

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-1162 of 2020

(Ghulam Shabbir Shaikh v. Province of Sindh and 02 others)

Malik Naeem Iqbal, advocate along with petitioner.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh.

Dr. Liaquat Ali Abro, Consultant Law to Chief Secretary Sindh.

Date of hearing : 24.02.2023.

Date of Order : 17.03.2023.

ORDER

Through this writ of mandamus the petitioner has challenged the decision taken by the Chief Minister Sindh vide summary dated 23.01.2020, where the regularization of the service of the petitioner as Legal Assistant (Second Capacity) in the Board of Revenue Sindh (BOR Sindh) was done away with. Feeling aggrieved by the approval of the Chief Minister Sindh on the aforesaid summary, the Petitioner has approached this court.

2. Petitioner has narrated his ordeal with the submission that the aforesaid impugned approval of Chief Minister Sindh is violative of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. It is submitted by the petitioner that the petitioner was appointed as Legal Assistant (Second Capacity) in the BOR Sindh on a contract basis vide notification dated 28.07.2010, subsequently, his services were regularized in BPS-18 with the approval of the Competent Authority vide notification dated 15.12.2011. In the year 2020, the respondent-BOR Sindh floated a summary for approval of the competent authority wherein it was suggested that the services of the petitioner were unauthorized and erroneously regularized in the year 2011 by then Chief Minister Sindh, and an attempt was made to serve the petitioner with show cause notice for termination of his regular services. Petitioner submits that respondents with malafide intentions are trying to de-notify the regular service of the petitioner based on the judgment passed by the Supreme Court in the case of *Rasheed Ahmad v. Federation of Pakistan, through Secretary Ministry of Information, Broadcasting and National Heritage, Government of Pakistan, Islamabad, and others*, **PLD 2017 Supreme Court 121**. Petitioner further submits that the aforesaid case has no bearing on the case at hand. As per the petitioner, the

summary floated by the department has been wrongly approved by the Chief Minister on the administrative side in deviation from service law with the sole object to appoint their blue-eyed in place of the petitioner. The Petitioner emphatically asserted that abuse of discretion by a public functionary violates Article 4 of the Constitution as it impairs due process and the right of a person to be treated under the law; that the present situation created by the respondents is a glaring example of lack of application of mind resulting in abuse of discretion by the appointing authority.

3. Mr. Ali Safdar Debar learned AAG submitted that the petitioner does not have any vested right to seek appointment on regular basis in BPS-18 in BOR Sindh or otherwise acquired any legal right to be appointed on contract by the Chief Minister Sindh. Therefore, no corresponding legal duty was/is cast on the Government of Sindh to continue with the appointment of the petitioner on regular basis in BPS-18, which post ought to be filled through the competitive process and not otherwise, thus writ of mandamus, as prayed for by the petitioner, cannot be granted by this court. The learned AAG added that the post in BPS-18 of the petitioner is not a selection post. As per learned AAG the regularization of the petitioner was/is illegal and without lawful authority as the order of regularization of service was obtained by misleading the then Chief Minister Sindh. Learned AAG further submitted that the performance of the petitioner is not up to the mark. In the alternative the learned AAG suggested that this court could wait for the decision of the supreme court in the case of Anjum Badar as the matter is still sub-judice before the Supreme Court of Pakistan in Civil Petition No.735-K/2021 and other connected petitions, wherein the Supreme Court of Pakistan has granted leave to appeal vide order dated 17.6.2021.

4. Malik Naeem Iqbal learned counsel for the petitioner argued that the entire process of impugned action against the petitioner is malafide and baseless as services of the petitioner were regularized by the competent authority viz. Chief Minister Sindh under a policy decision and it could not be reviewed by his predecessor under the Sindh Government Rules of Business 1986, once the services of the petitioner were regularized. The Judgment of the Supreme Court referred to in the impugned summary was in respect of the advocates/lawyers whose services were hired on contract in respect of different departments represented by the office of Advocate General or Attorney General which judgment has nothing to do with the case of the petitioner, whereas, services of the petitioner were regularized by the competent authority and the petitioner

became a civil servant under the Sindh Civil Servant Act,1973, and his services could only be dispensed with under the Sindh Civil Servants (Efficiency and Discipline) Rules 1974. The learned counsel pointed out that the services of the petitioner were regularized much before the enactment of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, therefore, his case has nothing to do with the case of Anjum Badar as suggested by the learned AAG. The learned counsel prayed for setting aside the impugned decision of respondent No.2 to the extent of the petitioner.

5. We have heard the learned counsel for the parties and have perused the record with their assistance.

6. To appreciate the aforesaid proposition, it is the case of the petitioner that he was initially appointed as Legal Assistant on a contract basis in the year 2010 and his services were regularized by the then Chief Minister in the year 2011 and now, the Chief Minister Sindh has reviewed this decision by endorsing the viewpoint of the BOR Sindh vide order dated 23.01.2020, where as per the petitioner, his regular service has been dispensed with vide approval on summary dated 23.01.2020, which reads as under:-

“7. It is therefore proposed as under:

- i. The two Second Legal Capacity Assistants viz: Mr. Ghulam Shabir Shaikh & Mr. Akhtar Ali Mastoi, who have unauthorizedly been regularized in BS-18 may be given a show cause for termination of their service being against the law and also being in show cause notice for conflict with Hon'ble Supreme Court of Pakistan order passed in Civil Appeal No. 1216/2015 (Annex-D).
- ii. The remaining contractual advocates namely M/s G.N. Qureshi, Ahmed Ali Ghumro, Ghulam Abbas Kubar, Irshad Ahmed Shaikh, Noor Alam Khatri, R.B. Qureshi, Sadaf Saleem Soomro may be individually given one month notice for termination of their contract.
- iii. With a view to enhancing the capacity and providing effective legal assistance to BOR to defend thousands of court cases, it is desirable to re-engage a legal team on properly budgeted contractual posts, as "Legal Capacity Assistants" in BOR. In this connection a Search Committee with the following composition may be constituted to invite applications from qualified advocates (Preferably enrolled in the Supreme Court of Pakistan) all over the province; conduct tests and/or interviews and recommend seven (in place of the currently available nine advocates), most suitable candidates on the monthly remuneration package of Rs.2,50,000/- (Two Hundred & Fifty Thousand only) per month under the head of the account A03917-LAW CHARGES. The total financial implications for seven (07) Advocates for one month comes to Rs.1,750,000/- (Rupees: one million and seven hundred fifty thousand only) and for one year the financial implication comes to Rs.21,000,000/- (Rupees: Twenty-one million only):

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|----|-------------------|------------------|
| a) | Chief Secretary | Chairman |
| b) | Advocate General | Member |
| c) | Senior Member BOR | Member |
| d) | Secretary Law | Member |
| e) | Secretary LU | Member/Secretary |

8. Hoping that the newly engaged advocates will effectively defend the BOR (LU) cases and safeguard vital Government stakes in state land and other revenue matters, the Hon'ble Chief Minister Sindh is requested to kindly approve proposals at para 07 above.
Sd/-10.01.2020
(Tameezuddin Khoro)

9. SENIOR MEMBER BOR
The proposal at para 07 are endorsed.
Sd-10.01.2020
10. MINISTER REVENUE & RELIEF
The proposal seems to be in the best of public interest. Para 7 is strongly endorsed.
Sd-13.01.2020
11. SECRETARY, LAW DEPARTMENT
Para 7 may kindly be considered for approval.
Sd/-16.1.2020
12. Advisor to CM for Law
Sd/-17.1.2020
12. SECRETARY, FINANCE
Para 7 is supported for approval
Sd-20.01.2020
13. CHIEF SECRETARY
Sd/-22.01.2020
14. CHIEF MINISTER
Para 7 is approved.
Sd/- 23.01.2020.”

7. From the above it is very much clear that the petitioner ought not to have been condemned unheard and should have been allowed the opportunity of hearing while endorsing the viewpoint of the respondent department vide Summary dated 10.1.2020, for the reason that admittedly the petitioner was appointed as Second Capacity, Legal Assistant in the Board of Revenue Sindh on a contract basis vide notification dated 28.07.2010, subsequently, his services were regularized vide notification dated 15.12.2011 along with budgetary allocation vide letter dated 19.03.2012.

8. However, at the same time we are cognizant of the fact that even the initial appointment to the public post should be made after inviting applications publically and by the competitive process and not otherwise. Additionally, regularization of service could be considered subject to the fitness, suitability, and applicable laws, rules, and regulations of the department. The supreme court in the case of the Government of Khyber-Pakhtunkhwa, Workers Welfare Board through Chairman Vs Raheel Ali Gohar and others (2020 SCMR 2068), held that contractual employees have no automatic right to be regularized unless the same has specifically been provided for in the law.

9. It is the elementary principle of law that temporary/contract/project employees have no vested right to claim regularization. The direction for regularization, absorption, or permanent continuance cannot be issued unless the employee claiming regularization had been appointed after codal formalities on

the basis under the relevant service rules and against the sanctioned vacant posts, which admittedly is not the case before us.

10. The question is whether the services of the petitioner could be dispensed with by way of a summary floated for the Chief Minister Sindh by the Secretary Land Utilization Department, Government of Sindh on the plea that his services were unauthorized and erroneously regularized in the year 2012 by the Chief Minister Sindh.

11. Prima-facie, the impugned order in the instant case, has not been passed by the competent authority under the Sindh Civil Servants (Efficiency and Discipline) Rules 1974. Primarily, the summary approved by the Chief Minister was based on the viewpoint put forward by the Secretary of the Land Utilization Department, Government of Sindh on the administrative side. Prima-facie, it was a conscious decision taken by the Government of Sindh at the relevant point in time, and at this stage, the respondent department is raising hue and cry on the aforesaid analogy, in such circumstances, we refrain from commenting on the manner and method by which the petitioner was appointed on contract and then regularized in BPS-18.

12. We, however, clarify that the administrative department of BOR can always appoint a Law Officer which could look after the interest in the Courts. The judgment referred to in the summary is independent and has no nexus with the case in hand. It is only when departments that are directly under the Governments and/or represented by Attorney General/Advocate General offices cannot retain an advocate on contract. The BOR, however, can retain an advocate either on the contract or otherwise subject to Sindh Government Rules of Business 1986.

13. We are at loss to understand that if the petitioner was found to be incompetent as contended by learned AAG then why his case was not departmentally pursued by the respondent department under the relevant law; and, at the same time he was allowed to continue in service since 2010 on regular basis and all of sudden in 2020, they woke up from deep slumber and feel it better to float summary for approval to shift their just burden, which is apathy on their part under the law.

14. We, therefore, in the given circumstances refer the matter to the competent authority to probe the allegations leveled by the respondent department within a reasonable time, however, that is subject to a regular mode

of inquiry as provided under the Sindh Civil Servants (Efficiency and Discipline) Rules 1974, in the intervening period the services of the petitioner shall not be dispensed with.

15. This petition stands disposed of in the above terms. Let a copy of this order be transmitted to the competent authority/Chief Secretary, Sindh for compliance.

JUDGE

JUDGE

Nadir*