

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon
Justice Mrs. Kausar Sultana Hussain

Constitutional Petition No.D-918 of 2017

(Muhammad Asif v. The Province of Sindh and 02 others)

Syed Nadeem ul Haq, advocate for the petitioner

Mr. Muhammad Ayub Awan, advocate for LDA
alongwith Syed Shabiul Hassan, Secretary, LDA and Irfan
Ali Abro, Law Officer.

Mr. Ali Safdar Depar, AAG

Date of hearing &
Order : **18.04.2022**

ORDER

Adnan-ul-Karim Memon, J. Through the captioned Constitutional Petition, the petitioner is seeking regularization of his services in Lyari Development Authority (`LDA`) in terms of the office memorandum dated 15.03.2013 and because of The Sindh (Regularization of Adhoc and Contract Employees), 2013.

2. It is, *inter alia*, contended by learned counsel for the petitioner that this Court disposed of so many petitions of similar nature, with the direction to the Director-General LDA to constitute a committee and consider the cases of the petitioners within three months. Learned counsel has submitted that the service of the petitioner was regularized vide office memorandum dated 15.3.2013 and after completing the codal formalities, he joined the service and was paid salaries from contingency. Learned counsel for the petitioner relied upon the order dated 27.10.2016 passed by this Court in CP No.D-2389/2016 and submitted that the case of the petitioner is akin to the aforesaid order and similar treatment may be given to him. Per learned counsel, in the light of findings of this court in CP No.D-2389/2016, the petitioner stood regularized by the ratio of the judgment passed by this court thus the respondents may be directed to issue his notification and allow him to join his service. He emphasized that employment is the basic necessity of life, particularly for the educated youth and the State is responsible to provide a transparent working environment the employers are required to provide the opportunity for grooming and exploitation of abilities and talent by the employees. He further contended that the Petitioner deserved regularization of his service in the terms of beneficial legislation i.e. the Sindh (Regularization of Adhoc and Contract Employees) Act 2013; that in pursuance of the above enactment, this Court passed several orders including the Judgment (*Dr. Iqbal Jan & others Vs. Province of Sindh & others*) reported as **PLC 2014 (C.S.) 1153**, as such the Petitioner shall be deemed to have been validly appointed regularly as ordered by this Court and because of section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act 2013. It is further contended that in all other departments, employees have been regularized in terms of Section 3 ibid. He lastly submitted that in light of the above, all the Petitioner seeks the similar treatment as meted

out to the employees of the respondent-Department; that any other/different interpretation of Section 3 ibid for the employees of the respondent- Department would not be only in violation of Article 25 of the Constitution, but also in violation of the aforesaid Judgment passed by this Court on the issue of Regularization. He prayed for allowing the instant Petition.

3. Mr. Muhammad Ayub Awan learned Counsel representing the respondent LDA has submitted that the petitioner was engaged/hired vide offer letter dated 02.03.2007 on a contingent basis for three months with the condition that his service can be terminated at any time without assigning any reasons thereof. From time to time his service period remained extended/re-hired. On 15.04.2010 all the contingent/contract employees were terminated by the orders of competent authority. He was again re-engaged on a work charge basis. On 15.03.2013 he was regularized as Driver and posted in the Horticulture Department subject to anticipation approval of the supplementary budget, but after receiving some complaints from the other Class-IV contingent staff, the regularization orders of all Class-IV were withdrawn/canceled. His regularization order was also withdrawn/canceled. He worked on a contingent basis as usual. On 31.7.2015 all the contingent/contract employees were terminated due to the non-availability of development funds. His termination has been passed more than 1-1/2 years. At present, there is no vacant post in Class-IV including the driver. Learned counsel also raised the question of maintainability of the instant petition on the premise that the petition is barred by laches; that petitioner was a contract/contingent employee and his services came to an end long ago in the year 2015, thus not entitled to any relief; that petition has been preferred maliciously, thus his case does not fall within the ambit of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013. He lastly prayed for the dismissal of the instant petition.

4. We have heard learned counsel for the parties and perused the material available on record.

5. The petitioner was engaged in LDA in the year 2007 and subsequently, his services were regularized in the year 2013 as Driver, however, his regularization was withdrawn/canceled in the year 2015 and since then he is not in the job of respondent LDA. The petition has heavily relied upon the order dated 27.10.2016 passed by this Court in CP No.D-2389/2016 whereby respondents were directed to implement the regularization letter dated 15.03.2013. Be that as it may; since much water has flowed under the bridge, therefore, it is for the competent authority of respondents to take into consideration all aspects of the case including the orders passed by this Court in different petitions from time to time and if there is a clear vacancy with budgetary provision available in LDA, the services of the petitioner may be considered under law, rules, and regulations of LDA. The aforesaid exercise shall be undertaken within two weeks after providing the opportunity of hearing to the petitioner.

This petition stands disposed of in the above terms.

JUDGE

JUDGE

Nadir*