

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-730 of 2022

Muhammad Ibrahim

Petitioner: In person

Respondent No.1: Through Mr. S. Ashikue Raza, advocate

Respondent No.2: Through Mr. Yasir Ahmed Shah, AAG

Date of hearing
& Decision: 25.01.2023.

ORDER

Through the captioned petition, the petitioner seeks regularization of his service as Telephone Operator (BS-9) in Korangi Fisheries Harbor Authority Karachi, inter alia, on the ground that he has served in the respondent authority for more than fifteen years on sanctioned budgetary posts and performed his duties as Telephone Operator since 2009 on contract basis, however, his services has not been confirmed and prayed for the direction to the respondents to regularize his service on the aforesaid post.

2. Petitioner, who is present in person, has referred to the documents attached to the memo of the petition and submitted respondents have regularized and appointed other daily wagers in 2016 and since the petitioner has more experience than the other daily wagers, therefore, his service is liable to be regularized.

3. On the contrary, Mr. S. Ashikue Raza learned counsel representing the respondents has raised the question of maintainability of the instant petition and submitted that the matter concerning regularization and appointment on the post of Telephone Operator (BS-09) is a matter between petitioner and respondent No.1, therefore, the petitioner has no locus standi and is not entitled to file the petition, which is liable to be dismissed. Learned counsel next argued that an employee cannot claim regularization of the service as his vested right. Even otherwise, the law relating to the matter of regularization of service has gone under a radical

change with time, and the petitioner is precluded to invoke the constitutional jurisdiction of this Court. He further submitted that the creation of post/posts and /or regularization of service is within the domain of the executive and authority cannot be assumed by the Court in the exercise of constitutional jurisdiction to allow the regularization of service of the petitioner. He next submitted that Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 guarantees the right of equality of citizens but such right is founded on an intelligible differentia, which distinguished persons or things that were grouped from those, who have been left out. He emphasized that the right of equality is always to be weighed amongst equals in all respects and not every citizen needs to be treated alike in all eventualities. He added that if some cause is based and structured on a wrong order or benefit that cannot be made the basis for claiming similar treatment under the garb of discrimination.

4. We have heard the petitioner, who is present in person, learned counsel for the respondents and perused the record.

5. Petitioner is serving in the Korangi Fisheries Harbour Authority (KoFHA), which is a statutory body established under Ordinance No. XVI of 1982 and Administrative control of the Authority is with the Ministry of Maritime Affairs.

6. It is observed that the petitioner has been working for a considerably long time against the permanent post of Telephone Operator and in such circumstances, the competent authority of respondents is required to look into the case of the petitioner in terms of the ratio of the decisions rendered by the Hon'ble Supreme Court of Pakistan in the cases of Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257), Abdul Ghafoor and others Vs. The President of the National Bank of Pakistan and others (2018 SCMR 157) and (2018 SCMR 325) and Government of Khyber Pakhtunkhwa and others Vs. Adnanullah and others (2016 SCMR 1375).

7. As a result of the above discussion, this petition is disposed of with the directions to the competent authority of respondents to hear the petitioner on the subject issue and apply the ratio of the aforesaid judgments of the Honorable Supreme Court in the case of petitioner and decision in this regard shall be made within fifteen days and submit compliance report through MIT-II of this court.

JUDGE

JUDGE

Nadir*