

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-886 of 2023

(*Khair Nawaz Khan v Federation of Pakistan & others*)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul_Karim Memon

Date of hearing and judgment: 18.12.2024

Syed Shoa-un-Nabi advocate for the petitioner.

Mr. Sanaullah Noor Ghouri advocate for Respondents No. 2 to 5.

Ms. Zahra Sahar Vayani, Assistant Attorney General

Mr. Muhammad Azhar, Manager of Export Processing Zone

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: Through this constitution petition petitioner has prayed as under:

- 1. To direct Respondent No.2 to regularize the Service of the Petitioner in the light of the (105th) Board of Directors meeting held on 30.07.2013 from the date of joining by issuing the letter of Regularization along with all benefits and pay protection.*
- 2. To direct Respondent No.2 to award 4 annual increments to the petitioner same as that of other colleague appointed in (E-1) in 2013 who availed 4 increments at the time of hiring, as the petitioner worked extra, longer hours and weekends on the special assignment of taxation including tax audits.*

2. It is inter alia contended by learned counsel for the petitioner that the petitioner was initially hired by the Export Promotion Zone Authority (EPZA), as a temporary Taxation Executive in 2012. The company's board approved regularizing his position as Assistant Manager in 2013, but this decision has not been implemented, despite repeated extensions in his contractual service, the petitioner remains on a temporary contract. He seeks the court's intervention to compel the statutory company to regularize his position. Learned counsel argued that the EPZA was established in 1980. The Federal Government created rules for its operation, including the Export Processing Zones (Control of Employment) Rules 1980. The petitioner, having served 10 years at EPZA, and non-regularization of his service is discriminatory and violates his constitutional service rights. He emphasized that even in the absence of statutory service rules for EPZA, as portrayed, the general principles of employment law and constitutional provisions related to fair treatment and due process to the employees may still be applicable including the petitioner in this case and this Court may consider these factors, along with the specific circumstances of the case in terms of (105th) Board of Directors meeting held on 30.07.2013. He next argued that the Federal Public Service Commission (FPSC) conditions do not apply in the petitioner's case retroactively and that the 2013 Board of Directors' approval should have been sufficient for regularization. He cited a High

Court's judgment supporting the regularization of contract employees without further government approval. He submitted that the Federal Government's 1980 rules for EPZA are statutory, while the Board of EPZA's 1993 rules are non-statutory. According to the Supreme Court's ruling in *National Bank of Pakistan v. Abdul Qadir*, **2008 PSC 511** statutory rules supersede non-statutory ones. Therefore, the 1980 rules precede the 1993 rules, making the petitioner's constitutional petition valid. The learned counsel submitted that EPZA is a "person" under the Constitution. This classification allows for a petition against the government-owned and controlled companies. He invited our attention to the various decisions rendered by this Court as well as by the Honorable Supreme Court in the Case of *Pakistan State Oil Company Limited vs. Siddique Bakht and others* [**2018 SCMR 1181**]. The case involved the regularization of PSO employees' services, which the Supreme Court determined was not a matter of contractual terms but rather depended on the employee's length of service, requiring no statutory rules. The learned Counsel, in support of the above contentions, has also placed reliance on the case of *Pakistan Defence Housing Authority and Others v.s Lt. Col. Syed Jawaid Ahmed and other connected appeals* [**2013 SCMR 1707**]. Lastly, he relied upon the Board of Directors meeting held on 30.07.2013. An excerpt of the EPZA Board Meeting Summary is as under:-

“Item 5: Other Items
 B. Hiring Temporary Staff for the Finance Division
EPZA hired two temporary staff (Tariq Shamsi & Khalid Nawaz Khan) for Taxation & Accounts.
Monthly pay: Rs. 25,000/- each
Requires creation of two permanent Assistant Manager (E-1) positions for their confirmation.
Decision: Approved creation of permanent positions and adjusting the temporary staff upon completion of formalities.”

3. The respondent's lawyer pointed out that the petitioner was hired in 2012 as a contract Taxation Executive due to his expertise in corporate taxation. The EPZA Board approved creating two Assistant Manager (E-1) positions for him in 2013. However, due to an FIA investigation and a government order mandating FPSC recruitment for BPS-16 and above, his regularization was delayed, therefore, the petitioner lacks the right to file this case, and it is too late to bring this matter to this court. Additionally, he contends that this court lacks jurisdiction to hear cases against the EPZA having no statutory rules of service for enforcement under Article 199 of the Constitution, given judgments rendered by the Supreme Court in the cases of *Pakistan International Airline Corporation and others v Tanweer-Ur-Rehman* **PLD 2010 SC 676**, *Pakistan Telecommunication Company Limited v Muhammad Samiullah* **2021 SCMR 998**, *Vice Chancellor, Bacha Khan University Charsadda v Tanveer Ahmed and others* **2022 PLC (CS) 85**, *Province of Punjab v Prof. Dr. Javed Iqbal and*

others, **2022 PLC(CS) 947**, *Deputy Director Finance & others v Dr. Lal Maran & others* **2022 SCMR 566**, *Ikramullah Khan Yousuf Zai v Dr. Rizwanullah and others* **2022 SCMR 576** and *Naureen Naz and others v Province of /Sindh & others* **2023 PLC(CS) Note 97**. *Suisouthren Gas Company Limited v Saeed Ahmed Khoso* **2022 SCMR 1256**. He lastly prayed for the dismissal of the instant petition.

4. Ms. Zahra Sahar Vayani, Assistant Attorney General, opposes the petition and supports the arguments of the respondent's lawyers.

5. We have heard learned counsel for the parties and have perused the material available on record with their assistance and case law cited at the bar.

6. There is no dispute that the status of Export Processing Zones Authority (EPZA) is a statutory body established under the EPZA Ordinance, 1980. This means it has the power to make rules governing its operations, including rules related to the terms and conditions of service for its employees in terms of minutes of the 43rd meeting of the Board of Directors of EPZA held at Karachi on 22.07.1993, whereby item No.3 about committees' report to finalize EPZA Employees Service Rules in pursuance of section 15 of EPZA Ordinance- IV of 1980. Therefore, EPZA is a "person" under the Constitution because it is a body corporate with the capacity to sue and be sued. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of the case of Pakistan Defence Housing Authority *and Others v.s Lt. Col. Syed Jawaid Ahmed and other connected appeals* [**2013 SCMR 1707**]. However, so far as its service rules as discussed supra are concerned, we have been informed that the Federal Government's 1980 rules for EPZA are statutory, while the Board of EPZA's 1993 rules are non-statutory, allowing the Board of Directors to frame the employee's service rules as there was no need for approval by the Ministry of Industries, meaning thereby they cannot be enforced through constitutional jurisdiction in terms of law laid down by the Supreme Court.

7. So far as the status of the petitioner, there appears to be no dispute that he is an MBA-Finance with over 10 years of experience, and he has been working at EPZA on a contract basis since 2012. Despite positive performance evaluations and a 2013 Board of Directors' approval for the creation of regular posts for the petitioner, the process had been delayed due to an FIA investigation and government regulations regarding FPSC recruitment for BPS-16 and above.

8. Regularization of contractual employees requires a clear legal basis, a well-defined policy, and a fair assessment of the employee's

performance and qualifications. Without these, employees cannot claim regularization of service. Reference in this regard may be made to the cases of *Vice Chancellor Agriculture University, Peshawar v Muhammad Shafiq* 2024 SCMR 527, *Federation of Pakistan through Secretary, Ministry of Law and Justice Islamabad and another v. Fazal-e-Subhan and others* (PLD 2024 SC 515); *Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others v. Sher Aman and others* (2022 SCMR 406); and *Messrs. State Oil Company Limited v. Bakht Siddique and others* (2018 SCMR 1181).

9. The differences between a contractual employee and a regular employee are material for both the employee and the employer and, inter alia, include as:-

(i) A contractual employee is usually employed for a specific period or task, with a set end date.

(ii) Contractual employees generally do not receive the same benefits or statutory protection as regular employees.

(iii) The contractual employee is engaged for a specific project or task.

(iv) The contractual employee often has more flexibility in terms of work hours and location.

(v) A contractual employee can be less costly in the short term as it does not require benefits and other long-term financial commitments, and

(vi) Hiring regular employees is often a long-term commitment, so organizations opt for contractual workers to manage risks associated with fluctuating market demands.

10. The Supreme Court has held that there is no automatic right to regularization for contractual employees unless it is supported by law or policy. Regularization without legal backing violates principles of fairness, transparency, and meritocracy. The Supreme Court also rejected the argument of discrimination, stating that discrimination requires a legal basis for the initial benefit, which is absent in this case. Therefore, regularization cannot occur without legal support and a transparent, merit-based process.

11. The Supreme Court also emphasizes that regularization is a policy decision within the executive's purview and generally beyond judicial interference. Courts can review policies only if they violate constitutional rights. The concept of institutional autonomy, essential for effective decision-making, supports non-interference in policy matters. This autonomy is vital for public institutions to safeguard public interest and promote democratic values, including academic freedom.

12. This Court has determined that the petitioner cannot ask for regularization of his service through constitutional petition, however, it is for the respondent's competent authority to consider his case in terms of

the Board of Directors meeting held on 30.07.2013, which is subject to law.

13. In view of the above facts and circumstances of the case, the petitioner fails to make out his case for enforcement of the service rules of EPZA, under Article 199 of the Constitution of the Islamic Republic of Pakistan, therefore this petition is dismissed accordingly.

JUDGE

JUDGE

Shafi