

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**C. P. No. D – 1540 of 2019**

**Before:**

Mr. Justice Muhammad Junaid Ghaffar  
Mr. Justice Zulfiqar Ali Sangi

Petitioner: Doctor Rashid Ali Lashari, through  
Mr. Aamir Mustafa Kamario, Advocate.

Respondents: Province of Sindh through Secretary  
Health Department and others, through  
Mr. Zulfiqar Ali Naich, Assistant  
Advocate General Sindh along with  
Dr. Anwar Ahmed, Focal Person of  
District Health Officer, Sukkur.

Date of hearing: **21-10-2021**

Date of decision: **21-10-2021**

**ORDER**

**Muhammad Junaid Ghaffar, J.** – Through this Petition, the Petitioner has sought the following relief(s):

- a. *That this Honourable Court may be pleased to declare that the act of respondents for not extending the period of contract of petitioner is illegal, so also the act of respondents for not releasing his salaries and also for not regularizing the services of the petitioner is illegal, unlawful, void ab-initio in the eyes of law.*
- b. *That this Honourable Court may be pleased to direct the respondents to extend the contract of petitioner which is pending since June 2017 despite the fact that he is continuously working till filing of this petition and furthermore the respondents may be directed to release the withheld salaries of the petitioner.*
- c. *That this Honourable Court may be pleased to direct the respondents to also regularize the services of the petitioner in light of the Regularization of the Doctors Appointed on Contract or Ad-hoc Basis Act 2018.*
- d. *That this Honourable Court may be pleased to direct the respondents to permit the petitioner to peruse his post-graduation on deputation / work charge basis program till disposal of this petition.*
- e. *That this Honourable Court may be pleased to grant any other equitable relief which has not been specifically prayed for, which this Honourable Court deems fit and proper in the circumstances of the above case.*

2. On 21-09-2021, after briefly hearing the learned Counsel for the Petitioner and learned AAG, we have passed the following order:

*“Learned AAG at the very outset has placed reliance on the judgment dated 08.04.2021, passed in C. P. No.D-6241 of 2016 etc. (Anjum Badar v. Province of Sindh and others), by learned Division Bench of this Court at Principal Seat (now also reported as **PLD 2021 Sindh 328**) and submits that petitioner’s prayer for regularization under “The Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 cannot be granted.*

*Counsel for the petitioner seeks time to go through the said judgment, whereas, learned AAG is also directed to come prepared with instructions, as apparently through various comments including comments filed on 22.06.2021 by the Secretary, Health, case of the petitioner for payment of outstanding salaries has been approved by extending his contract till 06.06.2018, whereas, matter for his regularization is being considered by the appropriate authority.*

*To come up on **21.10.2021.**”*

3. Today, learned AAG has placed on record notification dated 08-06-2021 through which the contract appointment of the Petitioner has been extended till 06-06-2018 on the same terms and conditions laid down in the offer of appointment issued by the Department, whereas, it is stated that pursuant to such letter the salary for this period will also be released and paid. It is further stated by the learned AAG that the case of the Petitioner for regularization is under active process and after its approval or otherwise, an appropriate report would be submitted before this Court; however, at the same time reliance has been placed on the case of Anjum Badar v. Province of Sindh through Chief Secretary and 2 others (PLD 2021 Sindh 328), and while confronted with the above order and the judgment cited by learned AAG, Petitioner’s Counsel has made an attempt to argue that since other similarly placed persons have been regularized and the Petitioner has been discriminated, therefore, the said judgment is not applicable and respondents be directed to regularize the petitioner.

4. However, such request does not seem to be justified in view of the judgment passed in the case of Anjum Badar (Supra), wherein section 3<sup>1</sup>

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<sup>1</sup> “3. Regularization of services of employees---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.”

the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, was in consideration, whereas, Section 3<sup>2</sup> of the Act in question i.e. the Regularization of Doctors Appointed on Contract or Ad-hoc Basis Act, 2018 is *pari materia* to the Act of 2013; hence the ratio of the said judgment is binding in nature. In fact, section 3 of the Act of 2013 was not in respect of appointments Civil Servants but only to the extent of up to grade 18 employees. Here, section 3 of the Act of 2018 has gone a step further inasmuch as the appointments of Doctors shall be deemed to have been validly appointed to that post of a Civil Servant, which in law is required to be made by the Sindh Public Service Commission. Therefore, the said judgment is applicable on all fours to the case in hand. As to discrimination to the petitioner as against other persons who have been regularized under the Act of 2018, it would suffice to refer to Para 23<sup>3</sup> of **Anjum Badar**

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<sup>2</sup> “**3. Regularization of services of doctors---**(1) 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, all categories of Doctors appointed on contract or adhoc basis in the Health Department or its Regular Projects, Programs and Health Facilities, and holding such appointment on the commencement of this Act, shall be deemed to have been validly appointed to that post as a civil servant on regular basis, with effect from the date of commencement of this Act: Provided that the orders of the regularization of services of a doctor shall be issued by the appointing authority subject to verification of his or her required qualifications by Health Department, Government of Sindh.”

<sup>3</sup> 23. Regarding all such contractual employees in BS 16, 17 and 18 who have been regularized under Section 3 of the Act of 2013 without going through the mandatory process of selection by the Commission in violation of the command of the Constitution and the direction of the Hon'ble Supreme Court, suffice it to say the Hon'ble Supreme Court in the case of Shahid Pervaiz supra was pleased to hold, inter alia, that if an illegal benefit was accrued or conferred under a statute, whether repealed/omitted or continuing, and its benefits continue to flow in favour of beneficiaries of such an unconstitutional Act which is declared ultra vires, the benefits so conferred would have to be reversed irrespective of the fact that the conferring Act was still on the statute book or not; and, such beneficiaries cannot take the plea of past and closed transaction as such plea would apply only in cases where rights were created under a valid law. It may be noted that the case of Shahid Pervaiz supra went under review and the judgment of the said review proceedings is reported as Akhtar Umar Hayat Lalayka and others v. Mushtaq Ahmed Sukhaira and others 2018 SCMR 1218, whereby the review petitions were dismissed/disposed of, and even the exception granted in paragraph 111 of the judgment in Shahid Pervaiz supra read with paragraph 143 thereof was withdrawn. As held by the Hon'ble Supreme Court in various pronouncements that its decisions laying down any proposition in law becomes the law binding on all whether or not they were party to the proceedings before the Hon'ble Supreme Court. Under Article 187(2) of the Constitution, it is the duty of this Court to ensure execution and enforcement of the directions, orders and judgments of the Hon'ble Supreme Court. Therefore, the purported regularization of all such contractual employees/beneficiaries in BS 16 and above under Section 3 of the Act of 2013 is liable to be reversed forthwith in view of the law laid down by the Hon'ble Supreme Court in Shahid Pervaiz supra and Akhtar Umar Hayat Lalayka supra. For the ease of convenience, paragraph 119 of the judgment pronounced in Shahid Pervaiz supra is reproduced here :

"119. However, when a statute (whether existing or repealed) is found to be ultra vires the Constitution, the Court is empowered-indeed, mandated-to examine whether any person continues to enjoy the benefits of the ultra vires statute, or whether any state of affairs continues to exist as a result, and if it is found so, the Court is mandated to undo the same, provided that the benefit or state of affairs in question is not a past and closed transaction. For instance, the case of an employee who had enjoyed an out of turn promotion pursuant to a law found to be ultra vires the Fundamental Rights, who now stands retired and or died, it would constitute a past and closed transaction inasmuch as it would be a futile exercise to re-open the case of such an employee. On the other hand, employees who were so promoted under such a statute and who continue to remain in service, would be liable to be restored to the position that existed prior to the benefit conferred under the statute found inconsistent with Fundamental Rights. Indeed, once a statute has been declared as being unconstitutional for any reason, all direct benefits continuing to flow from the same are to be stopped. Reference in this behalf may be made to the case of Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265). " (emphasis added)

**(Supra)**, wherein this issue has been dealt with in detail and is a complete answer to the petitioner's case on this issue.

4. Accordingly, since the judgment in the case of **Anjum Badar (Supra)** is binding on this Court, instant petition cannot be granted and is therefore dismissed with pending applications, if any, for the reasons so assigned in the case of **Anjum Badar (Supra)**. Respondents to act accordingly.

J U D G E

J U D G E

Abdul Basit