

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 4769 of 2014

Muhammad Kauser Noor

Petitioner

through

: Mr. Imtiaz Mansoor Solangi advocate

Respondents 1 to 4

Through

: Mr. Ali Safdar Depar, AAG and
Mr. M. Yousuf Alvi, Law Officer of Sindh Public
Service Commission

Respondents 8,10 to 20, 26 to 29,

31 to 35, 37 to 41

through

: Mr. Zubair Ahmed Rajput, advocate

Dates of hearing

: **03.03.2022**

ORDER

Through this petition, the petitioner has assailed the appointments of the private respondents as Information Officer (BS-17) in Information Department, Government of Sindh, inter alia, on the ground that they are not qualified to hold the post; and the post of Information Officer (BS-17), is to be filled through Sindh Public Service Commission (SPSC); that this court vide judgment dated 01.04.2019 in CP No.D-4460/2012 has already directed the Chief Secretary Sindh to scrutinize the recruitment process regarding the appointment for the post of Information Officer in BPS-17 on contract basis by the Information and Archives Department, Government of Sindh and the case of the petitioner is based on the same analogy, as such this petition may be allowed in the same terms.

Learned counsel representing the private respondents has submitted that this petition is not maintainable on the ground that the matter of regularization of contract employees is pending before the Hon'ble Supreme Court of Pakistan in Civil Petition No.735-K/2021 and other connected petitions, wherein the Hon'ble Supreme Court of Pakistan has granted leave to appeal vide order dated 17.06.2021. In support of his contentions, he relied upon the order dated 09.02.2022 passed by this Court in CP No.D-4329/2021, which reads as under:

This petition was disposed of vide order dated 01.10.2021 with the understanding that the petitioners would not press this petition if the respondents are directed to consider the

applications dated 17.10.2021 made by the petitioners about the stoppage of their salary. Four weeks' time was granted to the respondents to do the needful.

Learned counsel for the petitioners being aggrieved by and dissatisfied with inaction of the respondents filed contempt application bearing CMA No.29349/2021, inter alia, on the ground that the alleged contemnor has violated the order dated 01.10.2021 passed by this Court to consider the application of the petitioners for release of their salaries. This matter was taken up from time to time and lastly, it was taken up on 1st February 2022 when Secretary Information submitted a compliance report in respect of order dated 01.10.2021 by placing on record order dated 08.2.2022, whereby application of the petitioners for release of their salaries was considered and rejected. An excerpt of the order dated 08.2.2022 is as under:

"NO.50-COORD(INF)1(I.05)/2021: In pursuance of the Hon'ble High Court of Sindh Order, dated: 01-10-2021, the combined application of 38 Information Officer, dated 17-09-2021 has been considered and rejected, as their salaries have been stopped after the approval of the Chief Minister, Sindh, through a Summary initiated by this department on 17-05-2021."

Learned counsel for the petitioners has objected to the compliance report on the ground that the respondents cannot stop the salaries of the petitioners without passing a final order so far as their basic appointment is concerned. Per learned counsel, they are still on their respective jobs, therefore, under the law rules and regulations, the respondents are under obligation to release their salaries.

At this juncture, learned AAG has pointed out that this Court vide judgment dated 1.4.2019 passed in CP No.D-4460/2012 directed the Chief Secretary to scrutinize the recruitment process regarding an appointment for the post of Information Officer in BPS-17 on contract basis by the Information and Archives Department, Government of Sindh. Per learned AAG, the respondents started scrutinizing the recruitment to the post of Information Officer (BPS-17) and vide findings of the Chief Secretary which reads as under:

"From the perusal of the record and papers provided by the Information Department, it is clear that the Administrative Department has not processed the case for recruitment of Information Officers on contract at any level in accordance with the rules and delayed the process of making reference to Sindh Public Service Commission for regularization of these Information Officers. Besides, the Administrative Department has not presented the factual position before the Honorable High Court."

Learned AAG further pointed out that this court vide common judgment dated 08.4.2021 passed in the case of Anjum Badar v. Province of Sindh through Chief Secretary and others declared that the appointment in BPS-17 could only be made through Sindh Public Service Commission and further added that since the petitioners were appointed on contract basis in BPS-17 under the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, therefore, their combined application dated 17.9.2021 has rightly been considered and rejected with the further assertion that their salary has been stopped after the approval of competent authority i.e. Chief Minister Sindh through a summary initiated by the respondent-department on 17.5.2021. He prayed for dismissal of the contempt application.

Learned counsel for the petitioners has strongly controverted the stance of the learned AAG. Firstly on the ground that the petitioners are still working in the department and their salary cannot be stopped as long as they are in service; the direction of the Chief Minister Sindh to withhold salaries of the petitioners without their removal from service under the law was contrary the law of civil servants. Secondly, so far as the case of Anjum Badar is concerned, the matter is still subjudice before the Hon'ble Supreme Court of Pakistan in Civil Petition No.735-K/2021 and other connected petitions, wherein the Hon'ble Supreme Court of Pakistan has granted leave to appeal vide order dated 17.6.2021. An excerpt of the same is reproduced as under:

"C.M.As No.589-K and 695-K of 2021. These CMAs are allowed and the office is directed to register the civil petitions.

2. Learned counsel for the petitioners contends that the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 (the Act of 2013) is a valid law and was made by competent legislature and is not hit by Articles 240 and 242 of the Constitution of the Islamic Republic of Pakistan, 1973. Further contends that the Act of 2013 is made under Article 240 and in this regard has relied upon the judgment of this Court in the case of Inspector General of Police, Punjab, Lahore and others vs. Mushtaq Ahmad Warraich and others (PLD 1985 Supreme Court 159).

3. The submissions made by the learned counsel for the petitioners require consideration. Leave to appeal is granted to consider, inter alia, the same. The appeals shall be heard on the available record but the parties are allowed to file

additional documents, if any, within a period of one month. As the matter relates to service, the office is directed to fix the same, expeditiously, preferably, after three months.

Prima facie, the salaries of the petitioners cannot be stopped as they are still working in the respondent department. It is well-settled law that until and unless the civil servant is removed from service under the law, his salary cannot be stopped.

We, in the given circumstances, direct the respondents and the Finance Department to release the salaries of the petitioners forthwith and they will continue to disburse their salaries as long as they are on the payroll of the respondent department. However, it is made clear that if the respondents intend to dispense with their service, they are required to adopt the legal course under the laws. We have been informed that the matter of appointment in BPS-17 under the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, is still sub-judice before the Hon'ble Supreme Court of Pakistan in the aforesaid matters, therefore, the respondents should lay off their hands till the decision of the Hon'ble Supreme Court of Pakistan on the subject issue. The contempt application stands disposed of in the above terms."

Learned AAG has submitted that this Court vide common judgment dated 08.04.2021 passed in the case of Anjum Badar v. Province of Sindh through Chief Secretary and others, declared that the appointment in BPS-17 could only be made through Sindh Public Service Commission and further added that since the petitioners were appointed on contract basis in BPS-17 under the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, therefore, their case is akin. He further submitted that their salary was stopped under the approval of the competent authority, however, by order dated 09.02.2020 passed in CP No.D-4329/2021, their salary has been released. He further pointed out that since the matter is sub-judice before the Hon'ble Supreme Court on the subject issue and as such this matter may be adjourned sine die till the decision on the subject petition.

The proposal of learned AAG seems to be reasonable, we, in the circumstances of the case, deem it appropriate to wait for the decision of the Hon'ble Supreme Court in Civil Petition No.735-K/2021 and other connected petitions.

The matter is adjourned to be fixed after the decision of the Hon'ble Supreme Court in the aforesaid Civil Petition.

JUDGE

JUDGE

Nadir*