

# IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 5714 of 2016

Qurban Ali and another,  
Petitioners through:

Mr. Abdul Samad Memon, advocate

Respondents Through:

Mr. Shahriyar Mahar, AAG.

Date of hearing:

17.09.2019

Date of order:

17.09.2019

## ORDER

ADNAN-UL-KARIM MEMON, J. The petitioners are seeking regularization of their service under Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013.

2. At the very outset, we have asked a question from the learned Counsel representing the petitioners to satisfy this Court with regard to maintainability of the instant Petition, in view of Office Order dated 19.9.2013, whereby their services were dispensed with, with effect from 1<sup>st</sup> July, 2013 due to non-allocation of funds in the development scheme namely Strengthening and Improvement of Fish and Shrimp Hatcheries in Sindh. In reply to the query, the learned Counsel referred to the order dated 26.2.2015 passed by this Court in C.P No.D-4144/2013 and argued that under the similar facts and circumstances of the case, this Court disposed of the matter in terms of ratio in the case of Dr. Iqbal Jan and others vs. Province of Sindh and others (2014 PLC (C.S) 1153). We asked him another question that in the aforesaid petition, the petitioners approached this Court within time i.e. on 4.10.2013, whereas they have filed the instant Petition on 20.10.2016, as such their case falls within the doctrine of laches. He replied that the laches will not come in the way of Petitioners on the ground that this Court has already entertained various petitions of similar nature and the facts of the instant Petition are akin to the facts available in C.P No.D-5233/2016 and on that basis he has approached this Court and seeks disposal on the same terms, manner and methods as decided in the above referred petitions.

In support of his contention, he placed reliance upon the case of *S.A Jameel vs. Secretary to the Government of Punjab, Cooperative Department and others* (2005 SCMR 126).

3. The learned AAG raised the issue of maintainability of the instant Petition and argued that the case of Petitioners clearly falls within the ambit of laches, thus, the Petitioners are not entitled for the relief as claimed in the aforesaid Petitions.

4. We have heard the learned Counsel for the parties at length and have gone through the record made available as well as case law cited at the bar.

5. During the course of arguments, learned Counsel emphasized that Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 is clear in its terms on the issue of regularization of the project employees, 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. We have noticed that 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 aforesaid Act shall be regularized in service with effect from the promulgation of the Act, 2013. Learned Counsel for the Petitioners has stated at the bar that the case of the Petitioners do fall within the ambit of Section 3 of the Act, 2013, on the plea that they were appointed in the year 2009 through transparent manner and this Court in the aforesaid matters considered the Office Order dated 19.9.2013, whereby their services were terminated where-after this court allowed regularization of their service.

7. The learned Counsel has drawn our attention to the policy decision of the Government regarding regularization of the employees of the Project under the Act, 2013 as discussed supra, in our view, the policy decision of the

Government can be looked into in a writ jurisdiction of this Court if the same policy is in violation of fundamental rights of the petitioners. The Petitioners have specifically pleaded the discrimination as provided under Article 25 of the Constitution.

8. Be that as it may, we are only concerned with the point of laches involved in this matter, whether the petitioners have approached this court within reasonable time when impugned action was taken against them in the year 2013, the reasoning assigned by the learned counsel that the petitioners have approached this court on the basis of various orders passed by this court on the issue of Regularization; that a constitutional petition involving violation and infringement of fundamental rights of the citizens could not be thrown out on the ground of delay in filing the same.

9. We do not concur with this assertion of the learned counsel for the Petitioners with his explanation of laches as rights of petitioners were not dependent upon other petitioners in the referred petitions. We are of the considered view that the instant Petition clearly falls within the doctrine of laches as the Petitioner filed the instant Petition in the month of October 2016 whereas the alleged cause of action accrued to them in the month of September 2013, i.e. approximately 3 years prior to the filing of the instant Petition. Those who slept over there cannot be given premium. The observations of the Honorable Supreme Court in the case of *Ardeshir Cowasjee v. Karachi Building Control Authority* (1999 SCMR 2883) is guiding principle on the issue of laches.

10. Since the case of the Petitioners is suffering from serious laches, therefore, any discussion as to this Court's orders as discussed supra is not necessary.

11. In view of the aforementioned facts and circumstances, the instant petition stands dismissed along with listed applications.

**JUDGE**

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