

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No. D – 1336 of 2015

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| Date | Order with signature of Judge |
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Disposed of matter :

1. For orders on Misc. No.14792/2020 (U/A) :
2. For hearing of Misc. No.21863/2019 (U/S 151 CPC) :

10.08.2020 : Mr. Abdul Samad Memon, advocate for the petitioners.
Mr. Hakim Ali Shaikh, Addl. AG, Sindh.

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1. Urgency granted.
2. **NADEEM AKHTAR, J.** Through this application, the petitioners have prayed that contempt proceedings be initiated against the alleged contemnors for disobeying the common order passed by this Court on 26.11.2018 in the present petition and connected C.P. No.D-2039/2015. While issuing notice of this application, it was observed vide order dated 01.08.2019 that the same shall be treated as an application under Section 151 CPC for implementation of the aforesaid order dated 26.11.2018, the operative part whereof is reproduced below for convenience and ready reference :

“We, therefore, after going through the record and hearing the counsel at considerable length dispose of both the petitions by directing the Director General Fisheries, Government of Sindh / respondent No.3 to propose the cases of the left over petitioners for regularization of their services also in the same terms as that of the petitioners whose names have already been sent by him to the Secretary Fisheries & Live Stock, Government of Sindh / respondent No.2 for regularization. Before parting with this order, we would like to observe that the regularization of the petitioners whose names have been recommended earlier or would be recommended in view of the directions given today would be strictly as per the rules, regulations and after fulfilling all the legal and codal formalities prescribed in this behalf and after examining the fitness, eligibility, qualification and availability or the vacancies / posts in the department. With these observations, both these petitions along with the listed applications stand disposed of.”

Compliance report dated 11.10.2019 has been filed by respondent No.1 / Secretary Fisheries and Live Stock, Government of Sindh, wherein it is stated that in compliance of order dated 26.11.2018 a meeting of the Scrutiny Committee No.I, constituted under The Sindh Regularization of Adhoc and Contract Employees Act, 2013, was convened on 12.09.2019 for considering regularization of the petitioners ; upon scrutiny the Committee observed that as six petitioners were appointed after the enactment of the above Act, they were

not qualified to be considered under the said Act ; codal and legal formalities such as publication of advertisement for the subject posts and constitution of Selection Committee for initial appointment were violated ; and, in view of the above, the Committee did not recommend the petitioners for regularization. By reiterating the above purported compliance report, learned AAG has attempted to convince us that compliance of order dated 26.11.2018 has been made.

As per the contents of paragraph 2 of the petition and the minutes of the meeting of the Scrutiny Committee filed along with the above report, it is an admitted position that petitioners 1, 2 and 3 were appointed on contract basis in BPS 11, 7 and 4, respectively, and petitioners 4 to 10 were appointed on contract basis in BPS 01. It is also an admitted position that petitioners 1, 2, 6, 7, 8 and 9 were appointed on contract basis after 25.03.2013 i.e. when The Sindh Regularization of Adhoc and Contract Employees Act, 2013, came into force. Therefore, their case could not be considered for regularization in view of the bar contained in Section 3 of the said Act, and the Scrutiny Committee has rightly rejected their case for regularization. The other ground on which the regularization was rejected by the Scrutiny Committee, that the post was not advertised, was also correct in respect of petitioners 1 and 2 who were admittedly appointed on contract basis in BPS 11 and 7, respectively, without any advertisement. On this ground, the case of petitioner No.3 has also been rightly rejected as he was appointed on contract basis in BPS 4 without any advertisement. The above view is fortified by Muhammad Ali and 11 others V/S Province of KPK through Secretary, Elementary and Secondary Education, Peshawar and others, 2012 SCMR 673. Needless to say the regularization of the petitioners was to be considered by the Scrutiny Committee strictly in accordance with the law laid down by the Hon'ble Supreme Court and the provisions of Section 3 of the Act of 2013.

Regarding the regularization of the remaining petitioners viz. petitioners 4, 5 and 10, their case has been wrongly declined by the Scrutiny Committee on the ground that their posts were also not advertised. As the said three petitioners were appointed on contract basis in BPS 01, the requirement of advertising their posts was not mandatory. Moreover, they were appointed on contract prior to the enactment of the Act of 2013. Therefore, they ought to have been considered for regularization in terms of order dated 26.11.2018. Perusal of the minutes of the meeting of the Scrutiny Committee filed along with the above report shows that their case was not rejected on any other ground. Thus petitioners 4, 5 and 10 are entitled to be regularized in terms of Section 3 of the Act of 2013.

In view of the above, respondents 1 and 2 are directed to comply with the order dated 26.11.2018 by regularizing the services of petitioners 4, 5 and 10 viz. Ali Raza, Muhammad Iqbal and Ali Asghar, respectively, within fifteen (15) days, however, subject to fulfillment of remaining legal and codal formalities, if any, and to submit compliance report to this Court within seven (07) days thereafter through MIT-II.

This application is disposed of in the above terms with no order as to costs.

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