

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –6387 of 2019

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Mst. Beenish Mobin and others

Versus

Federation of Pakistan and another

Date of hearing & order : 04.11.2020

Mr. Faizan Hussain Memon, advocate for the petitioners.

Mr. Muhammad Ali Lakhani, advocate for respondent No.2

Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON, J. Petitioners seek regularization of their services with Respondent-Pakistan Industrial Development Corporation (Pvt) Ltd (PIDC) in line with similarly placed employees in terms of the decision of the cabinet.

2. The case of the petitioners is that petitioners were appointed on a contract basis against permanent posts. Petitioners have averred that the cabinet in its meeting held on 18.06.2019 decided to regularize contract staffs of all Ministry / Division / attached Department/ Sub-ordinate offices but the respondent-PIDC failed and neglected to act upon the decision of the cabinet. They claimed that their services ought to have been regularized in terms of the decision of the cabinet as discussed supra. They being aggrieved by and dissatisfied with inaction on the part of respondent-PIDC has filed the instant petition on 05.10.2019.

3. At the outset, learned counsel for respondent No.2, states that the matter of regularization of petitioners No.1 and 2 have been finalized as their status of employment with PIDC has been changed from time-bound contract to a regular contract with the same terms and conditions as of all other PIDC employees vide letter dated 27.10.2020. He further states that the case of petitioner No.3 for regularization of his service was considered by the competent authority and regretted on the ground that his contractual service had already expired in the year 2019.

4. During arguments, we queried from the learned counsel for the Petitioners as to how the instant Petition is maintainable against the aforesaid decision of Respondent- PIDC before this Court.

5. Mr. Faizan Hussain Memon learned counsel for the petitioners has confined his arguments to the case of petitioner No.3 only and strongly objected to the decision of Respondent-PIDC argued that he was appointed against the post of Chief Internal Auditor (CIA) PIDC through competitive process vide letter dated 03.11.2016 on contract basis for three (03) years. He emphasized that petitioner No.3 performed his responsibilities to the best of his abilities against the permanent position. He contends that the respondent–PIDC has regularized the services of colleagues of the petitioner No.3 but his service was not regularized on account of favoritism and finally knocked out him from his contractual service. He relied upon the order dated 09.10.2019 passed by this Court and argued that the respondents were restrained not to take coercive action against the petitioners including petitioner No.3 but the respondent did not continue his service on the ground that his contractual period was / is over.

6. We asked the learned counsel whether petitioner No.3 participated in the competitive process initiated by the respondents against the post of Chief Internal Auditor (CIA), he replied in the negative and argued that since he was appointed through the competitive process, there was no need to apply afresh against the aforesaid post. He prayed for a direction to the respondents to allow the petitioner No.3 to continue his service in the line with his colleagues i.e. petitioners No.1 and 2. In support of his contentions, he relied upon the case of Pakistan Telecommunication Company Ltd versus. Muhammad Zahid and 29 others (2010 SCMR 253), Pir Imran Sajid, and others versus Managing Director / General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257), Government of Khyber Pakhtunkhwa through Secretary Agriculture and others versus. Adannullah (2016 SCMR 1375), Zarai Taraqiati Bank Ltd versus Muhammad Asim Rafique (2016 SCMR 1756), Syed Muhammad Shoaib (Shoaib) and others v. Federation of Pakistan through Secretary and others (2017 PLC (CS) 1020), Messrs. State Oil Company Ltd versus. Bakht Siddique and others (2018 SCMR 1181) and Kamran Ahmed Mallah and others versus Federation of Pakistan and others (2019 PLC (CS) 41).

7. We have heard the learned counsel for the parties on the issue of regularization of contractual service of petitioner No.3 and have gone through the relevant documents brought on record.

8. At the outset, we find it pertinent to note that the employment of the petitioner No.3 was contractual and that his contract does not contain a provision for regularization, therefore, this Court cannot issue a writ for regularization of his service on the aforesaid analogy. On the aforesaid proposition, we are fortified by the latest un-reported decision dated 16.07.2020 pronounced by the Hon'ble Supreme Court in Civil Appeal No.73 of 2020 in the case of Government of Khyber Pakhtunkhwa, Workers Welfare Board, through its Chairman versus Raheel Ali Gohar and others.

9. Progressing further, prima-facie the petitioner No.3's post as Chief Internal Auditor required approval from the competent authority and the requirement of the said post was that the applicant must be "fit and proper" for the aforesaid position and he must have five (05) years of relevant audit experience as provided under Rule 22 of Public Sector Companies (Corporate Governance) Rules, 2013 as amended up to date, which reads as under:-

- (a) member of a recognized body of professional accountants; or
- (b) certified internal auditor; or
- (c) certified fraud examiner; or
- (d) certified internal control auditor; or
- (e) person holding a master degree in finance from a university recognized by the Higher Education Commission.

10. Besides the above, we have noticed that the contractual service of petitioner No.3 has already expired and the respondents did not renew his contract with the following decision:-

"Agenda No.3

Renewal of contract of Chief Internal Auditor

The said agenda item was discussed at the end. Because of conflict of interest CIA left the meeting before discussion of this item. Chairperson informed the committee that contract of CIA was coming to end in this November. The department of Internal Audit was established three years ago and hence it was important that the Committee deliberated that this agenda item before expiry of the term. Prince Balouch appreciated the work of the current CIA and inquired about possibility of renewal. Committee deliberated the subject and noted that at the time of appointment of the incumbent it was a requirement that the is CA/ICMA qualified whereas he was only a CA finalist. It was expected that he will be able to earn his ACA during employment term. However, even after lapse of three years this condition is still outstanding. Further it was observed that the job advertisement clearly mentioned a maximum of 3-years contract period and accordingly the contract offered to him was for three years without any possibility of automatic renewal/extension hence it was agreed by the committee that for sake of transparency, advertisement for the position should be published as soon as possible. The Audit Committee shall review the candidates and recommend to the Board the most eligible candidate. Committee also noted the performance appraisal of the CIA for last two years undertaken by the Committee."

11. It is well-settled law that contractual employees have no automatic right to be regularized unless the same has specifically been provided under the law, for which the petitioner No.3 has failed to point out. In this regard, reference may also be made to the judgment of the Hon'ble Supreme Court in the case of Chairman NADRA, Islamabad, and another v. Muhammad Ali Shah and others (2017 SCMR 1989).

12. Reverting to the grounds agitated by the petitioner No.3 for regularization of his service, which are untenable on the premise that the contractual period of petitioner No.3 stood expired in November 2019 by efflux of time, whereas the contract of petitioners No.1 and 2 continued up to August and September 2020 respectively and this Court vide order dated 05.08.2020 directed the respondents not to relieve them from their contractual post. Subsequently their case was considered by the respondents and their status of employment was changed from time-bound contract to a regular contract with the same terms and conditions as of all other PIDC Employees. Petitioner No.3 cannot plead discrimination because no such protection was given to him by this Court as was given to petitioners No.1 and 2 for the reason that their contract was subsisting at the time when such protection was extended to them. The second point, which he has raised that he is eligible for the post of Chief Internal Auditor, suffice it to say that Rule 22 of the Public Sector Companies (Corporate Governance) Rules, 2013 is very clear in its term and the petitioner has to meet the qualification as enumerated in the law which he has failed to show that he is eligible and qualified to continue the contractual post even after expiry of the contractual period.

13. In view of the foregoing, the petitioner No.3 ought to have participated in the competitive process initiated by the respondents, but he failed to do so. We do not find merit in the case of petitioner No.3 for the regularization of his service for the reasons alluded hereinabove. This petition to the extent of petitioner No.3 stands dismissed along with pending applications with no order as to costs.

J U D G E

J U D G E

Shahzad*