

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D –7096 of 2019

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Mahmood A. Khan

Petitioner : Muhammad Nadeem Rajput, through
Mr. Faizan Hussain Memon, advocate

Respondent No.1 : The Federation of Pakistan, through
Mr. Muhammad Nishat Warsi, DAG.

Respondents 2 & 3 : Trading Corporation of Pakistan (Pvt.) Limited and
The General Manager (Human Resource &
Admn), through Mr. Manzar Bashir, advocate.

Date of hearing : 05.10.2020.

ORDER

NADEEM AKHTAR, J. – The petitioner was appointed by the respondent / Trading Corporation of Pakistan (TCP) as the Company Secretary on a contract for a period of three years vide letter dated 19.03.2016. Through this petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, he has prayed for a declaration that the failure on the part of the respondent in regularizing his service and instead advertising the said post for fresh appointment, is illegal. He has also prayed that the respondent be directed to consider regularization of his service as the Company Secretary as per the Federal Cabinet’s decision dated 18.06.2019.

2. Prior to the filing of the instant petition, the petitioner had filed Constitutional Petition No.D-1955 of 2019 before this Court which was disposed of vide order dated 23.05.2019 in the following terms :

“ Learned counsel for the petitioner submits that he will be satisfied and not press the instant petition if respondents are directed not to take any coercive action during the last extended period of contracts of the petitioner. To this effect learned counsel for respondent No.1 & 2 raised (!) his no objection if respondents are left at liberty to continue the process of recruitment pursuant to the advertisement if any already made. Learned counsel for the petitioner to this effect also raised (!) his no objection but subject to the participation of the petitioner in the recruitment process as per his qualification / eligibility criteria. In view of

the above, the instant petition stands disposed of along with pending application(s), if any.”

3. Perusal of the above order shows that it was conceded on behalf of the petitioner that the respondent will be at liberty to continue with the process of recruitment for the subject post pursuant to the advertisement, however, subject to his participation in the said recruitment process. Filing of the instant petition by him clearly shows that he wants to be regularized at the subject contractual post without participating in the recruitment process, which participation was agreed by him before this Court. After conceding to the above position and agreeing to participate in the recruitment process for the subject post, the petitioner is estopped from questioning the recruitment process and or from asserting his alleged right to be regularized for the said post. In fact, the instant petition is barred under the principle of constructive *res judicata*.

4. It was contended by learned counsel for the petitioner that the above mentioned previous petition filed by the petitioner and the consent order passed therein have not disentitled him from filing the present petition as he is entitled to be regularized in view of the decision taken on 18.06.2019 by the Federal Cabinet after disposal of the said previous petition. We are afraid this can hardly be a ground for seeking regularization of a contractual employment. It must be made clear that no decision of the Cabinet can be relied upon or enforced if it is contrary to the law laid down by the Superior Courts, particularly the Hon'ble Supreme Court, which is briefly discussed here. The Hon'ble Supreme Court has been pleased to hold in its numerous pronouncements that a contract employee, whose terms and conditions of service are governed by the principle of 'master and servant', does not have any vested right for regular appointment, or to claim regularization, or to approach this Court in its constitutional jurisdiction to seek redressal of his grievance relating to regularization ; in fact he is debarred from approaching this Court in its constitutional jurisdiction and the only remedy available to him is to file a Suit for damages alleging breach of contract or failure on the part of the employer to extend the contract ; after accepting the terms and conditions for contractual appointment, the contract employee has no *locus standi* to file Constitutional Petition seeking writs of prohibition and or mandamus against the authorities from terminating his service and or to retain him on his existing post on regular basis ; a contract employee, whose period of contract expires by efflux of time, carry no vested right to remain in employment of the employer and the courts cannot force the employer to reinstate or extend the contract of the employee ;

and, no rights would accrue to a *de facto* holder of a post whose right to hold the said post was not established subsequently. In view of the above well-settled law consistently laid down by the Hon'ble Supreme Court, the petitioner, being a contractual employee having no vested right for regular appointment or to seek regularization of his service, is debarred from invoking the constitutional jurisdiction of this Court. Thus, the petition is liable to be dismissed on this ground alone.

5. Our above view is fortified, *inter alia*, by Farzand Ali V/S Province of West Pakistan, PLD 1970 S.C. 98, Government of Balochistan, Department of Health, through Secretary Civil Secretariat, Quetta V/S Dr. Zahida Kakar and 43 others, 2005 SCMR 642, Dr. Mubashar Ahmed V/S PTCL, through Chairman, Islamabad, and another, 2007 PLC (C.S.) 737, Sindh High Court Bar Association V/S Federation of Pakistan, PLD 2009 S.C. 879, Abid Iqbal Hafiz V/S Secretary, Public Prosecution Department, Government of Punjab, Lahore, and others, PLD 2010 S.C. 841, Suo Motu Case No.15 of 2010 (In re : Sou Motu action regarding regularization of contract employees of Zakat Department and appointment of Chairman of Central Zakat Council) 2013 SCMR 304, Qazi Munir Ahmed V/S Rawalpindi Medical College and Allied Hospital through Principal and others, 2019 SCMR 648, Province of Punjab through Secretary Agriculture Department Lahore and others V/S Muhammad Arif and others, 2020 SCMR 507, Naureen Naz Butt V/S Pakistan International Airlines, 2020 SCMR 1625, Government of Khyber Pakhtunkhwa, Workers Welfare Board, through Chairman V/S Raheel Ali Gohar and others, 2020 SCMR 2068, and judgment dated 18.02.2021 pronounced in Civil Appeal Nos. 936 and 937 of 2020.

6. In addition to the above, it is well-established that a writ of mandamus cannot be claimed as a matter of right ; and, for issuance of direction in the nature of mandamus, there must be a legal right existing in favour of the person seeking a writ of mandamus and a corresponding legal duty imposed upon the public officer or authority against whom the writ is sought. Rule 13 of the Public Sector Companies (Corporate Governance) Rules, 2013, provides that the Company Secretary of a public sector company defined in Rule 2(1)(g) of the said Rules shall be appointed by the Board of the said company, and the remuneration and other terms and conditions of his employment shall also be determined with the approval of the Board. Under Rule 14(4) of the above Rules, no person shall be appointed as the Company Secretary of a public sector company unless he possesses the qualification prescribed therein. In

view of the above Rules and the well-settled law discussed above, the petitioner does not have any vested right to seek regularization of his contractual service ; and, he has also not acquired any legal right from the appointment made by TCP and accepted by him admittedly on contract. Therefore, no corresponding legal duty was/is cast on TCP to appoint him on regular basis, and thus writ of mandamus, as prayed for by the petitioner, cannot be granted.

7. Foregoing are the reasons of the short order announced by us on 05.10.2020 whereby this petition was dismissed with no order as to costs.

JUDGE

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