

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitutional Petitions No.D-1899 and 4433 of 2012

Present: Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Adnan-ul-Karim Memon

Muhammad Muneer & others.....Petitioners

Versus

Province of Sindh & others.....Respondents

Date of hearing: 21.12.2017

Mr. Haider Waheed and Mr. Shahzeb Akhtar Khan, Advocates for
Petitioners.

Mr. Abdul Jalil Zubedi, Assistant Advocate General alongwith
Naveed Sadiq, Section Officer-II, Bashir Ahmed Brohi, Additional
Secretary, Agriculture, Muneer Ahmed Shaikh, Deputy Secretary,
Agriculture, Abdul Samad Shaikh, Legal Officer and Muhammad
Rizwan, DG Agricultural Engineering and Water Management,
Sindh

ORDER

ADNAN-UL-KARIM MEMON,J:-The captioned Petition was
disposed of by this Court vide order dated 30.1.2015 with the
following observations:-

*“By consent aforesaid petitions are disposed
of in terms of para 10 judgment reported in
2014 P.L.C. (C.S.) 1153 (Dr. Iqbal Jan and
others v. Province of Sindh and others). All the
pending applications are also disposed of.
Office is directed to place copy of this order in
C.P. No.D-2422/2012 and C.P. No.D-
3733/2012.”*

2. On 06.12.2017, Petitioners filed application under Article
204 of the Constitution of Pakistan, 1973 read with Section 3 of
the Contempt of Court Ordinance, 2003 (CMA No.34817/2017) for

initiating contempt proceedings against the alleged contemnors for deliberately flouting and disobeying the above specified order dated 30.1.2015.

3. Mr. Haider Waheed, learned counsel for the Petitioners in both the Petitions has contended that during pendency of the instant Petitions the Province of Sindh promulgated the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013. Learned counsel referred to Section 3 of the Act, 2013 and contended that persons who are appointed on ad-hoc or contract basis before the commencement of the Act are entitled to be deemed to have been validly appointed on regular basis. He next added that in pursuance of the above enactment, this Court passed consent order dated 30.1.2015. Per learned counsel in terms of paragraph 10 of the judgment reported as PLC 2014 (C.S.) 1153, all the Petitioners shall be deemed to have been validly appointed on regular basis in view of section 3 of the Sindh (Regularization of Ad hoc and Contract Employees) Act 2013. It is further contended that similar orders were also passed in several other constitutional petitions including CP No.1932/2012, 1615 and 1616/2011, 1950/2012, 1899/2012, 2422/2012 and CP 3733/2012; that all the said petitions related to employees in NPIW; that despite the orders of this Court the Government of Sindh has shown great slackness in issuance of notification in pursuance of Section 3 of Act, 2013 compelling the Petitioners in their respective Petitions to file contempt applications; that to utter shock and dismay of the Petitioners instead of notifying regularization from the date of the joining on contract or ad hoc basis, as envisaged in Section 3 of Act, 2013 the Respondents are

notifying persons in the Agriculture Department to be regularized with immediate effect. It is next contended that the alleged contemnors were supposed to regularize from the date of joining on contract or ad hoc basis. It is further contended that in all other departments, including the Law Department as well as the Forest Environment and Wildlife Department, employees have been regularized in terms of Section 3 ibid with seniority to be maintained from the date of joining on contract basis. He lastly contended that in light of the above, all the Petitioners seek the similar treatment to be meted out to employees of the Agricultural Department; that any other/different interpretation of Section 3 ibid for the employees of Agricultural Department would be not only in violation of Article 25 of the Constitution, but also in violation of the disposal Order dated 30.1.2015. He lastly prayed for allowing the listed application.

4. Mr. Abdul Jalil Zubedi, learned A.A.G, Sindh has contended that the listed application is not maintainable under the law; that the application is based on false allegations and misconceived one, hence liable to be dismissed with cost on the ground that earlier the issue of seniority was not raised by the Petitioners/Applicants in the main petition, which is one of the terms and condition of the service. It is further contended that in pursuance of the orders passed by this Court, the services of 1320 out of 1349 ex-employees of NPIW (including the Petitioners) have been regularized with immediate effect; that the Agriculture Department was strictly directed by this court to regularize the services of ex – employees of NPIW and there is no direction that the services of the employees are required to be regularized from the date of

appointment on contract basis. It is next contended that keeping in view the orders of this Court the services of these Petitioners/ex-NPIW employees have been regularized against 1349 newly created budgetary posts by the Finance Department in the year 2017-18. Per learned counsel earlier these Petitioners / employees were paid salaries against contractual posts of the Project instead of regular budgetary posts; that the order of this Court dated 30.1.2015 has been complied with in letter and spirit regarding regularization of their services and their seniority will be determined in light of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975. He prayed for dismissal of listed Application.

5. We have heard the learned counsel for the parties on the listed application and perused the material available on record.

6. The fundamental query that finalizes the controversy in hand is: -

Whether the seniority of the Petitioner can be reckoned from the date of their induction in service as an adhoc and contract appointment or from the date of regular appointment under Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013?

In the above context, we refer to Sub-Section (4) of Section 8 of the Sindh Civil Servants Act, 1973 reproduced herein below: -

“Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment of such civil servant to that post, service cadre:

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter seniority as in the lower post.”

7. Perusal of order dated 30.1.2015 passed by this court explicitly shows that all the Petitioners shall be deemed to have

been validly appointed on regular basis in view of section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013. Relevant paragraphs of the order are reproduced herein below: -

“1. The case of the petitioners in both petitions is that they were appointed on contract basis in the year 2005 after fulfilling the requisite formalities as laid down selection procedure. It is further stated that the Provincial Govt. in its meeting held on 4.6.2008, decided to regularize the services of all contract employees and in this regard, a summary was also floated to the Chief Minister, which is available at P-227, in which it was proposed that services of contract staff working under NPIW Project may be regularized with effect from 1.7.2008 by presenting a bill in the Sindh Assembly.

2. Learned counsel for the petitioners pointed out the judgment reported in 2014 PLC (C.S.) 1153 (Dr. Iqbal Jan and others V.s Province of Sindh and others) authored by one of us (Muhammad Ali Mazhar, J.) in which the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 was discussed in detail and after hearing the arguments, the petition was disposed of in terms of Para-10 of the judgment, which is reproduced as under: -

10. Learned Counsel for the petitioners pointed-out and learned A.A.G both extensively argued the matter and agreed that this petition may be disposed of at Katcha Peshi stage. In view of the above, this petition is admitted to regular hearing and disposed of in the following terms: -

(1) All the petitioners shall deem to have been validly appointed on regular basis in view of section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013.

(2) The Honorable Supreme Court in its order passed in Civil Appeals Nos.84-K to 86-K of 2012 left it open to the government to take appropriate action against the respondents, against whom they have reservation about their fitness and eligibility. If in this case, the competent authority has any such reservation regarding the fitness of eligibility of any petition, they may take appropriate action but such exercise

should be taken strictly in accordance with law.”

8. The moot point involved in the present application is interpretation of Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 which provides that;-

“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 department 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.” (Emphasis Added)

9. Learned Assistant Advocate General referred to the compliance report submitted on behalf of the alleged contemnors and argued that the order dated 30.1.2015 passed by this Court has been complied with in letter and spirit by regularizing the services of the Petitioners with immediate effect.

10. Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 provides that employee appointed on ad-hoc and contract basis shall be deemed to have been validly appointed on regular basis immediately before the commencement of the Act. Hence, no ambiguity is left that the Petitioners shall be regularized in service with effect from the promulgation of the Act,2013, as before the commencement of the said Act, petitioners were not working against the sanctioned budgetary posts but on a fixed period project posts. The pivotal question remains to be answered as

to whether Petitioners can be awarded seniority retrospectively from the date of initial appointment or ad-hoc / contract basis?

11. Looking through the above perspective and keeping in view the position of the case, we refer to Section 2(b) (ii) of Sindh Civil Servants Act, 1973 which provides as under: -

*2.(b) "civil servant" means a person who is a member of an All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connect with defence, **but does not include** -*

(ii) A person who is employed on contract, or on work-charged basis or who is paid from contingencies; [emphasize added].

In view of the above provision of law, the contract employee cannot be termed as civil servant. It is an admitted fact that the Petitioners before regularization of their service were not Civil Servants as they were working on particular project on contract basis. We are further fortified by Rule 10(1) and (2) of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975, which provides as under: -

"10 (1) subject to the provision of rule 11, the seniority of a civil servant shall be reckoned from the date of his regular appointment.

(2) No appointment made on adhoc basis shall be regularized retrospectively."

12. The above provision of law clarifies the legal proposition that the seniority of the civil servant shall be reckoned from the date of his regular appointment. The word "adhoc" has been used in Section 2(b) and (d) of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013.

13. In order to further elaborate the issue of adhoc appointment, we refer to Section 2(a) of the Sindh Civil Servants Act, 1973 which reads as under: -

(a) "adhoc appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending the recruitment in accordance with such method;

In the light of above provisions of law, we are of the considered view that no appointment made on ad-hoc basis shall be regularized retrospectively and the contract/ad-hoc period of service cannot be counted in seniority of a Civil Servant as seniority can be reckoned from the date of regular appointment. Thus, the question of regularization from the date of contract employment is misconceived.

14. We have also scrutinized the compliance report submitted on behalf of the alleged contemnors which says that the Finance Department created the posts upon which the Petitioners have been regularized in compliance of the order passed by this Court by issuance of notifications of regularization of services of the Petitioners.

15. In view of the above averments, the question before us is as to whether we can enlarge the scope and allow the parties to argue the matter on merits of the case in Contempt Proceedings? The answer is not in affirmative.

16. We are cognizant of the fact that this Court while disposing of the matter directed the Respondents that all the Petitioners shall deem to have been validly appointed on regular basis in view of

Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 and the Department has regularized the services of these Petitioners against 1349 newly created budgetary posts by the Finance Department in the year 2017-18 with immediate effect and not from the date of promulgation of the Act 2013.

17. Prime facie the explanation offered by the Respondents vide counter affidavit dated 26.12.2017 is not tenable under the law. The Petitioners pointed out malice on the part of alleged contemnors warranting interference of this Court to take action against the alleged contemnors under Article 204 of the Constitution who failed and neglected to regularize the service of the petitioner from the date of promulgation of the Act 2013.

18. In view of the facts and circumstances of the case and for the reasons alluded above, we are not satisfied with the explanation offered by the alleged contemnors that substantial compliance of the order dated 30.1.2015 passed by this Court has been made in its letter and spirit. Therefore, at this juncture, prima facie, petitioners have made out a case for initiating contempt proceedings against the alleged contemnors. Therefore, the office is directed to issue show cause notice under section 17 (1) of the Contempt of Court Ordinance 2003 read with Article 204 of the Constitution, as to why contempt proceedings should not be initiated against them for willful defiance of the order dated 30.01.2015 passed by this Court. Office shall make a separate file of the proposed contempt proceedings by assigning it a separate

number. The listed application bearing (CMA No.34817/2017), is adjourned to be taken up after two weeks.

19. Resultantly, CMAs pending in the connected Constitutional Petition bearing No.D-1899 of 2012 are adjourned.

JUDGE

JUDGE

Zahid/*