

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**

Before:  
Mr. Justice Nadeem Akhtar  
Mr. Justice Adnan-ul-Karim Memon

**Constitutional Petition No. D – 6632 of 2019**

Fareed Ali & 1478 others

*Versus*

Province of Sindh and 09 others

**Constitutional Petition No. D –5273 of 2019**

Noor Muhammad Daudpoto 45 others

*Versus*

Province of Sindh and 07 others

Date of hearing & order: **16.10.2020**

Mr. Amir Aziz Khan, advocate for the petitioners in C.P. No. D – 6632/2019  
Mr. Faizan Hussain Memon, advocate assisted by Mr. Sandeep Malani,  
advocate for the petitioners in C.P. No. D – 5273/2019  
Mr. Hakim Ali Shaikh, Additional A.G.  
Mr. Zakir Hussain Khaskheli, advocate for MDA.

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**ORDER**

**ADNAN-UL-KARIM MEMON, J.** In these petitions, the petitioners are seeking regularization of their service under section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 in Malir Development Authority (hereinafter referred to as “MDA”).

2. Petitioners have approached this Court for the regularization of their service in MDA. Their case is that they were appointed in different vacant posts in BPS-1 to BPS-17 in different years on Adhoc and Contract basis. They have been performing their duties honestly with due diligence. Their further assertion is that they are also eligible to be regularized under section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 (hereinafter referred to as “Act, 2013”), but the respondent-authority is not regularizing them rather they have taken the decision on 26.12.2017 to advertise the subject posts without considering them first. Hence, the instant petitions filed on 12.10.2019 and 09.08.2019 respectively.

3. Mr. Amir Aziz Khan, learned counsel for the petitioners in C.P. No. D – 6632/2019, has conceded that the petitioners were appointed after the promulgation of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 and has heavily relied upon Para 9.10 (b) of the minutes of the meeting of Provincial Cabinet held on 29.3.2018 and argued that Provincial Cabinet has decided to regularize the contract employees vide letter dated 18.04.2018; they fulfill the criteria and are qualified for the job; and, they are working to the satisfaction of the respondent-department. Learned counsel for the Petitioners has argued that on identical points, facts and law, this Court in the case of Dr. Iqbal Jan and others V/S Province of Sindh and others **2014 PLC [CS] 1153** has allowed Constitutional Petition with directions to the Government of Sindh to give benefits as contained in the Act, 2013. He next contended that Petitioners have been continuously working on permanent posts, without break, in the respondent-authority ; pursuant to the aforesaid policy of Sindh Government to regularize the services of contractual employees and in view of their qualification and performance they have legitimate expectancy of being regularized ; and, the respondents are violating the fundamental rights of the petitioners. He lastly prayed for allowing the instant petition by giving similar treatment / benefits as given in the case of Dr. Iqbal Jan as discussed supra.

4. Mr. Faizan Hussain Memon, learned counsel for the petitioners in C.P. No. D – 5273/2019, has argued that the instant petition is maintainable against the respondent-authority which is the administrative unit of the Government of Sindh, and the same falls within the definition of “person” under Article 199 (1) (a) (ii) of the Constitution. Thus, this Court has jurisdiction to exercise judicial powers in the affairs of respondent-authority. He further maintains that the petitioners were working on Adhoc and Contract basis and subsequently confirmed against their respective posts vide letter dated 20.03.2015. He further maintains that on 26.12.2017 the respondents abruptly decided to advertise their subject posts without considering them first, just to frustrate their confirmation already taken place as discussed supra. However he states that the petitioners have been performing their services for a considerable period, therefore, have vested the right to be reconfirmed / regularized.

5. During arguments we asked the learned counsel for the petitioners as to whether the respondent-authority while making recruitments, advertised the

subject posts on Adhoc and Contract basis? Learned counsel for the petitioners in C.P. No. D – 5273/2019 replied that though the due competitive process was followed still petitioners deserve to be retained on the subject post. He further maintains that the petitioners are ready and willing to participate in the competitive process subject to the condition that the subject posts shall only be filled amongst the petitioners who have experienced the subject posts. However, this suggestion was refuted by Mr. Amir Aziz Khan learned counsel for the Petitioners in C.P. No. D – 6632/2019 and argued that the matter shall be decided on merits.

6. Mr. Hakim Ali Shaikh, Additional A.G. Sindh has supported the impugned publication of posts to be filled on merit and argued that the instant petitions are not maintainable against the respondent-authority under the law. He further argued that the dispute between the parties related to contract employment. This Court has in various pronouncements settled the law that a contract employee is debarred from approaching this Court in constitutional jurisdiction. The only remedy available to a contract employee is to file a suit for damages alleging breach of contract or failure thereof. Learned AAG has tried to justify the action of Respondent-authority and argued that the case of the Petitioners is not identical to the case of Dr. Iqbal Jan as discussed supra.

7. Mr. Zakir Hussasin Khaskheli, learned counsel representing the respondent-authority / MDA, has supported the stance of the competent authority of MDA vide decision dated 26.12.2017 to advertise their subject posts to be filled on merits. He also endorsed the stance of learned AAG and has raised the identical question of maintainability of the present petitions. He further argued that the impugned action of the respondent-authority is well-reasoned based on settled principles of law and the conclusion drawn by the respondent-authority is duly supported by the record. He finally suggested that some of the petitioners have already been allowed to participate in the competitive process on the subject posts and rest of the petitioners can also participate in the same process.

8. We have heard learned counsel for the parties on the point of maintainability of these petitions, perused the material available on record and case-law cited at the bar.

9. We have noted that the basic concept of Adhoc and Contract appointments against the regular posts is a stopgap arrangement which is not

the permanent character. In our view, every post is required to be filled through the method prescribed by law not otherwise. In the present case, the petitioners are admittedly Adhoc and contractual employees of the respondent-authority and thus have no vested right for regular appointment. So far as contract employment is concerned, In our view, a contract employee, whose period of contract employment expires by efflux of time, carries no vested right to remain in employment and this Court cannot force the respondent-authority to regularize or extend the contract period of the petitioners in writ jurisdiction. *Prima-facie* we do not see any illegality in advertising the subject posts to be filled through a competitive process, which is the requirement of law.

10. The decision of Provincial Cabinet in its meeting held on 29.03.2018 about the regularization of the service of contract employees cited by him does not support their case, as *prima-facie* they do not fulfill the criteria and eligibility for regularization of their job. An excerpt of the minutes of the meeting of Provincial Cabinet held on 29.03.2018 is reproduced as under:

“ Para 9.10(b): The Cabinet also decided in principle to direct all the Departments to initiate the process of regularization of the contract employee, if they fulfill the criteria, are qualified for the job and they are working to the satisfaction of the respective Departments. ”

11. It is well-settled now that regularization of the services of contract employees is always subject to availability of post and fulfillment of recruitment criteria, apparently the petitioners have not initially been appointed openly and transparently through the 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 cases of Qazi Munir Ahmed V/S Rawalpindi Medical College and Allied Hospital through Principal and others 2019 SCMR 648, Province of Punjab through Secretary Agriculture Department, Lahore, and others V/S MUHAMMAD ARIF and others 2020 SCMR 507 and Miss Naureen Naz Butt V/S Pakistan International Airlines and others 2020 SCMR 1625.

12. That in view of the following judgments of the Hon'ble Supreme Court of Pakistan, there is no occasion of the detailed discussion by us on the question of maintainability of the instant Petition:

- i. Government of Balochistan v. Zahida Kakar (2005 SCMR 642)
- ii. Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others (PLD 2010 SC 676)
- iii. Federation of Pakistan v. Muhammad Azam Chattha (2013 SCMR 120)
- iv. Muzaffar Khan and others v. Government of Pakistan and others [2013 SCMR 304]
- v. Abdul Wahab and others v. HBL and others (2013 SCMR 1383)
- vi. Pakistan Defence Officers Housing Authority vs. Col. Javed Ahmed (2013 SCMR 1707)
- vii. PIA Corporation v. Syed Suleman Alam Rizvi (2015 SCMR 1545)
- viii. Pakistan International Airline Corporation Vs. Aziz-ur Rehman Chaudhary and others (2016 SCMR 14)
- ix. Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010)
- x. Pakistan International Airlines Corporation & another vs. Zaeem Aziz Qureshi another (2019 PLC (C.S) 194)
- xi. Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others (2019 SCMR 278)

13. We may observe that the Provincial Cabinet is well within its powers to frame policy, however, subject to law. It is well-settled that if a policy manifestly inconsistent with the Constitutional commands, retrogressive in nature, and discriminatory inter se the populace is not immune from judicial review. *Prima-facie* the decision of the Cabinet dated 29.3.2018 does not cover the case of the petitioners under Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, as their appointment is after enactment of the said Act i.e. 25.03.2013. 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.

14. At this juncture, learned counsel representing the respondent-authority conceded that that the competent authority of MDA is ready and willing to allow the petitioners to participate in the competitive process on the subject posts. If

this is the stance of the respondent-authority, they are directed to allow the petitioners to participate in the said process without discrimination, subject to all just exceptions as provided under the law and complete the same process within a reasonable time in accordance with law.

15. *Prima-facie* the respondent-authority misused the authority of law and made recruitments against the subject posts without adopting the codal formalities as required under the law. We have also noticed that respondent-authority has filled the posts of BPS-17 without following the procedure provided under the law for fulfilling such posts based on open merit through a competitive process. Therefore, the respondent-authority MDA is directed to ensure that no such appointment is made in future that may be in violation of the law settled by the Hon'ble Supreme Court regarding appointment etc.

16. The petitions and listed applications are disposed of with no order as to costs in terms of the direction given in paragraphs 14 and 15 above.

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