

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

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

Const. Petition No. D –7252 of 2018

Naveed Ahmed Abro

Versus

Province of Sindh and 04 others

For hearing of CMA No.18237/2020 :

Date of hearing
& order : 29.10.2020

Mr. Muhammad Ashraf Samoo, advocate for the petitioner.

Mr. Ali Safdar Depar, Assistant A.G Sindh along with Ghulam Ali Birhmani, Additional Secretary (Services) SGA&CD, and Ubaidullah Pahore, ADC-I, Thatta.

ORDER

ADNAN-UL-KARIM MEMON, J. The present application for initiating contempt proceedings, against the alleged contemnors, arises out of the order dated 17.2.2020 passed by this Court in the aforesaid matter, whereby direction was given to the Services Wing of Services General Administration & Coordination Department for scrutiny and decision afresh under law. A compliance report dated 29.10.2020 has been submitted which shows the following factual position of the case :

“In its decision the Scrutiny Committee No.2 has concluded that Mr. Naveed is not a contractual employee because the due process of recruitment was not followed i.e. neither the post was advertised nor the minutes of the Selection Committee are available. Hence the Committee concluded that his case is not covered under the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013.

2. Keeping in view the aforesaid factual position of the case, we asked the learned counsel to satisfy us about the maintainability of the contempt application. Mr. Muhammad Ashraf Samoo, learned counsel for the applicant, has submitted that since the alleged contemnors has failed to comply with the order passed by this Court in the aforesaid matter, contempt proceedings may be initiated against them. We have heard him and noticed that the Secretary (Services) SGACD, has placed on record a copy of the decision which, *prima-facie*, suggests that the case of the applicant was scrutinized and considered for regularization, but the same was declined on the premise that his case did not fall within the ambit of section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013.

3. Learned Assistant Advocate General has appraised this Court that the applicant's contingent / work charged service could not be converted into regular service, therefore, the respondent-department has rightly declined the regularization of the service of the petitioner vide office order dated 07.05.2020.

4. We are not impressed by the submissions of learned counsel for the applicant that the service of petitioner ought to have been regularized. We have also scrutinized the compliance report submitted on behalf of the alleged contemnors. *Prima-facie* the explanation offered by the respondents vide compliance statement dated 29.10.2020 is tenable under the law, as due process of recruitment in the case of applicant was not followed i.e. there was / is no record of the advertisement, announcement of the result, or minutes of the Selection Committee. In the circumstances, we cannot convert the contingent / contractual service of the applicant into regular service in the absence of fulfillment of all the codal formalities as provided under rule-11 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. The record further reflects that applicant's initial appointment for the post of Data Entry Operator (BPS-12) in Judicial Branch of the District Coordination Officer, Thatta, was made in utter violation of rule-4(1) of the Sindh Civil Service (Appointment, Promotion & Transfer) Rules, 1974.

5. Adverting to the contention of learned counsel for the applicant that the applicant has been working in the aforesaid office since 2009, is no ground to claim regularization of the subject post on the premise that his initial appointment was made by the then District Coordination Officer, Thatta, who was reported to be an officer of BPS-19, which action on his part, being without authority, was / is a violation of law as discussed supra.

6. The applicant, in our opinion, has failed to make out his case for regularization of his work charged / contractual service as his case is neither covered under Section 3 of Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, nor falls within the ambit of Policy of Government of Sindh. Vide order dated 17.02.2020, respondents were directed to decide the petitioner's case afresh, which decision has been taken by them in accordance with law. Therefore, the listed application stands dismissed with no order as to costs.

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