

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-2160 of 2021

C.P. No. D-2161 of 2021

Syed Ali Zafar & Kamal Ahmed
Petitioners through : Aga Zafar Ahmed, advocate.

Respondents
Through : Mr. Muhammad Nishat Warsi, DAG

Date of hearing
& order : **19.01.2022**

ORDER

ADNAN-UL-KARIM MEMON, J. We intend to decide the captioned petitions as the common question of law is involved in both the petitions.

2. The case of petitioners is a relatively simple one on the premise that they are seeking a declaration to the effect that they are entitled to salary and other legal dues, including survey fees with effect from 25.1.2019 till issuance of final release order on the premise that they were performing their duties as per instructions of respondent-Mercantile Marine Department, Ministry of Maritime Affairs (Ports & Shipping Wing), Government of Pakistan.

3. Aga Zafar Ahmed, learned counsel for the petitioners has contended that in response to the advertisement published in the newspaper dated 12.04.2015, they applied for the post of Engineer and Ship Surveyor (E&SS) Mercantile Marine Department, Karachi, on a contract basis for two years vide notification dated 22.01.2016. Per learned counsel, they continued to serve the respondent department till confirmation of their service status order, however, the petitioners continued to work for the respondents and finally served upon them legal notice dated 18.12.2020 calling upon them to clarify and confirm the status of the petitioner's service and payment of salary and other emoluments including survey fees for entire duration i.e. from 25.1.2019 till issuance of relinquishment order. That as per the version of the respondent department, the contract of the petitioners could not be extended by the competent authority for the reasons best known to them. Learned counsel relied upon the summary floated by the respondent department to the competent authority, for extension of the contract, which was, unfortunately, regretted to vide letter dated 31.08.2020. He prayed for a direction to the respondents to pay their legal dues for the work they carried out for the respondents.

4. Learned DAG has opposed these petitions by referring para-wise comments filed on behalf of respondents 1 to 3 and submitted that the contract of the petitioners stood expired on 24.01.2019, their request for extension in the contract was regretted by

the competent authority/Prime Minister, on the premise that they crossed the age of 65 years, thus they were/are not entitled to extension in the contract. On the issue of remuneration for the occasional task performed by them. He has submitted that the petitioner performed the work on a voluntary/pro bono basis, therefore they are not entitled to such remuneration. He further submitted that these are the disputed questions of facts and this Court cannot travel into such questions and decide the Constitutional petition which requires evidence to the extent whether they performed the duty voluntarily or pro bono basis or otherwise, as the respondents never instructed the petitioners to continue rendering the services for the respondent-department. Be that as it may, we have only confined ourselves to the extent that if the petitioners have worked for a certain period in the respondent department, they are entitled to the remuneration under the law for the simple reason that there is no concept of forced labor. In principle, all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily is called forced labor. In the present case the petitioners have claimed that they have worked for the respondent department till their contract not extended by the competent authority as discussed supra, if this is the position of the case, it would be more appropriate to let this issue be resolved by the competent authority of respondents within a reasonable time without discrimination.

5. In view of the above facts and circumstances of the case, we deem it appropriate to refer the matter to the competent authority of the respondent department to ascertain whether the petitioners continued to render the services after the expiry of their contract and/ or till their status of contract employee was made absolute and whether they were duly paid during the intervening period or otherwise. The respondents shall carry out the exercise and decide on the subject within one month after providing a meaningful hearing to the petitioners, if they are found to have worked for the respondents for the disputed period, then they shall be paid accordingly.

6. This petition stands disposed of in the above terms. Let a copy of this order be transmitted to the respondents for compliance.

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Nadir*