

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-85 of 2012

(Ghulam Muhammad Qasmi and 06 others v. Province of Sindh & 40 others)

C.P. No. D-724 of 2018

(Muhammad Asalam Rana & 05 others v. Province of Sindh & 23 others)

C.P. No. D-361 of 2019

(Nadeem Ahmed Khan and another v. The Province of Sindh & 09 others)

C.P. No. D-518 of 2019

(Syed Furqan Ali and 02 others v. The Province of Sindh and 09 others)

C.P. No. D-1526 of 2019

(Mirza Mukarram Hayat Baig and 02 others v. The Province of Sindh & 09 others)

C.P. No. D-1562 of 2019

(Muhammad Ashraf v. The Province of Sindh & 09 others)

Mr. Muhammad Arshad Khan Tanoli, advocate for petitioner No.1 in CP No. D- 361 of 2019, for petitioner No.1 in CP No. D- 1526 of 2019, for petitioner in CP No. D- 1562 of 2019, for petitioner No.1 in CP. No. D-518 of 2019 and for respondents 6,9,12 & 15 in D-85/2012,

S. Furqan Ali, petitioner in CP No.D-518/2019, Nadeem Ahmed Khan, petitioner in CP No.D-361/2019, Mohammad Ashraf petitioner in CP No.D-1562/2019, Mirza Mukkaram Baig, petitioner in CP No.D-1526/2019 petitioners present.

Masha Allah Khan, petitioner present in person in CP No.D-85/2012.

Mr. Danish Rashid Khan, advocate for respondents 6,9,12 & 15 in CP No.D-724/2018

Mr. Ameer Faisal, advocate for Hyderabad Development Authority

Altaf Ahmed Bhatti, Deputy Director, Hyderabad Development Authority

Date of hearing : **14.03.2022**

Date of announcement : **28.03.2022**

ORDER

The aforesaid matters were heard and decided by the learned Divisional Bench, of this Court, vide separate judgments/orders dated 15.10.2021, however, due to lack of consensus on the subject, the Hon'ble Chief Justice of this Court was pleased to accord approval; and, directed the office to place the captioned matters before this Court for a decision on merits.

2. In pith and substance, the petitioners in Constitution Petition Nos.D-361, 518, 1526, and 1562 of 2019 are seeking regularization/absorption of their services as Director Finance (BS-19) Executive Engineer (BS-18), Assistant Executive Engineer (BS-17), and Superintendent (BS-17) in Hyderabad Development Authority (HDA), whereas the petitioners in Constitution Petition No. D-85/2012 prayed for issuance of the writ of quo

warranto against the private respondents/ petitioners in Constitution Petition Nos.D-361, 518, 1526, and 1562 of 2019 to vacate the offices of Director Finance (BS-19) Executive Engineer (BS-18), Assistant Executive Engineer (BS-17), and Superintendent (BS-17) respectively, of the HDA, inter-alia, on the ground that they were/are not qualified to hold the aforesaid offices, either due to lack of transparency in their initial appointment or they were invalidly accommodated in BPS-17 to BPS-19 without competitive process; hence, their initial appointments were/are hit by Article 199 (1) (b) (ii) of the Constitution, 1973.

3. I have asked the learned Counsel for the petitioners in Constitution Petition Nos.D-361, 518, 1526, and 1562 of 2019 to show anything on the record that establishes that the Selection Committee was constituted to approve their contracts on the aforesaid posts in BPS-17 to BPS-19.

4. Mr. Muhammad Arshad Khan Tanoli, learned counsel for petitioners in Constitution Petition Nos.D-361, 518, 1526, and 1562 of 2019, and for respondents 6,9,12 & 15 in D-85/2012, has replied to the query and contended that the legality of the impugned office orders dated 28.01.2019 & 04.02.2019 (available at pages 217-219) passed by the HDA, whereby services of the petitioners were spared, resultantly their salaries were stopped and they all were relieved from services without any further order of the competent authority. Learned counsel has averred that after repatriation, they had joined their duties in HDA/WASA in pursuance of the office order dated 05.03.2018; that summary for Chief Minister dated 18.09.2018 was floated and para-11 of Finance Department was endorsed by the Chief Minister, Sindh, in terms of para 14; that the respondent No.2, according to said approval, issued the impugned notification dated 28.01.2019 to spare remaining contractual staff of the development scheme, however, this notification did not contain names of contractual staff, thereafter vide another office order dated 04.02.2019 the respondent No.7 has unlawfully and malafidely included the names of the present petitioners in the said office order, whereas neither the petitioners were/are contractual staff nor working in the aforesaid schemes at the time of initiating summary to Chief Minister, Sindh dated 18.9.2018, rather much before they had already been repatriated. Learned counsel emphasized that under the rule of locus poenitentiae, a valuable right has already accrued in favor of the petitioner as their appointments were made through the competitive process before the issuance of impugned Notifications as they were deemed to have been made on a regular basis on the premises that they fulfilled the qualifications and other conditions prescribed at the time of their initial appointment, and were appointed/regularized with the approval of the competent authority. Learned counsel further submitted that the petitioners have served for a considerable period and have thus accrued the vested right of being regularized. He asserted that if there was any discrepancy in the appointments, the petitioners could not be held responsible. In support of his contentions, he relied upon the cases of Water and Development Authority through Chairman, WAPDA House, Lahore v. Abbas Ali Malano and another, **2004 SCMR 630**, District Coordination Officer District Dir Lower and others v. Rozi Khan and others, **2011 PLC (CS) 942**, Pakistan International Airlines Corporation

through Chairman and others v. Shahzad Farooq Malik and another, 2004 PLC (CS) 82, Government of Sindh v. Abdul Sattar Sheikh and others, 2003 SCMR 819 and Muhammad Nawaz v. Federation of Pakistan and 61 others, 1992 SCMR 1420.

5. Mr. Ameer Faisal, learned counsel for the HDA, has raised the question of the maintainability of the petitions filed by the petitioners in CP No. D- 361 of 2019, CP No. D- 1526 of 2019, CP No. D- 1562 of 2019 and CP. No. D-518 of 2019, *inter-alia*, on the ground that a contractual employee is governed by the principle of master and servant and, therefore, has no right for seeking regularization/absorption/ reinstatement in service, and even in the event of arbitrary dismissal or unwarranted termination, such employee can only sue for damages. He further argued that where a citizen seeks relief in constitutional jurisdiction he must point out, to a right statutory or constitutional that vests in him/her and has been denied in violation of the law; and, in this case, the petitioners have failed to point out any right to seek regularization/absorption/ reinstatement in service, based on any constitutional guarantee or statutory law or instrument which may have been denied to them. Learned counsel emphasized that the terms and conditions of service of the petitioners were governed by their contractual letters. Learned counsel next submitted that project appointments could not be regularized after completion of the project, under any circumstances. He asserted that the project post was up to the approved project period and the tenure of the appointee stood terminated on the expiry period. He further averred that there is a difference between contract employees and employees employed in projects, therefore the relief sought by the petitioners could not be granted to the petitioners in the facts and circumstances of present cases. Learned counsel added that services of the petitioners had already been terminated/spared thus their matters had become past and closed transactions. He lastly submitted that the contractual letters of the petitioners spell out the status of the petitioners, as such no further indulgence of this court is required in the present matters. He added that it is mentioned in the appointment letters that the petitioners shall be employed on a contract basis and shall have no right to claim regular absorption in the respondent-department and their terms and conditions would be governed by the Contract as such there is no infirmity in the impugned letters which could warrant interference by this Court. In support of his contentions, he relied upon the cases of Province of Punjab through Secretary Agriculture Department, Lahore and others v. Muhammad Arif and others, 2020 SCMR 507, Ameer Solangi and others v. WAPDA and others, 2016 PLC (CS) 406, Tariq Habib and 2 others v. Government of NWFP through Chief Secretary, NWFP, and 2 others, 2011 PLC (CS) 1479, Haqbahoo Corporation v. PIA and others, PLD 2003 Karachi 369, Yousuf A. Haroon v. Custodian of the Karachi Hotel Project through Kamran Shehzad, 2004 CLC 1967, Abdul Sattar Khan Durrani and others v. Province of Balochistan through Chief Secretary and 5 others, 2015 PLC (CS) 489, unreported order dated 12.02.2020 passed by this Court in CP No.D452 of 2019, unreported order dated 20.08.2020 passed by this Court in CP No.D-1488 f 2016 and unreported order dated 10.10.2020 passed by this Court in CP No.D-6632 of 2019.

6. Mr. Muhammad Arshad Khan Tanoli, learned counsel for the petitioners, vehemently controverted the above stance of the learned counsel representing the HDA and argued that petitioners were appointed after completion of legal formalities and approval of the competent authority; and, that petitioners assumed their charge and received salaries for a certain period, and as such respondent-department had no justifiable reason to withdraw the orders of appointment of the petitioners, with a further assertion that the appointments so made, were made by the Competent Authority and in case prescribed procedure was not followed by the concerned authority, the appointees/petitioners could be blamed for what was to be performed and done by the Competent Authority before having verified the qualification and suitability and observance of the due process before issuing the appointment orders. He prayed for allowing the subject petitions as prayed and requested for dismissal of the CP No.D-85/2012 and CP No.D-724 of 2018 filed under Article 199 (1) (b) (ii) of the Constitution, 1973.

7. I have heard learned counsel for the parties at great length have minutely examined the material available on record, and the case-law cited at the bar.

8. Petitioners in CPs No. D-361, 518, 1526, and 1562 of 2019 claim that in pursuance of public notice dated 10.03.2007 their services were hired on a contract basis as Director Finance (BS-19) Executive Engineer (BS-18), Assistant Executive Engineer (BS-17), and Superintendent (BS-17) in Hyderabad Development Package, Hyderabad (HDP) vide appointment orders dated 16.02.2008; their services were absorbed against the vacant posts available in the schedule of the establishment of HDA/WASA vide letter dated 28.01.2010. The District Coordination Officer/Project Director HDP vide office order dated 26.10.2011 directed repatriation of the officers to their parent offices viz. HDA/WASA and their services were placed at the disposal of Director General HDA for further posting. At this stage, learned counsel for the petitioners referred to the office order dated 03.11.2016, summary for Chief Minister Sindh dated 09.12.2016 and approval given by the Chief Minister Sindh, notification dated 03.01.2018, letter dated 05.03.2018; and, submitted that the competent authority directed that until and unless the proof of their being a regular employee is provided the services of the petitioner shall be considered on contract basis and to be paid against contingency. Learned counsel for the petitioners further referred to the letter dated 20.08.2018, notification dated 28.01.2019 and submitted that with the approval of Competent Authority i.e. Chief Minister Sindh execution of ongoing Federal funded ADP Schemes were transferred from HDP to Works and Services Department and WASA Hyderabad, however, the contractual services of the employees of HDP were spared without assigning any reason. Learned counsel for the petitioners also referred to a letter dated 04.2.2019 and the applications of the petitioners dated 11.2.2019 and submitted that summary had been floated by the Project Director HDP for contract employees and HDA was/is misusing the notification dated 28.1.2019 which was/is for contract employees. He further submitted that the petitioners after passing the order dated 28.1.2019 had joined their respective posts in HDA and according to him they are working over there but they are being deprived of their monthly salaries.

9. I have gone through the judgments authored by my learned brother Judges; and, my viewpoint on the subject issue is that the petitioners were project employees for the particular project, thus could not be treated as absorbee as the project has not been taken over by the Government of Sindh on the non-development side. Besides that, the petitioners were purportedly appointed in BS-17, 18 & 19 in a project without a competitive process, which is not a regular appointment under the recruitment rules. The petitioners were contractual employees and thus their status and relationship was/are regulated and governed by the principle of master and servant. 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 acquire any vested right for a 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 a 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 the contract expires by efflux of time, carry no vested right to remain in the employment of the employer and this Court cannot compel the employer to reinstate the petitioners or to extend their contract; and, even no right would accrue to a de-facto holder of a post, whose right to hold the said post was not established subsequently as per stance of the respondent-department.

10. To go ahead on the subject issue, the prime function of this Court is to interpret the law and apply it in letter and spirit. This Court cannot go beyond what the law is, and what interpretation permits. Primarily, this Court lacks jurisdiction to provide remedies that are otherwise not in the law or the Constitution; and, by inventing remedies of their own. In principle, this Court cannot alter, amend or renegotiate the terms and conditions of the appointment orders of the petitioners for the simple reason that it does not have the jurisdiction under Article 199 of the Constitution, 1973 to do so. On the aforesaid proposition, I am guided by the decision of the Honorable Supreme Court rendered in the case of Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock and Cooperative Department Peshawar and others v. Saeed-ul-hassan and others, **2022 P L C (C.S.) 164**.

11. It is now well established that an employee who derives his employment under an act or statute must know the contours of his employment and those niceties of the said employment must be backed by statutory formation. Unless rules are not framed statutorily it is against the very fundamental/ structured employment as it must be guaranteed appropriately as per notions of the law and equity derived from the Constitution being the supreme law. On the aforesaid proposition, the honorable Supreme Court in the case of Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Intizar Ali and others, **2022 SCMR 472**, has held that framing of statutory rules of service is warranted and necessary as per law. The honorable Supreme Court further held that an

employee unless given peace of mind cannot perform its functions effectively and properly. The premise behind the formulation of statutory rules of service is gauged from Articles 4 and 9 of the Constitution of the Islamic Republic of Pakistan, 1973.

12. Coming on the subject, regularization of service requires the backing of law, rules, or policy. In absence of any of the same, an employee cannot claim regularization of his service, which factum is lacking in this case, therefore this court under Article 199 of the Constitution of the Islamic Republic of Pakistan cannot revive a document that is otherwise dead and confer rights on the petitioners that otherwise do not exist either in law or in fact. On the aforesaid proposition, I am guided by the decision of the Honorable Supreme Court rendered in the case of *Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others v. Sher Aman and others*, **2022 SCMR 406**.

13. In the present case forcing the respondent department to act as per the whims and wishes of the petitioners is not only burdensome but is also a transgression of the powers vested with this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan. Even otherwise, it is settled law that contractual terms and conditions could neither be enforced, nor a contract could be extended or renewed under Article 199 of the Constitution. On the aforesaid proposition, I am guided by the decision of the Honorable Supreme Court in the case of *Vice-Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa and others v. Tanveer Ahmad and others*, **2022 P L C (C.S.) 85**.

14. Because of the above, legal position of the case, the petitioners, being contractual employees, have no vested right for regular appointment or to seek regularization of their services, under Article 199 of the Constitution of the Islamic Republic of Pakistan. Thus, C.P No. D- 361 of 2019, C.P No. D- 1526 of 2019, C.P No. D- 1562 of 2019 and C.P. No. D- 518 of 2019 filed by them is not maintainable on the aforesaid analogy.

15. My aforesaid view point is further cemented by the decisions of the Honorable Supreme Court rendered in the cases of *Farzand Ali V/S Province of West Pakistan*, **PLD 1970 SC 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. 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. Raheel Ali Gohar and others*, **2020 SCMR 2068**, *Messrs Sui Southern Gas Company Ltd. v. Zeeshan Usmani and others*, **2021 SCMR**

609, Khushal Khan Khattak University through Vice-Chancellor and others v. Jabran Ali Khan and others, **2021 §CMR 977**, Pakistan Telecommunication Company Ltd. v. Muhammad Samiullah, **2021 § C M R 998**, Government of Khyber Pakhtunkhwa through Chief Secretary and others v. Muhammad Younas, **2021 §CMR 1045**, and Secretary Local Government, Election Rural Development, Khyber Pakhtunkhwa and others v. Muhammad tariq khan and others, **2022 P L C (C.S.) 186**.

16. Before parting with this order, I may observe that the appointment in the public office can only be made through the competitive process on merit as provided under the recruitment rules and not otherwise. It is well-settled law that appointments in public office are to be made strictly under applicable rules and regulations without any discrimination and in a transparent manner. Thus, all appointments in the public institution must be based on a process that is substantially and tangibly fair and within the parameters of its applicable rules, regulations, and bylaws. However, if the candidate has applied based on such admissible quota under the law he can be accommodated subject to his qualification for the post under the dicta laid down by the Honorable Supreme Court of Pakistan on the subject issue. On the aforesaid proposition, my view is supported by the following cases decided by the Hon'ble Supreme Court of Pakistan (1) Muhammad Yaseen v. Federation of Pakistan, **PLD 2012 §C 132**, Muhammad Ashraf Tiwana v. Pakistan, **2013 §CMR 1159**, Tariq Azizuddin: in re, **2010 §CMR 1301**, Mahmood Akhtar Naqvi v. Federation of Pakistan, **PLD 2013 §C 195**, Contempt Proceedings against Chief Secretary Sindh and others, **2013 §CMR 1752** and Syed Mubashir Raza Jafri and others v. Employees Old-age Benefits Institution (EOBI), **2014 §CMR 949**.

17. As a result of the above discussion, I am in full agreement with the conclusion arrived by my learned brother Mr. Justice Khadim Hussain Tunio. Consequently, C.P No. D- 361 of 2019, C.P No. D- 1526 of 2019, C.P No. D- 1562 of 2019 and C.P. No. D-518 of 2019 and applications pending therein are dismissed with no order as to costs.

18. In the light of the preceding paragraph, CP No. D-85 of 2012 and CP No.D-724 of 2018 filed under Article 199 (1) (b) (ii) of the Constitution, 1973, have served its purpose and are disposed of in the above terms.

J U D G E