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**IN THE HIGH COURT OF SINDH AT KARACHI**

Before: Mr. Justice Muhammad Ali Mazhar  
Mr. Justice Muhammad Karim Khan Agha

C.P. No.D-1185 of 2013

Ahsanullah & others  
Versus  
Federation of Pakistan & others

Date of hearing:	11.11.2015
Petitioners:	Through Mr. Malik Naeem Iqbal Advocate
Respondent No.1:	Through Mr. Sh. Liaquat Hussain, standing counsel.
Respondents No.2 to 5:	Through Mr. Moiz Ahmed Advocate.

**JUDGMENT**

**Muhammad Karim Khan Agha, J.-** This Petition has been moved by 12 footballers of the Karachi Port Trust (KPT) against the termination of their stipend contracts, without considering them for regularization, by the Respondents (Federation of Pakistan through Ministry of Ports and shipping, The Trustees of Port of Karachi, Board of Directors KPT, Manager (HR) KPT and Manager (sports) KPT. The main Prayer of the Petitioners is as follows:

1. *Declare that the termination of the petitioners vide impugned termination letters is illegal, unlawful, mala fide, arbitrary, discriminatory, without jurisdiction and in violation of principles of natural justice, equity and fairness and set aside the same.*
2. *Declare that the petitioners are regular employees of the respondent No.2 and direct the respondent No.2 to issue formal letter of regularization and pay the petitioners all benefits admissible to other employees of the respondent No.2 as per Rules.*

2 The Petitioners were all appointed by the KPT Sports Department as football players in the KPT football team between 20-7-2007 and 24-9-12 where according to their learned counsel each year they diligently performed their responsibilities continuously from the commencement of their contract until they were informed by the Respondents of their termination by letter dated 8-1-13.

3. The Petitioners were of the view that they had a legitimate expectation that they would be permanently absorbed/regularized in due course of time as had been done with other players.



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4. In a nutshell the case of the Petitioners is that they have been discriminated against as in 2012 98 players working on stipend basis were regularized by the respondents with the exception of 15 players including the Petitioners 5 of whom were allegedly not regularized because they were under age on account of the Prime Ministers Directive dated 10-12-12 communicated vide Ministry of Ports and Shipping's letter dated 20-12-12 whereby the services of all temporary employees working in Port Qasim Authority and KPT etc may be regularized. In fact rather than being regularized the Petitioners contracts were terminated as mentioned earlier by letter dated 8-1-13 with effect from 7<sup>th</sup> December 2012. The Petitioners in particular pointed out that 4 of their colleagues who had originally been terminated along with them had been reappointed by the Respondents a few weeks after their termination with an increased stipend who according to the Petitioners were less competent sportsmen than themselves.

5. In further support of their contention that the Petitioners had been discriminated against by the Respondents learned counsel for the Petitioners submitted that a number of employees who had been appointed after them in October and November 2012 on stipend basis had even been regularized within 2 or 3 months of the Prime Ministers Directive dated 10-12-12 communicated vide the Ministry of Ports and Shipping's letter dated 20-12-12 whereby the services of all temporary employees working in Port Qasim Authority and KPT etc may be regularized. The Petitioners submitted that such action was clearly discriminatory and was based on a pick and choose policy of favorites especially as no reason had even been assigned for the termination of their contracts let alone the reason why like other similarly placed contract workers they were not being regularized. According to learned counsel for the Petitioners the Respondents through their arbitrary and discriminatory conduct have violated Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan.

6. In support of their case the Petitioners placed reliance on the following authorities which tend to address the issue at hand of discrimination:

1. **Ejaz Akbar Kasi V Ministry of Information and Broadcasting** (2011 PLC (CS) 367)
2. **Hakim Ali Ujjan V Province of Sindh** (2012 PLC (CS) 127)
3. **Pakistan Telecommunications company Limited V Muhammed Zahid** (2010 SCMR 253)

7. In Particular in **Ejaz Akbar Kasi V Ministry of Information and Broadcasting** 2011 PLC (CS) 367 cited above reliance was placed on the following finding at P.368 which reads as under:

*---Arts. 184(3), 9&25---Constitutional petition before Supreme Court under Art.184(3) of the Constitution---Contentions of the petitioners (Pakistan Television employees on contract basis) were that the*



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organization be directed to protect their period of service as they have served the organization for the last more than ten years, with performance more than satisfactory, therefore, their case was clearly covered under Art.9 of the Constitution; it was further pointed out that some of the resourceful persons whose names were mentioned, who had joined the organization after petitioners' appointment and despite the fact that they were junior to the petitioners, their services had been regularized which clearly indicated that Art. 25 of the Constitution was violated---**Held, there was no doubt that policy in respect of such employees for regularization of service was to be framed by the organization, but at the same time it was to be borne in mind that there should not be any discrimination and such like employees who were on contract basis for a period of more than 10 years etc. deserved to be considered for regularization as they were working against the existing sanctioned vacancy for which budgetary allocations were also made annually out of which they were being paid regularly**---Board of Directors of the organization might not have declined the petitioners' regularization, however, it was a fact that regularization of contract employees, **if it all was to be made was to depend upon the performance**---**Petitioners, in the present case, had qualified the test and their performance as well was upto the mark which was evident that for the last more than 10 years they had been allowed to continue work against the vacancies which they were holding without any interference and there was, now, no question of performance at all as they had already shown their performance**---Petitioners, in circumstances, could not be discriminated without any cogent reason by violating the provisions of Art. 25 of the Constitution and it was the duty of the organization to protect their fundamental rights enshrined in Art.9 of the Constitution---**Petitions of the petitioners were accepted by the Supreme Court and their cases were sent to the organization for considering their cases for purpose of regularization or otherwise in view of the observations made in the present judgment.** (pp. 369, 370) A, B & C. (bold added)

8. On the other hand the learned counsel for the Respondents submitted that the Petitioners were illegally appointed in the first place because they had not been appointed by the KPT Human Resources (HR) Department as per KPT SOP's instead they had been illegally appointed by the Sports Department. Hence, they were not employees of KPT which had no formal records of them for HR purposes and as such were not entitled to any benefit of any direction given by the Prime Minister. In short the Petitioners were without any status in KPT.

9. Furthermore, appointing the Petitioners on contract gave rise to no legitimate expectation of regularization which was in the sole discretion of the employer. Learned counsel for the Respondents denied that any discrimination had been carried out against the Petitioners. The factual position was that when the illegal appointment of the Petitioners and others came to the Respondents knowledge they were all terminated and then all re considered for appointment by the HR Department as per KPT Rules, Regulations and SOP's based on the need of the Department, set eligibility requirements and merit whereby the better performing and most talented players were re appointed. The Respondents admitted that it had complied with the Prime Minister's directive of 10-12-12 and the services of all temporary employees were regularized from that date which

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excluded the Petitioners who had been illegally appointed and held no status within KPT.

10. The Respondents deny any discrimination against the Petitioners who had no vested right to be regularized and that persons in the same position as them were regularized purely on merit and in accordance with the Rules and not in any arbitrary or whimsical manner. In fact according to the Respondents the performance of the Petitioners was not meritorious and was much below those who were reappointed and as such their reappointment on merit was not justified and it would be contrary to the principles of good corporate governance to appoint undeserving and unmeritorious persons.

11. Even otherwise it was contended that persons employed under stipend contracts had absolutely no right let alone vested right to be regularized especially as stipend contracts were the sort of contracts which gave the least legal rights.

12. In support of its case learned counsel for the Respondents placed reliance on the following propositions based on the following authorities as set out below:-

**Proposition 1.** Stipend Employees are not employees, being only on stipend, hence apprentices, hence do not fall under the Ministry Notification dated 01.02.2012 for regularization.

1. **Muhammad Ashfaq V Government of Pakistan (2008 PLC (CS) 278)**
2. **Tayyab Farid V Government of Punjab (2011 PLC (CS) 53)**
3. **Regional Director Vs. Shri Anang A. Lalbhai, MD & Ors (Gujrat High Court, India)**
4. **Management of Jawahar Mills Lt V Regional Director Employees (2001 (II) LLJ 793 Madras High Court, India)**
5. **M/S. Southern Roadways Ltd vs E.S.I Corporation on 10 January, 07 Madras High Court, India**

**Proposition 2:** Stipend Employees cannot claim employment as a right or at all

6. **Matloob Hussain V Messrs Philips Electrical Industries (1978 PLC 428)**
7. **Dr. Ishaque Mohammed Shah V President NBP (2010 PLC (CS) 748)**

**Proposition 3:** If termination in accordance with employment letter, temporary employee cannot claim permanent employment

8. **Federation of Pakistan V Hashim Shah Qureshi (1987 SCMR 156)**
9. **Zia ul Haq Anjum V Chief Administrator Auqaf ( 2000 PLC (CS) 1079)**
10. **Chief Engineer A.E.B V Commissioner for Workmans Compensation Authority (1993 SCMR 2302)**



**Proposition 4:** Temporary or even contractual employment does not create any vested rights; not to be discriminated, being a vested right cannot be claimed as such by stipend employees.

11. **Government of Balochistan V Zahida Kakar (2005 SCMR 1061)**

**Proposition 5:** It is solely employers prerogative who to appoint and whose services to regularize. Only competent authority could decide merits of the employee, employee cannot ask to be heard or assessed publicly.

12. **Dr. Ikram ul Haq Tariq V Government of Pakistan (1998 SCMR 1061)**

13. **Idreesul Hasan Usmani V Government of Pakistan (1991 SCMR 113)**

13. We have heard the arguments of the learned counsel at length and have carefully perused the record and case law cited at the bar.

14. As can be seen from the case law cited by the Respondents this is not particularly relevant to the core issue in this case being that of discrimination. A majority of the citations refer to the lack of rights of contract/stipend/apprentice workers to be considered for regularization.

15. In fact, **Dr. Ikram ul Haq Tariq V Government of Pakistan 1998 SCMR 1061** may to a degree be helpful to the Petitioners in that it finds as under at P.1062:

*---Regularization of service---Petitioner was appointed as Civil Medical Practitioner in Pakistan Air Force on temporary basis for indefinite period, terminable by one month's notice from either side---Petitioner executed a service agreement and later on sought clarification as to his appointment and confirmation of service from the Authorities--- Authorities had not considered the case of regularization of his service in the letter of clarification but made him as ad hoc appointee---Validity--- Held, it was up to the Competent Authority to take the decision of regularization of appointee's service keeping in view all the facts and circumstances which course of action was just and proper---Authorities, however, were directed by Supreme Court to consider the employee's case for regularization in terms of existing policy on the subject (p. 1064) B. (bold added)*

16. At the outset it would be useful to consider the two sample types of contract in issue which are set out below:-

KARACHI PORT TRUST  
SPORTS DEPARTMENT

NO.KPT/Sports/Engage/222  
Dated: 20//7/07

Mr. Abdul Waheed  
S/o Abdul Rahim



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SUB:- ENGAGEMENT AS FOOTBALL PLAYER IN KPT.

I am directed to convey **the approval of Chairman, KPT** regarding your engagement in KPT Football Team as a Football player @ Rs.3000/- per month Lump Sum with effect from 20-7-2007. (bold added)

You are directed to report to Sports Department, KPT Sports Office at Sports Complex, on any working day.

SD/-  
MANAGER SPORTS  
K.P.T

KARACHI PORT TRUST  
SPORTS DEPARTMENT

NO.KPT/Sports/Eng-F.B/  
Dated: 08-09-2009

Mr. Amir  
Football Player  
Karachi

SUB:- ENGAGEMENT AS FOOTBALL PLAYER IN KPT TEAM

I am directed to convey **the approval of Chairperson, KPT** regarding your engagement in KPT as a Football Player on monthly stipend basis @ Rs.6,000/- (Six Thousand Only) per month Lump sum w.e.f 03-09-09.(bold added)

Your services are purely temporary and terminable at any time and without any reason.

You are directed to report to the Mr. Muhammad Razi at Sports Complex Office immediately on receipt of the letter.

SD/-  
ENGR. SHAH NAEEM ZAFAR  
MANAGER SPORTS

17. It is apparent from these contracts that their terms and conditions allowed their termination at any time though more specifically stated so in the contract dated 8-9-2009.

18. It was argued however that the contracts were terminated not on account of any particular non performance but because they had been illegally entered into, in some cases, nearly 6 years ago by the Sports Department of the Respondent rather than the HR Dept. This was despite the fact that in some cases

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these contracts had been running continuously without complaint for almost 6 years and the Respondents were honoring these contracts by paying the stipend to the concerned petitioner on the basis of the performance of the contract.

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19. The fact that the contract may have been illegally entered into was of no fault of the Petitioners who would have been extremely unlikely to know the niceties of whether a contract could be given by the Sports Department for whom they were working or the HR Department. In any event it is doubtful whether the contract had been illegally entered into as noted on the two contracts set out earlier although they may have been signed by the Manager Sports they had been approved by the Chairperson who presumably was the competent authority

20. Even if the termination of such contracts, which had been continuing in some cases for nearly 6 years, were terminated without notice and without assigning reason was legal it is doubtful whether such action is fully in consonance with the spirit of Article 3 of the Constitution especially when those contracts had been running for a long time, were of small value and in many cases the individual is dependant on his livelihood and that of his family based on such contracts. The fact that such contracts roll over for so many years without giving rise to any legitimate expectation of regularization also seems to make a mockery of a person's rights.

21. Article 3 is set out below for ease of reference:-

*3. Elimination of exploitation. The State shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principles, from each according to his ability to each according to his work.*

22. To behave as the respondents did would appear to smack of exploitation and be contrary to the spirit if not the letter of Article 3

23. At any rate notwithstanding the morality of the matter and Article 3 the Respondents terminated the contracts of all those workers appointed by the Sports Department instead of the HR Dept. This termination however is not really the issue at hand. This is because all similarly placed persons according to the Respondents also had their contracts terminated. The real issues are (a) whether when it came to choosing who to reappoint, regularize out of those terminated the Respondents acted in a fair and transparent manner and did not discriminate against the Petitioners and (b) whether when it came to regularizing 98 similarly placed persons (as opposed to terminating their contracts) the Respondents acted in a fair and transparent manner and did not discriminate against the Petitioners.

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24. In this respect Articles 4 and 25 of the Constitution are relevant which read as under:

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4. *Right of individuals to be dealt with in accordance with law, etc (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.*

(2) *In particular-*

- (a) *no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;*
- (b) *no person shall be prevented from or be hindered in doing that which is not prohibited by law; and*
- (c) *no person shall be compelled to do that which the law does not require him to do.*

25. *Equality of citizens. All citizens are equal before law and are entitled to equal protection of law.*

(2) *There shall be no discrimination on the basis of sex.*

(3) *Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.*

25. In this case the Ministry of Ports and Shipping, Government of Pakistan, vide letter dated 20.12.2012 intimated that in pursuance of Prime Minister's Directive No.PM.DIR/2255/D(imp)PAW/12 dated 10-12-2012, the Minister for Ports & Shipping has directed that the services of all temporary employees working in the Port Qasim Authority and Karachi Port Trust etc. may also be regularized immediately.

26. The KPT regularized all employees pursuant to the directive except those it deemed to not have been legally appointed through the HR Department. Although there was no discrimination on this account we find it suspicious that in so far as the Petitioners were concerned they were terminated by letters dated 8-1-13 with retrospective effect from 7-12-12 which would ensure that they could not be considered for regularization as per the Prime Ministers directive dated 10-12-12 as communicated to the Ministry of Ports and Shipping dated 20-12-12 especially as the Respondents only seemed to have woken up to the alleged illegality after, in some cases nearly 6 years, shortly after receiving the directive for regularization. It is likely that had the Prime Ministers directive not been issued the contracts of the Petitioners would not have even been considered let alone terminated. An example of a termination letter is set out below:

KARACHI PORT TRUST  
SPORTS DEPARTMENT

No.KPT/Sports/Stipend/TR/26  
Dated: 08.01.2013.

Mr. Ahsanullah  
Ex-Football Player  
KPT

SUB: Termination

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I am directed to inform you that your engagement has been terminated w.e.f 7-12-2012 vide **Manager (HR)** letter No:HR/Misc/425 dated 7-12-2012. Accordingly you **stand relieved from KPT w.e.f 7-12-2012.** (bold added)

SD/-  
MANAGER SPORTS

Copy to:-

1. General Manger (O)-----For information please.
2. Manager (HR)-----For information please.

27. Such action would seem to be a deliberate ploy to exclude as many persons as possible from regularization. If the Petitioners as a matter of law were not entitled for regularization due to the nature of their contracts then why were they terminated from 7-12-12 instead of the actual date of the letters. In fact if they were not entitled for regularization why all of a sudden was there a need to terminate them at all especially as they were playing for the KPT football team on 8-1-13 when they received their termination letters.

28. If any of the Petitioners had been underperforming on the football pitch for approx 6 years why was his contract/stipend continually renewed? The continued renewal of the stipends/contracts tend to speak to the contrary. Namely, that the performance of the Petitioners in the football team was good enough to ensure their continued engagement every year. Even otherwise to terminate the Petitioners on account of their illegal appointment by the Sports Department as opposed to the HR Department of the same Organization i.e. KPT after in some cases nearly 6 years would seem to attract the doctrine of laches and adds further suspicion to the real motives behind the sudden termination of the Petitioners after such a long period in continuous employment which seemed to be triggered by the Prime Ministers directive on regularization.

29. This apart some of the originally terminated footballers such as Mr.Tariq Ali were re-employed again as a footballer on 10-1-13 only 2 days after his 8-1-13 termination letter. Likewise, Mr.Zubiar Khan another terminated footballer was re appointed on 1-2-13 approx 3 weeks after his termination letter. There were also other cases of non footballers who also being in the same position as the Petitioners i.e. stipend workers allegedly appointed illegally by the Sports Department and terminated on 8-1-13 such as Boxer Mr. Ali Akber Shah who were shortly re appointed on 16-1-13 (8 days after his termination letter) on a temporary basis.

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30. Even otherwise 98 persons working on stipend basis like the Petitioners were regularized based on the Prime Minister's directive which has not been denied by the Respondents in their comments. Instead the Respondents have taken the position that the Petitioners who were excluded from regularization and were terminated not only had been illegally employed (as mentioned above) but also lacked merit. It is difficult to see how such an argument based on merit can be accepted when some of the terminated players were offered new contracts within only a few days of their termination. It seems unlikely that a full consideration based on merit was made of all the persons on stipend contracts who were either regularized or offered new contracts in such a short space of time especially as mentioned earlier that they had all been apparently performing satisfactorily on the KPT Football team or else where in KPT in some cases for nearly 6 years

31. The law regarding discrimination under A.25 is settled and was well set out in the case of **L.A.Sherwani V Government of Pakistan SCMR 1991 P.1041** at P.1047 which held as under:

*---Art. 25(1)---All citizens are equal before law and entitled to equal protection of law---State, however, is not prohibited to treat its citizens on the basis of a reasonable classification---Reasonable classification---Basis or criterion for classification as to avert violation of Art. 25(1).*

*Clause (1) of Article 25 of the Constitution of Pakistan (1973) enshrines the basic concept of religion of Islam. However, **this is now known as the golden principle of modern Jurisprudence**, which enjoins that all citizens are equal before law and are entitled to equal protection of law (p. 1081) O(bold added)*

*Following are the principles with regard to equal protection of law and reasonableness of classification*

- (i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike; (bold added)*
- (ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;(bold added)*
- (iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;*
- (iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances may be unreasonable in the other set of circumstances;*
- (v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant from the mischief of Article 25;*



- (vi) *that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;*
- (vii) *that in order to make a classification reasonable, it should be based—*
  - (a) *on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;(bold added)*
  - (b) *that the differentia must have rational nexus to be object sought to be achieved by such classification (p. 1086) Q*

*Principles as to classification are as under:-*

- (a) *A law may be constitutional even though it relates to a single individual if, on account of some, special circumstances, or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself.*
- (b) *There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The person, therefore, who pleads that Article 25, has been violated, must make out that not only has he been treated differently from others but he has been so treated from persons similarly circumstanced without any reasonable basis and such differential treatment has been unjustifiable made. However, it is extremely hazardous to decide the question of the constitutional validity of a provision on the basis of the supposed existence of facts by raising a presumption. Presumptions are resorted to when the matter does not admit of direct proof or when there is some practical difficulty to produce evidence to prove a particular fact;(bold added)*
- (c) *it must be presumed that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based on adequate grounds;*
- (d) *the legislature is free to recognize the degrees of harm and may confine its restriction to those cases where the need is deemed to be the clearest;*
- (e) *in order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation;*
- (f) *while good faith and knowledge of the existing conditions on the part of the Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of the constitutionality cannot be carried to the*



extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation;

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- (g) a classification need not be scientifically perfect or logically complete;
- (h) the validity of a rule has to be judged by assessing its overall effect and not by picking up exceptional cases. What the Court has to see is whether the classification made is just one taking all aspects into consideration (p. 1086) R

32. This Judgment has remained good law ever since and was followed in the cases of **Government of Balochistan V Azzizullah Memon** PLD 1993 SC P.341 and more recently by a full bench of the Hon'ble Supreme Court in the case of **Dr.Mubashir Hasan V Federation of Pakistan** (PLD 2010 SCP.265)

33. Based on the above settled law on this issue, and bearing in mind that we are in the equitable jurisdiction, based on the particular facts and circumstances of the case, we find that the Petitioners have been discriminated against by the Respondents under Article 25 as there seems to be no intelligible differentia which distinguishes those 98 stipend workers who were regularized and the Petitioners who were not and were in fact terminated. This would also be applicable to the case of the Petitioners viz a viz those similarly placed persons on contract who were terminated like the Petitioners and then re hired again by the Respondents on temporary contracts in a matter of a few days in some cases.

34. We find that based on the facts and circumstances of the case Article 4 has also been violated with respect to the Petitioners. The Respondents are therefore directed to consider the case of all the Petitioners for regularization within 2 months of this Judgment and thereafter forward a compliance report through MIT II of this Court.

Dated: 16-12-15

