

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –6236 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Raza Muhammad and others

Versus

Province of Sindh and 03 others

Date of hearing & order : 15.12.2020

Mr. Shan-ur-Rehman, advocate for the petitioners.

ORDER

ADNAN-UL-KARIM MEMON, J. Petitioners have approached this Court for regularization of their service in Shaheed Benazir Bhutto Housing Cell, Government of Sindh.

2. Mr. Shan-ur-Rehman learned counsel for the petitioners, has conceded that the petitioners were appointed after the promulgation of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 and has heavily relied upon Para 9.10 (b) of the minutes of the meeting of Provincial Cabinet held on 29.3.2018 and argued that Provincial Cabinet has decided to regularize the contract employees vide letter dated 18.04.2018; they fulfill the criteria and are qualified for the job; and, they are working to the satisfaction of the respondent-Housing Cell. He emphasized that the decision of the Cabinet is binding upon the respondents to regularize the services of the petitioners as their case falls within the ambit of Section 3 of Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013. He urged that under the constant policy of other Provincial Governments to regularize the services of contractual employees working in different projects of government and in view of their qualification and performance they have the legitimate expectancy of being regularized; and, the respondents are violating the fundamental rights of the petitioners. Learned counsel referred to the grounds raised by the petitioners in the memo of petition and argued that the actions of the respondents are in violation of fundamental rights of the petitioners guaranteed under Article 2,3,4,9,10-A, 11,14,18 & 25 of the Constitution of Pakistan, 1973. He lastly prayed for allowing the instant petition. In support of his contentions, he relied upon the case of Pir Imran Sajid and others

versus Managing Director/Regional Manager (Manager Finance) Telephone Industries of Pakistan, 2015 SCMR 1257.

3. We have heard learned counsel for the petitioners on the maintainability of the instant petition and carefully examined the record and case-law cited at the bar.

4. We have noticed that the petitioners were appointed as Naib Qasid and Driver in Shaheed Benazir Bhutto Housing Cell, Government of Sindh in the year 2016.

5. Admittedly, the petitioners were appointed after the cutoff date i.e. 25.3.2013 as provided under Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, therefore, no vested right with regard to regularization of their service can be claimed.

6. The decision of the Hon'ble Supreme Court of Pakistan cited by him is altogether on the different subject on the premise that the names of candidates were specifically recommended for regularization by the Cabinet, whereas in the subject matter there is no directive of the Provincial Cabinet in its meeting held on 29.03.2018 with regard to regularization of the service of the petitioners, prima-facie they do not fulfill the criteria and eligibility for regularization of their job. An excerpt of the minutes of the meeting of Provincial Cabinet held on 29.03.2018 is reproduced as under:

“ Para 9.10(b): The Cabinet also decided in principle to direct all the Departments to initiate the process of regularization of the contract employee, if they fulfill the criteria, are qualified for the job and they are working to the satisfaction of the respective Departments. ”

7. It is well settled now that regularization of service is always subject to the availability of post and fulfillment of recruitment criteria. Besides it is well-settled law that a contract employee is debarred from approaching this Court in constitutional jurisdiction, in the light of the law laid down by the Hon'ble Supreme Court of Pakistan in the case of Qazi Munir Ahmed versus Rawalpindi Medical College and Allied Hospital and others, 2019 SCMR 648.

8. Before parting with this order, we may observe that the Provincial Cabinet is well within its powers to frame policy, however, subject to the law. It is well-settled that if a policy manifestly inconsistent with the Constitutional commands, retrogressive in nature, and discriminatory *inter se* the populace is not immune from judicial review. Prima-facie the decision of the Cabinet dated 29.3.2018

does not cover the case of the petitioners under Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, as their appointment is after the promulgation of the said Act i.e. 25.3.2013. On the proposition of contractual appointments and regularization of service of employees, the following judgments of the Hon'ble Supreme Court of Pakistan are providing guiding principles:

- i. Government of Baluchistan V/S Dr. Zahida Kakar and 43 others **(2005 SCMR 642)**
- ii. Dr. Mubashir Ahmed V/S PTCL through Chairman, Islamabad, and another **(2007 PLC CS 737)**.
- iii. Abid Iqbal Hafiz and others v. Secretary, Public Prosecution Department, Government of the Punjab, Lahore, and others, **PLD 2010 Supreme Court 841**
- iv. Federation of Pakistan v. Muhammad Azam Chattha **(2013 SCMR 120)**
- v. Muzafar Khan & others V/S Government of Pakistan & others **(2013 SCMR 304)**
- vi. Abdul Wahab and others v. HBL and others **(2013 SCMR 1383)**
- vii. Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and others, **2017 SCMR 1979**
- viii. Raja Iviz Mehmood and another v. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others, **2018 SCMR 162**
- ix. Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals, **2019 SCMR 984**.
- x. Unreported order dated 13.03.2019 passed by the Hon'ble Supreme Court in C.P. No.2792/2018 and other connected petitions
- xi. Province of Punjab through Secretary Agriculture Department, Lahore, and others Vs. Muhammad Arif and others **(2020 SCMR 507)**.
- xii. Miss Naureen Naz Butt vs Pakistan International Airlines and others **(2020 SCMR 1625)**.

9. The petitioners, in our view, have failed to make out their case for regularization of their service as their case is neither covered under Section 3 of Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, nor falls within the ambit of Policy of Government of Sindh, therefore, the instant petition is hereby dismissed in *limine* along with the pending application(s) with no order as to costs.

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Shahzad*