

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-3559 of 2022

(Muhammad Tariq and 23 others v. Federation of Pakistan and 02 others)

Constitutional Petition No.D-3036 of 2022

(Muhammad Shehroz and 87 others v. Federation of Pakistan and 02 others)

Constitutional Petition No.D-3338 of 2022

(Sanaullah Khan and 76 others v. Federation of Pakistan and 02 others)

Mr. Ali Asadullah Bullo, advocate for the petitioners in CP No. D-3036 of 2022 and D-3338 of 2022

Mr. Muhammad Ishaq, advocate for the petitioners in CP No.D-3559 of 2022

Shaikh Zahid Mehmood, advocate

Mr. Khalid Mehmood Siddiqui, advocate respondent in CP No.D-3338/2022

Dr. Shah Nawaz, advocate assisted by Ms. Fozia M. Murad, advocate for respondent Civil Aviation Authority

Syed Yasir Shah, Assistant Attorney General

Date of hearing
& Decision: 18.01.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. Through this common order, we intend to decide the present petitions as the controversy and questions raised, on behalf of the petitioners, are common.

2. Petitioners are employees of the Civil Aviation Authority (CAA) and seeking regularization of their services on the premise that they are working on permanent posts since 2018, 2019, and 2020. Petitioners have averred that the respondents have threatened to dispense with their services on the ground that they accept the terms and conditions of service through a third-party contractor and do not ask for regularization of their service.

3. M/S Ali Asadullah Bullo and Muhammad Ishaq, learned counsel for the petitioners, have unanimously raised their voice of concern on the behavior of the respondent CAA and submitted that the respondents have threatened to dispense with the services of the petitioners if they do not accept the employment

through third-party contractor. Learned counsel for the petitioners has referred to the memo of the petitions and grounds raised therein and submitted that regularization of the employees is not a part of the terms and conditions of service for which there need to be some statutory rules but it depends upon terms of equity that a person who has given his prime life and youth to a department is always kept in dark and his services were taken in very exploitive manner. So it is on that principle the petitioners have approached this Court for regularization of their service just to enforce their fundamental rights in terms of Articles 9 and 25 of the Constitution. Per learned counsel, the post of petitioners is permanent and petitioners had been satisfactorily working on the permanent post for the past many years on a contract basis and were/are liable to be absorbed in service in terms of policy decision of the respondents. Learned counsel further submitted that it is the responsibility of the respondent CAA to allow the petitioners to serve the CAA either as players or employees without discrimination. Learned counsel emphasized that the only source of income of the petitioners is their salary, which is a fundamental right to be protected under Article 199 of the Constitution. Learned counsel prayed for directions to respondents to scrutinize the matter for regularization of the services of the petitioners and provide them equal treatment under the similarly placed employees. Learned counsel submitted that the petitioners' contract has been extended from 06.07.2021 to till date and relied upon the statement dated Nil.11.2022. Per learned counsel, their case is covered in terms of the ratio of the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of *State Oil Limited v. Bakht Siddique and others*, **2018 SCMR 1181**. In support of his contention, he relied upon the cases of *Muhammad Rafi and another v. Federation of Pakistan and others*, **2016 SCMR 2146**, *Iqbal Hussain v. General Manager Southern Telecom Region-II and others*, **2017 SCMR 353**, *Abdul Ghafoor and others v. The President National Bank of Pakistan and others*, **2018 SCMR 157**, *Government of Khyber Pakhtunkhwa through Secretary Energy and Power Department Peshawar v. Ihsanullah and others*, **2018 PLC (CS) 354**, *Pir Imran Sajid and others v. Managing Director and others*, **2015 SCMR 1257**, **2016 SCMR 2146**, and unreported order dated 26.08.2009 passed by the Hon'ble Supreme Court of Pakistan in Human Rights Case No.3423-K of 2007.

4. Mr. Khalid Mehmood Siddiqui, advocate for respondent in CP No.D-3338/2022 and D-3036/2022, has raised the question of maintainability of the

instant petitions and submitted that CAA employees are governed through non-statutory rules, thus the petitioners cannot invoke Constitutional Petition. He further submitted that it is well-settled law that where a contractual employee wishes to be regularized he must demonstrate the statutory basis for such a claim, in the absence of which, relief cannot be granted. Learned counsel further submitted that regularization could be considered subject to the fitness, suitability, and availability of vacancy and law on the subject and all the factum are missing in the present case, as such the petitioners have no vested right to seek regularization of their contractual service. Learned counsel emphasized that petitioners have to serve till the pleasure of their master and, in case of any wrongful termination, they cannot seek their reinstatement through Constitutional Petition as their service is governed under the terms and conditions of the contract, which they had with the CAA at the time of initial engagement. Learned counsel further submitted that temporary employees have no vested right to claim regularization. Learned counsel also emphasized the plea that the petitioners have failed to point out any malafide intention or malice on the part of CAA against the petitioners which deprives them of the alleged right of permanent absorption in CAA, though their contract is required to be governed through third-party-contractor to avoid regularization of service as CAA cannot engage the service of employees permanently so far as the petitioners are concerned. In support of his contention, he relied upon the unreported judgment dated 28.02.2022 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.4282 of 2018 and Order dated 22.09.2022 passed by this Court in CP No.D-5333 of 2018.

5. Dr. Shah Nawaz, advocate for respondent in CP No.D-3559 of 2022, has raised a similar question about the maintainability and submitted that in absence of statutory rules of service Writ Petition in service matters ought not to be entertained; the petitioners have no vested right to seek regularization in absence of any law and policy. He emphasized that the courts have deprecated the tendency of temporary employees to invoke the writ jurisdiction seeking regularization as their relationship is governed by the principle of master and servant. In support of his contention, he relied upon the cases reported as 2022 SCMR 1256, 2022 SCMR 991, 2021 SCMR 609, 2021 SCMR 1995, and 2022 SCMR 406. He prayed for the dismissal of the instant petition.

6. We have heard learned counsel for the parties on the point of maintainability of these petitions, and have also perused the material available on record.

7. To begin with the question of regularization of service of an employee vis-à-vis service jurisprudence, it has to be kept in mind as to what is the concept of regularization of service. In other words, what are the necessary elements that must exist to allow a person to seek regularization of a job under the law? The law on the regularization of service is clear in its concept according to which regularization and permanent absorption must be granted strictly under the rules of recruitment in force.

8. Principally, this Court, in exercising power under Article 199 of the Constitution, cannot issue directions for regularization, absorption, or permanent continuance of service of an employee, unless the employee claiming regularization had been appointed in an open competitive process in pursuance of regular recruitment under the relevant rules against a sanctioned vacant post. It is a well-settled principle of law that for public employment unless the appointment is in terms of the relevant rules and after a proper competition amongst qualified persons, the same would not confer any vested right on the appointee. If it is a contractual appointment, the appointment comes to an end upon expiration of the contract, and if it was an engagement or appointment on daily wages or casual basis, the same would come to an end upon the completion of the agreed assignment or tenure. It is well-settled that a temporary employee cannot claim permanent status at the end of his term as a matter of right. It is clarified that if the original appointment was not made by following the due / prescribed process of selection as envisaged by the relevant rules, a temporary / contract employee or a casual wage worker cannot be absorbed in regular service or made permanent merely for the reason that he was allowed to continue the service beyond the term of his appointment. It is not open for this Court to allow regular recruitment in the case of a temporary / contract employee whose period of work has come to an end, or of an ad-hoc employee who by the very nature of his designation, does not acquire any right. Merely because an employee had obtained an interim order from the Court, would not entitle him to any right to be absorbed or made permanent in the service without the mandatory lawful process.

9. In the present case, the petitioners in CP No.D-3559/2022 claim regularization of their service with effect from the date of joining as Football players. Per learned counsel for the respondents that under CAA Service Regulation-2018 and Sports Policy 2010-2022, CAA cannot hire players and coaches on a regular or contract basis as these positions are not approved by the establishment of CAA, however, in 2017-2018, players and coaches were hired for CAA Cricket and Football teams on temporary or contract basis under Corporate Social Responsibility Program to develop and patronize sports activities in PCAA. Learned counsel submitted that the petitioners were hired on wages and their remunerations were paid accordingly and their contract stood expired on 30.06.2022 and no further extension is being offered to them.

10. Having discussed the legal aspect of the case, we have perused the appointment orders of the petitioners, which were admittedly a contractual appointment for a certain period. The record indicates that the petitioners' service was on contract for a certain period or an extended period on the choice of appointing authority. The case of the petitioners was/is subject to the principle of Master and Servant. It is well-established law that a contractual employee cannot claim a vested right, even for the regularization of his service.

11. In the present case, the petitioners have not established that they have a fundamental / acquired vested right to remain in the contractual post or to seek an extension and/or regularization of the contractual service. The General Clauses Act, of 1897, also empowers the competent authority to appoint or remove anyone appointed in the exercise of that power as discussed in the preceding paragraph. It is also a settled law that Courts ordinarily refrain from interfering in the policy-making domain of the Executives unless it is proven that it has infringed the fundamental rights of the citizens of Pakistan, which is not the case at hand.

12. The views expressed by us in the preceding paragraphs are fortified by the following authoritative pronouncements of the Hon'ble Supreme Court in the unreported judgment dated 28.02.2022 passed in Civil Petition No.4282/2018, *Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals, 2019 SCMR 984, Province of Punjab through Secretary Agriculture Department, Lahore, and others Vs. Muhammad Arif and others, 2020 SCMR 507, Miss*

Naureen Naz Butt vs Pakistan International Airlines, and others, 2020 SCMR 1625, Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar and others v. Intizar Ali and others, 2022 SCMR 472, Vice-Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa and others Vs. Tanveer Ahmad and others, 2022 PLC (C.S.) 85, Pakistan Telecommunication Company Ltd. Vs. Muhammad Samiullah, 2021 SCMR 998, Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others Vs. Sher Aman and others, 2022 SCMR 406, Deputy Director Finance and Administration FATA through Additional Chief Secretary FATA, Peshawar and others v. Dr. Lal Marjan and others, 2022 SCMR 566), Sui Southern Gas Company Limited v. Saeed Ahmed Khoso, 2022 SCMR 1256, and Pakistan Electric Power Company v. Syed Salahuddin, 2022 SCMR 991.

13. In view of the above discussion, the petition is not maintainable either on facts or in law. However, before parting with this case, it may be observed that every person has a right to approach a Court of law for redressal of his grievance, whether such grievance is against a private party or a public functionary. Article 199 of the Constitution restricts such right only to an aggrieved person, as contemplated in the said Article, who is aggrieved by any action or order of a public functionary or department or the Provincial or Federal Government. A person coming to Court must be fully aware of his right i.e. whether he is entitled to such right or not.

14. We are constrained to observe that despite the legal position established because of the plethora of pronouncements by the Hon'ble Supreme Court as discussed above, the present petitioners filed these petitions seeking a relief to which they were not entitled under the law. In other words, the petitioners wanted this Court to grant a declaration contrary to the law settled by the Hon'ble Supreme Court.

15. In the light of the above facts and circumstances of the case, the instant petitions are dismissed along with the listed application(s).

JUDGE

JUDGE