

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –1412 of 2021

Ameet Kumar and 04 others

Versus

The Chief Secretary Government of Sindh and 03 others

Date of hearing
& order : 26.02.2021

Mr. Rehman Dino Mahesar, advocate for the petitioners.

ORDER

ADNAN-UL-KARIM MEMON, J. – Through this petition, petitioners are seeking confirmation of their services in respondent-Planning and Development Department, Government of Sindh, Karachi from the date of joining, and they be placed in BPS-17 based on seniority and qualification. We asked the learned counsel to satisfy this Court about the maintainability of the instant petition on the premise that their appointments were made purely on the contract basis.

2. Mr. Rehman Dino Mahesar learned counsel for the petitioners mainly argued that the petitioners were appointed in the year 2017 through the competitive process thus their services ought to have been confirmed in terms of advertisement. He further argued that the respondents are reluctant to consider their case for regularization. He lastly prayed for allowing the instant petition.

3. We have heard the learned counsel for the petitioners on the issue of regularization of contractual service of the petitioners and have gone through the relevant documents brought on record.

4. The question involved in this petition relates to the regularization of service of an employee vis-à-vis service jurisprudence. The law on the subject is clear in its concept according to which regularization and permanent absorption must be granted strictly under the rules of recruitment in force. It is also well-settled law that contractual employees have no vested right to be regularized unless the same has specifically been provided under the terms and conditions of appointment/service and law. We have perused the appointment orders of the petitioners, which were admittedly contractual appointments for a certain period or an extended period on the choice of appointing authority, and

that their contract does not contain a provision for regularization, therefore, this Court cannot issue a writ for regularization of their services on the aforesaid analogy. On the aforesaid propositions, we are fortified by the latest un-reported decision dated 16.07.2020 pronounced by the Hon'ble Supreme Court in Civil Appeal No.73 of 2020 in the case of Government of Khyber Pakhtunkhwa, Workers Welfare Board, through its Chairman V/s Raheel Ali Gohar and others, and Chairman NADRA, Islamabad, and another V/s Muhammad Ali Shah and others (2017 SCMR 1979).

5. In view of the above legal position of the case, principally, this Court, in exercising power under Article 199 of the Constitution, cannot issue directions for regularization, absorption, or permanent continuance of service of an employee, unless the employee claiming regularization had been appointed in an open competitive process in pursuance of regular recruitment under the relevant rules against a sanctioned vacant post. It is a well-settled principle of law that for public employment unless the appointment is in terms of the relevant rules and after a proper competition amongst qualified persons, the same would not confer any vested right on the appointee. If it is a contractual appointment, the appointment comes to an end upon expiration of the contract, and if it was an engagement or appointment on daily wages or casual basis, the same would come to an end upon the completion of the agreed assignment or tenure. It is well settled that a temporary employee cannot claim permanent status at the end of his term as a matter of right. The said advertisement does not even highlight the hope of regularization on completion of the contractual period and that must have prevailed amongst all those who have not opted to apply as they have eager and interested to apply for a vacancy of the permanent post and hence they would be deprived in case the regularization is offered to these petitioners.

6. Having discussed the legal aspect of the case, we have noticed that the subject appointments were made for implementation of the project namely Support for Implementation of World Bank Reforms (T.A.) to enhance the capacity of the Monitoring and Evaluation Cell in Planning & Development, Government of Sindh, therefore, the case of the petitioners falls within the principle of Master and Servant. It is well-established law that a contractual employee has no fundamental / acquired vested right to remain in the contractual post or to seek an extension and/or regularization of the contractual service. Besides their case does not fall within the ambit of section 3 of the Sindh Regularization (Contract Employees) Act, 2013.

7. Adverting to the grounds raised by learned counsel for the petitioners in the memo of the petition, suffice it to say they accepted their respective posts with certain terms and conditions of their service, as such they are precluded under the law to claim extension or regularization of their contractual service, the reasons discussed supra are sufficient to discard their point of view.

8. The views expressed by us in the preceding paragraphs are fortified by the following authoritative pronouncements of the Hon'ble Supreme Court i. Government of Baluchistan V/s Dr. Zahida Kakar and 43 others, **2005 SCMR 642**. ii. Dr. Mubashir Ahmed V/s PTCL through Chairman, Islamabad and another, **2007 PLC CS 737**. iii. Abid Iqbal Hafiz and others V/s Secretary, Public Prosecution Department, Government of the Punjab, Lahore, and others, **PLD 2010 Supreme Court 841**, iv. Federation of Pakistan V/s Muhammad Azam Chattha, **2013 SCMR 120** v. Muzafar Khan & others V/s Government of Pakistan & others, **2013 SCMR 304** vi. Abdul Wahab and others V/s HBL and others, **2013 SCMR 1383** vii. Chairman NADRA, Islamabad through Chairman, Islamabad and another V/s Muhammad Ali Shah and others, **2017 SCMR 1979** viii. Qazi Munir Ahmed V/s Rawalpindi Medical College and Allied Hospital through Principal and others, **2019 SCMR 648** ix. Raja Iviz Mehmood and another V/s Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others, **2018 SCMR 162**, x. Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals, **2019 SCMR 984**, xi. Unreported order dated 13.03.2019 passed by the Hon'ble Supreme Court in C.P. No.2792/2018 and other connected petitions xii. Province of Punjab through Secretary Agriculture Department, Lahore, and others V/s Muhammad Arif and others, **2020 SCMR 507**. xiii. Miss Naureen Naz Butt V/s Pakistan International Airlines and others, **2020 SCMR 1625**.

9. For the aforesaid reasons and case law cited supra, this petition is misconceived and is dismissed in limine along with the pending application(s) with no order as to costs.

10. These are the reasons for our short order dated 26.02.2021, whereby we have dismissed the instant petition limine.

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