

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO
C.P.No.D-281 of 2022
(Sarfaraz Ali and Ors v/s. V.C. SMBBMU, Larkana and Ors)

Date	Order with signature of judge
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Before:

Mr. Justice Muhammad Saleem Jessar.

Mr. Justice Nisar Ahmed Bhanbhro.

1. For orders on office objections at flag "A".
2. For orders on maintainability of main case.

Petitioners: Sarfaraz Ali and 8 others
Through Mr. Muhammad Ali Jagirani, Advocate.

Respondents No.1-5: SMBBMU
Through Mr. Sarfaraz Ali M. Abbasi, Advocate.

Respondent No.6: Secretary Law Government of Sindh
Through Mr. Liaquat Ali Shar, Additional A. G Sindh.

Date of Hearing: 15.05.2025

Date of Order: 15.05.2025

ORDER

Nisar Ahmed Bhanbhro J.- Through this petition, the petitioners have claimed following relief(s):

- a. That this Honourable Court may graciously be pleased to direct the respondents to pay and release the monthly pay/salary to the petitioners with immediate effect i.e. arrears from October 2021 and to pay their monthly salary regularly in future and also regularize their service.
- b. To declare the action of respondents for non payment of salaries to petitioners, and their threatened action to discontinue the services of petitioners null and void.

2. The facts in brief leading to file this constitution petition are that the petitioners are working as Attendant, Driver, Junior Clerk and Chowkidar in a project initiated by Higher Education Commission (HEC) in Shaheed Muhtarman Benazir Bhutto Medical University (SMBBMU), Larkana. The petitioners were appointed after due process of law in the years 2011, 2012 and 2013. They have discharged their duties diligently and efficiently in the office of Project Director, SMBBMU, Larkana and working against the sanctioned regular positions, but they have not been regularized since the date of their appointments despite of the recommendations of the Human Resources Department, SMBBMU, Larkana however, their contracts were extended from time to time and lastly were extended on 01.02.2017, but till today despite of availability of vacancies, the respondents have not considered the case of the petitioners for regularization in service. The Salaries of the Petitioners have also been stopped since the month of October 2021, without assigning any reasons thereof.

3. On notice, Respondent SMMBMU filed its reply and contended that the petitioners were appointed under a project HEC and on completion of said project the services of the Petitioners were no more required by the university. Services of the Petitioners were on contract, which were liable to be terminated at any time without assigning any reason or issuance of advance notice; therefore, they have been laid off, and cannot be taken back into service. The petition was not maintainable as the petitioners had filed C.P.No.D-1100/2016, which was disposed of with directions to consider the case of Petitioners for appointment against permanent vacancies when advertised. The Petition is hit under doctrine of Res Judicata and liable to dismissal.

4. Mr. Mohammed Ali Jagirani, Learned Counsel for the Petitioners contends that the Petitioners are working in project since 2011 and this fact has not been denied by the Respondents. In intervening period, Legislative Assembly of Sindh enacted Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, wherein under Section 3 of the said Act all the employees working on contract, adhoc or in project service stood regularized. He contended that the Petitioners are working against permanent positions, since 2011 and in year 2016 University authorities issued an advertisement for recruitment to various positions, the Petitioners had applied therein but they were not considered. He contended that under the similar circumstance one Mohammed Ali Shaikh who was appointed on contract with the Petitioners in the same project has been inducted into regular service by the University, but discriminatory treatment has been meted out to the Petitioners, which tantamount to infringement of fundamental rights of the Petitioners. He contended that the Petitioners filed CPD No 1100 of 2016 wherein the directions were issued to the University to consider Petitioners for regular employment but to no effect, hence they have filed this petition as the University authorities have withheld their salaries for no reasons.

5. Mr Sarfaraz Ali Abassi Learned counsel for University so assisted by learned Additional Advocate General, Sindh contended that the Petitioners were contract employees, their services were not permanent and subject to the continuity of the project and on completion of project, they were informed that their services were not required by the University. The Petitioners were no more in service, hence their services cannot be regularized and salaries cannot be paid to them. They prayed that the petition is not maintainable and liable to be dismissed being hit by doctrine of Res Judicata as this the second Petition filed by the Petitioners on the same subject.

6. Heard Arguments, Perused material on record.

7. Scanning of the record reveals that the Petitioners had filed C.P.No.D-1100/2016, wherein they had prayed that the Respondents may be directed to consider their case for appointment against the regular positions from the project. The petition was disposed of vide order dated 20.09.2017. The Order of the Court is reproduced for the sake of convenience.

“This is a petition, wherein the project employees of Shaheed Mohtarama Benazir Bhutto Medical University, Larkana have sought for the prayer that they may be regularized from project posts to permanent posts. The comments have been filed by the respondents No.1 to 5/SMBBMU, Larkana.

Learned counsel for respondents No.1 to 5 submits that the petitioners are still in project employment which is still continuing. To this proposition, learned counsel for the petitioners is satisfied and seeks disposal of instant petition.

Accordingly, this petition is disposed of with observations that if any permanent vacancy is advertised, the petitioners may apply for such post and

SMBBM University shall consider their applications in accordance with law and if they are found fit, their appointments may be considered for the said permanent posts.

With these observations, instant petition is disposed of along with listed application.”

8. When confronted whether the orders passed earlier by this Court are complied with by the University, Learned Counsel for the University asserted that no fresh advertisement has been issued and University was overburdened. This cannot be an excuse to deny petitioners a right which accrued to them since the date of their initial appointment in the project of University. Instead of complying with Court orders, the Respondent University after the passage of sometime discontinued the salaries of Petitioners, without assigning any reasons. The Petitioners therefore filed instant petition, with a prayer that the Respondent University may be directed to release salaries and regularize services. The petitioners are working in the University since year 2011 as Junior Clerks, Drivers, Chowkidars and Attendant as such their employment under the law does not require any specific technical qualification, so that they may be dragged for a period of more than 14 years. The University administration should have preferred petitioners to others on account of their experience particularly when to the own admission of Learned Counsel for the University that 415 new employees were inducted in the regular service during the intervening and many of the newly inductees included those who were working with Petitioners under the same project. The Petitioners have worked with the University under its project for last more than 14 years but for no reasons their jobs have been left unattended. In the earlier round of litigation, University was directed to consider case of the Petitioners for appointment against regular positions, however, said directions issued by this Court seems to have been flouted, as University has not taken any efforts for appointment of these low salaried employees, who are only nine in number. When confronted that as to whether University has made appointment during intervening period from date of appointment of the Petitioners up till now, Learned Counsel for University frankly conceded that almost 415 persons were recruited against ministerial positions that included Attendant, Chowkidar, Junior Clerk and Driver. Astonishingly these all recruitments have been made until year 2016. University has suck the blood of the Petitioners, making them ineligible to apply anywhere for the job on account of age restrictions and this act on the part of University cannot be lauded, as it falls within the definition of exploitation which is impermissible under the law and article 11 of the Constitution obligates the state functionary to shun exploitation by all means.

9. At the time of the earlier advertisement, the Petitioners were before this Court they had filed C.P.No.D-1100/2016, they were well aware that University Administration would not consider them for permanent employment; therefore, they sought indulgence of this Court seeking directions for regular appointment. Petitioners are Grade-1, 2 and 4 employees, their continuous service for about 14 years is sufficient to induct them into regular service on merits as excepting the condition of residence in the local area no other condition is prescribed under the law to take a person in job of Naib Qasi, Chokidar (watchman) and attendant. The University Administration did not own its responsibility to secure the future of Petitioners and appointed some other persons/blue eyed boys definitely under extraneous consideration.

10. It is also a matter of record that the services of the Petitioners were found satisfactory, at no point of time during the contract service of 14 years they are accused of misconduct, on the contrary job evaluation reports furnished by the Petitioners depict that they have been recommended for induction into regular service time and again by the Human Resources

Department. The Supervisor of the Project in its job Performance Evaluation Form forwarded to the University made recommendations in favor of the Petitioner in the following manner:

“He is working since 09 years. His performance is good and recommended for extension/regularization.

“Signature of the Supervisor/Head”.

This recommendation was sufficient to consider and take the Petitioners into a regular service on account of their experience, satisfactory performance over past one decade, which were rendered nowhere else, but in the University.

11. The Provincial Assembly of Sindh enacted Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, wherein all the employees working under the projects were directed to be regularized and to admission of the University itself that the Petitioners were working under the project funded by HEC since 2011. By virtue of Section 3 of the Act, the Petitioners stood regularized automatically, but they were not considered. Under the similar circumstances one Muhamad Ali Shaikh was taken into regular service, when confronted with this factual position, Learned Counsel for the University frankly conceded that said Mohammed Ali Shaikh was taken into regular service in the Engineering wing, he was grade 17 employee and did not fall under the category of Petitioners. We failed to understand, how the case of Petitioners can be distinguished from said Muhammad Ali Shaikh when all of them were appointed under HEC Project and Muhammad Ali Shaikh was considered for regular services. The Petitioners were required to be given similar treatment as meted out to other employees, no doubt law permits the state owned Organizations to do classification, to place employees in different categories, but the classification should be reasonable and rationale. No reasons or rationales are demonstrated by the University to keep and classify Petitioners on different footings. Muhammad Ali Shaikh the employee of University who was taken into regular service in grade 17 has filed Petition No 153 of 2025 against the University seeking promotion to next grade, the said petition is also fixed today. This lends support to the contention of Petitioners that they have not been treated at par, in violation of law and discriminated without sufficient reasoning

12. Record sufficiently demonstrates that this is a case of serious exploitation, discrimination and dealing the persons beyond the provisions of law offending the fundamental rights of the Petitioners guaranteed under Articles 4, 9, 11, 18 and 25 of the Constitution, Islamic Republic of Pakistan, 1973. This Court being the custodian of the rights of individuals cannot shut its eyes on such actions beyond the bounds of law at the hands of an entity discharging its functions in connection with the affairs of the Province of Sindh. This gloomy and sad state of affairs wherein a person desirous of seeking job of Naib Qasid does not find support from the authorities in the helm of affairs despite of rendering efficient services and availability of vacancies against permanent positions. The highhandedness of the University administration is evident from the fact that despite of their undertakings furnished in earlier round of litigation some other persons were taken into job and Petitioners were rendered helpless.

13. The Petitioners need to be treated at par and their future cannot be left hanging at the unclean hands of their superiors. They require the aid of Court to seek implementation of the earlier orders passed in CPD 1100 of 2016 for the safe administration of justice. They should not be compelled to open a new spate of litigation time and again. In our considered opinion, the Petitioners have made out a case for indulgence of this Court under its writ jurisdiction to ensure safeguard and protection of their fundamental rights. Accordingly, this petition is

allowed. The Respondent University is directed to take the Petitioners into regular service after adopting due process of law and all the Petitioners namely 1. Sarfaraz Ali Lund (Attendant), 2. Abdul Jabbar Brohi (Driver), 3. Mumtaz Ali Jagirani (Driver), 4. Shahabuddin Mangi (Junior Clerk), 5. Abdul Wahab Soomro (Chowkidar), 6. Irshad Junejo (Chowkidar), 7. Muhabbat Ali Shaikh (Chowkidar), 8. Shamsuddin Soomro (Chowkidar) and 9. Gulzar Hussain Abro (Driver) shall be accommodated/inducted in the regular service if the positions are lying vacant and in case no position at the moment is lying vacant, the Registrar of the University shall place the matter before Syndicate of the University for Sanction of New Establishment for accommodating the Petitioners. Till the finalization of this process the Petitioners shall continue working with the University and their salaries shall not be stopped. The University shall complete this process within a period of six months from today.

With these observations this petition stands disposed of with pending applications if any.

Judge

Judge

Manzoor