

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Sadiq Hussain Bhatti
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-7348 of 2015

Muhammad Suleman KhanPetitioner

Versus

Federation of Pakistan &
others.....Respondents

Date of hearing 19.10.2017

Mr. Sanaullah Noor Ghouri, Advocate for the Petitioner.
Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- Through the captioned Petition, petitioner seeks declaration that the impugned order dated 25.07.2015, passed by Deputy Director (Admn) (ESTB) Intelligence Bureau, Government of Pakistan, Sindh Provincial Headquarter, whereby petitioner was relieved of his duties on expiry of his two years contract period.

2. Brief facts of the case are that the father of the petitioner namely Mr. Muhammad Khan was appointed in the Intelligence Bureau as Inspector. During service, he passed away on 26.02.2013. It is averred by the petitioner that the petitioner submitted application for appointment in Intelligence Bureau on son quota on 17.07.2013. It is further added in the memo of petition that his application was entertained by the Respondent No.2 and he was offered the post of Assistant Sub Inspector

BS-09, on contract basis, vide appointment letter dated 02.09.2013. As per petitioner, after completion of two years' service on contract, he submitted representation to the competent authority for regularization of his service as ASI in Intelligence Bureau, which was duly forwarded by the office on 02.07.2015. It is asserted by the petitioner that the Respondents rejected the representation of the petitioner vide letter dated 25.08.2015. It is further added by the petitioner that he filed departmental appeal against the order termination from service before competent authority but no response was communicated to the petitioner. On 17.11.2015, Petitioner, being aggrieved and dissatisfied with the impugned relieving order dated 27.08.2015, has approached this Court with the prayer to set aside the impugned relieving order.

3. On issuance of notice, Respondents filed their para-wise comments through covering statement of Deputy Attorney General.

4. Mr. Sanaullah Noor Ghouri, learned counsel for petitioner has argued that the impugned office memorandum dated 25.08.2015 is illegal, malafide, and issued in utter violation of the fundamental right as well as principle of natural justice; that Respondent No.2 has regularized the services of other employees of Intelligence Bureau and discriminatory treatment has been meted out to the petitioner in violation of Article 25 of the Constitution; that the impugned order dated 25.08.2015/ 26.08.2015 are also against the policy of Respondent No.1 and the department cannot deny the benefit of that policy of regularization of the contract employees to the petitioner; that family package was issued by the Federal Government vide office memorandum dated 11.07.2006 wherein "Assistance Package for families of Government employee, who die in service" was offered for those employees, who expired during

service and the petitioner was offered the post of Assistant Sub Inspector in Intelligence Bureau on contract for a period of two years and subsequently the Federal Government revised the policy vide office memorandum dated 20.10.2014, whereby the word contract basis for two years was deleted and it was ordered that one son of the deceased may be appointed on regular basis without any advertisement; that the Federal Government issued Notification on 02.04.2015/03.04.2015 regarding constitution of committee for regularization of contract employees and the case of the petitioner was forwarded to the committee for regularization for service but no action whatsoever has been taken by the Respondent No.2; that there are various directives of the Federal Government to regularize the service of contract employees but the Respondents are turning their deaf ear and reluctant to regularize the service of the Petitioner.

5. Mr. Shaikh Liaquat Hussain, learned Assistant Attorney General has drawn our attention to the para-wise comments filed on behalf of Respondent Nos. 2 and 3 wherein it has been admitted in paragraphs No. I & K of the comments which read as under:-

“Incorrect. The Cabinet Sub-committee was constituted in pursuance of the Islamabad High Court orders dated 10.09.2014 for examining the cases of contract employees. The appellant’s case has been forwarded to the said committee on 02.12.2015.

Incorrect. The contract period of the appellant has been expired as per terms and conditions of employment. Now his case has been sent to Cabinet Sub-Committee for final decision.

6. Learned AAG, during the course of arguments, referred to a document without any signature, available at page-10, annexed with the comments of Respondent No. 1 and 2 and submitted that the department has already forwarded the request of the petitioner with regard to his

regularization of service to the competent authority in accordance with law with the following remarks:-

“He was appointed as ASI (GD) on contract basis for a period of two years w.e.f. 28.08.2013 being son of IB deceased employee under Assistance Package for families of Government employees who die in service. His contract period was expired on 27.08.2015. accordingly he was relieved of his duties.

Justification for placing the case before the committee:-

- i. His case is similar to that of other cases referred to the committee by the Hon’ble Court and is required to be settled as such in the light of judgment of Hon’ble Supreme Court of Pakistan SCMR 1185.***
- ii. Further, he is son of a deceased IB employee and was employed under “Assistance Package for families of Government employees who die in service” to provide to the bereaved family. The temporarily relief so provided may be extended to permanent relief by regularizing his services on humanitarian grounds.***
- iii. Moreover, he fulfills the illegibility criteria for appointment in IB i.e. age and qualification.***

Remarks:-

He fulfills the conditions of regularization of contract service, however rules does not permits the same, therefore the case is to be decided by the committee in light of position explain above.

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

8. At this juncture, learned Assistant Attorney General conceded that the case of the petitioner has already been forwarded to the competent authority for regularization of service of the petitioner in accordance with law and seeks disposal of instant petition with direction to the Respondent to finalize the case of the petitioner for his regularization in

service to which learned Counsel for the petitioner has agreed to the proposal given by learned AAG and he has also sought disposal of instant petition in terms of statement made before this Court by learned AAG.

9. Looking through the above perspective and keeping in view the factual position of the case, we hereby infer that the Petitioner ought to have been considered for regularization by the Respondents.

10. The case of the Petitioner 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.”

11. 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.”

12. In the light of above facts and circumstances of the case, by consent of learned counsel for the parties, the instant Petition is hereby allowed in the terms, whereby the Director General Intelligence Bureau Government of Pakistan Islamabad / Respondent No.2 is directed to consider the case of Petitioner 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 hereinabove within a period of two months from the date of receipt of this judgment.

JUDGE

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