

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No. D-984 of 2016

Present

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhary

Muhammad Masood & others Petitioners

V E R S U S

Province of Sindh and others Respondents

Date of hearing: 07.11.2018

Mr. Faizan Hussain Memon, Advocate for Petitioners.
Mr. Abdul Jalil Zubedi, A. A. G, Sindh.

JUDGMENT

ADNAN-UL-KARIM MEMON-J. Through the instant petition,
Petitioners have sought following relief(s):-

i) Declare that the failure of Respondents to treat the Petitioners on preferential basis for appointment as Water management Officers and Computer Operators in Sindh Irrigated Agriculture Productivity Enhancement Project is illegal, unlawful, unconstitutional, mala fide, arbitrary, discriminatory and in grave violation of Order dated 30.04.2014 of the Hon'ble Supreme Court in civil Appeal No. 248-K of 2011.

ii) Direct the Respondents to consider the Petitioners for appointment against respective posts in Sindh Irrigated Agriculture Productivity Enhancement Project and if they meet the qualification they may be issued appointment/posting orders.

2. Brief facts of the case are that Petitioners No. 1 to 6 were appointed as Water Management Officers (BS-17) (hereinafter referred to as "WMO"), whereas the Petitioner No.7 was appointed as Computer Operator (BS-16) on contract basis in

Sindh “On-Farm Water Management Project” in the year 2005 and after rendering services for a period of four years, their services were terminated in the month of June, 2009. Petitioners have submitted that they filed Constitutional Petition No. D-1302/2010 before this Court whereby they challenged the termination of their services on the premise that since the said project was not completed but was merged with the National Program for improvement of Water Courses. Petitioners have submitted that the aforesaid petition was dismissed vide order dated on 05.10.2010 with the following observation:-

“20. Result of the above discussion is that this Constitution Petition is dismissed in limine. Listed application is also disposed of. The above are our reasons for the short order announced in open Court on 05.10.2010.”

Petitioners have submitted that they impugned the order dated 05.10.2010 passed by this Court before the Hon’ble Supreme Court of Pakistan in Civil Appeal No. 248-K of 2011 which was disposed of vide judgment dated 30.04.2014 with the following observation:-

“6. The record reveals that one set of employees was employed in the project known as National Programme for Improvement of Watercourses while the other set of employees was employed in the project known as Sindh On-Farm Water Management Project. The former continued because it received the funds while the latter came to an end because it did not receive the funds. The services of the employees of the former project were extended while the services of the employees of the latter were terminated. The classification between the two is thus based on intelligible differentia because the government on its own could not afford to run the other project. In the meantime, the Sindh (Regularization of Adhoc and Contract Employees) Act XXV of 2013 was enforced. Section 2 of the Act envisaged regularization of those who were in service at the time of passing the Act. The appellants were not in service at the relevant time, therefore, they could not be regularized. We, thus, don’t agree with the learned ASC for the appellants that classification between the two sets of employees for the purposes of extension of services is not based on intelligible differentia. However, we would not like to comment upon the classification between the two sets of employees for the purposes of regularization

in terms of the Act because the Act was passed during the pendency of appeal before this Court. We, against this backdrop, don't feel inclined to interfere with the impugned judgment. In any case, as observed in the short order, the appellants would be given preferential treatment on account of their experience for appointment against the vacancies occurring in future.

3. At this stage, Mr. Faizan Hussain Memon, learned counsel for the Petitioner has contended that he confines his arguments to the extent as observed by the Hon'ble Supreme Court that in any case the Petitioner would be given preferential treatment on account of their experience for appointment against the vacancies occurring in future. He next argued that in the month of March 2015, the Government of Sindh approved a new Project, namely SIAPEP with the objective to improve irrigation water management at tertiary and field levels in Province of Sindh and total number of posts of WMOs are 400 whereas Cos are 133 in number, however the Respondents have posted regular employees of Government of Sindh and NPIW against the posts in question. He next submitted that the act of Respondents is not only in violation of the orders of the Hon'ble Supreme Court of Pakistan but is also against the principles of merit and transparency in appointment; that the act of the Respondents is illegal, unlawful, unconstitutional, malafide, discriminatory, arbitrary, capricious and in grave violation of principles of natural justice; that the failure of the Respondents to consider the Petitioners for appointment against the vacancies of WMOs and Cos and treat them on preferential basis is in violation of the order dated 30.04.2014 of the Hon'ble Supreme Court in Civil Appeal No. 248-K of 2011; that the actions of the Respondents tantamount to infringement of fundamental rights of the Petitioners

in particular, Article 4, 18 and 25 of the Constitution. He lastly prayed for allowing the instant petition.

4. Mr. Abdul Jalil Zubedi, learned AAG has argued that Petitioner No.1 was appointed as Water Management Officer (Social Mobilization) and Petitioner No. 2 to 6 were appointed as Water Management Officer (Agriculture) in Sindh and no any post of Water Management Officer (Social Mobilization) was available in the SIAPEP project and Petitioner No.7 was appointed as Computer Operator and at present no any post of Computer Operator is vacant against which he may be accommodated. He has further contended that the posts of Water Operator are to be filled in by posting from existing regular staff on Farm Water Management and NPIW project. He lastly prayed for dismissal of the instant petition.

5. We have considered the submissions of the parties and have also gone through the entire record carefully with their assistance.

6. The pivotal question in the present proceeding is whether, once the service issue of the Petitioners was agitated upto to the Hon'ble Supreme Court, the Petitioners can start fresh round of litigation on the same cause of action?

7. Record reflects that Petitioners impugned their termination order before this Court and they were non-suited vide judgment dated 07.10.2010 and the same was assailed before the Hon'ble

Supreme Court in Civil Petition No. 248-K of 2011 and they met with the same fate vide Judgment dated 30.04.2014.

8. In the light of foregoing, we are of the considered view that that similar relief cannot be claimed by filing subsequent legal proceedings as it would fall within the ambit of “constructive res-judicata”. Reliance is placed on the case of State Bank of Pakistan through Governor and others vs. Imtiaz Ali Khan and others (2012 SCMR 280).

9. We have noticed that the Respondents have conceded in the comments that whenever vacancies will be advertised, the Petitioners will be given preferential treatment subject to their qualification and eligibility.

10. If this being the position of the case, this Petition is disposed of with the direction to the competent authority of Respondents to give preferential treatment to the Petitioners on account of their experience for appointment, as and when the vacancies occur in the Respondent-Department, as per direction passed by the Hon’ble Supreme Court vide Judgment dated 30.04.2014 in Civil Appeal No.248-K of 2011.

11. The instant petition stands disposed of in the above terms.

JUDGE

JUDGE

Karachi

Dated:- 12.11.2018.

Nadir/PA