

## IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

**C.P No.D-2863 of 2014**

Pir Kalimullah and another .....

Petitioners

Versus

Province of Sindh and others .....

Respondents

**Date of hearing: 08.05.2018**

Mr. Abdul Salam Memon Advocate for the Petitioners.

Barrister Shehryar Mahar, Assistant Advocate General Sindh.

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J: -** Through the instant Petition, the Petitioners have prayed for the following relief(s).

- i) Declare that the Petitioners were entitled to be reinstated in service as Deputy Superintendent of Prisons (BPS-17) since the said post having already been upgraded since January 2010.***
- ii) Declare that the order/notification of the Petitioners to the extent of their reinstatement as Deputy Superintendent of Prisons BPS-16 is arbitrary and violative of Section 10 of the Sacked Employees (Reinstatement) Act, 2010 and the up gradation of posts and the petitioners were entitled to be reinstated as Deputy Superintendent of Prisons BPS-17).***

- iii) Declare that the petitioners are entitled to be allowed all service/consequential benefits as well seniority from the date of their initial appointment as Deputy Superintendent of Prisons since the intervening period has been ordered to be treated as extraordinary leave without pay.***
- iv) Declare that the petitioners are entitled to be allowed promotion to BPS-18 to at least bring them at par with their batch mates and most of the juniors to them, since the services of the petitioners were terminated on political grounds and admittedly with no fault on the part of the petitioners.***

2. The facts as averred in the pleadings of the parties are that the Petitioners were appointed as Deputy Superintendent Jail in BPS-16 on contract basis for a period of one year vide Notifications dated 01.09.1996 and 10.09.1996 respectively. Petitioners were dismissed from service on 3.12.1996, on political grounds, without giving them a fair opportunity of hearing. Petitioners contend that in pursuance of the Sacked Employees Reinstatement Act, 2010 ("the Act 2010"), whereby applications were invited from all those persons for their reinstatement in service, who were appointed as a regular or adhoc employee on contract basis or otherwise during the period from the 1<sup>st</sup> day of November 1993 to the 30<sup>th</sup> day of November 1996 (both days inclusive) and were dismissed, removed or terminated from services or whose contract period was expired or who was given forced golden hands shake during the period from the 1<sup>st</sup> day of November 1996 to the 12<sup>th</sup> day of October, 1999. Petitioners have submitted that after fulfillment of the criteria and completing all the requisite procedure and formalities,

the Competent-Authority reinstated the services of the Petitioners in terms of the contract dated 1.9.1996. Petitioners have added that no corresponding Act was enacted by the Provincial legislature as such on the analogy of the Sacked Employees Reinstatement Act, 2010, the Sindh Government issued a Notification dated 27.01.2010, whereby a committee was constituted, comprising of the Minister for Home & Forest and Minister for Law, Parliamentary Affairs and Criminal Prosecution Service, Sindh to examine the cases of the employees who were dismissed, removed or terminated on political grounds during the period from 1<sup>st</sup> day of November 1996 to 31<sup>st</sup> day of December 1998. Petitioners further submitted that the committee was mandated to submit its recommendations to the Chief Minister, Sindh. As per the Petitioners the committee recommended the names of the Petitioners for their reinstatement vide letter dated 27.07.2011 for further action in the matter. Petitioners have asserted that they were reinstated in service vide Notifications dated 01.12.2011 issued by the Respondent No.2 with immediate effect and their intervening period was treated as an extraordinary leave without pay and subsequently their posting orders were issued accordingly. Petitioners have averred that the terms and conditions of their service as Deputy Superintendent Prisons (BPS-16) remained the same as mentioned in their respective appointment notifications. Petitioners have further averred that they are also entitled to be treated at par and treated alike and given the same treatment as that of the sacked employees of the Federation of Pakistan. Petitioners have added that the Respondent-Department instead of treating them as

regular employee were treated as contract employee vide letter dated 17.03.2013. Petitioners have submitted that during pendency of the instant petition, the Prison-department vide letter dated 10.7.2014 relieved them of their duties to report to the Home Department, Government of Sindh and till date they have not been paid their salaries.

3. Upon notice, Respondent-Department filed para-wise comments and denied the allegations.

4. Mr. Abdul Salam Memon, learned counsel for the Petitioners has contended that as per Section 10 of the Sacked Employees (Reinstatement) Act, 2010, the Petitioners ought to have been reinstated in service as Deputy Superintendent of Prisons in (BPS-17) and not in BPS-16; that the executive posts in Sindh Prisons Department have been upgraded likewise the post of Deputy Superintendent Prisons has also been upgraded from BPS-16 to BPS-17, thus the Petitioners ought to have been reinstated as Deputy Superintendent of Prisons in BPS-17; that services of the Petitioners were terminated on political grounds without any fault on their part and since the intervening period has been treated as extraordinary leave without pay in terms of the notification of their reinstatement in services, as such their services have virtually been deemed to be in continuity, therefore Petitioners are entitled to be allowed all other service benefits but they were illegally deprived of their due service benefits; that a number of Petitioners' batch-mates and even various juniors having been appointed subsequently to the termination of the

Petitioners are presently holding the posts of BPS-18 and 19, while the Petitioners are reinstated in BPS-16 on the same terms and conditions as mentioned in the Notification for their appointment as Deputy Superintendent Prisons, which is arbitrary, illegal and not warranted under the law and against the fundamental rights as guaranteed in the Constitution of the Islamic Republic of Pakistan, 1973; that the Petitioners have not been treated in accordance with law; that the colleagues and juniors of the Petitioners have long ago been promoted in BS-18/BS-19, whereas the Petitioners even after eighteen 18 years of service are serving in the grade in which they were appointed even the benefit of up-gradation has not been awarded to them.

5. Mr. Shehryar Mahar, learned AAG, has raised the issue of maintainability of the Petition and argued that both the Petitioners were appointed as Deputy Superintendent Prison (BPS-16) on contract basis for a period of one year in the year 1996; that after a period of 03 months their services were terminated vide this departments' Notification as discussed supra; that after a prolong period of 15 years they were reinstated in Government Service in the month of December 2011 on the terms and conditions as mentioned in their appointment Notifications No. SO (PRS- 1/11-176/2011 dated 01.12.2011 on the recommendations of the Committee constituted by the services General Administration & Co-ordination Department with regard to reinstatement of those persons who were dismissed, removed or terminated on Political Grounds in the year 1996 as advised by Law Department,

conveyed vide letters dated 13.08.2011 & 03.10.2011; that after expiry of the remaining period of contract i.e 30.07.2012 the services of the Petitioners were not extended; that the summary dated 21.09.2014 was floated to the Chief Minister Sindh with proposal that contract period of the Petitioners may be extended for three years from expiry of their contract period w.e.f. 30.07.2012 to 30.07.2015 so that their cases may be forwarded for consideration to relevant Scrutiny Committees constituted for regularization of Adhoc & contract employees under the Act, 2013 however the same was regretted and the Petitioners are no more employees of the Respondent-Department after expiry of their contractual period as discussed supra; that the post of Deputy Superintendent Prison (BPS-17) is to be filled through competitive process and not otherwise; that the Petitioners cannot claim the vested right for the aforesaid posts. Learned AAG lastly referred the Act 2010 and argued that it does not apply to the Employees Respondent-department.

6. We have heard the learned counsel for the parties and perused the material available on record.

7. Foremost, we would address the question of maintainability of the instant Petition under Article 199 of the Constitution.

8. Prima-facie, the case of the Petitioners is for regularization of their service as Deputy Superintendent Prison in BPS-17. As per record both the Petitioners were appointed as

Deputy Superintendent Prison in BPS-16 on contract basis for a period of one year in the year 1996 and after a period of 03 months their services were terminated, however their services were restored in the month of December 2011, after lapse of 15 years on the terms and conditions as set forth in their contract appointment.

09. The pivotal questions arise in the present proceedings are as under:-

***i) Whether the post of Deputy Superintendent Prison was required to be filled on contract basis and now can be regularized under the Sacked Employees (Reinstatement) Act, 2010 or under Sindh (Regularization of Adhoc and Contract Employees) Act, 2013?***

***ii) Whether the case of the petitioner is at par with Naib Ali Banbhan who having similar fact as that of petitioners had been reinstated in the service under the above provisions of Ordinance and the Act?***

10. During the course of arguments, we asked the learned counsel for the Petitioners to address the query whether the Petitioners' appointments as Deputy Superintendent Prison in BPS-16 on contract basis for a period of one year were in accordance with law. He however submitted that the Petitioners have been non-suited on a technicality and made submissions on the merits of the case. The learned counsel referred to section 3 of Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, which allow an employee appointed on Adhoc and contract basis or otherwise against the post in BS- 1 to BS-18 or equivalent basic scales, who is otherwise eligible for appointment on such

post and is in service in the Government department and its project in connection with the affairs of the Province, immediately before the commencement of this Act, shall be deemed to have been validly appointed on regular basis.

11. The moot question involved in this petition is that whether the Petitioners are entitled to be reinstated under provisions of the Sacked Employees (Reinstatement) Ordinance, 2010. This Ordinance was promulgated on 05.02.2010 and the Sacked Employees (Reinstatement) Act, 2010, was enacted on 08.12.2010. The aforesaid enactments were made to provide relief to the persons, who were appointed in a corporation service of autonomous or semi-autonomous bodies or in the Government Service during the period from 01.11.1993 to 30.11.1996 (both days inclusive).

12. As per the definition of person in corporation service as given under section 2 of the Sacked Employees (Reinstatement) Act, 2010 an excerpt of the same is reproduced as under:-

***(a) "person in corporation service" means a person who was appointed in a corporation, organization or autonomous or semi-autonomous body, established by or under a Federal law or owned or controlled by the Federal Government, during the period from the 1st day of November, 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed or terminated from service or given forced golden handshake during the period from the 1st day of November, 1996 to the 31st day of December, 1998 (both days inclusive);***

***(b) "Person in Government service" means a person who was appointed and was a member of the civil service of the Federation or held a civil . post in***

**connection with affairs of the Federation in a Ministry, Division or department during the period from the 1st day of November, 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed or terminated from service or given forced golden handshake during the period from the 1st day of November, 1996 to the 31st day of December, 1998 (both days inclusive)”**

13. In order to get the answers of above questions, various provisions of the Ordinance and the Act as well as their applicability to the facts and circumstances of this case has to be examined first. For the sake of convenience, Section 3 of the Ordinance is reproduced hereunder:-

**(3) Reinstatement of Employees.---Notwithstanding anything contained in any law for the time being in force, judgment of any Tribunal or a Court including the Supreme Court and the High Court, contract or terms and conditions of service, all persons appointed in corporation or Government service, during the period from the 1st days of November, 1993 to 30th day of November, 1996 (both days inclusive) and dismissed, removed, terminated or given forced golden handshake during the aforesaid period shall be reinstated immediately in service on one scale higher to their substantive scale of the post at the time of termination of the service and report for duty to their respective departments or organizations.”**

14. Section 3 of the Ordinance is a non-obstante clause, which provides that notwithstanding anything contained in any law or judgment of any Tribunal or Court, contract or terms and conditions of service, all person appointed in Corporation and Government service between 01.11.1993 to 30.11.1996 and dismissed, removed, terminated or forcibly given golden hand shake between 01.11.1996 to 31.12.1998 shall be reinstated immediately in service one scale higher to their substantive scale of

post at the time of termination. The said Ordinance was converted into an Act (Sacked Employees (Re-instatement) Act, 2010) and was duly published in the Gazette of Pakistan on 08.12.2010. Similar rather more beneficial provision as compared to section 3 of the Ordinance was introduced through Section 4 of the Act as under:-

**“4. Re-instatement of employees in service and regularization of employees’ service.--- Notwithstanding anything contained in any law, for the time being in force, or any judgment of any tribunal or any court including the Supreme Court and a High Court or any terms and conditions of appointment on contract basis or otherwise, all sacked employees shall be re-instated in service and their service shall be regularized with effect from the date of enactment of this Act.”**

15. Section 4 of the Act is also a non-obstante clause, which says that notwithstanding anything contained in any law and judgment of any Court, all the sacked employees shall be reinstated in service and their services shall be regularized with effect from the date of enactment of this Act in the manner provided in section 4 of the Act.

16. Section 2(f)(i) and (iii) of the Act defines the Sacked Employees as under:-

**2(f)(i) a person who was appointed as a regular or ad hoc employee or on contract basis or otherwise in service of employer, during the period from the 1st day of November, 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed removed or terminated from service or whose contract period was expired or who was given forced gold hand shake during the period from the 1st day of November, 1996 to the 12th day of October, 1999 (both days inclusive);**

***2(f)(iii) a person who was appointed or re-instated in service of employer during the period from the 1st day of November, 1993 to the 30th day of November, 1996 (both days inclusive) and who was subsequently dismissed or removed or terminated from service during the period from 1st day of November, 1996 to the 12th day of October, 1999 (both days inclusive) or who was intermittently dismissed, removed or terminated from service from time to time and re-instated through statutes or order or judgment of any tribunal or through any court including the Supreme Court or a High Court or through any administrative order or through withdrawal or any order conveying dismissal, removal or termination or by any other way on any date after the 1st day of November, 1996;***

17. As per Section 2(f)(i) of the Act, a person is “Sacked Employee” if he was appointed as regular or Adhoc employee or on contract basis or otherwise in service of employer from 01.11.1993 to 30.11.1996 (both days inclusive) and was dismissed, removed or terminated from service during the period from 01.11.1996 to 12.10.1999 (both days inclusive).

18. A bare reading of the above definitions indicate that provisions of the Ordinance and the Act is applicable only to the employees, who fall within the very limited category i.e. recruited during November 1993 to November 1996 and removed during November, 1996 to December, 1998. It may be noticed that the word used between the two described periods, is “And”. Therefore unless an employee of a corporation concurrently meets both these conditions, he is not entitled to the benefit of the Ordinance and the Act.

19. In the light of forgoing provision of law, the case of the Petitioners does not fall within the ambit of Ordinance and the Act, 2010. Reliance in this regard is placed on the case of Masroor Hussain and 45 others Vs. Chairman, Pakistan International Airlines and another [2010 PLC (C.S.) 630].

20. Now, we would like to address the question raised by the learned counsel for the Petitioners with respect to the applicability of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013. In our view prima-facie this Act does not seem to be applicable to the facts and circumstances of the present case of the Petitioners, 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. This Act, 2013 was promulgated on 25.3.2013, whereas the contract period of service of the Petitioners were expired before promulgation of the Act, 2013. Therefore the Petitioners are not entitled to the benefit of the aforesaid Act.

21. As regards the question of reinstatement of the Petitioners' colleague namely Naib Ali Bambhan, the record reveals that he was appointed as Deputy Superintendent of Prison (BS-17) in the year June 2014.

22. The summary of Chief Minister of Sindh dated 21.11.2014 reveals that the competent authority sought views of learned Advocate General Sindh who opined as under:-

***“We have gone through the facts stated in the summary as well as annexures attached with it. It is reported that the Government of Sindh in pursuance of Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 with the approval of competent authority has constituted scrutiny committees to scrutinize the eligibility of the employees appointed on Adhoc or contract basis. It will not be out of place to point out the terms of Reference of the scrutiny committees in which it was specifically stated that the committee shall examine and verify whether those employees were appointed in accordance with respective recruitment rules and observance of codal formalities including advertisement of the posts in newspaper, minutes of the Selection Committee etc. it is further reported that the cases of applicants were referred to the respective committee and that after scrutinizing the cases of these employees were recommended for reinstatement on the same terms and conditions of their Notification of Appointment and the intervening period was treated as extra ordinary leave without pay. It is submitted that the reinstatement of the contractual employees due to the revival of their original Notifications and on the same terms. Their contract period was expired on 30.07.2012 and 30.08.2012 without any formal extension, except the case of Mr. Naib Ali Banbhan, who was reinstated w.e.f. 15.04.2014 vide Notification dated 15.04.2014. In such circumstances, the benefit of Regularization under the Act, 2013 cannot be given to contractual employees viz-a-viz (1) Pir Kaleemullah, (2) Roshan Din Thebo, (3) Qazi Anwar Hameed, as their contractual period had expired on 30.07.2012 and 30.08.2012 after their reinstatement. Since the employees appointed on adhoc and contract basis otherwise. The relevant proviso is reproduced as under:-***

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

***Hence only those contractual/adhoc employees would be benefited who are still in service as such.***

***As for as the case of Mr. Naib Ali Banbhan is concerned, he stands on different footings, as he was reinstated on the directions of Honourable High Court***

***vide order dated 10.02.2014 in C.P. No. D-3266/2012 and was reinstated vide Notification dated 15.04.2014, when the Act, 2013 was in the field. Hence the benefit of Regularization under the Act No. XV of 2013 can be extended to Mr. Naib Ali Banbhan only, while the rest of the candidates cannot be regularized nor their contractual period can be extended, because it would be in the contravention of Judgment of Honourable Supreme Court of Pakistan in Crl. Org. Petition No. 89 of 2011.***

23. Record further reveals that this Court vide order dated 10.02.2014 passed in C.P. No. D-3266 of 2012 with the direction to the Chief Secretary Sindh to immediately consider the case of Petitioner (Naib Ali Banbhan) and place the same before the worthy Chief Minister Sindh for consideration in view of his earlier directives within a period of two months and petition was disposed of. This Court vide order dated 17.08.2016 passed in C.P. No. D-1421 of 2015 disposed of the Petition by directing the Home Secretary and the Chief Secretary Government of Sindh to complete the process and issue Notification accordingly within 45 days. The department submitted compliance report before this Court and the contempt application was disposed of vide order dated 20.12.2016. learned AAG has attempted to convince this Court with the case of Mr. Naib Ali Banbhan is on different footing as he was reinstated on the direction of this Court vide order 10.02.2014 passed in C.P. No. D-3266 of 2012 and was reinstated vide Notification dated 15.04.2014 when the Act, 2013 was in the field.

24. In view of the orders passed by this Court as discussed supra we refrain ourselves to dilate upon the case of Mr. Naib Ali

Banbhan at this juncture as he is not a party in the present proceedings, therefore no benefit of this case can be given to the Petitioners, for the simple reason that in the case Mr. Naib Ali Banbhan this Court directed the Chief Secretary Government of Sindh to consider case of the Petitioner and place the same before the Chief Minister for consideration, whereas in the present case Petitioner has claimed through the instant petition that they were entitled to be reinstated in service as Deputy Superintendent Prison in BS-17 and other ancillary relief(s) and the Petitioners were reinstated in service vide Notification dated 01.12.2011 on the terms and conditions of their appointments letter dated 10.09.1996, which contractual period of their service expired by efflux of time.

25. On merits, we hereby proceed to determine the controversy between the parties with respect to regularization of service of the Petitioners in the Respondent-Department. The documents on record reveal that a large number of persons were appointed in Sindh Prison Department on contract basis for a period of one year. However, only after a period of three months their services were terminated. Record does not reflect that upon reinstatement of the Petitioners in service, their services were regularized by the Respondent-Department and contractual period of the Petitioners expired on 30.7.2012 and 30.8.2012 respectively as per the term of their contract appointment by efflux of time. We are of the view that such appointment would be terminated on the expiry of contract period or any extended period on the choice of

the Employer or Appointing Authority. The case of the Petitioners is governed by the principle of “Master and Servant”, therefore, the Petitioners do not have any vested right to seek reinstatement in the service. It is a well settled law that contract employee cannot claim any vested right, even for regularization of service.

26. In the present case, there is no material placed before us by which we can conclude that the competent authority wrongly exercised the discretion by declining to regularize the service of the Petitioners.

27. The Honorable Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch V.S Province of Sindh (2015 SCMR 456) has held at paragraph No 188 as under:-

**“188. The background of the notification of 07.05.2013 of the Sindh Government was that during the hearing of the arguments in C.P.No.71/2011 and other Petitions in Criminal Original Petition No. 89-K of 2011, two CMAs numbered as 245/2013 and 247/2013 were filed, complaining that the Sindh Government had appointed 10 D.S.Ps without observing requisite Codal formalities. On 06.05.2013, this Court enquired from the Additional Advocate General Sindh, representing the Sindh Government, to satisfy the Court as to how the Sindh Government could appoint D.S.Ps without recourse to the procedure prescribed under the service law. The Additional Advocate General sought time for instructions and on the following day, he made a statement that all the D.S.Ps appointed directly, including the Petitioner, have been de-notified by notification dated 07.05.2013.”**

28. As per the West Pakistan Prisons Service (Class II) Rules 1962, and Notification dated 29.05.2015 issued by the Government of Sindh Home Department, the post of Deputy Superintendent of Prison in BPS-17 is a regular service post and can be filled in the following manner:-

5	Deputy Superintendent of Prisons (BPS-17). Male/ Female	(i) Thirty three percent by initial appointment through Sindh Public Service Commission. (ii) Sixty seven percent by promotion from amongst the Assistant Superintendents of Prisons (BPSD-16) having atleast five years service as such on the seniority-cum-fitness basis. (iii) Course at National Academy for Prisons Administration (NAPA) at Lahore or Sind Prisons Staff Training Institute at NARA, Hyderabad for promotion to (BPS-17)	Minimum Graduate Degree atleast in Second Division from recognized University. Height <u>Male</u> "Minimum 01 meter 70 cm" Minimum girth of chest 78 cm with expansion of 3 cm" <u>Female</u> "Minimum 01 Meter 70 cm" Vision 6/6 both eyes	21-28
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29. The aforesaid recruitment rules clearly depict that the post of Deputy Superintendent of Prison in BPS-17 can be filled in the aforesaid manner through competitive process and by promotion on seniority-cum-fitness basis. Admittedly, the Petitioners have not been declared successful candidates by Sindh Public Service Commission therefore; they cannot claim regularization of their service a matter of right. The appointment/ reinstatement of the Petitioners, if any, made by the Respondents for the post of Deputy Superintendent of Prison in BPS-17 is in violation of law cannot be given sanctity. We are of the view the qualification viz age, experience and Physical Standards for the post of Deputy Superintendent of Prison in BPS-17 cannot be relaxed under Recruitment Rules.

30. In view of the foregoing, we are of the considered view that the Petitioners were appointed as Deputy Superintendent of Prison without recourse to the provisions contained in the Sindh Civil Servant (Appointment, Promotion and Transfer Rules, 1974. It is a well settled law that a post of BS-17 can only be filled through Public Service Commission after advertisement; therefore no sanctity can be attached with the appointment of the Petitioners as

Deputy Superintendent of Prison on contract basis, which is a regular service post.

31. The Honorable Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456) has held at paragraph No 198 as under:-

***“The Sindh Government and or the Competent Authority cannot bypass this mandatory requirement and substitute a parallel mechanism to appoint a person in BS.16 to 22 against the language of these Rules, which are framed under the dictates of the Act as mandated under Article 240 of the Constitution. The Article 242 of the Constitution provides the mechanism for appointment of a Civil Servant through Public Service Commission. This Article is safety valve which ensures the transparent process of induction in the Civil Service. It provides appointment by Public Service Commission with the sole object that meritorious candidates join Civil Service. The Sindh Government through executive or legislative instruments cannot withdrawn any post from the purview of the Public Service Commission as has been done in the case of the petitioners, in negation to the command of Article 242 of the Constitution. For the aforesaid reasons, we hold that the Sindh Government shall make all the appointments in BS 16 to 22 through Public Service Commission.”***

32. It is now well established that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protect the rights within the frame work of the Constitution. This extra ordinary jurisdiction of the High Court may be invoked to encounter and collide with extraordinary situation. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the object to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. Reliance is placed on the case

of Muslim Commercial Bank Ltd. through Attorney Vs. Abdul Waheed Abro and 2 others (2015 PLC 259).

33. In the light of above observation of the Honorable Supreme Court, the Petitioners have failed to establish that they have any fundamental/vested right to remain on the contractual post or claim regularization of their service on the subject post which is not to be filled on contract basis. Reliance is placed upon the case of Contempt Proceedings against Chief Secretary and others (2013 SCMR 1752).

34. Besides the above, this Petition is not maintainable in law; therefore Constitutional jurisdiction of this Court cannot be invoked under Article 199 of the Constitution.

35. In view of the foregoing, the Constitutional Petition in hand is not maintainable, hence, is dismissed with no order as to cost along with the listed application(s).

Karachi  
Dated: 11.05.2018

JUDGE

JUDGE