

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-1847 of 2017

Present:

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

Yasir Ali Baloch and another..... Petitioners

Province of Sindh..... Respondents

Petitioners Present in person.
Mr. Shahryar Mehar AAG along with
Mr. Ismail Kolachi Incharge Legal Section and
Yaqoob-ul-Haq Statistical Assistant (STEVTA)

Dates of hearing: 21.03.2018 & 11.04.2018

JUDGMENT

Adnan-ul-Karim Memon, J. Both the Petitioners are seeking regularization of their service from the date of their initial appointment in Sindh Technical Education and Vocational Training Authority (STEVTA).

2. Brief facts of the above referred petition are that the Petitioner No.1 was appointed as Assistant DP Finance & Accounts and Petitioner No.2 was appointed as Junior Clerk in STEVTA in the year 2012 and 2013 respectively at fixed remuneration for a period of 89 days on contingent basis. They have asserted that they performed duties assigned to them with keen interest and devotion without any complaint therefore; they may be regularized in the service. They have further asserted that employment is basic necessity of the life, particularly for the educated youth and the State is responsible to provide transparent

working environment and the employers are required to provide opportunity for grooming and exploitation of abilities and talent by the employees. They contended that after continuous devoted and successful performance, the Respondent-Authority threatened the Petitioners and several other employees to accept employment on contingent basis or face termination from the contract employment. They further contended that the Petitioners and other employees of the Respondent-Authority deserved regularization of their service as well as promotion to the higher posts according to their qualification. The Petitioners further contended that as per office order dated 04.09.2013 issued by the Respondent-Authority, which was partially modified in continuation of the office order dated 05.12.2013 (after 92 days) and in response to the aforesaid order their pay fixation was also made, thereafter the names of the Petitioners were included in payroll and salaries were being drawn by them as regular employee of the Respondent-Authority and not from any project funds. Petitioners have submitted that they have worked as regular employee for one year four months and nineteen days and Respondent-Authority has given annual increment as well as Adhoc relief allowance to the Petitioner No.1. Petitioners have averred that as per Recruitment Policy 2010, the Respondents have regularized the services of other contingent employees, who were appointed in the year 2009-2010 vide office order dated 28.3.2012. Petitioner have submitted that the Respondent-Authority has appointed their nearest and dearest relatives, unqualified persons in violation of STEVTA (Appointment, Promotion and Transfer) Rules 2012 on regular basis and the Petitioners have been ignored. Petitioners have further submitted that they should stand confirmed; but, they were not given any

benefit admissible under the Recruitment Policy. On the contrary being threatened for forcible removal from the employment under the garb of their powers and authorities, as the Respondents are bent upon to further victimize and remove the Petitioners and other employees from service in violation of the law and disregard of the Constitution. It is further asserted that the Respondents having observed that the Petitioners being employed for the last four years or so on, without any break in their services and payment of their emoluments, perks and perquisites/benefits of employment for all the legal purposes; might ask for bringing them to regular status, framed a new strategy to create insecurity and confusion in the ranks of the Petitioners by way of introducing a policy for appointment for 89 days only and on the basis of such policy, the Petitioners should stand confirmed, but they have been neglected, by the arbitrary, unilateral acts of the Respondents. It is further averred that in order to block the career of the Petitioners, the Respondents have dispensed with the service of the Petitioners with effect from 24th December 2016 without assigning any reason in order to avoid their regularization in their service, whereas the petitioners continued to work in STEVTA for consecutive terms of 89 days, however the Respondent-Authority by intervention of this Court, have paid the salaries to the Petitioners for the period they worked up to 2017. Petitioners being aggrieved by and dissatisfied with the purported action with malafide intention to deprive the Petitioners from their jobs have approached this Court on 24.3.2017.

3. Upon notice, Respondents-Authority filed comments and denied the allegations leveled against them.

4. Petitioners who are present in person have submitted that they at the time of filing of the captioned Petition were serving in the Respondent-Authority on regular posts; that the Petitioners were eligible for permanent absorption under the policy and Sindh Technical Education and Vocational Training Authority Act, 2009. (Act, 2009) They further submitted that it is consistent practice of the Respondent-Authority to hire persons on contract basis and thereafter regularize them. They further submitted that the contractual employees cannot be subjected to discriminatory treatment; that Petitioners are entitled for similar treatment in respect of regularization under, which their similarly placed colleagues have been regularized vide office order dated 28.3.2012; that the Petitioners are qualified persons to hold the subject posts. In support of their contention they have relied upon the case of Abdul Ghafoor and others Vs. President of National Bank of Pakistan and others (2018 SCMR 157). In the end Petitioners submitted that they are liable to be regularized in service.

5. On the other hand Barrister Shahryar Mehar, learned AAG has contended that the Petitioners were engaged for the project of SSBP in STEVTA for limited period of time, based on contingent; that the Petitioners are not appointed by the STEVTA; that the said appointment of the Petitioners was made purely on need and temporary basis without considering the availability of the posts; that a committee was constituted by the Competent Authority to submit its recommendation to place the matter before the STEVTA to make the contingent engagement on their circular dated 25.09.2013; that the STEVTA has released their salary up to their contract period; that the Petitioners have no right to agitate their contingent service grievances before this Court under Article

199 of the Constitution of Pakistan, 1973 hence, Petition is not maintainable; that the contractual obligations cannot be enforced through constitution petition; that the Petitioners were serving in the Respondent-Authority in accordance with the terms and conditions of the service contract duly entered/accepted by both the parties and at present the said employment contract has been concluded and the said relationships have come to an end in the month of March 2016; that the contract between the parties was always extended or renewed with consent of the parties as no contract can come into force on the will of a single party; that the management of the Respondent-Authority has the exclusive right to determine terms and conditions of employees and determine number of the employees in a particular category; that this Court cannot alter and / or amend the terms of contract that were offered to the Petitioners. He lastly prayed for the dismissal of the instant Petition.

6. We have heard the Petitioners in person and the learned AAG perused the material available on record and the case law cited by the parties.

7. First of all, we address the question of the maintainability of the instant Petition under Article 199 of the Constitution. Prima-facie, it appears that the STEVTA is a statutory body in terms of Sindh Technical Education and Vocational Training Authority Act, 2009. (Sindh Act No. VIII of 2010). Respondent- Authority has its statutory rules of services called "Sindh Technical Education and Vocational Training Authority Employees (Appointment, Promotion and Transfer) Rules 2012." The same were framed by the Government

of Sindh, pursuant to Section 22 of STEVTA Act, 2009. STEVTA is performing its 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 to decide the same on merits. We are fortified by the decision rendered by the Honorable Supreme Court of Pakistan in the cases of Pakistan Defence Housing Authority & others vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257).

8. In the light of the aforesaid judgments of the Honorable Supreme Court of Pakistan, the objection of maintainability of the captioned constitution Petition is not sustainable in law.

9. On merits, we hereby proceed to determine the controversy between the parties with respect to regularization of service of the Petitioners in the Respondent-Authority. Record reflects that the Petitioners continued to serve initially on contingent basis in the Respondent-Authority, thereafter they were in employment/service for several years i.e. Four consecutive terms of 89 days on the post, which have now been given in the regular budget of the Respondent-Authority. However their service were terminated with effect from 24th December 2016 due to expiry of the contract period. Petitioners have specifically pleaded that they are entitled for the similar treatment in respect of the regularization under which their

similarly placed colleagues have been regularized vide office order dated 28.3.2012 and the Petitioners are qualified person to hold the subject posts.

10. 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 Petitioners. 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 of Sindh Departments which includes the post in a Project of such Department in connection with the affairs of the Province also excluding the employees appointed on contingent/daily wages basis. We are cognizant of the fact that under the aforesaid Act, 2013 the contingent service cannot be converted into regular service. But in the present matter Petitioners have taken the plea of discrimination as discussed supra, therefore in the matter of regularization of service of the Petitioners, we seek guidance from the reported case of M/s Hadeed Welfare Trust & another Vs. Syed Muhammad Shoaib & others rendered by the Honorable Supreme Court of Pakistan in Civil Petitions No.121-K and 122-K of 2017, wherein the Honorable Supreme Court has maintained the Judgment dated 15.12.2016 passed by this Court against M/s Hadeed Welfare Trust (A subsidiary of Pakistan Steel Mills) reported in 2017, PLC (C.S.) 1020, whereby the contract

employees of Pakistan Steel Cadet College were regularized as under: -

“3. The other pretext for not regularizing the respondents was that the office memo dated 29.8.2008, issued by the respondent No.26 (Federation of Pakistan), which required regularization of the service of the employees of the Federal Ministries/Divisions/ Attached Departments, Subordinate offices, Autonomous, Semi-Autonomous Bodies/Corporations, was for the benefit of employees in BS-1 to BS-15, and is not applicable to the present respondents, however, in so pleading the present petitioners have ignored the minutes of the meeting of the Cabinet Committee dated 07.2.2011 and minutes of the meeting of the Cabinet sub-committee on regularization, inter alia, of contract employees in Ministries/Divisions/Attached Department / Autonomous Bodies/Organizations held on 13.3.2013, relevant paragraphs whereof, for the ease of reference are reproduced below: -

“MINISTRY OF PRODUCTION

236. The representative of the Ministry of Production/Secretary Pakistan Steel Mills informed the Cabinet Sub-Committee that there are certain contract/daily wages employees in the Cadet College and other educational institutions of the Steel Mills at Karachi who have served for more than one year and whose services are required to be regularized.

DECISION

237. The Cabinet Sub-Committee discussed and directed that the services of all the contract/daily wages employees (teaching and non-teaching staff) of the Cadet College and other educational institutions of Pakistan Steel Mills Karachi, who have served for more than one year should be regularized subject to fulfillment of criterion and availability of posts under intimation to the Establishment Division.”

4. As can be seen from the forgoing, the above decision is not restricted to any scale or grade, and no such restriction can be read therein by any stretch of imagination and is therefore equally applicable to the employees of all grade and scales including the present respondents, who were thus rightly granted such relief through the impugned judgment. We therefore do not find any lacuna in the impugned judgment justifying our interference in the matter, the petitions are therefore dismissed.”

11. On the issue of the regularization in service, our view is further strengthened by the Judgment of this Court dated 01.6.2017 passed in the Constitution Petitions No.D-3199, D-4605 and D-5079 of 2013, D-509, D-2034, and D-1091 of 2014 respectively (2017 PLC CS), whereby Pakistan State Oil Company was directed to regularize the services of third party contractor/“outsourced employees”. The said Judgment was assailed before the Honorable Supreme Court of Pakistan in Civil Petitions No.409-K to 414-K of 2017, which maintained the same and held as under: -

“As regards the question that the respondents were not the employees of the petitioner but the contractor, suffice it to say that it is a normal practice on behalf of such industries to create a pretence and on that pretence to outsource the employment of the posts which are permanent in nature and it is on the record that the respondents have been in service starting from as far back as 1984. This all seems to be a sham or pretence and therefore it being not a case of any disputed fact and no evidence was required to be recorded. Moreover, we have seen from the order under challenged that in such like cases where the orders have been passed by the Labour Tribunals, the employees, even those who were under the contractors’ alleged employment, have been regularized by the petitioner. And thus keeping in view the rule of parity and equity, all the respondents even if considered to be the employees of the contractor, which is not correct, they having been performing duties of permanent nature

should have been regularized. However, at this stage, we would like to observe that the employment of the respondents shall be regularized with effect from the date when they approached the learned High Court through the Constitution petition but for their pensionary benefit and other long terms benefits, if any, available under the law, they would be entitled from the date when they have joined the service of the petitioner. All the petitions are accordingly dismissed.”

12. From what has been discussed above, we have reached the conclusion that submissions of the Respondent-Authority are misconceived and are not well founded. The regularization of the service of the Petitioners is based upon their length of service they have worked for the Respondent-Authority and it is on the above principle that the Petitioners have approached this Court for regularization of their service under Article 9 and 25 of the Constitution of the Islamic Republic of Pakistan. We are fortified by the observation made by the Hon'ble Supreme Court of Pakistan in the case of Khawaja Muhammad Asif Vs. Federation of Pakistan & others (2013 SCMR 1205).

13. It is asserted by the Petitioners that they were earlier on contingent basis for a period of 89 days as per terms and conditions set forth in the contract appointment; that as per record, the contract continued till the Petitioners services were dispensed with from the month of December 2016. Record shows that performance of the Petitioners in the Respondent-Authority has not been called in question throughout their service period by the Respondent-Authority.

14. We are of the view that the Respondent-Authority cannot act whimsically while making fresh appointments against the posts already held by the Petitioners, who were appointed in a

transparent manner and nothing adverse in terms of qualification and character and/or inefficiency in the subject field was observed by the Competent Authority of the Respondent-Authority during their entire period of their service.

15. We have noted that the Petitioners served the Respondent-Authority for a period of 4 years. The said period of service is more than sufficient to acquire expertise in the respective fields. Therefore, considering others while ignoring the Petitioners is unjustified and against the principles of natural justice and equity.

16. We have gone through the Office Memorandum dated 11th May, 2017 issued by the Government of Pakistan, Cabinet Secretariat, Establishment Division and excerpt of the same is reproduced herein below: -

*Government of Pakistan
Cabinet secretariat
Establishment division*

No.F-53/1/2008-SP Islamabad the 11th May, 2017

OFFICE MEMORANDUM

Subject:- Amendment in the Recruitment Policy/Mechanism to Ensure Merit Based Recruitment in the Ministries/Divisions/Sub-ordinate Offices/Autonomous/Semi-Autonomous Bodies/ Corporations/Companies/Authorities

The undersigned is directed to state that the Federal Cabinet in its meeting held on 12th April, 2017 has accorded approval of the subject amendment to be inserted as para 1(e) in the Recruitment Policy/Mechanism issued vide this Division's O.M. No.531/2008-SP dated 16th January, 2015 as under: -

“(e) Appointment on Regular Basis of Contract/Contingent/ Paid/ Daily Wages/Project Employees For the purpose of appointment on regular basis of Contract/Contingent/Paid/Daily Wages/Project employees the following criteria shall be observed: -

(i) All Contract/Contingent/Paid/Daily Wages/Project employees who have rendered a minimum of one year of service in continuity, as on 1.1.2017 (hereinafter referred to as eligible employees) may apply for appointment on regular basis in the manner prescribed hereinafter provided that the condition of continuity shall not be applicable in case of person(s) employed

on daily wages who have completed at least 365 days service.

(ii) For initial appointment to posts in BS-16 and above, the employees shall apply direct to FPSC against relevant/suitable vacancies as and when arising for which they are eligible.

(iii) For initial appointment to posts in BS-1 to BS-15, the eligible employees may apply as per criteria given vide this Division's O.M. No.531/2008-SP dated 16.1.2015 and 3.3.2015 shall be adopted.

(iv) The eligible employees shall be awarded extra marks in interview at the rate of one (01) mark for each year of service rendered upto a maximum of five (05) marks, on the recommendation of the respective selection authorities.

(v) The period served as Contract, /Contingent/Paid/Daily Wages/Project employees shall be excluded for the purpose of determination of upper age limit in addition to relaxation of upper age limit as per existing rules.

(vi) Qualifications prescribed for a post shall be strictly followed in case a person does not possess the prescribed qualifications/experience for the post he/she is applying for he/she shall not be considered for the same.

(vii) The employees must be in good mental and bodily health and free from any physical defect likely to interfere with the discharge of his duties unless appointed against disability quota.

(viii) The advantage of para 1(e) is a one-time dispensation for all Contract/Contingent/Paid/Daily Wages/Project employees for their eligibility to regular appointment.

2. This Division's O.M. of even number dated 16th January, 2015 is modified to the above extent. All Ministries/Divisions are requested to take further action accordingly.

(AttiqHussainKhokhar)
Director General
[Tel:051-9103482](tel:051-9103482)

All Ministries/Divisions
Rawalpindi/Islamabad"

17. The above Memorandum dated 11th May, 2017 is issued in pursuance of the decision of the Cabinet Sub-Committee for regularization, wherein the Federal Government has directed the Ministries/Divisions/Sub-ordinate Offices/Autonomous/Semi-Autonomous Bodies/Corporations/Companies/Authorities to regularize all the Contract employees, who have rendered a minimum of one year of service in continuity, as on 01.01.2017.

18. We are of the view that this is a policy decision of the Cabinet Division on the issue of the regularization of the service of the certain employees working in the Federal Government or its entities. Petitioners have served STEVTA for four consecutive terms of 89 days and they are entitled to be regularized. In principle, the Petitioners are fully entitled to the benefits contained in the aforesaid Office Memorandum, though it is applicable for the employees of the Federal Government and its entities, because they are in continuous service of the Respondent-Authority for a long time and are paid salary as well. We are of the considered view that regularization of service is not an initial appointment but it is confirmation of an existing employment.

19. 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), the case of Abdul Ghafoor and others Vs. The President of National Bank of Pakistan and others (2018 SCMR 157) and (2018 SCMR 325). We are further fortified on the similar principle by the case law decided by the learned five Members' Bench of the Hon'ble Supreme 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.”

20. The Judgment dated 10.2.2017 of this Court passed in C.P No. D-2797 of 2014 and other connected petitions, in the case of Murtaza Ali and others Vs. Province of Sindh and others, cited by the learned AAG is not applicable to case in hand, more particularly in presence of the Judgments of the Honorable Supreme Court of Pakistan, on the subject issue.

21. In the light of facts and circumstances of the case discussed above and decisions rendered by the Honorable Supreme Court in the aforesaid cases, the instant Petition is hereby disposed of with direction to the Managing Director/Competent Authority of the Respondent-Authority to take a fresh decision so far as the matters of the Petitioners are concerned for regularization of their services, without discrimination, in accordance with law and dicta laid down by the Hon'ble Supreme Court of Pakistan in the cases referred to hereinabove.

22. The Managing Director/Competent Authority of Respondent-Authority is further directed to complete the entire exercise within a period of two months from the date of receipt of this Judgment.

23. Petition stands disposed of along with the listed application in the above terms.

JUDGE

JUDGE

Karachi
Dated: