

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No. D-1487 of 2022
(*Nasrullah and others v. P.O.Sindh & others*)

Present:-

**Mr. Justice Muhammad Iqbal Kalhoro &
Mr. Justice Arbab Ali Hakro**

Mr. Achar Khan Gabol, Advocate for petitioners.
Mr. Zulfiqar Ali Naich, Assistant A.G-Sindh a/w Zahid Hussain,
Assistant Engineer, Public Health Engineering, Sub-Division,
Naushahro Feroze.

Date of Hearing & Order: **25-01-2024**

ORDER

MUHAMMAD IQBAL KALHORO, J:- Petitioners, daily wages employees in the department of Public Health Engineering, Naushehro Feroze, working on different low-grade posts such as Pump Operator, Chowkidar etc., have filed this petition seeking regularization of their service. Their case is that in reply to an advertisement dated 23.02.2022 inviting applications for appointment against aforesaid low grade posts, they applied, but the department is in the process of appointing other applicants ignoring the fact that petitioners have already been working on such posts.

2. We have heard learned counsel for petitioners who while relying upon cases reported as *Abdul Ghafoor and others v. the President, NBP and others* (2018 SCMR 157) and *Board of Intermediate and Secretary, Education Multan* (2019 SCMR 233) has sought directions to the respondents to regularize service of the petitioners. He further states that although petitioners are already working in the said department, but are not being considered against the advertised posts.

3. On the other hand, Assistant Engineer, Public Health Engineering, Sub-Division, Naushahro Feroze submits that process of appointment pursued on the heels of aforesaid advertisement has been stalled on the directions of the high officials and no appointment has been made. He further submits that there are two wings in the Public Health Engineering Department, one is Operation and Maintenance, the other is Development wing. The petitioners are working on daily wages in Operation and Maintenance wing, whereas, the advertisement was in

relation to the posts in Development wing, hence not concerned with the petitioners.

4. Learned AAG has opposed this petition and has relied upon cases reported as Government of Khyber Pakhtunkhwa v. Intizar Ali (2022 SCMR 472), Khushal Khan Khattak University v. Jabran Ali Khan (2021 SCMR 977), Deputy Director Finance and Administration FATA v. Dr.Lal Marjan and others (2022 SCMR 566), and Government of Khyber Pakhtunkhwa v. Saeed-ul-Hassan and others (2021 SCMR 1376)

3. We have considered arguments of the parties and perused material available on record so also the case law relied at bar. As per latest view of the Supreme Court, the daily wages or contractual employees have no vested right to seek regularization unless there is legal and statutory basis for the same. The contractual or daily wages employees cannot disown terms and conditions of their employment and claim permanent service just because for a certain length of time they have been rendering service in terms of their contract or appointment letter. The Supreme Court has also decreed that High Court cannot arrogate to itself the executive function of being an appointing authority. Such function is beyond the pale of jurisdiction of High Court and militates against the fundamental concept of trichotomy of powers.

4. The case law relied upon by learned counsel for petitioners were rendered in the year 2018 by a Bench of two member of the Supreme Court. The view since has been revisited and the case law in this regard relied upon by learned AAG is latter in time and rendered by three member Bench of the Supreme Court, hence the same has precedence over the case law relied upon by learned counsel for the petitioners.

5. Since this issue is already settled in a number of the case law as stated above, we need not harp on it further. This being the position, this petition being meritless is accordingly **dismissed** along with pending application(s).

JUDGE

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