

THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan Iqbal Chaudhry.

C.P. No. D-354 of 2018 Muneer Ahmed and 109 others
versus Province of Sindh and
others.

C.P. No. D-7454 of 2018 Tariqe Hussain and 25 others
versus Province of Sindh and
others.

For the Petitioners Mr. Ali Asadullah Bullo Advocate,
and Mr. Manzoor Hussain Soomro
Advocate.

For the Respondents Mr. Shaharyar Mahar, Assistant
Advocate General Sindh.

Date of hearing 07-10-2019.

Date of decision 28-10-2019

JUDGMENT

Adnan Iqbal Chaudhry J. - The Petitioners were initially appointed on contract as Male Mobilizers by the District Population Welfare Officer, Government of Sindh, for the purposes of counseling and facilitating family planning. Apparently, the appointments were in relation to a project, the Population Welfare Program. The appointment of the Petitioners was subsequently regularized by virtue of section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 and pursuant to order dated 30-01-2015 passed by this Court in C.P. Nos. D-869/2011, D-871/2011, D-933/2011, D-3516/2012 and D-499/2013; order dated 25-02-2015 passed in C.P. No.D-199/2014; and order dated 21-09-2017 passed in C.P. No.D-1222/2013. All of the said petitions had been disposed off in terms of the judgment this Court in the case of *Dr. Iqbal Jan v. Province of Sindh* [2014 PLC (CS) 1153], decided on 14-05-2014,

wherein it had been held that in view of section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, the Petitioners shall be deemed to have been validly appointed on regular basis, but that the competent authority was at liberty to take appropriate action against the appointees if it had reservation regarding their fitness or eligibility.

2. The Petitioners are now aggrieved of the fact that while notifying their regularization in the Population Welfare Department, the Government of Sindh has regularized them in BPS-01. The regularization notification of the Petitioners of C.P. No.D-354/2018 is dated 08-02-2016 and the regularization notification of the Petitioners of C.P. No.D-7454/2018 is dated 13-03-2018.

3. Learned counsel for the Petitioners submitted that the regularization of the Petitioners in BPS-01 is arbitrary and discriminatory inasmuch as such pay-scale is meant for peons, chowkidars, sweepers etc., whereas the Petitioners are intermediates and graduates and cannot be treated at par with employees of BPS-01; and that they are to be treated at par with Male Mobilizers who were regularized by the Federal Government in BPS-07 in the District Population Welfare Office, Islamabad pursuant to a notification dated 16-11-2012.

4. Opposing the petition, the learned AAG Sindh submitted that the initial appointment of the Petitioners on contract was not in any Government pay-scale; that at the time of their regularization the Petitioners were being paid a fixed monthly remuneration that is commensurate with BPS-01 and hence they were regularized in BPS-01; that the Petitioners do not work from 09:00 am to 05:00 pm at any designated work-place, rather their job is to mobilize the community towards family planning; and that after the 18th Amendment to the Constitution of the Pakistan, the Provinces are at liberty to decide the status and service structure of their employees keeping in view

the financial implications to the Province and its resources. The learned AAG Sindh also drew our attention to the judgment dated 25-02-2016 passed by this Court in C.P. No.D-872/2013, and to the judgment dated 04-03-2014 passed by the Honourable Supreme Court of Pakistan in Civil Appeals No.1486/2013 and 1487/2013, both relating to the regularization of Male Mobilizers.

5. Heard the learned counsel and perused the record.

Adverting first to the judgments referred to by the learned AAG. In the case of *Government of KPK v. Shujaat Ali*, Civil Appeals No.1486/2013 and 1487/2013 (hereinafter '*the KPK Case*'), the judgment of the Peshawar High Court directing regularization of Male Mobilizers in BPS-01 under the N.W.F.P. Employees (Regularization of Services) Act, 2009, had been set-aside by the Supreme Court. The *KPK Case* was considered by this Court in *Muhammad Hayat v. Province of Sindh*, C.P. No.D-872/2013, where a learned Division Bench distinguished the *KPK Case* on the ground that there the N.W.F.P. Employees (Regularization of Services) Act, 2009 (later renamed as the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009), had by section 2(b) thereof, expressly excluded project employees and those paid out of contingencies from the purview of regularization; whereas, by section 2(e), the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 expressly includes within the ambit of regularization employees holding posts in a project of the Provincial Government.

Be that as it may, since the question before us is not one of the validity of the Petitioners' regularization, the *KPK Case* and the case of *Muhammad Hayat* are not relevant to the instant matter. Before us the sole question is whether the Petitioners can claim to have been subjected to discrimination by the placement of their post in BPS-01 on the regularization of their appointment.

6. It is not the case of the Petitioners that the post of Male Mobilizer had been sanctioned a Government pay-scale prior to their regularization. In fact, the Petitioners' contract had categorically stated that no Government rule would apply. Nor is it the Petitioners' case that the remuneration they were receiving as Male Mobilizers at the time of regularization was something greater than BPS-01. In any case, by dint of regularization of appointment, section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 does not contemplate placing the regularized employee in a better pay-scale.

7. The entire case of the Petitioners seems to have been built around a notification dated 16-11-2012 whereby the Federal Government had regularized Male Mobilizers in BPS-07 in the District Population Welfare Office, Islamabad. While there is nothing before us to show under what circumstances that was done, the fact of the matter remains that the Petitioners are employees of the Provincial Government, and pursuant to Article 240 of the Constitution of Pakistan, it is for the Provincial Government to determine the conditions of service of the Petitioners keeping in view the Province's financial resources. Therefore, even if Male Mobilizers employed by the Federal Government had been regularized at a higher pay-scale than the one given to the Petitioners, that cannot be termed as discrimination with the Petitioners especially when it is not their case that other Male Mobilizers in this Province had been regularized in a pay-scale higher than BPS-01. In that regard, reliance can be placed on *Suo Moto Action Regarding Regularization of Contract employees of Zakat Department* (2013 SCMR 304) where it was held by the Supreme Court of Pakistan that :

“As regards the question of discrimination, it may be pointed out that each Province is empowered and entitled to make its own decision regarding the subjects that fall within their respective domain in accordance with their own circumstances. A decision by one Province regarding any matter cannot be cited as ground for

discrimination if another Province does not take the same decision. To hold otherwise would be an intrusion into the provincial economy of the Provinces.”

8. For the foregoing reasons, these petitions are misconceived and are dismissed alongwith pending applications.

JUDGE

JUDGE

KARACHI

DATED: 28-10-2019