

**IN THE HIGH COURT OF SINDH AT KARACHI**

BEFORE:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Adnan Iqbal Chaudhry

C.P. No. D-8331 of 2018

Mehboob Ali & others  
Versus  
Province of Sindh & others

Date of Hearing: 30.09.2019

Petitioners: Through Mr. Ali Asadullah Bullo Advocate

Respondents: Through Mr. Ali Safdar Debar, AAG.

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- This petition is filed by a number of petitioners, essentially for regularization of their appointments in the light of judgment in the case of Pir Imran Sajid & others v. Managing Director/General Manager (Manager Finance) Telephone reported in 2015 SCMR 1257.

2. Brief facts of the case, as stated, are that petitioners were appointed on daily wages basis as stenographer, Data Process Assistant, Filled Supervisor, Junior Clerk, driver, Dispatch Rider, helper, chowkidar and sanitary workers etc. They claim to have been appointed in between 2009 and 2013 respectively against their respective posts. It is urged that they were appointed on daily wages basis for a limited period. The period consisting of three months, eight months and twelve months etc.

3. It is also submitted by the petitioners that in March, 2013 Provincial Assembly Sindh has passed an Act as Sindh (Regularization of Ad-hoc and Contractual Employees) Act, 2013 in terms of which all the employees working from BPS 1 to BPS 18 contractual/ad-hoc or otherwise, excluding the employees appointed on daily wages basis or work charge basis, against the post in BPS 1 to 18 or equivalent basic

scale, were declared as regular employees. Thus, on the strength of the said Act and the judgment, referred above, petitioners seek their regularization from the date of their appointments and/or from the date of promulgation of law.

4. In response to the pleadings, parawise comments were filed by respondent No.3 wherein they have taken a defence that due to exigency need of supporting staff, the services of the petitioners on daily wages basis against sanctioned posts, subject to the condition that their appointments is purely on temporary basis and that their services were liable to be terminated without assigning any reason were engaged. The defence as taken by respondent No.3 i.e. Energy Department through its Secretary is neither here nor there. They stated about these posts to be sanctioned whereas their appointments were on daily wages basis.

5. With this background we have heard the learned counsel and perused the material available on record

6. In the judgment, as relied upon by petitioners' counsel in the case of Pir Imran Sajid (Supra), the first point of distinction, compared to the case of the petitioners herein, is that appointments in the cited judgment were made through due process pursuant to an advertisements for such vacancies in the national newspapers and the petitioners therein were appointed on contract for one year. On the other hand, in the present case it is nowhere claimed by the petitioners that any due process such as advertisement, tests or interviews were followed, even for BPS-3 onwards. The appointment of petitioners in the instant case not based on transparent mechanism and due process, thus do not call for discretionary relief as the equity is not available with the petitioners. Secondly in the case of Pir Imran Sajid, the regularization of daily wagers was not ousted by any Statute. In the instant case, the

Sindh (Regularization of Ad-hoc and Contractual Employees) Act, 2013 categorically excludes daily wagers from regularization. The vires of the said Act are not under challenge in this petition.

7. No doubt the petitioners may have been working for some time with the respondents but it would be disgraceful for those citizens who were duly qualified/entitled for the subject posts and were waiting for a lawful mechanism and procedure to be launched, so that there may not be any question on their appointments or raising of eyebrows. Thus, eligible citizens will be deprived of their rights if such process of appointments of petitioners, which does not qualify any transparency, codel formalities, would be followed to legitimize the process and would entail regularization of the employees. Had they been the outcome of a due process, the discretion may well be exercised for them but not in this case where they have been selected, picked and chosen by the high ups.

8. Provincial assembly of Sindh has legislated on the subject of regularization by introducing Sindh (Regularization of Ad-hoc & Contractual Employees) Act, 2013. The legislature has specifically excluded the employees appointed on daily wages basis and work-charged basis. The initial appointment letters does suggest that they were appointed on daily wages for limited period. These appointments include not only of BPS 1 and 2 but also upper grades. This fact is very alarming that the appointments on BPS 11 to 15 were made without any advertisement and any codel formalities to be followed. Petitioner's arguments suggest that at any given time selected appointments can be made by those who have the powers and capacity in our system which can ultimately be rounded up/legitimized by regularizing them after a passage of time. If this kind of regularization, which does not involve transparent process such as advertisements, competition, tests,

interviews etc. would be allowed, then we would end up in regularization those employees who were only selected at the desire of those having their own interest.

9. In the case of Muhammad Ali v. Province of KPK reported in 2012 SCMR 673, the Hon'ble Supreme Court in paragraph 5 on the questions as involved in this petition observed as under:-

*“5. Having noted the relevant facts divulged from the case record, as above, which have not been disputed by the learned Advocate Supreme Court for the petitioners, we do not find any substance in the arguments of learned Advocate Supreme Court regarding denial of opportunity of hearing to the petitioners for the simple reason that one who seeks equity must do equity and approach the Court with clean hands, as opposed to protection of some ill-gotten gains. The petitioners, who admittedly got their appointments from the backdoor without advertisement of vacancies, inviting of applications and completion of codal formalities, in the given facts and circumstances of the case, cannot challenge the principles of good governance adopted at the highest level, mandating each and every appointment in the government service to be made on merits as per relevant rules and completion of codal formalities or lawfully agitate any grievance on the pretext of lack of due opportunity of hearing.”*

10. Similarly Sindh Civil Servants (Appointment, promotion and transfer) Rules, 1974 provides initial appointment to post in Basic Scale 3 to onwards on the recommendation of the Departmental Selection Committee after vacancies in these basic scales, which has not been done in the present case. Rule 11 of the ibid Rules is reproduced as under:-

*“11.- Initial appointment to posts in Basic Scales 3 to 10 shall be made on the recommendations of the Department Selection Committee after the vacancies in these Basic Scales have been advertised in newspapers.*

11. Furthermore, the subject Regularization Act 2013 does not suggest that all those contractual employees for whom the basic requirements of transparency is not fulfilled, are also entitled to be regularized. Regularization of Ad-hoc or contract employees under Act of

2013 is not open for all those contractual and ad-hoc employees for whom the codel formalities have not been fulfilled thus a competition should have been made available amongst all those who were interested in the appointments on subject posts. We would not approve the process involved in the appointment of petitioners, which could ultimately deprive the eligible and entitled persons of a fair competition and a precedent could be made to cater the system where the appointment of selected persons, can be legitimized.

12. In view of the above we are of the view that the petitioners have not been able to make out a case for indulgence hence petition is dismissed along with pending application.

Dated: 11.10.2019

**Judge**

**Judge**