

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

C.P No.D-2134 of 2013

**BEFORE: Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry**

Petitioners : Through Mr. Ishrat Ali Lohar, Advocate.
Respondents : Through Mr. Rafique Ahmed Dahri,
Asst. Advocate General, Sindh.
Date of Hearing : 10.11.2021
& Order

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioners have challenged their termination order dated 19.09.2013 issued by the respondent / Directorate General Fisheries Sindh, on the ground that their case falls within the ambit of Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, thus their services are liable to be regularized w.e.f the date of initial appointment.

2- The case of the petitioners is that they were appointed on contract basis under development scheme i.e. Strengthening & Improvement of Fish and Shrimp Hatcheries in Sindh on different lower posts in Fisheries Department such as Electrician, Plumber, Driver and Laboratory Assistant in the year 2009; however, in the year 2013 their services were terminated due to non-allocation of funds by the Government, as such, petitioners have approached this Court for their regularization.

3- At the very outset, we asked learned counsel representing the petitioners to satisfy this Court concerning maintainability of the instant Petition, because of Office Order dated 19.09.2013, whereby their services were dispensed with, with effect from 1st July 2013 due to non-allocation of funds in the development scheme discussed supra.

4- In reply to the query raised by this Court, learned counsel for the petitioners has submitted that the impugned order dated 19.09.2013 is illegal therefore, liable to be quashed; that the colleagues of the petitioners have already been regularized vide order dated 25.01.2018 passed in C.P No.D-5233 of 2016. Thus no discriminatory attitude shall

be meted out with them. Per learned counsel the case of the petitioners is akin to the case decided by this Court in C.P No.D-5233 of 2016 and prayed for allowing the instant petition in the same terms.

5- *Learned Asst. Advocate General, Sindh has objected to the stance of the petitioners on the ground that due to non-allocation of funds in the development scheme their services were terminated in the year 2013, therefore, they cannot be adjusted at this point of time in any department of Government of Sindh, therefore, the petition in hand is not maintainable under the law, hence is liable to be dismissed.*

6- *We have heard learned counsel for the parties at length and have also examined the material available on record.*

7- *Firstly, we would address the question of the maintainability of the instant Petition under Article 199 of the Constitution.*

8- *To begin with the question of regularization of service of an employee vis-à-vis service jurisprudence, it has to be kept in mind as to what is the concept of regularization of service. In other words, what are the necessary elements that must exist to allow a person to seek regularization of a job under the law.*

9- *The law on the regularization of service is clear in its concept according to which regularization and permanent absorption must be granted strictly under the rules of recruitment in force. Whereas, in the present case there are no recruitment rules available to claim appointment on contract basis and subsequent regularization.*

10- *Principally, this Court, in exercising power under Article 199 of the Constitution, cannot issue directions for regularization, absorption, or permanent continuance of service of an employee, unless the employee claiming regularization had been appointed in an open competitive process in pursuance of regular recruitment under the relevant rules against a sanctioned vacant post. It is a well-settled principle of law that for public employment unless the appointment is in terms of the relevant rules and after a proper competition amongst qualified persons, the same would not confer any vested right on the appointee. If it is a contractual appointment, the appointment comes to an end upon expiration of the contract, and if it was an engagement or appointment on daily wages or casual basis, the same would come to an end upon the completion of the agreed assignment or tenure. It is well-settled that*

a temporary employee cannot claim permanent status at the end of his term as a matter of right. It is clarified that if the original appointment was not made by following the due/prescribed process of selection as envisaged by the relevant rules, a temporary / contract employee or a casual wage worker cannot be absorbed in regular service or made permanent merely for the reason that he was allowed to continue the service beyond the term of his appointment. It is not open for this Court to allow regular recruitment in the case of a temporary / contract employee whose period of work has come to an end, or of an ad-hoc employee who by the very nature of his designation, does not acquire any right.

11- *In view of the above, the respondent - department was well within its rights to dispense with the service of its employees under the law. Having discussed the legal aspect of the case, we have perused the appointment orders of the petitioners, which were admittedly a contractual appointment for the project only. According to the petitioners, they were appointed in the respondent department in the year 2009 on a contract basis against certain posts. Since the project is no more in the field and closed long back thus, the services of the petitioners cannot be regularized in the nonexistent project. Even otherwise, the contract employee is not entitled to claim regularization as a matter of right in a project. On the subject issue, there are several pronouncements of the Hon'ble Supreme Court on the point of regularization. The case of the petitioners was/is subject to the principle of Master and Servant. It is well-established law that a contractual employee cannot claim vested rights, even for the regularization of their services.*

12- *In the present case, the petitioners have not established that they have fundamental / acquired vested right to remain in the contractual post or to seek an extension and/or regularization of the contractual service that admittedly expired in the year 2013 and they seized to work accordingly. The General Clauses Act, 1897, also empowers the competent authority to appoint or remove anyone appointed in the exercise of that power as discussed in the preceding paragraph. It is also a settled law that Courts ordinarily refrain from interfering in the policy-making domain of the Executive unless it is proven that it has infringed the fundamental rights of the citizens of Pakistan, which is not the case in hand.*

13- *In the present case, no material whatsoever has been placed before us by which we can conclude that the impugned letter / order dated 19.09.2013 has been wrongly issued by the respondent - department. Thus, the statement of the petitioners that they were not heard before issuance of impugned letter / order dated 19.09.2013 is not tenable in the eyes of the law for the reason that the respondent - department allowed the petitioners to continue their contractual service for the subject project only which is no more in the field; even otherwise the period of the said project is no longer in existence.*

14- *The case cited and relied upon by learned counsel for the petitioners is not relevant or applicable to the instant case on the premise that the matter was decided by consent, therefore, the consent order cannot be cited as a precedent to claim similar treatment.*

15- *The views expressed by us in the preceding paragraphs are fortified by the following authoritative pronouncements of the Hon'ble Supreme Court :*

- i. *Government of Baluchistan V/S Dr. Zahida Kakar and 43 others (2005 SCMR 642)*
- ii. *Dr. Mubashir Ahmed V/S PTCL through Chairman, Islamabad and another (2007 PLC CS 737).*
- iii. *Abid Iqbal Hafiz and others v. Secretary, Public Prosecution Department, Government of the Punjab, Lahore, and others, PLD 2010 Supreme Court 841*
- iv. *Federation of Pakistan v. Muhammad Azam Chattha (2013 SCMR 120)*
- v. *Muzafar Khan & others V/S Government of Pakistan & others (2013 SCMR 304)*
- vi. *Abdul Wahab and others v. HBL and others (2013 SCMR 1383)*
- vii. *Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and others, 2017 SCMR 1979*
- viii. *Qazi Munir Ahmed Versus Rawalpindi Medical College and Allied Hospital through Principal and others (2019 S C M R 648)*

- ix. *Raja Iviz Mehmood and another v. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others, 2018 SCMR 162*
- x. *Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals, 2019 SCMR 984.*
- xi. *Unreported order dated 13.03.2019 passed by the Hon'ble Supreme Court in C.P. No.2792/2018 and other connected petitions*
- xii. *Province of Punjab through Secretary Agriculture Department, Lahore, and others Vs. Muhammad Arif and others (2020 SCMR 507).*
- xiii. *Miss Naureen Naz Butt vs Pakistan International Airlines and others (2020 SCMR 1625).*

16- *In view of the above discussion, the petition is not maintainable either on facts or in law, and accordingly same is dismissed along with the pending application(s).*

JUDGE

JUDGE

Hafiz Fahad