

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -1041 of 2021

Abdul Sattar

Versus

Province of Sindh and 02 others

Date of hearing &
Decision : 12.02.2021

Mr. Aftab Alam Mallick, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. - Petitioner is seeking regularization of his service in the District Municipal Corporation (West) Baldia Zone Karachi (DMC West) on the premise that initially he was appointed as a cooly on contract basis on 01.09.2014 in DMC West. Petitioner has asserted that he performed duties assigned to him with keen interest and devotion without any complaint, therefore, his service may be regularized as Sanitary Worker/Naib Qasid in the DMC concerned. He relied upon the letter dated 30.05.2015 issued by the office of the Director, Administration DMC West, whereby his service was continued for 89 days. Petitioner has submitted that his case for regularization was recommended by the Administrator, DMC West, vide letter dated 13.01.2016, but to no avail.

2. We asked the learned counsel to satisfy this Court about the maintainability of this petition on the premise that his contractual service was not extended by the respondent-DMC. He replied that there is no relieving letter from DMC West; and, as per rule, he is presumed to be working on the payroll of the concerned DMC. He further argued that the petitioner deserves regularization of his service in line with the cases of his colleagues. In support of his contention, he relied upon Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 and argued that this Court passed several orders on the issue of regularization of service, including the judgment reported as PLC 2014 (CS) 1153. It is next submitted that he was supposed to be regularized from the date of joining his duty.

3. We have gone through the appointment letter of the petitioner which explicitly provides that his service was hired on a contract basis for 89 days and his further period on the contract was extended for another 89 days vide letter dated 30.05.2015; and, since then his service record is silent about the factum whether the said contract was extended or otherwise. However, the record reflects that there is no vacancy of Cooly or Naib Qasid in Site Zone DMC West, and in absence of a vacant position his case cannot be forwarded for regularization. It is well-settled law that regularization is always subject to the availability of vacancy. So far as the applicability of the Act 2013 is concerned, we have seen that the appointment of the petitioner was made after the enactment of Act 2013 i.e. in the year 2014, thus his case does not fall within the ambit of Section 3 of the Act, 2013.

4. In view of the facts and circumstances of the case and for the reasons alluded to above, no case for the regularization of his service is made out. Resultantly, this petition is dismissed in limine along with the pending application(s). However, the petitioner is at liberty to approach the competent authority for the continuation of his contractual post which is required to be dealt with under law within a reasonable time.

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