

IN THE HIGH COURT OF SINDH AT KARACHI

Before :

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D – 5144 of 2015

Dr. Haresh Kumar and 19 others

V/S

Federation of Pakistan and 3 others

Date of hearing & order : 28.04.2021

Mr. Zamir Hussain Ghumro, advocates for the petitioners.

Mr. Nasir Rizwan Khan, advocate for respondent-WAPDA along with Syed Liaquat Ali, Rtd. D.G. (HR & Admn). WAPDA.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

Adnan-ul-Karim Memon, J. – 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 temporary contractual appointments/services be regularized in respondent-Water and Power Development Authority (`WAPDA`) without discrimination, with a further assertion that they have already served in WAPDA for a considerable period and they have the legitimate expectation for appointment on regular basis rather than joining fresh process with other candidates, which 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.

2. Primarily, the competent authority of WAPDA vide minutes of the meeting held on June 2019, 2015 decided for the hiring of the petitioners on the posts of Specialist Doctors (BPS-18), General Duty Medical Officers (GDMOs) (BPS-17) and Nursing Staff (BPS-16) temporarily at various health units for one year or till completion of regular recruitment process whichever is earlier. Subsequently, the petitioners prayed for regularization of their services vide letter dated 08.07.2015. However, their request was not entertained compelling them to approach this Court by filing the instant petition on 26.08.2015. The main ground taken by the petitioners in the present petition is that they are serving in the respondent-WAPDA temporarily with effect from 2015 and are eligible and qualified for the regularization of their services. According to learned counsel, the petitioners did not lack the requisite qualification, therefore, the respondents cannot be allowed to take benefit of the irregularity, if any, committed by them at the time of their appointments ; the petitioners cannot be blamed or penalized because primarily the authority who had

exceeded or misused its powers, for reasons known to it, is bound to be held responsible for the same instead of penalizing the petitioners who accepted the employment in good faith to earn a livelihood to support their families ; it has been held by the Hon'ble Supreme Court that instead of removing the employees from service, action should be taken against the authority who had committed irregularity in their appointment ; abuse of discretion by a public functionary violates Article 4 of the Constitution as it impairs due process and the right of a person to be treated in accordance with law ; the present situation created by the respondents is a glaring example of lack of application of mind resulting in abuse of discretion by the appointing authority ; a vested right has accrued in favour of the petitioners and subsequent requisitions in the ordinary course to re-advertise the vacancies would, on the one hand, frustrate the basic principle of law , and on the other hand, would deprive the petitioners of their jobs ; after having successfully served for a considerable period, if the petitioners are removed from service, they shall be seriously prejudiced ; the petitioners have sufficient expertise in their profession, therefore, they are entitled to be considered for regularization and denial of the same tantamount to infringement of an inalienable right and fundamental right of the petitioners as enshrined under Articles, 4,9, 25 of the Constitution of the Islamic Republic of Pakistan, 1973. According to him, the respondents have willfully been causing harassment and have arbitrarily deprived them of their legitimate rights; that the petitioners are being discriminated by the respondent-WAPDA due to ulterior motives to force the petitioners to leave the job or get a cause to terminate their services; that under the constant policy of Federal Government to regularize to similarly placed employees and because of their qualification and experience, after the initial appointment, the petitioners had a legitimate expectation of being regularized. Learned counsel for the petitioners, in support of his contentions, has relied upon the cases of Messrs State Oil Company Limited v. Bakht Siddiq and others (2018 SCMR 1181), Syed Faisal Ali and 16 others v. Federation of Pakistan and 4 others (2019 PLC (CS) 751), Kamran Ahmed Mallah and others v. Federation of Pakistan and others (2019 PLC (CS) 41), Board of Intermediate and Secondary Education Faisalabad and others v. Tanveer Sajid and others (2018 SCMR 1405), Pakistan Telecommunication Company Ltd and another v. Muhammad Zahid and 29 others (2010 SCMR 253), Zarrai Tarqiyati Bank v. Muhammad Asim Rafiq and others (2016 SCMR 1756), Pir Imran Sajid and others v. Managing Director / General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257), 2017 PLC (CS) 602, Naimatullah and others v. Chairman Governing Body Worker Welfare Board and others (2016 SCMR 1299), Aftab Ahmed and others v. Government of Punjab and others (2012 PLC (CS) 602, and

Ayaz Ahmed Memon v. Pakistan Railways through Chairman and 8 others (2017 PLC (CS) 226). He further relied upon the unreported order dated 12.02.2020 and order dated 17.11.2020 passed by the Hon'ble Supreme Court in Civil Petition No.293-K/2020 and argued that the case of petitioners is akin to the cases decided by the Hon'ble Supreme Court in the aforesaid matter. Learned counsel relied upon Article 38 of the Constitution and 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-WAPDA 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, however, they have reservations about the issuance of public notice dated 16.12.2018 by the respondent-WAPDA for the sole purpose to get rid of the petitioners from their postings.

3. On the contrary, learned counsel representing WAPDA, has briefed us on the subject and submitted that the doctors working temporarily in WAPDA hospitals applied for regularization of their service against the decision of the authority dated 01.7.2015 regarding their rehiring in temporary service, they approached the learned Division Bench of Lahore High Court, Lahore, for regularization of their service. The learned bench vide judgment dated 01.2.2016 directing the respondent-department to consider their case for appointment through a competitive process in the light of ratio of the judgment rendered by the Hon'ble Supreme Court in the case of Dr. Naveeda Tufail supra and in view of the above, the competent authority accorded approval for separately advertisement and processing applications for regular appointments in case of petitioners/doctors working temporarily.

4. We have gone through the record of the case and have given due consideration to the contentions urged before us. Primarily Pakistan Water and Power Development Authority Medical Service Rules 1982 (Rules, 1982) prescribe the procedure of initial appointment to the post-BPS-17 in WAPDA on the recommendation of the Selection Board, based on interview. At this stage we asked the learned counsel for the respondent-WAPDA whether, at the time of the petitioner's induction in service, the interview was conducted, he candidly conceded the factual position, however, stated that due to imposing of Ban on general recruitment, the competent authority of respondent-WAPDA decided for the hiring of the petitioners on the posts of Specialist Doctors (BPS-18), General Duty Medical Officers (GDMOs) (BPS-17) and Nursing Staff (BPS-16) temporarily at various health units for one year or till completion of regular recruitment process whichever

is earlier, but the ban continued to remain in field and this was the reason that no public notice was issued and now they have initiated the recruitment process through public notice and the petitioners are required to participate in the competitive process and if they meet the criteria they would surely be considered for appointment on the subject posts. We again asked the learned counsel whether the performance of the Petitioners, in the respondent-WAPDA, has ever been called in question throughout their service period by the respondent-WAPDA. He candidly conceded that to date no adverse report is available against them. If this is the position of the case, we are not satisfied with the analogy of respondent-WAPDA to hire the services of the petitioners in a casual and cursory manner and continue with the same for about 7 years and now when the petitioners have gained sufficient experience in the relevant field, engaging others in place of the petitioner would be highly uncalled for.

5. in the light of the above narration the petitioners would be justified to ask for regularization on the premise that employment is the source of livelihood and the right of livelihood is an undeniable right to a person. If the work is the sole source of livelihood of a person, the right to work shall not be less than a fundamental right which should be given protection accordingly; and, the respondent-WAPDA cannot act whimsically while making fresh appointments against the posts already held by the Petitioners; besides nothing adverse in terms of qualification and character and/or inefficiency in the subject field was observed by the Competent Authority of the respondent-WAPDA during their entire period of service. Therefore, the petitioners who have served the respondent-WAPDA for such a long period would deserve to be given a fair chance of regularization in the given situation.

6. After arguing the matter on the aforesaid points, both the parties finally agreed for disposal of this petition in the light of the above analogy and more particularly the principles outlined in the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Dr. Naveeda Tufail and 72 others v. Government of Punjab and others, 2003 SCMR 291. An excerpt whereof is as under:

“12. We having examined the above scheme find that in the similar circumstances, the Federal Government while giving fair treatment to its employees appointed on ad hoc basis successively framed policies for regularization through the process of selection by the Public Service Commission. It is stated that all Provincial Governments, except Government of Punjab, following the Federal Government also adopted the policy of regularization and gave their employees the equal treatment. The petitioners, being ad hoc employees of Provincial Government, cannot claim regularization as of right in the light of policy of Federal Government but the principle of equality as embodied in Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, would demand that they while facing the similar circumstances

should be treated in the same manner. The principle of equality would impliedly be attracted in favour of the petitioners as they being ad hoc lecturers in the Provincial Government would stand at par to that of the ad hoc employees of the Federal Government and therefore, it would be fair, just and proper to consider their cases for regularization. We having heard the learned counsel for the petitioners and Mr. Maqbool Ellahi Malik, learned Advocate-General Punjab, assisted by Mr. Tariq Mahmood Khokhar, Additional Advocate-General, are of the view that since substantial questions of public importance are involved in the present petitions, therefore, the technical objection that the, questions not raised before the Tribunal, cannot be allowed to be raised before this Court, is not entertained. The authorities in the Education Department, Government of Punjab, while adopting the method of ad hoc appointments as a continuous, policy, created a legitimate expectancy in the mind of petitioners for their retention on regular basis and therefore, we deem it proper to direct that the respondents while seeking guidance from the scheme of regularization of ad hoc employees of Federal Government referred above, will initiate the process of regularization of the petitioners through Punjab Public Service Commission giving the concession as mentioned in the reply filed by the respondents in the Punjab Service Tribunal within a period of one month and meanwhile without prejudice to title right of the selectees of the Public Service Commission for appointment on regular basis, the posts which were being held by the petitioners shall not be filled. It is clarified that the cases of the petitioners shall be sent separately to the Public Service Commission and shall not be tagged with the direct recruits. In case any of the petitioners is not found suitable, by the Public Service Commission, he shall not be entitled to be retained in service.

13. We in the light of above discussion, convert these petitions into appeals and dispose of the same with no order as to costs.”

7. For the reasons given above, we find it appropriate to direct the competent authority of respondent-WAPDA to consider the case of the petitioners for appointment on regular basis by conducting a fresh interview as provided under the recruitment Rules, within one month from the date of order of this Court, while considering their case for the said purpose, the ratio of judgment passed by the Honorable Supreme Court in the case of Dr. Naveeda Tufail supra must be kept in mind, in the intervening period, the posts which were being held by the petitioners shall not be filled.

JUDGE

JUDGE

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