

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Zulfiqar Ahmad Khan

C.P. No. D-4527 of 2018

Dr. Muhammad Aslam & 2 others
Versus
Federation of Pakistan & others

Date of Hearing: 02.12.2019

Petitioners: Through Mr. M.M. Aqil Awan along with Mr. Danish Rasheed, Advocates.

Respondent No.1: Through Mr. Muhammad Nishat Warsi, DAG.

Respondents No.2to4: Through Mr. Sarmad Hani Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioners claim their initial appointments of 2013 on Daily-Wages as regular appointments and in the alternate sought regularization of their services in pursuance of the judgment dated 01.06.2017 passed by a Division Bench of this Court in CP No.D-75 of 2017 and others.

2. Petitioners were appointed as medical officers by respondent No.2 Oil & Gas Development Company Limited on Daily-Wages on different dates. It is claimed that Government of Pakistan framed a policy through Cabinet Division Sub-Committee for regularization of contract/daily wages employees in the ministries/divisions/attached departments/autonomous bodies/organizations, as decided in a meeting dated 18.02.2013 in Establishment Division.

3. It is claimed that the respondents violated the above directives of the Establishment Division and instead advertised different posts including posts of medical officers (EG-III) to be filled on contract basis for a period of two years. These petitioners however, along with other

colleagues, applied for contractual appointments but were refused on the ground that they were over-age.

4. Initially some of the colleagues of petitioners who were appointed on contract basis earlier were subsequently converted on Daily-Wages basis again and consequently they filed petitions for their regularization on the strength of the policy framed by the Cabinet Sub-Committee, referred above. Those petitions were then clubbed and were disposed of accordingly vide judgment in CP No.D-75 of 2017 and others with the direction to consider the case of petitioners therein for regularization of service in accordance with the dicta laid down by Hon'ble Supreme Court in the cases referred in the judgment, within two months.

5. Hon'ble Supreme Court then disposed of several petitions, i.e. Civil Petitions No.2781 to 2783 and 2980 of 2017 wherein the aforesaid judgment was impugned, on appearance of the Managing Director of OGDCL on the statement that the process for regular appointments of the respondents has already been initiated and that the advertisement in that context had also been issued and if anyone has failed to apply he may apply within the week followed by advertisement and thereafter process shall be finalized within a period of six weeks. It was observed that the respondents (the medical officers) who would qualify shall be accommodated in the regularization process. Petitioners herein have also applied in response to the advertisement, as referred in the order of Hon'ble Supreme Court. They appeared before the Selection Committee and their regularization was rejected on the ground that they were over-age.

6. Learned counsel for petitioners submitted that this ground of over age was never available with the respondents. This defence was repelled by the Division Bench of this Court in CP No.D-75 of 2017 in terms of the observations that they have become over age while in service hence

there was no justification to deny the regularization. Learned counsel for petitioners thus submitted that the petitioners herein also sail in the same boat with those in petitions No.75 of 2017 and others and hence entitled for same treatment as given to those petitioners.

7. Learned counsel for respondents on the other hand submitted that these petitioners were not entitled for regularization as no codel formalities were observed in their appointments. They were over age at the time of their initial appointments and it is not the case that while working with OGDCL/respondent they have crossed the prescribed age of appointment.

8. It is further claimed that there were two categories of employees; first set was of those who at the time of initial appointments were within the prescribed age limit; and second set was of those who were over age at the time of their initial appointments. The petitioners' case fell in the second category and hence they were not entitled for same treatment. Secondly in the earlier case codel formalities such as advertisement etc. were observed whereas in the instant case no such codel formalities were completed.

9. We have heard the learned counsel and perused the material available on record.

10. The petitioners in the instant petition were not party to the earlier proceedings when earlier petitions such as CP No.D-75 of 2017, 442 of 2016 etc. were heard and disposed of. In the instant matter these petitioners were initially appointed without any codel formalities such as advertisement etc. Furthermore, petitioner No.1 was initially engaged on 25.05.2013 when he was 44 years and five months; Petitioner No.2 was initially engaged on 27.10.2009 when he was of 44 years and six months; petitioner No.3 was appointed initially on 28.01.2013 when she was 37 years and nine months. Thus, petitioners were beyond prescribed

age limit at the time of their initial appointments and that too without any codel formalities.

11. In the earlier petitions out of nine petitioners, two of them were over-age and the regularization to them was declined. These petitioners then filed Criminal Original Petitions No.11-14 of 2018 in earlier Civil Petition No.2980 of 2017 alleging therein violation of the orders of the Hon'ble Supreme Court dated 21.11.2017 as two of the petitioners were not regularized on account of being over-age at the time of their initial appointments. The Hon'ble Supreme Court dismissed the Criminal Original Petitions No.11-14 of 2018 with the observations that no case for contempt was made out.

12. Learned counsel for petitioners had no answer to these submissions that the case of two of the petitioners who were over-age, were declined on the strength of the observations of Hon'ble Supreme Court, as recorded in order dated 21.11.2017. The relevant portion is reproduced as under:-

“... It is categorically stated that the respondents, who do qualify, shall be accommodated in the regularization process.

2. In the light of the above, we dispose of these petitions as having become infructuous. However, if the respondents are not appointed/accommodated, as has been undertaken by the MD, OGDCL, they may move an application for resurrection of these petitions.”

13. Learned counsel for respondents submitted that in all advertisements including the one which was advertised in terms of the order of Hon'ble Supreme Court, they always disclosed the age of 35 years for medical officer EP-III and none of these petitioners were within the prescribed age. An attempt was made to provide a regular employment to these petitioners by virtue of an advertisement however they failed to fulfill the criteria such as prescribed age. It was only those petitioners who were within the prescribed age at the time of initial

appointments, and not beyond, were regularized in the earlier set of petitioners and hence no discrimination was caused to these petitioners. Petitioners' counsel had not controverted this statement of respondent's counsel. Even in the earlier advertisement of 2015 when job opportunities were provided to some of the daily-wagers, the prescribed limit of age was set at 35 years. Thus, even if we keep these petitioners at par with those of the earlier petitions they would sink with them as the service of those petitioners in the earlier set of petitions were not regularized being over aged at the time of their initial appointments.

14. In view of the above, the petitioners have failed to make out a case of discrimination and hence the petition was dismissed vide short order dated 02.12.2019 along with listed application and these are reasons for the same.

Dated:

Judge

Judge