

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 5514 of 2019

**Saif Shujaat, Musheer Ahmed
& Muhammad Ashraf Khatti**

Petitioners through:

Petitioners present in person

Date of hearing:

30.08.2019

Date of order:

30.08.2019

ORDER

Petitioners seek direction to the respondents' department to count their seniority with effect from their initial appointments till the regularization of their services in pursuance of Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013.

2. Petitioners, who are present in person were asked to satisfy this Court as to how their contractual period with effect from their contractual appointments can be counted from service when they have been regularized in services in the year 2018 with effect from 25th March 2013 under Sindh (Regularization of Adhoc and Contract Employees) Act, 2013. Petitioners have placed reliance upon the various documents annexed with the memo of petition and submitted that their previous contractual services can be counted and seniority is to be assigned to them with effect from their initial appointments.

3. We are not satisfied with the aforesaid analogy of the petitioners for the simple reason that seniority can be reckoned from the date of regular appointment when their services were regularized in pursuance of Act 2013.

4. At this stage, the Petitioners has drawn our attention to Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 which 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, therefore the seniority of the Petitioners can be reckoned from the date of regularization i.e. 25.3.2013. The assertion of the Petitioners is wholly misconceived, in our view, no ambiguity is left that the services of the Petitioners have been regularized with effect from the promulgation of the Act, 2013, for the simple reason that regularization of the Petitioners has taken place on the orders of this court and the Respondent-Department issued the notification of regular appointment of the Petitioners by creating the posts as before that the Petitioners were not working against the sanctioned budgetary posts but on

a fixed period project posts on contract basis. In our view no seniority can be awarded retrospectively.

5. 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;**

6. In view of the above provision of law contract employees cannot be termed as civil servants. It is an admitted fact that the Petitioners before regularization of their services 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.”**

7. 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.

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

8. In the light of the above facts and circumstances of the case, we do not find any merit in the captioned Petition, which is dismissed along with all the pending application(s).

9. These are the reasons of our short order dated 30.8.2019, whereby we have dismissed the captioned petition in *limine*.

JUDGE

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