

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-3872 of 2020

Zulfiqar Ali
Petitioner through : Mr. Rafiq Ahmed Kalwar, advocate.

Respondent No.1
Through : Mr. Muhammad Nishat Warsi, DAG

Respondents 2, 3 & 4
Through : Ms. Durdana Tanweer, advocate

Date of hearing
& order : **25.01.2022**

ORDER

ADNAN-UL-KARIM MEMON, J. Through this petition, the petitioner has assailed the order dated 20.05.2020 issued by Manager (Human Resources) Karachi Shipyard & Engineering Works Limited (KS&EW), whereby the petitioner had been released from the services of KS&EW upon completion of the contract period on 18.05.2020, hence his name was **struck off** from the nominal roll of contract officers with effect from 18.05.2020. An excerpt of the letter dated 20.5.2020 is reproduced as under:

*“Subject: **STRUCK OFF FROM SERVICE OF AM (TECH)SB/CO-273***

*It is informed that Mr. Zulfiqar Ali Kalwar, AM (TECH)SB/CO-273 will be released from the services of KS&EW upon completion of contract period on 18-05-2020 (AN), hence his name may kindly be **“STRUCK OFF”** from the Nominal Roll of contract officers w.e.f 18-05-2020 (AN).”*

2. Mr. Rafiq Ahmed Kalwar, learned counsel for the petitioner, has argued that no reason has been assigned to put the contract employment of the petitioner into an end vide order dated 20.5.2020. Learned counsel asserted that this unchecked discretion on the part of respondents has caused colossal loss to the career of the petitioner in untimely ending his services though he could have been served in the department more efficiently, therefore ex-facie the action of the respondents lacks the requirement of fairness and procedural due process, thereby offending Article 4 and 10-A of the Constitution. Per learned counsel, before taking adverse action, the affected party must be given a fair opportunity to respond and defend the action. Learned counsel referred to various documents attached with the memo of the petition and argued that the applicant just requested for one-month medical leave with effect from 6.4.2020 to 6.5.2020 on medical grounds, which was duly sanctioned as per his financial statement. Learned counsel further pointed out that the petitioner moved representation vide letter dated 24.06.2020 raising his voice of concern, however, the respondents turned their deaf ear and replied vide letter dated 14.07.2020 with the assertion that his contract has ceased. Learned counsel pointed out that in his place fresh candidates have been appointed, thus discriminatory attitude has been meted out with him. In support of his

contentions, he relied upon the cases of Muhammad Rafi and another v. Federation of Pakistan and others, **2016 SCMR 2146**, Pakistan Defence Officers Housing Authority v. Mrs. Itrat Sajjad Khan and others, **2017 SCMR 2010**, Pakistan Agriculture Storage and Services Corporation v. Muhammad Akram and 31 others, **2018 PLC (C.S) 427**, Samina Karwal v. Director Punjab Forestry Research Institute, Faisalabad, **2011 PLC (CS) 1553**, and unreported judgment dated 13.12.2021 passed by the Hon'ble Supreme Court of Pakistan in **Civil Petition No.2892 of 2020**, unreported judgment dated 13.08.2012 passed in **Civil Petition No.236-K of 2012** and unreported order of this Court dated 20.08.2020 passed in **C.P. No.D-1679 of 2017**. He lastly prayed for setting aside the impugned notice dated 20.5.2020 and the petitioner may be allowed to continue with the service of respondents.

3. Ms. Durdana Tanweer, learned counsel for the respondents 2 to 4, has argued that the instant petition is not maintainable under Article 199 of the constitution on the premise that the respondent has no statutory rules of service, thus no relief could be granted to him. Learned counsel further pointed out that the petitioner was a contract employee and had been appointed for a specific project which he had accepted the terms and conditions of appointment before joining the service, and the project employee could not claim employment beyond the period of completion of the project, his contract was completed and on completion of the project, his contract was not extended, thus the same cannot be called in question in writ jurisdiction of this Court. Per learned counsel, the petitioner was served with a notice of expired work contract dated 14.7.2020 striking off his name from the contractual employment, therefore, no further indulgence of this Court is required. In support of her contentions, she relied upon the cases of the Government of Khyber Pakhtunkhwa through Secretary Energy and Power Department, Peshawar and others v. Ihsan Ullah and others, **2018 PLC (CS) 354**, Wajahatullah Nasim and another v. Provincial Government through Chief Secretary Gilgit and 3 others, **2016 GBLR 39**, Abdul Shakoor Sheikh v. Federation of Pakistan through Secretary, Ministry of Aviation, Civil Aviation Division Islamabad and 6 others, **2019 PLC (CS) 25**. She prayed for dismissal of the instant petition.

4. Mr. Muhammad Nishat Warsi, learned DAG, has controverted the stance of the learned counsel representing the petitioner on the plea that respondent- KS&EW is one of the organs of strategic organization, thus constitutional petition under Article 199 of the Constitution is not maintainable. Learned DAG referred to para-wise comments filed on behalf of respondents 2 to 4 and statement dated 25.1.2022 that respondent is working as a commercial organization under Ministry of Defence Production; that the service rules of respondents are non-statutory and are approved by the Board of Director of the company, besides that Ministry has now no role in appointment, promotion, and engagement of contractual employees in their services. He prayed for dismissal of the instant petition.

5. We have heard the parties on the issue of maintainability of the instant petition under Article 199 of the Constitution and perused the material available on record.

6. We have perused the termination of the contract letter dated 20.5.2020 of the petitioner, which is a contractual appointment for a limited period. The record does not reflect that the service of the petitioner was regularized by the respondents. We are of the view that such an appointment would be terminated on the expiry of the contract period or any extended period on the choice of

Employer or Appointing Authority. The case of the Petitioner is governed by the principle of Master and Servant, therefore, the Petitioner does not have any vested right to seek reinstatement in service. It is well-settled law that contract employees cannot claim any vested right for reinstatement in service. Reverting to the claim of the Petitioner that he has been condemned unheard by the respondents on the allegations, the record reflects that though the Petitioner was a contract employee and under the law, an opportunity of Show Cause can only be issued to the employee, who is holding a permanent post, whereas the record does not reflect that the Petitioner was a permanent employee of Respondents, therefore in our view the Petitioner cannot claim vested right to be reinstated in service. It is well-settled law that the service of temporary employees can be terminated on 14 days' notice or pay in lieu thereof, whereas in the present case petitioner claims revival of the contract, which period expired, through reinstatement in service, which factum cannot be thrashed out in the Constitution jurisdiction.

7. Prima-facie, the contract of the petitioner dated 30.04.2014 does not envisage the condition of regularization/confirmation of service. In the present case, there is no material placed before us by which we can conclude that Impugned termination of the contract has been wrongly issued by the respondents. Admittedly, the relationship between the parties was governed by the principle of 'master and servant' and the Hon'ble Supreme Court of Pakistan in several cases has held that contract employees have no vested right to claim regularization/continuation of service after expiry of the contract period. The Hon'ble Supreme Court of Pakistan in the case of *Government of Khyber Pakhtunkhwa Workers Welfare Board v. Raheel Ali Gohar*, **2020 SCMR 2068**, has categorically held that contractual employees, who are governed by the principle of 'master and servant' do not have the right to approach the High Court in its Constitutional jurisdiction to seek redressal of their grievances relating to regularization. However, admittedly in the present case, the contract of the petitioner was terminated on 18.05.2020 and he filed the constitutional petition on 18.8.2020 after three months of his termination of the contract. The Hon'ble Supreme Court of Pakistan in the case of *Naureen Naz Butt v. Pakistan International Airlines*, **2020 SCMR 1625** while relying on earlier judgments has held as under:-

"Thus, the establish law is that a contract employee, whose period of contract employment expires by efflux of time, carry no vested right to remain in employment of the employer and the Courts cannot force the employer to reinstate or extend the contract of the employee."

8. From the foregoing legal position of the case, the Petitioner has failed to establish that he has any fundamental/vested right to remain on the temporary/contractual post. Therefore, the submissions of the Petitioner that he was not heard before the issuance of the Impugned letter dated 20.5.2020 is not tenable in the eyes of law. Adverting to the other grounds raised by the petitioner, suffice it to say he accepted his post with certain terms and conditions of his service, as such he is precluded under the law to claim extension/reinstatement and/or regularization of his contractual service, the reasons discussed supra are sufficient to discard his point of view. The case-law cited by the learned counsel for the petitioner are of no help to him in the light of ratio of the judgment passed by the Hon'ble Supreme Court as discussed supra.

9. The views expressed by us in the preceding paragraphs are fortified by the following authoritative pronouncements of the Hon'ble Supreme Court:

- i. Government of Baluchistan V/S Dr. Zahida Kakar and 43 others, **2005 SCMR 642.**
- ii. Dr. Mubashir Ahmed V/S PTCL through Chairman, Islamabad, and another, **2007 PLC CS 737.**
- iii. Abid Iqbal Hafiz and others v. Secretary, Public Prosecution Department, Government of the Punjab, Lahore, and others, **PLD 2010 Supreme Court 841.**
- iv. Federation of Pakistan v. Muhammad Azam Chattha, **2013 SCMR 120.**
- v. Muzafar Khan & others V/S Government of Pakistan & others, **2013 SCMR 304.**
- vi. Abdul Wahab and others v. HBL and others, **2013 SCMR 1383.**
- vii. Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and others, **2017 SCMR 1979.**
- viii. Qazi Munir Ahmed Versus Rawalpindi Medical College and Allied Hospital through Principal and others, **2019 SCMR 648.**
- ix. Raja Iviz Mehmood and another v. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others, **2018 SCMR 162.**
- x. Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals, **2019 SCMR 984.**
- xi. Province of Punjab through Secretary Agriculture Department, Lahore, and others Vs. Muhammad Arif and others, **2020 SCMR 507.**

10. In view of the foregoing, the Constitutional Petition in hand is not maintainable, hence, is dismissed along with the pending application(s) with no order as to cost.

JUDGE

JUDGE

Nadir*