

**HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

C.P No.D-1655 of 2016

[Junaid Ahmed & another versus Province of Sindh & Others]

C.P No.D-3207 of 2017

[Sardar Ali Shah & Others versus Govt. of Sindh & Others]

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before:-

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

Mr. Ghulam Shabbir Pathan, advocate for petitioners in CP No. D-1655 of 2016

Mr. Muhammad Ayoub Leghari, advocate for petitioners in C.P No.D-3207 of 2017

Mr. Ishrat Ali Lohar, advocate for respondent No.2/SDA

Mr. Allah Bachayo Soomro, Additional A.G Sindh

Date of hearing : 27.10.2021

Date of Decision : 27.10.2021

ORDER

ADNAN-UL-KARIM MEMON, J. - Through these Constitutional Petitions under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have prayed that their temporary contractual appointments / services be regularized in BPS-17 and BPS-9 under Section 3 of The Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 (the Act of 2013). All these petitions were heard together and are being disposed of by this common judgment as common questions of law and facts are involved therein.

2. In C.P No.D-1655 of 2016, petitioners claim that they were engaged by Sehwan Development Authority (SDA) on daily wage basis on fixed emoluments initially for one month, which was extended for further three months and finally vide Office Orders dated 03.02.2012 they were appointed as Assistant Director (BS-17) and Sr. Clerk (BS-09) respectively on temporary basis; however, their salaries have been stopped by the respondent No.2; and, they are not being regularized. Whereas in C.P No.D-3207 of 2017 petitioners are claiming to have been appointed on various

posts by Sehwan Development Authority in the year 2009; however, their salaries are not being paid to them.

3. Today Mr. Ghulam Shabbir Pathan advocate filed an application under Order 1 Rule 10 CPC in C.P No.D-3207 of 2017 on behalf of interveners/applicants for impleading them as petitioners on the ground that their case is akin to the case of petitioners in the above-referred petitions. The other side waived the notice thereof.

4. Learned counsel for the petitioners in C.P No.D-1655 of 2016 has argued that withholding salaries of petitioners, despite being in service, violates the fundamental rights of the petitioners. He further argued that stretching the probationary period of the petitioners beyond the initial one and not regularizing their services violates The Sindh Civil Servants (Regularization of Adhoc and Contract Employees) Act, 2013. He lastly argued that the act of respondents is clear disregard to the law developed by the Superior Courts. He prayed for allowing the petition.

5. Learned counsel for petitioners in C.P No.D-3207 of 2017, while adopting the arguments of learned counsel for petitioners in C.P No.D-1655 of 2016, prayed for disposal of his petition with direction to respondents to release the salaries of petitioners.

6. Learned counsel for respondent – Sehwan Development Authority has argued that petitioners have failed to produce any advertisement in respect of subject posts, on which they were allegedly appointed. He further argued that excess appointment is a burden over the Authority being an autonomous body, which is generating funds by itself. He also argued that Authority is facing an acute shortage of funds. He lastly prayed for dismissal of these petitions.

7. Learned A.A.G. adopted the arguments advanced by learned counsel for Sehwan Development Authority.

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

9. Before unpacking the questions raised on behalf of the petitioners, it may be observed that all the said questions have already been set at naught by this court in the cases of (Anjum Badar V/S Province of Sindh and 2 others in Constitutional Petition

No. D – 6241 of 2016 and other connected petitions) and the Hon'ble Supreme Court through various authoritative pronouncements. However, learned counsel for the petitioners insisted that the said judgments were inapplicable to their cases as the facts and circumstances therein were distinguishable from those in their cases, or some of the authorities are in their favor. Accordingly, the full opportunity was afforded to them to make their respective submissions. Since only the questions of law are involved in these petitions and all the petitioners are admittedly contractual employees, we need not discuss the facts of each case.

10. It is an admitted position that the petitioners are contractual employees and thus their status and relationship are regulated and governed by the principle of master and servant. The Hon'ble Supreme Court has been pleased to hold in its numerous pronouncements that a contract employee, whose terms and conditions of service are governed by the principle of "master and servant", does not acquire any vested right for regular appointment, or to claim regularization, or to approach this Court in its constitutional jurisdiction to seek redressal of his grievance relating to regularization ; in fact he is debarred from approaching this Court in its constitutional jurisdiction and the only remedy available to him is to file a Suit for damages alleging breach of contract or failure on the part of the employer to extend the contract ; after accepting the terms and conditions for contractual appointment, the contract employee has no locus standi to file a Constitutional Petition seeking writ of prohibition and or mandamus against the authorities from terminating his service and or to retain him on his existing post on regular basis ; a contract employee, whose period of contract expires by efflux of time, carry no vested right to remain in employment of the employer and the courts cannot compel the employer to reinstate him or to extend his contract ; and, no rights would accrue to a de facto holder of a post whose right to hold the said post was not established subsequently.

11. In view of the above well-settled law consistently laid down by the Hon'ble Supreme Court, the petitioners, being contractual employees having no vested right for regular appointment or to seek regularization of their services, are debarred from invoking the constitutional jurisdiction of this Court. Thus, these petitions filed by them are not maintainable on this ground alone. This view

is fortified, inter alia, by Farzand Ali V/S Province of West Pakistan, PLD 1970 S.C. 98, Government of Balochistan, Department of Health, through Secretary Civil Secretariat, Quetta V/S Dr. Zahida Kakar and 43 others, 2005 SCMR 642, Dr. Mubashar Ahmed V/S PTCL, through Chairman, Islamabad, and another, 2007 PLC (C.S.) 737, Sindh High Court Bar Association V/S Federation of Pakistan, PLD 2009 S.C. 879, Abid Iqbal Hafiz V/S Secretary, Public Prosecution Department, Government of Punjab, Lahore, and others, PLD 2010 S.C. 841, Suo Motu Case No.15 of 2010 (In re : Sou Motu action regarding regularization of contract employees of Zakat Department and appointment of Chairman of Central Zakat Council) 2013 SCMR 304, Qazi Munir Ahmed V/S Rawalpindi Medical College and Allied Hospital through Principal and others, 2019 SCMR 648, Province of Punjab through Secretary Agriculture Department Lahore and others V/S Muhammad Arif and others, 2020 SCMR 507, Naureen Naz Butt V/S Pakistan Internatinal Airlines, 2020 SCMR 1625, Government of Khyber Pakhtunkhwa, Workers Welfare Board, through Chairman V/S Raheel Ali Gohar and others, 2020 SCMR 2068, and judgment dated 18.02.2021 pronounced in Civil Appeal Nos. 936 and 937 of 2020.

12. After holding as above, we need not dilate upon the other questions raised on behalf of the petitioners.

13. As a result of the above discussion, both these petitions and applications pending therein along with application under Order 1 Rule 10 in C.P No.D-3207 of 2017 on behalf of interveners/ applicants are dismissed with no order as to costs.

Let this order be communicated forthwith to the competent authority, for compliance.

JUDGE

JUDGE