

# HIGH COURT OF SINDH AT KARACHI

C.P.No.D-1254 of 2011

**Present:**

**Mr. Justice Irfan Saadat Khan**  
**Mr. Justice Adnan-ul- Karim .**

Date of hearing: 08.02.2018.

Petitioner: Dr. Sunita Devi through Mr. Abdul Samad,  
Advocate.

Respondent Secretary Health, Government of Sindh through  
Mr. Choudhry Muhammad Rafiq Rajourvi,  
A.A.G. Sindh.

## **J U D G M E N T**

IRFAN SAADAT KHAN, J. The instant petition has been filed with the following prayers:

- “i. To direct the respondent to regularize the petitioner as she has worked 11 years on contract basis and further 21 months without pay as a dental surgeon from 30.03.2001.*
- ii. Cost of the petition.*
- iii. Any other relief(s) which this Honourable Court may deem fit and proper in the circumstances”.*

2. Briefly stated the facts of the case are that the petitioner was appointed as Dental Surgeon on contract basis by the Health Department, Government of Sindh vide Notification SO-II A (H) RSC/95 dated 28.12.1995 and then posted at RHC Pangrio District Badin vide Notification No.DHS/HYD DIV/E I/D Surgeon contract/5153/60 dated 15.02.1996, where she assumed the charge of Dental Surgeon on 28.02.1996 and worked upto 10.02.1999. It is averred that all the doctors working on contract basis including the petitioner were thereafter stopped from performing their duties through notification dated 10.02.1999. The petitioner was then again appointed through a fresh contract vide notification No.DGHSS/Dental (Dental Section)/439/10 dated 18.04.2000

and she again assumed the charge of Dental Surgeon on 09.05.2000 at RHC Pangrio District Badin. It is the claim of the petitioner that she was punctual in her duty and a punctuality certificate was also awarded to her by the Health Officer District Badin on 02.10.2000. As per the petitioner, on 23.09.2000 she submitted leave application on maternity grounds to the DHO Badin. Thereafter the Government announced examination of Public Service Commission (PSC) for contract doctors and the petitioner also submitted application to SPSC Hyderabad in this regard. It is further stated that the Sindh Assembly then regularized the contract doctors who could not succeed in the examination vide notification dated 20.12.2003. The petitioner then received a letter bearing SO-II-A(H) RSC/Summary 2000 (Pvt) dated 24.10.2000 showing that since she had not joined the duty, therefore her name has not been included in the list of the contract doctors. After receiving the said letter the petitioner moved an application to the Secretary, Health Department dated 06.01.2001 to grant her permission to appear in Public Service Commission examination. It is however averred that no reply on the said application was given.

3. The petitioner then moved another application to the Chief Minister on 07.05.2005 and the Chief Minister was pleased to accord approval on her application and issued a fresh letter/order for her appointment on contract basis for one year vide Order SO(Contract) S-153/2005 dated 04.03.2006. It is averred that the petitioner then assumed her fresh charge on 08.03.2006 and remained on her duty till 13.12.2008 punctually. After completion of the contract period, the petitioner moved an application for extension of contract to various fora including the Secretary Health, Chief Minister but when no heed was paid by these authorities, thereafter the instant petition has been filed.

4. Mr. Abdul Samad Memon, advocate has appeared on behalf of the petitioner and stated that the Secretary was not justified in not regularizing the petitioner for which she was entitled to. He stated that the petitioner had served punctually, which is quite evident from the certificate given by the DHO in this regard. He further stated that a number of contract doctors were regularized but for reasons best known to the respondents the petitioner was not regularized and a discriminatory treatment has been meted out with her, hence the instant petition has

been filed. He therefore prays that service of the petitioner may be regularized and her salary from 30.03.2001 may be given to her accordingly.

5. Learned AAG has appeared on behalf of respondents and has vehemently refuted the submissions made by the counsel for the petitioner. Learned AAG stated that the petitioner was appointed on contract basis and was never regularized. He further stated that the petitioner was offered a posting of Woman Medical Officer on contract basis but since she had remained absent from the duty, therefore she was not regularized. He stated that the petitioner was re-appointed in 2000 when she worked for some time and then again had remained absent from her duty and due to this wavering attitude the petitioner was not regularized in the service. He further stated that apart from writing letters to the Secretary Health and the Chief Minister, no cogent material was produced by the petitioner to show that she had worked regularly and thus entitled for regularization. Learned A.A.G further stated that for the period she had performed her duty due salary has been paid to her however it was only when she had remained absent that her salary was stopped and thereafter was finally relieved from the job and was not regularized. He also stated that no doubt a number of contract doctors were regularized but their case is different from the case of petitioner since the petitioner had remained absent from the service without any intimation and her whereabouts also were not known during the period she had remained absent. He finally submitted that the petition merits dismissal.

6. Mr. Abdul Samad Memon advocate in his rebuttal has reiterated his above arguments and has drawn our attention to some letters written to the Secretary Health and Chief Minister by the petitioner to prove that she was vigilant in pursuing her case for regularization and that the statement made by the learned A.A.G that her whereabouts were not known is not based on proper appreciation of the facts. He therefore prays that this petition may be allowed as prayed.

7. We have heard both the learned counsel at considerable length and have perused the record.

8. Perusal of the record clearly reveals that the petitioner was appointed on contract basis vide offer letter dated 28.12.1995 and as per the said offer letter the appointment of the petitioner was purely temporary on contract basis for a period of one year, subject to extension by the competent authority as deemed fit. It was also mentioned in the said contract that the termination of the contract could be made without assigning any reason and giving any notice. It is also an admitted fact that the petitioner had worked in the Rural Health Centre Pangrio uptill 30.09.2000. It is also an admitted position that on 23.09.2000 the petitioner addressed a letter to the DHO Badin through Incharge RHC Pangrio mentioning therein that she was feeling tiredness and weakness and is unable to attend her duties in future hence she requested for leave on maternity grounds so that she could leave from her duties. That when the petitioner had not joined her duties, thereafter her services were terminated on the ground that she had not joined her duty and even a letter of Public Service Commission dated 03.01.2001 her candidature was cancelled on the ground that she had failed to join her duties.

9. We are of the view that how come the petitioner can claim regularization when it is apparent from the record that it was the petitioner who sought leave on personal grounds and thereafter had remained absent from her duties not only during the period of the first contract but also during the period of second contract. It is also beyond comprehension that how the petitioner could claim regularization from the year 2000 when it is an admitted fact that on 23.9.2000 her contract was revoked and thereafter was again appointed as Dental Surgeon through a fresh contract of 04.03.2006, which clearly denotes that there was break in her service from the period 2000 to 2006 and the claim of regularization for a period when she herself had relinquished her duties on the maternity ground, which is evident from her letter addressed to the DHO on 23.09.2000. Moreover it is again a matter of record that her application for candidature was also dismissed by the Sindh Public Service Commission Hyderabad on 03.01.2001 wherein it has categorically been mentioned that she had not joined her duties.

10. Though the petitioner had annexed some letters addressed to the Secretary Health and the Chief Minister Sindh but these letters in our view

do not support her claim in view of the fact that she had failed to show any cogent material justifying her absence from her duty to support her contentions raised in the instant petition. Learned counsel for the petitioner has also failed to produce before us any supporting material or law to show that a contract employee has any vested right to claim regularization, in view of the fact that she had remained absent from her duties, upon which her case was not considered for regularization. Punctuality certificate shown by the petitioner hardly support her case as there is no question with regard to her punctuality during the period she had served but it was only when she had remained absent from her duty after 23.09.2000 that she was not considered for regularization. It is further noted that her due salary for the period she had performed the duties was paid to her. However so far as her claim of non-payment of salaries for 21 months is concerned the record reveals that the petitioner has duly been paid her salary for the period she had worked in the Health Department and had performed her duty. In any case, if the petitioner has not been paid her salary for any month she had worked, the Secretary Health is directed to look into the matter and settle the same with in one month from the date of receipt of this order. Let a copy of this order be sent to the Secretary Health for information and compliance.

11. We therefore in view of what has been discussed above, have come to the conclusion that the petitioner is not entitled for the relief prayed for. The petition therefore stands dismissed along with the listed application.

JUDGE

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