

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No.D-143 of 2014

Present: Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Mujib-ul-Islam.....Petitioner

Versus

Province of Sindh & others.....Respondents

Date of hearing: 13.09.2018

Mr. Ahmed Ali Ghumro, Advocate for the Petitioner.

Mr. Nadir Khan Burdi, Advocate for the Respondents No.3 & 4.

ORDER

ADNAN-UL-KARIM MEMON,J:-. The Petitioner is seeking regularization of his service as Computer Operator in BPS-16 from the date of his initial appointment on contingent basis with effect from 01.08.1998 in Lyari Development Authority, Government of Sindh. Petitioner has also sought cancellation of the Office Order dated 14.12.2013, whereby the Corrigendum dated 02.05.2013 was cancelled.

2. Brief facts of the case in nutshell are that Petitioner was engaged/ appointed as Computer Personnel with a consolidated amount of Rs.1500.00 per month vide letter dated 01.08.1998 in Lyari Development Authority, Government of Sindh. Petitioner has asserted that he performed duties assigned to him with keen interest and devotion without any complaint. Petitioner has submitted that he being aggrieved by and dissatisfied with non-regularization of his service, filed CP No.D-3658/2010 before this

Court and the same was disposed of vide order dated 13.8.2012 in the following terms:-

“Since, according to the Petitioner, he has been serving the Respondent Authority for the last 14 years, we would dispose of this petition by directing the Respondents to regularize the Petitioner as a permanent employee and/or appoint him to a permanent post as and when such vacancy/post is available with the Authority, which may be suitable for the Petitioner keeping in view his academic qualifications, credentials and experience with the Respondent Authority. Such shall be done in accordance with law and subject to the availability of the sanctioned permanent posts.

The petition alongwith the pending application stands disposed of in the foregoing terms.”

3. Mr. Ahmed Ali Ghumro, learned counsel for the Petitioner has submitted that in compliance of the order dated 10.8.2012 passed by this Court in the aforesaid Constitution Petition, the Respondent-Authority vide office Order dated 04.09.2012 regularized the service of the Petitioner as Computer Operator in BPS-16 w.e.f. 01.09.2012 instead of 01.08.1998. Per learned counsel the same act of the Respondent is illegal and malafide; that the Petitioner deserved regularization of his service from the date of his initial appointment i.e. 01.08.1998 in the Respondent-Authority. It is further contended that the Respondent-Authority realized the legal position of the case of the Petitioner and issued Corrigendum dated 02.05.2013 and treated the regularization period of the Petitioner w.e.f. 01.08.1998 instead of 01.09.2012. Learned counsel for the Petitioner next submitted that Respondent-Authority vide office Order dated 24.12.2013 withdrew / cancelled the aforesaid Corrigendum and again reverted the case

of Petitioner for regularization w.e.f. 01.09.2012 which act of the Respondent is against the basic spirit of law, thus liable to be quashed. He lastly prayed for allowing the instant Petition.

4. Mr. Nadir Khan Burdi, learned counsel for Respondent-Authority has contended that the instant Petition is not maintainable under the law. It is further contended that the service of the Petitioner is not required to be regularized retrospectively i.e. from the date of his initial appointment on contingent basis i.e. 01.08.1998. It is next contended that his seniority will be determined from the date of his regularization i.e. 01.09.2012 instead of 01.08.1998; that the office of the Respondent-Authority has rightly cancelled the Corrigendum dated 02.05.2013 which act of the Respondent is within the parameters of law. He prayed for dismissal of the instant Petition.

5. We have heard the learned counsel for the Petitioner as well as learned counsel representing Respondent-Authority and perused the material available on record.

6. The fundamental question in hand is: -

Whether the seniority of the Petitioner can be reckoned from the date of his induction in service as contingent appointment or from the date of his regular appointment i.e. 01.09.2012?

7. In the above context, we are of the considered view that Seniority in a post, service or cadre to which is to take effect from the date of the regular appointment of an employee and not from the date of his initial appointment on contract/adhoc / contingent basis.

8. Perusal of order dated 13.08.2012 passed by this Court in C.P. No. D- 3658 of 2010 explicitly show that service of Petitioner was regularized i.e. 01.09.2012 and not from the date of his initial appointment. Prima facie, the regularization of the service of the Petitioner is in line with the order passed by this Court in the aforesaid matter which does not require further deliberation on the issue of regularization for the simple reason that petitioner was not working against a sanctioned budgetary post, but on a fixed amount. The pivotal question remains to be answered as to whether Petitioner can be awarded seniority retrospectively from the date of initial appointment or ad-hoc / contract basis?

9. 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].

10. In view of the above provision of law, a contract employee cannot be termed as a civil servant. It is an admitted fact that the Petitioner before regularization of his service was not a Civil Servant as he was working on a particular project on contingent 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.”

11. The above provision of law clarifies the legal proposition that the seniority of the civil/public servant shall be reckoned from the date of his regular appointment under the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013.

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

13. We have also scrutinized the comments submitted on behalf of the Respondents, which prima facie suggest that the service of the Petitioner has been regularized with effect 01.09.2012.

14. Reverting to the question of withdrawal of Corrigendum dated 02.05.2013 issued by the Respondent-Authority is concerned, the same is in line with the order passed by this Court in the aforesaid Petition, therefore, the Petitioner cannot claim the benefit of law on the ground of locus poenitentiae.

15. In view of the facts and circumstances of the case and for the reasons alluded above, we are of the considered view that the

service of the Petitioner is not required to be regularized with effect from 01.08.1998, therefore the claim of the Petitioner is not maintainable under the law.

16. Resultantly, the above petition is dismissed in the above terms along with the listed application(s).

JUDGE

JUDGE

Nadir/ P.A