

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**C.P No.D-527 of 2018**

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

Agha Shoaib Abbas & 10 others .....Petitioners

Versus

Province of Sindh & others.....Respondents

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**Dates of hearing: 08.10.2018 & 09.10.2018**

M/s. Muhammad Umer Lakhani & Syed Ali Ahmed Zaidi,  
advocates for the Petitioners.

Mr. Shehryar Mehar, Assistant Advocate General, Sindh for the  
Respondents.

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**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** The Petitioners are seeking regularization of their service under the Sindh Regularization of Ad-hoc and Contract Employees) Act 2013 in the Department of Information and Archives, Government of Sindh.

2. Brief facts of the case in a nutshell are that the Petitioners were appointed in weekly magazine "Sindh Manzar" in different cadres in the Department of Information and Archives, Government of Sindh on contract basis in the year ranging from 2012 to 2013 till 30.06.2018. They have asserted that they performed the duties assigned to them with keen interest and devotion without any complaint; therefore, they may be regularized in the service in the Department of Information and Archives, Government of Sindh. They have further asserted that employment is the basic necessity of the life, particularly for the 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. They contended that after continuous devoted and successful performance, the Respondent-Department vide Office Order dated 07<sup>th</sup> August, 2017 extended the period of contract of the Petitioners w.e.f. 01.07.2017 to 30.06.2018 with certain terms and conditions. They further contended that the Petitioners and other employees of the Respondent-Department deserved regularization of their service in the Department of Information and Archives, Government of Sindh under the Sindh Regularization of Ad-hoc and contract employees) Act 2013. Petitioners have submitted that persons who are appointed on ad-hoc or contract basis before the commencement of the Act-2013 are deemed to have validly been appointed on regular basis. They next added that in pursuance of the above enactment, this Court passed several orders including the Judgment reported as Dr. Iqbal Jan and others Vs. Province of Sindh & others (PLC 2014 (C.S.) 1153), as such 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 submitted that to utter shock and dismay of the Petitioners instead of notifying their regularization as envisaged under Section 3 of Act, 2013, the Respondents have issued the Office Order dated 7<sup>th</sup> August, 2017 and have confined the services of the Petitioners up-to 30.06.2018. Petitioners being aggrieved by and dissatisfied with the aforesaid action of the Respondents have filed the instant petition on 19.1.2018.

3. M/s. Muhammad Umer Lakhani & Syed Ali Ahmed Zaidi, advocates for the Petitioners argued that the petitioners are working in the Department of Information and Archives, Government of Sindh since 2012 and 2013. They further added

that the publication of the weekly magazine "Sindh Manzar" was deemed necessary by the Provincial Government in order to inform the public at large about the achievements and performance of the Provincial Government on a weekly basis. Pursuant thereto, the Respondent No.3 issued Offer Letters (as on the dates mentioned in the respective offer Letters) to the Petitioners for their respective posts in the Information Department, Government of Sindh on a fixed lump-sum monthly remuneration on contract basis and the Petitioners are employed on the posts as mentioned in paragraph 3 of the memo of instant petition and their contract is still in existence as per Office Order dated 07.08.2017 available at Page 47 of the Court file. Learned counsel claim that the Petitioners are entitled to be regularized in service under Section 3 of the Sindh Regularization of Ad-hoc and contract employees) Act 2013. They further added that summary for the Chief Minister has been floated for renewal of contract employees working in weekly magazine of the Information Department, but the Petitioners have been ignored and their colleagues have been recommended for regularization of their service contract; that the posts against which the Petitioners are working are sanctioned budgetary posts, therefore, their services cannot be confined up-to 30<sup>th</sup> June, 2018. Learned counsel, in support of their contention have placed on record statement dated 09.10.2018 and argued that other employees of the Respondent-Department were regularized pursuant to various orders passed by this Court and such recommendations were made by the Respondent-Department for regularization of the services of the Petitioners but the service of the petitioners have not been regularized as yet; that the Petitioners have been working in the Respondent-Department since long time ranging from 2012-2013 on contract basis without any service protection. Learned counsel in support of their contentions

relied upon the cases of *Dr. Iqbal Jan & Ors Vs. Province of Sindh & others (2014 PLC (C.S) 1153, Government of KPK Vs. Adnan ullah (2016 SCMR 1375 [FB]), PSO Vs. Bakht Siddique (2018 SCMR 1181)*. They lastly prayed for allowing the instant petition.

4. Mr. Shehryar Mehar, learned A.A.G, Sindh has contended that the instant Petition is not maintainable under the law; that the service of the Petitioners are no more required as the Project against which the Petitioners were appointed was closed down on 30.06.2018; that the service of the petitioners have been dispensed with having been appointed on contract basis up to 30.06.2018. Learned A.A.G relied upon the comments of Respondent No.3 and argued that there was no sanctioned strength for the employees of weekly "Sindh Manzar" at the time of appointments hence this petition being meritless may be dismissed.

At this juncture, we asked from the learned AAG as to whether 39 employees of the Respondent-Department have been regularized under the Act of 2013, pursuant to the orders of the Respondent-Department vide Notification dated 01.06.2017, he in reply to the query argued that 39 employees in question who had been regularized under the Sindh Regularization of Ad-hoc and contract employees) Act 2013 were appointed on contract basis against the sanctioned posts after the judgment of this Court passed in CP No.D-4751 of 2016. He further argued that the Petitioners were appointed on contract basis and not on permanent basis therefore, they cannot be considered for regularization of their service. He lastly prayed for dismissal of the instant Petition.

5. We have heard the learned counsel for the Petitioners as well as the learned AAG and have perused the material available on record and the case law cited at the Bar.

6. The basic point involved in the present matter is as follows:-

***Whether the services of the Petitioners were hired for weekly magazine in the Information Department, Government of Sindh on different posts on contract basis can be regularized?***

7. Upon perusal 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)***

8. 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 validly been appointed on regular basis immediately before the commencement of the Act. Hence, no ambiguity is left that the employees who were appointed before the commencement of the Act, 2013 can be regularized in service with immediate effect i.e. from the date of promulgation of the Act, 2013.

9. Record reflects that Petitioners have been performing their duties with due diligence to the satisfaction of the Authorities. It may be noted that the superior Courts have always condemned the practice of keeping the employees on temporary basis for long period of time without confirming or regularizing their services.

10. In the recent pronouncement of the Hon’ble Supreme Court of Pakistan in the case of ***Board of Intermediate and Secondary***

*Education, Faislabad Vs. Tanveer Sajid and others (2018 SCMR 1405)*, whereby it is held that:

**“In such a situation, the superior Courts have always exercised their extraordinary constitutional jurisdiction with compassion and in favour of the employees. Needless to observe that the Federal as well as the Provincial Governments have regularized hundreds of daily-wagers, work-charge and contract employees working various Departments and Organizations. Thus, on the basis of the above, we are in complete agreement with the learned High Court that the respondents-employees are entitled for regularization of their services. In view of the above, we are of the view that the learned High Court has rightly directed the petitioner-BISEs/Government of Punjab to regularize the services of the respondent-employees. Thus, no case for interference in the impugned judgments is made out. These petitions are accordingly dismissed and leave to appeal is refused.”**

11. In view of the foregoing, we are of the considered view that the persons, who have served for more than three years, without a break of more than 15 days are entitled to be regularized on the services. Prima facie, the Petitioners are working since 2012 on contract basis and in our view deserve to be considered for regularization.

12. Now, we address the main objection of the Respondent-department that Petitioners were hired on contract basis and they are not eligible for regularization. We have noted that Respondent-department has fixed the time period of contract of the Petitioners which expired on 30.06.2018, which ex-facie appears to deprive the Petitioners from regularization of their service. We in the circumstances of the case are of the considered view that prima facie there is no protection to the Petitioners under the said Office Order dated 07<sup>th</sup> August, 2017, so far as regularization of their service is concerned. We have further noted that the management of the Respondent-department has attempted to regularize some of

the employees working on contingent/contract posts under the order dated 06.12.2016 passed by this Court in CP-D No.7451 of 2016, where the aforesaid cases of those employees was at par with the case of the Petitioners. We find this treatment discriminatory. We are cognizant of the fact that all appointments in the Respondent-Department are made either by promotion or by initial recruitment or on contract basis or on daily wages basis. Except daily wages all other appointments are deemed to be appointed on regular basis in the department, therefore, only the Petitioners working on contract basis have been singled out without any reasonable classification and justification. Thus, in our view the Petitioners are entitled to be considered for regularization along with their colleagues and other employees of the Respondent-department, as per the law. We are of the considered view that regularization of service is not an initial appointment but it is a confirmation of an existing employment. The objection of the Respondents that Petitioners are now working against contract employment in the weekly magazine "Sindh Manzar" at a fixed monthly remuneration and after 30<sup>th</sup> June, 2018 not a single issue of aforesaid magazine has been published, would be of no legal effect.

13. In view of the peculiar facts and circumstances of the present case, while invoking the jurisdiction conferred upon this Court under Article 199 of the Constitution, we hereby declare the impugned action/orders of the official Respondents to fix the period of service of the petitioners i.e. 30.6.2018 to be in violation of strict and prohibitory command as contained under Article 25 of the Constitution, more particularly, in view of decisions rendered by the Honourable Supreme Court of Pakistan and this Court in the cases of Dr. Iqbal Jan & Ors Vs. Province of Sindh & others

(2014 PLC (C.S) 1153, Dr. Bashir Ahmed & Ors Vs. Province of Sindh & others (2016 PLC (C.S) 179), Bakht Siddique Vs. Federation of Pakistan (2017 PLC (C.S) 1192), Rizwan Javed Vs. Secretary of Agriculture Livestock (2017 PLC (C.S) 712 [FB]), Government of KPK Vs. Adnan ullah (2016 SCMR 1375 [FB]), PSO Vs. Bakht Siddique (2018 SCMR 1181), Sikandar Ali Malik Vs. Province of Sindh in CP No.D-4751/2016 (unreported judgment), Board of Intermediate & Secondary Education Faislabad Vs. Tanveer Sajid & Ors (2018 SCMR 1405) & Unreported Judgment dated 22.02.2018 passed in CP No.D-2598/2016 Rashid Ali Memon Vs. Chief Secretary and others, because the Petitioners have been treated with sheer discrimination, which cannot be approved on any premise whatsoever.

14. In the light of facts and circumstances of the case discussed above the instant Petition is hereby disposed of with directions to the Competent Authority of the Respondent-department to take a fresh decision so far as the matter of the Petitioners is concerned for regularization of their service, without any discrimination, in accordance with law subject to the budgetary sanction, qualifications and eligibility of the Petitioners and this exercise shall be completed within a period of two months from the date of receipt of this Judgment.

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

Karachi,

Dated: 11.10.2018.

**JUDGE**

**JUDGE**