

ORDERSHEET  
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.  
Constitution Petition No.D-1612 of 2021

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on Office objection.
2. For hearing of main case.

*Present:-*  
*Mrs. Justice Rashida Asad, J.*  
*Mr. Justice Khadim Hussain Soomro, J.*

Mr. Muhammad Qayoom Arain, advocate for the petitioners.  
Mr. Shaharyar Imdad Awan, Assistant Advocate General, Sindh  
Mr. Khuda Bux Chohan, Advocate for respondents 2, 3, & 4

Date of hearing 28-09-2023.

Date of Order 02-10-2023.

**ORDER**

**KHADIM HUSSAIN SOOMRO, J.** Through the instant petition, the petitioners seek direction to respondents to process the regularization of their services, award of back-dated benefits, and submission of compliance report before this court.

1. Precisely, the petitioners have filed the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 with prayer to issue a writ of this court to direct the respondents to process regularization of the petitioners along with back-dated benefits. Admittedly, the petitioners were appointed, on contract, as sanitary workers and underground collies in the year 2011 in the Taluka Municipal

Administration, new Sukkur, but later on, their contract employment was not extended.

2. Learned Counsel for the petitioners submits that the petitioners remained contractual employees of Taluka Municipal Administration, New Sukkur. He argued that they worked as Sanitary workers and underground colliers on consolidated meagre pay as per order of appointment dated 01.01.2011 & 18.07.2011; later on, services of the petitioners were transferred to North Sindh Urban Service Corporation, and they used to draw their salaries thereupon. Learned counsel further submitted that some of the employees filed an identical Constitution petition No. D-684/2012 [Re. Irshad Ali and others Vs P.O Sindh & others] and the same was allowed; hence, the services of petitioners therein were regularized vide judgment dated 02-09-2012. He submitted that due to poverty and financial constraints, the present petitioners did not file any application for joining them as petitioners/party; hence the petitioners are entitled for the same relief. He argued that the present petitioners approached the respondents to process their cases for regularization, but their cases were not considered; hence they filed instant petition. He placed his reliance on cases reported as 2013 SCMR 1547, 2015 SCMR 1557 and 2009 SCMR 01. He concluded by submitting to issue a writ of this court to direct the respondents to regularize the petitioners and pay them back-dated benefits/Wages.
3. Conversely, learned A.A.G. Sindh, as well as learned counsel for respondents Nos. 2, 3 & 4, submit that the petitioners have neither filed the title page nor the last of the list, which they are relying upon; they

further submit that petitioners No.1 & 3 have no any appointment order except petitioner at Serial No. 2 Hasebullah appearing at Serial No.29 in Office Order No.TMA/Admin/PS/19/2011 dated 18-07-2011, which is shown as contractual/daily wages employee with a monthly fixed salary of Rs. 7000/ for the period of one year with effect from 15-07-2011 to 14-07-2012 and after completion of such period he was no more in service, and he has no any further extension; hence his claim for regularization is meritless while the petitioner No. 1 & 3 were appointed on daily wages, and not on contract basis, with effect from 01-01-20211 for a specified period. The learned counsels argued that the petitioners did not have any appointment order or extension order, so they are no longer in service; that as per implementation of the order dated 15-08-2018 passed by this Court, all daily wages/contractual contingency employees argued that, temporary contractual employees had been discontinued from their service; therefore, the petitioners are not entitled to the relief/benefit.

4. We have heard the learned counsels for the parties and have perused the material available on record.
5. Foremost, we do not find it convincing that present petitioners, after the termination of their contractual employment in 2012, have filed the instant petition in 2021 for their regularization along with back-dated benefits/wages. Perusal of the material available on record does nowhere show the continuity of the service of the petitioners qua contractual or daily wages beyond the year 2012; 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.”***

In the case of DEPUTY DIRECTOR FINANCE AND ADMINISTRATION FATA through Additional Chief Secretary FATA, Peshawar and others Versus Dr. LAL MARJAN and others (2022 S C M R 566), hon’ble Apex court has observed as under:

***14. The learned High Court has in the impugned judgments held that, by not regularizing the Respondents and by regularizing others, the Appellants have committed discrimination. The said finding is not based on any legal or factual basis. Firstly, even when others have been regularized, the circumstances and terms and conditions of their employment were different. If some have illegally been regularized, the petitioners cannot claim equal treatment with them. If and when the question of legality and validity of their regularization comes before us, we will pass appropriate orders after considering the facts, circumstances and merits of each case. It has been repeatedly held by this Court that regularization is not a vested right but requires a statutory basis which is admittedly absent in the instant case. As such, the present Respondents merely rely on the fact that others have been regularized and so should they, which is not a legal ground per se. Where a contractual employee wishes to be regularized, he must demonstrate statutory basis for such a claim, in the absence of which, relief cannot be granted solely on the principle of "similarly placed". Such a course of action would tantamount to making one right out of two wrongs which is not permissibly in the law.***

6. We have noted that nothing in the record is available that shows that the contract of the petitioners was extended beyond the year 2012;

therefore, we do not find it legally appealing when the claim of back-dated benefits is made by the petitioners for the period when they were not engaged in employment in the municipality. It is also peculiar to observe that the petitioners had not made any approach, as permissible under the law, for an extension of their contract/daily wages when it was terminated/expired; petitioners have 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).....”***

7. It is needless to reiterate that petitioners have neither pointed out any illegality nor have shown any statutory right. It is now a well-settled

principle, as laid down in various dicta of the Hon'ble Apex court, that regularization is not a vested right of a contractual employee, which too is claimed after the passage of several years and in the presence of discontinuation of contract in the instant matter. In the case of FARAZ AHMED Versus FEDERATION OF PAKISTAN through Secretary, Ministry of Communication, Government of Pakistan, Islamabad and others (2022 P L C 198), the Hon'ble Apex Court has held that:

*“8. The bone of contention was whether the petitioner, being a contractual employee, had any vested right for regularization or absorption in the newly created cell, and whether a certain length of contractual services could be considered to give rise to a legitimate right to be permanently absorbed. On the contrary, in the various dictums laid down by this Court it was repeatedly held that contractual employees have no vested right to regularization, but their regularization may be considered subject to the fitness, suitability and the applicable laws, rules and regulations of the Department. In the case of Khushal Khan Khattak University through Vice-Chancellor and others v. Jabran Ali Khan and others (2021 SCMR 977), this Court held that it is settled law that there is no vested right to seek regularization for employees hired on contractual basis unless there was legal and statutory basis for the same. In the case of Government of Khyber Pakhtunkhwa, Workers Welfare Board through Chairman v. Raheel Ali Gohar and others (2020 SCMR 2068), this Court held that contractual employees have no automatic right to be regularized unless the same has specifically been provided for in the law. The judgment of this Court in Civil Petitions Nos. 4504 to 4576, 4588 and 4589 of 2017 dated 08.01.2013 was also quoted in which it was held that contractual employees have no right to be regularized until there is a law provided to that effect and we are not confronted with any such legal proposition. They have to serve till the pleasure of their master and, in case of any wrongful termination, they cannot seek the reinstatement. At the best, they can only have the compensation for the wrongful termination by applying to the competent court of law. Whereas in the case of Chairman NADRA, Islamabad, through Chairman, Islamabad and another v. Muhammad Ali Shah and others (2017 SCMR 1979), it was held that till such time that the employees were regularized they would continue to be governed by the terms and conditions of the contract which they had with NADRA. The writ or constitutional jurisdiction of the High Court under Article 199 of the Constitution could not be invoked by a contractual employee of a statutory organization, such as NADRA (see Pakistan Defence Officers' Housing Authority v. Jawaid Ahmed reported as 2013 SCMR*

*1707, Pakistan Telecommunication Co. Ltd. v. Iqbal Nasir reported as PLD 2011 Supreme Court 132 and P.T.C.L. v. Masood Ahmed Bhatti reported as 2016 SCMR 1362). In the next case of Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Intizar Ali and others (2022 SCMR 472), it was held that temporary employees have no vested right to claim reinstatement/ regularization. This Court in a number of cases has held 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 in pursuance of a regular recruitment in accordance with relevant rules and against the sanctioned vacant posts, which admittedly is not the case before us. In the case of Vice-Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa and others v. Tanveer Ahmad and others (2022 PLC (C.S.) 85), it was held that a person employed on contract basis has no vested right to regularization. Similarly, in the case of Pakistan Telecommunication Company Ltd. v. Muhammad Samiullah (2021 SCMR 998), it was held that an ad hoc, temporary or contractual appointment does not create any vested right of regularization in favour of the appointee. In the case of Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others v. Sher Aman and others (2022 SCMR 406), it was held that contract employees have no vested right to be regularized. While in the case of Deputy Director Finance and Administration FATA through Additional Chief Secretary FATA, Peshawar and others v. Dr. Lal Marjan and others (2022 SCMR 566), it was held by this Court that that regularization is not a vested right but requires a statutory basis which is admittedly absent in the instant case. Where a contractual employees wishes to be regularized, he must demonstrate statutory basis for such a claim, in the absence of which, relief cannot be granted solely on the principle of "similarly placed persons".*

8. For the above-stated reasons, this petition is devoid of merits and of no legal force; hence the same is dismissed, with no order as to costs.
9. These are the reasons of our short order dated 28-09-2023.

JUDGE

JUDGE