

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-4168 of 2016

Syed Muhammad Ali Asad Jaffery.....Petitioner

Versus

Province of Sindh & Others.....Respondents

Date of hearing 27.03.2018

Syed Nadeem-ul-Haq advocate for the Petitioner.
Mr. Nadir Khan Burdi advocate for Respondents No.2 & 3.
Mr. Shahriyar Mehar, A.A.G.

ORDER

ADNAN-UL-KARIM MEMON,J:- Through the instant petition, the Petitioner is seeking direction to the Competent Authority of Layari Development Authority to consider / treat him as regular employee of the Layari Development Authority and provide all benefits / emoluments / rights available to other employees on the same posts according to the rules.

2. Brief facts of the case, as per averments of the parties, are that Petitioner was initially appointed as Data Entry Operator on contingent basis vide offer letter dated 20.08.2009, thereafter he was offered the post of Computer Operator in Layari Development Authority (LDA) on contingent basis vide offer letter dated 09.06.2010. Petitioner has averred that his contingent service was converted into regular service and his

cadre was also changed from Data Entry Operator into Chowkidar vide Office Memorandum dated 15.3.2013. Petitioner has submitted that he was declared medically fit vide certificate dated 15.3.2013 issued by the Civil Surgeon Karachi. Petitioner has submitted that he moved an application to the Respondent-Authority that he is duly qualified Computer Operator but his service has been regularized as Chowkidar for which Department ignored the request of the Petitioner, even failed to actualize the regularization of the service of the Petitioner for the post of Chowkidar. However the Respondent-Authority issued another Office Order dated 15.1.2015, treated the Petitioner as contract employee and extended the contractual period of three months w.e.f. 02.01.2015 to 31.03.2015. Petitioner has submitted that he has performed his duty up to 18.06.2016 as Regular Employee and not as a contract employee in view of the Office Order dated 15.3.2013 issued by the Respondent-Authority but his services have not been actualized as Regular employee. Petitioner has further submitted that in view of Section 3 of Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 his service is liable to be treated as regular employee. Petitioner has claimed that the Respondent No.3 has regularized the services of several employees but the Petitioner has been singled out, which is a discriminatory attitude on the part of Respondent's Authority. Petitioner being aggrieved by and dissatisfied with the inaction on the part of Respondent-Authority has filed the instant petition on 25.07.2016.

3. The Respondent-Authority filed parawise comments and controverted the allegations leveled by the Petitioner.

4. Syed Nadeem-ul-Haq, learned counsel for Petitioner has argued that the Petitioner is a regular employee and not contract employee of Respondent-Authority, thus his service is liable to be actualized and he is entitled to be treated as regular employee without discrimination; that the Provincial Assembly has passed the beneficial legislation in the shape of Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, therefore, the Petitioner is liable to be treated as regular employee as provided under Section 3 of the Act, 2013; that the Petitioner is graduate engineer and the Competent Authority appointed him as computer operator on contingent basis, subsequently due to non-availability of post of computer operator, he was regularized as Chowkidar against vacant post on 15.03.2013, which act of the Respondent-Authority is within the parameters of law; that since the service of the Petitioner was regularized in the year 2013, therefore the Respondent-Authority cannot cancel the regularization of service of the Petitioner unilaterally without assigning any reason and treat him as contract employee for certain period and terminate his service; that the Petitioner has been condemned unheard and removed from the service without holding proper inquiry into the allegations if any leveled against the Petitioner, which is unwarranted under the law; that the Petitioner appointed on regular basis, is entitled to a fair opportunity in terms of Article 4, 10-A and 25 of the Constitution of Islamic Republic of Pakistan 1973; that this Court has jurisdiction to interfere in the matters involving denial of such rights of citizens of this Country by the State Functionaries. He next contended that the Respondent-Authority has created chaos amongst employees who were rendering their services but, have not been considered for regularization. However, Respondent-Authority extended the benefit of

regularization to colleagues of the Petitioner and he has been singled out. He lastly prayed for allowing the petition.

5. Mr. Nadir Khan Burdi, learned counsel for Respondents No.2 & 3 has raised the issue of maintainability of the instant petition. He has submitted that Petitioner had never remained in continuous service of Respondent-Authority and his case does not fall within the ambit of Sindh (Regularization of Adhoc and Contract Employees, Act 2013; that Petitioner was a contingent employee and services of all contingent and contract employees was terminated on 31.07.2015 i.e. 302 employees appointed / hired on contingent / contract basis; that petitioner was initially appointed as Data Entry Operator for a specific project of LDA, whereas the LDA has only one post of Date Entry / Computer Operator and at the time of consideration of cases of all the contract employees for regularization as such the case of the Petitioner cannot be considered for regularization; that regularization process initiated in the year 2013 was withdrawn by Competent Authority of the Respondent-Authority, soon after its initiation on 21.03.2013, which was not challenged by the Petitioner. He lastly prayed that the Petitioner is not entitled for any relief and the instant petition may be dismissed.

6. We have considered the submissions of the parties and have perused the material available on record.

7. First of all, we address the question of maintainability of the instant Petition under Article 199 of the Constitution. Prima-facie, it appears that Layari Development Authority is a statutory body in terms of Layari Development Authority Act, 1993. (Sindh Act No. X of 1994).

Respondent- Authority is performing functions in connection with the affairs of the Province within the meaning of Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution and therefore this Court has jurisdiction to entertain this Petition and decide the same on merits.

8. On merits, we hereby proceed to determine the controversy between the parties with respect to regularization of service of the Petitioner in Respondent-Authority. Record reflects that the Petitioner continued to serve initially on contingent basis in Respondent-Authority thereafter his cadre was changed from Date Entry / Computer Operator to Chowkidar on regular basis on 15.3.2013 and was in employment/service for several years on the post which have now been given in the regular budget of Respondent-Authority. However his service was again treated on contract basis vide Office Order dated 15.1.2015 and he was terminated from service on 31.07.2015 due to expiry of the contract period.

9. Now, we would like to address the question raised by the learned counsel for the Respondent-Authority with respect to the non-applicability of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 in the case of Petitioner. In our view prima-facie this Act, 2013 does not seem to be applicable to the facts and circumstances of the present case of the Petitioner, as this Act, 2013 is relevant for those employees, who held the posts in Government Department and includes the post in a Project of such Department in connection with the affairs of the Province, excluding the employees appointed on contingent/daily wages basis.

10. As regards the next question raised before this Court that whether the Petitioner can be regularized in the Respondent-Authority. We have noticed that the Petitioner was initially appointed as Data Entry Operator on contingent basis vide offer letter dated 20.08.2009, thereafter he was offered the post of Computer Operator in Layari Development Authority (LDA) on contingent basis vide offer letter dated 09.06.2010 and the cadre of the Petitioner was changed from Data Entry Operator into Chowkidar vide Office Memorandum dated 15.3.2013, which is against the law. Even the Petitioner has admitted that he accepted the contractual period of three months w.e.f. 02.01.2015 to 31.03.2015 and has performed his duty up to 18.06.2016, which prima-facie shows that the Petitioner had accepted the contractual terms of three months, therefore cannot blow hot and cold in the same breath to claim regularization of service, once he accepted another term of his service on contract basis.

11. We are of the considered view that the issue in hand is fully covered through the judgment Petitioner's contingent service could not have been converted into regular service and his cadre was wrongly changed from Data Entry Operator into Chowkidar, therefore Respondent-Authority rightly cancelled the Regularization of the service of the Petitioner vide order dated 21.03.2013.

12. We, therefore, are of the considered view that issue in hand is fully covered the judgment passed by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456), which provides that the cadre of employee cannot be changed. The

Hon'ble Supreme Court In the case of Ali Azhar Khan Baloch & others (supra) has held at Paragraph No. 121, which is as under:

“That the impugned judgment is only applicable to Civil Servants and does not cover non civil servants. We, with respect, disagree with the contentions of the learned Counsel. The impugned judgment would be equally applicable to the Government Servants, employees of any statutory or non-statutory organization controlled by the Sindh Government, who were wrongly absorbed in different Cadres, Services, Posts of the Government Departments, Statutory Organizations against their Service Rules.”

13. The Petitioner has in our view has failed to make out his case for regularization of his service; therefore the instant Petition is hereby dismissed along with pending application(s).

JUDGE

JUDGE

Karachi
Dated: 27.03.2018