

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

CP No. D- 2608 of 2018

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Date of hearing
& decision:

03.11.2021

Petitioner:

Deepak through Mr. Irfan Ahmed Qureshi,
Advocate.

Respondent-3:

through Syed Shahzad Ali Shah, Advocate

Mr. Ayaz Ali Rajpar, Asstt. A.G.

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioner has prayed as under:-

- a. That it be ordered to the respondents that the petitioner may be restored on his original position of sweeper on regular post after its sanctioned.
- b. That it may be ordered that the appointment of respondent No.3 on a temporary basis may be discharged.

2. Brief facts of the case are that the petitioner was appointed as Sweeper in the Court of Special Judge, Anti-corruption (P) Hyderabad on 26.12.2007; since the said post was not on the budgetary sanctioned strength, hence he was appointed against remuneration of Rs.500/- per month. Petitioner has averred that he worked on the said post with effect from 26.12.2007 to 22.12.2015; and, when the regular post was sanctioned, his services were dispensed with and in his place, another person was appointed on regular post, hence he has filed the instant petition.

3. Mr. Irfan Ahmed Qureshi learned Counsel for the Petitioner has argued that the respondent is under obligation to consider his 8 years' service rendered by him as a sanitary worker as a regular employee, however, Petitioner was ignored with malafide intention; that the post to which the petitioner was appointed on work charged basis was/is permanent; that where a post is of permanent nature then it has to be filled in through a permanent appointment rather

than on monthly remuneration; Like in the present case, a person who has served for more than 8 years on a permanent post cannot be thrown out on the ground that he was employed on contingent/work charged basis and another person has been appointed on permanent vacancy, therefore, this petition needs to be allowed by this Court with directions to the respondents to issue notification of his regular appointment without discrimination.

4. Learned AAG argued that the petitioner was employed on fixed remuneration 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 respondent for more than 8 years then what was the impediment in keeping him on the regular job; he replied that there is no vacancy available to accommodate him; however he admitted that on the same date when he was discharged from service another candidate was appointed on regular basis. 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 the permanent post for the past more than eight years on work charged basis which is of Scale-01 only, hence he is to be considered in service first.

5. We have heard learned Counsel for the parties on the aforesaid pleas.

6. Perusal of the appointment letter of the petitioner explicitly shows that the post against which he was appointed as sweeper was not a permanent post but a part-time post based on fixed remuneration, paid out of the contingent fund, hence, the petitioner is not entitled to claim permanent appointment.

7. 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 dispensed with his service vide order dated 22.12.2015.

8. We, therefore, are of the considered view that the issue at 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).

9. However, we may observe that the petitioner has served from 26.12.2007 till 2015 without break and was lead to believe that he would be taken into regular service as and when a regular post was sanctioned. To leave him high and dry after eight (08) years by not considering him for fresh appointment was most unfair. Therefore, his services as sweeper be considered, in any of the department of the Government of Sindh as per law.

10. With the above observation, the Petitioner, in our view, has failed to make out his case for conversion to a permanent post as such eventuality is not provided under the law. Therefore, the instant Petition is dismissed along with the pending application(s).

JUDGE

JUDGE

Karar_hussain/PS*