

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Irfan Saadat Khan, J.**  
**Agha Faisal, J.**

CP D 3081 of 2019 : Umar Rasheed Malik & Others  
vs. Federation of Pakistan & Others

CP D 4120 of 2019 : Aaqib Ali & Others  
vs. Federation of Pakistan & Others

For the Petitioners : Mr. Syed Shoa-un-Nabi, Advocate

For the Respondents : Mr. Muhammad Nishat Warsi  
Deputy Attorney General

Mr. Khaleeq Ahmed, Advocate

Mr. M. Salim Thepdawala, Advocate

Date of hearing : 01.12.2021

Date of announcement : 03.12.2021

## **JUDGMENT**

**Agha Faisal, J.** The petitioners claim to have been third party contractual employees, with the cited contractual relationship/s *admittedly* having lapsed, and seek their regularization in the respondent no. 3 Karachi Port Trust (“KPT”) along with appurtenant benefits and seniority.

2. Petitioners’ counsel articulated that the petitioners have rendered services at KPT, as a consequence of a contract entered into by their employer / contractor respondent no. 4 (“Aquatech”), however, their contracts have lapsed / terminated. In such regard it was added that no salary has been received by the petitioners for over twenty months and it was incumbent upon KPT to regularize their services and provide them with the due benefits and seniority sought; hence, these petitions.

3. Learned Deputy Attorney General submitted that the petitions were misconceived and even otherwise devoid of merit. The submission was rested *inter alia* upon the premise that admittedly the petitioners were not employees of KPT (contractual or otherwise), hence, had no nexus to claim regularization; their third party contracts had admittedly lapsed; and that the questions of fact sought to be agitated were not amenable for determination in writ jurisdiction as an alternate efficacious remedy was available.

Mr. M. Salim Thepdawala, Advocate represented Aquatech and seconded that the petitioners had been its contractual employees in the past, however, that no such contract was in subsistence. Reference was made to the relevant letters of contract, on file, to demonstrate that the terms governing the relationship *inter se* were stipulated therein and that there existed no occasion to merit the grant of the present petitions.

Mr. Khaleeq Ahmed, Advocate submitted on behalf of KPT that the petitioners had worked there at, however, solely in consequence of its contract with Aquatech and that no vested right had arisen in favour of the petitioners to seek regularization in KPT.

4. We have heard the respective learned counsel and considered the record before us. Admittedly, the petitioners had been contractual employees of Aquatech and their contracts had come to an end<sup>1</sup>. No specific law was placed before us to demonstrate the accrual of any vested right in favour of the petitioners to be considered for regularization in KPT. The assertions seeking to demonstrate the petitioners' indispensability to KPT are disputed questions of fact, adjudication whereof is not amenable in the exercise of writ jurisdiction<sup>2</sup>. Therefore, the question for determination before us is whether the petitioners have set forth a case for exercise of writ jurisdiction of this Court.

5. The august Supreme Court has recently maintained in *Khushal Khan*<sup>3</sup> *inter alia* that the High Court lacked jurisdiction to revive, amend or alter contracts; there was no vested right to seek regularization for employees hired on contractual basis unless there was legal and statutory basis for the same; contractual employees had no automatic right to be regularized unless the same has specifically been provided for in a law; and that the relationship of contractual employees is governed by principles of master and servant.

6. Even though not articulated by the petitioners' counsel, but in the memorandum of petition it was pleaded that the period of contractual service may be considered as a probationary period; with the necessary consequences and corollaries. This argument is also unfounded in law as the august Court held

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<sup>1</sup> Despite our query, not a single subsisting contract could be demonstrated before us by the petitioners' counsel.

<sup>2</sup> 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415;

<sup>3</sup> Per *Ijaz ul Ahsan J* in *Khushal Khan Khattak University & Others vs. Jabran Ali Khan & Others* reported as 2021 SCMR 977.

in *Dr. Anwar Ali Sahto*<sup>4</sup> that contractual tenures cannot be equated with a probationary period by any stretch of the imagination as the two phrases had distinct connotations altogether. It was observed that a contractual assignment could not become permanent merely by efflux of time.

7. A Division Bench of this Court was recently seized of a similar issue in *Anjum Badar*<sup>5</sup>, wherein it was maintained that contractual employees had no vested right for regular appointment or to seek regularization of their services, hence, were debarred from invoking the constitutional jurisdiction of this Court.

8. It is trite law that contractual employees could not be considered to have a generic entitlement for regularization<sup>6</sup>. In the present case the petitioners did not claim to be contractual employees of KPT but that of Aquatech, being a third party entirely. Petitioners' counsel has been unable to identify any specific law conferring any right upon the petitioners to be considered for regularization<sup>7</sup>. Petitioners' contracts, albeit third party, have admittedly lapsed and any claim in pursuance thereof may lie, if at all, with respect to parties privy thereto and not with respect to others. It is, thus, our deliberated view that the petitioners have failed to set forth a case for exercise of the writ jurisdiction of this Court.

9. In view of the reasoning herein contained, we find that the present petitions are devoid of merit, hence, the same (along with pending application/s) are hereby dismissed.

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<sup>4</sup> *Dr. Anwar Ali Sahto & Others vs. Federation of Pakistan & Others* reported as *PLD 2002 Supreme Court 101*.

<sup>5</sup> *Per Nadeem Akhtar J in Anjum Badar vs. Province of Sindh & Others* reported as *PLD 2021 Sindh 328*.

<sup>6</sup> *Per Ijaz ul Ahsan J in Govt of KPK vs. Jawad Ali & Others* reported as *2021 SCMR 185*; *Per Mansoor Ali Shah J in Province of Punjab vs. Dr. Javed Iqbal* reported as *2021 SCMR 767*; *Per Ijaz ul Ahsan J in Owais Shams Durrani vs. Vice Chancellor Bacha Khan University* reported as *2020 SCMR 2041*; *Per Miangul Hassan Aunrangzeb J in First Womens Bank vs. Muhammad Tayyab* reported as *2020 PLC (C.S.) 86*.

<sup>7</sup> *Per Ijaz ul Ahsan J in Govt of KPK Welfare Board vs. Raheel Ali Gohar & Others* reported as *2020 SCMR 2068*;