

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Agha Faisal

C.P No.D-8018 of 2015

Mirza Ghulam Sarwar Petitioner

Versus

Dow University of Health Sciences
and 03 others Respondents

Date of hearing: 09.08.2018

Mr. Qadir Hussain Khan, Advocate for the Petitioner.
Mr. Ghulam Nabi, advocate for the Respondent No.1 to 3.
Mr. Shahriyar Mehar, Assistant Advocate General.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- Through the instant Petition, the Petitioner has prayed for regularization of his contractual service from the month of December, 2006 in the Respondent-University.

2. Brief facts of the case as per averments of the parties are that the petitioner was appointed on 2.12.2006 as a Laboratory Technician on contract basis for a period of 02 years in Respondent-University. Petitioner has submitted that his contract period was extended from time to time up to 31.12.2015 for six months. Petitioner contends that he approached the competent

authority for regularization of his service, but failed to achieve his desire due to his overage issue. Petitioner has submitted that the Respondent-University has regularized 650 contract employees, but only the petitioner was left out. Petitioner further averred that he approached to the office of Provincial Ombudsman for regularization of his service, but of no avail. Petitioner has added that the Respondent-University terminated the contract service of the petitioner on 27.3.2017 without paying salary, thus he has approached this Court on 30.12.2015. Respondent-University filed counter affidavit and raised the question of maintainability of the instant petition.

3. Mr. Qadir Hussain, learned counsel for the petitioner has argued that the petitioner has performed his duty as a Laboratory Technician since 2006, therefore, he is entitled for regularization of his service; that the Respondent-University have regularized the contractual service of other 650 employees, but the petitioner has been discriminated; that the petitioner is eligible to be appointed on regular basis. Learned counsel for the petitioner has drawn our attention to the order dated 31.12.2015 and argued that this Court has already passed status quo order with regard to petitioner's employment. He lastly prayed for allowing the instant petition.

4. Upon query by this Court as to how the instant Petition is maintainable so far as issue of regularization of the petitioner in the Respondent-University is concerned as the petitioner has crossed the age of 60 years, the learned counsel for the Petitioner

reiterated his arguments and argued that this is a hardship case and this Court can hear and decide the matter on merits.

5. We have gone through the case file and heard the learned counsel for the Petitioner and Mr. Ghulam Nabi, learned counsel for the Respondents No.1 to 3. Record reflects that the case of petitioner is quite different due to his crossing the age of superannuation i.e. 60 years, therefore, he cannot be regularized in service of public sector University. Besides that the Respondent-University has terminated the service of the petitioner vide letter dated 27.3.2017. Record does not reflect that the service of the Petitioner was regularized by the Respondent-University. It is well settled now that such appointment would be terminated on the expiry of contract period or any extended period on the choice of Employer or Appointing Authority. The case of the Petitioner is governed by the principle of Master and Servant, therefore, the Petitioner does not have any vested right to seek reinstatement in service. It is well settled law that contract employee cannot claim any vested right, even for regularization of service.

6. Reverting to the claim of the Petitioner that he has been condemned unheard by the Respondent-University before passing the impugned termination order dated 27.3.2017. Record reflects that at the time of appointment, he was more than 58 years of age and now has completed superannuation age i.e. 60 years; therefore, the service of the petitioner cannot be regularized. It is well settled law that an opportunity of Show Cause can be given to the employee of department, who is holding a permanent post,

whereas the record does not reflect that the Petitioner was permanent employee of Respondent-University, therefore in our view the Petitioner cannot claim vested right to be reinstated in service. It is well settled law that the service of temporary employee can be terminated on 14 days' notice or pay in lieu thereof. In the present case, there is no material placed before us by which we can conclude that termination letter of contract of petitioner has wrongly been issued by the Respondent-University. The Petitioner has failed to establish that he has any fundamental/ vested right to remain on the temporary /contractual post. Therefore, the argument of the Petitioner that he was not heard before issuance of termination letter dated 27.03.2017 is not tenable in the eyes of law.

7. In view of the foregoing, the Constitutional Petition in hand is dismissed along with listed application.

8. These are the reasons of our short order dated 09.08.2018, whereby we have dismissed the instant petition.

Karachi
Dated: 11.08.2018.

JUDGE

JUDGE

Nadir Ali P/A