

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No. D-5311 of 2016

Present

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Qurat-ul-Ain & others Petitioners

V.s

Province of Sindh and others Respondents

Date of hearing: 12.11.2018

Mr. M. Aqil Awan, Advocate for Petitioners.

Malik Altaf Jawed Advocate for Respondent No.4.

Barrister Sheryar Mehar A. A. G, Sindh along with

Khalilullah Jakhro, Fida Hussain Internee.

ORDER

ADNAN-UL-KARIM MEMON-J. The Petitioners have approached this Court for regularization of their services in terms of Section 3 of the Sindh Regularization (Ad-hoc and contract) Employees Act 2013. The case of the Petitioners is that they are serving in Sindh Irrigation and Drainage Authority (SIDA), since 2011 and from time to time their contractual engagement is being extended and at present they are performing their duties on contract basis.

2. Mr. M. Aqil Awan, learned counsel for the Petitioners has contended that the case of the Petitioners falls within the ambit of Section 3 of the Sindh Regularization (Ad-hoc and contract) Employees Act 2013. In support of his contention, he relied upon the order dated 01.06.2016 passed by this Court in

C.P. No. D-5100 of 2013. He next contended that the Petitioners are entitled for their job protection in accordance with law; therefore their cases may be placed before the Competent Authority for consideration of regularization of their services in terms of the order passed by this Court in the aforesaid matter. He further added that the case of the Petitioners needs to be treated at par with the colleagues of the Petitioners, whose services have already been regularized.

3. Mr. Malik Altaf Jawed learned counsel for SIDA has supported the stance of the learned counsel for the Petitioners and argued that SIDA has already recommended the case of the Petitioners for regularization of their services to the Competent Authority.

4. Barrister Sheryar Mehar, learned AAG has controverted the stance of the learned counsel for the Petitioners and argued that the case of the Petitioners needs to be initiated by the Board of Directors of SIDA, which is an Autonomous Authority. He next added that the Finance Department Government of Sindh had already provided funds to SIDA as per their demand; therefore the Irrigation department has nothing to do with the regularization of services of the Petitioners as it is the job of their parent department. Learned AAG has pointed out that since the Respondent No. 1 to 3 have not acted for and against the Petitioners, therefore the question of discrimination, purportedly meted out with them does not arise. He next argued that the present matter pertains to SIDA, which is a project

(through ongoing development scheme) the staff working in the said project is meant only for the project execution; therefore question of regularization of their services does not arise at their end without completion of project. He lastly prayed for dismissal of the instant petition.

5. We have considered the submissions of the parties and have perused the material available on record.

6. Record reflects that this Court vide order dated 01.06.2016 passed in C.P. No. D-5100 of 2013, directed the Competent Authority of SIDA to decide the subject issue of regularization of services of the employees of SIDA in accordance with SIDA Ordinance 2002. In our view the learned AAG has rightly pointed out that the matter of the Petitioners is akin to those Petitioners in the aforesaid matter, therefore their case may be placed before the SIDA Board for initiating the process of regularization of the Petitioners. At this stage, learned counsel for the Petitioners has objected to the aforesaid proposal and argued that in terms of paragraph 10 of the Judgment rendered by this Court in the case of Dr. Iqbal Jan vs. Province of Sindh & others (PLC (CS) 1153), 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, thus the case of the Petitioners may be decided in accordance with the terms of aforesaid Act 2013 and the Judgment passed by this Court in the case of Dr. Iqbal Jan.

7. To appreciate the above contention of the learned counsel, it is expedient to have a look at the relevant para of the Judgment pronounced by this Court. An excerpt of the same is reproduced as under:-

“10. Learned Counsel for the petitioners pointed-out and learned A.A.G both extensively argued the matter and agreed that this petition may be disposed of at Katcha Peshi stage. In view of the above, this petition is admitted to regular hearing and disposed of in the following terms: -

(1) All the petitioners shall deem 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.

(2) The Honorable Supreme Court in its order passed in Civil Appeals Nos.84-K to 86-K of 2012 left it open to the government to take appropriate action against the respondents, against whom they have reservation about their fitness and eligibility. If in this case, the competent authority has any such reservation regarding the fitness of eligibility of any petition, they may take appropriate action but such exercise should be taken strictly in accordance with law.”

8. The moot point involved in the present petition is interpretation 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 ad-hoc 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.”

9. 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 been validly appointed on regular basis immediately before the commencement of the Act. Hence, no ambiguity is left that all employees, who fall within the ambit of law shall be regularized in service with effect from the promulgation of the Act, 2013.

10. As per record, before the commencement of the said Act, Petitioners were not working against the sanctioned budgetary posts but on a fixed period project posts in Respondent-SIDA, which is an Autonomous Statutory Authority is governed under Sindh Water Management Ordinance, 2002. In our view the Respondent-SIDA is competent to initiate the process of regularization of the Petitioners for the simple reason that Petitioners are their employees and not the employees of the Respondent No 3, thus we do not concur with the assertion of the learned counsel for the Petitioners on the aforesaid pleas, on the contrary the proposal of the learned AAG seems to be fair and reasonable.

11. In view of the facts and circumstances of the case and for the reasons alluded above, this Petition is disposed of in the terms of order dated 01.06.2016 passed by this Court in C.P. No- 5100 of 2013 with direction to the Competent Authority of SIDA to initiate the process of regularization of the Petitioners, strictly in accordance with law, subject to availability of vacancies and budgetary posts, if all the prerequisites are fulfilled then the same may be placed before the Board of SIDA, who in turn consider the case of the Petitioners for regularization of their services in accordance with law within a period of 90 days from the date of receipt of this Order.

12. The instant petition is disposed of in the above terms.

JUDGE

Karachi.
Dated:- 15.11.2018.

JUDGE

Shafi Muhammad /PA