

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. NO.D-764/2013

Petitioners: **Muhkamuddin Metlo & Others**
through M/s Malik Altaf Javed and
Barrister Faizan Memon, Advocates.

Respondents: **Province of Sindh & Others**
Abdul Jabbar Qureshi, learned AAG along
with Dr. Badaruddin Shaikh, Addl.
Secretary (Admn), & Engr. Abdul Samad
Shaikh, Incharge Legal Section, Agriculture
Dept.

C.P. NO.D-191/2013

Petitioners: **Muhammad Juman Chohan & others**
through Mr. Masood A. Noorani, Advocate.

Respondents: **Province of Sindh & Others**
Abdul Jabbar Qureshi, learned AAG along
with Dr. Badaruddin Shaikh Addl. Secretary
(Admn) & Engr. Abdul Samad Shaikh,
Incharge Legal Section, Agriculture Dept.

C.P.NO.D-2995/2014

Petitioners: **Zulfiqar Ali & Others** through Barrister
Zamir Hussain Ghumro and Mr. Malik
Naeem Iqbal, Advocates.

Respondents: **Province of Sindh & Others**
Abdul Jabbar Qureshi, learned AAG along
with Dr. Badaruddin Shaikh Addl.
Secretary (Admn) & Engr. Abdul Samad
Shaikh, Incharge Legal Section, Agriculture
Dept.

C.P.NO.D-948/2014

Petitioners: **Tariq Hussain & Others** through Barrister
Zamir Hussain Ghumro and Mr. Malik
Naeem Iqbal, Advocates.

Respondents: **Province of Sindh & Others**
Abdul Jabbar Qureshi, learned AAG along
with Dr. Badaruddin Shaikh Addl.
Secretary (Admn) & Engr. Abdul Samad
Shaikh, Incharge Legal Section, Agriculture
Dept.

C.P.NO.D-2797/2014

Petitioners: **Murtaza Ali & Others** through Barrister Zamir Hussain Ghumro and Mr. Malik Naeem Iqbal, Advocates.

Respondents: **Province of Sindh & Others**
Abdul Jabbar Qureshi, learned AAG along with Dr. Badaruddin Shaikh Addl. Secretary (Admn) & Engr. Abdul Samad Shaikh, Incharge Legal Section, Agriculture Dept.

C.P.NO.D-3412/2014

Petitioners: **Muhammad Arsalan & Others** through Barrister Zamir Hussain Ghumro and Mr. Malik Naeem Iqbal, Advocates.

Respondents: **Province of Sindh & Others**
Abdul Jabbar Qureshi, learned AAG along with Dr. Badaruddin Shaikh Addl. Secretary (Admn) & Engr. Abdul Samad Shaikh, Incharge Legal Section, Agriculture Dept.

Date of hearing: 10.02.2017

Date of Judgment:

Present: Munib Akhtar & Yousuf Ali Sayeed, JJ

JUDGEMENT

YOUSUF ALI SAYEED. – In these matters, the Petitioners have invoked the writ jurisdiction of this Court under Article 199 of the Constitution seeking regularization of their service with the Agriculture Department of the Province of Sindh. In view of the commonality as to the underlying facts, as well as the grounds raised and relief sought, we intend to dispose of these matters vide this common Judgment accordingly.

2. From a perusal of the Petitions, and the arguments advanced at the bar on behalf of the Petitioners, the common factual thread discernible in these matters is that the Petitioners were all engaged as part of the field teams of a project known as the National Program for Improvement of Watercourses (the “**Project**”). These engagements are said to have been made on a ‘contingent basis’, pursuant to sanction ostensibly emanating from a Provincial Steering Committee Meeting held on 18.06.2007 under the Chairmanship of Additional Chief Secretary (Development), Government of Sindh, Karachi.
3. Accordingly, the Directorate General, Agricultural Engineering & Water Management, under the aegis of the Agriculture Department of the Province of Sindh, authorized the concerned District Officers to undertake recruitment of such ‘contingent staff’ as need dictated.
4. Contingent appointments thus came to be made vide individual Office Orders all dated as or about 01.11.2007 issued to each Petitioner by the District Officer concerned, whereby they were engaged as either Naib Qasid, Rodman, Chowkidar or Driver, at a specified monthly salary. It is said that this was done after observing all codal formalities, which has not been disputed.
5. In each Office Order, as part of the terms of appointment it was specified, inter alia, that employment was purely on a temporary basis for a period of 89 days and could be terminated at any time without any notice.

6. As the Project apparently remained ongoing, and it was deemed expedient and necessary that the Petitioners continue their duties so that field work which was already in progress did not suffer, their term of appointment was extended on such 'contingent basis' from time to time, with prior approval being sought from the competent authorities for each extension. Fresh Office Orders for further retention of the Petitioners in service for the purposes of the Project are said to have been issued accordingly.

7. It has been further submitted that the Petitioners have thus been retained in service on an ostensibly contingent basis over a protracted period. It has been alleged that the failure/unwillingness to absorb/regularize the Petitioners stems from political reasons, and to serve such ends the Respondents appear bent on removing the Petitioners from service and making fresh recruitments for the very positions presently being filled by them. It is submitted that this is evident from the fact that the Respondents have publicly advertised openings for these very same functions rather than absorbing/regularizing the services of the Petitioners, which would be the logical and reasonable thing to do in as much as they have been satisfactorily discharging their responsibilities.

8. It has been contended that such contingent employment on a protracted basis is exploitative, and the failure to regularize the service of the Petitioners is arbitrary, illegal and even unconstitutional. It is further contended that the Petitioners have a legitimate expectation of regular employment and are entitled to be regularized in service due to efflux of time in view of the principles evolved by the Honourable Supreme Court in the case of *Ikram Bari & Others v. National Bank of Pakistan through President & Others* 2005 PLC (C.S.) 915, as well as by various Division Benches of this Court in the cases of *Gul Muhammad & 4 Others v. Province of Sindh through Secretary Revenue, Government of Sindh & 4 Others* 2010 PLC (C.S.) 1169,

Ayaz Ahmed Memon v. Pakistan Railways, Ministry of Railway, Islamabad through Chairman & Another 2011 PLC (C.S.) 281, Hakim Ali Ujjan & Others v. Province of Sindh & Others 2012 PLC (C.S.) 127, and Irshad Ali & 78 Others v. Province of Sindh through Secretary Local Government Department Karachi & 4 Others 2015 PLC (C.S.) 293. It is further contended that a period of three years' service gives rise to such an entitlement in view of the principles laid down in these Judgments.

9. It has also been submitted that in the year 2006 various Officers/Officials, i.e. Assistant Director (Field) (BPS-17), Water Management Officer (BPS-17), Computer Operators (BPS-16) and Sub Engineers (BPS-11) had also been appointed for the same Project on contract basis, initially for a period of one year. Their contracts were extended on a year to year basis due to non-completion of the project. It is submitted that these contractual employees filed C.P. No. D-1932/2011 (Dilshad Ali Dharejo & 141 Others v. Province of Sindh & others) before this Court seeking regularization in service from the date of their appointment with all consequential benefits. It has been submitted the said Petition along with other similar Petitions was disposed of vide Judgment dated 02.10.2012, directing regularization of their service. Subsequently, the Provincial Legislature enacted the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, pursuant to which the service of these contractual employees was regularized.
10. Although it has been conceded that contingent staff are not covered under the 2013 Act, it has been contended that they have been discriminated against by the Respondents in as much as persons employed for the purposes of the Project in other cadres have been regularized whereas in the case of the Petitioners that is not being done, and the Respondents are seeking to induct other persons to the detriment/exclusion of the Petitioners.

11. It is in this backdrop that the Petitioners have filed these Petitions, wherein, as final relief, they have prayed, inter alia, that:

(a) A declaration be made that the Petitioners are entitled to be appointed on a regular basis against the posts on which they have been working and that they are entitled to all consequential benefits of regular appointment from the date of their initial appointment, and that

(b) A direction be issued to the Respondents to treat the Petitioners as regular employees in their respective posts from the date of their appointment and to complete the codal formalities, if any.

12. Learned AAG, instructed by the Addl. Secretary and learned departmental representative, accepted that the Petitioners were all appointed for the purposes of the Project on the terms stated, but contended that as such appointments were on contingency basis and took place on acceptance by them of the specified terms and conditions of appointment, the Petitioners cannot claim regularization of service.

13. The learned AAG submitted that the Project was a federally funded venture launched in March 2004 for the improvement of 33,000 unlined watercourses all over Sindh within an initial time span of 52 months, expiring on 30.06.2008. He submitted that due to shortage of regular staff, more personnel were taken on in order to ensure progress of the Project. As targets could not be achieved due to several reasons, such as floods, heavy rains, etc., the Project was extended by the Ministry of Food and Agriculture, Government of Pakistan, and the services of contingent staff were also extended from time to time on the same basis as they had been appointed. Subsequently, in the wake of the 18th Amendment to the Constitution, the

Project was devolved to the Province of Sindh, and the Provincial Government then finally extended the Project and services of personnel employed for the purposes thereof up to 30.06.2016.

14. He pointed out that the Petitioners were engaged as contingent staff for the Project purely on a temporary basis and on specified terms, where it was unambiguously stated that their employment was for only 89 days, at a fixed salary without TA/DA, and terminable at any time without notice. Due to extensions in the Project, their services were also extended for 89 days at a time. He submitted that they were never appointed against any permanent/vacant post, and, in fact, there are presently no permanent vacancies in the Agriculture Department, hence, the judicial precedents cited by the Petitioners are distinguishable and would not apply to the instant case.
15. He further submitted that the employees who fell within the ambit and purview of the 2013 Act constitute a distinct class from contingent staff, who were never appointed against a budgeted post and, being akin to work-charged employees, do not fall within the scope of the said Act and thus cannot claim to have been discriminated against. He submitted that the cases of contingent staff are not similarly placed and categorically states that no personnel from within the contingent staff has been regularized to date. He also submitted that subsequent to the institution of these Petitions, the Project has since come to an end, as evinced by the submission of a PC-IV to the Planning & Development Department vide letter dated 27.08.2015. He pointed out that the PC-IV of a project is the closure report.
16. In reply, it has been submitted on behalf of the Petitioners that as the Province of Sindh falls at the tail of the Indus and is a lower riparian suffering acute shortage of water, there is a pressing and ongoing need of water management

and lining of water courses. It is contended that whilst the lining of water courses has largely been undertaken under the umbrella and nomenclature of the Project, in reality this task and the functions associated therewith, as are being performed by the Petitioners, will remain ongoing. As such the Project is in fact a constant and the posts held by the Petitioners are thus essentially of a permanent nature. Furthermore, it is submitted that even if it is correct that the Project has culminated, various directorates of the Department of Agriculture have advertised posts of the same nature as being vacant in their respective directorates. As the Petitioners have been discharging such functions for the past several years, they ought to be absorbed against these posts on the basis of their relative seniority inter se rather than fresh recruitments being made in that regard.

17. Turning to the precedents on which reliance has been placed by the Petitioners, Ikram Bari's case (supra) was a matter where clerical and non-clerical personnel had been appointed and retained by the National Bank of Pakistan in various categories on a temporary basis for a number of years. Such personnel filed appeals before the Federal Services Tribunal seeking regularization. By a common Judgment, the Tribunal accepted most of the appeals, except those held to be time-barred, which were dismissed accordingly. In ensuing proceedings under Article 212(3), the Honourable Supreme Court disposed of a number of Civil Petitions filed by employees with a direction to the Bank to regularize/absorb them in service with effect from 15.09.2003, subject to the conditions that had been laid down by the Tribunal in its Judgment. From the underlying circumstances of that case, as reported, it appears that the nature of functions performed by those employees fell within categories of employment envisaged under the Staff Service Rules of the Bank. Furthermore, a number of employees who had been inducted on similar terms had subsequently been absorbed by the Bank as regular

employees under a policy decision to absorb 1000 daily wages staff and temporary godown staff (700 in clerical and 300 in non-clerical cadre). Some of the appointees were absorbed but others were left out. Thereafter, in terms of the Agreement arrived at with the Collective Bargaining Agent it was agreed that clerical staff who met certain education standards and had a satisfactory record of service would be given employment with effect from 15.09.2003, and similarly, non-clerical staff meeting certain standards would be employed in the regular clerical cadre with effect from that date in line with their qualification and experience. As such, it appears that this was a case where the Bank's own policy was being implemented rather than an extraneous rule being evolved and applied. The period of 3 years mentioned in the Judgment stemmed from the agreement inter se the Bank and the CBA, and is not a rule or yardstick evolved by the Court.

18. From a reading of the Judgments in Ayaz Ahmed Memon's case (supra) as well as the cases of Hakim Ali Ujjan (supra), and Irshad Ali (supra), it appears that the underlying cases concerned matters where personnel had been employed on a contractual basis against vacant civil service posts of a permanent nature, and their contracts were repeatedly extended without them being regularized in service against these posts. In this context, it was held by the learned Division Benches of this Court that temporary employment against a permanent post on a protracted basis was exploitative, and that the service of these contractual employees was to be regularized and that they were entitled to permanent absorption in service as per the parameters specified in that regard in each Judgment. The principles that may be distilled from these Judgments are as follows:

(a) Where a vacant post is of a permanent nature, it has to be filled through a permanent appointment.

- (b) Whilst a person may initially be appointed against such a post on probation, after successfully completing the probationary period he or she is to be treated as a confirmed employee.
- (c) Where the nature of the job in respect of such a post does not require specialization or qualification, and the question of competence or suitability are not relevant criteria, the fact that a person has been performing such job over a prolonged period serves to make out a case in his or her favour for permanent absorption against such post.
- (d) The services of a person who has been working over a protracted period against a permanent post cannot be terminated merely on the ground of contractual employment.

Similarly, the reference in *Hakim Ali Ujjan* (supra) to a three year service period, and with reference thereto in *Irshad Ali* (supra), came about simply because the contract period in the former case had been of that duration and contract employees had filed their petitions upon culmination thereof. No guiding rule was laid down by the Court that 3 years' service would of itself constitute a firm entitlement to regular employment.

19. In the matters at hand, the Petitioners have not even contended, let alone been able to show, that they were appointed against vacant posts. On the contrary, their case is that they were engaged on a contingent basis for the Project and remained so throughout. It has not even been contended that the Project has been accorded permanence vide attachment to a Provincial Government department and/or brought under the regular Provincial budget or that the posts against which they have been working under the umbrella of the Project are or have become regular

budgeted posts. On the contrary, the principal thrust of the Petitioners case is simply that as the Project has been carrying on over a prolonged period, hence the posts ought to be regarded as permanent. Accordingly, the case of the Petitioners is clearly distinguishable from the Judgments on which reliance has been placed.

20. On the contrary, on the underlying facts and circumstances these Petitions appear to be more akin to the case of Ameer Solangi & Others v. WAPDA & Others 2016 SCMR 46, wherein the appellants had been appointed on contract basis for the purposes of a specified project and where it was mentioned that they would have no right to claim regular absorption and that their terms and conditions of employment would be governed by the contract. In this backdrop, it was held by the Apex Court that the extension of their contracts during the completion process of the project did not give them any right to claim regularization in service. Reliance was placed by the Apex Court on its earlier Judgment in the case of Dr. Anwar Ali Sahto & Others v. Federation of Pakistan & Others PLD 2002 SC 101, wherein it had been held that continuing service due to delayed completion of the project/s over a longer period than the initial period of temporary assignment would not be determinative of the nature of employment, and the mere fact that project/s for which personnel were employed for a specific period could not be completed within the specified time and such personnel thus continued in service till completion thereof does not *ipso facto* entitle them to be permanently absorbed in service.

21. As such, it is apparent that every contract assignment does not of itself become permanent by mere efflux of time, as it is primarily in cases where a person is kept employed on a temporary basis notwithstanding the existence of a vacant permanent post that such an arrangement would be

deemed exploitive and be subject to regularization. Accordingly, the Petitioners claim to regularization in the instant Petitions due to mere efflux of time appears to be ill founded.

22. Be that as it may, in the given circumstances, it merits consideration that the Petitioners have claimed that certain vacancies against regular budgeted posts for the same nature of functions as have been performed by the Petitioners were advertised by the Agriculture Department, and it is not denied by the Respondents that certain advertisements were placed. There is a specific noting of such advertised posts in the Order made in CP No. D-764/13 on 23.12.2016, whereby a restraint was imposed against such posts being filled and the Office was directed to place a copy of the Order in the files of all the connected Petitions. As such, it may not be inappropriate to assume that such posts as were created and advertised remain vacant. In any case, it must be noted that there has been no denial that the Petitioners have been working satisfactorily, albeit on a contingent basis, which is also borne out from the repeated extensions of their service on such terms.

23. Therefore, whilst dismissing the captioned Petitions, we would observe that keeping in view that the Petitioners have been discharging their functions to the apparent satisfaction of the Respondents over an extended period, in the event that if at any time within a period of nine (9) months from the date of this Judgment any posts as match such functions as have been performed by the Petitioners are freshly advertised by or for the Agriculture Department or the Respondents seek to fill the posts as herein before referred to (for the filling of which there must be a renewed advertisement), then in either case the Petitioners may apply against such posts and the Respondents are required

to accord any Petitioner who does so apply in response to the fresh or renewed advertisement (as the case may be) and is found eligible, priority over persons who are strangers to these Petitions. Furthermore, in the event that the number of eligible applicants from amidst the ranks of the Petitioners exceeds the number of posts, the Respondents may then grant priority as between the Petitioners in accordance with their relative seniority inter se, which seniority will be determined by educational qualifications, and if in any particular case the said qualifications are the same, then by age.

JUDGE

JUDGE

Karachi
Dated _____