

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No. D- 1488 of 2016

***Present:-***

***Mr. Justice Abdul Maalik Gaddi***

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

Petitioner : Through Mr. Irfan Ahmed Qureshi, Advocate.

Respondent No.2 : Through Mr. Muhammad Suleman Unar,  
Advocate

Respondent No.4 : Through Mr. Allah Bachayo Soomro, Addl.  
Advocate General, Sindh.

Date of hearing. : 20.08.2020  
& decision.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J:** - Petitioner has approached this Court for regularization of her service as Assistant Manager Social Mobilization in Left Bank Canal Area Water Board Project Badin under Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013.

2. Mr. Irfan Ahmed Qureshi, learned counsel for the Petitioner has contended that the case of the Petitioner falls within the ambit of Section 3 of the Sindh Regularization (Ad-hoc and contract) Employees Act 2013. In support of his contention, he relied upon the order dated 01.06.2016 passed by this Court in C.P. No. D-5100 of 2013. He next contended that the Petitioner is entitled for her job protection in accordance with law; therefore, her case may be placed before the Competent Authority for consideration of regularization of her services in terms of order passed by this Court in the aforesaid matter. 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. Learned Counsel also cited the cases of *Government of Khyber Pakhtunkhwa and others Vs. Adnanullah and others (2016 SCMR 1375)* and *Rizwan Javed and others vs. Secretary Agriculture Livestock and others (2016 SCMR 1443)* and argued that petitioner's case is also akin to the cases cited supra.

3. Mr. Allah Bachayo Soomro, Addl. Advocate General, Sindh has controverted the stance of learned counsel for the Petitioner and argued that the Irrigation department has nothing to do with the regularization of services of the Petitioner as it is the job of her parent department / Left Bank Canal (AWB) Badin. He also pointed out that since Respondent No. 4 has not acted

for and against the Petitioner, therefore the question of discrimination, purportedly meted out with her does not arise. He further pointed out that the present matter pertains to Left Bank Canal Area Water Board Project, which is a project (through ongoing development scheme) the staff working in the said project is meant only for the project execution; therefore, question of regularization of her services does not arise at their end without completion of project. He lastly prayed for dismissal of instant petition.

4. Mr. Muhammad Suleman Unar, learned counsel for Respondent No.2, has raised the question of maintainability of the captioned petition and supported the stance of learned A.A.G. and argued that the services of the petitioner was dispensed with vide letter dated 10.05.2016. In support of his contention, he relied upon the decision dated 09.03.2012 rendered by this Court in the case of *Piyar Ali and others vs. Province of Sindh and others* (C.P. Nos. D-715 & 2094 of 2011). He lastly prayed for dismissal of the instant petition.

5. We have heard learned counsel for the parties and carefully examined the record and the case law cited at bar.

6. The moot point involved in the present petition is interpretation of Section 3 of 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.”*

7. 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.

8. As per record, the petitioner was not initially appointed in an open and transparent manner and prima-facie her service record was sketchy which factum is disclosed from the office letters dated 06.3.2009, 04.01.2012, 11.11.2012, 18.11.2014,13.04.2015 and onwards (Page-23 to 77) of the Memo of Petition that’s why her services were terminated vide letter dated 10.05.2016 which means that she is no more in job, therefore, no vested

right with regard to her reinstatement in service or regularization of her service can be claimed.

9. In our view regularization is always subject to availability of post and fulfillment of recruitment criteria, apparently the petitioner was not initially appointed in an open and transparent manner through prescribed competitive process as the vacancies were not advertised in the newspaper. Besides it is well-settled law that a contract employee is debarred from approaching this Court in constitutional jurisdiction, in the light of the law laid down by the Hon'ble Supreme Court of Pakistan in the case of *Qazi Munir Ahmed versus Rawalpindi Medical College and Allied Hospital and others (2019 SCMR 648)*.

10. In view of the facts and circumstances of the case as well as in the light of dicta laid down by the Honorable Supreme Court in the case of *Province of Punjab through Secretary Agriculture Department, Lahore and others Versus Muhammad Arif and others (2020 SCMR 507)*, we do not find any force in the arguments of learned counsel for the petitioner that she has been discriminated.

11. The issue of project employees and their regularization in service has already been settled in the aforesaid judgment of the Honorable Supreme Court on the analogy that 'Insofar as contracts of some of the contract employees were extended while those of others were not. In our opinion, insofar as it relates to contract employees of the project, it is the prerogative of the project management to determine which employees are required for the extended period and stage of the project for effective implementation of the same. No vested right exists in favour of a particular employee to insist that the management should be directed to retain their services and extend their contract'. The case law cited by the learned counsel for the petitioner is distinguishable from the facts obtained in the present matter, therefore do not support her case.

12. The petitioner, in our view, has failed to make out her case even for reinstatement in service or for regularization of her service as her case is neither covered by 3 of Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, nor falls within the ambit of Policy of Government of Sindh, therefore, the instant petition is hereby dismissed along with pending application(s) with no order as to costs.

**JUDGE**

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