

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2135 of 2021

Noman Ali Bhatti Versus **Government of Sindh & 02 others**

Date of hearing
& order: 30.03.2021

Petitioner is present in person.

ORDER

ADNAN-UL-KARIM MEMON, J:-, Petitioner is nonsuited by the respondent-Sindh Education Foundation (*hereinafter referred to as 'SEF'*) on the ground, *inter-alia* that his contractual service period ceased to exist on 30th June 2018. The petitioner submits that on 20.09.2017 he was arrested in NAB Reference and was incarcerated in Central Prison Karachi and subsequently succeeded in obtaining post-arrest bail, from this Court vide order dated 16.12.2019 passed in CP No.D-5249/2019, thereafter he submitted his application for joining the job and continued to move applications to the competent authority, however, finally his application was regretted vide letter dated 06.02.2020 on the premise that the competent authority did no renew/extend his contract beyond 30th June 2018. He is aggrieved by the aforesaid order moved another application to the Managing Director of respondent-SEF, but the same was also regretted vide letter dated 30.11.2020. He is aggrieved by and dissatisfied with the aforesaid orders has filed this petition on 25.3.2021.

2. Petitioner who is present in person has submitted that his service is/was liable to be continued even after his arrest in the NAB reference on 20.09.2017. Per Petitioner, his contractual service period had been shown to have expired on 30th June 2018, is back-dated action on the ground that he was already under custody in the criminal case as discussed supra, therefore, the respondent-SEF was not required to discontinue his contractual service; that the service contract was purportedly terminated on 30th June 2018 on the alleged policy decision of the Management of respondent-SEF. Per petitioner,

no reason has been assigned on the issue that he could not continue the contractual service.

3. We confronted him with the fact that the respondent-SEF has not taken any adverse action against him, rather his contractual period was not extended and admittedly, which had already expired on 30th June 2018. He replied that the aforesaid Office Order was never communicated to him; therefore, all the actions have been taken by the respondent-SEF behind his back. In support of his submissions, he relied upon the contents of his memo of the petition and emphasized that he is entitled to the relief(s) as contained in his Memo of Petition. He further relied upon the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 and submitted that his service is required to be regularized by the respondents under the policy of the Sindh Government and law consequently, all the benefits accrued thereon may be ordered to be restored to him by the respondent-SEF; that the case of the petitioner falls within the ambit of Section 3 of the Sindh Regularization (Ad-hoc and contract) Employees Act 2013; that he is entitled to his job protection under the law; therefore his case may be placed before the Competent Authority for consideration of regularization of his service in terms of the several orders passed by this Court on the aforesaid issue. He further added that his case needs to be treated at par with his colleagues, whose services have already been regularized. He lastly submitted that this is a hardship case and this Court can hear and decide the matter on merits.

4. We have heard the Petitioner, who is present in person at considerable length on the issue of maintainability of the instant petition, and have perused the record and documents relied upon by the Petitioner attached with his Memo of Petition.

5. The moot point involved, on the issue of regularization of service of the petitioner, is the interpretation of Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013. Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 provides that employees appointed on Ad-hoc and contract basis shall be deemed to have been validly appointed on regular basis immediately before the commencement of the Act. Hence, no ambiguity is left that all employees, who fall within the ambit of law shall be regularized in service with effect from the promulgation of the Act, 2013.

6. The Competent Authority scrutinized the case of the Petitioner and concluded that the contractual period of the petitioner cannot be extended after 30th June 2018. The record reflects that petitioner was informed vide letter dated 06.02.2020 regarding the expiry of his contractual period of service on 30th June 2018. In our view, such an appointment would be deemed to have been terminated on the expiry of the contract period or any extended period on the choice of the employer or appointing authority. The case of Petitioner is governed by the principle of master and servant, therefore, the Petitioner has no vested right to seek extension in his contractual service, which has already expired on 30th June 2018, even he cannot claim vested right for regularization of his service.

7. The policy decision of the Government regarding regularization of the post of the petitioner or otherwise could not be challenged in writ jurisdiction of this Court on the purported plea that he has been condemned unheard by the Respondent-SEF before passing the impugned orders dated 06.02.2020 and 30.11.2020, therefore, the service of the Petitioner cannot be regularized and his contractual period has already expired in the year 2018.

8. We are cognizant of the fact this Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In the present case, the contractual period of the petitioner expired in the year 2018, and still, he is insisting to continue on the subject post and claim violation of natural justice, however in our view, an opportunity of show cause can be given to the employee of the department, who is holding a permanent post, whereas the record does not reflect that the petitioner was a permanent employee of Respondent-SEF, therefore, the Petitioner cannot claim vested right to be either reinstated, regularized and extension in his contractual period; that the service of the temporary employee can be terminated on 14 days' notice or pay in lieu thereof. In the present case, there is no material placed before us by which we can conclude that the non-extension of the contract of the Petitioner has wrongly been issued by the Respondent-SEF. Petitioner has failed to establish that he has any fundamental/vested right to remain on the temporary/contractual post, therefore, the submission of the Petitioner that he was not heard before issuance of letters dated 06.02.2020 & 30.11.2020 is

not tenable in the eyes of law. Our view is subscribed by the following pronouncements of the Hon'ble Supreme Court of Pakistan:

1. Dr. NAVEEDA TUFAIL and 72 others Versus GOVERNMENT OF PUNJAB and others, 2003 S C M R 291
2. Government of Baluchistan v. Dr. Zahida Kakar and 43 others, 2005 SCMR 642.
3. Dr. Mubashir Ahmed v. PTCL through Chairman, Islamabad and another, 2007 PLC CS 737.
4. Abid Iqbal Hafiz and others v. Secretary, Public Prosecution Department, Government of the Punjab, Lahore, and others, PLD 2010 Supreme Court 841
5. Federation of Pakistan v. Muhammad Azam Chattha, 2013 SCMR 120
6. Muzafar Khan & others v. Government of Pakistan & others, 2013 SCMR 304
7. Abdul Wahab and others v. HBL and others, 2013 SCMR 1383
8. Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and others, 2017 SCMR 1979
9. Raja Iviz Mehmood and another v. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others, 2018 SCMR 162
10. Qazi Munir Ahmed v. Rawalpindi Medical College and Allied Hospital through Principal and others, 2019 SCMR 648
11. Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals, 2019 SCMR 984
12. Abu Bakkar Farooq through Chairman and others v. Muhammad Ali Rajpar, 2019 SCMR 830
13. GOVERNMENT OF KHYBER PAKHTUNKHWA, WORKERS WELFARE BOARD through Chairman v. RAHEEL ALI GOHAR and others, 2020 S C M R 2068
14. Province of Punjab through Secretary Agriculture Department, Lahore, and others v. Muhammad Arif and others, 2020 SCMR 507.
15. Miss Naureen Naz Butt v. Pakistan International Airlines and others, 2020 SCMR 1625.
16. M/S Suit Southern Gas Company Limited v. Zeeshan Usmani etc. and Saima Akhtar etc vide judgment dated 18.02.2021 passed in Civil Appeal No.936 & 937/2020.

17. Un-reported judgment dated 25.11.2020 passed in Civil Appeals No.240 & 272 of 2020 by the Hon'ble Supreme Court

9. In light of the above facts and circumstances of the case, we conclude that there is no illegality, infirmity, or material irregularity in the impugned letters dated 06.02.2020 & 30.11.2020 issued by the respondent-SEF. Besides, the issue of continue in service, since he is facing the NAB reference based on moral turpitude, thus we cannot order the competent authority to continue his service.

10. In view of the foregoing, the Constitutional Petition in hand is dismissed in limine along with the pending application(s).

JUDGE

JUDGE

*Nadir**