

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

CP No. D- 1197 of 2021

BEFORE :

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

Date of hearing 23.11.2021

Date of decision: 02.12.2021

Petitioners: Dr. Ali Murad Lajwani and others through M/s.
Zamir Hussain Ghumro & Zeeshan Malik,
Advocates

Mr. Ahsan Zahoor Baloch, Advocate for
University

Mr. Allah Bachayo Soomro, Addl. A.G.

ORDER

ADNAN-UL-KARIM MEMON, J: - The petitioners through the instant petition have prayed as under:-

- i. Declare that the failure of the respondents to regularize the services of the petitioners is discriminatory, illegal, unlawful, mala fide, arbitrary and in violation of principles of natural justice, equity and fair play;
- ii. Direct the Respondents to regularize the services of the petitioners with all consequential benefits;
- iii. Restrain the respondents, their servants, subordinates, agents and / or any other person(s) working through or under them for taking any adverse action against the petitioners, including but not limited to causing their removal or termination from service;
- iv. Grant any further relief that this Honourable Court deems appropriate;

2. At the outset we asked learned Counsel for the petitioners as to how this petition is maintainable under Article 199 of the constitution.

3. Mr. Zamir Hussain Ghumro learned counsel for the petitioners has argued that failure of respondents to regularize the services of the petitioners is discriminatory, illegal, unlawful and in violation of principles of natural justice; that the petitioners have been appointed after advertisement in fair, transparent and meritorious manner as prescribed by law, hence their appointments should have been made on regular basis; that petitioners are highly qualified and termination of their services without any reason or justification will cause severe loss to the university; that the petitioners have rendered remarkable services to the university which is evident from the fact that since 2017 their contractual period is being extended; that to overcome the shortage of teaching staff respondent No.3 on one hand has sought approval from Syndicate for recruiting faculty and administrative staff on regular basis and on the other hand extending threats to the petitioners for their termination without any rhyme and reason; that the petitioners are working on the posts which are permanent in nature and in view of constitutional guarantee they have legitimate expectation of their regularization. He lastly prayed for allowing the instant petition. In support of his contention, he relied upon the cases reported in 2015 SCMR 1257, 2016 SCMR 1756, 2017 PLC (C.S) 26, 2017 PLC (C.S) 1020, 2018 SCMR 1181.

4. Conversely, Mr. Ahsan Zahoor Baloch, learned counsel for the respondent university has raised the question of maintainability of this petition on the premise that the petitioners have no vested right to seek regularization of their service as they were hired on a contractual basis and there was no legal and statutory protection provided to their terms and conditions of service; he further argued that upon expiry of the contractual period the respondent university issued a public notice for appointment against the said post on regular basis; however, the petitioners have interfered in the process and approached this court for regularization of their service as such they could not complete the process of appointment on merit. He prayed for the dismissal of this petition. In support of his contention, he relied upon the cases of Qazi Muneer Ahmed v. Rawalpindi Medical College and others (2019 SCMR 648).

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

6. The case of the petitioners is that they applied for subject posts in the year 2017, through Public Notice; the competent authority conducted the interview and selected them for appointment against permanent posts, however, when they were appointed on a contract basis and the period of contract was extended from time to time but despite several assurances, their services have not been regularized.

7. It has now been settled by the Honorable Supreme Court that all the employees who have entered into contracts of service on the same or similar terms and conditions have no vested right to seek regularization of their employment, which is discretionary with the master; and, the master is well within his rights to retain or dispense with the service of employees based on satisfactory or otherwise performance. Reliance is placed on the enunciation of the Hon'ble Supreme Court in the case of *Owais Shams Durani and others versus Vice-Chancellor Bach Khan University, Charsadda, and another* (2020 SCMR 1041).

8. We have gone through the record. It appears that the petitioners were appointed as Assistant Professors, Lecturers, and Jr. Lecturers in the respondent university on a contract basis in the year 2017 by the Vice-Chancellor, in the exercise of emergency powers conferred upon him by Section 4(i) of Section 13 of the University of Sufism and Modern Sciences Bhitshah Sindh Act, 2011 for six months. At this juncture, we have been informed that the respondent university is now properly functioning. In such a situation, this Court vide order dated 10.09.2021, directed the petitioners to appear in the test to be conducted by the respondent-university through IBA; however, their result was ordered to be withheld. Unfortunately, on the very day, the petitioners did not appear in the test for the reasons best known to them.

9. Be that as it may, we have noticed that petitioners were appointed for a temporary period under emergency powers exercised by the Vice-Chancellor of the respondent university; and, since the expiry of their contractual period, they applied for regularization of their services, however in the intervening period, the respondent-university opted to invite applications for various posts including the posts of the petitioners in the year 2019 through IBA Sukkur to

conduct their test, but unfortunately, the petitioners failed and neglected to appear in the said test despite the order passed by this court. The aforesaid factum is disclosed by the respondent-university vide letter dated 24.09.2021.

10. We have noticed that nothing is adverse in terms of qualification and character and/or inefficiency in the subject field was observed by the Competent Authority of the respondent University during their entire period of service. Therefore, the petitioners who have served the respondent-university for such a long period would deserve to be given a fair chance of appearing in the process of regularization in the given situation by the competent authority of respondent-university.

11. For the reasons given above, we find it appropriate to direct the competent authority of respondent-university i.e. Syndicate to scrutinize the candidature of the petitioners afresh for appointment on regular basis by conducting a fresh interview as provided under the recruitment Rules, within one month from the date of order of this Court. While considering their case for the said purpose, the ratio of judgments passed by the Honorable Supreme Court in the aforesaid cases must be kept in mind. In the intervening period, the posts which were being held by the petitioners shall not be filled.

12. This petition stands disposed of in the above terms.

JUDGE

JUDGE