

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Naimatullah Phulpoto
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-3153 of 2021

Yasir Ali & Ayaz Ali Panhwer

Petitioners through : In person

Respondent No.1
through : Mr. Ali Safdar Depar, AAG

Respondents 2 and 3
through : Mr. Rajesh Kumar Khagaija, advocate

Date of hearing : **25.04.2022**

Date of order : **10.05.2022**

ORDER

Through this petition, the petitioners seek enforcement of judgment dated 16.04.2018 passed by this court in CP No.D-1847 of 2017 for regularization of their services in Sindh Technical and Vocational Training Authority (**STEVTA**), *inter-alia*, on the ground that they have served in the respondent-authority more than five years on sanctioned budgetary posts and performed their duties as Assistant DP Finance & Accounts and Junior Clerk since 2012 and 2013, in different sections of the respondent authority.

2. Petitioners who are present in person have submitted that the earlier petition of the petitioners bearing CP No.D-1847 of 2017 was disposed of vide judgment dated 16.04.2018 with direction to the Managing Director/Competent Authority of respondent-authority to take a fresh decision so far as the matters of the petitioners are concerned, for regularization of their services, without discrimination and under law and dicta laid down by the Hon'ble Supreme Court, within two months. Petitioners further submitted that the decision of the respondent authority by discarding the findings recorded by this Court in the aforesaid judgment was/is erroneous and against the law and based on malafide intention to deprive the Petitioners of their jobs, as such they have approached this Court. They further submitted that they were serving in the Respondent-Authority on regular posts; that they were/are eligible for permanent absorption under the policy and Sindh Technical Education and Vocational Training Authority Act, 2009 (Act-2009). They further submitted that it is the consistent practice of the Respondent-Authority to hire persons on a contract basis and thereafter regularize them. They further submitted that the contractual employees cannot be subjected to discriminatory treatment; that Petitioners are entitled to similar treatment in respect of regularization under which their similarly placed colleagues have been regularized vide office order dated 28.3.2012; that the Petitioners are qualified persons to hold the subject posts. In support of their contentions, they have relied upon the case of Abdul Ghafoor and others Vs. President of

National Bank of Pakistan and others (2018 SCMR 157). In the end, Petitioners submitted that the decision of the respondent is liable to be reversed and their service is liable to be regularized by the respondent-authority in terms of the ratio of the judgment dated 16.04.2018 passed by this Court in CP No.D-1847 of 2017. For convenience sake, an excerpt of the judgment dated 16.8.2018 is reproduced is as under:

“12. From what has been discussed above, we have reached the conclusion that submissions of the Respondent-Authority are misconceived and are not well founded. The regularization of the service of the Petitioners is based upon their length of service they have worked for the Respondent-Authority and it is on the above principle that the Petitioners have approached this Court for regularization of their service under Article 9 and 25 of the Constitution of the Islamic Republic of Pakistan. We are fortified by the observation made by the Hon'ble Supreme Court of Pakistan in the case of *Khawaja Muhammad Asif Vs. Federation of Pakistan & others (2013 SCMR 1205)*.

13. It is asserted by the Petitioners that they were earlier on contingent basis for a period of 89 days as per terms and conditions set forth in the contract appointment; that as per record, the contract continued till the Petitioners services were dispensed with from the month of December 2016. Record shows that performance of the Petitioners in the Respondent-Authority has not been called in question throughout their service period by the Respondent-Authority.

14. We are of the view that the Respondent-Authority cannot act whimsically while making fresh appointments against the posts already held by the Petitioners, who were appointed in a transparent manner and nothing adverse in terms of qualification and character and/or inefficiency in the subject field was observed by the Competent Authority of the Respondent-Authority during their entire period of their service.

15. We have noted that the Petitioners served the Respondent-Authority for a period of 4 years. The said period of service is more than sufficient to acquire expertise in the respective fields. Therefore, considering others while ignoring the Petitioners is unjustified and against the principles of natural justice and equity.

16. We have gone through the Office Memorandum dated 1st May, 2017 issued by the Government of Pakistan, Cabinet Secretariat, Establishment Division and excerpt of the same is reproduced herein below: -

**Government of Pakistan
Cabinet secretariat
Establishment division**

No.F-53/1/2008-SP

Islamabad the 1st May, 2017

OFFICE MEMORANDUM

Subject:- Amendment in the Recruitment Policy/Mechanism to Ensure Merit Based Recruitment in the Ministries/Divisions/Sub-ordinate Offices/Autonomous/Semi-Autonomous Bodies/Corporations/Companies/Authorities

The undersigned is directed to state that the Federal Cabinet in its meeting held on 12th April, 2017 has accorded approval of the subject amendment to be inserted as para 1(e) in the Recruitment Policy/Mechanism issued vide this Division's O.M. No.531/2008-SP dated 16th January, 2015 as under: -

“(e) Appointment on Regular Basis of Contract/ Contingent/ Paid/ Daily Wages/Project Employees For the purpose of appointment on regular basis of Contract/Contingent/Paid/Daily Wages/Project employees the following criteria shall be observed: -

(i) All Contract/Contingent/Paid/Daily Wages/Project employees who have rendered a minimum of one year of service in continuity, as on 1.1.2017 (hereinafter referred to as eligible employees) may apply for appointment on regular basis in the manner prescribed hereinafter provided that the condition of continuity shall not be applicable in case of person(s) employed on daily wages who have completed at least 365 days service.

(ii) For initial appointment to posts in B5-16 and above, the employees shall apply direct to FPSC against relevant/suitable vacancies as and when arising for which they are eligible.

(iii) For initial appointment to posts in B5-1 to B5-15, the eligible employees may apply as per criteria given vide this Division's O.M. No.531/2008-SP dated 16.1.2015 and 3.3.2015 shall be adopted.

(iv) The eligible employees shall be awarded extra marks in interview at the rate of one (01) mark for each year of service rendered upto a maximum of five (05) marks, on the recommendation of the respective selection authorities.

(v) The period served as Contract, /Contingent/Paid/Daily Wages/Project employees shall be excluded for the purpose of determination of upper age limit in addition to relaxation of upper age limit as per existing rules.

(vi) Qualifications prescribed for a post shall be strictly followed in case a person does not possess the prescribed qualifications/experience for the post he/she is applying for he/she shall not be considered for the same.

(vii) The employees must be in good mental and bodily health and free from any physical defect likely to interfere with the discharge of his duties unless appointed against disability quota.

(viii) The advantage of para 1(e) is a one-time dispensation for all Contract/Contingent/Paid/Daily Wages/Project employees for their eligibility to regular appointment.

2. This Division's O.M. of even number dated 16th January, 2015 is modified to the above extent. All Ministries/Divisions are requested to take further action accordingly.

(AttiqHussainKhokhar)
Director General
[Tel:051-9103482](tel:051-9103482)

**All Ministries/Divisions
Rawalpindi/Islamabad"**

17. The above Memorandum dated 11th May, 2017 is issued in pursuance of the decision of the Cabinet Sub-Committee for regularization, wherein the Federal Government has directed the Ministries/Divisions/Sub-ordinate Offices /Autonomous/Semi-Autonomous bodies/Corporations/Companies/Authorities to regularize all the Contract employees, who have rendered a minimum of one year of service in continuity, as on 01.01.2017.

18. We are of the view that this is a policy decision of the Cabinet Division on the issue of the regularization of the service of the certain employees working in the Federal Government or its entities. Petitioners have served STEVTA for four consecutive terms of 89 days and they are entitled to be regularized. In principle, the Petitioners are fully entitled to the benefits contained in the aforesaid Office Memorandum, though it is applicable for the employees of the Federal Government and its entities, because they are in continuous service of the Respondent-Authority for a long time and are paid salary as well. We are of the considered view that regularization of service is not an initial appointment but it is confirmation of an existing employment.

19. The case of the Petitioners is fully covered by the Judgment rendered in the case of Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257), the case of Abdul Ghafoor and others Vs. The President of National Bank of Pakistan and others (2018 SCMR 157) and (2018 SCMR 325). We are further fortified on the similar principle by the case law decided by the learned five Members' Bench of the Hon'ble Supreme Court in the case of Government of Khyber Pakhtunkhwa and others Vs. Adnanullah and others (2016 SCMR 1375), wherein the Hon'ble Supreme Court has held at paragraph 31 as reproduced below:-

"The record further reveals that the Respondents were appointed on contract basis and were in employment/service for several years and Projects on which they were appointed have also been taken on the regular Budget of the Government, therefore, their status as Project employees has ended once their services were transferred to the different attached Government

Department, in terms of Section 3 of the Act. The Government of KPK was also obliged to treat the Respondents at par, as it cannot adopt a policy of cherry picking to regularize the employees of certain Projects while terminating the services of other similarly placed employees.”

20. *The Judgment dated 10.2.2017 of this Court passed in C.P No. D-2797 of 2014 and other connected petitions, in the case of Murtaza Ali and others Vs. Province of Sindh and others, cited by the learned AAG is not applicable to case in hand, more particularly in presence of the Judgments of the Honorable Supreme Court of Pakistan, on the subject issue.*

21. *In the light of facts and circumstances of the case discussed above and decisions rendered by the Honorable Supreme Court in the aforesaid cases, the instant Petition is hereby disposed of with direction to the Managing Director/Competent Authority of the Respondent-Authority to take a fresh decision so far as the matters of the Petitioners are concerned for regularization of their services, without discrimination, in accordance with law and dicta laid down by the Hon'ble Supreme Court of Pakistan in the cases referred to hereinabove.*

22. *The Managing Director/Competent Authority of Respondent-Authority is further directed to complete the entire exercise within a period of two months from the date of receipt of this Judgment.*

23. *Petition stands disposed of along with the listed application in the above terms.”*

3. Mr. Rajesh Kumar Khagaija, learned counsel for the respondent-authority, has opposed the petition inter-alia on the ground that the petitioners were appointed on a contingent basis and it was specifically mentioned in the appointment orders of the petitioners that they could not claim regularization and further that they were being employed for a specific period, therefore, no further indulgence of this court is required on the subject regularization; that mere long service is no ground for regularization. He further submitted that regularization has to be supported by legislation and is not an automatically accruing right. He emphasized that regularization is not a vested right but requires a statutory basis which is admittedly absent in the instant case. As such, the petitioners merely rely on the fact that other colleagues have been regularized and so should they, which is not a legal ground per se. He added that where a contractual employee wishes to be regularized, he must demonstrate the statutory basis for such a claim, in the absence of which, relief cannot be granted solely on the principle of "similarly placed". Such a course of action would be tantamount to making one right out of two wrongs which is not permissible in the law. He asserted that this Court is supposed to interpret the law and apply it in letter and spirit and this Court cannot go beyond what the law is, and what interpretation permits. He added that this Court lacked jurisdiction to provide relief to the petitioners under Article 199 of the Constitution. He submitted that the petitioners have already been engaged in another service, therefore, the question of regularization of their service in STEVTA has lost its significance in terms of statutory rules of service of STEVTA. He added that though the contractual employee can be regularized however the contingent employees are excluded from the Act-2013. He also relied upon the compliance report filed on behalf of respondent No.2 whereby the Managing Director STEVTA declined to regularize the services of the petitioners on the plea that as and when any vacancies are advertised, the cases of petitioners shall be considered under the law. Learned counsel in support of his contentions has relied upon the cases of Muhammad Ishaque v. Province

of Sindh through Secretary and 4 others, 2021 PLC (CS) 51, Syed Muhammad Ali Asad Jaffery v. Province of Sindh, through Secretary, Local Government Tughlaq House Karachi and 2 others, 2018 PLC (CS) Note 162, Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock and Cooperative Department Peshawar and others, 2022 PLC (CS) 164, Muhammad Ali and 11 others v. Province of KPK through Secretary, Elementary and Secondary Education, Peshawar and others, 2012 SCMR 673, Deputy Director Finance and Administration FATA through Additional Chief Secretary FATA, Peshawar and others, 2022 SCMR 566 and Government of Khyber Pakhtunkhwa through Secretary Forest Peshawar and others v. Sher Aman and others, 2022 PLC (CS) 164. He lastly prayed for the dismissal of the instant petition.

4. Record reflects that the Petitioners continued to serve initially on a contingent basis in the Respondent-Authority; thereafter they were in employment/service for several years i.e. four consecutive terms of 89 days on the posts, which have now been given in the regular budget of Respondent-Authority. However, their service was terminated with effect from 24th December 2016 due to the expiry of the contract period. Petitioners have specifically pleaded that they are entitled to similar treatment in respect of the regularization under which their 07 similarly placed colleagues have been regularized vide office order dated 28.3.2012 and the Petitioners are qualified persons to hold the subject posts. The earlier petition of the petitioners bearing CP No.D-1847 of 2017 was disposed of vide judgment dated 16.04.2018 with direction to the Managing Director/Competent Authority of respondent-authority to take a fresh decision so far as the matters of the petitioner are concerned, for regularization of their services, without discrimination and under law and dicta laid down by the Hon'ble Supreme Court, within two months. A compliance report was filed and their contempt application bearing CMA No.7413/2019 was disposed of with the directions to the petitioners to pursue their remedy against non-regularization of their service by the respondent-authority, such permission was accordingly allowed vide order dated 16.04.2021, leaving the petitioners to assail the findings of respondent authority, whereby their regularization was declined.

5. Prima-facie, the reasons assigned by the Respondent-Authority through the purported compliance report dated 05.10.2019 are just an eyewash, misconceived, and are not well-founded on any principle of law and negate the ratio of the judgment dated 16.04.2018 passed by this court in CP No.D-1847 of 2017. Even otherwise, the regularization of the service is based upon the length of service of the employee and in this case, petitioners have worked for the Respondent-Authority with effect from 2012 and 2013 and it is on the above principle they had approached this Court in CP No.D-1847 of 2017 for regularization of their service under Articles 9 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 and not under the policy of the respondent STEVTA, therefore, their approach is not appreciated at all. The Honorable Supreme Court has condemned the practice of keeping the employees temporarily for long periods without confirming or regularizing their services. It has been held that an employee being jobless and in fear of being shown the door has no option but to accept and continue with the appointment on whatever terms a job is offered by the employer. Such consent to continue to work as a

temporary employee is not like free consent between the employees, on the one hand, and employers on the other. A person so employed is not in a position to bargain with the employers/departments which are in a disproportionately dominating bargaining position as compared to the employee and the employer could always coerce them to waive their legal protection and accept contractual terms or face the risk of losing their jobs. Reference is given in the cases of Pakistan v. Public at Large (PLD 1987 SC 304) and Sui Southern Gas Company Ltd. v. Ghulam Abbas (PLD 2003 SC 724). The case of the Petitioners is fully covered by the judgment rendered in the case of Abdul Ghafoor and others Vs. The President of the National Bank of Pakistan and others (2018 SCMR 157) and (2018 SCMR 325). We are further fortified on the similar principle by the case law decided by the learned Five Members' Bench of the Hon'ble Supreme Court in the case of Government of Khyber Pakhtunkhwa and others Vs. Adnanullah and others (2016 SCMR 1375), Government of Punjab v. Sameena Parveen and others (2009 SCMR 1), Secretary (Schools), Government of Punjab, Education Department and others v. Yasmin Bano (2010 SCMR 739), Province of Punjab through Secretary Communication and Works Department and others v. Ahmad Hussain (2013 SCMR 1547), Pir Imran Sajid and others v. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257) and Pakistan Railways and others Vs. Sajid Hussain and others (2020 SCMR 1664).

6. Before taking cognizance of the matter under Article 204 of the Constitution, we, in the first instance, are inclined to seek implementation of the ratio of the judgment dated 16.04.2018 passed by this Court in CP No.D-1847 of 2017 in letter and spirit and direct the Managing Director of the respondent-Authority to appear in person with fresh compliance report strictly in terms of the judgment discussed supra within two weeks. However, it is made clear that in case of failure on his part, appropriate contempt proceedings shall be initiated against him under the law.

To come up **after two weeks**.

J U D G E

J U D G E

Nadir*