

IN THE HIGH COURT OF SINDH KARACHI

Before:

Justice Muhammad Saleem Jessar

Justice Nisar Ahmed Bhanbhro

CP No.D- 5115 of 2016

(Izhar ul Haq Junejo v. Province of Sindh and 02 others)

CP No.D- 4516 of 2017

(Dr Sehrish Ishfaque & others v. Province of Sindh and 04 others)

CP No.D-4271 of 2018

(Akram Basheer & others v. Province of Sindh and 03 others)

CP No.D-2732 of 2018

(Tajamul Hassan Memon & others v. Province of Sindh and 03 others)

CP No.D-9016 of 2018

(Khurram Rauf Khan v. Province of Sindh and 02 others)

CP No.D- 7376 of 2019

(Abdullah Chandion v. Province of Sindh and 02 others)

CP No.D- 4292 of 2020

(Dr. Gul Hassan Kutrio v. Province of Sindh and 02 others)

Date of hearing

& order: 12.05.2026

Date of Reasons: 18.05.2026

For Petitioners

C. P No D- 2732 of 2018

CP No D- 6229 of 2017

Through Mr. M.M Aqil Awan, Advocate

C.P No.D-5115 of 2016

C.P No.D-4271 of 2018

C.P No. D- 7376 of 2019

Through Mr. Talha Abbasi, Advocate

C.P No.D-4516 of 2017

C.P No D- 9016 of 2018

Through Mr. Muhammad Nasir Advocate

Respondents

Province of Sindh

Through Mr Sageer Ahmed Abbasi,
Assistant Advocate General, Sindh

Dr Majeed Hakeem Dhamrah Project
Director BBSYDP Live stock & Fisheries
Department, Government of Sindh

ORDER

Nisar Ahmed Bhanbhro, J. Through this Common Order, the fate of captioned petitions is proposed to be decided, as they involve a common question of law.

2. In the earlier round these petitions along with a bunch of petitions were dismissed by a Learned Division Bench of this Court vide order dated 08.04.2021.

3. Petitioners assailed the order passed by this Court before Hon'ble Supreme Court of Pakistan through Civil Appeals No 26 - K of 2021 & others. Honorable Supreme Court of Pakistan vide its order dated 29.12.2023 set aside the order dated 08.04.2021 passed by this Court and remanded the petitions back to this Court for deciding afresh. For the sake of convenience, para 16 and 17 of the order dated 29.12.2023 of Supreme Court of Pakistan is reproduced below:

"16. In fact, the case before the High Court was to consider whether the petitioners are entitled for regularization of their services and obviously, if no case was made out, the petitions could have been dismissed. Here, however, not only were the petitions dismissed but Karachi the law was also declared ultra vires which disturbed and traumatized regularized since 2013 by the Government of Sindh in its different departments/ministries under the same law. The impugned judgment has deprived a long chain of employees and virtually made them jobless without providing any right of audience to them which was grave violation of Article 10-A of the Constitution and also amounts to the contravention of the principle of natural justice and due process of law. In the case of Jameel Qadir and another Vs Government of Balochistan, Local Government, Rural Development and Agrovilles Department, Quetta through Secretary and others (2023 SCMR 1919), it was held by this Court that the term jurisdiction in the legal parlance means the command conferred to the Courts by law and Constitution to adjudicate matters between the parties. The jurisdiction of every Court is delineated and established to adhere to and pass legal orders. Transgressing or overriding the boundary of its jurisdiction and authority annuls and invalidates the judgments and orders. The Courts commit judicial overreach when they exercise powers beyond the compass of powers and jurisdiction entrusted to the courts through the law and the Constitution. We are again making endeavors to recapitulate the legal position with the fond hope that the High Court would keep in mind the legal position and the law declared by this court which is crystallized by a catena of decisions as under:-

1. Dr. Imran Khattak v Ms. Sofia Waqar Khattak PSD to the Chief Justice (2014 SCMR 122). It be noted that no Judge of a High Court or the Supreme Court is robed, crowned and sceptered as a King to do

whatever suits his whim and caprice In al eventualities, he is bound to abide by and adhere to the law and the Constitution. Yes, in certain cases a High Court on receipt of a letter or an application of an aggrieved person can convert it into a constitutional petition and exercise its Constitutional jurisdiction but not in the matters where the Constitution and the law of the land have provided a forum and a machinery for their settlement It thus follows that the framers of the Constitution of 1962 and those of 1973, inasmuch as it can be gathered from the words used in Article 98 of the former and Article 199 of the latter, never intended to confer Suo Motu jurisdiction on a High Court Article 175(2) of the Constitution leaves no ambiguity by providing that 'no Court shall have jurisdiction, save as is or may be conferred on it by the Constitution or by or under any law We would be offending the very words used in the Article by reading exercise of Suo Motu jurisdiction in it which cannot be read even if we stretch them to any extreme

2. Jahanzaib Malik v. Balochistan Public Procurement Regulatory Authority thr. Chairman Board of Directors and others (2018 SCMR 414) in this case, two years contract of the petitioner was expired on 08.04.2015 and he was granted a further extension of 2 years but said office order was not challenged by respondent No.3. The Court held that by taking Suo Motu Notice of such extension, the High Court appears to have exceeded its jurisdiction for reasons which are not legally sustainable.

3. Mian Muhammad Nawaz Sharif and others v. Muhammad Habib Wahab Al-Khairi and others (2000 SCMR 1046). It is true that in the order passed by the learned ICA. Bench, it has been held that the learned Single Judge had no suo motu jurisdiction under Article 199 of the Constitution and therefore, the proceedings initiated by him in exercise of his power under Article 199 of the Constitution in respect of the alleged illegal allotment of plots as well as mismanagement of Federal Baitul Maal Funds, were wholly without jurisdiction and were accordingly quashed.

4. Raja Muhammad Nadeem v. The State and another (PLD 2020 SC 282). On the higher plane, High Court had no jurisdiction under the Constitution to take up the issue suo motu. Article 199 of the Constitution envisages an aggrieved person; there was none before the Court besides the bar of alternate remedy.

5. Mian Irfan Bashir v. The Deputy Commissioner, Lahore and others (PLD 2021 SC 571) This Court held that suo motu exercise of judicial power not available to the High Court under the Constitution. Such exercise of judicial power by a judge passes for judicial overreach ie, exercise of judicial power without any backing of law and clearly interfering in and encroaching on the legislative and executive domain.

6. M/s Sadiq Poultry (Pvt.) Ltd, v. Government of Khyber Pakhtunkhwa thr. Chief Secretary and others (PLD 2023 SO 236). It is settled law that the High Court does not have suo motu jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan (the "Constitution") as compared to this Court which has

been conferred exclusive jurisdiction in the matter by the Constitution in terms of Article 184(3) The learned High Court could only pass appropriate and lawful orders on matters which have a direct nexus with the lis before it and could not overstep or digress therefrom.

17. The aforementioned Civil Appeals along with connected Civil Miscellaneous Applications No. 7436 & 3498/2021, moved for seeking permission to file and argue two CPLAs, were fixed on 29 12 2023, when the office was directed to number the said petitions and for the reasons to be followed, the Civil Appeals were allowed as well as the Civil Petitions were also converted into appeals and allowed As a consequence thereof, the impugned judgment of the Sindh High Court dated 08.04.2021 was set aside and the matter was remanded to the High Court for deciding the Constitution Petitions afresh after providing opportunity of hearing to all the parties. Above are the reasons assigned in support of our short order."

4. Per ratio of the erstwhile judgment rendered by Honorable Supreme Court, referred herein-above, this Court has been burdened to determine whether a case in favor of Petitioners for regularization in service is made out or not.

5. It is the case of Petitioners, that they were appointed against permanent posts; in projects in connection with the affairs of the province of Sindh, hence, they were entitled to all consequential benefits as permanent employees from the date of their initial appointment. Alternatively, they entreated that the respondents may be directed to treat the petitioners as regular employees in their respective grades from the date of promulgation of the **Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 (Act-2013)**, **Sindh Regularization of Doctors on Adhoc and Contract Act, 2018** and **Sindh Regularization of Veterinary Doctors Act, 2018 (Act-2018)**. Failure of the respondents to regularize the services of petitioners was an act ab initio illegal, arbitrary, fanciful, discriminatory and unconstitutional, therefore, they may directed to regularize the service of Petitioners.

6. Mr. M. Aqil Awan Learned counsel for the petitioners in C.P No.D-2732/2018 and CPD No 6229/2017 argued the matter and other learned Counsel in connected petitions relied upon his assertions. He contended that Petitioners were appointed in service through due process of law. He contended that Petitioners were working in projects related to the affairs of province of Sindh and by operation of Section 3 of the **Act-2013**, and **Act - 2018**, they stood regularized in service and a formal notification was required to be issued by Respondent departments in that regard. He

contended that Government has granted such benefit to other similarly placed employees and non regularization of services of Petitioners was an act of discrimination. He prayed to allow the petitions.

7. Learned A.A.-G contended that petitioners were performing their services on contract basis in different projects. He further contended that Petitioners joined service on contract with their sweet will, the nature of employment of petitioners was temporary and contractual one. Furthermore petitioners were aware that their services are being governed under Employment Agreement signed by them, hence they cannot claim regularization. He prayed to dismiss the petitions.

8. Heard learned counsel for the parties and perused the material made available before us on record.

9. Scanning of record reveals that petitioners were appointed on contract basis through a competitive process, in various projects of Government of Sindh. Since induction in service Petitioners were working in the projects and their contract of service was extended from time to time. Perusal of the appointment letters of Petitioners reflected that their services were governed under the provisions of Sindh Civil Servants Act 1973 (**SCSA**). The Petitioners were subjected to the service discipline under the provisions of Sindh Civil Servants (Efficiency and Discipline) Rules 1973, (**E&D Rules**). Since the services of petitioners were hired on contract basis which they agreed to, therefore, were precluded to lay claim of regularization, unless backed by any statutory regulation.

10. It is by now a settled principle, that in absence of any statutory or legal backing, an employee cannot claim regularization in service as a matter of right. In the absence of such a framework, courts cannot impose any obligation on the government to regularize the services of employees on any ground including efflux of time. An employee who accepts terms and conditions of service on contract cannot claim regularization as his fundamental right and knock on the door of Courts for the same purpose. The process of appointment is an internal affair of the department. If the department takes service of an employee on contract basis, then the claim of regularization cannot be accepted unless backed by the statute or any

provision of law. This view is fortified by the judgment of Honorable Supreme Court, in the case of VICE-CHANCELLOR AGRICULTURE UNIVERSITY, PESHAWAR and others Versus MUHAMMAD SHAFIQ and others reported as 2024 S C M R 527.

11. For the general benefit of employees working on contract or adhoc basis, in government departments and projects related to Government of Sindh, the Provincial Assembly enacted "The Sindh (Regularization of Contract and Adhoc Employees), Act 2013" (Act-2013). The preamble of the above referred law makes it clear that it was promulgated to provide for regularization of the services of certain employees appointed on ad hoc and contract basis or otherwise (excluding the employees appointed on daily-wages and work-charged basis). In Clause (b) of section 2, (definition clause) "**Appointment of an employee**" means the appointment of a duly qualified employee made on ad hoc and contract basis or otherwise (excluding the appointment on daily-wages and work-charged basis). In Clause (d), "**employee**" means a person appointed to a post on ad hoc and contract basis or otherwise (excluding the employee appointed on daily-wages and work-charged basis). While Clause (e) defines "**the post**" which means the post held by an employee in Government department and includes the post in a Project of such department in connection with the affairs of the Province. In compliance to such beneficial legislation services of the thousands of employees were regularized in terms of the provisions of Section 3 of the Act, who were working in grade 1 to 18 in various departments and projects of the Government of Sindh. Section 3 of the Act-2013 contained a non obstante clause, and reads as under:

3. Notwithstanding anything contained in the Act or rules made thereunder or any decree, order or judgment of a court, but subject to other provisions of this Act, an employee appointed on adhoc and contract basis or otherwise (excluding the employee appointed on daily-wages and work-charged basis), against the post in BS-1 to BS-18 or equivalent basic scales, who is otherwise eligible for appointment on such post and is in service in the Government department and it's project in connection with the affairs of the Province, immediately before the commencement of this Act, shall be deemed to have been validly appointed on regular basis.

12. Since Petitioners claim the benefit of Act-2013, & Ac-2018, so let us first clarify in view of definition clause made in section (2) of the Act-2013 that benefit of this Act will go to all ad hoc and contract employees and employees include the employees performing their duties on a Project of such department in connection with affairs of the Province. Now main section under the Act is section 3 which provides and or stipulates the criterion for regularization which envisages in well-defined terms that an employee who has been appointed on ad hoc and contract basis against the post in BS-1 to BS-18 or equivalent basic scales, who is otherwise eligible for appointment on such post and is in service in the Government department and its project in connection with the affairs of the Province, immediately before the commencement of this Act, shall be deemed to have been validly appointed on regular basis. It is the responsibility of Government to apply and allow the benefit to all employees placed in equal and similar circumstances without any discrimination and not to pick and choose the employees for conferring the benefit or advantage of this law. The law under discussion is a beneficial statute proclaimed with the sole aim to provide and secure the rights of a particular category or class of employees for their betterment and to safeguard and preserve the contractual or ad hoc employment into a permanency. The letter of law enshrines that the efforts should be made to bequeath the benefit and its advantage to all the deserving employees in rem rather than to seek ways and means to deprive them on one or the other pretexts which is against the norms of good governance.

13. Appointment in the civil service was purely a prerogative of the concerned department. The process of recruitment depends upon availability of resources, need of the employees whether on regular or temporary basis. Appointment in civil service is basically a policy matter which falls squarely within the domain of "Executive", any interference in the policy issues may amount to usurpation of the executive powers and every possible effort be made by the Courts of law to avoid encroaching upon the exclusive domain of the executives. Pronouncements of Honorable Supreme Court on issue of regularization of services of employees underscored that regularization is not merely a procedural formality but a prerogative of the executive, reflecting its autonomy in determining institutional priorities and resource

allocation, therefore, it should not be interfered with under the writ jurisdiction of this Court. This view is fortified from the dicta laid down by the Honorable Supreme Court of Pakistan in the case of MOHSIN RAZA GONDAL and others Versus SARDAR MAHMOOD and others reported as 2025 S C M R 104.

14. The Sindh Civil Servants Act, 1973 (SCSA) is the governing law regulating the recruitment in civil service in the province of Sindh, whereas the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 ('APT Rules') framed under section 25 of the SCSA govern the method of appointment. Rule 3 of the APT Rules empowers administrative department to determine the method of appointment, qualifications and other conditions applicable to a post in consultation with the services department. Rule 11 of the APT Rules provides that initial appointment to a post in basic pay scales 1 to 15 and equivalent shall be made on the recommendation of Departmental Selection Committee after the vacancies have been advertised in newspapers. Rule 10 further provides for filling of the vacancies in grade 16 and above through Sindh Public Service Commission (SPSC). Rule 12 mandates that the candidates for initial appointment to a post must possess the prescribed educational qualifications and experience and must be within the age limit, except if otherwise provided in the rules framed for the purposes of relaxation thereof.

15. Admittedly Petitioners were working on contract basis in projects in relation to the affairs of Province of Sindh in grade 1 to 18. The benefit of section 3 of the **Act - 2013 and that of Act - 2018** as such is available to them. However, to seek regularization, Petitioners are required to demonstrate that their initial appointments were done strictly in accordance with law and were in consonance with the provisions of SCSA & APT Rules. In order to ascertain that Petitioners in all the petitions were appointed in accordance with law, it will be, appropriate to examine their cases separately:

16. In CPD 5115/2016, Petitioner Izhar ul Haq Dharejo was appointed as Assistant Director BS - 17 in Benazir Bhutto Shaheed Youth Development Program in Research wing of Irrigation Department, Government of Sindh in year 2009. Though Petitioner by concealing this fact has claimed regularization for the post of Deputy Director BS -18, on this account his

petition was liable to be dismissed. However by accepting his apology, Petitioner's case is examined. Petitioner was appointed in service pursuant to advertisement and competitive process. Respondent department in its reply to petition contended that service of Petitioner was regularized in grade 17, however petitioner stressed for regularization in grade 18 which was regretted by Scrutiny Committee. It transpired that Petitioner applied for appointment against the post of Deputy Project Director BS -18 but he was recommended for appointment in grade 17 which he accepted, therefore he cannot claim regularization in the grade 18. This petition having served its purpose is disposed of.

17. In CPD 4516 of 2017, Petitioners Dr. Sehrish Ishfaque, Dr. Kiran, Dr. Nighat Sharif, Dr Nida Jafferi, Dr Ameeran and Dr Ghulam Farima were appointed as Women Medical Officers in National Maternal, Neonatal & Child Health Programme Sindh vide appointment letters dated 11.06.2014, 02.06.2014, 13.02.2015, 19.02.2015 and 27.03.2011. Respondent No 2 Secretary to Government of Sindh Health Department has filed statement with a cover of statement of today's date which transpired that Petitioners Dr. Sehrish, Dr Nighat Sharif, Dr. Kiran were regularized in service vide notification dated 21st November 2019 and Petitioners Dr Nida Jafferi, Dr Ameeran Panhwar and Dr Ghulam Fatima are regularized in service vide notification dated 26th March 2026 and sought disposal of the instant petition. We are surprised rather shocked to learn that some of the Petitioners have been taken into regular service in year 2019 and others in year 2026, though their cases were at par. When confronted, Learned AAG failed to dispel this discriminatory act on the part of department. In view of above, the Notification dated 26.03.2026 is declared to be ultra vires the provisions of Article 4, 9, 25 and 27 of the Constitution, thus set at naught. The Petitioners Dr Nida Jafferi, Dr Ameeran Panhwar and Dr Ghulam Fatima are declared entitled for regularization in service since 21st November 2019 when their colleagues were regularized. The Petition is allowed and Respondent Health Department is directed to modify the notification dated 26th March 2026 accordingly and grant regularization from the date of earlier notification viz. 21.11.2019.

18. i. In CPD 4271 of 2018 Petitioners 1) Akram Basheer, 2) Fahad Ahmed Shaikh, 3) Mohammad Ramiz Aslam, 4) Mohammad Arslan Khan, 5)

Raheel Shahid, 6) Syed Ghazanfar Ali, 7) Syed Asif Shah, 8) Kamran Mehboob, 9) Mehtab Zakir, 10) Mohammed Adil Akram, 11) Noman Latif, 12) Khalil Mohiuddin, 13) Faheem Akhtar, 14) Ahmer Faraz, 15) Jhanzaib Hanif, 16) Muhammad Sharooq, 17) Syed Faizan Danish, 18) Muhammad Nabeel, 19) Mohammad Hammad, 20) Ghulam Akber, 21) Fiazan ur Rehman, 22) Mohammad Wahaj Khan, 23) Aazar Shabir Mirani, 24) Naveed Abassi, 25) Shuja uddin, 26) Syed Shahid Ali, 27) Muhammad Faraz Khan, 28) Rizwan Ali, 29) Jhanzaib Ahmed, 30) Faiz Muhammad Abro, 31) Islamuddin, 32) Ghulam Mustafa, 33) Mohammad Anwar, 34) Faizan Ahmed Hashmi, 35) Syed Mohammad Junaid Ali, 36) Mubashir Qureshi, 37) Salman Ghauri, 38) Muhammad Amir Tahir, 39) Junaid Shakeel, 40) Arslan Kazi, 41) Muhammad Alam Zaib, 42) Qaiser Hafeez, 43) Maqsood ur Rehman, 44) Muhammad Ahmed Afaq, 45) Muhammad Zeeshan & 46) Sana Razi as Network Manager, Data Entry Operators and other positions vide appointment letters issued in the month of August 2012 in Information, Science & Technology Department in a project of Computerization of Domicile & PRC System. The Petitioners remained in job until 30.06.2014 in the short lived project, which per Respondent Department was closed.

ii. It transpired from record that some of the Petitioners had filed Petitions CPD No 3310 of 2014 (Akram Basheer and others Vs. Province of Sindh & others), CPD 3479 of 2014 (Syed Hassan Raza Vs. Province of Sindh & others) & CPD 6084 of 2014 Muhammad Zeeshan Vs Province of Sindh & others). The Petitions were disposed of by Learned Division Bench of this Court vide consolidated order dated 29.11.2016 on consent of parties to refer the case of Petitioners to concerned Scrutiny Committee to pass an appropriate order.

iii. Pursuant to the order passed in earlier petition case of Petitioners was referred to concerned scrutiny committee. Petitioners' claim for regularization was scrutinized by Committee in its meeting held on 12th July 2017 and turned down on the ground that project was closed and services of Petitioners were no more required to Department.

iv. Decision of Scrutiny Committee is not tenable under the law as Section 3 of Act - 2013 envisaged that *"Notwithstanding anything contained in the Act or rules made thereunder or any decree, order or judgment of a court, but subject to other provisions of this Act, an employee appointed on adhoc and contract basis or*

otherwise (excluding the employee appointed on daily-wages and work-charged basis), against the post in BS-1 to BS-18 or equivalent basic scales, who is otherwise eligible for appointment on such post and is in service in the Government department and it's project in connection with the affairs of the Province, immediately before the commencement of this Act, shall be deemed to have been validly appointed on regular basis."

v. The legislature in its own intent and wisdom enacted that employees in a project working on contract or adhoc basis who were otherwise eligible for appointment on such post and were in service in the Government Department and its' project in connection with the affairs of province immediately before the commencement of the Act, shall be deemed to have been validly appointed on regular basis. The words "immediately before the commencement of Act" and "deemed to have been appointed on regular basis" were of significance which enshrined that irrespective of the length of service of an employee appointed on contract or adhoc basis, he shall be deemed to have been regularized, if he on the date of commencement of Act was in service. Admittedly petitioners were in service at the time of enactment, therefore, reason that project ended in June 2014 will not be decisive factor for the regularization of service of Petitioners. By operation of law, they stood regularized except they were found ineligible for the post. .

vi. It further transpired from record that aspect of eligibility of Petitioners was not examined by the Scrutiny Committee. This Petition is therefore allowed, the decision of Scrutiny Committee dated 12th July 2017 is set aside. The Respondent Department is directed to examine the case of Petitioners falling in grade 15 and below as to their eligibility afresh, if found otherwise eligible, the Petitioners shall be deemed to have been regularized and notification in that regard shall be issued. For the Petitioners in grade 16 and above, their cases shall be referred to SPSC to assess their eligibility. If Petitioners are found otherwise eligible, the SPSC shall make recommendation for regularization accordingly.

19. i. In CPD 2732 of 2018, Petitioners 1) Tajamul Hassan, 2) Adnan Ali, 3) Ms Maryam, 4) Naveed Ahmed, 5) Naveed Ali, 6) Farooque Ahmed, 7) Muhammad Hassan, 8) Dr. Shahida Parveen, 9) Dr. Adeeba Khanum, 10) Kanwal Malik, 11) Riaz Ahmed, 12) Muhammad Nazim, 13) Amjad Parvaiz,

14) Shazad, 15) Muhammad Hanif, 16) Deedar Hussain, 17) Qurban Ali, 18) Abdul Rasheed, 19) Abdul Faheem, 20) Muhammad Amjad, 21) Nadeem Ahmed and 23) Imdad Ali were appointed as Accounts Assistant, Trainer, Attendant, Chowkidar, Driver, Office Boy in Shaheed Muhtarrama Benazir Bhutto Youth Development Programme (SMBBYDP) in Livestock and Fisheries Department Government of Sindh, in years of 2008 to 2013.

ii. Respondent No 2 has placed on record notification dated 27th July 2021 which demonstrated that Petitioners Kanwal Malik, Riaz Ahmed, Muhammad Nazim, Amjad Parvez, Shahzad Khokhar, Muhammad Hanif, Deedar Hussain, Nadeem Bhurgari and Imdad Ali have been regularized, the petition to the extent of above petitioners stands disposed of having served its purpose.

iii. For other petitioners, it is stated that meeting of Scrutiny Committee to consider the regularization of Petitioners was held on 10.07.2015. Minutes of Scrutiny Committee filed with rejoinder by petitioners (available at page 41 of rejoinder- relevant page 57) revealed that Scrutiny Committee found shortcomings in the appointment process. Scrutiny Committee denied relief of regularization by holding that appointments were made without due process viz-viz the administrative department did not intimate the nomenclature of the post/ equivalent post against which the candidates required to be considered for regularization and availability of posts on regular strength. Besides, Basic Scale of the post of Livestock and Fisheries Trainers as well as Accounts Officers was not mentioned in the advertisement.

iv. Deficiency as pointed out by Scrutiny Committee did not render the appointment of Petitioners invalid, as the same were administrative lapses. The Scrutiny Committee was mandated to examine the eligibility of Petitioners to retain posts, which from record it transpired, petitioners held at the time of appointment. In the circumstances, decision of Scrutiny Committee dated 10.07.2015 is declared without lawful authority and stands set at naught. Petitioners are held entitled for regularization. Respondent Department is directed to regularize the services of remaining Petitioners within a period of 60 days from date of this order.

20. In CPD 9016 of 2018, Petitioner Khurram Rauf Khan was appointed as Media Coordinator BS - 17 in Hepatitis Prevention & Control Programme on contract basis vide appointment letter dated 27.02.2013. The contract of Petitioner was extended from time to time and lastly vide notification dated 29th June 2019. Petitioner's claim for regularization was considered by Scrutiny Committee and declined as he did not possess the required qualification. Petitioner is not satisfied from the report of scrutiny committee, perusal whereof revealed that requisite qualification for the post of Media Coordinator did not find mention either in the appointment order or in the committee report. Since Petitioner was appointed in BS -17, a post falling within the purview of Rule 10 of APT Rules to be filled through SPSC. Instant Petition is therefore disposed of with directions to Respondent Department to re-consider the case of Petitioner for regularization and to refer the same to SPSC to assess his eligibility. If Petitioner is found otherwise eligible, SPSC shall make recommendations accordingly. The above exercise for regularization shall be completed within a period of two months from the date of this order.

21. i. In CPD 7376 of 201, Petitioner Abdullah Chandio was appointed as Maintenance Manager BS -17 in Strengthening of Sindh Poultry Vaccine Centre Hepatitis Prevention & Control Programme on contract basis vide appointment letter dated 02.04.2012. The contract of Petitioner was extended from time to time and lastly up to March 2017. Petitioner's case for regularization was considered by Scrutiny Committee in its meeting held on 05th July 2019 but was declined on the grounds that in selection process two candidates qualified for a single post. Principal candidate was appointed but later on he resigned therefore Petitioner was taken into service. Secretary of the Department and nominee of SGA&CD were not part of Selection Committee. Page No 1 of the recommendations did not contain signatures of any member or Chairman of Selection Committee and contract period of Petitioner was not extended beyond March 2017.

ii. Deficiency as pointed out by Scrutiny Committee did not render the appointment of Petitioners invalid, as the same were administrative lapses. The committee was mandated to examine the eligibility of Petitioner, which from record it transpired, petitioner held at the time of appointment.

iii. Findings of Scrutiny Committee that Petitioner, was not entitled for regularization, as his contract was extended beyond March 2017 is not tenable under the law. Section 3 of the Act - 2013 envisaged that *“Notwithstanding anything contained in the Act or rules made thereunder or any decree, order or judgment of a court, but subject to other provisions of this Act, an employee appointed on adhoc and contract basis or otherwise (excluding the employee appointed on daily-wages and work-charged basis), against the post in BS-1 to BS-18 or equivalent basic scales, who is otherwise eligible for appointment on such post and is in service in the Government department and it’s project in connection with the affairs of the Province, immediately before the commencement of this Act, shall be deemed to have been validly appointed on regular basis.”*

iv. The legislature in its own intent and wisdom enacted that the employees in a project working on contract or adhoc basis who were otherwise eligible for appointment on such post and is in service in the Government Department and its’ project in connection with the affairs of the province immediately before the commencement of the Act, shall be deemed to have been validly appointed on regular basis. The words “immediately before the commencement of Act” and “deemed to have been appointed on regular basis” laid emphasis that irrespective of the length of service of an employee appointed on contract or adhoc basis shall be deemed to have been regularized. Admittedly petitioner was in service at the time of enactment, therefore, reason that project ended in March 2017 will not be decisive factor for the regularization of the service of Petitioner. By operation of law, he stood regularized except found otherwise ineligible for the post.

v. Instant Petition is therefore allowed. Findings of Scrutiny Committee dated 05th July 2019 are set aside. Respondent Department is directed to reconsider the case of Petitioner for regularization. Since Petitioner was appointed in BS -17, a post falling within the purview of SPSC. Respondent Department is directed to refer the case of Petitioner to SPSC to assess his eligibility. If Petitioner is found otherwise eligible, the SPSC shall make recommendations accordingly. The above exercise for regularization shall be completed within a period of two months from the date of this order.

22. i. In CPD 4292 of 2020 Petitioners 1) Dr Gul Hassan Qutrio, 2) Dr. Aijaz Hussain Soomro, 3) Dr Hidayatullah Soomro, 4) Dr Abdul Rehman, 5)

Dr Rehan Arain, 6) Dr Amjad Ali, 7) Dr Khalid Hussain, 8) Dr Shumaila Jalbani and 9) Dr Noor Ahmed Perozani were appointed as Senior Research Officers BS -18 and Research Officer BS 17 in ADP Scheme “**Surveillance and Characterization of circulating pathogens of poultry in Sindh including avian influenza containment programme**” on contract basis vide appointment letters issued in the months of April and May 2015 (available at page 97-119 of petition). The contract of Petitioners was extended from time to time and lastly until June 2019. Petitioners claim for regularization was declined by the department as the project ended in year 2020.

ii. Petitioners claim regularization under the provisions of “**the Sindh Regularization of Veterinary Doctors Appointed on Contract Basis Act, 2018**” (Sindh Act No XXXIII of 2018). The case of Petitioners for regularization was declined on the ground that Act-2018 covered regularization of Doctors under District-wise Veterinary Service Program and Petitioners did not fall under the said category.

iii. Preamble of the Act-2018 envisaged that it was enacted to provide for the regularization of services of certain Doctors appointed on contract basis under district-wise Veterinary Service Program of Livestock and Fisheries Department, Government of Sindh. Section 2(b) of the Act-2018 defines “**appointment of a veterinary doctor on contract basis**” means the appointment of a duly qualified Veterinary Doctor made on contract basis in the Program. From plain reading of the appointment letters of Petitioners it transpired that they were appointed in a District Wise Program viz. “**Surveillance and Characterization of circulating pathogens of poultry in Sindh including avian influenza containment programme**” in districts of Larkana, Hyderabad, Karachi and Thatta, thus fell in the definition of Contract Doctor contained under Section 2(b). The Petitioners were not regularized due to the nomenclature of the post being Senior Research Officer and Research Officer. In essence Petitioners were Veterinary Doctors and entitled to reap fruits of beneficial legislature of Act-2018. Section 3 of the Act-2018 contained a non obstante clause, and reads as under:

3. *Notwithstanding anything contained in the Act or rules made thereunder or any decree, order or judgment of a court, but subject to other provisions of this Act, a Veterinary Doctor*

appointed on contract basis in the program, and holding such post immediately before the commencement of this Act, shall be deemed to have been validly appointed on that post as a Civil Servant on regular basis, with effect from the date of commencement of this Act.

Provided that the services of Veterinary Doctor, who does not possess the qualifications, prescribed for the post, shall not be regularized.

iv. Since Petitioners were appointed in BS -17 and BS - 18 post falling within the purview of SPSC. Instant Petition is therefore disposed of with directions to Respondent Department to re-consider the case of Petitioners for regularization. The Respondent Department is directed to refer the case of Petitioners to SPSC to assess their eligibility. If Petitioners are found otherwise eligible, the SPSC shall make recommendations accordingly. The above exercise for regularization shall be completed within a period of two months from the date of this order.

23. The petitions stand disposed of in the above terms. Office to send the copy of the order to the respondents for compliance. Office is further directed to keep signed copy of the order in connected petition.

J U D G E

J U D G E

HEAD OF CONST. BENCHES

Approved for reprotng