

Order Sheet
**IN THE HIGH COURT OF SINDH CIRCUIT COURT
AT HYDERABAD**

C.P No.D-180 of 2017

Muhammad Hanif and others v. Province of Sindh & others.

Present:-

***Mr. Justice Arshad Hussain Khan,
Mr. Justice Irshad Ali Shah.***

11.02.2021

Mr. Mansoor Ali Jamali, Advocate for petitioners.

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

ARSHAD HUSSAIN KHAN, J: - Through instant constitutional petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners have made the following prayers: -

- A. *To direct the respondents to regularize the petitioners from work charged establishment to permanent basis with effect from the date of appointments.*
- B. *To direct the respondents to give all the benefits, increments, promotions and allowances for the period under which the petitioners served on work charge basis with all allowances allowed to the Government Employees from the date of their appointment.*
- C. *Costs of the petition may be saddled upon the respondents.*
- D. *Any other relief(s) which this Honourable Court deems fit, just and proper in favour of petitioners.*

2. The precise plea of the petitioners in the case is that during the period from 1989 to 1993 they were appointed in Health Engineering Department in lower grades viz. Chowkidar, Pump Operator etc. on Work Charge basis and since then they are performing their respective duties. It is also their stance that since a considerable time has been passed and the services of other work charged employees were regularized by this court, therefore, the petitioners are also entitled to be regularized as per the principle of equal treatment.

3. Upon notice of the present petition, the respondents filed their respective comments; through which, Respondent No. 2 [Chief Engineer Public Health Engineering Department, Government of Sindh] and Respondent No. 4 [Executive Engineer, Public Health Engineering Division, Badin] while controverting the facts of the petition, categorically stated that the petitioners are no more in the service of the respondents as their services have already been terminated as petitioners No.1 to 5, and 7 to 9 were terminated in the year 2000, and petitioners No. 10 and 12 were terminated in the year 1999, while Petitioner No. 6 was terminated in the year 2011 and petitioner No. 11 (Bughroo Mal) left his service in the month of February 1999 without any intimation. The respondents in support of their comments have also annexed termination letters. It has been further stated that the work charge employees pertaining to C.P No.D-742/2010 since were continuously working as such their services were regularized in compliance of this court's order. It has been further stated that since the petitioners are no more in the service of respondent, as such, the petitioners are not entitled to seek regularization of their service as that of other employees of work charges basis.

In view of such comments, when this court on 15.10.2020, confronted the question of maintainability of present petition, learned counsel for the petitioners sought time.

4. From the record, it does not reflect that the petitioners have placed any document, which could either rebut the comments of respondents regarding termination of the petitioners' services and/or substantiate their stance that they are still in service of the respondents. Conversely, the petition is annexed with a letter of termination dated 22.02.2011 of petitioner No.6, which substantiates the stance of respondents 2 and 4 in the case.

In view of these facts, it is manifest that this constitutional petition is not maintainable on various grounds: Firstly, the petitioners are lacking locus standi to file the present petition for regularization of their services when they are no more in the service; Secondly, this petition is hit by laches as the services of the petitioners were terminated way back during the year 1999, 2000 and 2011 and this petition was admittedly filed in year 2017 after a considerable time without any justification and explanation of delay; And thirdly, in view

of categorical denial of respondents No.2 and 4, in respect of petitioners' continuity of service, the facts have become controversial. It may also be stated that the Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the framework of Constitution and this extra ordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation and non-availability of any alternate remedy under the law where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. It is worth mentioning that it is mandatory and obligatory for a party invoking the constitutional jurisdiction to establish a clear legal right, which should be beyond any doubt and controversy. Controverted questions of fact, adjudication on which, is possible only after obtaining all types of evidence in power and possession of parties only by the courts having plenary jurisdiction in matter. Reliance can be placed on the case of Anjuman Fruit Arhtian and others vs. Deputy Commissioner, Faisalabad and others [2011 SCMR 279].

5. Insofar as the laches are concerned, the Hon'ble Supreme Court of Pakistan in the case of Civil Aviation Authority through Director General and 3 others v. Mir Zulfiqar Ali and another [2016 SCMR 183], wherein the division bench of this Court allowed the petition by directing CAA to regularize the service of the petitioner, and has reversed the findings of this Court and held that;

"The respondent No.1, who appeared in person, despite opportunity failed to explain or justify the delay. Since the petition was filed after a lapse of almost 10 years and that too without any justification or explanation for such delay, the same ought to have been dismissed as such. However through the impugned order the petition was instead allowed, which order, on account of the above noted delay in filing of the petition, is not sustainable. The appeal is, therefore, allowed and the impugned order is accordingly set aside."

6. In view of the above discussion, we are of the considered opinion that this constitutional petition is patently not maintainable and as such the same is **dismissed**.

JUDGE

JUDGE