

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

**C.P No.D-1656 of 2016**

**Present**

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

Arham Khan & others ..... Petitioners

**V E R S U S**

Managing Director Karachi  
Water & Sewerage Board & others ..... Respondents

Date of hearing: **14.11.2018**

Mr. Muhammad Waseem Sammo Advocate for the Petitioners  
Mr. Abrar Hasan Advocate for the Respondents  
Mr. Shehryar Mehar, Assistant Advocate General

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

**ADNAN-UL-KARIM MEMON, J:** - Through the present petition, Petitioners have called in question the office order dated 27.7.2016 issued by the Respondent- Karachi Water & Sewerage Board (KW&SB) whereby Petitioners regularization of service was recalled and cancelled on the premise that their services had not been regularized through proper procedure under the Karachi Water & Sewerage Board Employees (Appointment, Promotion & Transfer) Rules, 1987. The Respondent-department has cited the decision of the Hon'ble Supreme Court of Pakistan and took action against the Petitioners.

2. Brief facts of the case as per averments of the parties are that in the month, ranging from April to December 2012, the Petitioners were appointed as Junior Clerk in BPS-07 and Meter Reader in BPS-06 on

ad-hoc basis in KW&SB against vacant posts. Petitioners have further averred that they completed their probationary period and their services were regularized in the month of December 2012 and 2013. The Petitioners have submitted that they were also being paid salaries and they continued to serve the Respondent-department without any break in service up to 27.7.2016, when the Respondent-department cancelled their regularization of service and terminated them from service, without any fault on their part. Petitioners have further submitted that the Provincial Sindh Assembly promulgated Sindh (Regularization of ad-hoc and contract employees) Act, 2013 and the Petitioners are entitled to be benefited under the aforesaid beneficial enactment. The Petitioners have submitted that their colleagues and juniors have been regularized under the Act, 2013 and the Petitioners have been left out, which is discriminatory attitude of the Respondents and their case falls within the ambit of Article 25 of the Constitution of the Islamic Republic of Pakistan 1973. The Competent Authority of Respondents during the pendency of the instant petition has cancelled their Regularization of their services vide letter dated 27.7.2016, without hearing them in terms of the Article 10-A, of the Constitution. The Petitioners being aggrieved by and dissatisfied with the cancellation of Regularization of their services have called in question the action of the Respondent-department before this Court.

3. Mr. Muhammad Waseem Sammo, learned counsel for the Petitioners has submitted that the Petitioners were appointed on Ad-hoc basis and thereafter their services were regularized by the Respondent-department in accordance with law; that the Respondent-department cancelled the regularization of services of the Petitioners without

assigning any reason; that the whole procedure adopted by the Respondents against the Petitioners is nullity in the eyes of law; that no show cause notices were issued to the Petitioners, who were regular employees of the Respondent-department; that no any inquiry was conducted into the purported allegations and unilateral decision was taken by the Respondents against the Petitioners in violation of Article 10-A of the Constitution; that the Petitioners are qualified to hold the post of Junior Clerk in BPS-07 and Meter Reader in BPS-06, thus their ad-hoc period was wrongly cancelled; that Respondents are responsible for the alleged act of irregular appointments and regularization, if any, and the Petitioners cannot be deprived on account of the illegal acts of the Respondents; that if there was any procedural illegalities, the same may be condoned and regularized under Karachi Water & Sewerage Board Employees (APT) Rules 1987 or under the Sindh (Regularization of ad-hoc and Contract Employees) Act, 2013; that the services of the Petitioners cannot be terminated by a single stroke of pen and be relieved them from their posts; that the appointment of the Petitioners cannot be terminated without issuing Show Cause Notices and completing other legal and codal formalities under the law, thus according to him, the entire proceedings undertaken by the Respondents are nullity in the eyes of law; that the Petitioners have enjoyed their postings and after lapse of considerable time the Respondents have awoken from deep slumber to say that the appointment and regularization of the Petitioners were not in accordance with the law. He continued by stating that if there is a maladministration in appointments, it is the responsibility of the Respondents and not the Petitioners. Per learned Counsel, since the Petitioners were appointed in accordance with law and there was no

illegality in their appointments and regularization, therefore, the comments filed by the Respondents cannot be considered as Gospel truth to deprive the Petitioners of their respective jobs on incorrect pleas; that depriving the Petitioners from their jobs amounts to depriving from their livelihood, therefore the instant Petition can be heard and decided on merits. Learned counsel for the Petitioners has prayed for setting aside the impugned letter dated 27.7.2016. He further argued that the Petitioners are innocent and victim of internal tug of war between the officials of the KW&SB and local Government department even otherwise the appointment orders of the Petitioners for the aforesaid posts are genuine and the Petitioners have nothing to do with the purported illegal appointments in KW&SB and that they cannot be held responsible for that. He lastly prayed for allowing the instant Petition.

4. Mr. Abrar Hasan learned counsel for the Respondents has raised the issue of maintainability of the instant Petition and argued that the ad-hoc appointments made in the year 2010 to 2015 in KW&SB were without advertisement and adopting/completing the codal formalities, which were cancelled under KW&SB Employees (APT) Rules 1987; that the Petitioners were appointed on adhoc basis on the orders of the political figures, therefore their services were terminated in the month of January, 2016; that there is no requirement of law to issue Show Cause Notices and hold inquiry into their culpability particularly with their alleged service issues, which were procured illegally; that since the Petitioners have not come with clean hands as their basic appointments were called in question; that after completing formalities action was taken against the Petitioners; that there are sufficient documentary

evidences that the appointment orders, upon which the Petitioners are relying, were not issued in accordance with the terms of Karachi Water & Sewerage Board Employees (APT) Rules 1987. He has further contended that the alleged postings orders of the Petitioners do not validate and legitimize their appointments and subsequent regularization. He lastly prayed for dismissal of the instant petition.

5. We have heard the parties on the aforesaid issues and have perused the material placed on the record.

6. The pivotal question before us is that whether service of the Petitioners can be terminated without providing opportunity of hearing? In our view, he who seeks equity must do equity and approach the Court with clean hands, ill-gotten gains cannot be protected. It is argued by the learned counsel for the Respondents that Petitioners had got their appointments and regularization through backdoor, thus cannot agitate any grievance on the pretext of denial of due opportunity of hearing to them.

7. In view of the forgoing facts and circumstances, the question at hand could be reduced to the following:-

***Whether the adhoc period of service of the petitioners as Junior Clerk in BPS-07 and Meter Reader in BPS-06 in KW&SB can be regularized, under Section 10(1) Karachi Water & Sewerage Board Employees (APT) Rules 1987?***

8. To answer the above question, we have to look at the Appointment Order dated 14.4.2012 issued by the Director Personal KW&SB in favor of one of the Petitioners. An excerpt of appointment letter is reproduced below for the sake of convenience:-

**“No. KW & SB/HRD&A/D.P./12/872 dated 14<sup>th</sup> April, 2012**

**“ Sub: APPOINTMENT OF MR. ARHAM KHAN S/O FAREED KHAN AS JUNIOR CLERK (BS-07) ON ADHOC BASIS.**

***In pursuance of Rule 17 of KW&SB Employees (Appointment promotion & Transfer) Rules, 1987. Mr. Arham Khan S/o Fareed Khan is appointed as Junior clerk (BS0-07) against the existing vacancy on adhoc basis with immediate effect.***

***This issues with the approval of the Managing Director, KW&SB.”***

9. Upon perusal of above order, we have noticed that appointment of the Petitioners as Junior Clerk in BPS-07 and Meter Reader in BPS-06 in KW&SB were made upon the recommendation of the Managing Director KW&SB by exercising the powers under Rule 17 (1) of APT Rules 1987. We have to see whether the Managing Director was competent to make appointment of the Petitioners in the same manner as provided under Rule 17 of APT Rules 1987. An excerpt of the same is reproduced as under:-

***“17. When the appointing authority considers it to be in the public interest to fill in a post falling within the purview of the Selection Committee urgently, it may pending selection of a candidate by the Selection committee, proceed to fill in such post on ad-hoc basis for a period not exceeding six months.”***

10. Prima-facie the said appointments were against the norms of natural course and deviation from recruitment/service rules and procedures.

11. Rule 10(1) of APT Rules 1987 also prescribed method of initial appointment to a post. Rule 11(1) provides qualification & age limit for the post i.e. Junior Clerk in BPS-07 and Meter Reader in BPS-06 in KW&SB. The aforesaid rules provide that the appointments shall be made through public notice and on the recommendation of Selection Committee. It is further provided that the candidate must have academic

qualification and be within the age limit and must be in good health condition. Record does not reflect that the aforesaid conditions were fulfilled at the time of initial appointment of the Petitioners on ad-hoc basis by the Managing Director of KW&SB, therefore no sanctity can be attached with such appointments.

12. Record further reflects that the ad-hoc appointments were made in KW&SB without advertisement in violation of law. The definition clause 2(i) provides that ad-hoc appointment means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment in accordance with such method. Prima facie no material has been placed on record to claim that the Petitioners were duly qualified persons during the pendency of recruitment process in KW&SB. The ad-hoc appointments are made only for six months not exceeding 180 days as prescribed under the rules. Prima facie record reflects that all the Petitioners were appointed on the orders of the then Minister Local Government and other political figures, therefore no premium can be given to the Petitioners that their appointments were made in accordance with the law.

13. In view of the foregoing reasons, we are of considered view that the case of the Petitioners for regularization of their ad-hoc appointment and subsequent regularization of their services do not involve any complicated question. In our view by virtue of their ad-hoc appointment, no vested right in terms of public notice, educational qualification, age and medical fitness accrued to them to claim regularization on the basis of Rule 17(1) of APT Rules 1987. Besides, their initial appointment in the

year 2012 was also found to be in violation of prescribed procedure and non-transparent manner.

14. Perusal of report submitted by the learned counsel for the Respondents in compliance of the order dated 01.11.2017 passed by this Court, which explicitly shows that Ad-hoc appointments were made without completing the codal formalities as prescribed under the law. Record reflects that the Petitioners were appointed and regularized within shortest period by the Respondent-department in violation of the Rule 10(1) of APT Rules 1987, in whimsically manner.

15. We have noticed that the Managing Director was not competent to make regularization of the services of the Petitioners under the aforesaid Rules. The learned counsel for the Petitioners tried to convince this Court that Managing Director of Respondent-department was competent to make appointments under Rule 17 (1) of APT Rules 1987 and argued that the aforesaid Rule provides that when the appointing authority considers it to be in the public interest to fill in a post falling within the purview of the Selection Committee urgently, it may pending selection of a candidate by the Selection committee, proceed to fill in such post on ad-hoc basis for a period not exceeding six months. We are not convinced with the assertion of the learned counsel for the simple reason that the service of the Petitioners were required to be made in accordance with Rule 10(1) of the APT Rules 1987 and on the recommendation of the Selection committee through public notice, finally with the approval of the Chairman KW&SB. Record does not reflect that the Petitioners were regularized within the parameters of law.



16. To appreciate the plea taken by the petitioners, we have to refer to the aforesaid enactment provides for regularization of the services of certain Government servants appointed on ad-hoc basis and as per the definition clause the “post” means a post sanctioned by the Government connected with the affairs of the province, but in the present proceedings, no sanctioned or substantive post of Junior Clerk in BPS-07 and Meter Reader in BPS-06 were available to be filled on ad-hoc basis at that relevant point of time. We are of the considered view that the foundation i.e. appointment of the Petitioners against the aforesaid posts were illegal; therefore the question of regularization of their service does not arise. 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 ad-hoc basis shall be regularized retrospectively.”***

17. In order to further elaborate the issue of ad-hoc appointment, we refer to Section 2(i) of APT Rules 1987 which reads as under: -

***“(a) adhoc appointment” means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending the recruitment in accordance with such method”***

18. In view of the forgoing, we cannot accept that the Petitioners were qualified person at the time of their initial appointment in the year 2012 for the simple reason that they did not meet the basic criteria of appointment against the posts as provided under APT Rules 1987 the Petitioners were not working against the sanctioned budgetary post and could not be termed to be appointed on a regular basis, which could be recognized by the law. Thus, the question of regularization as claimed by the Petitioners is misconceived.

19. Now, we would like to address the question raised by the learned counsel for the Petitioners with respect to the applicability of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013. In our view prima-facie this Act does not seem to be applicable to the facts and circumstances of the present case of the Petitioners, as this Act 2013 is relevant for those employees, who held the posts in the Government Department and includes the post in a Project of such Department in connection with the affairs of the Province. Therefore the Petitioners are not entitled to the benefit of the aforesaid Act also.

20. In the present case, there is no material placed before us by which we can conclude that the Competent Authority wrongly exercised the discretion by declining to regularize the service of the Petitioners.

21. In view of the aforesaid decision taken by the Respondent-KW&SB, in our view is the right decision, which does not call for interference of this Court.

22. Summing up our conclusions in the light of the discussions in the foregoing paragraphs, we hold that the Petitioners appointed by the Respondents on ad-hoc basis cannot claim a right to be regularized or even to remain in the service being appointed in a wholly illegal manner. We are fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456).

23. It is now well established that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protect the rights within the frame work of the Constitution. This extra ordinary

jurisdiction of the High Court may be invoked to encounter and collide with extraordinary situation. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the object to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. Reliance is placed on the case of Muslim Commercial Bank Ltd. through Attorney Vs. Abdul Waheed Abro and 2 others (2015 PLC 259).

24. In the light of above observation of the Hon'ble Supreme Court, the Petitioners have failed to establish that they have any fundamental/vested right to remain on the ad-hoc post or claim regularization of their service on the subject posts, which are not to be filled on ad-hoc basis. Reliance is placed upon the case of Contempt Proceedings against Chief Secretary and others (2013 SCMR 1752).

25. Before parting with the order we would like to observe that since it has come on record that illegal appointments were made by the then Managing Director KW&SB, the Secretary Local Government/Chief Secretary Sindh are directed to initiate appropriate action/disciplinary proceedings against the said Managing Director in accordance with law.

26. In view of the foregoing, the Constitutional Petition in hand is dismissed, with no order as to cost, along with the listed application(s). Let a copy of order be communicated to the Chief Secretary Sindh and Secretary Local Government for information and compliance.

Karachi  
Dated: 19 .11.2018

JUDGE

JUDGE