

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-5016 of 2021

Sohail Memon and 03 others

Petitioners through : Mr. Ali Asadullah Bullo, advocate

Respondents

Through : Mr. Ali Safdar Depar, AAG

Date of hearing

& order : **22.02.2022**

ORDER

Through the captioned petition, the petitioners have approached this Court for regularization of their services in the Planning and Development Department, Government of Sindh.

Mr. Ali Asadullah Bullo, learned counsel for all the petitioners, has conceded that the petitioners were appointed after the promulgation of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 and 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. He emphasized that the case of petitioners falls within the ambit of Section 3 of Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013; according to a constant policy of other provincial governments to regularize the services of contractual employees working in different projects of government and because of their qualification and performance they have a legitimate expectancy of being regularized; and, the respondents are violating the fundamental rights of the petitioners. He lastly prayed for allowing the instant petition. In support of his contentions, he relied upon the case of *Pir Imran Sajid and others versus Managing Director/Regional Manager (Manager Finance) Telephone Industries of Pakistan, 2015 SCMR 1257*.

Learned AAG has opposed this petition on the ground that they were engaged on daily wages for (89) days, therefore, their case cannot be regularized.

We have heard learned counsel for the parties, carefully examined the record and case-law cited at the bar.

We have noticed that petitioners were appointed as Computer Operator/ Key Punch Operator and Naib Qasid, in Monitoring & Evaluation Cell in Planning and Development, Government of Sindh, in the years 2014 to 2021 respectively, on daily wages

basis and they are still working in the respondent department and their salaries have been paid through regular side budget.

In the light of foregoing position of the case, 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 C§ 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. Irtiqa Rasool Hashmi and another, **1987 §CMR 359**. Secretary, Ministry of Defence, Rawalpindi and others v. Muhammad Miskeen, **1999 §CMR 1296**.

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**.

The petition is allowed and the case of petitioners is remitted to the competent authority of respondents to regularize their service in the light of dicta laid down by the Hon'ble Supreme Court of Pakistan in the case of *Pir Imran Sajid and others* and other decisions cited supra.

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