

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitutional Petition No.D-7528 of 2018

(Shahnawaz and 36 others v. Province of Sindh & 04 others)

Constitutional Petition No.D-4291 of 2020

(Mr. Muhammad Younis & 31 others v. Province of Sindh and 03 others)

Order with signature of Judge(s)

CP No.D-7528 of 2018

Priority

1. For hearing of CMA No.8679/2021
2. For hearing of CMA No.32957/2021
3. For hearing of main case

CP No.D-4291 of 2020

Priority

1. For hearing of CMA No.18053/2020
2. For hearing of main case

22.2.2022

M/s. M.M. Aqil Awan and Danish Rashid Khan, advocate for the petitioners
Mr. Ali Safdar Depar, AAG along with Mr. Ghulam Ali Birhmani, Additional Secretary (Services-I), SGA&CD, Karachi, Abdul Sami, Deputy Director, Live Stock Department & Abdul Wajid Shaikh, Secretary-cum-Director, Board of Revenue, Karachi.

ORDER

In both the petitions common question of law and facts are involved, therefore, the same are being disposed of through this single order.

Through these constitutional petitions filed by the petitioners under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, they have prayed that their contractual service be regularized without discrimination. Learned counsel for the petitioners in CP No.D-7528/2018 has submitted that the petitioners have been appointed through the competitive process as Data Process Assistant in Land Administration and Revenue Management System (LARMIS) by conducting test from Institute of Business Administration (IBA) Sukkur in the year 2013, 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 LARMIS for a considerable period i.e. with effect from 2014 and they have the legitimate expectation for appointment on regular basis.

Petitioners in CP No.D-4291/2020 have been appointed through competitive process vide public notice dated 16.12.2014, and their test and interview were conducted by the Selection Committee, in the year 2015, followed by their appointment letters on various posts i.e. Computer Operator, Junior Clerk, Electrician, Lab Technician, Driver, Lab Attendant, Guardner (Mali), Lab Cleaner, Peon and Sanitary Worker in Program known as

Surveillance and Characterization of Circulating Pathogen of Polytary and Livestock and Fisheries Department, Government of Sindh. Subsequently, their service is protected under the Sindh Institute of Animal Health at Karachi Act, 2018.

Mr. M.M. Aqil Awan, learned counsel for the petitioners in both the petitions, has submitted that the petitioners are well qualified and have requisite experience after the initial appointment, thus joining fresh process with other candidates as suggested by the respondent department, via Summary floated to the competent authority, 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 as their candidature had already been assessed through a competitive process in terms of The Sindh Civil Servants Act, 1973 and rules framed thereunder, thus they are not required to go through rigorous of further process. 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-LARMIS and/or Livestock Department, for such a long period would deserve to be given a fair chance of regularization in the given situation; that on account of their experience of the subject posts, they are fit and qualified to retain the said posts on regular basis. Besides, as the cases of the petitioners squarely fall within the ambit of the non-development project side posts, thus their services are to be treated regularly.

Learned AAG has opposed the prayer of the petitioners on the premise that their case does not fall within the ambit of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 (Act-2013). Learned AAG in CP No.D-4291/2020 has referred to the statement dated 01.12.2021 and submitted that the Sindh Cabinet decided to constitute a sub committee to look into the legal aspect as well as financial implications of regularizing the contract employees. Per learned AAG, the sub committee has referred the matter to Law Department, to tender legal opinion, however, the response from the Law Department is still awaited. Learned AAG further submitted that the competent authority has yet to take decision in the cabinet with regard to regularization of contract employees of Development Schemes /Program of Livestock and Fisheries Department. Learned AAG also referred to the summary for Chief Minister Sindh in the case of petitioners in CP No.D-7528 /2018 and submitted that the competent authority has approved para 15 and 16 for extension of contract/cotinent appointment of staff of LARMIS including GIS and Preservation of Land Record Project upto June 2022, however, he submitted that respondent department has framed the recruitment rules vide notification dated 23.04.2018 and 16.06.2020

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

In the light of the above, it has become clear that the petitioners had cleared the written examination, for the subject posts, through IBA Sukkur, vide result announced on 15.9.2013, which was a pre-condition before they could be appointed to the posts applied for. Essentially the written test is designed to gauge a candidate's familiarity with the subject plus his power of expression etc. In our view, the written test does not gauge the personality of the candidate or his communication skills, or his leadership or decision-making abilities which are left to be examined at the time of the interview. For this proposition, our view is supported by the decision rendered by the Honorable Supreme Court in the case of Muhammad Ashraf Sangri vs. Federation of Pakistan and others, **2014 SCMR 157**.

Principally, an interview is a subjective test and a Court of law can't substitute its own opinion for that of the Interview Board. If any, malafide or bias or for that matter error of judgment were floating on the surface of the record, we would have certainly intervened as Courts of law are more familiar with such improprieties rather than dilating into the question of fitness of any candidate for a particular post which as observed above is a subjective matter and can best be assessed by the functionaries who are entrusted with this responsibility, in the present case, the respondent-department. For this proposition, we seek guidance from the decision rendered by the Honorable Supreme Court in the case of Federation of Pakistan through Secretary Establishment Division v. Ghulam Shabbir Jiskani, **2011 SCMR 1198**.

We have been informed that the petitioners were appointed on a contract basis to run the operations of Peoples Service Centre in 27 districts of Sindh, and are in employment/service for several years and project on which the colleagues of the petitioners who were appointed in BPS-17 had also been taken over by the provincial Government on the regular budget for the Financial year 2017-2018, therefore, the status of the petitioners is same and they being project employees had ended once Finance Department, Government of Sindh, had sanctioned the regular posts to run the computerized land record facility across the Province. The summary floated by the Senior Member Board of Revenue on 09.12.2021 has endorsed the stance of petitioners.

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 retained in the public interest for successful implementation of computerization of land records in Sindh. However, the competent authority i.e. Chief Minister Sindh has proposed that the service of the petitioners may be regularized through a competitive process through public notice afresh.

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 §CMR 1257.*

Primarily, the decision of the Hon'ble Supreme Court of Pakistan cited by him on the subject is clear in its terms on the premise that the names of candidates were specifically recommended for regularization by the Cabinet, in the subject matter directive of the Provincial Cabinet in its meeting held on 29.03.2018 about the regularization of the service of the contract employees. There is no cavil to the proposition that after the decision of the cabinet on the subject issue, the legislative instrument needs to be prepared for approval by the Provincial Assembly to sanctify the decision of the cabinet. In the present case, the petitioners have already been selected through a competitive process for the subject posts, however, the competent authority may take their own decision, subject to the law. 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 apartments. ”

In the light of foregoing, in principle the posts are only of two kinds one is called temporary post which is always a time-bound post, and the post which is not time-bound is always treated as a permanent post and there is no concept of any contract post in service jurisprudence; and, in the service regulations there is no post which can be termed as contract post as a separate cadre; and, there is no procedure whatsoever which provides appointment by way of contract, therefore, the government of Sindh is bound to ensure that every appointment in the basic scales is to be made, in their departments, under the regular mode of appointment/service and not otherwise; that is why the Honorable Supreme Court has deprecated the practice of appointments on the contract basis. On the aforesaid proposition, we are guided by decisions of Honorable Supreme Court rendered in the cases of *Government of Baluchistan v. Dr. Zahida Kakar and 43 others, 2005 §CMR 642.* *Dr. Mubashir Ahmed v. PTCL through Chairman, Islamabad, and another, 2007 PLC CS 737.* *Abid Iqbal Hafiz and others v. Secretary, Public Prosecution Department, Government of the Punjab, Lahore, and others, PLD 2010 Supreme Court 841* *Federation of Pakistan v. Muhammad Azam Chattha, 2013 §CMR 120*

Muzafar Khan & others V/S Government of Pakistan & others, 2013 §CMR 304
Abdul Wahab and others v. HBL and others, 2013 §CMR 1383 Chairman
NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad
Ali Shah and others, 2017 §CMR 1979 Qazi Munir Ahmed Versus Rawalpindi
Medical College and Allied Hospital through Principal and others, 2019 §CMR
648 Raja Iviz Mehmood and another v. Federation of Pakistan through
Secretary M/o Information Technology and Telecommunication and others,
2018 §CMR 162 Maj. (R) Syed Muhammad Tanveer Abbas and other
connected Appeals, 2019 §CMR 984 Unreported order dated 13.03.2019 passed
by the Hon'ble Supreme Court in C.P. No.2792/2018 and other connected
petitions, Province of Punjab through Secretary Agriculture Department,
Lahore, and others Vs. Muhammad Arif and others, 2020 §CMR 507 Miss
Naureen Naz Butt vs Pakistan International Airlines and others, 2020 §CMR
1625, Water and Power Development Authority v. Irtiga Rasool Hashmi and
another, 1987 §CMR 359. Secretary, Ministry of Defence, Rawalpindi and
others v. Muhammad Miskeen, 1999 §CMR 1296.

On the issue of discriminatory treatment as well as regularization of contract employees/daily wages, the Hon'ble Supreme Court of Pakistan has dealt with the aforesaid issues in elaborative manner in the following authoritative judgments:

(1) Government of KPK V/S Adnanullah, 2016 §CMR 1375, (2) Government of
N.W.F.P. (Now KPK) through its Chief Secretary VS Kaleem Shah, 2011 §CMR
1004, (3) Ghulam Mustafa VS Omaid Ali, 1984 §CMR 1126, (4) Miss Benazir
Bhutto V/S Federation of Pakistan, PLD 1988 §C 416, (5) Director, Social
Welfare, N.W.F.P., Peshawar VS Sadullah Khan, 1996 §CMR 1350, (6)
Chairman, Minimum Wage Board, Peshawar VS Fayyaz Khan Khattak, 1999
§CMR 1004, (7) Muhammad Akhtar Shirani VS Punjab Textbook Board,
2004 §CMR 1077, (8) Federation of Pakistan VS Gohar Riaz, 2004 §CMR
1662, (9) Muhammad Ashraf Tiwana V/S Pakistan and others, 2013 §CMR
1159, (10) Government of N.W.F.P. through Secretary, Education Department,
Peshawar V/S Qasim Shah, 2009 §CMR 382, (11) Sumara Umar Awan V/S
Chancellor Gomal University, D.I. Khan, 2014 PLC (CS) 526, (12) Rafaqat Ali
V/S Executive District Officer (Health), 2011 PLC (CS) 1615, (13) Shabana
Akhtar V/S District Coordination Officer, Bhakkar, 2012 PLC (CS) 366, (14)
Pakistan Telecommunication Company Limited through General Manager and
another v. Muhammad Zahid and 29 others, 2010 §CMR 253 (15) Ziaullah
Khan v. Government of Pakistan through Secretary, Law, Justice and Human
Rights Islamabad and 3 others, 2011 PLC (CS) 7 (16) Ejaz Akbar Kasi v. Ministry
of Information and Broadcasting and others, 2011 PLC (CS) 367, (17) Shahid

Habib V/S Government of Khyber Pakhtunkhwa, 2019 PLC (CS) 1426,(18)
Suo Motu Action Regarding Eligibility Of Chairman And Members of Sindh
Public Service Commission, etc., 2017 SCMR 637,(19) Inspector General of
Police and others v. Ali Abbas and others, 1985 SCMR 946, (20) Professor
Abdul Qayyum Qureshi v. Government of Punjab etc., 1975 SCMR 457, (21)
Secretary Schools Government of Punjab Education Department and others v.
Yasmeen Bano, 2010 SCMR 739, (22) Chairman Pakistan Railways and others
v. Arif Hussain and others, 2008 PLC (CS) 240, (23) Messers State Oil
Company Limited v. Bakht Siddique and others, 2018 SCMR 1181, (24) Board
of Intermediate and Secondary Education, Multan through Chairman and
others v. Muhammad Sajid and others, 2019 PLC (CS) 539,(25) Province of
Punjab through Secretary Communication and Works Department and others
v. Ahmad, 2013 SCMR 1547,(26) Secretary to Government of Pakistan, Ministry
of Finance and others v. Muhammad Hussain Shah and others, 2005 SCMR
675.

Before parting with this order, we may observe that the appointment in the public office can only be made through the competitive process on merit as provided under the recruitment rules and not otherwise as discussed supra. It is well-settled law that appointments in public office are to be made strictly under applicable rules and regulations without any discrimination and in a transparent manner. Thus, all appointments in the public institution must be based on a process that is substantially and tangibly fair and within the parameters of its applicable rules, regulations, and bylaws. However, if the candidate has applied based on such admissible quota under the law he can be accommodated subject to his qualification for the post under the dicta laid down by the Honorable Supreme Court of Pakistan on the subject issue. On the aforesaid proposition, our view is supported by the following cases decided by the Hon'ble Supreme Court of Pakistan (1) Muhammad Yaseen v. Federation of Pakistan, PLD 2012 SC 132, Muhammad Ashraf Tiwana v. Pakistan, 2013 SCMR 1159, Tariq Azizuddin: in re, 2010 SCMR 1301, Mahmood Akhtar Naqvi v. Federation of Pakistan, PLD 2013 SC 195, Contempt Proceedings against Chief Secretary Sindh and others, 2013 SCMR 1752 and Syed Mubashir Raza Jafri and others v. Employees Old-age Benefits Institution (EOBI), 2014 SCMR 949.

In view of the foregoing, we are of the considered view that the matter of the petitioners needs not to be processed further through legislative intent as portrayed by the respondent-department; and / referred to the scrutiny committee to assess their eligibility/fitness/suitability afresh as they have been appointed on regular posts (LARMIS), through a competitive process.

In the light of the above discussion, we deem it appropriate to hold in the following terms:

a) The appointments of the petitioners in the respondent department are based on the process that is substantially and tangibly fair and within the parameters of its applicable rules and regulations, through the competitive process on merits.

b) The Government of Sindh, from onwards shall ensure that the recruitment to every post from BPS-1 to BPS-15, applied by the candidates, in any department of Government of Sindh be made through the competitive process on open merit with the budgetary sanction, on regular basis (except the posts to be filled in the time-bound projects/with tenurial limitation posts) by invoking the Sindh Civil Servants Act,1973 and rules framed thereunder as well as the relevant recruitment Rules and regulations already notified by the respective departments.

c) In the future, the Government of Sindh/respondents shall also avoid public appointments, having permanent status, on a contract and ad-hoc basis (except the posts provided under Rules 18 to 20 of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules 1974.

For all the above-mentioned reasons, we allow these petitions along with all pending application(s) to the extent of the above observations.

JUDGE

JUDGE

Nadir*