

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

C.P. No.D-1753 of 2016

Before:

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

Mazhar Ali Chandio & another ----- Petitioners

VERSUS

Province of Sindh & others ----- Respondents

Date of hearing and Decision: 22.09.2020

Mr. Saeed Shams Memon advocate for petitioners.
Mr. Allah Bachayo Soomro, Additional Advocate General Sindh

ORDER

ADNAN-UL-KARIM MEMON, J. The petitioners have approached this Court for regularization of their service in Sindh Irrigation Department in RBOD Project-II at Jamshoro. They have submitted that their cases for the post of Junior Clerk BPS-07 were considered by this court in constitutional petition No.D-346/2009 on the undertaking given by the Executive Engineer RBOD Project-II at Jamshoro; however, without assigning valid and cogent reason, he did not consider their cases for regularization which action is impugned through the captioned petition before this Court.

2. The case of the petitioners is that they were appointed in Sindh Irrigation Department in RBOD Project-II at Jamshoro as Junior Clerks on a work charge basis in the years 2008 till completion of the project. After completion of the project, their services stood discontinued as per terms of their appointment orders.

3. Mr. Saeed Shams Memon learned counsel for the petitioners has argued that the petitioners filed Constitutional Petition No.D-346/2009 against the respondents for regularization of their services and salaries; that respondent No.4 appeared before this Court in the aforesaid matter and assured that the petitioners would be appointed on priority basis; that Petitioners have been approaching the respondents for regularization of their services but they have turned their deaf ear; that the services of the colleagues of the petitioners have been regularized on the direction of this court; however, the petitioners are being neglected by the respondents, which is a discriminatory attitude on their part.

4. Learned AAG raised the issue of maintainability of the instant Petition and argued that the case of the petitioners clearly falls within the ambit of laches, thus, they are not entitled for the relief claimed in this Petition

5. We have asked learned counsel to satisfy this Court about the maintainability of the captioned petition on the premise that the petitioners in an earlier round of litigation were non-suited by the order dated 1.7.2009 passed by this Court in C.P. No.346 of 2009. Learned counsel for the petitioners reiterated his arguments as discussed supra and submitted that it is a case of hardship and this petition can be heard and decided on merits.

6. We have heard learned counsel for the parties at length and have gone through the record made available before us.

7. Much emphasis has been laid on the order dated 1.7.2009 passed by this court. For convenience sake, an excerpt of the same is reproduced as under:-

“The executive engineer present in Court confirms this position. He further states that at this moment 90% of project work is stopped due to lack of funding, in case, in future any project is revived. Employment/appointment of the petitioners with the respondent will be made on a priority basis, if suitable funds are available with the respondents for this purpose as regards the claims of the salaries from August 2008 is concerned. Due to the termination fo the services of the petitioners, they are not entitled to payment of salaries. He has also disputed the claim of petitioners that even after August 2008 they are on duty with the Respondents.

While dealing with this petition. We cannot investigate the disputed question of fact that whether petitioners are performing their duties with the respondents after august, 2008 or not.

In view of the above, we find no substance in this petition, which is accordingly dismissed in limine, however, the statement made by the XEN for the future appointment of the petitioners on priority basis will be binding upon the respondents.”

8. We asked another question to learned counsel for the petitioners as to whether, after the advertisement dated 27.2.2017, petitioners applied for the post of Jr. Clerk or otherwise, they replied that though they did not apply for the post, but the respondents were bound to fulfill their commitment made before this court as discussed supra.

9. We are not satisfied with the assertion of the petitioners for the simple reason that if they would have applied for the subject post, the respondent would have been under obligation to consider their candidature but unfortunately, they failed to avail the chance and remained mum; therefore, they are precluded from asking for regularization of their services at this stage, as admittedly they are no more in service.

10. From the above-admitted position, it is clear that after completion/ closure of the project, as mentioned in the order dated 1.7.2009 passed by this court, their cases do not fall within the ambit of Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013. Moreover, their appointments were not against regular sanctioned strength of RBOD Project-II at Jamshoro.

11. The petitioners, in our view, have failed to make out their case for regularization of their service as their case is neither covered under Section 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

JUDGE

Karar_hussain/PS*