

Order Sheet  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

CP No. D- 1659 of 2015

**Before:**

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Date of hearing  
& decision : 12.12.2019

Petitioners : Ms. Sanam and others through Mr. Zafarullah Solangi, Advocate.

Respondent No.1 : Federation of Pakistan through Mr. Aslam Pervaiz Khan, Assistant Attorney General

Respondents 2 to 7: through Mr. Muhammad Arshad S. Pathan

**ORDER**

**ADNAN-UL-KARIM MEMON, J:-** Through this petition, the petitioners are praying that the office order dated DG/DA/30241-B/6951-55 dated 16.7.2015 be declared as null, void, ab-initio, illegal, unjustified and unlawful and liable to be recalled / cancelled and the petitioners may be allowed to continue their services on their respective posts as permanent employees.

2. Petitioners have averred that their regular services as paramedical staff in BPS-1 to 9 were converted into contingent basis vide letter No. DG/DA/30241-B/6951-55 dated 16.7.2015, Petitioners have submitted that they are regular employees of respondent No.2, thus their status/cadre could not be converted / changed into contingency basis ; Petitioners have submitted that all of sudden the respondents changed their mind and took unilateral decision by recalling the order of temporary / regular services of the Petitioners vide letter No. DG/DA/30241-B/6951-55 dated 16.7.2015 on fixed pay. An excerpt of the same is reproduced as under:-

“The above paramedical staff working on temporary basis under M.S. Regional Group, Hyderabad will be issued fresh offer of appointment by MS concerned on daily wages basis initially for a period of 89 days w.e.f. the dates mentioned against each.”

3. Mr. Zafarullah Solangi learned counsel for the Petitioners has argued that the Petitioners were confirmed and regular employees of the respondent No.2 and their service could not be de-regularized without assigning any cogent reason; that the regular status of the Petitioners could not be converted into contingency status, which amounts to punishment without hearing, hence the

impugned order is nullity in the eyes of law. Petitioners are regular employees of the Respondent-Department, thus their services are liable to be treated as regular employee without discrimination; that since the service of the Petitioners were regularized in the year 2015, therefore, the Respondent-department cannot cancel the temporary / regular services of the Petitioners unilaterally and arbitrarily and treat them as contingency employees for certain period; that the Petitioners have been condemned unheard without holding proper inquiry into the factum of appointment without advertisement and budgetary sanction or any other allegations if any leveled against the Petitioners, which is unwarranted under the law; that the Petitioners appointed on regular basis in the year 2013 in PBS-1 to 9 on different posts, are entitled to a fair opportunity in terms of Article 4, 10-A and 25 of the Constitution of Islamic Republic of Pakistan 1973; that this Court has jurisdiction to interfere in the matters involving denial of such rights of citizens of this Country by the State Functionaries. He next contended that the Respondent-department has created chaos amongst the employees, who were rendering their services on regular basis but have been considered as contingency employees. However, Respondent-department extended the benefit of regularization to the colleagues of the Petitioners and other employees and the Petitioners have been singled out on false assertion. He lastly prayed for allowing the instant petition.

4. Mr. Muhammad Arshad S. Pathan learned counsel for Respondents 2 to 7 has raised the question of maintainability of the captioned petition and has argued that the basic temporary service of the Petitioners were conditional i.e. subject to advertisement / budgetary sanction from the competent authority; that the Respondents withdrew the regularization order by invoking the powers conferred upon the Competent Authority; that the Petitioners' status is now contingent employees and not temporary / regular employees; that the respondents appointed the petitioners without approval of the Competent Authority and budgetary sanction; that Petitioners cannot claim vested right for regularization of their services being contingent employees under the law. He lastly prayed for dismissal of the instant petition.

5. Mr. Aslam Pervaiz Khan, Assistant Attorney General representing the Respondent No. 1 adopted the argument of learned counsel for Respondent No. 2 to 7.

6. We have heard learned counsel for the parties and perused the material available on record.

7. First of all, we address the question of maintainability of the instant Petition under Article 199 of the Constitution. Respondent-department is performing functions in connection with the affairs of Federation within the

meaning of Article 199(1) (a) (ii) read with Article 199(5) of the Constitution and therefore this Court has the jurisdiction to entertain this Petition and decide the same on merits.

8. To resolve the controversy on the issue of regularization of services of the Petitioners and their subsequent reversion / change of status into contingent, we deem it appropriate to shed light on the legal position of the case.

9. In view of the foregoing legal position of the case we are of the considered view that the respondents are competent to take decision on the service issue of the Petitioners including regularization of their services. Prima facie the post cannot be regularized without advertisement / budgetary sanction under the law.

10. On merits, the foremost question in the present proceedings is whether the Petitioners were initially appointed on temporary basis and consequently their service cannot be regularized?

11. Admittedly, the Petitioners were initially appointed on temporary / contract basis in the year 2003, where after pursuant to the policy decision vide letter No.DG/DA/30241-B/6951-55 dated 16.7.2015 as discussed supra, the Petitioners and other contract employees were converted into contingent basis by the order of competent authority without budgetary sanction. As per record the regularization of the Petitioners remained for short period and was reversed in the year 2015 vide order dated 16.7.2015. In the meanwhile the Petitioners performed their duties in various offices of Respondent-department as regular employees.

12. We address the main objection of the Respondent-department that Petitioners were hired on contingency basis and they are not eligible for regularization.

13. We have noted that Respondent-department has converted regular posts into daily wages, which ex-facie appears to deprive the Petitioners from regularization of their service. This procedure adopted by the Respondent-department by converting the regular appointment in the categories of daily wages (work charge), is against the basic spirit of terms and conditions of regular appointment letters as due to that policy, the Petitioners have been placed on daily wages and there is no protection to them under the said policy, so far as regularization of their services is concerned. We have further noted that the management of Respondent-department has attempted to regularize the services of some of the employees working on contingent posts and the case of petitioners is at par with those employees. We find this treatment

discriminatory. We are cognizant of the fact that all appointments in the Respondent-department are made either by promotion or by initial recruitment or on contract basis or on daily wages basis. Except daily wages all other appointments are deemed to be appointed in Regular Service of the department, therefore, only the employee working on daily wages have been singled out without any reasonable classification. Thus, in our view the Petitioners are entitled to be considered for regularization along with their colleagues and other employees of the Respondent-department as per law.

14. Record reflects that the terms and conditions of services of the Petitioners were changed from regular appointment against Contingency position, which legally could not be done. We are of the considered view that regularization of service is not an initial appointment but it is a confirmation of an existing employment. The objection of the Respondents that Petitioners are now working against contingency would be of no legal effect for the simple reason that once the service of the Petitioners were confirmed on the subject posts, the Respondents cannot take a U-turn and convert the regular service into contingent service.

15. In view of the peculiar facts and circumstances of the present case, while invoking the jurisdiction conferred upon this Court under Article 199 of the Constitution, we hereby declare the impugned action / orders of the official Respondents No.1 to 4 to be in violation of strict and prohibitory command as contained under Article 25 of the Constitution, because the Petitioners have been treated with sheer discrimination, which cannot be approved on any premise whatsoever.

16. In this view of the matter, the decision taken by the Respondent-department by converting the regular service into contingent service is found to be erroneous and of no legal effect.

17. In the light of facts and circumstances of the case discussed above the instant Petition is hereby allowed along with listed application with direction to the Competent Authority of Respondent-department to consider their cases for regularization of their services, without discrimination, in accordance with law subject to budgetary sanction. The entire exercise shall be completed within a period of two months from the date of receipt of this order.

JUDGE

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