

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –1318 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Wasim Ahmed Khan

Versus

Province of Sindh and 03 others

Date of hearing & order : 09.12.2020

Mr. Ameet Kumar, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. In this petition, the petitioner is seeking regularization of his 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. Petitioner has approached this Court for the regularization of his service in MDA. His case is that he was appointed in BPS-16 in the year 2013 on Adhoc and Contract basis. He has been performing his duties honestly with due diligence. His further assertion is that he was allowed to look after the work of Assistant Law Officer / MDA in addition to his duties vide office order dated 13.06.2014 and he is 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 neither relaxing his age to 03 years and 07 months to participate in the competitive process vide advertisement dated 12.02.2020 published in daily Express nor regularizing him against the aforesaid post. Hence, the instant petition was filed on 24.02.2020.

3. During arguments we asked the learned counsel for the petitioner as to whether the respondent-authority while making recruitments, advertised the subject post on Adhoc and Contract basis? Learned counsel for the petitioner replied that he has served the respondent-authority for about 12 years thus entitled to be regularized. He further argued that though the due competitive process was followed still petitioner deserves to be retained on the subject post. He further maintains that the petitioner is ready and willing to participate in the competitive process initiated by the respondents vide advertisement published

in Daily Express on 12.02.2020. At this stage, we confronted him with the common order dated 16.10.2020 passed by this Court in C.P. No. D-6632 of 2019 and another connected petition, he concedes that the subject issue involved in this proceeding is the same. For sake of convenience, an excerpt of the order dated 16.10.2020 is reproduced as under:

“14. At this juncture, learned counsel representing the respondent-authority conceded 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 the 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.”

4. Since the issue involved in this petition is akin as decided by this Court in C.P. No. D-6632 of 2019 and another connected petition vide common order dated 16.10.2020, therefore, this petition is not maintainable under Article 199 of the Constitution is disposed of in terms of the common order dated 16.10.2020, leaving the petitioner to avail and exhaust his remedy if any, as provided under the law.

J U D G E

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Shahzad*