

**THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P No. D-1195 of 2011

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Petitioner. : Asmatullah through Mr. Muhammad Sachal R. Awan, Advocate

Respondents. : Through Mr. Allah Bachayo Soomro, Addl. Advocate General, Sindh along with Mr. Haroon Ahmed Khan, Secretary, Auqaf, Religious Affairs, Zakat and Ushar Department, Government of Sindh.

Date of hearing & Decision : 12.12.2019

ORDER

ADNAN-UL-KARIM MEMON, J: - The captioned Petition was heard on 03.12.2018 when the following order was passed:-

“Administrative Officer, Auqaf for Chief Administrator Auqaf Sindh today filed a letter No.AUQ (CAA) Litig:/2018-1325 dated 30.11.2018 wherein, it has been categorically stated that the case of the Petitioner has already been sent to the Regularization Committee through Secretary Auqaf Government of Sindh, Karachi vide office letter No.AUQ(CAA) Estt:/2018-1304 dated 27.11.2018. Copy thereof is taken on record along with relevant documents. Let the case of the Petitioner be decided by the Regularization Committee preferably within a period of four [4] weeks.

By consent, and as suggested, adjourned to 15.1.2019.”

2. Case of the petitioner is that despite clear directions in the above order and subsequent orders, the respondents have not complied with the same. He next contended that more than 08 years have been elapsed but the respondents are not following the dicta laid down by Honourable Supreme Court to consider the case of the petitioner for regularization of his service; that no development has occurred yet. Petitioner seeks direction to the competent authority of respondents to regularize the service of the petitioner as Naib Qasid if his case falls within the ambit of policy.

3. Today, Secretary Auqaf, Religious Affairs Zakat and Ushr Department has appeared and submitted that a meeting of Scrutiny Committee-I constituted vide notification dated 16.2.2014 was held on 26.2.2019 to consider the case of the petitioner for regularization of his services in Auqaf Department; that on 26.02.2019, the Scrutiny Committee-I, after detailed deliberation regretted the case of regularization of petitioner. The relevant portion of decision of Scrutiny Committee-I is reproduced as under:-

“After going through the record and other relevant information provided by Chief Administrator Auqaf and looking to TORs of the Committee, conclude as under:-

The above three petitioners namely Mr. Faraz Hussain, Mr. Nazeer Ahmed, Mr. Asmatullah appointed as Moazin, Moazin & Pesh Imam respectively do not fall within the meaning of contract/Adhoc employment. Rather appointed on fixed remuneration of Rs.1500/ to 2000/- per month, terminated appointed time and again after lapse of considerable time. Moreover, not appointed through competitive process as no advertisement, no merit, no selection committees roles seen in their appointments. Thus age and academic qualifications were seriously not ascertained at that time. Therefore their regularization under Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 (Sindh Act No.XXV of 2013) cannot be recommended.”

4. We have heard the Secretary Auqaf, Religious Affairs, Zakat and Ushar Department on the issue of regularization of the service of the petitioner as peshimam Jamia Masjid Sanghar. It appears from the record that the petitioner was engaged on contract basis as peshimam vide order dated 21.1.1997 and he is continuing as such till today.

5. Perusal of statement dated 22.1.2014 given by Muhammad Saleem Shaikh, Administrative Auqaf Sukkur and Larkana Zone at Hyderabad / authorized officer explicitly show that the contract service of the petitioner shall be regularized as Peshimam as per rules and practice of the department.

6. We queried from the Secretary that as far as, the matter of contract of one Abdul Salam and Hafiz Kamran whose services were regularized as Naib Qasid and Moazin respectively. He replied that Administrative Auqaf has already stated that their posts were vacant as such they were regularized. The reasoning assigned by the Committee constituted under the chairmanship of Secretary, departmental selection /recruitment committee that his services were restored vide letter dated 13.6.2008 as peshimam on contract basis for a period of one year and his contractual period was extended upto 12.12.2015 vide letter dated 26.12.2014; that his case does not fall within the meaning of contract / Adhoc employment. Rather appointed on fixed remuneration of Rs.1500/ to 2000/- per month and terminated appointed time and again after lapse of considerable time. Moreover, not appointed through competitive process as no advertisement, no merit, no selection committees roles seen in their appointments. Thus age and academic qualifications were seriously not ascertained at that time. Therefore his regularization under Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 (Sindh Act No.XXV of 2013) cannot be recommended.

7. We are not convince with the reasoning of Secretary Auqaf for the simple reason that initially petitioner was appointed as Pesh Imam at Jamia Masjid Sanghar in the year 1997, however, he was appointed afresh on contract basis

vide letter dated 13.12.2008 and the said period continued from time to time. In the meanwhile, Responded-department regularized the services of the colleagues of the petitioner. Prima facie, his case falls within the ambit of Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013.

8. In view of the above, the instant petition is disposed of with direction to the competent authority of Respondent-department to regularize the service of the petitioner in accordance with law and dicta laid down by Hon'ble Supreme Court in the case of Messers Pakistan State Oil and others vs. Muhammad Siddique and others (2018 SCMR 1181) within a period of one month without discrimination.

JUDGE

JUDGE

Fahad Memon