

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C. P No. D – 1460 of 2019

Before:-

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

Date of hearing: 25-11-2021

Date of decision: 25-11-2021

Mr. Muhammad Junaid Akram, Advocate for the Petitioners
Mr. Shahryar Awan, Assistant Advocate General

ORDER

Muhammad Junaid Ghaffar, J;- Through this Petition, the Petitioners have sought the following reliefs;-

- (a) To declare that the act of the respondent No.1 for not considered their service as regular of the Petitioners is clear discrimination with the petitioners, as some other employees of TMA Panoakil as has been regularized on same terms, condition and criteria by respondent No.1 on the directions of this Honourable Court in C.P No.3315/2015.
- (b) To direct the respondents No.1 to consider the case of Petitioners for regularized the services as some other i.e. (08) employees of TMA Panoakil had been regularized by the respondent No.1 and same they are working in TMA Panoakil as regular employees and enjoy peace of mind however the petitioners have deprived their legal rights and clear discrimination with the hand of respondent No.1.

2. Learned Counsel for the Petitioners submits that earlier Petitioners had filed C.P No.D- 596/2018 along with other Petitions, which were disposed of on 15-05-2019 with certain directions; that despite directions the case of the Petitioners has not been decided in their favour; that other similarly placed persons have been regularized, whereas, Petitioners have been discriminated; hence instant Petition.

3. On the other hand, learned Assistant Advocate General has argued that as per directions of this Court matter was considered and the case of the Petitioners was rejected as they are not qualified to be regularized.

4. We have heard the learned counsel for the Petitioners and AAG Sindh and perused the record.

5. Insofar as the earlier round of litigation is concerned, C.P No.D-596/2018 and other connected matters were disposed of vide Order dated 15-05-2019, which reads as under;-

“Comments of Town Officer, Town Committee Salehpat disclose that the appeals/applications of the petitioners for regularization is forwarded to the Secretary Local Government department who has not filed comments. Learned counsel for the petitioners submits that he would be satisfied in case the Secretary be directed to decide these appeals/applications within reasonable time after hearing the parties. Accordingly, though the comments have not been filed however in case the appeals/applications are pending as forwarded by the Town Officer, Town Committee, Salehpat be decided after hearing the parties within a period of two months. The petition stands disposed of.”

6. It appears that pursuant to such directions, regularization of the Petitioners was considered and the Departmental Scrutiny Committee examined the case of the Petitioners. The relevant finding of the said Committee as contained in Para 3 of the said report reads as under;-

“Study of documents produced revealed that 35 persons were engaged/appointed {12 Junior / Recovery Clerks, 03 Drivers, 09 Helpers, 01 Malhi, 05 Chowkidar, 02 Naib Qasid & 03 Coolies} on contract basis for eleven months w.e.f. 01-06-2013 on a fixed pay / remuneration of Rs.7000 P.M. Appointments were not made after observing codal formalities i.e. advertisement of posts, selection through selection committee, Medical examination, verification of credentials etc., all such appointees fixed remuneration of Rs.7000 / P.M was given from Clerk to Coolie. According to instructions contained in Local Government Department letter # SO-V(LG)5(69)/2009, dated 29-06-2010, that Honourable Supreme Court of Pakistan in Human Rights Case No.104/92 had held that even an appointment on Adhoc Basis cannot be made without publication and proper advertisement. Departmental Recruitment Committee does not found that appointments were not made in line with recruitment Laws / Rules.”

7. Perusal of the aforesaid reasoning reflects that insofar as the Petitioners are concerned, their initial appointments were not made by observing all requisite formalities including advertisement, medical examination and verification of academic qualification, etc; therefore, they have not been considered for such regularization. From the perusal of the aforesaid report, it appears that the Petitioners have failed to make-out a case, whereas, while confronted, Counsel has only referred to the appointment order and has not been able to assist us as

to how the initial appointment of the Petitioners was in accordance with law. It is settled law that a person could only be considered for regularization, if the initial appointment on temporary or contract basis, is against some permanent vacancy which has been done through a regular process. if not, then such person cannot be regularized.

8. As to the argument of discrimination and reliance on order dated 18.10.2017 passed in CP No.3312/2015 in respect of some other petitioners is concerned, it would suffice to hold that in present petitioners case directions were given to respondents on petitioners own request to decide their representation regarding regularization, which has been done, and while confronted no satisfactory response has been given as to the shortcomings and defects in their initial appointment, whereas, in that case also similar directions were issued and no judgment was passed by this Court on merits; therefore, reliance on any other order is not relevant in the facts and circumstances of this case.

9. In view of such position, no case is made-out. Accordingly, the Petition being misconceived is hereby dismissed.

Judge

Judge

ARBROHI