

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2598 of 2016

Rashid Ali Memon Petitioner

Versus

Chief Secretary, through Government
of Sindh & others Respondents

Date of hearing: 22.02.2018

Mr. Malik Naeem Iqbal, Advocate for the Petitioner.
Chaudhary Muhammad Rafiq Rajorvi, AAG.

JUDGMENT

ADNAN-UL-KARIM MEMON, J:- Through the above captioned Petition, the Petitioner is seeking regularization of his service from the date of promulgation of Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, in Live Stock & Fisheries Department, Government of Sindh.

2. Brief facts of the case as set forth in the Memo of Petition are that initially Petitioner was appointed on 15.11.2010 as Assistant Director Fisheries in BPS-17, Fish Hatchery Bubak. The sole grievance of the Petitioner is that his services have not been regularized. Petitioner has averred that his service was dispensed with; with effect from 01.07.2013 vide Notification No. DS (Admin) L&F) Contract Staff

Fish/2013 dated 19.09.2013. Petitioner has asserted that his contract period was extended but prior to the expiry of the contract period, the Petitioner was relieved from his service by the Respondent-Department without any formal letter of termination and payment of salary dues. The Petitioner added that the colleagues of the Petitioner who were terminated from service vide aforesaid Notification dated 19.09.2013, approached this Court by filing the Constitution Petition No. D-4144 of 2013 and this Court vide order dated 26.05.2015 passed the following order:-

“In view of the above, this petition is disposed of in terms of the judgment of this court in the case of Dr. Iqbal Jan and others vs. Province of Sindh and others report in 2014 P.L.C (C.S) 1153.

Petitioner has submitted that he approached to the Respondent-Department and requested for similar treatment in view of the dicta laid down by the Honorable Supreme Court of Pakistan in the case of Hameed Akhtar Niazi, reported in (1996 SCMR 1185) but of no avail. Petitioner has submitted that he seeks similar treatment as meted out with his colleagues in the light of order dated 26.02.2015 passed by this court in the above referred Constitution Petition.

3. Mr. Malik Naeem Iqbal, learned counsel for the Petitioner has argued that Petitioner had been working since 2010 in the Respondent-Department and that his contractual tenure was extended from time to time till 01.07.2013, yet his services were not regularized by the Respondent-Department. He next contended that Provincial Assembly of Sindh on 25.3.2013 promulgated Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 for regularization of services of certain

employees appointed on Adhoc and contract basis and the case of Petitioner also falls within the ambit of Section 3 of the Act, 2013 and the service of the Petitioner can be regularized under this beneficial legislation. In support of his contention, he relied upon the case of Dr. Iqbal Jan and others versus Province of Sindh and others (2014 PLC [CS] 1153) and argued that in the similar circumstances, this Court has allowed the Petitions with directions to Respondent No.2 to consider the case of the Petitioners for regularization of their service in accordance with Section 3 of the Act, 2013. He next contended that Respondent-Department did not allow the Petitioner to continue on the post and illegally relieved the Petitioner from service without giving any plausible reasons or personal hearing which is in violation of Article 10-A of the Constitution. Learned counsel further argued that prior to the expiry of the contract period of the Petitioner, the Respondent-Department regularized the services of the colleagues of the Petitioner, who were terminated along with him, vide Notification dated 29.09.2016 in pursuance of Sindh (Regularization of Adhoc and Contract Employees) Act 2013 and in compliance of the order dated 26.02.2015 passed by this Court in C.P No.D-4144 of 2013. Feeling aggrieved by and dissatisfied with the discriminatory attitude of Respondent-Department, the Petitioner filed the instant Petition on 05.05.2016 before this Court with prayer for regularization of his services.

4. Chaudhary Muhammad Rafiq Rajorvi, learned AAG has raised the preliminary legal objection of maintainability of the instant Petition on the ground that the Petitioner has challenged the impugned order dated 19.09.2013 after lapse of three years which is without justification; that

Petitioner was appointed on purely contract basis for the period upto 30.06.2011 and was liable to termination at any time without assigning any reason vide Notification dated 25.11.2010; that services of the Petitioner were not extended, but he was adjusted against the post of Nutritionist for salary purpose though he was not possessing qualification for the post of Nutrition, which is evident from the order dated 01.12.2011; that the Respondent-Department did not issue order/Notification for extension in service of Petitioner with effect from 01.07.2012 to 30.06.2013; that after completion of Revenue component of Scheme no funds were available, hence services of all the incumbents were terminated. Learned AAG has tried to justify the action of Respondent-Department and argued that so far as order passed by this Court in C.P. No. D-4144 of 2013, the case of the Petitioner is not identical to the case of Dr. Iqbal Jan (2014 P.L.C (C.S) 1153) as he has not sought remedy from this Court in time; that Petitioner has concealed the facts that he was initially appointed for the post of Assistant Director Fisheries and then he was accommodated for salary purpose in another scheme. Learned AAG has tried to convince us that the viries of Sindh (Regularization and Adhoc Contract Employees) Act, 2013 is under challenged before the Hon'ble Supreme Court of Pakistan in C.P. No. 482-K of 2015 and C.P. No. 616-K of 2015, and invited our attention to the order dated 23.12.2015 passed by the Hon'ble supreme Court of Pakistan in the above referred matter, however we have been informed that the Government of Sindh has subsequently withdrawn the above referred petitions.

The Learned AAG has next contended that the case of the Petitioner falls within the ambit of doctrine of laches therefore the instant petition is liable to be dismissed on this score alone.

5. We have heard learned counsel for the parties and perused the material available on record and case law cited at the bar.

6. First of all, we address the question of maintainability of the instant Petition under Article 199 of the Constitution on the point of laches.

7. Addressing the question of delay and filing of legal proceedings within the period specified under the law, in filing of Constitutional Petition lapse of time or question of laches is to be examined on equitable principles for the reason that the exercise of Constitutional jurisdiction is always discretionary for a court and the relief so granted is always in the nature of an equitable relief. It is well settled law that in case this Court comes to the conclusion that enquiry leans in favour of the Petitioner, the court must exercise discretion in favour of such party. If this Court finds that the party invoking the Constitutional jurisdiction is guilty of contumacious lethargy in action, laxity or gross negligence in the prosecution of a cause for enforcement of right, it would be justified in non-suiting such person on the premise of laches. However, the issue of delay or laches is to be considered with reference to the facts of each case and no hard and fast rule can be laid down in his behalf. As such we are of the view that this Petition can be heard and decided on merits by this Court while exercising Constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

8. On merits, we hereby proceed to determine the controversy between the parties with respect to the regularization of service of the Petitioner in Respondent-Department. Record reflects that Petitioner was appointed on 25.11.2010 as Assistant Director in BPS-17 on contract basis for one year extended up to 01.07.2013. Record further reflects that the colleagues of the Petitioner continued to serve initially in Respondent-Department on contract basis and were in employment/service on the said posts, which have now been given in the regular budget of Respondent-Department vide letter dated 29.09.2016, which was issued in pursuance of order dated 26.02.2015 passed by this Court in C.P. No D-4144 of 2013. Prima facie the case of the Petitioner is identical to the case of the colleagues of the Petitioner in the above referred matter.

9. Now, we would like to address the question raised by the learned counsel for the Petitioner with respect to the applicability of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013. In our view *prima-facie* this Act seems 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 Department and includes the post in a Project of such Department in connection with the affairs of the Province.

10. As regards the next question raised before this Court that whether the petitioner can be regularized in the Respondent-Department. We have sought guidance in this regard from the decision of the Hon'ble Supreme Court rendered in the case of Rana Aamer Raza

Ashfaq and another v. Dr. Minhaj Ahmed Khan and another (2012 SCMR 6), wherein the Hon'ble Supreme Court has held at paragraph 39 that:-

“This Court would not interfere in the judgment of the High Court on yet another salutary principle of equity i.e. if in the exercise of Constitutional jurisdiction it has passed an order to remedy a manifest wrong. In Messrs Norwich Union Fire Insurance Society Limited v. Muhammad Javed Iqbal (1986 SCMR 1071), it was observed as follows:-

“In this view of the matter, as laid down in Raunaq Ali v. Chief Settlement Commissioner PLD 1973 SC 236, the High Court was within its power to refuse relief in writ jurisdiction, where the impugned order before it had the effect of fostering justice and righting a wrong, even though the authority concerned had acted clearly without jurisdiction. The High Court having acted in consonance with this higher principle of justice laid down by this Court, there is no justification for taking exception to the impugned judgment. The other question of law need not, therefore, be examined.”

11. We, therefore, are of the considered view that issue in hand is fully covered by para above of the Judgment passed by the Hon'ble Apex Court referred to hereinabove, which provides that the Constitutional Jurisdiction of this Court can be invoked against the Respondent-Department. Respondents can be directed for regularization of his contractual service as on that issue the Hon'ble Apex Court has already enunciated the principles 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 that:-

“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.”

12. We are further fortified on the similar principle by a decision given by a 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 that:-

“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.”

13. We are of the view that the case of Petitioner is also on the same footing as decided by the Honorable Supreme Court in the case of Pir Imran Sajid and others (supra) and in the case of Government of Khyber Pakhtunkhwa and others (supra) as well as order dated 26.02.2015 passed by this Court in C.P. No.D-4144 of 2013.

14. In the light of above the facts and circumstances of the case, the instant Petition is disposed of in the terms whereby the Competent Authority/Respondent-Department is directed to consider the case of the

Petitioner without any discrimination for regularization of his service in accordance with law, subject to his eligibility and qualification for the subject post, within a period of two months from the date of receipt of this judgment.

15. The Petition stands disposed of in the above terms along with the listed application(s).

JUDGE

JUDGE