

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

CP No. D- 404 of 2013

**Present:**

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon

Muhammad Ali and another                    -----                    Petitioner

Versus

Federation of Pakistan and others                    -----                    Respondents

Date of Hearing        :        24.01.2019

Mr. Shabbir Shar, advocate for petitioner  
Mr. Muhammad Aslam Bhatti, advocate for SSGCL.

**ADNAN-UL-KARIM MEMON**,- Through the captioned petition, the petitioners have approached this court for regularization of their services in Sui Southern Gas Company Limited. Their case is that they were appointed in SSGCL Hyderabad region on contract in lower grade on different vacant posts with effect from 2002 and onwards. They have been performing their duties honestly and with due diligence. The petitioners have further asserted that they are eligible to be regularized under various Office Memorandums issued by Government of Pakistan, Cabinet Secretariat, Establishment Division, but the respondent-company is not regularizing them on the premise that they are not their employees but are the employees of third party contractor.

2. Upon notice, Respondents-Company filed comments and denied the allegations levelled against them.

3. Mr. Ghulam Shabbir Shar, learned counsel for the petitioners has argued that the petitioners are seeking regularization of their services and on the same facts and law whereby this court has allowed CP No. D- 5871 of 2014 and other connected petitions with direction to the respondent company to give benefits as contained in

the office memorandum dated 29.8.2008. He next contended that the issue of regularization of services of the contract employees or employees of third party contractor has already been settled by Honourable Supreme Court of Pakistan in Civil Petitions No.409-K to 414-K of 2017, vide order dated 08.12.2017 and has held as under: -

“As regards the question that the respondents were not the employees of the petitioner but the contractor, suffice it to say that it is a normal practice on behalf of such industries to create a pretence and on that pretence to outsource the employment of the posts which are permanent in nature and it is on the record that the respondents have been in service starting from as far back as 1984. This all seems to be a sham or pretence and therefore it being not a case of any disputed fact and no evidence was required to be recorded. Moreover, we have seen from the order under challenged that in such like cases where the orders have been passed by the Labour Tribunals, the employees, even those who were under the contractors’ alleged employment, have been regularized by the petitioner. And thus keeping in view the rule of parity and equity, all the respondents even if considered to be the employees of the contractor, which is not correct, they having been performing duties of permanent nature should have been regularized. However, at this stage, we would like to observe that the employment of the respondents shall be regularized with effect from the date when they approached the learned High Court through the Constitution petition but for their pensionary benefit and other long terms benefits, if any, available under the law, they would be entitled from the date when they have joined the service of the petitioner. All the petitions are accordingly dismissed.”

He has added that they performed duties assigned to them with keen interest and devotion without any cause or complaint to the Respondent-Company; therefore, regularization in service was their right; that employment is basic necessity of life in the society, particularly for educated youth and the State is responsible to provide transparent working environment and the employers are required to provide opportunity for grooming and exploitation of abilities and talent by the employees; that after continuous devoted and successful performance, the Respondent-Company threatened the Petitioners and several other employees to accept them under the role of third party contract or face termination from the contract employment; that the Petitioners and other employees of the Respondent-Company deserved regularization of their service, as well as, promotion to higher

posts. He prayed for allowing the instant petition by giving similar relief as given in the aforesaid petitions.

3. Conversely, Mr. Muhammad Aslam Bhatti, learned counsel for SSGCL has argued that the instant petition under Article 199 of the Constitution of Pakistan is not maintainable against respondent company. He next contended that there is no relationship of employment of the petitioners with respondent-company. He next added that respondent company has nothing to do with the employment of petitioners, who have an adequate remedy in the shape of Grievance Petition under the Labour Laws before the appropriate forum, which is not availed; that Respondent-Company is a Public Limited Company, which was incorporated under the Companies Act, 1913 (now the Companies Ordinance, 1984) and is engaged in the business of transmission and distribution of natural gas to the Province of Sindh and Baluchistan and is managed by a Board of Directors for policy guidelines and overall control under the provisions of Companies Ordinance, 1984 and has its own Memorandum and Articles of Association. He next contended that Respondent-Company does not perform functions connected with the affairs of the Federation, Province and Local Authority. According to him, the disputed facts involved in the instant Petition require recording of evidence, which cannot be done in a Constitutional Petition. He added that SSGCL Service Rules are not statutory, as such, the relationship between “SSGCL” and the Petitioners is that of “Master and Servant”; that Petitioners have no right to agitate their service grievances before this Court under Article 199 of the Constitution of Pakistan, 1973 hence, petition is not maintainable; that the contractual obligations cannot be enforced through constitutional petition; that the Petitioners are not serving in the Respondent-Company but of private contractor. He lastly prayed for dismissal of the instant petition.

4. The learned Assistant Attorney General, representing Respondent No.1 has adopted the arguments of the learned counsel for the Respondent-Company.

5. We have heard the parties and perused the material available on record.

6. Firstly we would address the question of maintainability of instant Petition under Article 199 of the Constitution. The Respondent-Company as per its profile is a State enterprise incorporated under the Companies Ordinance, 1984 and has an authorized capital of Rs.10 billion, of which Rs.6.7 billion is issued and fully paid up capital. The Government and other State entities jointly own more than 67% of shares of Respondent-Company and 11 out of 14 Directors on its Board are nominees of the Government. Aforesaid status of Respondent-Company is confirmed from the decision of the Hon'ble Supreme Court of Pakistan in the case of Khawaja Muhammad Asif vs. Federation of Pakistan (PLD 2014 SC 206). The Respondent No.2 is indeed a Company, which is performing function in connection with the affairs of Federation and as such, is amenable to Constitutional jurisdiction of this Court. Mere fact that it is a Company limited by shares and registered under the Companies Ordinance, 1984 is not sufficient to hold that Constitutional petition against it is not maintainable. The registered companies funded by the Federation or Province fall under the dominative control of the State and constitutional jurisdiction under Article 199 of the Constitution, 1973 could be invoked against them. We are fortified by the decision rendered by the Honorable Supreme Court of Pakistan in the case of Ramna Pipe and General Mills (Pvt.) Ltd v. Sui Northern Gas Pipe Lines (Pvt.) (2004 SCMR 1274). The aforesaid view is further affirmed in the cases of Pakistan Defence Housing Authority & others vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), Abdul Wahab and others v. HBL and others (2013 SCMR 1383), Salahuddin v. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244), Aitcheson College, Lahore through Principal v. Muhammad Zubair (PLD 2002 SC 326), Pakistan International Airlines v. Tanweer-urRehman (PLD 2010 SC 676), Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager

Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257), and Pakistan Defence Housing Authority & others vs. Mrs Itrat Sajjad Khan and others (2017 SCMR2010).

7. In the light of the aforesaid judgments of the Honourable Supreme Court of Pakistan, the objection of maintainability of the captioned constitutional petition is not sustainable in law and is accordingly rejected.

8. In the matter of regularization of service of the Petitioners, we seek guidance from the unreported case of M/s Hadeed Welfare Trust & another vs. Syed Muhammad Shoaib & others rendered by the Honourable Supreme Court of Pakistan in Civil Petitions No.121-K and 122-K of 2017, wherein the Honourable Supreme Court has maintained the Judgment dated 15.12.2016 passed by this Court against Hadeed Welfare Trust (A subsidiary of Pakistan Steel Mills) reported in 2017, PLC (C.S.) 1020, whereby contract employees of Pakistan Steel Cadet College were regularized.

9. On the issue of regularization in service, our view is further strengthened by the judgment of this Court dated 01.6.2017 passed in Constitutional Petitions No.D-3199, D-4605 and D-5079 of 2013 respectively and D-509, D-2034, and D-1091 of 2014 respectively, whereby Pakistan State Oil Company was directed to regularize the services of third party contractor/ “outsourced employees”.

10. The aforesaid Judgment was assailed before the Honourable Supreme Court of Pakistan in Civil Petitions No.409-K to 414-K of 2017, which maintained the same.

11. From what has been discussed above, we have reached the conclusion that submissions of Respondent-Company are misconceived and not well founded. The regularization of the employees is not part of the terms and conditions of service of the employees for which statutory rules are required, but it depends upon the length of service. And, it is on the above principle that Petitioners have approached this

Court for regularization of their service under Article 9 and 25 of the Constitution of Islamic Republic of Pakistan. We are fortified by the observation made by the Hon'ble Supreme Court of Pakistan in the case of Khawaja Muhammad Asif vs Federation of Pakistan & others (2013 SCMR 1205).

12. We are of the considered view that Petitioners are entitled to similar treatment which was given to their similarly placed colleagues for their regularization and absorption and the Respondent-Company cannot act whimsically while making fresh appointments against the posts already held by the Petitioners, who were appointed in a transparent manner and nothing adverse in terms of qualification and character and/or inefficiency in the subject field was observed by the Competent Authority of the Respondent-Company during their entire period of service.

13. We have noted that the Petitioners served the Respondent-Company for a long period. The said period of service is more than sufficient to acquire expertise in respective fields. Therefore, considering others while ignoring the Petitioners is unjustified and against the principles of natural justice and equity.

14. We have gone through the Office Memorandum dated 11<sup>th</sup> May, 2017 issued by Government of Pakistan, Cabinet Secretariat, Establishment Division and excerpt of the same is reproduced herein below: -

GOVERNMENT OF PAKISTAN  
CABINET SECRETARIAT  
ESTABLISHMENT DIVISION

No.F-53/1/2008-SP

Islamabad the 11th May, 2017

**OFFICE MEMORANDUM**

Subject:- Amendment in the Recruitment Policy/Mechanism to Ensure Merit Based Recruitment in the Ministries/Divisions/Subordinate Offices/ Autonomous / Semi Autonomous Bodies/ Corporations/ Companies/ Authorities

The undersigned is directed to state that the Federal Cabinet in its meeting held on 12th April, 2017 has accorded approval of the subject amendment to be inserted as para 1(e) in the Recruitment Policy/Mechanism issued vide this Division's O.M.No.531/2008-SP dated 16th January, 2015 as under: -

16 "(e) Appointment on Regular Basis of Contract/ Contingent/ Paid/ Daily Wages/Project Employees For the purpose of appointment on regular basis of

Contract/Contingent/Paid/Daily Wages/Project Employees for the purpose of appointment on regular basis of Contract / Contingent / Paid / Daily Wages / Project employees the following criteria shall be observed: -

(i) All Contract/Contingent/Paid/Daily Wages/ Project employees who have rendered a minimum of one year of service in continuity, as on 1.1.2017 (hereinafter referred to as eligible employees) may apply for appointment on regular basis in the manner prescribed hereinafter provided that the condition of continuity shall not be applicable in case of person(s) employed on daily wages who have completed at least 365 days service.

(ii) For initial appointment to posts in BS-16 and above, the employees shall apply direct to FPSC against relevant/suitable vacancies as and when arising for which they are eligible.

(iii) For initial appointment to posts in BS-1 to BS-15, the eligible employees may apply as per criteria given vide this Division's O.M. No.531/2008-SP dated 16.1.2015 and 3.3.2015 shall be adopted.

(iv) The eligible employees shall be awarded extra marks in interview at the rate of one (01) mark for each year of service rendered up to a maximum of five (05) marks, on the recommendation of the respective selection authorities.

(v) The period served as Contract, / Contingent/Paid/Daily Wages/Project employees shall be excluded for the purpose of determination of upper age limit in addition to relaxation of upper age limit as per existing rules.

(vi) Qualifications prescribed for a post shall be strictly followed in case a person does not possess the prescribed qualifications/experience for the post he/she is applying for he/she shall not be considered for the same.

(vii) The employees must be in good mental and bodily health and free from any physical defect likely to interfere with the discharge of his duties unless appointed against disability quota. 17

(viii) The advantage of para 1(e) is a one-time dispensation for all Contract/Contingent/Paid/Daily Wages/Project employees for their eligibility to regular appointment.

2. This Division's O.M. of even number dated 16<sup>th</sup> January, 2015 is modified to the above extent. All Ministries/Divisions are requested to take further action accordingly.

(Attiq Hussain Khokhar)  
Director General  
Tel:051-9103482

All Ministries/Divisions  
Rawalpindi/Islamabad"

15. The above Memorandum dated 11th May, 2017 is issued in pursuance of the decision of the Cabinet Sub-Committee for regularization vide which the Federal Government has directed Ministries/ Divisions / Sub-ordinate Offices / Autonomous / Semi-Autonomous Bodies / Corporations / Companies / Authorities to regularize all Contract employees who have rendered a minimum of one year of service in continuity as on 01.01.2017.

16. We are of the view that the Petitioners are fully entitled to the benefit contained in the aforesaid Office Memorandum because they are in continuous service of the Respondent-Company for long time and are paid salary as well.

17. The case of the Petitioners 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). We are further fortified on the similar principle by the case law decided by learned five Members' Bench of the Hon'ble Apex Court in the case of Government of Khyber Pakhtunkhwa and others Vs. Adnanullah and others (2016 SCMR 1375).

18. Reverting to the contention of the Respondent-SSGCL that the Petitioners, being not their employees but were employees of the private contractor (third party), who was engaged by the Respondent-SSGCL to perform various functions. It may be mentioned that this issue of "Outsource" third party contractor has been settled by the Hon'ble Supreme Court in the case of Fuji Fertilizer Company Ltd Vs. National Industrial Relations Commissions and others (2013 SCMR 1253), the Hon'ble Supreme Court at Paragraph No.17 and 18 has held as follows:-

"17. Normally, the relationship of employer and employee does not exist between a company and the works employed by the Contractor; however, in the case where an employer retains or assumes control over the means and method by which the work of a Contractor is to be done, it may be said that the relationship of employer and employee exists between him and the employees of the contractor. Further, an employee who is involved in the running of the affairs of the company; under the direct supervision and control of the company; working within the premises of the company, involved directly or indirectly in the manufacturing process, shall be deemed to be employees of the company. In the instant case, the employees of the contractor were involved in running the affairs of the company such as filling and loading of urea bag as well as cleaning of machines and floors, therefore, for all intents and purposes, they are employees of the company through the contractor." (Emphasis added)

19. From what has been discussed above, we have reached to the conclusion that submissions of the Respondent-Company on the issue of "Outsource" (3rd party



contractor) are misconceived and not well founded. It is now well settled that the issue of regularization of the employees is not part of the terms and conditions of service of the employees for which statutory rules are required, but it depends upon the length of service.

20. Record shows that performance of the Petitioners in the Respondent-Company has not been called in question throughout their service period by the Respondent-Company. We are of the considered view that the Petitioners are entitled to similar treatment, which was given to their similarly placed employees for their regularization more particularly the relief granted to the Petitioners in Constitutional Petitions No.D-3759 & 4422 of 2017 and Constitutional Petitions No. D 3199, D-4605 and D-5079 of 2013 respectively and D-509, D-2034, and D-1091 of 2014 (SBLR 2018 Sindh 134).

21. Looking through the above perspective and keeping in view the factual position of the case, we hereby infer that the Petitioners ought to have been considered for regularization by the Respondent-Company in the light of the aforesaid Office Memorandums.

22. Keeping in view the foregoing, the Petition is disposed of in the terms whereby Chief Executive Officer of Respondent-Company/Respondent No.2 is directed to consider the case of the Petitioners for regularization of their service without discrimination, in accordance with law and the dicta laid down by Hon<sup>ble</sup> Supreme Court of Pakistan in the cases referred to hereinabove within a period of two months from the date of receipt of this judgment. The listed application(s) also stand disposed of accordingly.

JUDGE

JUDGE