

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

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

C.P. No. D- 4064 of 2014

Muhammad Yaseen Abbasi,

Petitioner through:

Mr. Sanaullah Noor Ghouri advocate

Federation of Pakistan

Through:

Mr. Hussain Bohra, Assistant Attorney General

N.A.D.R.A through:

Chaudhary Muhammad Farooq, Law officer

Date of hearing:

04.09.2019

Date of order:

04.09.2019

ORDER

ADNAN-UL-KARIM MEMON, J. The petitioner has assailed the office Order dated 14.04.2014, whereby regularization of his service was annulled by the Respondent-Authority.

2. At the very outset, we have asked a question from the learned Counsel representing the petitioner to satisfy this Court with regard to maintainability of the instant Petition, in view of the latest decision rendered by the Hon'ble Supreme Court in reported case of *Major Retd. Syed Muhammad Tanveer Abbas and other connected appeals vs. Federation of Pakistan through its Secretary, Ministry of Interior & others* (2019 SCMR 984), whereby the Appeals of the employees of NADRA were dismissed by the Hon'ble Supreme Court vide Judgment dated 13.5.2019 on the premise that they have no Statutory Rules of service, therefore, Constitutional Petition under Article 199 of the Constitution is not maintainable

3. Mr. Sanaullah Noor Ghouri, argued that, first of all the instant petition is maintainable on the plea that the present Petition relates to the regularization of service of the Petitioner for which no statutory rules are required; that the issue involved in the aforesaid petitions was with regard to enforcement of non-statutory rules of service of NADRA, whereas, in the present proceedings the issue is quite different which relates to the regularization of the service of the petitioner for which this Court has only to see the length of service and statutory rules of service are not required to be looked into; that the Petitioner is/was regular employee and not

contractual employee of NADRA, therefore, the aforesaid decision is distinguishable from the facts obtaining in the present petition; that the impugned cancellation of regularization of service of the Petitioner is in gross violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Further that the action on the part of Respondent-Authority was arbitrary and capricious thus untenable in law. Lastly, learned Counsel for the Petitioner argued that the impugned order dated 14.4.2014 whereby services of the Petitioner through such office order has been de-regularized. He emphasized that the service of the petitioner was regularized by the Respondent-Authority vide order dated 5.4.2013. Per learned Counsel the same cannot be rescinded unilaterally. He also complained that Petitioner has not been paid salary, since passing of the impugned order. He next submitted that there is no other efficacious and adequate remedy available with the Petitioner but to invoke the Constitutional Jurisdiction of this Court for the relief(s) as prayed in the Memo of Petition.

4. We confronted to him with another decision rendered by the Hon'ble Supreme Court of Pakistan on the aforesaid proposition, in the case of Chairman NADRA v. Muhammad Shah Ali and others (2017 SCMR 1979). He reiterated his earlier submissions and emphasized that this Court has decided various petitions for regularization of the employees of statutory bodies having non-statutory rules of service. We are not in an agreement with the assertion of the learned Counsel for the petitioner for the reason that the Hon'ble Supreme Court in the aforesaid matters has settled the status of contractual employees of NADRA and put embargo upon this Court to entertain the Constitution petition with respect to contractual obligations, more particularly in the cases of NADRA employees.

5. Chaudhry Muhammad Farooq, learned Law Officer of NADRA argued that the instant petition is not maintainable and further stated that enforcement of non-statutory rules of service of statutory authority are altogether different and the same cannot be enforced through Constitutional Petition. He added that Rule of 'Master and Servant' is attracted in the present case. He invited our attention to the various decisions of this Court and the Hon'ble Supreme Court of Pakistan on the aforesaid proposition, whereby the Petitions were dismissed; therefore, no interference in the

present matter is required by this Court. He lastly prayed for dismissal of the instant Petition.

6. We have heard the learned Counsel for the parties on the question of maintainability of the instant petition and perused the material available on record and considered the decisions rendered by the Hon'ble Supreme Court as discussed supra.

7. The issue of maintainability of the captioned Constitutional Petition has been raised, in view of the latest verdicts by the Honorable Supreme Court of Pakistan in the cases of Major Retd. Syed Muhammad Tanveer Abbas and other connected appeals vs. Federation of Pakistan through its Secretary, Ministry of Interior & others (2019 SCMR 984) and Chairman NADRA, Islamabad, through Chairman, Islamabad and another Versus Muhammad Ali Shah and others (2017 SCMR 1979), as such we would confine our self to that issue only and refrain ourselves to dilate upon the merits of the case, if we find the instant matter is not maintainable under the law.

8. The case of the Petitioner is with regard to regularization of his service which has now been de-regularized by means of the impugned order dated 14.4.2014. In our view, contract employee cannot claim any vested right, even for regularization of service. The Hon'ble Supreme Court of Pakistan in the case of Chairman NADRA, Islamabad through Chairman, Islamabad and another Vs. Muhammad Ali Shah and others (2017 SCMR 1979) has held that the writ or Constitutional jurisdiction of High Court under Article 199 of the Constitution cannot be invoked by a contractual employee of a statutory organization, such as NADRA. For convenience sake, the relevant portion of the Judgment passed by the Hon'ble Supreme Court of Pakistan is reproduced herein below:-

“10. NADRA had opposed the petitions before the High Court. NADRA also took a specific plea that the NADRA Ordinance, and in particular section 35 thereof did not envisage outside interference in the affairs of NADRA and NADRA itself in alone competent to employ people, and this is required to be done in accordance with the prescribed mythology. NADRA had also raised the legal objection with regard to the jurisdiction of the High Court. Surprisingly, these legal questions did not receive and answer from the High Court.”

11. Pursuant to the powers conferred by section 45 read with sections 35 and 37 of the NADRA Ordinance, NADRA had enacted the Regulations. The Regulations attend to the method of appointment and qualification of employees (Regulation 8), designate the appointing authority (Regulation 9), specify the Selection Boards and Selection. Committee (Regulation 10), set out the procedure for initial appointment (Regulation 11), require that merit and provincial quota be observed (Regulation 12), require candidates to be medically fit (Regulation 13)

and require verification of the character and antecedents of potential employees (Regulation 14). It is not clear whether the prescribed procedure for the selection and appointment (as mentioned in the Regulations) was followed, however, NADRA had elected to regularize all contractual employees and there is no challenge to such regularization. NADRA, the appellant herein, is aggrieved by the impugned judgment which has struck down NADRA's letter dated March 6, 2012 "to the extent of equivalency table" attached, therewith and given directions to "re-designate their [the petitioners before the High Court] pay scales as mentioned in the Notifications No. F&A/ NADRA/ HQ/2002-2003, dated 21.6.2003 with all consequential benefits"

12. The referred to NADRA's letter dated March 6, 2012 had enclosed "Option Form" which was required to be "filled by all eligible employees" and the Option Form was to be submitted "latest by 22nd March 2012". The regularization process initiated by NADRA would proceed towards completion after the eligible contractual employees had submitted their Option Forms. However, before the submission of his/ her Option Form a contractual employee would continue as such, that is remain a person who was employed on contract by NADRA. The private respondents therein, who were the petitioners before the High Court, however, challenged certain terms./ components of NADRA's letter dated March 6, 2012; in doing so they undermined their own status of becoming regular or permanent employees of NADRA. If they did not accept NADRA's letter dated March 6, 2012, or any part thereof, they would remain as contractual employees of NADRA. The High Court could not renegotiate, alter and / or amend the terms of regularization that were offered by NADRA for the simple reason that the High Court did not have jurisdiction to do so. Therefore, till such time that the employees were regularized they would continue to be governed by the terms and conditions of the contract which they had with NADRA. **The writ or constitutional jurisdiction of High Court under Article 199 of the Constitution could not be invoked by a contractual employee of a statutory organization, such as NADRA** (see *Pakistan Defence Officers Housing Authority v. Jawaid Ahmed* reported as 2013 SCMR 1707, *Pakistan Telecommunication Co. Ltd. v. Iqbal Nasir* reported as PLD 2011 Supreme Court 132 and *P.T.C.L v. Masood Ahmed Bhatti* reported as 2016 SCMR 1362). It was only after the terms and conditions as offered by NADRA had been accepted and the Option Form had been submitted that the status of a contractual employee would convert to that of a regular employee of NADRA. Before accepting the terms offered by NADRA and submitting the Option Form the status of a contractual employee would remain as such and he/she would not be able to seek recourse to the constitutional jurisdiction of the High Court.

13. Therefore, for all the reasons mentioned shows, both these appeals are allowed and the impugned judgment dated March 6, 2014 of the Peshawar High Court is set aside and the petitions (W.Ps. Nos. 3210 and 3437 of 2012) filed before the Peshawar High Court are dismissed." **(Emphasis added)**

9. The Honorable Supreme Court in the case of *Major Retd. Syed Muhammad Tanveer Abbas vs. Federation of Pakistan through its Secretary, Ministry of Interior & others and another connected Appeal* (2019 SCMR 984) vide common judgment dated 13.5.2019 has clarified the issue involved in the present proceedings.

10. In the light of forgoing decisions of the Honorable Supreme Court, this petition is not maintainable in law, thus is accordingly dismissed along with listed application(s), leaving the petitioner to avail an appropriate remedy in accordance with law.

JUDGE

JUDGE