

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

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

C.P No.D-7035 of 2016

Shahnawaz Babar Petitioner

Versus

Federation of Pakistan another Respondents

Date of hearing: 16.10.2018

Mr. Muhammad Arshad Khan Tanoli Advocate for the Petitioner.
Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - Petitioner has prayed for Regularization of his service as Chowkidar in BPS-01 in the office of Director General Marine & Fisheries department, Fish harbor West Wharf road, Karachi. He claims that the Cabinet Sub-Committee on the issue of regularization of services of employees, vide decision dated 26.06.2012 recommended his case for regularization of his service but the same was not done and his service was dispensed with vide Office order dated 22.10.2015 issued by the Respondent department. Per Petitioner the aforesaid action of Respondents is illegal and unlawful.

2. Basically Petitioner's case is that on 13.02.2008, he was appointed as Chowkidar in BPS-01 on contract basis in the project titled as "Accreditation of Quality Control Laboratories of Marine and Fisheries department, Karachi" (M.F.D). It is averred by the Petitioner that on 22.10.2015 the Respondent department declined to regularize the service of the Petitioner on the premise that his

case did not fall under the rules/policy of regularization. Petitioner has submitted that he moved various applications to the Competent Authority for regularization of his service but of no avail and he lastly filed the instant petition on 23.12.2016.

3. Respondent-Department filed para-wise comments and denied the allegations leveled against them with the assertion that the project where the Petitioner was working was closed in the month of June 2011. It is further averred in the comments that the service of the Petitioner was terminated with effect from 01.07.2011. Mother of the Petitioner applied on 13.05.2015 for regularization and adjustment of her son in service which was also declined vide letter dated 22.10.2015. The Respondents have also claimed that the case of Petitioner falls within the ambit of doctrine of laches.

4. Mr. Muhammad Arshad Khan Tanoli, learned counsel for the Petitioner has contended that action of the Respondents by not regularizing the service of the Petitioner despite the approval by Cabinet Sub-Committee regarding the regularization of the service of the Petitioner is against the law; that discrimination has been meted out with the Petitioner on the ground that various employees of Ministry of Ports & Shipping, who had completed one year of service, had been regularized but the Petitioner was singled out in violation of Article 25 of the Constitution of Pakistan. In support of his contention he relied upon the case of I.A Sherwani vs. Government of Pakistan (1991 SCMR 1041) and argued that the Respondent departments non-compliance, rather defiance of

the decision of the Cabinet sub-committee to regularize the Petitioner and not heeding to the directives of their Ministry to comply with the said decision hence the Petitioner has come for compliance of the aforesaid directives. He further added that the Petitioner was appointed in a transparent manner on the recommendation of the departmental committee and with the approval of the Competent Authority; the Respondent department ought to have regularized the service of the Petitioner; that the Petitioner has been condemned unheard before taking impugned action against the Petitioner in violation of Article 10-A of the Constitution. He lastly prayed for allowing the instant petition in the light of decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Pir Imran Sajjad & others vs. Managing Director / General Manager (Manager Finance) Telephone Industries of Pakistan & others (2015 SCMR 1257).

5. Shaikh Liaquat Hussain, learned AAG, has raised the issue of maintainability of the present petition and argued that the Petitioner was appointed on contract basis for a period of two years and his service was terminated under Clause 14 of the Contract Appointment. Learned AAG pointed out that in pursuance of 18th Amendment in the Constitution, the project where the Petitioner was working was closed in the month of June 2011, therefore his service was no more required beyond the period of 30.06.2011. It is further averred that the Petitioner was not in service when the Respondent department rejected the claim of the Petitioner for regularization and adjustment for the post of Naib Qasid vide letter

dated 22.10.2015. Learned AAG added that only 06 contract employees of M.F.D/Respondent No.2 were terminated out of which only 02 employees were regularized against their posts on regular basis, whereas four employees including the Petitioner were not regularized in service because of their poor reputation and performance. Learned AAG in support of his contention relied upon the report dated 27.04.2016, which is available on record and argued that no discrimination had been meted out with the Petitioner and no provision of the Constitution has been violated by the Respondents.

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

7. Primarily, we would address the question of maintainability of instant Petition under Article 199 of the Constitution. Admittedly, the Petitioner was initially appointed for the post of Chowkidar in BPS-1 on contract basis for the period of two years w.e.f. 20.08.2008 in the project titled as "Accreditation of Quality Control Laboratory of Marine & Fisheries department" vide letter dated 10.03.2008.

8. Record reflects that his contract services were extended for further period of one year up to 30.06.2011. We are cognizant of the fact that in the wake of Constitutional 18th Amendment, concurrent legislative list was abolished as consequence thereof some of the Ministries were devolved to the provinces.

9. During the course of argument learned AAG pointed out that the Competent Authority on the aforesaid issues decided that some of the Federal Government Projects, which were handled by those Ministries were ordered to be closed by June 2011 and the Project of M.F.D was also closed on 30.06.2011 as such the service of the Petitioner in the aforesaid project came to an end on 30.06.2011. Record further reflects that the Respondent department vide letter dated 29.04.2010 observed that the Petitioner left the office without prior permission before closing time and his act fall within the ambit of misconduct, his explanation was called vide letter dated 17.01.2011, consequently he was warned to be careful in future vide letter dated 04.04.2011 but he did not mend his way and resultantly two more warnings were issued to him vide letter dated 30.05.2011 and 13.06.2011.

10. It is a matter of record that the Petitioner, though he was on contract, obtained 96 days LFP and 31 days EOL (without pay) during his total contract service of 3 ½ year. Various Memo(s) issued to the Petitioner (available at page 129 of the comments), which prima facie suggest that the Petitioner was not interested in performing his duties, seriously and diligently therefore no premium can be given to the Petitioner at this stage. It is a well settled law that contract appointment would be terminated on the expiry of contract period or any extended period on the choice of the Employer or Appointing Authority. The case of the Petitioner thus is governed by the principle of Master and Servant, therefore, the Petitioner does not have any vested right to seek regularization of his service.

11. Reverting to the claim of the Petitioner that he has been condemned unheard by the Respondents on the allegations of remaining absent from duty and other allegations. Record reflects that though the Petitioner was a contract employee of the Respondent-department, however he was issued various Show Cause Notices. It is a well settled law that an opportunity of Show Cause can be issued to an employee, who is holding a permanent post, whereas the record does not reflect that the Petitioner was permanent employee of the Respondents, therefore in our view the Petitioner cannot claim vested right to be reinstated in service. It is well settled law that the service of temporary employee can be terminated on 14 days' notice or pay in lieu thereof. The Respondents thus in our view have no ostensible reason to put false allegations against the Petitioner for remaining absent from duty from time to time and obtaining unnecessary leaves.

12. In the present case, there is no material placed before us by which we can conclude that impugned action has wrongly been taken by the Respondents. The Petitioner has failed to establish that he has any fundamental/vested right to remain on the temporary /contractual post. Therefore, the argument of the learned counsel for the Petitioner that he was not heard before issuance of impugned action is not tenable in the eyes of law.

13. The case law cited by the learned counsel for the Petitioner surely is distinguishable from the facts and circumstances of the case.

14. In view of the foregoing, the Constitutional Petition in hand is not maintainable, hence, stands dismissed with no order as to cost.

15. These are the reasons of our short order dated 16.10.2018, whereby we have dismissed the instant petition.

Karachi
Dated: 17.10.2018

JUDGE

JUDGE

Shafi Muhammad P/A