

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -8515 of 2018

Sofia Ibrahim & 07 others

Versus

Province of Sindh & another

Date of hearing

& decision : 08.02.2021

Ms. Zahrah Sehr Vayani, advocate for the petitioners.

Mr. Masroor Ahsan, advocate for respondent No.2.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through the instant petition, Petitioners have prayed that their services may be regularized by the Respondent No.2/Benazir Bhutto Shaheed Human Resource Research Department Board (BBSHRRDB).

2. Mr. Masroor Ahsan learned counsel for respondent No.2, in principle has not opposed their prayer, however, he pointed out that the petitioners were appointed on a contingency basis and they have to undergo a competitive process initiated by them in this regard. At this juncture, Ms. Zahrah Sehr Vayani learned counsel for the petitioners states that the Petitioners are employees of the Respondent No.2 who were appointed on the contingency basis in the years 2011-2012 when public notice also appeared and submits that despite their uninterrupted longstanding service their employment has not been regularized as per the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, whilst contractual employees with similar or lesser service have been extended the benefit thereof. Per learned counsel, the Petitioners are eligible and qualify for consideration under the said Act as the only exclusion thereunder is in relation to employees appointed on a daily- wages and work-charged basis. She invites attention to an Order made by the learned Division Bench of this Court on 31.05.2018 in C.P. No. D-3048/2016, where it was observed in the context of the aforementioned Act that the word Contingency seemed to be alien thereto.

3. It may be noted that the Honorable Supreme Court in the case of Board of Intermediate and Secondary Education, Faisalabad through Chairman and others vs Tanveer Sajjid and others (2018 SCMR1405) has held that the superior Courts have always condemned the practice of keeping the employees temporarily for long periods without confirming or regularizing their services. It has been held that an employee being jobless and in fear of being shown the door has no option but to accept and continue with the appointment on whatever terms a job is offered by the employer.

4. Such consent to continue to work as a temporary employee is not like free consent between the employees, on the one hand, and employers on the other. A person so employed is in no position to bargain with the employers/departments which are in a disproportionately dominating bargaining position as compared to the employee and the employer could always coerce them to waive their legal protection and accept contractual terms or face the risk of losing their jobs.

5. Since learned counsel for the respondent No.2 agreed to look into the matter of petitioners for regularization of their services in the respondent-department under the law; and, on the aforesaid analogy as set forth by the Honorable Supreme Court in the case of Board of Intermediate and Secondary Education, Faisalabad (supra) within a reasonable time. Learned counsel for the petitioners has agreed for the candid proposal of learned counsel for the respondent No.2, however without prejudice to the rights of the petitioners involved in the present proceedings.

6. In the light of the above consensus between the parties, more particularly the statement of the learned counsel for respondent No.2, the instant petition is disposed of in terms of his statement with no order as to cost.

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