

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

C.P. No.D-1638 of 2023

Present:

Justice Mrs. Kausar Sultana Hussain
Mr. Justice Khadim Hussain Soomro

Petitioner : Zeeshan Ali Memon through Mr. Shankar Meghwar, Advocate.

Respondents : None present.

Date of hearing : 11.01.2024

Date of decision : 11.01.2024

ORDER

Khadim Hussain Soomro, J.- Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks direction to respondents to process the reinstatement of his service along with back-dated benefits.

2. Brief facts of the case are that the petitioner was appointed, on contract, as Sub-Inspector (BPS-14) in the year 2019 in FIA Cyber Crime Wing, Government of Pakistan, but his contract was not extended later. He filed a Departmental Appeal, which the competent authority has also dismissed. The petitioner has filed the instant petition impugning the office order dated 04.08.2022 issued by ADG, Cybercrime FIA, Islamabad, whereby his service contract has not been extended and seeks issuance of writ by this court to direct the respondents to process his reinstatement along with back-dated benefits.

3. Learned Counsel for the petitioner submits that the petitioner remained a contractual employee of FIA Cyber Crime, Government of Pakistan, up to 30.06.2022; that respondent No.3 has issued an office order on 04.08.2022 whereby the petitioner's contract has not been extended without any legal justification. He concluded by submitting to issue a writ of this court to direct the respondents to reinstate the petitioner and pay him back-dated benefits/Wages.

4. We have heard the learned counsel for the petitioner and have perused the material available on record.

5. Foremost, it is not convincing that the present petitioner, after completion of his contractual employment in 2022, has filed the instant petition in 2023 for his reinstatement along with back-dated benefits/wages. It is an admitted fact that the petitioner's contract was not extended on the grounds that there were departmental proceedings against him. Further, the offer of appointment letter dated 13.12.2019 issued to the petitioner also contains specific terms and conditions. The relevant para of the contract is reproduced as under:-

*“xii. **Termination of Contract:** Notwithstanding anything contained in Clause (xi), the appointment during the period of contract may be liable to be terminated on 30 days notice of either side or payment of one month salary in lieu thereof, without assigning any reason. (Emphasis is given through underlining.)*

6. Based on the above condition, the employer can terminate the petitioner's contract with 30 days' notice. The record reflects that during the contract employment, the petitioner was found involved in professional misconduct; thereon, an inquiry was conducted, which was consequently decided against the petitioner; thereafter, he preferred an appeal, which was also dismissed. A perusal of the material available on record does nowhere show the continuity of the service of the petitioner qua contractual beyond August 2022; even otherwise, it is not a vested right of a contractual employee to be regularized automatically, in the case of DEPUTY COMMISSIONER UPPER DIR and others Versus Mst. NUSRAT BEGUM (2022 S C M R 964), Apex court has held as under:-

13. The judgment passed in C.P. 3609/2010, relied upon by the Counsel for the Respondent is distinguishable in law and on facts. Even otherwise each case has to be decided on the basis of its own facts and circumstances. Relief granted to one party cannot automatically be granted to another party without properly scrutinizing the record. It is worth mentioning that the contract of the Respondent was terminated vide letter dated 28.02.2008 whereas, the Constitutional Petition was filed in 2015 which was clearly hit by the principle of laches.”

7. Upon examination of the record, it is evident that the petitioner was not appointed through a competitive process, nor was his service regularized. Hence, we believe that the appointment can be terminated after the contract period ends, or the contract period may be extended solely at the discretion of the respondent department; in other words, the principle of master and servant governs the case of the petitioner. Therefore, the petitioner does not have a vested right to seek reinstatement in service. It is a well-settled law that a contract employee cannot claim reinstatement as a matter of right.

8. The apex court in, its multiple judgments, has definitively established the legal principle that a person engaged as a contractual employee is precluded from seeking recourse before the High Court within its constitutional jurisdiction. The sole remedy available to a contractual employee is to initiate legal proceedings by filing a suit for damages, stating claims of contractual breach or non-extension of the contractual employment. In the case of **Qazi MUNIR AHMED V/S RAWALPINDI MEDICAL COLLEGE AND ALLIED HOSPITAL through Principal and other (2019 SCMR 648)**, the apex court observed as under :-

“ We have also noticed that the dispute between the parties related to contract employment. This Court has in various pronouncements settled the law that a contract employee is debarred from approaching the High Court in its constitutional jurisdiction. The only remedy available to a contract employee is to file a suit for damages alleging breach of contract or failure to extend the contract. Reference in this behalf may be made to Federation of Pakistan v. Muhammad Azam Chattha (2013 SCMR 120), where it has been held that it is a cardinal principle of law that a contract employee cannot press for reinstatement to serve for the left over period and can at the best claim damages to the extent of unexpired period of his service. Therefore, it was correctly held that the petitioner approached the wrong forum in the first place and the learned Single Judge had exceeded his jurisdiction by interfering in a purely contractual matter”.

9. We have noted that nothing in the record is available that shows that the contract of the petitioner was extended beyond the year 2022; therefore, we do not find it legally appealing when the claim of back-dated benefits is made by the petitioner for the period when he was not engaged in employment in the FIA Cyber Crime. Petitioner has failed to point out any illegality for the interference of this court. In the case of **PROVINCE OF PUNJAB through Chief Secretary, Lahore and others Versus Prof. Dr. JAVED IQBAL and others (2022 S C M R 897)**, hon’ble Apex court has observed as under:

“10. It is settled law that the Court cannot step into the shoes of the appointing authority. The Appellants mentioned that the Respondents were reinstated with immediate effect and, were regularized with immediate effect. It is pertinent to mention that the Respondents did not challenge the order dated 27-10-2014 according to which they were reinstated with immediate effect. They have only challenged the order dated 22-06-2015 whereby, they were regularized with immediate effect. The fact that the Appellants have reinstated the Respondents and regularized the Respondents with immediate effect cannot be interfered with by the Court in absence of any illegality. The argument that other similarly placed medical practitioners were given relief, therefore, the Respondents 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 takes effect prospectively, from the date when a regularization order is passed. In the absence of any law/order/policy providing for retrospective regularization, the Respondents cannot claim regularization of their services based on past service rendered on contract basis as well as the period during which they were out of service. As such, the conclusion of the High Court to the effect that the Appellants could not have regularized the Respondents with immediate effect is ex facie erroneous and is accordingly held as unsustainable. Reliance in this regard is placed on the case of Khushal Khan Khattak University v. Jabran Ali Khan (2021 SCMR 977 Supreme Court).....”

10. For the above-stated reasons, this petition is devoid of merits and of no legal force; hence, the same is dismissed in limine, with no order as to costs.

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