

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

C. P. No. D — 945 of 2022.

DATE	ORDER WITH SIGNATURE OF JUDGE[S]
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Present.
Mr. Justice Muhammad Shafi Siddiqui.
Mr. Justice Irshad Ali Shah.

Date of Hearing:	26.04.2022.
Date of short order:	26.04.2022.
Date of reasons:	29.04.2022.

Petitioners: Din Muhammad Parhiyar & others through Mr. Waseem Hussain Jafri associate of Mr. Mumtaz Alam Leghari Advocate for petitioners.

Respondents: Province of Sindh & others through Mr. Rafique Ahmed Dahri A.A.G. Sindh along with Muzaffar Hussain Zardari, Executive Engineer, Public Health Engineering District Shaheed Benazirabad.

MUHAMMAD SHAFI SIDDIQUI, J.- All petitioners claimed to have been appointed in Public Health Engineering Department Shaheed Benazirabad through an office order on different low grade posts temporarily for a period of 89 days as being a pump operator/helper etc. Without prejudice to defence, the appointment orders available on record were issued in between 2019 to 2021.

2. Through this petition the petitioners seek regularization of their appointments as permanent one and that all benefits which include annual increment, promotion and other allowances be also awarded to them.

3. Notices were issued and comments have been filed by the District Accounts Officer only. We have inquired from the counsel as to how this petition is maintainable for the regularization of these employees who claimed their initial appointment on daily basis for a period of 89 days only to which the petitioner was unable to respond. We have again inquired if any codal formalities were completed while these appointments were made notwithstanding that these were low grade posts. The counsel said that no such codal formalities were lead up since these were low grade posts and hence the requirements were dispensed.

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

5. Essentially on the basis of disputed appointment letters petitioners are seeking a premium that their services be regularized as permanent one. They have relied upon the Judgment of this Court passed in C.P. No.D-742 of 2020 but that is distinguishable on the count that the regularization was dependent on a policy announced by the then Prime Minister in the year 1992 on the basis of which one set of employees were regularized whereas some were discriminated. The other judgments as attached with the memo of petition does not discussed if any codal formalities before the appointment of those petitioners were exhausted. In one of the petition i.e. D-957 of 2014 which was disposed of vide order dated 17.11.2016 the Division Bench maintained that the respondents have consented in their comments and keeping the length of their services the case of regularization of service including those of petitioners therein were sent to the Government in the year 2012 and on the strength of some earlier orders the petitioners therein claimed same benefit.

6. The case of the present petitioners is distinguishable on all counts. The crucial and significant point is that while they were appointed, there was nothing in the process of their recruitment which could have matured the temporary recruitment into a permanent one. If there were permanent posts available with this Health Department of Shaheed Benazirabad, then notwithstanding the fact that it was a low grade post a public awareness should have been made for the locals through a local newspaper or any other source. No one except those who were in connection with the officials of the Health Department (suppose to exercise their discretion) were given appointment letters. No doubt the discretion vests with the authority but that discretion should be seen to be a transparent one. A pathway and/or modus operandi for exercising such discretion will always be questioned if the recruitment is not backed with transparency. Reliance is placed on the case of Mehboob Ali v. Province of Sindh in C.P. No.D-8331 of 2018. This being a Court of equity, the petitioners ought to disclose that a transparent process was exhausted and only then

equity be discharged for them. Para-7 of the aforesaid Judgment passed in C.P. No.D-8331 of 2018 is reproduced as under:-

“7. No doubt the petitioners may have been working for some time with the respondents but it would be disgraceful for those citizens who were duly qualified/entitled for the subject posts and were waiting for a lawful mechanism and procedure to be launched, so that there may not be any question on their appointments or raising of eyebrows. Thus, eligible citizens will be deprived of their rights if such process of appointments of petitioners, which does not qualify any transparency, codal formalities, would be followed to legitimize the process and would entail regularization of the employees. Had they been the outcome of a due process, the direction may well be exercised for them but not in this case where they have been selected, picked and chosen by the high ups.”

7. We therefore do not approve this modus operandi of appointing even for low grade employee without public awareness and later on providing a premium to such unlawful process of recruitment. Those disputed appointment letters were only of two years. This would shatter the confidence of public at large if the public awareness is not given to those who are interested in such recruitment. Even if it is a low grade post, public awareness is inevitable so that a pool of applicants be available for the authority concerned to exercise their discretion in a transparent manner and employment be given to those who deserve and not by choice and / or for any other covert motive.

These are the reasons of the short order announced earlier on 26.04.2022 whereby instant petition was dismissed.

JUDGE

JUDGE

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