

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D- 1526 of 2017

Date _____ Order with Signature(s) of Judge(s) _____

Priority

1. For orders on office objection
2. For hearing of Misc No.7816/2017
3. For hearing of main case

18.02.2022

Mr. Muhammad Ali Wais Lari, advocate for the petitioners
Mr. Nadir Khan Burdi, advocate for respondent No.2 and 3

ORDER

Petitioners are seeking regularization of their services in Lyari Development Authority (LDA) in terms of order dated 26.02.2016 passed by this Court in CP No. D-1216/2013. An excerpt of the order dated 26.02.2016 is reproduced as under:

“All the petitioners are employees of respondents No.2 & 3. They have approached this court for regularization of their services in terms of Sindh (Regularization of Adhoc and Contract Employees) Act, 2013. They have further prayed that the directions be given to the respondents to consider their cases and maintain their seniority accordingly. In both the petitions, interim orders are also operating.

Today learned counsel for the respondents No.2 & 3 proposed that the cases of the petitioners will be considered by the Director General Lyari Development Authority, who will constitute a Committee to consider the cases of the petitioners for their regularization in fair and transparent manner and strictly on merits. Each individual will be considered for regularization and opportunity of hearing will also be provided to the petitioners to present their case before the Committee.

Learned counsel for the petitioners are satisfied on this statement of learned counsel for respondents No.2 & 3.

By consent both these petitions are disposed of with directions to the Director General L.D.A to constitute a Committee and consider the cases of the petitioners within 03 months. The fate of the Committee's recommendation will be intimated to each petitioner individually and till such time, the committee decides fate of the petitioners, interim order will continue. It is further ordered that in case within three months, cases of the petitioners are not considered in the above terms, they shall be deemed to have been regularized automatically on expiry of three months period.

The pending applications in both the petitions also stand disposed of.”

It is, *inter alia*, contended by learned counsel for the petitioners that this Court disposed of the aforesaid petition of the petitioners, with the direction to the Director-General LDA to constitute a committee and consider the cases of the petitioners within three months. Learned counsel has submitted that such direction of this Court has not been adhered to in its letter and spirit and the committee so-called failed and neglected to consider the cases of the petitioners, leaving them to assail the findings of the committee and approach this Court for redressal of their grievances. He further contended that there are vacant positions and the petitioners' services could be regularized on the aforesaid positions, they already held in LDA. In support of his contentions, he relied upon the statement dated 16.11.2021 and other documents attached with the memo of the petition and argued that the committee so constituted has deliberately taken the decision against the

petitioners on malafide consideration. Per learned counsel, in the light of findings of this court in CP No.D-2389/2016, the petitioners stood regularized by the ratio of the judgment passed by this court thus the respondents may be directed to issue their notification and allow them to join their respective service. He emphasized that employment is the basic necessity of life, particularly for the educated youth and the State is responsible to provide a transparent working environment and the employers are required to provide the opportunity for grooming and exploitation of abilities and talent by the employees. He further contended that the Petitioners deserved regularization of their service in the terms of beneficial legislation i.e. the Sindh Regularization of Adhoc and Contract Employees) Act 2013; that in pursuance of the above enactment, this Court passed several orders including the Judgment (*Dr. Iqbal Jan & others Vs. Province of Sindh & others*) reported as **PLC 2014 (C.S.) 1153**, as such all the Petitioners shall be deemed to have been validly appointed regularly as ordered by this Court in their earlier petition and because of section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act 2013. It is further submitted that to utter shock and dismay of the Petitioners the committee opined against the petitioners. It is further contended that in all other departments, employees have been regularized in terms of Section 3 *ibid*. He lastly submitted that in light of the above, all the Petitioners seek the similar treatment as meted out to the employees of the respondent-Department; that any other/different interpretation of Section 3 *ibid* for the employees of the respondent- Department would not be only in violation of Article 25 of the Constitution, but also in violation of the aforesaid Judgment passed by this Court on the issue of Regularization. He prayed for allowing the instant Petition.

Mr. Nadir Khan Burdi, learned Counsel representing the respondent LDA has raised the question of maintainability of the instant petition on the premise that the petition is hit by the principle of *res judicata*; and, is barred by *laches*; that petitioners were contract employees and their services came to an end long ago, and adjudicated properly, thus not entitled to any relief; that all three petitioners had preferred earlier CP No.D-1216/2013 in which consent order was passed with direction to respondent No.3 to constitute a committee and to consider the cases of the petitioners which has already been complied with and rejected their claim of regularization of their services; that petition has been preferred maliciously, thus their case does not fall within the ambit of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013. He lastly prayed for the dismissal of the instant petition.

We have heard learned counsel for the parties and perused the material available on record.

The moot point involved in the present petition is that once the direction contained in the order dated 26.02.2016 passed by this Court in CP No. D-1216/2013 is still intact as the respondents have taken the plea that the case of petitioners could not be regularized for want of vacancy, though their initial appointment is in

the year 2009 & 2012 before the cut-off date of beneficial Act-2013 i.e. 25.3.2013, prima facie, the case of the petitioners ought to have been considered for regularization against the posts they were holding at the relevant point in time, merely saying that there is no vacancy is not ground to nonsuit the petitioners, it amounts denial of the right of regularization of their service, thus they stood automatic regularized in terms of the ratio of the order dated 26.02.2016 as discussed supra for the simple reason that regularization of service is the continuation of appointment.

We have noted that the basic concept of Adhoc and Contract appointments against the regular posts is a stopgap arrangement which is not the permanent character. In our view, every post is required to be filled through the method prescribed by law not otherwise. In the present case, the petitioners are admittedly contingent/ contractual employees of the respondent-authority and thus have asked for a regular appointment, as such their earlier petitions were disposed of with such direction. So far as contract employment is concerned, in our view, the interim order was operating when a certain direction was given to the respondent authority, however, their case for regularization has been kept in abeyance for want of vacancy as portrayed by the respondent authority in their minutes of the meeting of the Committee held on 18.04.2016.

Reverting to the plea raised by learned counsel for the respondent authority that the order passed by this court in their earlier petitions has been complied with and their contempt application has been dismissed. Be that as it may, merely dismissal of contempt application is no ground as the Committee failed to decide the fate of their regularization and took the plea that there was/is no vacancy available for the petitioners. Prima facie, this is hardly a ground not to obey the order passed by this court in its letter and spirit, which needs to be looked into by the competent authority afresh.

In view of the facts and circumstances of the case and for the reasons alluded above, we are of the considered view that the service of the Petitioners is required to be regularized with effect from the date of the order dated 26.02.2016 passed by this Court in CP No. D-1216/2013. The Director-General of respondent Authority is directed to issue their notification of regularization with the budgetary sanction within two weeks from today. Secretary, Sindh Local Government, shall endeavor in this regard accordingly.

This petition stands allowed in the above terms.

Let this order be transmitted to the Director-General Lyari Development Authority and Secretary Sindh Local Government for compliance.

JUDGE

JUDGE