

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

**C. P. No. D – 1255 of 2022**

*(Anwar Ali Kandhro & others versus Province of Sindh & others)*

Present:

**Mr. Muhammad Iqbal Kalhoro, J.**

**Mr. Arbab Ali Hakro, J.**

Date of hearing : **05.10.2023**

Date of decision : **05.10.2023**

Mr. Illahi Bux Jamali, Advocate for petitioners.

Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh.

## **ORDER**

**Muhammad Iqbal Kalhoro, J.** – Petitioners, claiming to be lower grade employees, working in Public Health Department, District Khairpur, are aggrieved by a letter dated 17<sup>th</sup> August 2022, written by the Secretary, Finance Department, Government of Sindh to the District Accounts Officer, Khairpur, communicating approval of competent authority for recovery of excess amount from salary/pension of the officials of Public Health Engineering & Rural Development, District Khairpur with immediate effect. Petitioners are among the employees from whose salary recovery of excess amount has been ordered.

2. Their case is that initially they were working on work charge/contract basis and were regularized by the orders of this Court, when they filed Constitutional Petitions for such purpose, with all back benefits since the time of their initial employment on adhoc/contract basis. The impugned letter, commanding deduction of differential amount from their salary, is against the constitution, law and natural norms of justice. That although in entire Sindh, the employees in different departments were regularized after the orders passed by this Court in various Constitutional Petitions to that end, but it is only them, who have been singled out for such discrimination; hence, this petition.

3. The Finance Department, in its comments, has divulged that the case of the petitioners was placed before a Scrutiny Committee, which, in its meeting held on 18.03.2022, unanimously decided that fixation of pay is permissible from the exact date of regularization i.e. on

completion of five years' service in the capacity of work charge/contingent paid staff etc. the arrears of pay and allowances are permissible only from the effective date of order of regularization, which is exactly the scheme under Sindh (Regularization of Adhoc & Contract Employees) Act, 2013 (**'Act 2013'**).

4. In this regard, when a legal advice was obtained from Advocate General Sindh, he also concurred with the view of Finance Department that regularization of contract employees cannot be made retrospectively and the question of claiming arrears by them does not arise. The Advocate General also accepted the view that the arrears, which such employees had received before promulgation of the Act 2013, ought to be recovered from their salaries. After such advice, the matter was placed before the Chief Minister Sindh, who accorded permission to proceed with the matter and deduct differential amount received by the employees from their salaries in easy installments.

5. The matter was further examined by the Scrutiny Committee in its meeting on 18.03.2022. It concluded that adjustments of arrears were erroneously done in favour of the employees without making necessary deduction by the office of District Accounts Officer, Khairpur insofar as case of the petitioners is concerned. Hence, vide impugned letter, District Accounts Officers, Khairpur was advised to start the process of recovery.

6. Along with the comments, a copy of summary for Chief Minister Sindh is attached. A perusal of Para No.3 thereof reveals that initially the Scrutiny Committee in its initial meeting held on 20.08.2020 had unanimously recommended recovery of excess amount from salary of those, who before regularization w.e.f. 25.03.2023, were drawing more salary and were permitted withdrawal of differential amount. In regard to those contract and adhoc employees, who were allowed regularization from the commencement date of Act 2013, but had not served in any capacity due to winding up project where they were working. It was decided that they were not allowed financial benefit w.e.f. 25.03.2013 till issuance of formal notification/order of their regularization. Minutes of such meeting were sent to Administrative Secretaries for implementation, and finally, when it was realized that such decision had huge financial implication, the matter was re-discussed by the Scrutiny Committee and it decided to take a legal advice through SGA&CD, Government of Sindh from the Advocate General Sindh.

7. The comments and summary for Chief Minister Sindh clearly speak of the fact that petitioners or any other contract/adhoc/work charge employees were entitled to fixation of salary and other benefits w.e.f. 25.03.2013, when their regularization had been actualized i.e. came into effect. The Scrutiny Committee, however, found that the fixation of salary and other benefits were given to them before actualization of their regularization, which came into effect only on 25.03.2013. They were found drawing more salary and were permitted withdrawal of differential amount before their regularization.

8. After a thorough examination and enquiry, the fact of excess amount being drawn by petitioners illegally was found. The Committee members are stated to be experts in their own fields, and apparently, had no ill-will or *mala fide* against the petitioners to allude any ulterior motive to them to make a wrong conclusion of excess amount having been received by the petitioners.

9. In constitutional jurisdiction, we are not permitted to substitute expert opinion of the Scrutiny Committee for our opinion, when, against the merits of findings of the Scrutiny Committee, nothing substantial has been proposed by the petitioners except that the deduction from their salary of the excess amount is against the natural norms of justice. None has taken a plea that they were not paid any excess amount before the date of actualization of their regularization w.e.f. 25.03.2013. No document has been placed on record to show that petitioners were actually regularized before the commencement of Act 2013. We, therefore, find no merit in the instant petition and accordingly **dismiss** it along with pending application.

J U D G E

J U D G E

Abdul Basit