

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-5748 of 2019

(Dr. Samreen Riaz Ali and 03 others v. Dow University of Health Sciences and 05 others)

M/S Rab Nawaz Sargana and Ghulam Murtaza Chajjro, advocate for the petitioners

Ms. Alizeh Bashir, advocate and Mr. Wasiq Mirza, advocate for Dow University Karachi

Date of hearing
& decision : 14.03.2023.

ORDER

Through the captioned petition, the petitioners are seeking regularization of their services as Medical Officers at Dow University of Health Sciences Karachi (**University**) in terms of Section 3 of the Sindh (Regularization of Adhoc and Contractual) Act, 2013.

2. It is *inter-alia* contended by learned counsel for the petitioners that through the competitive process, the petitioners were appointed as Medical Officers on a contract basis in the respondent University and were subsequently terminated from service without assigning any reason. The learned counsel submitted that under similar circumstances, the respondent university regularized the services of other doctors who were working on a contract basis. The learned counsel prayed for allowing the instant petition as prayed.

3. On the contrary, learned counsel representing the respondent university has raised the question of maintainability of the instant petition on the ground that the petitioners were hired on a contract basis and after the termination of their contract, they are no more employees of the respondent university. The learned counsel argued that regularization of service is the prerogative of the Executive of the respondent university if the statute provides; and, it cannot be arbitrarily interfered with by the Court. Such interferences militate the mandate provided to this Court under Article 199 of the Constitution and, must be exercised keeping in mind the fundamental principles of judicial review and tracheotomy of powers. Long and satisfactory contractual service does not confer any right on an employee to claim regularization at all. Reliance in this regard is placed on the Government of *Khyber Pakhtunkhwa and others v. Saeed ul Hassan and others* (2021 SCMR 1376). The learned counsel further argued that it is by now a settled

principle of law that, long or satisfactory contractual service does not confer a vested right for regularization as conversion from contractual to regular appointment requires statutory support, which factum is missing in the present case. The learned counsel next submitted that Regularization is a policy matter which necessarily requires the backing of the law. In the absence of any law, policy, or rules, an employee cannot knock on the door of this Court for the regularization of his/her services. The petitioners had agreed to the terms and conditions of their contract services.

4. We have heard learned counsel for the parties and have perused the material available on record with their assistance.

5. To properly understand the controversy, it would be appropriate to have a glance at the university statute to see whether the university code provides the mechanism for the regularization of the services of the employees of the university or otherwise.

6. It is an admitted fact that the petitioners have employed on a contract basis for a fixed term and the services of the petitioners were terminated. As a result of a Court order, the department addressed the salary issue of the petitioners during the contractual period.

7. The argument that other similarly placed medical officers were given relief, therefore, the petitioners cannot be discriminated against is misconceived. Firstly, each case has to be analyzed on its facts and circumstances, and relief which is available to a party in one set of circumstances is not always available to another party in a different set of circumstances like those before us. Secondly, regularization of service takes place only when statute provides, in the absence of any law/order/policy providing for the mechanism of regularization, the petitioners cannot claim regularization of their services based on discrimination. It is settled law that continuity in service is required for seeking regularization. Since the contracts of the petitioners had expired in, it could not be held by any stretch of the language that there was no break in the continuity of their service. The respondent university was at liberty to dispense with the services of the petitioners under the terms and conditions of the contract which were accepted by the petitioners when they accepted contractual employment. This Court could not amend or alter the terms and conditions of the contract of the petitioners in the exercise of its constitutional jurisdiction under Article 199 of the Constitution. Reliance in this regard is placed on the case of Khushal Khan Khattak University through Vice-Chancellor and others v. Jabran Ali Khan and others (2021 SCMR 977) wherein, in an identical situation, this court held as follows:-

“The learned counsel for the Respondents has not been able to show us any law which conferred a right upon the Respondents to be regularized. The assertion of the learned ASC that since others were regularized, the Respondents should also be regularized despite there being no statutory basis has not impressed us. As noted above, the Respondents could not claim regularization as a matter of right. Even otherwise, all the appointment orders of the Respondents clearly state that they would have no right to claim regularization. Therefore, the Respondents cannot disown the terms and conditions of their own employment contracts and claim permanent employment when at the very inception of their employment they had accepted contractual employment on the conditions that they would have no right to claim regularization”

8. The aforementioned excerpt makes it amply clear that this Court in its Constitutional Jurisdiction cannot alter the scope of the terms that have been agreed upon by the parties and put an additional burden upon the employer. At best, a contract employee can approach the appropriate forum for recovery of damages against an employer for breach of contract, if a case is made out against the employer. This Court cannot in the exercise of constitutional jurisdiction assume the role of the appointing authority and direct employers to amend/ alter terms and conditions in favor of employees which have been agreed upon by the said employee. Since the contract period of the petitioners has already expired and there is no statutory backing for the regularization of service of the petitioners under the law, therefore, this court cannot direct the respondents to take up the case of petitioners for consideration of their case for regularization of their service.

9. This petition is found misconceived and is accordingly dismissed.

JUDGE

JUDGE

Nadir*