

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-633 of 2018

Israr ul Haq Versus M/S. Sindh Education Foundation & 03 others

Date of Hearing: 05.09.2019

Date of order: 05.09.2019

Petitioner is present in person.

Malik Altaf Javed (commonly known as Altaf Hussain), advocate for Respondent No.1.

ORDER

ADNAN-UL-KARIM MEMON, J:-, Petitioner is nonsuited by the Respondent-Sindh Education Foundation (*hereinafter referred to as 'SEF'*) on the ground, *inter-alia*, that his contractual service period ceased to exist on 30th June, 2018. The reasons assigned by the Respondent-SEF are that the Petitioner has already crossed the age limit of 60 years on 10th April, 2018, and his contractual service cannot be further extended. They heavily relied upon the directions issued by the Hon'ble Supreme Court of Pakistan in Criminal Original Petitions No.89/2011, 175 of 2016 and Civil Review Petition No.193/2015 (2015 SCMR 456). Upon query by this Court as to how the instant Petition is maintainable so far as issue of regularization of the service of the Petitioner in the Respondent- SEF is concerned, as the Petitioner has crossed the age of 60 years. Petitioner, who is present in person, has referred the order dated 13.06.2018 passed by this Court in the aforesaid matter and submitted that his only concern is that since he was on contract basis and his contract ought to have been extended, therefore the issue of reaching the age of superannuation, as agitated by the Respondent-SEF is/was of no

consequence. He further submitted that his service is/was liable to be continued even after his reaching the age of superannuation. Per Petitioner, the letter dated 16th July, 2018, whereby his contractual service period had been shown to have expired on 30th June, 2018, is back-dated action on the ground that interim order passed by this Court on 13th June, 2018 restraining the respondents from passing any final order was in his favour; that the service contract was purportedly terminated on 30th June, 2018 on the alleged policy decision of the Management of respondent-SEF. Per petitioner there is no judgment on the issue that the employee cannot continue after reaching the upper age limit i.e. 60 years. Petitioner also seeks initiation of contempt proceedings against the alleged contemnors, who have deliberately violated the orders passed by this Court as discussed *supra*. He was asked to show as to which order, the alleged Contemnors have not complied with, and in response thereto he relied upon the aforesaid order and made his submissions accordingly. We confronted him with the fact that the Respondent-SEF has not taken any adverse action against him, rather his contractual period was not extended and admittedly, which had already expired on 30th June, 2018. He replied that the aforesaid Office Order was never communicated to him; therefore, all the actions have been taken by the respondent-SEF behind his back. In support of his submissions, he relied upon the contents of his affidavit-in-rejoinder to the counter affidavit filed by the Respondent No.1 and made his submissions by reading the entire contents of affidavit-in-rejoinder and emphasized that he is entitled for the relief(s) as contained in his Memo of Petition. He further relied upon an un-reported judgment dated 23.01.2017 passed by the Hon'ble Supreme Court in the case of Ahmad vs. Federation of Pakistan (Civil Appeal No.1216/2015), un-reported judgment of the Islamabad High Court passed in W.P No.4203/2017 and un-reported judgment of the Lahore High Court passed in W.P No.6197-2016. He lastly

submitted that his service is required to be regularized by the respondents in accordance with policy of Federal Government and law consequently; all the benefits accrued thereon may be ordered to be restored to him by the Respondent-SEF; that the case of the Petitioner falls within the ambit of Section 3 of the Sindh Regularization (Ad-hoc and contract) Employees Act 2013; that he is entitled for his job protection in accordance with law; therefore his case may be placed before the Competent Authority for consideration of regularization of his service in terms of the several orders passed by this Court on the aforesaid issue; He further added that his case needs to be treated at par with his colleagues, whose services have already been regularized. He lastly submitted that this is a hardship case and this Court can hear and decide the matter on merits.

2. Malik Altaf Javed learned Counsel for the Respondent-SEF has raised the question of maintainability of the petition and argued that the petition in hand is not maintainable and prayed for its dismissal.

3. We have heard the Petitioner, who is present in person and learned Counsel representing Respondent-SEF at considerable length and have perused the record and documents relied upon by the Petitioner attached with his Memo of Petition.

4. To appreciate the contention of the petitioner, it is expedient to have a look at the relevant para of the Judgment pronounced by this Court in the case of Dr. Iqbal Jan vs. Province of Sindh & others (PLC (CS) 1153).

An excerpt of the same is reproduced as under:-

“10. Learned Counsel for the petitioners pointed-out and learned A.A.G both extensively argued the matter and agreed that this petition may be disposed of at Katcha Peshi stage. In view of the above, this petition is admitted to regular hearing and disposed of in the following terms: - (1) All the petitioners shall deem to have been validly appointed on regular basis in view of section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013. (2) The Honorable Supreme Court in its order passed in Civil Appeals Nos.84-K to 86-K of 2012 left it open to the government to take appropriate action against the respondents, against whom they have

reservation about their fitness and eligibility. If in this case, the competent authority has any such reservation regarding the fitness of eligibility of any petition, they may take appropriate action but such exercise should be taken strictly in accordance with law.”

5. The moot point involved, on the issue of regularization of service of the petitioner, is interpretation of Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 which provides that;-

“Notwithstanding anything contained in the Act or rules made thereunder or any decree, order or judgment of a court, but subject to other provisions of this Act, an employee appointed on ad-hoc and contract basis or otherwise (excluding the employee appointed on daily wages and work-charged basis), against the post in BS-1 to BS-18 or equivalent basic scales, who is otherwise eligible for appointment on such post and is in service in the Government department and it’s project in connection with the affairs of the Province, immediately before the commencement of this Act, shall be deemed to have been validly appointed on regular basis.”

6. Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 provides that employee appointed on Ad-hoc and contract basis shall be deemed to have been validly appointed on regular basis immediately before the commencement of the Act. Hence, no ambiguity is left that all employees, who fall within the ambit of law shall be regularized in service with effect from the promulgation of the Act, 2013.

7. Prima-facie the facts of this case are quite distinguishable from the aforesaid case, as per record, the case of the Petitioner is quite different due to his reaching the age of 60 years. The Competent Authority scrutinized the case of the Petitioner and reached at the conclusion that the contractual period of the petitioner cannot be extended after 30th June, 2018.

8. Record reflects that petitioner was informed vide letter dated 16th July 2018 regarding expiry of his contractual period of service on 30th June, 2018. In our view, such appointment would be deemed to have been terminated on the expiry of contract period or any extended period on the choice of employer or appointing authority. The case of Petitioner is governed by the principle of master and servant, therefore, the Petitioner has no vested right to seek extension in his contractual service, which has already expired on 30th

June, 2018, even he cannot claim vested right for regularization of his service. At this stage petitioner raised the legal issue that the upper age limit for appointment can be relaxed up to the extent as notified by the Government from time to time, but he has failed to submit any proof that any person who has crossed the age of 60 year his service has been regularized by the Respondents, in absence of that, we cannot substitute our findings in place of findings of the Competent Authority regarding the issue of regularization or extension of contractual service of the Petitioner.

9. The policy decision of the Government regarding regularization of the post of petitioner or otherwise could not be challenged in a writ jurisdiction of this Court on the purported plea that he has been condemned unheard by the Respondent-SEF before passing the impugned order dated 27.7.2017. Record reflects that at the time of appointment, he was more than 50 years of age, now he has completed superannuation age i.e. 60 years, therefore, the service of the Petitioner cannot be regularized and his contractual period has already expired in the year 2018.

10. We are cognizant of the fact this Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Let us take up the issue of principle of natural justice in the present case, Basically there are 2 principles of natural justice: (i) no one shall be a judge in his own cause (*nemo iudex in causa sua* or *nemo debet esse iudex propria causa*); and (ii) no one shall be condemned unheard (*audi alteram partem* or hear the other side). The first principle consists of the rule against bias or interest and is based on three maxims: (i) No man shall be a judge in his own cause; (ii) Justice should not only be done, but manifestly and undoubtedly be seen to be done.

In the present case the contractual period of the petitioner expired in the year 2018 and still he is insisting to continue on the subject post and claim violation of natural justice, however in our view, an opportunity of show cause can be given to the employee of department, who is holding a permanent post, whereas the record does not reflect that the petitioner was permanent employee of Respondent-SEF, therefore, the Petitioner cannot claim vested right to be either reinstated, regularized and extension in his contractual period; that the service of temporary employee can be terminated on 14 days' notice or pay in lieu thereof. In the present case, there is no material placed before us by which we can conclude that non-extension of contract of the Petitioner has wrongly been issued by the Respondent-SEF. Petitioner has failed to establish that he has any fundamental / vested right to remain on the temporary / contractual post, therefore, the submission of the Petitioner that he was not heard before issuance of letter dated 27.7.2017 is not tenable in the eyes of law.

11. In the light of above facts and circumstances of the case, we conclude that there is no illegality, infirmity or material irregularity in the impugned order dated 17.7.2017 issued by the Respondent-SEF. Besides, the issue of re-employment after retirement has been discouraged by the Honorable Supreme Court in SUO MOTU CASE NO.24 of 2010 [Regarding Corruption in Hajj Arrangements in 2010] and held at paragraph No.38 as under:-

“38. The matter of re-employment of police officers after their retirement also came under consideration by this Court in the case of In Re: Suo Motu Case No.16 of 2011 (PLD 2013 SC 443) wherein on 22.03.2013 it was held that re-employment in disciplinary force like Police or for that matter in any other department has to be made subject to section 14 of the Civil Servants Act, 1973 read with instructions contained in Esta Code under the heading “Reemployment”. It was further observed that undoubtedly, it is the Government, which has to perform its function strictly in accordance with law but, prima facie, re-employment of police officers (noted SMC 24/10 34 therein) was not in conformity with the law and the judgment of this Court. Consequently, with the approval of the Competent Authority i.e. Chief Minister Sindh, the contract appointments of police officers were terminated, whereas, one of the re-employed employee, namely, Mr. Waseem Ahmed, Additional Chief Secretary, Home Department (BS-21), who was also a former Police Officer and on retirement has been appointed by the Government of

Sindh, tendered his resignation, which was accepted by the competent authority”

12. In view of the foregoing, the Constitutional Petition in hand is dismissed along with listed application(s). Since, the Petition has been dismissed, no contempt of Court has been found out.

JUDGE

JUDGE

*Nadir**