We are fortified on the aforesaid issue by the decision rendered by the Hon'ble Supreme Court of Pakistan 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.”***

7. In addition to the benefit of the above dictum, we may observe here that Respondent-institute, apparently has committed

non-compliance, rather defiance of the decision of the Cabinet sub-committee to regularize the services of the Petitioner by not heeding to the directives of their Ministry and to comply with the said decision, which appears to be wholly illegal and uncalled for. Even otherwise, since as noted earlier, the retention of the Petitioner by NIM for a period of more than 17 (seventeen) years and repeated renewal of his contract of employment, clearly show that the post/position held by the Petitioner was/is of permanent nature, which was essentially required by the Respondent-institute for its functioning, therefore, employing/retaining the Petitioner on contract, instead on permanent basis for such a long period be unfair and not in accordance with law. Such practice/conduct has also been deprecated through the aforesaid decision rendered by the Hon'ble Supreme Court of Pakistan. The Petitioner has rendered prime time of his life in serving Respondent-institute and in the process may now has become overage for any other suitable employment.

8. It is now well established that right to life as envisaged by Article 9 of the Constitution, includes the right to livelihood and as laid down in the case of ***Abdul Wahab and others V. HBL and others (2013 SCMR 1383)***, the “right to livelihood, therefore, cannot hang on to the fancies of individuals in authority.” Certainly, as has further been held in the aforesaid judgment; “it shall unmistakably be permissible that the employment of an employee can be brought to an end, but obviously in accordance with law”, whereas in the present case, as observed earlier, there was/is no justification for not making his employment permanent, and that keeping his entire career, rather livelihood exposed and

susceptible to the whims of the authorities, which also hurts the dignity of the Petitioner for an indefinite period.

9. It is further noted that the service/employment rules of NIM are statutory, which do not prevent the Petitioner from seeking implementation of the decision/order of the Federal Government/ Ministry for his regularization. We are further fortified with the similar principle referred to in a case decided by a five Member Bench of Hon'ble Supreme 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 as follows:-

***“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.”***

10. We have thus reached to the conclusion that case of the Petitioner is also on the same footing as the one 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).

11. Looking through the above Constitutional prism and keeping in view the facts that the Federal Government which owns, controls, manages and finances NIM has directed NIM to regularize the Petitioner, and that admittedly the Petitioner has initially been

appointed in an open and transparent manner and after the vacancy was advertised in the newspapers, one cannot escape from the conclusion that the Petitioner ought to have been regularized.

12. In the light of above facts and circumstances, the Petition is allowed in the terms whereby the Competent Authority of the Respondent-institute is directed to consider the case of the Petitioner for regularization of his service without discrimination, in accordance with law and the dicta laid down by 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.

13. These are the reasons of our short order dated 25.10.2018, whereby we have allowed the captioned petition.

JUDGE

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