

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-75 of 2017

Dr. Huma Jokhio and others.....Petitioners

Versus

Federation of Pakistan &
others.....Respondents

C.P No.D-4442 of 2016

Dr. Ehsan Ali Palari.....Petitioner

Versus

Federation of Pakistan &
others.....Respondents

C.P No.D-4465 of 2016

Dr. Shafiq Ahmed.....Petitioner

Versus

Federation of Pakistan &
others.....Respondents

C.P No.D-4694 of 2016

Dr. Syed Abbas Haider.....Petitioner

Versus

Federation of Pakistan &
others.....Respondents

Date of hearing 08.05.2017

Mr. Malik Naeem Iqbal, Advocate for the Petitioners in C.P No.D-75/2017.

Mr. Muhammad Athar Ismail, Advocate for the Petitioners in C.P No.D-4442/2016, 4465/2016 and 4694/2016 respectively.

Syed Javed Iqbal, Advocate for Respondents No.2 to 4.

Mr. Muhammad Aslam Butt, D.A.G.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- Since In all the captioned Petitions similar points of law and facts are involved, therefore, we intend to dispose of the same by this common judgment.

2. In C.P. No.D-75/2017, Petitioners are seeking regularization of service at par with their colleagues who are being considered for regularization as per respective Office Memorandum dated 16.11.2016 and 17.11.2016 issued by the Respondent-Company.

3. Similarly, the Petitioners in C.P No.D-4442/2016, 4465/2016 and 4694/2016 earlier filed Constitutional Petitions bearing No. D-1533, D-1954 and D-1929 of 2015 respectively before this Court and the same were disposed of vide order dated 27.04.2016 with direction to the Respondent-Company to consider the Representations of the Petitioners within 30 days. The Respondent-Company disposed of the Representations of Petitioners vide impugned Letter dated 26.5.2016 with the following findings:-

“With reference to your representation dated May 03, 2016 and an o opportunity afforded for personal hearing in compliance top the order dated April 27, 2017 of the Honorable High /court of Sindh, Karachi in C.P.P. No. D-1954, D-1929 and D-1533 of 2015. Considering your contentions and after examining relevant record of the Company, following is conveyed:

- . *That the resolution of Board of Directors of the Company pertains to the regularization of contract employees/officers from EG-V and does not apply to a person engaged as a daily wager.*
 - . *During the personal hearing you failed to provide any document to support your contention. In fact allowing you the benefit of regularization would be a clear violation of Company's policy which is tantamount to extending undue benefit.*
 - . *OGDCL has no policy of regularizing temporary manpower or officers engaged on daily wage basis or Contractor employees and have never done in violation to the rule/policy.*
 - . *The matter of age relaxation has no connection with regularization of the officers particularly in this case.*
2. *In view of the foregoing, your request cannot be acceded to being without merit.*

*(Tariq M. Qureshi)
Chief Incharge (Admin/Rectt)
Contact: 051-920023544"*

4. Petitioners feeling aggrieved and dissatisfied with the impugned Letter dated 26.5.2016, have approached this Court with the prayer to set aside the impugned letter and sought declaration that they are eligible for regularization of service as Medical Officer but, Respondent-Company is not considering their case whereas, colleagues of Petitioners are being given the same benefit.

5. The Respondent-Company filed parawise comments and controverted the allegations leveled by the Petitioners.

6. Mr. Malik Naeem Iqbal, learned counsel for Petitioners in C.P No. D-75/2017 has argued that Petitioners were initially appointed as Medical Officers on contract basis in the year 2004, whereafter pursuant to a policy, the contract of the Petitioners was converted into daily wages

in the year 2012, since then the Petitioners are performing their duties in various offices of Respondent-Company. Per learned counsel, the case for regularization of Petitioners is not considered by Respondent-Company, as the process for regularization of contract employees is being conducted by taking interviews and issuance of office Memorandum dated 17.11.2016 (available at page 73-75 of case file). He next contended that Petitioners have been working as professional Doctors on permanent posts in the Respondent-Company with effect from 06.10.2004. In the meantime, the Respondent-Company issued a policy of conversion of contractual employment into daily wages (work charge) by changing the terms and conditions of contractual employment. He next contended that said policy has created chaos amongst the contract employees who were rendering their services but, have not been considered for regularization. However, Respondent-Company extended the benefit of regularization to colleagues of the Petitioners. Per learned counsel, Petitioners have sufficient expertise in their profession therefore they are entitled to be considered for regularization. He next contended that Respondent-Company advertised the post of Medical Officer (EG-III) and Petitioners participated in the competition. But, the Respondent-Company rejected the candidature of Petitioners on the ground that they have become overage. This treatment with the Petitioners by the Respondent-Company is highly objectionable and against basic norms of justice. Per learned counsel, how Petitioners became overage when they have been working in the Respondent-Company since 2004. Learned counsel referred to various orders of extension of contract period of the Petitioners from time to time and argued that Respondent-Company called interviews of contract employees for regularization vide office

Memorandum dated 17.11.2016 whereas, the Petitioners were not considered for regularization on the grounds that their service was converted on work charge / causal basis and as per policy dated 22nd October, 2012 Petitioners being daily wages employees cannot be considered for regularization, as they are not the contract employees. This treatment given to the Petitioners is highly deplorable. He also referred to the Oil and Gas Development Company Limited Employees Service Rules, 2002 and has argued the said Rules protect the Petitioners service. Per learned counsel, the Petitioners were initially appointed on contract basis in the year 2004 and the said Rules clearly stipulate that appointments made in the regular service except those who were appointed on daily wages or against the project, are entitled for consideration of regularization in service. In support of his case, he relied upon the case of Pakistan Tele Communication Company Ltd through General Manager and another v. Muhammad Zahid and others (2010 SCMR 253), in the case of Ajaz Akbar Kansi and others v. Ministry of Information and Broad Casting and others (2011 PLC CS 367), in the case of Captain Saleem Bilal v. Pakistan International Airline Corporation and others (2013 PLC CS 1212) and in the case of Pir Imran Sajid and others v. Managing Director / General manager (Managing Finance) Telephone Industry of Pakistan and others (2015 SCMR 1257).

7. Mr. Muhammad Athar Ismail, learned counsel for Petitioners in C.P. No. D-4442, D-4465 and D-4694 of 2016 respectively adopted the arguments of Mr. Malik Naeem Iqbal, Advocate. However, he contended that Petitioners are working as Medical Officers with effect from 19.7.2007 on contract basis against the post, which is of regular nature.

He next contended that Respondent-Company in violation of dicta laid down by the Hon'ble Apex Court has wrongly rejected the claim of the Petitioners vide impugned Letter dated 26.05.2016. He next contended that Respondent-Company wrongly stated in impugned Letter that there is no policy of Respondent-Company to regularize the service of daily wages employees and they have never regularized them. This stand of Respondent-Company itself negates their own Letter dated 14.01.2011 whereby contractual employees were regularized in service. He next contended that Petitioners are serving on post of permanent nature and Respondent-Company vide Letter dated 05.11.2012 converted the contract service into daily wages in violation of law and policy. Per learned counsel, the Respondent-Company cannot change terms and conditions of service of the Petitioners on the premise of purported policy. He next contended that Petitioners are eligible and qualified to be considered for regularization of service. He next contended that Respondent-Company has regularized the blue eyed persons in a discriminatory manner. He next contended that the Government of Pakistan, Cabinet Secretariat, Establishment Division in Minutes of Meeting dated 7.3.2013, directed the Respondent-Company to regularize the contract employees/daily wages. Since 2007 till date the Respondent-Company has not regularized Petitioners and on the contrary issued impugned Letter dated 26.5.2016 by stating that regularization is not policy of the Respondent-Company. The said act on the part of Respondent-Company is discriminatory and in violation of fundamental right of the Petitioners. He next contended that Petitioners are experienced Doctors having sufficient knowledge of relevant field but the Respondent-Company is keeping the Petitioners on daily wages and not

regularizing their services in violation of the policy of Government of Pakistan. The Respondent-Company cannot give preference to their policy by ignoring the policy of Federal Government because Respondent-Company is a Government owned entity and not a private company. He next contended that impugned Letters dated 26.5.2016 issued by Respondent-Company are nullity in the eyes of law and liable to be set-aside by this Court. He next contended that Respondent-Company has wrongly stated that the matter of age relaxation has no connection with regularization of the officers because it is a matter of record that Petitioners are serving in Respondent-Company since 2007. Per learned counsel, age relaxation issue can be settled by the Competent Authority as per law which they have miserably failed to do so.

8. Syed Javed Iqbal, learned counsel for the Respondent-Company / OGDCL has raised the preliminary issue of maintainability of the instant Petitions. Per learned counsel, the Petitioners were hired against a unit of Medical Officers through "Outsource" i.e. third party contractor and as per policy issued in the year 2012 they were converted into Daily Wagers. Learned counsel further contended that staff workers who were initially hired through "Outsource" were converted as Daily Wagers and taken on contract by virtue of 23rd Memorandum of Settlement (MOS) between the Management of Respondent-Company and CBA. However due to non-availability of Policy regarding placement of Daily Wages Officer on contract the Petitioners or any other Daily Wage Officers have not been taken on contract. It is next contended that Respondent-Company advertised various posts of Engineers and Medical Officers for appointment on contract basis. Petitioners applied as per the said

advertisement however they did not qualify for the post as per requisite criteria due to overage, therefore, the Petitioners were not short listed. It is also contended that Petitioners were never assured that their status of employment would be brought at par with the new appointees on contract basis. It is next contended that Board of Directors of Respondent-Company has authorized the Managing Director/CEO to regularize the contract employees upon completion of one year in service. Since the Petitioners are Daily Wages and not contract employees, they are not entitled for regularization. He next contended that Petitioners in C.P No. D-4442, 4465 and 4694 of 2016 respectively earlier filed Constitution Petition bearing No. D-1533, 1945 and 1929 of 2015 before this Court and the said Petitions were disposed of vide order dated 27.4.2016. Therefore, the Petitioners cannot file fresh petitions on the same cause of action. He next contended that Petitioners were never appointed on contract basis. He next contended that in compliance of order dated 27.4.2016 passed by this Court the Representations of Petitioners were disposed of on 26.5.2016 and the Petitioners were informed accordingly. He next contended that regularization could only be made in respect of only officers who are working on contract basis from EG-1 to EG-V. He next contended that Respondent-Company at no time regularized any officer working on daily wages basis or hired through "Outsource" in deviation of policy/rules. He next contended that the matter of age relaxation has no concern with the issue of regularization. He next contended that the case of Petitioners does not fall under policy/rule of Respondent-Company for regularization therefore, the claim of Petitioners is rightly rejected by the Respondent-Company vide impugned Letter dated 26.5.2016. Per learned counsel, no

discrimination has been meted out to the Petitioners nor any fundamental right is violated.

9. We have considered the submissions of the parties and have perused the material available on record and case laws cited at the Bar.

10. In the first place, we would like to examine the issue of maintainability of the captioned Petitions under Article 199 of the Constitution. As per Section 3 of Oil & Gas Development Corporation (Re-Organization) Ordinance, 2001 OGDCL got status of a Company limited by shares with effect from the date of incorporation of the Company with the Securities and Exchange Commission of Pakistan under the Companies Ordinance, 1984 (XLVII of 1984). As per Section 2 (g) of Public Sector Companies, (Corporate Governance) Rules, 2013 defines 'company' as under:-

- (g) *“Public Sector Company” means a company, whether public or private which is directly or indirectly controlled, beneficially owned or not less than fifty percent of the voting securities or voting power of which are held by the Government or any instrumentality or agency of the Government or a statutory body, or in respect of which the Government or any instrumentality or agency of the Government or a statutory body, has otherwise power to elect, nominate or appoint majority of its directors, and includes a public sector association not for profit, licensed under Section 42 of the Ordinance.”*

11. On the issue of non-statutory rules of service, we are fortified with the decisions rendered by the Honorable Supreme Court in the case of OGDCL etc. vs. Nazar Hussain etc. (2010 SCMR 1559) and Sayed Tahir Abass Shah versus OGDCL etc (2012 PLC CS 885) wherein it has been held by the Hon'ble Apex Court that Oil and Gas Development Corporation Employees (Service) Regulation, 1994 have statutory force.

Insofar as the question of maintainability of captioned Petitions is concerned, we seek guidance from the decision rendered by the Honorable Supreme Court in the case of Ramna Pipe and General Mills (Pvt.) Ltd v. Sui Northern Gas Pipe Lines (Pvt.) reported in 2004 SCMR 1274 wherein it has been held that a Constitutional Petition against a Public Limited Company is maintainable. Thus, the High Court has jurisdiction to interfere in the subject affairs of OGDCL under the Constitution.

12. On merits, the foremost question in the present proceedings is whether the Petitioners were initially appointed on contract basis and/or on work charge/casual basis and consequently their service cannot be regularized? Admittedly, the Petitioners were initially appointed on contract basis in the year 2004 & 2007, where after pursuant to the policy decision dated 22.10.2012, the Petitioners and other contract employees were converted into daily wages. Since then the Petitioners are performing their duties in various offices of Respondent-Company as daily wages employees.

13. We address the main objection of Respondent-Company that Petitioners were hired against a unit of Medical Officer through Outsource that is, third party contractor and the Petitioners are not eligible for regularization under the policy adopted by Respondent-Company. The said policy is reproduced as follows:

*“OIL AND GAS DEVELOPMENT COMPANY LIMITED
POLICY DEPARTMENT
Head office, Islamabad*

No. AA0103-32

22nd October 2012

*Subject: POLICY/PROCEDURE REGARDING PLACEMENT
OF 3RD PARTY HIRED SERVICE UNITS/WORKERS AS DAILY
WAGES (WORK CHARGE) BASIS CATEGORIES*

It has been decided by the management that all the third (3rd) party workers, working against regular posts, in offices as well as in fields/locations, will be brought in the categories of Daily Wages (Work charge) at the strength of concerned locations/departments of the company.

2. Therefore, all the concerned Fields/location In charges shall prepare and provide complete lists of third (3rd) party workers, hired in their departments. These lists will be submitted to respective EDs/GMs duly verified by Field/location In charges for approval. The verified copies of lists (as per specimen attached at Annex-1) will be incorporated in computer record/data at Recruitment Department at Head Office

3. In the fields/locations, hiring on specific projects basis shall be continue only for those categories which are likely to be finished with the completion of the projects. Such categories of workers shall be termed as man-days and the concerned department will undertake the exercise to determine them as work charge/daily wages if employed against regular posts.

4. The nature of employment in the fields/locations/officers so far as erstwhile third party workers are concerned, will henceforth be categorized as under:

- i) Daily wages/Work charge Workers:
All those third (3rd) party workers, hired against regular positions for short duration up to 87 days (as per existing rates already notified by the Company) to be termed as Daily Wages/Work charge Worker.*
- ii) Project Workers/Man-days/Labour etc.
All those workers who are engaged for specific projects only and are to remain in employment only till the completion of that specific project, as per approved rates. Their duration of employment will be strictly followed for 87 days after each term of continuity in hiring.*

5. PROCEDURE FOR PLACEMENT AS DAILY WAGES/LABOUR ETC.

Presently, there are 2884 third party workers as on 15.10.2012 hired at different location/fields/departments. Their location-wise/department wise detail with break up is given at Annex-II. The placement process will be completed in one go (provided they fulfill the pre-requisite of the post) and after that no service unit will be hired through third (3rd) party.

6. DAILY RATES:

The revised rates applicable for daily service units of various categories/groups notified vide policy order No. AAOi07-03 dated 09-08-2012 i.e. in nine (09) groups of jobs, shall remain applicable to all the Daily Wages/Work charge employees from their date of placement on Company's roll/strength.

7. FACILITIES/BENEFITS FOR DAILY WAGES/WORKCHARGE WORKERS.

The facilities/benefits previously notified (from time to time) for Daily Wages/Work charge Workers shall be decided by the management, detail of which is given as under:

S# Details of Facilities/Benefits

- i) Casual leave (15 days in calendar years)*
- ii) Medical Facility (for self only)*
- iii) Tours based on operational requirements (Rail/Bus Fare)*
- iv) Safety shoes and Helmets (at Fields only)*
- v) Provision of Uniform at fields.*
- vi) 12 days leave with wages/Bus/Railway Fare (for the most familiar routes after 03 months max 04 fares in a calendar year) No railway fare will be allowed for routes where train service is not available.*
- vii) Wages for the period of Hospitalization.*
- viii) Grant of award equal to 50% of the gross monthly wages instead of minimum basic pay whenever the award is announced for the employees.*
- ix) Overtime will be admissible as per following rate per hour Gross Wages/240.*
- x) Payment of 5% WPPF (if admissible as per rules)*

8. ENGAGEMENT AND DIS-ENGAGEMENT POWERS:

i) No formal letter of engagement will be issued for engaging the work charged/man-days labour against specific project requirements, which stand dis-engaged on completion of project (for seismic parties only).

ii) Monthly wages would be paid directly by Accounts Rep. at fields/locations/RO and in case of HO by Payable Section, through proper vouchers duly verified/signed by concerned Location In charge, Area Manager and HOD, with monthly attendance sheets.

iii) The Location In charges/PC/OM/FMs would be empowered to dis-engage or replace the hired worker against approved strength of concerned location/field/offices after clearance of HOD/GM concerned.

9. All those workers hired under supply and Services agreements through SCM Department (including Security Services etc.) would not be covered under this placement policy of the Company.

10. Keeping in view the job description, manpower meeting the criterion shall be adjusted accordingly.

11. This issues with the approval of Managing Director/CEO.

Sd/-22.10.12
(TalatHaider)
Chief H.R Officer (Policy)
Ext.3606
DISTRIBUTION:
As per list "A"

14. Per learned counsel for the Respondent-Company, the post of Medical Officer (EG-III) for appointment on contract basis was advertised and Petitioners participated but they did not qualify due to overage, whereas, in C.P No.D-1533/2015, 1954/2015 and 1929/2015 Respondent-Company admitted that Petitioners were appointed on contract basis and this Court vide order dated 27.04.2016 recorded the stance taken by them. The contract letter dated 06.10.2004 of Petitioner namely Dr. Ahsan in Constitution Petition bearing No. 75/2017 available at page 17 establishes that he was appointed as Medical Officer on contract basis. The said Letter is reproduced as under:-

"No.FM-03/QP/2004/376 Dated 06.10.2004
To,

Dr. Ahsan Ali,
S/o Taj Muhammad Ramejo
Village Lohi Sharif, P.O, Khanpur Mahar,
Taluka Khangarah Sharif, District, Ghotki,

Subject:- PLACEMENT OF "MEDICAL OFFICER" ON CONTRACT

01-With reference to your application for the placement of "Medical Officer" (on contract) in Social Welfare Public Dispensary (OGDCL) Qadirpur District Ghotki.

02-The competent authority has been pleased to place you on the panel of OGDCL as Medical Officer (on contract) on the following terms and condition with effect the date of assumption of duty at Social Welfare Dispensary-Qadirpur Gas Field District Ghotki.

- i) Retainer-ship fee of Rs.11000/- per month.
- ii) You will attend the dispensary 06 days a week.
- iii) Causal leave 15 days in a calendar year.
- iv) Field medical facilities for self only as per policy of company in real emergency.
- v) One month notice will be required from either party to dispense with the agreement.

03-In case of above terms and conditions are acceptable, you are advised to report for duty to the Field Manager Qadirpur Gas Field, Ghotki within 03 days after receipt of this letter.

04-If you failed to report on due time, your placement may be treated as cancelled.

Yours faithfully
Sd/-
6.10.2004
(Abdul Majeed)
Field Manager

15. We have noted that Respondent-Company has converted contractual posts into daily wages which ex-facie appears to deprive the Petitioners from regularization of their service. This procedure adopted by the Respondent-Company by converting the contractual appointment in the categories of daily wages (work charge), is against the basic spirit of terms and condition of contract appointment letters. Because due to that policy, the Petitioners have been placed at the hands of third party i.e. contractor and are now on daily wages and there is no protection to them under the said policy so far as regularization of their service is concerned. We have further noted that management of the Respondent-Company has attempted to regularize some of the employees working on contract posts under the garb of Office Memorandum dated 16.11.2016 and 17.11.2016, where case is at par with the case of petitioners. We find this treatment discriminatory.

16. We are cognizant of the fact that all appointments in the Respondent-Company are made either by promotion or by initial recruitment or on contract basis or on daily wages basis. Except daily wages all other appointments are deemed to be appointed in the Regular Service of the Company, therefore, only employee of the daily wages have been singled out without any reasonable classification. Thus, in our views the Petitioners are entitled to be considered for regularization along with their colleagues as per Office Memorandum dated 17.11.2016.

17. We are not satisfied with the assertion of Respondent-Company that Petitioners were initially appointed on daily wages through 'Outsource/Third party contractor, therefore, they are not entitled for regularization. It may be mentioned that this issue has been settled down by the Hon'ble Surpeme Court in the case of Fouji Fertilizer Company Ltd v. National Industrial Relations Commissions and others (2013 SCMR 1253), the Hon'ble Supreme Court at Paragraph No.17 and 18 has held as follows:-

“17. Normally, the relationship of employer and employee does not exist between a company and the works employed by the Contractor; however, in the case where an employer retains or assumes control over the means and method by which the work of a Contractor is to be done, it may be said that the relationship of employer and employee exists between him and the employees of the contractor. Further, an employee who is involved in the running of the affairs of the company; under the direct supervision and control of the company; working within the premises of the company, involved directly or indirectly in the manufacturing process, shall be deemed to be employees of the company.

18. In the instant case, the employees of the contractor were involved in running the affairs of the company such as filling and loading of urea bag as well as cleaning of machines and floors, therefore, for all intents and purposes, they are employees of the company through the contractor.”

18. We have observed that mere change of status / terms and conditions of Petitioners would not debar them from consideration for regularization. Petitioners who are qualified and fit to hold the posts under the law have right to compete in the process initiated by the Respondent-Company for regularization of service.

19. We are of the view that the assertion of Respondent-Company that Petitioners have become overage for regularization is not justified under the law. We have noted that Petitioners have been working in the Respondent-Company since long time and their case is covered in the Memorandum dated 7.3.2013 available at page 135 issued in pursuance of the decision of the Cabinet Sub-Committee for regularization which provides as under:-

“GOVERNMENT OF PAKISTAN
CABNET SECRETARIAT
(ESTABLISHMENT DIVISION)

Subject: MINUTES OF THE MEETING OF THE CABMET SUB-COMMITTEE ON REGULARAIZATION OF CONTRACT/DAILY WAGES EMPLOYEES IN THE MINISTRIES/DIVISIONS/ATTACHED DEPARTMENTS/AUTONOMOUS BODIES/ORGANIZATIONS ETC HELD ON 18TH FEBRUARY, 2013 AT 02.00 P.M. IN ESTABLISHMENT DIVISION

A meeting of the Cabinet Sub-Committee on regularization of daily wages/contract employees in the Ministries/Divisions/Attached Departments/Autonomous Bodies/Organizations etc. was held on 18th February, 2013 at 02.00 p.m in the Committee Room of Establishment Division under the Chairmanship of Syed Khursid Ahmed Shah, Federal Minister for Religious Affairs. Mir Hazar Khan Bijarani, Federal Minister and Ch. Manzoor Ahmed, Chairman, Peoples Labour Bureau/Member of Central Executive Committee (CEC) of PPP, also attended the meeting. The list of other participants is enclosed.

2. The above meeting commenced with the recitation of verses from the “Holy Quran” and it was

decided in the start of the meeting that the contract/daily wages employees who have completed one year of contractual service or 3-spells of 89 days as daily wages respectively up-till 15.3.2013 will be considered for regularization during this meeting and onward. Latter, the cases of the following Ministries/Divisions were discussed in detail in the above meeting. The Ministries/Division wise detail of proceedings is produced below:-

The representative of the Ministry of Petroleum & Natural Resources informed the Cabinet Sub Committee that there are 756 contract and 2925 daily wages employees out of which already the Board of Directors have regularized the services of 565 such employees, and cases of 49 employees who meet the criterion of regularization are in process.

The Cabinet Sub Committee discussed and directed the Ministry of Petroleum & Natural Resources to ensure that all those employees who are getting salaries from recurring/non development budget and who have served for more than one year on contract or 3 spells of 89 days should be regularized immediately under information to this Committee in the following organizations working under the Ministry.

1. Oil & Gas Development Company Limited (OGDCL)
2. Pakistan State Oil Company Limited (PSOCL)
3. Sui Northern Gas Pipelines Limited (SNGPL)
4. Sui Southern Gas Pipelines Limited (SSGPL)
5. Hydrocarbon Development Institute of Pakistan (HDIP)
6. Pakistan Mineral Development Corporation Limited (PMDC)
7. Lakhra Coad Development Corporation Limited (LCDC)
8. Geological Survey of Pakistan (GSP)”

And more so, the appointment on regular basis of contract/daily wages can be considered on the ground that they have rendered minimum years of their service in continuity on the posts of permanent nature. So far as determination of upper age limit of the Petitioners for regularization is concerned, the Competent Authority may relax the

upper age limit of the petitioners as per Rules. We may observe here that the Respondent-Company cannot debar the employees working on contract/daily wages/work charge who have rendered their service for the Company for so many years from competing for consideration for regularization.

20. We are of the view that the Respondent-Company cannot adopt a policy of fresh appointments on the posts already held by the Petitioners on which they were appointed after going through a transparent procedure particularly when during their entire service nothing adverse in terms of their qualification and character and/or inefficiency in the subject field was observed by the Competent Authority of the Respondent-Company. The Petitioners served the Respondent-Company for almost 7 and 13 years which is more than sufficient time to gain expertise in their respective fields. Therefore to consider someone other than Petitioners for regularization is unjustified and against principles of natural justice and equity.

21. We are of the view that Petitioners are fully entitled to the benefit contained in office Memorandum dated 07.03.2013 because they are in continuous service since 2004 & 2007 respectively and have drawn salary from the Respondent-Company. We are fortified with the unreported order dated 17.5.2013, rendered by the Hon'ble Supreme Court in the case of M/s. Pakistan State Oil Company Limited Vs. Ghulam Ali and others (CPLA No. 95-K 2013) upheld the Order dated 11.1.2013 passed by learned Division Bench of this Court in C.P. No. D-3882/2011 has held as follows:

“Through these proceedings petitioners have challenged the judgment of the Sindh High Court passed on 11.1.2013 for regularization of the respondents in their organization.

2. We have heard the learned counsel for the petitioner company and according to him they outsourced the services of the respondents to a contractor and therefore, the High court of Sindh by impugned judgment was in error to allow the petition of the respondents.

3. We have perused the record, which shows that the respondents were employed by the petitioner and working there since years. Respondents were issued security cards by the Civil Aviation Authority on the recommendation of the petitioner company. The entire material was placed before the High court and the High Court by impugned judgment has recorded correct findings. It is contended that the issue ought to have been raised before the National Industrial Relations Commission(“NIRC”). We are not persuaded by the contention of the learned counsel on this score as well. NIRC cannot determine nor can order regularization of the respondents as it has limited scope.

4. For the aforesaid reasons we do not find any infirmity in the impugned judgment, which could warrant interference by this Court. Petition merits dismissal. Leave refused.”

22. Looking through the above perspective and keeping in view the factual position of the case, we hereby infer that the Petitioners ought to have been considered for regularization by the Respondent-Company.

23. The case of the Petitioners is fully covered by the judgment rendered in the case of Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257), wherein the Hon’ble Supreme Court has held at paragraph 13 as follows verbatim:-

“looking through the above constitutional prism and keeping in view the facts that the federal government which owns, controls, manages and finances TIP has directed TIP to regularize the appellants, and that admittedly the appellants have initially been appointed in

an open and transparent manner and after the vacancies were advertised in the newspapers, one cannot escape the conclusion that the appellants ought to have been regularized.”

24. We are further fortified on the similar principle by the case law decided by learned five Member Bench of Hon’ble Apex Court in the case of Government of Khyber Pakhtunkhwa and others Vs. Adnanullah and others (2016 SCMR 1375), wherein the Hon’ble Supreme Court has held at paragraph 31 as reproduced below:-

“The record further reveals that the Respondents were appointed on contract basis and were in employment/service for several years and Projects on which they were appointed have also been taken on the regular Budget of the Government, therefore, their status as Project employees has ended once their services were transferred to the different attached Government Departments, in terms of Section 3 of the Act. The Government of KPK was also obliged to treat the Respondents at par, as it cannot adopt a policy of cherry picking to regularize the employees of certain Projects while terminating the services of other similarly placed employees.”

25. In the light of above facts and circumstances of the case, the instant Petitions are hereby disposed of in the terms, whereby the Chief Executive Officer of Respondent-Company is directed to consider the case of Petitioners for regularization of service in accordance with law and dicta laid down by the Hon’ble Supreme Court of Pakistan in the cases referred to herein above within a period of two months from the date of receipt of this judgment.

JUDGE

JUDGE

Karachi
Dated: 01.06.2017
S.Soomro/PA