

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 4920 of 2016

Maqsood Ahmed & 09 othersPetitioners
Versus
Federation of Pakistan & othersRespondents

C.P. No. D- 4336 of 2017

Afshan Sahar and anotherPetitioners
Versus
Federation of Pakistan & othersRespondents

C.P. No. D- 8330 of 2018

Shabana Rizvi and 02 othersPetitioners
Versus
Federation of Pakistan & othersRespondents

C.P. No. D- 8747 of 2018

Muhammad Bux and 06 othersPetitioners
Versus
Federation of Pakistan & othersRespondents

C.P. No. D- 8252 of 2018

Sajida Parveen and 04 othersPetitioners
Versus
Federation of Pakistan & othersRespondents

Date of hearing: 12.9.2019

Date of short order: 12.9.2019

Mr. Muhammad Arshad Khan Tanoli advocate for the petitioners in C.P Nos.D-4920 of 2016.

Mr. Ali Asadullah Bullo advocate for the petitioners in C.P No.D-4336 of 2017 & C.P No.D-8330 of 2018.

Mr. Habibullah Dahri advocate for the petitioners in C.P No.D-8747 of 2018 & C.P No.D-8252 of 2018

Mr. Khadim Hussain Thahim advocate for respondent/PSQCA.

Mr. Muhammad Nishat Warsi DAG.

J U D G M E N T

ADNAN-UL-KARIM MEMON-J. The above referred Constitutional Petitions are being disposed of by this common Judgment as the issues raised are similar in nature.

2. Learned Counsel for all the Petitioners consented that Petition bearing No. 4920 of 2016 may be treated as leading Petition and same may be disposed of at Katcha Peshi stage along with other connected petitions.

3. Petitioners have approached this Court for regularization of their service in Pakistan Standards and Quality Control Authority (PSQCA). Their case is that they were appointed, through competitive process on different vacant posts including Scientists/Engineers, Senior Laboratory Technician, Junior Laboratory Technician, Computer/Data Entry Operator, Laboratory Security Guard, Telephone Operator, Laboratory Receptionist etc., on contract basis in the year 2012 and onward. They have been performing their duties honestly with due diligence. Petitioners' further assertion is that they are eligible to be regularized under Office Memorandum dated 29.08.2008 as amended up to date issued by Government of Pakistan, Cabinet Secretariat, Establishment Division, but the Respondent- Authority is not regularizing them on the premise that they closed the project with effect from 31st December, 2018. They contended that regularization in service was their right. They have further asserted that employment is basic necessity of life in the society, particularly for educated youth and the State is responsible to provide transparent working environment and employers are required to provide opportunity for grooming and exploitation of abilities and talent by the employees. They contended that after continuous devoted and successful performance the Respondent- Authority threatened them to terminate their contract on the purported closure of the project and in this regard they acted upon by publishing another advertisement dated 28.8.2016 to the extent of the post of Assistant Directors, Field Officers

and Chemical Examiners in order to accommodate their blue eyed ones. Per Petitioners, the Government of Pakistan issued a regularization policy in the year 2017 vide Office Memorandum dated 11.5.2017 but the Respondents are reluctant to award benefit of the aforesaid Office Memorandum and dispensed with the service of the Petitioners with effect from 31st December, 2018 on the plea that they had to participate in the competitive process afresh through Public Notice dated 28.8.2016. Petitioners resisted their hegemony but to no use, compelling some of them to approach this Court in the years 2016, 2017 and 2018 much prior to the termination of their contract as well as against the publication of Notice and now they are asking for regularization of their respective services against the posts they were holding at the time of their termination.

4. Mr. Muhammad Arshad Khan Tanoli, learned counsel for Petitioners in C.P No.D-4920 of 2016 has argued that the Petitioners are seeking regularization of their service in Respondent-Authority and on identical points, facts and law, this Court vide order dated 11.01.2013 has allowed Constitutional Petition No.D-3882/2011 with directions to the Pakistan State Oil Company to give benefits as contained in the Office Memorandum dated 29.08.2008. He next contended that the issue of Regularization of service of the contract Employees has already been settled by this Court more particularly, the decision rendered in case of M/s Hadeed Welfare Trust & another Vs. Syed Muhammad Shoaib & others by the Honorable Supreme Court of Pakistan in Civil Petitions No.121-K and 122-K of 2017, wherein the Honorable Supreme Court has maintained the Judgment dated 15.12.2016 passed by this Court against M/s Hadeed Welfare Trust (A subsidiary of Pakistan Steel Mills) reported in (2017, PLC (C.S.) 1020), whereby contract employees of Pakistan Steel Cadet College were regularized. He next contended that this Court vide Order dated 11.01.2013 has allowed Constitutional Petition No.D-3882/2011 and Pakistan State Oil Company filed Civil Petition for Leave to Appeal No.95-K of 2013

before Hon'ble Supreme Court of Pakistan, which was declined and Order of this Court was upheld vide Order dated 17.05.2013. Learned counsel much emphasized on the Judgment of this Court dated 01.6.2017 passed in the Constitution Petitions No.D-3199, D-4605 and D-5079 of 2013, D-509, D-2034, and D-1091 of 2014 respectively (SBLR 2018 Sindh 134), whereby Pakistan State Oil Company was directed to regularize the services of contract employees" similar point of law is involved in the present proceedings. The said Judgment was assailed before the Honorable Supreme Court of Pakistan in Civil Petitions No.409-K to 414-K of 2017, which maintained the aforesaid Judgment of this Court. Learned counsel for the Petitioners has vigorously argued that the Petitioners have been continuously working on permanent posts in the Respondent-Authority on contract basis since 2012. He lastly prayed for allowing the instant Petitions by giving similar treatment/benefits as given in the aforesaid petitions.

5. Mr. Ali Asadullah Bullo, learned Counsel for the Petitioners in C.P No.D-4336 of 2017 & C.P No.D-8330 of 2018 has adopted the arguments of learned Counsel for the Petitioners in C.P No.D-4920 of 2016, however, he added that the Competent Authority vide Minutes of Meeting of the Committee on Science and Technology held on 20.2.2019 recommended (10) items as well as absorption of 34 contract employees working in PSQCA including the Petitioners but the respondents are adamant and insisting to the Petitioners to approach through Public Notice. He next added that Petitioners have given their prime life in the Authority, as such they cannot now be asked for a fresh appointment through a Public Notice, which act on the part of the Respondent-Authority is against the law and the provision of Constitution; that the project life is still in existence and the Respondents have issued the Public Notice against the posts which the Petitioners were holding, which prima-facie suggest that the Respondents are still carrying out the work on the project which is

on-going project can never be closed, therefore, the Petitioners are entitled for their permanent absorption in PSQCA.

6. Mr. Khadim Hussain Thahim, learned Counsel representing the Respondent-Authority has argued that instant Petitions are not maintainable against Respondent-Authority under Article 199 of the Constitution. He next contended that there is no relationship of employment of the Petitioners with the Respondent-Authority in any manner of whatsoever in nature; that the project against which the Petitioners were working has been closed in the year 2018, therefore, the service of the Petitioners were no more required for the project and their services were dispensed with, with effect from 31st December, 2018. He next contended that the Petitioners have an adequate remedy in the shape of grievance Petition under the labour laws before appropriate forum, which is not availed. We confronted him with the interim order dated 4.11.2016, whereby this Court directed that if the Petitioners are performing their duties, their services may not be terminated till next date of hearing. He replied that they have not violated the terms and conditions of service of the Petitioners, their services were hired for the project till its completion which has now ended, therefore, their services cannot be regularized under the law. In support of his contention, he relied upon the statement dated 14.01.2019 and argued that the instant Petitions have become infructuous on the premise that the project of purchase of lab equipment/ provision of furniture and fixture for PS and QCA Laboratory/ Office Complex was closed on 31.12.2018; that the Petitioners are well aware of the closure of the project and they were accordingly intimated through various letters. He also referred the Service Regulations 2015 of PS and QCA and argued that the post of the Petitioner is regular one and can be filled through competitive process and not otherwise. He lastly prayed for dismissal of the instant Petitions.

7. Mr. Muhammad Nishat Warsi, learned Deputy Attorney General has adopted the arguments of the learned Counsel representing the PSQCA.

8. We have heard the parties at length and have gone through the material available on record and case law cited *supra*.

9. Pakistan Standards and Quality Control Authority is established under Act, 1996 (VI of 1996) which is owned and controlled by the Federal Government. Pakistan Standards and Quality Control Authority Service Regulations, 2014 are statutory in nature and the same have been framed with the previous approval of the Federal Government vide Notification dated 06th May, 2015.

10. In view of the facts stated above, the status of PSQCA can be regarded as a “Person” performing functions in connection with the affairs of the Federation under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution. Thus, this Court has jurisdiction to entertain the Constitutional Petition against PSQCA.

11. In the light of the aforesaid status of Respondent-Authority, the objection of maintainability of the captioned constitutional petitions is not sustainable in law and is accordingly rejected.

12. In the matter of regularization of service of the Petitioners, we seek guidance from the unreported case of M/s Hadeed Welfare Trust & another vs. Syed Muhammad Shoaib & others rendered by the Honorable Supreme Court of Pakistan in Civil Petitions No.121-K and 122-K of 2017, wherein the Honorable Supreme Court has maintained the Judgment dated 15.12.2016 passed by this Court against Hadeed Welfare Trust (A subsidiary of Pakistan Steel Mills) reported in 2017, PLC (C.S.) 1020, whereby contract employees of Pakistan Steel Cadet College were regularized as under: -

“3. The other pretext for not regularizing the respondents was that the office memo dated 29.8.2008, issued by the respondent No.26 (Federation of Pakistan), which required regularization of the service of the employees of the Federal Ministries/Divisions/Attached Departments, Subordinate offices, Autonomous, Semi-Autonomous Bodies/Corporations, was for the benefit of employees in BS-1 to BS-15, and is not applicable to the present respondents, however, in so pleading the present petitioners

have ignored the minutes of the meeting of the Cabinet Committee dated 07.2.2011 and minutes of the meeting of the Cabinet sub-committee on regularization, inter alia, of contract employees in Ministries/Divisions/Attached Department / Autonomous Bodies/Organizations held on 13.3.2013, relevant paragraphs whereof, for the ease of reference are reproduced below: -

“MINISTRY OF PRODUCTION

236. The representative of the Ministry of Production/Secretary Pakistan Steel Mills informed the Cabinet Sub-Committee that there are certain contract/daily wages employees in the Cadet College and other educational institutions of the Steel Mills at Karachi who have served for more than one year and whose services are required to be regularized.

DECISION

237. The Cabinet Sub-Committee discussed and directed that the services of all the contract/daily wages employees (teaching and non-teaching staff) of the Cadet College and other educational institutions of Pakistan Steel Mills Karachi, who have served for more than one year should be regularized subject to fulfillment of criterion and availability of posts under intimation to the Establishment Division.”

4. As can be seen from the forgoing, the above decision is not restricted to any scale or grade, and no such restriction can be read therein by any stretch of imagination and is therefore equally applicable to the employees of all grade and scales including the present respondents, who were thus rightly granted such relief through the impugned judgment. We therefore do not find any lacuna in the impugned judgment justifying our interference in the matter, the petitions are therefore dismissed.”

13. On the issue of regularization in service, the issue was further clarified by the judgment of this Court dated 01.6.2017 passed in Constitutional Petitions No.D-3199, D-4605 and D-5079 of 2013 respectively and D-509, D-2034, and D-1091 of 2014 respectively, whereby Pakistan State Oil Company was directed to regularize the services of contract employees.

14. The aforesaid Judgment was assailed before the Honorable Supreme Court of Pakistan in Civil Petitions No.409-K to 414-K of 2017, which maintained the same and held as under: -

“As regards the question that the respondents were not the employees of the petitioner but the contractor, suffice it to say that it is a normal practice on behalf of such industries to create a pretence and on that pretence to outsource the employment of the posts which are

permanent in nature and it is on the record that the respondents have been in service starting from as far back as 1984. This all seems to be a sham or pretence and therefore it being not a case of any disputed fact and no evidence was required to be recorded. Moreover, we have seen from the order under challenged that in such like cases where the orders have been passed by the Labour Tribunals, the employees, even those who were under the contractors' alleged employment, have been regularized by the petitioner. And thus keeping in view the rule of parity and equity, all the respondents even if considered to be the employees of the contractor, which is not correct, they having been performing duties of permanent nature should have been regularized. However, at this stage, we would like to observe that the employment of the respondents shall be regularized with effect from the date when they approached the learned High Court through the Constitution petition but for their pensionary benefit and other long terms benefits, if any, available under the law, they would be entitled from the date when they have joined the service of the petitioner. All the petitions are accordingly dismissed."

15. From what has been discussed above, we have reached the conclusion that submissions of Respondent-Authority are misconceived and not well founded. The regularization of the employees is not part of the terms and conditions of service of the employees, but it depends upon the length of service. And, it is on the above principle that Petitioners have approached this Court for regularization of their service under Article 9 and 25 of the Constitution of Islamic Republic of Pakistan. We are fortified by the observation made by the Hon'ble Supreme Court of Pakistan in the case of Khawaja Muhammad Asif vs Federation of Pakistan & others (2013 SCMR 1205).

16. It is asserted by the learned Counsel for the Petitioners that the Petitioners were appointed in the year, 2012 and onwards on contract basis as per terms and conditions set forth in the contract appointment; that as per record the contract continued till Petitioners were asked not to attend their respective offices on the closure of project with effect from 31st December, 2018 and their contract appointment came to an end without further renewal. Record shows that performance of the Petitioners in the Respondent-Authority has not been called in question throughout their service period by the Respondent-Authority.

17. We have perused the statement dated 14.1.2019 of Respondent-Authority, in our view, the Petitioners have secured valuable rights by rendering

their service some of them for about six years and are entitled to permanent absorption in accordance with the said policy in the manner identical to the one adopted by the Federal Government Authorities to regularize their employees.

18. We are not satisfied with assertion of the Respondent-Authority under which they have invited fresh candidates for the posts already held by the petitioners, prima facie, fresh invitation was malafide. The said conduct of the Respondent-Authority is clearly reflecting discriminatory treatment to the Petitioners, which is not sustainable in the eyes of law.

19. Adverting to the issue of closure of the project as discussed supra. In substance, it was never a Project; in fact, it is on-going and was never completed. Record reflects that it was renewed after few months, which is sufficient to infer against the assertion of the Respondent-Authority.

20. We are of the considered view that Petitioners are entitled to similar treatment which was given to their similarly placed colleagues for their regularization and absorption in different public sector authorities and the Respondent-Authority cannot act whimsically while making fresh appointments against the posts already held by the Petitioners, who were appointed in a transparent manner and nothing adverse in terms of qualification and character and/or inefficiency in the subject field was observed by the Competent Authority of the Respondent-Authority during their entire period of service.

21. We have noted that the Petitioners served the Respondent-Authority for a period ranging from 5 years to 6 years. The said period of service is more than sufficient to acquire expertise in respective fields. Therefore, considering others while ignoring the Petitioners is unjustified and against the principles of natural justice and equity.

22. We have gone through the Office Memorandum dated 11th May, 2017 issued by Government of Pakistan, Cabinet Secretariat, Establishment Division and excerpt of the same is reproduced herein below: -

**Government of Pakistan
Cabinet secretariat
Establishment division**

No.F-53/1/2008-SP

Islamabad the 11th May, 2017

OFFICE MEMORANDUM

Subject:- **Amendment in the Recruitment Policy/Mechanism to Ensure Merit Based Recruitment in the Ministries/Divisions/Sub-ordinate Offices/Autonomous/Semi-Autonomous Bodies/Corporations/Companies/Authorities**

The undersigned is directed to state that the Federal Cabinet in its meeting held on 12th April, 2017 has accorded approval of the subject amendment to be inserted as para 1(e) in the Recruitment Policy/Mechanism issued vide this Division's O.M. No.531/2008-SP dated 16th January, 2015 as under: -

“(e) Appointment on Regular Basis of Contract/ Contingent/ Paid/ Daily Wages/Project Employees For the purpose of appointment on regular basis of Contract/Contingent/Paid/Daily Wages/Project employees the following criteria shall be observed: -

(i) All Contract/Contingent/Paid/Daily Wages/ Project employees who have rendered a minimum of one year of service in continuity, as on 1.1.2017 (hereinafter referred to as eligible employees) may apply for appointment on regular basis in the manner prescribed hereinafter provided that the condition of continuity shall not be applicable in case of person(s) employed on daily wages who have completed at least 365 days service.

(ii) For initial appointment to posts in BS-16 and above, the employees shall apply direct to FPSC against relevant/suitable vacancies as and when arising for which they are eligible.

(iii) For initial appointment to posts in BS-1 to BS-15, the eligible employees may apply as per criteria given vide this Division's O.M. No.531/2008-SP dated 16.1.2015 and 3.3.2015 shall be adopted.

(iv) The eligible employees shall be awarded extra marks in interview at the rate of one (01) mark for each year of service rendered upto a maximum of five (05) marks, on the recommendation of the respective selection authorities.

(v) The period served as Contract, /Contingent/Paid/Daily Wages/Project employees shall be excluded for the purpose of determination of upper age limit in addition to relaxation of upper age limit as per existing rules.

(vi) Qualifications prescribed for a post shall be strictly followed in case a person does not possess the prescribed qualifications/experience for the post he/she is applying for he/she shall not be considered for the same.

(vii) The employees must be in good mental and bodily health and free from any physical defect likely to interfere with the discharge of his duties unless appointed against disability quota.

(viii) The advantage of para 1(e) is a one-time dispensation for all Contract/Contingent/Paid/Daily Wages/Project employees for their eligibility to regular appointment.

2. This Division's O.M. of even number dated 16th January, 2015 is modified to the above extent. All Ministries/Divisions are requested to take further action accordingly.

(Attiq Hussain Khokhar)
 Director General
Tel:051-9103482

All Ministries/Divisions
 Rawalpindi/Islamabad”

23. The above Memorandum dated 11th May, 2017 is issued in pursuance of the decision of the Cabinet Sub-Committee for regularization vide which the Federal Government has directed Ministries/ Divisions / Sub-ordinate Offices / Autonomous / Semi-Autonomous Bodies / Corporations / Companies / Authorities to regularize all Contract employees who have rendered a minimum of one year of service in continuity as on 01.01.2017.

24. We are of the view that the Petitioners are fully entitled to the benefit contained in the aforesaid Office Memorandum because they are in continuous service of the Respondent-Authority for long time and are paid salary as well.

25. The case of the Petitioners is fully covered by the Judgment rendered in the case of Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257). We are further fortified on the similar principle by the case law decided by learned five Members' Bench of the Hon'ble Apex Court in the case of Government of Khyber Pakhtunkhwa and others Vs. Adnanullah and others (2016 SCMR 1375), wherein the Hon'ble Supreme Court has held at paragraph 31 as reproduced below:-

“The record further reveals that the Respondents were appointed on contract basis and were in employment/service for several years and Projects on which they were appointed have also been taken on the regular Budget of the Government, therefore, their status as Project employees has ended once their services were transferred to the different attached Government Departments, in terms of Section 3 of the Act. The Government of KPK was also obliged to treat the Respondents at par, as it cannot adopt a policy of cherry picking to regularize the employees of certain Projects while terminating the services of other similarly placed employees.”

We also seek guidance, on the similar principle, by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Board of Intermediate and Secondary Education, DG Khan and another Versus Muhammad Altaf and

others (2018 S C M R 325). The Hon'ble Supreme Court has held at paragraphs No.2 & 3 as under:-

“2. The respondents were employed by the petitioner-Board, they have been working as Drivers, Clerks, Naib Qasids and Security Guards, for a considerable period of time, on daily wages. Some of them have been so working since the year 1996. However, their employment contracts were terminated after every 89 days and were resumed a day there after. All of them have certainly served the petitioner-Board for not less than nine months, however with artificial breaks, as noted above, this was done to break the continuity of their service with mala fide intent to avoid their regularization. The respondents, despite the fact that their services had matured and were under the law required to be regularized, and instead of doing so, as noted in the judgment of the learned Single Judge, contemplated to make fresh appointments through advertisement, which prompted the respondents to file the writ petition which culminated into the impugned judgment.

3. We in the circumstances as noted above, do not find any lacuna in impugned judgment, legal or otherwise, and find no justification for interfering with the same. The petition is therefore dismissed.”

On the issue of regularization of service, the Hon'ble Supreme Court in the case of Board of Intermediate and Secondary Education, Multan through Chairman and another Versus Muhammad Sajid and others (2019 S C M R 233) has provided the guiding principle and held at paragraphs No.3 as under:-

3. It is an admitted position that the respondents before us have been working with the petitioner-Board since long, however, in their clumsy attempt to break the continuity of their service, the petitioner has been employing them for 89 days only, and has been re-hiring them for the next 89 days, and thus continued to avail their service for a long period by creating artificial breaks in their service period. The fact that they have, in fact, continuously served the petitioner for a long period of time, albeit the breaks created by the petitioner, as noted above, clearly shows that they have been performing job of permanent nature and have not been serving on casual posts. Admittedly, similarly placed employees of BISC Rawalpindi, have been regularized in pursuance of the judgment of the High Court, upheld by this Court, as noted above. The learned counsel for the petitioner has not been able to highlight a single feature distinguishing the nature of the respondents' job/employment, disentitling them from regularization. The respondents, in the circumstances, were rightly found eligible and entitled for regularization of their service with the petitioner-Board, and have rightly been so ordered through the impugned judgments and we do not find any justification for interfering therewith. The petitions in the circumstances are dismissed.

26. In the light of facts and circumstances of the case discussed above and decisions rendered by the Honorable Supreme Court in the aforesaid cases, the instant Petitions are hereby allowed with direction to the Competent Authority of Respondent-Authority to consider case of the Petitioners for regularization of their service in accordance with law and dicta laid down by the Hon'ble Supreme Court of Pakistan in the cases referred to hereinabove, subject to their eligibility and qualification for the subject posts. The aforesaid exercise shall be completed within a period of three [03] months under intimation to this Court through MIT-II.

27. These are the reasons of our short order, whereby we have allowed the captioned Petitions on 12.09.2019.

JUDGE

JUDGE

Nadir/*