

HIGH COURT OF SIND, CIRCUIT COURT, HYDERABAD

C.P. No.D-812 of 2018

[Muhammad Sibtain Mirza and another vs. Federation of Pakistan and others]

Present: Mr. Justice Arbab Ali Hakro
Mr. Justice Riazat Ali Sahar

Petitioners by : Mr.Mian Taj Muhammad Keerio, Advocate
Respondents by : Mr.Ghulam Sarwar Baloch, Asst. Attorney General and
Mr.Muhammad Daud, Asst. Manager SSGC (Legal Service)
Dates of Hearing : 17.3.2025
Date of Decision : 03.4.2025

ORDER

ARBAB ALI HAKRO, J:- Through this petition filed under Article 199 of the Constitution of Pakistan ('the Constitution'), the petitioners seek regularization of their services in Sui Southern Gas Company Ltd. ('SSGCL').

2. The petitioners, through the memo of the petition, assert that they were appointed as contractual employees by Sui Southern Gas Company Ltd. (SSGCL) approximately two years prior to the filing of the instant petition. They contend that they diligently performed their duties in strict compliance with the office memorandums issued by the respondents at their respective assignments, with utmost dedication and without any cause for complaint. Petitioner No. 1 is engaged at the Emergency Complaint Centre, Hyderabad (1199), on daily wages, while Petitioner No. 2 serves at the Customer Facilitation Centre, Hyderabad. They further aver that SSGCL issued Certificates of Training to them upon completion of their training. However, despite fulfilling all requisite obligations and having approached the respondents to regularise their services, they were not regularized to their respective posts. The petitioners claim that, in accordance with the policy of SSGCL, they were entitled to confirmation and regularization of their positions, yet they were unjustly deprived of this relief. Subsequently, the respondents introduced a recruitment methodology requiring employees, including the petitioners, to secure a minimum of 35%

marks in the National Testing Service (NTS) examination to qualify as successful candidates eligible for permanent absorption. However, the respondents amended the policy, raising the threshold to 60% marks in the NTS examination for eligibility. The petitioners further allege that certain respondents deliberately introduced this amended policy in 2017 to create obstacles for the petitioners, constituting a manifest violation of the law and contrary to the provisions of the Constitution of Pakistan. They also assert that some affected individuals, aggrieved by the newly introduced policy, filed Constitution Petitions Nos. D-3759 and D-4422 of 2017 before the Principal Seat of this Court at Karachi. These petitions were allowed vide judgment dated 08.12.2017, wherein the respondents were directed to consider the regularization claims of the petitioners therein. Despite this judicial pronouncement, the petitioners claim that upon reapproaching the respondents for the regularization of their services, with reference to the aforementioned judgment, their claims were denied on the pretext that an appeal had been filed by the respondents before the Supreme Court of Pakistan. Subsequently, the apex Court dismissed the appeal, affirming the judgment of this Court. Nevertheless, when the petitioners again approached the respondents for regularization, they were denied the relief unjustly. The petitioners, therefore, have filed the present petition, seeking the same relief as was granted to their colleagues through the judgments of this Court and the Supreme Court of Pakistan.

3. The notices were issued to the respondents. In response, respondents Nos. 2, 3, and 5 submitted their comments, explicitly challenging the maintainability of the petition. They contended that SSGCL, incorporated under the Companies Act, 1913 (now the Companies Ordinance, 1984), is engaged in the transmission, supply, and sale of natural gas to the provinces of Sindh and Baluchistan. They asserted that the shares of SSGCL are freely traded on all Pakistan stock exchanges and that the entity is managed by a Board of Directors elected under the provisions of the Companies Act 2017 and its Articles of Association. Accordingly, they claimed that SSGCL does not perform functions in connection with the affairs of the Federation, a Province, or a Local Authority and, as such, is not amenable to the jurisdiction of this Court under Article 199 of the Constitution. The respondents further averred that the petitioners seek to enforce

expired training program contracts through the instant constitutional petition, despite it being a settled principle of law that contractual obligations cannot be enforced through a writ petition, with reference to the reliance placed by the petitioners on the judgment passed in C.P. Nos. D-3759 and D-4422 of 2017, the respondents argued that the said judgment holds no relevance to the petitioners' case. They explained that the judgment pertained to contractual executives, whereas the present petitioners were management trainees who served SSGCL for two years. During their tenure, the petitioners failed to qualify for the NTS examination despite attempting it thrice. Consequently, the company lawfully concluded their training program upon completion of the two-year period, effective from 24.07.2016.

4. Mr. Mian Taj Muhammad Keerio, learned counsel for the petitioners, contends that they were appointed as contractual employees by SSGCL and have performed their duties diligently, strictly in accordance with the office memorandums issued by the respondents, without any complaints. He further contends that the petitioners completed their training, for which Certificates of Training were issued by SSGCL, substantiating their eligibility for regularization. Despite fulfilling all requisite criteria and approaching the respondents for regularization, the petitioners were unjustly denied confirmation of their positions, contrary to the established policy of SSGCL entitling employees to such regularization. Learned counsel further contends that the respondents introduced a recruitment policy requiring employees to achieve a minimum of 35% marks in the NTS examination for permanent absorption, which was subsequently amended to raise the threshold to 60%. He asserts that these amendments, introduced in 2017, are arbitrary, discriminatory, and violate the fundamental principles enshrined in the Constitution of Pakistan. It is contended that the judgment rendered in Constitution Petitions Nos. D-3759 and D-4422 of 2017 directed the respondents to consider the regularization claims of contractual executives. The Supreme Court upheld the High Court's judgment, yet the respondents unjustifiably denied the petitioners the same relief. Learned counsel asserts that such denial violates the principles of justice, fairness, and equality, as the petitioners are similarly situated to those granted relief by the High Court and the Supreme Court. Finally, learned counsel submits that the petitioners are entitled to regularise their services, as

they have a legitimate claim to the same relief granted to their colleagues through binding judicial precedents. He has relied upon the case law reported as PLD 2014 S.C 206 to support his contentions.

5. Mr Ghulam Sarwar Baloch, Assistant Attorney General, assisted by Mr Muhammad Daud, Assistant Manager SSGCL (Legal Service), argued that SSGCL, incorporated under the Companies Act, 1913 (now Companies Ordinance, 1984), engages in the transmission, supply, and sale of natural gas to Sindh and Baluchistan. It was contended that SSGCL's shares are freely traded on all Pakistan stock exchanges, and the entity is managed by a Board of Directors elected under the Companies Act 2017 and its Articles of Association. Therefore, SSGCL does not perform functions related to the affairs of the Federation, a Province, or a Local Authority, and is thus not amenable to this Court's jurisdiction under Article 199 of the Constitution. He contended that the Petitioners seek to enforce expired training program contracts through the constitutional petition, despite the settled principle that contractual obligations cannot be enforced through writ petitions. They challenged the relevance of the judgment in C.P. Nos. D-3759 and D-4422 of 2017, explaining that it pertained to contractual executives, whereas the petitioners were management trainees who failed to qualify for the NTS examination despite three attempts. Consequently, their training program lawfully concluded upon completion of two years on 24.07.2016, and they have no legitimate claim for regularization. He relied upon case law 2019 SCMR 648 to support his contentions.

6. Having extensively heard the learned counsel for the parties and examined the records presented before us.

7. Before examining the substantive merits of this case, it is crucial to address the preliminary objection advanced by the learned Assistant Attorney General, which questions the maintainability of the instant petition. To resolve this issue, it is prudent to seek guidance from the authoritative pronouncement rendered in the case of *Muhammad Arif and 196 others*¹. This decision, delivered by the Divisional Bench of this Court in a series of analogous petitions, dealt with various categories of petitioners seeking regularization of their services with SSGCL on the grounds that are materially comparable to the ones advanced in the present petition. In the aforementioned judgment, the Divisional Bench

¹ Muhammad Arif and 196 others vs. Federation of Pakistan through Federal Secretary, Ministry of Petroleum and Natural Resources, Government of Pakistan, Islamabad and 2 others (2023 PLC (C.S) 961)

relies on the precedent set in M/s. Sui Southern Gas Company Limited², articulated the principle as follows:

“From perusal of the aforesaid findings of the Hon'ble Supreme Court, it clearly reflects that where employment rules are non statutory in nature, the relationship of employer and employee is governed by the principle of master and servant, whereas, there appears to be no dispute that insofar as SSGCL is concerned, the rules of service are non-statutory. The only attempt which has been made by the Petitioner's Counsel for distinguishing this judgment of the Hon'ble Supreme Court is, that in the case of Sui Southern Gas Company Limited (Supra) the employee stood terminated and therefore, it was held that the Petition is not maintainable before a High Court under Article 199 of the Constitution, whereas, in the present case the petitioners are seeking regularization. However, this argument, though attractive but on the face of it, appears to be misconceived and not tenable. Once, it has been held that where the employment rules are non-statutory, and the relationship between an employee and the employer is to be governed under the principle of master and servant, then, admittedly, in that case no writ lies against an employer under Article 199 of the Constitution. Merely, for the fact that the present Petitioners seek regularization as against any dismissal or termination from service would not ipso facto make a Petition competent. At best the Petitioners before us are either contract employees or temporary employees who are seeking regularization of their services on one pretext or the other. In that case as well, a contract employee cannot seek enforcement of a contract in writ jurisdiction; nor even otherwise, a writ by a contract employee is competent against a Company duly incorporated under the Companies Act, 2017; and therefore, no distinction can be drawn insofar as the case of Sui Southern Gas Company Limited (supra) is concerned.”

8. A meticulous examination of the referenced decision rendered by the Divisional Bench of this Court highlights an extensive discussion on the principle of *master and servant* as it applies to non-statutory employment rules. It was conclusively held that no writ petition is maintainable against an employer under Article 199 of the Constitution where the employment rules are non-statutory, and the employer-

² M/s. Sui Southern Gas Company Limited vs. Saeed Ahmed Khoso (2022 SCMR 1256)

employee relationship is governed by the principle of master and servant. This position was further reinforced by the apex Court in *Saeed Ahmed Khoso's case*, which affirmed that contractual obligations are beyond the enforceability of writ jurisdiction.

9. The petitioners, while asserting diligence in performing their duties and successfully completing their training, evidenced by Certificates of Training issued by SSGCL, contend that they were unjustly denied regularization of their services. Nonetheless, the status of the petitioners as contractual employees places them within the ambit of the *master and servant* framework, limiting their recourse under constitutional jurisdiction. The reliance placed by learned counsel for the petitioners on the judgment in Constitution Petitions Nos. D-3759 and D-4422 of 2017 (*supra*) are misplaced. A careful reading of the said decision reveals a significant divergence in factual circumstances. In those petitions, the employees were appointed as contract executives, a category distinct from the present petitioners, who were appointed as management trainees. Furthermore, the employees had successfully cleared the NTS examination in the referenced cases, a critical factor underpinning the relief granted. Conversely, the petitioners in the present case have failed to meet the requisite criteria, having attempted the NTS examination multiple times without success. This cardinal distinction in factual and legal contexts vitiates the petitioners' claim for equitable relief akin to that granted in the earlier petitions. It is a settled principle that equitable relief is circumscribed by the specific factual and legal milieu of each case. Therefore, the reliance on the aforementioned judgment does not fortify the petitioners' claim and fails to provide a legal foundation for the relief sought in the instant petition.

10. The amended recruitment policy stipulating a minimum requirement of 60% marks in the NTS examination for absorption unequivocally establishes that regularization was contingent upon meeting specified performance benchmarks, a criterion the petitioners failed to satisfy. The contention that such amendments were arbitrary or discriminatory is devoid of legal substance, as the determination of recruitment and regularization standards falls squarely within the prerogative of the employer, provided it does not violate statutory or constitutional provisions. Furthermore, reliance on precedents set by this Court or the Supreme Court regarding regularization claims does

not confer enforceable rights upon the petitioners, given that such judgments were context-specific and tailored to the factual and legal circumstances of those cases. These precedents do not, and cannot, override the established principle that contractual obligations are not enforceable through writ jurisdiction.

11. In view of the foregoing discussion, the preliminary objection regarding the maintainability of the petition is sustained. The employment rules of SSGCL are non-statutory, and the relationship between the petitioners and SSGCL is governed by the principle of master and servant. Consequently, the petitioners' regularisation claims do not fall within the ambit of Article 199 of the Constitution. The petition is, therefore, dismissed as not maintainable.

JUDGE

JUDGE

AHSAN K. ABRO