

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D- 6114 of 2014
(Sohail Iqbal and 2 others v. Province of Sindh and 2 others)

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

For hearing of CMA No.10757/2019 (Contempt)

18.02.2022

Mr. J.K. Jiskani, advocate for the petitioner
Mr. Nadir Khan Burdi, advocate for respondent No.2 and 3
Mr. Shahriyar Mahar, AAG

ORDER

This petition was disposed of in terms of the ratio of the order dated 12.11.2018 passed by this court, whereby respondents were directed to consider the case of petitioners for regularization in accordance with the law, with further direction to the extent that if there is no vacancy available in the department, the respondents may then move representation to the Secretary, Local Government for sanctioning of a post so that the petitioners could be regularized in the service strictly in accordance with law as well as rules and regulations. Prima facie, the compliance report submitted by the respondents vide statement dated 20.08.2021 is untenable in the light of the ratio of the order dated 18.02.2022 passed by this court in CP No.D-1526/2017. An excerpt of the order is reproduced as under:

"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.”

The listed application stands disposed of in the terms of order dated 18.02.2022 passed in CP No.D-1526 of 2017.

JUDGE

JUDGE