

# IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

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

C.P. No. D- 679 of 2017

Mohammad Ishaque,  
Petitioner through:

Mr. Shamshad Ali Qureshi, advocate

Respondents Through:

Mr. Ali Safdar Depar, Assistant Advocate  
General, Sindh.

Date of hearing:

20.09.2019

Date of order:

20.09.2019

## ORDER

ADNAN-UL-KARIM MEMON, J. Basically the claim of the Petitioner is that he being an employee of the office of Executive Engineer Highways Division Thatta worked as Helper on temporary work charged basis vide letter dated 1.8.1992. Due to non- regularization of his service, he filed Constitutional Petition No.D-3976 of 2011 before this Court, which was disposed of vide order dated 01.12.2015 with the direction to the Secretary, Works & Services Department to decide his representation and pass speaking order after providing an ample opportunity of hearing to him. Per Petitioner, he was not heard before his representation was decided on 29.1.2016. He being aggrieved by and dissatisfied with the aforesaid action of the Respondent- department has filed the captioned Petition on 1.12.2017 with the prayer to direct the respondents to appoint him as regular employee and allow him back benefits of 23 years' service.

2. Mr. Shamshad Ali Qureshi, learned Counsel for the Petitioner has argued that the respondents are under obligation to regularize his 23 years' service. We confronted him with the order passed by this Court in his earlier Petition, whereby his representation was decided. He replied that Petitioner was condemned unheard before deciding his representation. He next added that the Petitioner was working with the Respondents since 1992 on temporary basis and on the basis of directives issued by the Prime Minister of Pakistan on the issue of regularization, his service ought to have been

regularized, however Petitioner was ignored with the malafide intention; that Petitioner has been serving with the Respondents and he has spent his entire life with the Respondent-department and now he is at the verge of superannuation but the respondents are not considering him as a regular employee; that the post to which the petitioner has been appointed on work charged basis is of permanent nature; that where a post is of a permanent nature then it has to be filled in through a permanent appointment; that he may be initially appointed on probation but after successfully completing the probationary period, he is to be treated as confirmed employee; that the practice of employing a person on work charged basis on a permanent post has always been deprecated by Superior Courts; that this creates a sense of insecurity amongst such employees. Like in the present case, a person who has served for more than 23 years on a permanent post cannot be thrown out on the ground that he was employed on contingent/work charged basis and policy of the Finance Department does not allow. Hence, a case for absorption in service on permanent basis is made out for the reason that job is not of such a nature which requires specialization or high qualification; that it is an admitted position that for the last more than 23 years, the petitioner is working on the subject post and is being paid his salaries but later on they discontinued him due to filling of this petition; that at no stage during subsistence of his contract was terminated for being incompetent or found unsuitable for the job for any justifiable reason; that discrimination has been meted out with him; that there cannot be two sets of employees working on the same post in government service, one employed on contract basis and the other on permanent basis, though the post is of a permanent nature; that in the present case the manner in which the petitioner is being treated is highly unreasonable; that the Respondents have admitted the claim of the Petitioner in their Counter Affidavit, therefore, this petition needs to be allowed by this Court with the directions to the respondents to issue notification of his regularization of service without discrimination. He lastly prayed for allowing the Petition.

3. Mr. Ali Safdar Depar, learned AAG has argued that the petitioner being on temporary basis and his post being not regular, therefore, such privileges could not be acceded to for the reason that he had already lost his age for eligibility to Government Job. Learned AAG further argued that the petitioner was employed on contingent/work charged basis and under the law a contingent/work charged employee has no protection, his service cannot be regularized; that where the terms and conditions of an employee are not governed by any statutory rules then the rule of master and servant shall apply. We confronted him that the petitioner has served the respondents for more than 23 years than what is the impediment not to confirm him on the job. He has no reply but to say this is a policy decision of the Government of Sindh. At this stage, learned Counsel for the petitioner objected on the submission of learned AAG and argued that the petitioner has been satisfactorily working on permanent post for the past more than twenty three years on work charged basis which is of Scale-02 only, hence he is to be considered in service first; that the learned Division Bench of this Court in the case of Hakim Ali Ujjan vs. Province of Sindh and others (2012 PLC (C.S) 127) has already decided similar matter and has given directions that all low paid employees who have worked for more than three years on a permanent post should be regularized against such post.

4. We have heard the learned Counsel for the parties on the plea of regularization of the service of the Petitioner.

5. At the very outset, the argument of the learned Counsel for the petitioner regarding the acceptance of similar writ petition by this Court on the pleas he has raised in the present matter is not factually correct as the facts and grounds obtained in this petition are altogether different, therefore no reliance can be placed to claim similar treatment.

6. A perusal of the record shows that the writ petition was filed by the petitioner in the year 2011 and was disposed of vide order dated 3.9.2015 with the directions to the respondents to decide his representation. The respondents vide order dated 29.1.2016 has decided his representation

and regretted his request being not covered under the Rules/Policy as per Finance Department's letter dated 10.3.1994.

7. Perusal of appointment letter of the petitioner explicitly shows that the post against which he was appointed as Helper was not a permanent post but part time non-pensionable post, paid out of the contingent fund, hence, the petitioner is not entitled to claim regularization of his service even pension as the pension is admissible only to the permanent employees of the Government not to the part time contingent paid or temporary employees.

8. We have perused the Government Notification dated 10.3.1994 as relied upon by the learned AAG. For proper appreciation, it will be useful to reproduce the same as under:-

“Subject: CONVERSION OF WORK CHARGED/CONTINGENT PAID ESTABLISHMENT IN TO REGULAR ESTABLISHMENT

I am directed to refer to this Department's circular NO: FD (EXP:IX)7-(67)/91, dated: 05-08-1992 and to say that per directives of Prime Minister of Pakistan issued during her visit to Larkana, in January, 1994, all such work charged/contingent paid employees are to be regularized.

2/- With the approval of competent authority, all the Departments and Offices under which such employees are working, are requested to scrutinize all such cases with financial implication for getting the required posts in the budget for regularization of such employees with effect from 1.7.1994 by constituting a Committee to submit a verified list of eligible workers, to Finance Department who fulfill following conditions:-

- i. Who have rendered five years or more than five years continuous service as directed by the Prime Minister and the duties performed by them are of permanent nature.
- ii. Who possess valid N.I.C.

2/- In future no such work charged/contingent paid appointments shall be made and Audit/Accounts Officers should not entertain such bills from A.Ds in future without specific approval of Finance Department for each post if required with full justification.

Sd/-  
(AKBAR ALI BALOCH)  
SECTION OFFICER (EX.P:IX)  
FOR SECRETARY TO GOVERNMENT”

9. Now, we would like to address the question with respect to the non-applicability of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 in the case of Petitioner. In our view, prima-facie this Act, 2013 does not seem to be applicable to the facts and circumstances of the present case of the Petitioner, as this Act, 2013 is

relevant for those employees, who held the posts in Government Department and includes the post in a Project of such Department in connection with the affairs of the Province, excluding the employees appointed on contingent/daily wages basis. Prima facie the appointment of the Petitioner is based on work charged basis does not cover his regularization issue.

10. As regards the next question raised before this Court that whether the petitioner can be regularized in the Respondent-Department. We have noticed that the Petitioner has admitted that he accepted the contingent/work charged appointment vide his endorsement on the appointment letter dated 1.9.1993 (*available at Page-41 of the Memo of Petition*) and has performed his duty up to January, 2013 whereby he was forcibly stopped, which factum is disclosed in the order dated 14.2.2014, which prima-facie shows that the Petitioner had accepted the contingent terms of service, therefore cannot blow hot and cold in the same breath to claim regularization of service, once he accepted terms of his service on contingent/work charged basis.

11. We are of the considered view that Petitioner's contingent/work charged service could not be converted into regular service, therefore Respondent-Department has rightly declined the Regularization of the service of the Petitioner vide order dated 29.1.2016. An excerpt of the order is reproduced as under:-

“ORDER

Mr. Muhammad Ishaque S/O Bahadur Chandio was appointed as Helper on Temporary Work Charged vide Executive Engineer, Highways Division, Thatta Order No.SAC/G-2(b)/1513 dated 01.08.1992.

2. The above named applicant has filed Constitutional Petition No. D-3976 V/S Government of Sindh & others in the Honourable High Court of Sindh, Karachi for redersal of his grievances pending in the Department.

3. The Honourable High Court of Sindh has passed another order on 01.12.2015 which is reproduced below:

“On 03.09.2015 with the consent of the petitioner and learned A.A.G it was ordered that the representation of the petitioner dated 13.06.2005 may be referred to the concerned authority for consideration and may be disposed of in accordance with law preferably within a period of eight weeks. Despite clear order the compliance of the said order has not been made and still counsel for the petitioner is aggrieved that no effort has been made to proceed the representation of the petitioner. Since the petition has not been disposed of at that time, the learned

AAG requests for further time so that the order may be complied with, therefore, we disposed of this petition with directions to the Secretary (W&S), Government of Sindh after providing ample opportunity of hearing to him. This exercise shall be completed within period of two months and compliance report shall be submitted to this Court through MIT-II. In case of non-compliance action will be taken in accordance with law. This petition is disposed in the above terms.”

The request of Mr. Muhammad Ishaque Chandio (Petitioner) in his application/representation dated 13.06.2005 is that his post be converted from Work Charged Helper to Regular Post of Greaser on the basis of his past service of 13 years.

The Executive Engineer, Highways Division, Thatta being competent authority in the matter has already decided the case and regretted the request of petitioner being not covered under the rules/policy as per Finance Department’s letter No.FD(EXP-IV)-7/67/1994, dated 10.03.1991.

As such, there is no policy for regularization of work charge establishment into regular establishment in Government of Sindh.

Whereas, in compliance of the orders of Honourable High Court of Sindh Karachi I, being competent authority, heard the petitioner in person and have gone through the record and the order passed by Executive Engineer, Highways Division Thatta vide Order No.EC/G-148/68/2016 dated 25.01.2015 (copy enclosed) and found that the representation of Mr. Muhammad Ishaque Chandio is not tenable.

The representation of Mr. Muhammad Ishaque Chandio (Petition) is rejected.”

12. We, therefore, are of the considered view that the issue in hand is fully covered through the judgment passed by the Supreme Court in the case of Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456).

13. The Petitioner, in our view, has failed to make out his case for regularization of his work charged service as his case is neither covered under Section 3 of Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 nor falls within the ambit of Policy of Government of Sindh, therefore, the instant Petition is hereby dismissed along with pending application(s).

14. Before parting with this judgment, we may observe that that the petitioner has served from 1992 with some breaks but the fact of the matter is that he has a long service of more than two decades at his credit, therefore, it is not justified at the end of department after sucking the youth of petitioner and kicked him out on the pretext that his case does not fall in the aforesaid policy and that the post held by him being temporary and contingent/work charge paid, being not pensionable. Since the Petitioner is 58 years old and two years remaining to attain the age of

superannuation, therefore, his services be continued till his date of superannuation. The salary issue of the Petitioner for the intervening period may be decided in accordance with the law within a period of one month from the date of receipt of this order.

**JUDGE**

**JUDGE**

Nadir/\*