

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C. P No. D- 1237 of 2023

Present:

Mr. Justice Zulfiqar Ali Sangi

Mr. Justice Abdul Hamid Bhurgri

Petitioners : Kashmir Ali S/o Illahi Bux and Muhammad Sodho S/o Muhammad Yousuf, through Mr. Achar Khan Gabol, Advocate.

Respondents: Province of Sindh, through Secretary Population Welfare Department and 04 other officials through Mr. Shehriyar Imdad Awan, Assistant Advocate General Sindh

Date of hearing : **19.03.2025**

Date of decision : **22.04.2025.**

ORDER

ABDUL HAMID BHURGRI, J:- Through the instant Constitutional Petition, the Petitioners challenge the validity of the impugned Minutes of Meeting dated 14.12.2021, convened by the Scrutiny Committee of the Population Welfare Department, Sindh.

2. The petitioners assert that they were appointed as Family Welfare Assistants (Male - BPS-05) on 20.10.2011 and 31.12.2011, respectively, by respondent No.4 in the District Population Welfare Department, Ghotki. Their identities were issued by respondents Nos.4 and 5, and they had continuously drawn salaries without any formal complaint being raised. However, vide letter dated 07.12.2016 (No.DPWO/GHT/Estt/2016-280), respondent No.4 informed respondent No.2 that their appointments exceeded the sanctioned strength, listing the petitioners at serial Nos.13 and 14. Consequently, their IDs were blocked by respondent No.5 and their salaries discontinued. Aggrieved, the petitioners instituted C.P No.D-1226/2017, which was disposed of with the following directive:-

“Accordingly, the said Committee is directed to decide the petitioners case of regularization strictly in accordance with law and after providing opportunity of hearing to the petitioners within a period of ninety (90) days under compliance report through Additional Registrar of this Court”.

The petitioners further submit that upon filing contempt proceedings for non-compliance, respondent No.1 submitted a compliance report dated 21.12.2021, enclosing the Minutes of the Scrutiny Committee Meeting dated 14.12.2021, which declared that all appointments were made beyond sanctioned posts and without

adherence to codal formalities. On this basis, the petitioners withdrew C.P No.D-1226/2017 and filed the present petition seeking the following reliefs:

- (a) *To declare that the impugned Minutes of Meeting of Scrutiny Committee held on 14.12.2021 (annexed at page No.103 of herein above petition) is illegal, null void, on the basis of mala fide and based on the discrimination as the scrutiny committee has ignored the material on record, as co-employees who were appointed along with the petitioners (through the same recruitment process) have been regularized and are drawing their salaries till yet, however, the cases of the petitioners are although at par with that of those co-employees but instead of that the cases of the petitioners for regularization of their services have not been considered by the scrutinizing committee.*
- (b) *To declare the act of respondents for not regularizing/considering the cases of the present petitioners for regularization in their services though the co-employees who had been appointed along with the present petitioners have been regularized and drawing their salaries. Hence such act of the respondents is discriminatory and against the law therefore such act of the respondents be declared as null and void and against the law.*
- (c) *To direct the respondents to consider the cases of the petitioners for regularization as their co-employees have already been considered and regularized. Hence the petitioners are entitled for the same relief because the cases of the present petitioners are at par / identical with the cases of co-employees who have been appointed along with present petitioners.*
- (d) *To award the cost of the petition.*
- (e) *To grant any other relief, which this Honourable Court may deem fit and proper under the circumstances of the petition.*

3. Learned counsel for the petitioners submits that this Court, vide order in C.P No.D-1226/2017, had directed the respondents to consider the regularization of petitioners within 90 days. Upon non-compliance, a contempt petition was filed, resulting in the submission of a compliance report dated 21.12.2021 along with Minutes of Meeting dated 14.12.2021, wherein it was held that the appointments had been made beyond sanctioned strength and without observance of codal formalities. The petitioners, therefore, withdrew the earlier petition with permission to file afresh. Counsel contends that co-employees appointed through the same recruitment process have been regularized and continue drawing salaries, while the petitioners alone have been selectively discriminated against. He emphasized that two employees Aslam and Hyder Ali listed at serial Nos.1 and 9 in the same list, remain in service under

respondent No.4. This, he argues, reflects mala fide exclusion of the petitioners, warranting judicial redress.

4. Conversely, the learned Assistant Advocate General submits that complaints regarding over-appointments in the District Population Welfare Department, Ghotki, surfaced in July/August 2016. Consequently, an inquiry was ordered via Notification No.PWDS/SO(G/DF-Ghotki-2005/3-2075/75 dated 05.01.2017. The inquiry revealed numerous irregularities, including the petitioners' appointments, which exceeded the sanctioned strength. Upon transition of the department to the current budget structure under the SAP system, the services of 27 such employees were rejected due to lack of sanctioned posts. In compliance with the Court's directions in C.Ps No.D-1226/2017 and 721/2017, a Scrutiny Committee considered the petitioners' cases. It found that recruitment had taken place without advertisement, selection committee recommendations, competent authority approval, or availability of sanctioned posts. It also noted that six out of ten applicants held domiciles of districts other than Ghotki and that petitioners had not performed any duties since 2016. The committee concluded that no codal formalities were followed. Hyder Ali's case was distinguished as he had fulfilled all requirements. The AAG concluded by citing case law to assert that contractual appointees have no vested right to regularization and prayed for dismissal of the petition.

5. We have heard learned counsel for the parties and perused the record with due care.

6. The record reflects that the petitioners were appointed on contract basis for a period of one year, commencing 20.10.2011 and 31.12.2011 respectively. No documentation is available regarding any extension of their contractual tenure, although it appears from respondents' comments that petitioners continued to work beyond expiry of the contract. Petitioners had previously approached this Court via C.P No.D-1226/2017 for regularization and release of salaries, asserting that their IDs were blocked without justification. That petition was disposed of with directions to the Scrutiny Committee. The Committee, chaired by the Secretary, Population Welfare Department, submitted its compliance report. The minutes reveal that the appointment process was fraught with serious legal infirmities. The Minutes of the meeting are reproduced as under;-

“MINUTES OF THE MEETING OF SCRUTINY COMMITTEE NO.1 FOR SCRUTINY OF CASES OF II PETITIONERS OF C.P NO.D1226/2017 AND D-721/2017 IN COMPLIANCE OF COURT ORDER.

A meeting of the Scrutiny Committee No.1 constituted by SGA&CD vide Notification No.SORI(SGA&CD)12-3/2013 dated 16.09.2014 was held on 14.12.2021 at

12:00 Noon at Secretary, Population Welfare Department Sindh Office for scrutinizing cases of II Petitioners of C.P No.D-1226/2017 and D-721/2017 in compliance of Sindh High Court Order (Annexure-I). The following members attended the Scrutiny Committee meeting.

- | | | |
|------|--|------------|
| i. | Secretary,
Population Welfare Department Sindh | (Convener) |
| ii. | Additional Secretary (Admn & Finance)
Population Welfare Department Sindh | (Member) |
| iii. | Section Officer (SR-II)
Representative / On behalf of Additional
Secretary (Services) SGA&CD | (Member) |

2. The detail of the Petitioners who were personally called before the Scrutiny Committee on 14.12.2021 are as under;-

Sr.#	Name of Petitioners	Designation	Date of Birth	Date of Appointment	Remarks
1.	Sana Zubair	FWA(F)	19.03.1986	31.12.2021	Present
2.	Rehana Begam	FWA(F)	01.01.1971	31.12.2021	Present
3.	Sodho Kalwar	FWA(M)	28.02.1975	20.10.2011	Present
4.	Kashmeer Ali Kolachi	FWA(M)	01.02.1985	31.12.2011	Present
5.	Aijaz Ali	FWA(M)	28.02.1992	15.11.2011	Present
6.	Ali Nawaz Shah	FWA(M)	01.06.1986	28.11.2011	Present
7.	Mansoor Ahmad	FWA(M)	1981	16.11.2011	Present
8.	Abdul Rehman	FWA(M)	01.01.1986	12.12.2011	Present
9.	Muhammad Amin	FWA(M)	04.03.1978	16.09.2011	Present
10.	Altaf Ahmed	FWA(M)	25.07.1986	31.12.2011	Present
11.	Ghulam Hussain	Chowkidar	01.01.1988	31.12.2011	Absent

3. The Scrutiny Committee No.1 at Provincial level called above incumbents one by one to check their Original documents i.e. Appointment Order, Service Book, Qualification Certificate, CNIC, Domicile/PRC etc. Entire appointment record was also produced by the District Population Welfare Officer Ghotki. Even the Performance Certificate of above incumbents issued by District Population Officer, Ghotki was also examined. Remarks of the Committee are as under;-

S#	Documents required	Remarks.
1.	Budget Book showing the detail of sanctioned posts	Non Existent
2.	Recruitment Rules of the Post(s)	Available
3.	Approval of Competent Authority for initiating process of recruitment.	Non Existent
4.	Approval of Competent Authority for advertising the posts	Non Existent
5.	Advertisement published in (03) leading newspapers (English/Urdu/Sindh)	Non Existent
6.	Notification of Selection Committee.	Non Existent
7.	List of Candidates applied against the posts advertised.	Non Existent
8.	List of shot listed candidates along with justification	Non Existent
9.	Recommendation / Minutes of Selection Committee	Non Existent
10.	The marks sheet awarded by member(s) of selection committee.	Non Existent
11.	Approval of Competent Authority for appointment	Non Existent
12.	Offer of Appointment letter/order	Available
13.	Proof of Salary drawn by the employee(s)	Available till September, 2016 except Altaf

		Ahmed
14.	The details / information of employees on prescribed proforma.	Available

4. The Scrutiny Committee also checked following requirements;-

S #	INFORMATION REQUIRED	REPLY OF ADMINISTRATIVE DEPARTMENT
1.	Whether academic records (degrees/diploma certificates) & other relevant documents of the contract appointment were scrutinized?	Yes
2.	Whether the appointment on contract basis was made in accordanc with the provision of the respective recruitment rules i.e. age limit, academic/technical qualification, experience and after observance of all codal formalities, including advertisement of the post in newspapers, minutes of selection committee?	Codal formalities were not fulfilled.
3.	Whether the employees were appointed by the respective appointing authority as laid down in Rule-4(1) of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974?	Yes. No Recommendations was done by the Selection Committee.
4.	Whether performance of contract employees was satisfactory?	No

Findings;

- i. During personal hearing Ten (10) petitioners out of eleven (11) appeared before Scrutiny Committee except Mr. Ghulam Hussain, Chowkidar (Copy of Attendance Sheet Annexure-II).
- ii. The Advertisement of said posts was not published.
- iii. The Recommendations of Selection Committee for appointment was not done.
- iv. The approval of Competent Authority was not taken by the then District Population Welfare Officer.
- v. The appointments were made by District Population Welfare Officer without having sanctioned strength and vacant positions.
- vi. The Domicile Certificate of 06 out of 10 appeared Petitioners are of other Districts.

S#	Name of Petitioners	Designation	Remarks
1.	Sana Zubair	FWA (F)	District Sukkur
2.	Rehana Begum	FWA (F)	District Sukkur
3.	Aijaz Ali	FWA(M)	District Sukkur
4.	Ali Nawaz Shah	FWA(M)	District Khairpur
5.	Abdul Rehman	FAW(M)	District Sukkur
6.	Altaf Ahmed	FWA(M)	District Khairpur

- vii. The Police verification certificates of incumbent were also not done.

- viii. The Petitioners are not performing their duties since 2016 (DPWO Ghotki letter is at (Annexure-III).
- ix. The complete detail of the Petitioners on Prescribed Format of SGA&CD is at (Annexure-IV)

6. Findings.

All the appointments were done beyond the sanctioned strength & no codal formalities were followed during the recruitment process.

7. The meeting ended with vote of thanks.

Sd/-
(Yar Muhammad Hakro)
Section Officer (SR-II)
Representative / On behalf of
Additional Secretary (Services)SGA&CD
(Member)

Sd/-
(Farhan Qazi)
Additional Secretary (Admn & Finance)
Population Welfare Department Sindh
(Member)

Sd/-
(Rehan Iqbal Baloch)
Secretary
Population Welfare Department Sindh
(Convener)

7. On perusal of the report, it is manifest that the recruitment was conducted in blatant disregard of statutory and procedural requirements. The petitioners' argument that similarly placed individuals were regularized, and therefore, they too deserve regularization, is untenable. It is a settled principle that for a contractual employee to claim regularization, he must establish a statutory or legal basis. Absence of such foundation, regularization cannot be sought merely on grounds of parity with others. Article 25 of the Constitution applies only where lawful benefits are unequally distributed not where benefits have been extended illegally. This Court cannot perpetuate an illegality on the plea that others have benefited likewise.

8. The petitioners' assertion of a right to regularization is also devoid of legal merit. It is trite law that contractual employees do not possess a vested right to regularization unless such entitlement flows from a statutory provision, rule, or policy. Without such legal backing, the relief cannot be granted. Regularization without legal sanction undermines principles of merit, transparency, and responsible governance, and imposes unjustified financial burdens on the public exchequer.

9. At this juncture, it must be emphasized that regularization is a matter of policy, falling within the exclusive domain of the Executive. Courts, unless confronted with a violation of fundamental rights, should refrain from intruding into policy formulation. The doctrine of institutional autonomy requires public departments to exercise discretion in staffing matters without judicial interference, barring instances of manifest illegality or unconstitutionality.

10. In the case of Vice Chancellor Agricultural University Peshawar v. Muhammad Shafiq and others (**2024 SCMR 527**), the Honourable Supreme Court has held as under;-

6. It is well settled that there is no vested right to seek regularization for employees hired on contractual basis unless there is any legal or statutory basis for the same. The process of regularization requires backing of any law, rules or policy. It should adhere to the relevant statutory provisions and government policies. In the absence of any of the same, a contractual employee cannot claim regularization. Applying the principles settled by this Court to the proposition at hand, it becomes clear that the Respondents have no automatic right to be regularized unless the same has specifically been provided for in law or policy which in the present case is not available. Any regularization without the backing of law offends the principles of fairness, transparency and meritocracy and that too at the expense of public exchequer. The Impugned Judgment has also erred in law by failing to take into account that 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 persons. Article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities. It comes into operation when some persons are granted a benefit in accordance with law but others, similarly placed and in similar circumstances, are denied that benefit. But where a person gains, or is granted, a benefit illegally, other persons cannot plead, nor can the court accept such a plea, that the same benefit must be allowed to them also in violation of law. Thus, the ground of discrimination also does not stand, because in order to establish discrimination it is important to show that the earlier act was based on law and policy, which has not been the case here. Thus, with respect to the first question raised, we are of the view that the regularization of the Respondents cannot take place without the backing of any law, rule or policy and without an open and transparent process based on an objective criteria, as discussed above.

7. At this juncture, it is underlined that the process of regularization is a policy matter and the prerogative of the Executive which cannot be ordinarily interfered with by the Courts especially in the absence of any such policy. It does not befit the courts to design or formulate policy for any institution, they can, however, judicially review a policy if it is in violation of the fundamental rights guaranteed under the Constitution. The wisdom behind non-interference of courts in policy matters is based on the concept of institutional autonomy which is defined as a degree of self-governance, necessary for effective decision making by institutions of higher education regarding their academic work, standards, management, and related activities... Institutional autonomy is usually determined by the level of capability and the right of an institution to decide its course of action about institutional policy, planning, financial and staff management, compensation, students, and academic freedom, without interference from outside authorities. The autonomy of public institutions is not just a matter of administrative convenience, but a fundamental requirement for the effective functioning of a democratic society, as public sector organizations are guardians of the public interest. Democracy, human rights and rule of law cannot become and remain a reality unless higher education institutions and staff and students, enjoy academic freedom and institutional autonomy. More recently, the concept has in its longstanding and idealized form been well captured in the Magna Charta Universitatum 2020 that states ...intellectual and moral

autonomy is the hallmark of any university and a precondition of its responsibilities to society.

8. Courts must sparingly interfere in the internal governance and affairs of educational institutions i.e., contractual employments. This is because the courts are neither equipped with such expertise, nor do they possess the relevant experience that would allow for interference in such policy matters. Under this autonomous realm, educational institutions are entitled to deference when making any decisions related to their mission. At the same time, any transgression by Courts would amount to the usurpation of the power of another, which would be against the spirit of Article 7 of the Constitution as it is not the role of the Courts to interfere in policy decisions. The judicial pronouncement of the Courts in other jurisdictions i.e., United States of America, United Kingdom and India also provide that that courts should not interfere in the internal affairs of educational institutions”.

11. In light of the foregoing legal and factual analysis, we are of the considered view that the petitioners are not entitled to the reliefs sought. Accordingly, this petition is devoid of merit and stands dismissed.

12. However, before parting with this judgment, we deem it appropriate to express serious concern over the conduct of the official respondents in making appointments without adhering to lawful procedures. The Chief Secretary, Sindh, is directed to personally look into the matter and take disciplinary and legal action against officials responsible for such irregularities, so as to prevent recurrence of such practices in public administration.

With these observations, this petition stands disposed of. Copy of this order be provided to learned Additional AG for compliance and communicate this order to the officials.

Judge

Judge

ARBROHI