

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

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

C.P No.D-5895 of 2015

Abdul Jabbar Petitioner
Versus
Province of Sindh & others Respondents

Date of hearing: 13.11.2018

Syed Abrar Ahmed Bukhari, Advocate for the Petitioner
Mr. Shahryar Mehar, Assistant Advocate General along with
Shamim Imran (Internee), Muhammad Saleem Soomro, focal
Person and Nadeem Ahmed Law officer

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- Through the instant Petition, the Petitioner has prayed for regularization of his contractual service from the month of May 2009 in the Respondent-Law Department Government of Sindh.

2. Brief facts of the case as per averments of the parties are that the Petitioner was appointed on 14.05.2009 as Deputy District Attorney (DDA) in the Solicitor Department, Government of Sindh on contract basis for a period of one year. Petitioner has submitted that his contract period was extended from time to time and still continued. Petitioner contends that he approached the Competent

Authority of Law department for regularization of his service, but failed to achieve his desire, due to his overage issue. Petitioner has submitted that the Respondent-department had regularized 136 DDA's vide Notification dated 13.8.2015 but only the Petitioner was left out. Petitioner further averred that he approached to the office of the Law department and called in question their discriminatory treatment meted out with him, but of no avail, thus he has approached this Court on 21.09.2015.

3. Upon notice, Respondent-department filed para wise comments and raised the question of maintainability of the instant petition.

4. Syed Abrar Ahmed Bukhari, learned counsel for the Petitioner has argued that the Petitioner has been performing his duty as Deputy District Attorney since 2009, therefore, he is entitled for regularization of his service; that the Respondent-department have regularized the contractual service of other 136 DDA's, but the Petitioner has been discriminated in violation of Article 4, 9 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. On the aforesaid ground, the learned counsel pleaded discrimination and argued that the case of the Petitioner falls within the parameters contained in Article 25 of the Constitution. He further submitted that under Article 5 of the Constitution, it is the imperative obligation of the functionaries of the State to abide by the Constitution and the law because it has been held inviolable obligation of every citizen wherever he may be and of every other person for the time being within Pakistan; that

the Petitioner is eligible and qualified to be appointed on regular basis. Learned counsel for the Petitioner has drawn our attention to the Summary for Chief Minister, Sindh for regularization of contract employees of the Law department and argued that this Court has already passed several orders with regard to the regularization of services of various organizations and departments of Government of Sindh, therefore the case of the Petitioner is on the same footing as decided by this Court. He lastly prayed for allowing the instant petition.

5. Upon query by this Court as to how the instant Petition is maintainable so far as issue of regularization of the Petitioner in the Respondent-department is concerned, as the Petitioner has crossed the age of 59 years, the learned counsel for the Petitioner reiterated his arguments and argued that the case of the Petitioners falls within the ambit of Section 3 of the Sindh Regularization (Ad-hoc and contract) Employees Act 2013; that the Petitioner is entitled for his job protection in accordance with law; therefore his case may be placed before the Competent Authority for consideration of regularization of his service in terms of the several orders passed by this Court on the aforesaid issue. He further added that the case of the Petitioner needs to be treated at par with the colleagues of the Petitioner, whose services have already been regularized. He lastly submitted that this is a hardship case and this Court can hear and decide the matter on merits.

6. Mr. Shahryar Mehar, Assistant Advocate General has raised the question of maintainability of the instant petition and argued that the instant petition is not maintainable and prayed for dismissal of the instant petition.

7. We have considered the contention of the learned counsel for both the parties and have minutely gone through the material available on record with their assistance.

8. To appreciate the contention of the parties, it is expedient to have a look at the relevant para of the Judgment pronounced by this Court in the case of Dr. Iqbal Jan vs. Province of Sindh & others (PLC (CS) 1153). An excerpt of the same is reproduced as under:-

“10. Learned Counsel for the petitioners pointed-out and learned A.A.G both extensively argued the matter and agreed that this petition may be disposed of at Katcha Peshi stage. In view of the above, this petition is admitted to regular hearing and disposed of in the following terms: - (1) All the petitioners shall deem 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. (2) The Honorable Supreme Court in its order passed in Civil Appeals Nos.84-K to 86-K of 2012 left it open to the government to take appropriate action against the respondents, against whom they have reservation about their fitness and eligibility. If in this case, the competent authority has any such reservation regarding the fitness of eligibility of any petition, they may take appropriate action but such exercise should be taken strictly in accordance with law.”

9. 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 ad-hoc 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.”

10. 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 all employees, who fall within the ambit of law shall be regularized in service with effect from the promulgation of the Act, 2013.

11. Prima-facie the facts of this case are quite distinguishable from the aforesaid case, as per record, the case of the Petitioner is quite different due to his reaching at the age of 59 years. The Competent Authority scrutinized the case of the Petitioner and reached at the conclusion that the Petitioner at the time of his initial appointment had crossed the age of 50 years, therefore, he was not recommended along with the others DDA's for regularization of their services. In our view a candidate for appointment by initial recruitment must possess the educational qualifications and experience and be within the age limit laid down for that appointment. We are cognizant of the fact that the upper age limit for appointment can be relaxed up to the extent as notified by the Government from time to time, therefore we cannot substitute our findings in place of findings of the Competent Authority regarding the issue of regularization of service of the Petitioner. Record reflects that, Petitioner at the time of his initial appointment on 14.5.2009 as DDA on contract basis had crossed the age of 50 years. Prima facie the Respondent-department has rightly opined that the post of DDA cannot be regularized. Besides

that the Respondent-department has not recommended those officials, who crossed the minimum age i.e. 45 years at the time of their initial appointment. Record does not reflect that the service of the Petitioner was regularized by the Respondent-department. It is well settled now that such appointment would be terminated on the expiry of contract period or any extended period on the choice of the Employer or Appointing Authority. The case of the Petitioner is governed by the principle of 'Master and Servant', therefore, the Petitioner does not have any vested right to seek regularization in service. In our view the contract employee cannot claim any vested right, even for regularization of service. The policy decision of the Government regarding regularization of the post of DDA or otherwise could not be challenged in a writ jurisdiction of this Court on the purported plea of discrimination, when Article 25 of the Constitution itself provides a provision for such discrimination on the principle of reasonable classification.

12. Record reflects that the Petitioner is at the verge of superannuation age i.e. 60 years and now seeking regularization of his service; therefore, at this stage the service of the Petitioner cannot be regularized. In the present case, there is no material has been placed before us, by which we can conclude that the service of the Petitioner can be regularized by the Respondent-department. The Petitioner has failed to establish that he has any fundamental/ vested right to remain on the temporary/ contractual post.

13. In the light of above facts and circumstances of the case, we conclude that there is no illegality, infirmity or material irregularity in the impugned Notification dated 13.8.2015 issued by the Respondent-department. However before parting with the judgment, we would like to observe that since the Petitioner is at the verge of attaining superannuation age, he would not be disturbed from continuing his present assignment till the time he attains superannuation.

14. In view of the foregoing, the Constitutional Petition in hand is dismissed along with the listed application(s).

Karachi
Dated: 15.11.2018

JUDGE

JUDGE