

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-3031 of 2020

Muhammad Akbar Siyal and
04 others

Petitioners through : Mr. Ali Asadullah Bullo, advocate

Respondents

through: : Mr. Ali Safdar Depar, AAG

Date of hearing
& order

: **03.02.2022**

ORDER

Through this constitutional petition filed by the petitioners under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, they have prayed that their contractual service as Auditor, in Auqaf, Religious/Minorities Affairs, Zakat and Usher Department Government of Sindh (**ARMAZU**), be regularized without discrimination as they have been appointed through the competitive process, by advertising the subject post in News Paper dated 11.2.2002, by conducting test and Interview in the year 2002, and with the approval of competent authority, and their contractual terms have been annually extended till today, with a further assertion that they have already served in ARMAZU for a considerable period i.e. with effect from 2002 and they have the legitimate expectation for appointment on regular basis, in terms of section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 (Act-2013).

2. Mr. Ali Safdar Depar learned AAG has opposed the petition on the ground that the Honorable Supreme Court has maintained that the High Court lacked jurisdiction to revive, amend or alter contracts; there was no vested right to seek regularization for employees hired on a contractual basis unless there was/is a legal and statutory basis for the same; contractual employees had no automatic right to be regularized unless the same has specifically been provided for in law; and that the relationship of contractual employees is governed by principles of master and servant as held by the learned Division Bench of this Court in the case of *Anjum Badar v. Province of Sindh through Chief Secretary and 2 others*, **PLD 2021 Sindh 328**; that contractual employees had no vested right for regular appointment or to seek regularization of their services, hence, they are debarred from invoking the constitutional jurisdiction of this Court. In support of his contentions, he relied upon the case reported as *SMC NO.15/2010 2013 SCMR 304*.

3. To the above assertion, Mr. Ali Asadullah Bullo, learned counsel for the petitioners has submitted that the petitioners are well qualified and have requisite experience after the initial appointment, thus joining fresh process with other candidates is unfair and if they are forced to apply afresh, then there shall be no difference between them and

outsiders applying for the subject posts. He further argued that employment is the source of livelihood and the right of livelihood is an undeniable right to a person, therefore, the petitioners who have served the respondent- ARMAZU for such a long period would deserve to be given a fair chance of regularization in the given situation.

4. We have heard the learned counsel for the parties and perused the material available on record and case-law cited at the bar.

5. The petitioners have initially been appointed openly and transparently through the prescribed competitive process as the vacancies were advertised in the newspaper. The professional tests of the petitioners for (10) posts of Auditors in Auqaf, Religious/Minorities Affairs, Zakat, and Usher Department Government of Sindh were conducted by the department in the year 2002 and subsequently appointed them in the same year 2002. In the intervening period, the respondent department has not called in question their qualification and experience for the subject posts.

6. In the light of the above, it has become clear that the petitioners had cleared the recruitment, for the subject posts, through a competitive process, which was a pre-condition before they could be appointed to the posts applied for.

7. Record further revealed that the petitioners were appointed on a contract basis to run the affairs of the respondent-department in different districts of Sindh, and are in employment/service for several years which they were appointed had also been taken over by the Provincial Government on the regular budget for the Financial year 2017-2018-2019 (page 111 to 113), therefore, their status as contract employees had ended once Finance Department Government of Sindh had sanctioned the regular posts to run the affairs of respondent-department across the Province.

8. During arguments, we have been informed that the Summary has been floated by the respondents, to the Competent Authority, with the proposal that the services of the petitioners may be shifted from the Secretariat side i.e. Chief Administrator Zakat and Ushr Secretariat Karachi to Field side i.e. Administrator Zakat & Ushr Karachi so that the contractual staff of internal audit may be regularized. However, the competent authority i.e. Chief Minister Sindh has not yet accorded the approval. Be that as it may, it is for the worth Chief Minister, Sindh to consider the proposal of the Secretary Finance, Government of Sindh.

9. At this stage learned counsel for the petitioners, has heavily relied upon Para 9.10 (b) of the minutes of the meeting of Provincial Cabinet held on 29.3.2018 and argued that Provincial Cabinet has decided to regularize the contract employees vide letter dated 18.04.2018; they fulfill the criteria and are qualified for the job; and, they are working to the satisfaction of the respondent-department and relied upon the decision of Honorable Supreme Court rendered in the case of *Pir Imran Sajid and others versus Managing Director/Regional Manager (Manager Finance) Telephone Industries of Pakistan, 2015 SCMR 1257*. Primarily, the decision of the Hon'ble Supreme Court of Pakistan cited by

him on the subject is clear in its terms. An excerpt of the minutes of the meeting of the Provincial Cabinet held on 29.03.2018 is reproduced as under:

“ Para 9.10(b): The Cabinet also decided in principle to direct all the Departments to initiate the process of regularization of the contract employee, if they fulfill the criteria, are qualified for the job and they are working to the satisfaction of the respective departments. ”

10. In the light of facts and circumstances of the case discussed above and decisions rendered by the Hon'ble Supreme Court of Pakistan in the aforesaid case, the instant petition is hereby allowed with a direction to the competent authority /Secretary Auqaf, Religious/Minorities Affairs, Zakat and Usher Department Government of Sindh to regularize the services of the petitioners, in the line with the proposal of Secretary, Finance Department, Government of Sindh vide letter dated 03.05.2018, more particularly in the same analogy as decided by the Hon'ble Supreme Court of Pakistan in the case of Messrs. State Oil Company Limited vs. Bakht Siddique and others (**2018 SCMR 1181**). The aforesaid exercise shall be undertaken within two weeks from today and a compliance report be submitted through MIT-II of this Court.

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