

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 128 of 2020

Asad Ali Laghari and others
Petitioners : Mr. Zameer Hussain Ghumro and Mr. Faizan
Hussain Memon, advocates.

Respondent : Mr. Ali Safdar Depar, AAG a/w Abdul Wajid
Shaikh, Secretary-cum-Director Larmis BoR
Sindh.

Dates of hearing
& order : **14.01.2022**

ORDER

ADNAN-UL-KARIM MEMON, J. Through this constitutional petition filed by the petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, they have prayed their contractual service as District Manager, Assistant Manager, Land Administration and Revenue Management Information System (`LARMIS`), Board of Revenue Sindh, be regularized without discrimination as they have been appointed through the competitive process by conducting test from Institute of Business Administration IBA Sukkur in the year 2013, and with the approval of competent authority, and their contractual terms have been annually extended till today, with a further assertion that they have already served in LARMIS for a considerable period i.e. with effect from 2014 and they have the legitimate expectation for appointment on regular basis. In alternate, they have prayed to refer their matter to the Sindh Public Service Commission (`SPSC`) just for assessing their suitability of the subject posts.

2. Learned AAG has opposed the prayer of the petitioners on the premise that their case does not fall within the ambit of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 (`Act-2013`).

3. To this proposition, Mr. Zameer Hussain Ghumro, learned counsel for the petitioners has submitted that the petitioners are well qualified and have requisite experience after the initial appointment, thus joining fresh process with other candidates is unfair and if they are forced to apply afresh, then there shall be no difference between them and outsiders applying for the subject posts. He further argued that employment is the source of livelihood and the right of livelihood is an undeniable right to a person, therefore, the petitioners who have served the respondent-LARMIS for such a long period would deserve to be given a fair chance of regularization in the given situation, however, their suitability for the subject post

could be assessed by SPSC; that on account of their experience of the subject posts, they are fit and qualified to retain the said posts on regular basis, however, they have reservations about the requisition and issuance of public notice by the respondent- LARMIS for the sole purpose to get rid of the petitioners from their postings.

4. We have heard the learned counsel for the parties and perused the material available on record and case-law cited at the bar.

5. There is no cavil to the proposition that under Article 242 of the Constitution, the mechanism for appointment of a civil servant in BPS-16 and BPS-17 through Public Service Commission on merits and the petitioners were/are required to compete in the process. In the present case, there is no dispute that respondent-BoR, considering the need for speedy operationalization of Service Centers as well as in compliance with the orders of Honorable Supreme Court in Suo Moto Case No. 16 of 2011 (PLD 2013 Supreme Court 443), for speeding up the process of computerization of land records in the Province of Sindh, the respondents initiated the recruitment process for the subject posts, constituted Selection Committees, vide Notification dated -12.2011. The petitioners have initially been appointed openly and transparently through the prescribed competitive process as the vacancies were advertised in the newspaper. The professional tests of the petitioners for (27) posts of District Manager, Information Technology and (27) posts of Assistant Manager, Information Technology in the Project Management Unit of LARMIS were conducted by IBA Sukkur in the year 2013 and subsequently appointed in the year 2014. In the intervening period, the respondent-BoR has not called in question their qualification and experience for the subject posts.

6. In the light of the above, It has become clear that the petitioners had cleared the written examination, for the subject posts, through IBA Sukkur, vide result announced on 15.9.2013, which was a pre-condition before they could be appointed to the posts applied for. Essentially the written test is designed to gauge a candidate's familiarity with the subject plus his power of expression etc. In our view, the written test does not gauge the personality of the candidate or his communication skills, or his leadership or decision-making abilities which are left to be examined at the time of the interview. For this proposition, our view is supported by the decision rendered by the Honorable Supreme Court in the case of Muhammad Ashraf Sangri vs. Federation of Pakistan and others, **2014 SCMR 157**.

7. Principally, an interview is a subjective test and a Court of law can't substitute its own opinion for that of the Interview Board. If any, malafide or bias or for that matter error of judgment were floating on the surface of the record, we

would have certainly intervened as Courts of law are more familiar with such improprieties rather than dilating into the question of fitness of any candidate for a particular post which as observed above is a subjective matter and can best be assessed by the functionaries who are entrusted with this responsibility, in the present case, the Sindh Public Service Commission. For this proposition, we seek guidance from the decision rendered by the Honorable Supreme Court in the case of Federation of Pakistan through Secretary Establishment Division v. Ghulam Shabbir Jiskani, 2011 SCMR 1198.

8. Record further revealed that the petitioners were appointed on a contract basis to run the operations of Peoples Service Centre in 27 districts of Sindh, and are in employment/service for several years and project on which they were appointed had also been taken over by the provincial Government on the regular budget for the Financial year 2017-2018 (page 279 to 293), therefore, their status as project employees had ended once Finance Department Government of Sindh had sanctioned the regular posts to run the computerized land record facility across the Province.

9. During arguments, we have been informed that the Summary has been floated by the respondents, to the Competent Authority, with the proposal that the services of the petitioners may be retained in the public interest for successful implementation of computerization of land records in Sindh through legislation. However, the competent authority i.e. Chief Minister Sindh has proposed that the service of the petitioners may be regularized through competitive process i.e. SPSC, through public notice afresh.

10. At this stage learned counsel for the petitioners, has heavily relied upon Para 9.10 (b) of the minutes of the meeting of Provincial Cabinet held on 29.3.2018 and argued that Provincial Cabinet has decided to regularize the contract employees vide letter dated 18.04.2018; they fulfill the criteria and are qualified for the job; and, they are working to the satisfaction of the respondent-department and relied upon the decision of Honorable Supreme Court rendered in the case of Pir Imran Sajid and others versus Managing Director/Regional Manager (Manager Finance) Telephone Industries of Pakistan, 2015 SCMR 1257. Primarily, the decision of the Hon'ble Supreme Court of Pakistan cited by him on the subject is clear in its terms on the premise that the names of candidates were specifically recommended for regularization by the Cabinet, whereas in the subject matter though there is no specific directive of the Provincial Cabinet in its meeting held on 29.03.2018 about the regularization of the service of the petitioners. Even otherwise after the decision of the cabinet, the legislative instrument needs to be prepared for approval of the Provincial Assembly to sanctify the decision of the cabinet. An

excerpt of the minutes of the meeting of the Provincial Cabinet held on 29.03.2018 is reproduced as under:

“ Para 9.10(b): The Cabinet also decided in principle to direct all the Departments to initiate the process of regularization of the contract employee, if they fulfill the criteria, are qualified for the job and they are working to the satisfaction of the respective apartments. ”

11. To the above proposition, as put forward by the competent authority, learned counsel for the petitioners finally has referred to the case of Dr. Naveeda Tufail and 72 others v. Government of Punjab and others, **2003 SCMR 291** and argued that the case of the petitioners for appointment on regular basis may be referred to SPSC by conducting their fresh interview as provided under the recruitment rules within one month.

12. If this is the stance of the petitioners, the question that arises in this petition is whether the candidature of the petitioners can be referred to the Sindh Public Service Commission to check their suitability for the subject posts afresh.?

13. In principle, the SPSC is not required to conduct tests for recruitment to the posts in BPS-16 and BPS-17, which could be filled on contract for a specified period. this prohibition is contained under section 4(1) of the Sindh Public Service Commission (Functions) Rules, 1990 (**Rules-1990**). Since the petitioners have been appointed on a contract basis in a Project i.e. LARMIS, as discussed supra and the same project has now been taken over by the Sindh Government, through budgetary provision, thus it would be more appropriate to treat the petitioners' services on adhoc basis for a certain period as provided under section 18 and 19 of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974; till final recommendation of SPSC; and send the candidatures of the petitioners to the SPSC for their interview to assess the suitability of each candidate against the post which he/she has been appointed, under the recruitment Rules.

14. To go ahead with the aforesaid proposition, we have gone through the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Dr. Naveeda Tufail and 72 others. An excerpt of the judgment is reproduced as under:

“12. We having examined the above scheme find that in similar circumstances, the Federal Government while giving fair treatment to its employees appointed on ad hoc basis successively framed policies for regularization through the process of selection by the Public Service Commission. It is stated that all Provincial Governments, except the Government of Punjab, following the Federal Government also adopted the policy of regularization and gave their employees equal treatment. The petitioners, being ad hoc employees of Provincial Government, cannot claim regularization as of right in the light of the policy of Federal Government but the principle of equality as embodied in Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, would demand that they while facing the similar circumstances should be treated in the same manner. The principle of equality would impliedly be attracted in favour of the petitioners as they being ad hoc lecturers in the Provincial Government would stand at par to that of the ad hoc employees of the Federal Government and therefore, it would be fair, just and proper to consider their cases for regularization. We having heard the learned counsel for the petitioners and Mr. Maqbool Ellahi Malik, learned AdvocateGeneral Punjab, assisted by Mr. Tariq Mahmood Khokhar, Additional AdvocateGeneral, are of the view

that since substantial questions of public importance are involved in the present petitions, therefore, the technical objection that the, questions not raised before the Tribunal, cannot be allowed to be raised before this Court, is not entertained. The authorities in the Education Department, Government of Punjab, while adopting the method of ad hoc appointments as a continuous, policy, created a legitimate expectancy in the mind of petitioners for their retention on regular basis and therefore, we deem it proper to direct that the respondents while seeking guidance from the scheme of regularization of ad hoc employees of Federal Government referred above, will initiate the process of regularization of the petitioners through Punjab Public Service Commission giving the concession as mentioned in the reply filed by the respondents in the Punjab Service Tribunal within a period of one month and meanwhile without prejudice to title right of the selectees of the Public Service Commission for appointment on regular basis, the posts which were being held by the petitioners shall not be filled. It is clarified that the cases of the petitioners shall be sent separately to the Public Service Commission and shall not be tagged with the direct recruits. In case any of the petitioners is not found suitable, by the Public Service Commission, he shall not be entitled to be retained in service.

13. We in the light of above discussion, convert these petitions into appeals and dispose of the same with no order as to costs.”

15. We have noticed that under similar circumstances, this Court vide order dated passed in C.P. No.D-160/2020 and C.P. No.D-2431/2021 and C.P. No.D-2839/2017 has observed as under. An excerpt of the above order is as under:

“The Secretary, School Education & Literacy Department further stated that the working papers of all the petitioners will be sent to the Sindh Public Service Commission to determine the eligibility of incumbent i.e. Head Master/Head Mistresses for regularization as per rule and policy.

Learned counsel for the petitioners is satisfied with this statement. At this juncture, the Secretary, School Education & Literacy Department further stated that the last contracts of many of the petitioners will expire in the month of June and may be Sindh Public Service Commission will take some time to decide the eligibility and issue of regularization of the petitioners therefore he very fairly stated that the contracts of the petitioners will be extended for six months and in case the matter is further delayed by Sindh Public Service Commission and not decided within six months then the contracts will be extended for some further period. Secretary, School Education & Literacy Department further submits that within two weeks the complete working papers of the petitioners will be sent to the Sindh Public Service Commission for onwards proceedings.

So far as C.P. No.D-2839 of 2017 is concerned, Mr. Ali Asadullah Bullo, Advocate for the petitioners argued that though his petition has been dismissed but a contempt application is pending. Secretary, School Education & Literacy Department voluntarily submits that since they are already sending the cases of 937 Head Master/Head Mistresses to the Sindh Public Service Commission therefore he assured us that the working papers of 12 petitioners in C.P. No.D-2839 of 2017 will also be sent to the Sindh Public Service Commission alongwith the cases of 937 Head Master/Head Mistresses as mentioned above for scrutinizing their eligibility so that their services may be regularized if found eligible and competent for the said position.

In view of above terms, C.P. No.D-2431 of 2021 is disposed of alongwith pending application(s) and Miscellaneous Application pending in C.P. No.D-2839 of 2017 is also disposed of. However, interim order passed earlier in C.P. No.D-2431 of 2021 shall continue till the contracts of the petitioners are extended.

The office is directed to place copy of this order in the above-listed petition.”

16. In view of the foregoing, we are of the considered view that the matter of the petitioners needs to be referred to the competent authority of SPSC to assess their eligibility/fitness/suitability afresh for the subject post by conducting their interview under the recruitment rules within a reasonable time and send the recommendation of successful candidates to the Government of Sindh for appointment on regular posts of District Manager and Assistant Manager (LARMIS). The aforesaid exercise shall be conducted by SPSC within two months after due notice to the petitioners.

17. It is clarified that the cases of the petitioners shall be sent by the respondent-department, separately to the Sindh Public Service Commission and shall not be tagged with the direct recruits. In case any of the petitioners is not found suitable and fit for the subject post, by the Sindh Public Service Commission, he/she shall not be entitled to be retained in service. Let a copy of this order be transmitted to the chairman Sindh Public Service Commission and head of the respondent department for compliance.

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