

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.D-797 of 2016

Present:

**Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon**

Gulzar Ahmed & another ----- Petitioners

VERSUS

Province of Sindh & others ----- Respondents

Date of hearing and Decision: 03.09.2020

Mr. Ishrat Ali Lohar advocate for petitioners.
Mr. Allah Bachayo Soomro, Additional Advocate General Sindh
alongwith Ms. Safia Turk, Assistant Education Officer Jamshoro and
Mr. Iftikhar Ahmed Rajput Litigation Officer Education Department.

ORDER

Adnan-ul-Karim Memon, J. Through the above captioned Petition, the Petitioners are seeking regularization of their services as Junior School Teacher (BPS-14) under Sindh (Regularization of Adhoc and Contract Employees) Act, 2013. The Petitioners added that the colleagues of the Petitioners approached this Court by filing the Constitution Petition No. D-7200 of 2015 and this Court vide order dated 27.2. 2020 passed the following order:-

“In compliance of order dated 11.02.2020, Naveed Ahmed Shaikh, Secretary, Services, General Administration and Coordination Department, Government of Sindh, is present in person along with his compliance report dated 27.02.2020 and reply to show cause notice issued to him in pursuance of order dated 11.02.2020. Along with his compliance report and reply, he has filed copy of order dated 26.02.2020 regarding regularization of the petitioner’s service. In view of the above, show cause notice issued to him stands discharged.

Khalid Hyder Shah, Secretary, School Education and Literacy Department, Government of Sindh, is also present in Court. He states that services of the petitioner have been regularized with effect from the date of commencement of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, as provided under Section 3 thereof. He undertakes that entire outstanding salary of the petitioner shall be paid to him within thirty (30) days.

Petitioner and his learned counsel are satisfied with the above order of regularization and undertaking given by Secretary, School Education and Literacy Department, Government of Sindh, regarding payment of his salaries. They seek disposal of this petition in terms thereof.

By consent, the petition and listed applications are disposed of in the above terms with no order as to costs.”

2. Petitioners have submitted that they approached to the Respondent-Department and requested for similar treatment in view of the dicta laid down by the Honorable Supreme Court of Pakistan in the case of Hameed Akhtar Niazi, reported in (1996 SCMR 1185) but of no avail. Petitioners have submitted that they seek similar treatment as meted out with their colleagues in the light of order dated 27.2. 2020 passed by this court in the above referred Constitution Petition.

3. Mr. Ishrat Ali Lohar learned counsel for the Petitioners has argued that Petitioners have been working since their appointment in the Respondent-Department and that their contractual tenure was extended from time to time up-to-date, yet their services were not regularized by the Respondent-Department. He next contended that Provincial Assembly of Sindh on 25.3.2013 promulgated Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 for regularization of services of certain employees appointed on Adhoc and contract basis and the case of Petitioners also falls within the ambit of Section 3 of the Act, 2013 and the services of the Petitioners can be regularized under this beneficial legislation. In support of his contention, he relied upon the case of Dr. Iqbal Jan and others versus Province of Sindh and others (2014 PLC [CS] 1153) and argued that in the similar circumstances, this Court has allowed the Petitions with directions to Respondents to consider the case of the Petitioners for regularization of their services in accordance with Section 3 of the Act, 2013. He next contended that Respondent-Department has regularized the services of the colleagues of the Petitioners, vide notification dated 5.12.2018 in pursuance of Sindh Act 2018 promulgated on 18.4.2018 pertaining to regularization of school teachers and in compliance of the order dated 27.2. 2020 passed by this Court in Constitution Petition No. D-7200 of 2015. Feeling aggrieved by and

dissatisfied with the discriminatory attitude of Respondent-Department, the Petitioners filed the instant Petition on 13.4.2016 before this Court with prayer for regularization of their services.

4. Mr. Allah Bachayo Soomro learned AAG has referred the order dated 12.3.2020 passed by this court in the above proceedings and submitted that Scrutiny Committee has checked the credentials of petitioners including all other candidates, whose documents were placed before the Committee; that they have forwarded the cases of all those employees who were appointed on contract basis, and now the matter is pending before worthy Chief Minister, Sindh for appropriate orders on the summary based on the credential reports.

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

6. As regards the question raised before this Court that whether the petitioners can be regularized in the Respondent-Department. We have sought guidance in this regard from the decision of the Hon'ble Supreme Court rendered in the case of Rana Aamer Raza Ashfaq and another v. Dr. Minhaj Ahmed Khan and another (2012 SCMR 6), wherein the Hon'ble Supreme Court has held at paragraph 39 that:-

“This Court would not interfere in the judgment of the High Court on yet another salutary principle of equity i.e. if in the exercise of Constitutional jurisdiction it has passed an order to remedy a manifest wrong. In Messrs Norwich Union Fire Insurance Society Limited v. Muhammad Javed Iqbal (1986 SCMR 1071), it was observed as follows:-

“In this view of the matter, as laid down in Raunaq Ali v. Chief Settlement Commissioner PLD 1973 SC 236, the High Court was within its power to refuse relief in writ jurisdiction, where the impugned order before it had the effect of fostering justice and righting a wrong, even though the authority concerned had acted clearly without jurisdiction. The High Court having acted in consonance with this higher principle of justice laid down by this Court, there is no justification for taking exception to the impugned judgment. The other question of law need not, therefore, be examined.”

7. We, therefore, are of the considered view that issue in hand is fully covered by para above of the Judgment passed by the Hon'ble Apex Court referred to hereinabove, which provides that the Constitutional Jurisdiction of

this Court can be invoked against the Respondent-Department. Respondents can be directed for regularization of their contractual service as on that issue the Hon'ble Apex Court has already enunciated the principles 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.”

8. We are further fortified on the similar principle by a decision given by a five Member Bench of Hon'ble Apex 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 that:-

“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.”

9. We are of the view that the case of Petitioners is also on the same footing as decided by the Honorable Supreme Court in the case of Pir Imran Sajid and others (supra) in the case of Government of Khyber Pakhtunkhwa and others (supra) as well as order dated 27.2. 2020 passed by this Court in Constitution Petition No. D-7200 of 2015.

10. In the light of above the facts and circumstances of the case, the instant Petition is disposed along with pending application(s) with no order as to costs, in the terms whereby the Competent Authority of respondents is directed to consider the cases of the petitioners for regularization of their

services on the subject posts strictly in accordance with law and dicta laid by the Honorable Supreme Court discussed supra and order dated 27.2. 2020 passed by this Court in Constitution Petition No. D- 7200 of 2015, within a period of one month from the date of receipt of this order.

11. Let a copy of this order be communicated to the competent authority of the respondents for information and compliance within stipulated period.

JUDGE

JUDGE

Irfan Ali