

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-891 of 2018

(Ali Hayder Sultani & others 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 Order: 28.04.2025

M/s Muhammad Zahid and Bilawal Khan advocate for the petitioners.
Mr. Muhammad Humayun advocate for the respondent No.2
Ms. Wajiha Mehdi, Additional Attorney General

ORDER

MUHAMMAD KARIM KHAN AGHA, J :- The learned counsel for the petitioners presents a case where three Petitioners (Muhammad Muslim, Zubair Ahmed, and Ali Hyder Sultani) are seeking regularization of their employment in Security Papers Limited (SPL). They claim to have been working for (SPL) for 5, 3, and 6 years, respectively, in various temporary positions. They submitted that despite promises of permanent employment and satisfactory service, SPL has not regularized them, citing nepotism as a reason and violating their fundamental rights. The Petitioners' counsel referred to government memorandam and the cases of *Syed Muhammad Shoaib v Federation of Pakistan & others* **2017 PLC (CS) 1020** and one reported Judgment passed by this Court on *16.05.2018 in C.P. No. D-5871 of 2014 & others* regarding the regularization of contract employees in other organizations, arguing that SPL is unfairly discriminating against them. He also mentioned a similar case where this Court allowed a petition for regularization against SPL, a decision upheld by the Supreme Court. Learned counsel prayed for this court to direct SPL to issue regularization letters with full back benefits and restrain SPL from taking any adverse action against them.

2. The respondent No. 3, West Synergy (Pvt.) Ltd, through the comments submitted that the petition against SPL is not maintainable because the Petitioners are actually their employees, i.e., third-party contractors, working as Supervisors and a Relationship Manager within West Synergy.

3. The learned counsel for the Respondent No. 2, Security Papers Limited, vehemently denied the Petitioners' claims of being their employees. SPL counsel stated that there is no employer-employee relationship between them and the Petitioners. He clarified that the Petitioners are employees of Respondent No. 3, East West Synergy (Pvt.) Limited, with whom SPL has had a contractual agreement since 2015 for the provision of services. According to SPL counsel, East West Synergy employed its workforce, including the Petitioners, and deputed

them to SPL's premises. SPL counsel emphasized that Respondent No. 3 is responsible for the Petitioners' salaries and their management. Therefore, SPL requested the dismissal of the petition against them. In support of his contentions, he relied upon the case of Zeeshan Usmani and others v Federation of Pakistan & others **2021 PLC (CS) 59**.

4. We have heard the learned counsel for the parties and perused the record with their assistance.

5. The central and recurring legal battle involves determining if workers are direct employees of a company or employees of an outsourced contractor. Employees often put forward the analogy that outsourcing agreements are a deceptive tactic to bypass labor laws, giving employers an unfair advantage despite the company's actual control and supervision. Conversely, employers uphold these agreements, denying a direct employment relationship.

6. The core issue hinges on whether an agreement is a genuine contract or a "sham" designed to evade legal duties. To resolve this, the Supreme court in the case of IFFCO Pakistan Vs Ghulam Murtaza and others (**2024 SCMR 1548**) has settled the issue once for all by observing that key factors must be examined: the extent of the company's control and supervision over the workers, the independent contractor's ongoing control, financial responsibilities, and who provides essential resources like plant, machinery, premises, and raw materials. These elements serve as the primary indicators to differentiate between a direct employee and one employed through an independent contractor.

7. Based on the Supreme Court's rulings in Fauji Fertilizer (**2013 SCMR 1253**), Abdul Ghaffoor (2018 SCMR 157), State Oil (**2018 SCMR 1181**), and Sui Southern Gas (**2020 PLC 153**). To tell a real outsourcing situation from a fake one designed to avoid employer responsibilities, courts can look beyond the paperwork and focus on the actual working relationship. Key questions for consideration are whether the company controls *how* the contractor's employees do their jobs. Are these workers essential to the company's main business, supervised by the company, and working on its property (especially in manufacturing)? Is the work they perform ongoing or permanent? Have these individuals been working for the company for a long time, even if through a series of short contracts? Does the company directly pay them? Is the "contractor" label simply a way to unfairly deny workers their rights? Have similar workers hired through contractors been made permanent employees in the past? Ultimately, the Supreme Court examined the *reality* of the work in the aforesaid judgments.

8. Is Security Papers Limited (SPL) a statutory body having statutory rules of service?

9. Security Papers Limited (SPL) is not a statutory body governed by traditional statutory service rules. Incorporated in 1965 and listed on the PSX, it operates under the Companies Act and SECP/PSX regulations instead of a specific statute governing its operations and service conditions. Although it was recently classified as a Public Sector Company for corporate governance, this classification does not imply that it is established by a statute with its own service rules. A court noted that SPL has no statutory service rules, defining the employer-employee relationship as "Master and Servant." Therefore, despite its public sector classification for governance, the terms of employment at SPL are primarily based on contracts and internal policies within general labor and corporate laws.

10. The third question is whether the services of the petitioners could be regularized in Security Papers Limited.

11. The court is of the considered view that "regularization" means immediate, permanent hiring of qualified contract employees as per the law, and without legal provisions, it is not possible. While the Constitution (Articles 4, 3, and 38) guarantees legal protection, equality, fair labor practices, and improved living standards, the petitioners' counsel has not presented any rules allowing the respondent (No. 2) to regularize their services. Although the respondents admit the petitioners work for them, the court is of the view that without a specific law, rule, or policy for regularization, it cannot assist the petitioners at this stage. This court leaves it to the respondent (No. 2) to consider their cases for suitability according to their own rules and regulations. Consequently, the petition is deemed not maintainable under Article 199 of the Constitution and is dismissed along with any pending applications.

Head of Constitutional Benches

JUDGE