

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI

Before:
Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D-391/2018
Constitutional Petition No. D-887/2018

Fayyaz Khan & others,
Petitioners in C.P. No.391/2018
and **Hassan Zada & another**
through:

Mr. Imran Khan, advocate

Respondent No.1 in both
petitions through:

Mr. Muhammad Nishat Warsi, DAG.

Respondents No.2&3 in
both petitions
through:

Mr. Kashif Nazeer, advocate.

Date of hearing:

29.04.2021

ORDER

ADNAN-UL-KARIM MEMON, J: Through these Constitutional Petitions filed by the petitioners under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, they have prayed that their contingent/contractual/ work-charge appointments/services be regularized in respondent- Directorate of Training and Research (Customs, Excise & Sales Tax) Karachi without discrimination, with a further assertion, that they have already served in respondent- Directorate for a considerable period; and, they have the legitimate expectation for appointment on regular basis.

2. Brief facts of the case are that the petitioners have been working on different low-grade posts since 2006 and onwards on a contingent / contractual/ work-charge basis with the respondent-Directorate. Despite working for more than 18 years, the services of the petitioners, as well as other work-charge employees posted at Custom House Karachi, were not regularized by the respondent department. The petitioners have averred that they are fulfilling the required educational qualification; and, the respondents have also extended the period of their service after the expiry of the initial period of their appointment. The petitioners alleged that they have been performing their services without any break to the satisfaction of the respondent-directorate and prayed for acceptance of these petitions and their regularization in services, in accordance with law.

3. Mr. Imran Khan, learned counsel for the petitioners, has argued that respondent No.1 issued office memorandum No.10/30/2008-R.II dated 29.8.2008, whereby all employees from BS-1 to BS-15 were directed to be regularized in the

service of the Federal Ministries/Divisions/Attached Departments, Subordinate Offices, Autonomous, and Semi-autonomous Bodies/Corporations. He further argued that the Cabinet Committee in its meeting held on 29.08.2012 decided that contract employees, including of respondent-Federal Board of Revenue, who have completed one year of satisfactory service be regularized; the daily wages workers employed for 89 days (one spell) and completed three spells of their services shall be regularized. The petitioners are also entitled to regularization from the date of their induction in the respondent's service. Learned counsel emphasized that the regularization of service is not initial recruitment but is confirmation of existing employment. In support of his contentions, he relied upon the cases of Board of Intermediate and Secondary Education, Faisalabad through Chairman and others v. Tanveer Sajid and others (2018 SCMR 1405), and Muhammad Ali Shah and 45 others v. Federation of Pakistan and 5 others (2021 PLC (CS) 295). He lastly prayed for allowing the instant petitions.

4. The respondents were put to notice, who contested both these petitions by filing their para wise comments, wherein, they denied the right of the petitioners to be regularized in service of the respondent-directorate, on various legal as well as factual grounds. They asserted that the appointment of the petitioners was purely temporary / contingent/need base and discontinued and, now they cannot claim continuity in their service without break nor confirmation or regularization against such a temporary post. They further asserted that they were paid through a remuneration bill up to December 2015. They further stated that the petitioners being daily wages employees have no vested right to claim regularization as held by this Court in the case of Irfan Ali & others vs. Province of Sindh and others (2015 PLC(CS)1364. Learned counsel for the respondent-Directorate has referred to the parawise comments and documents attached with and argue that the petitioners are no more employees of respondents, therefore, they cannot come forward to claim their extension of contract or regularization thereto. He prayed for dismissal of the instant petition on the aforesaid grounds.

5. Arguments of learned counsel for the petitioners, learned DAG appearing on behalf of the Federation of Pakistan and learned counsel representing Directorate of Training and Research (Customs, Excise & Sales Tax) Karachi, heard and record perused with their assistance.

6. The record would show that the petitioners have been appointed by the respondents as contingent paid staff against the various posts, referred to above, and since their appointment in the years 2006 to 2009, they have been performing their duties and after the expiry of the initial period of their service, the respondents extended the said period, however, their services were not regularized on the sole ground that they were contingent paid staff and their services could not be regularized notwithstanding the availability of sanctioned

posts and the budget thereof. It is also noteworthy that the respondents have also not disputed the performance of the petitioners, however, they only stated that they are no more in touch with them, thus nothing could be said in their favour.

7. Primarily, the superior Courts have always disapproved of the practice of continuous service on a temporary/contract/daily wages/contingent paid staff basis for a long period. The issue involved in the present petitions has already been set at naught by the Honorable Supreme Court in the cases titled 'Board of Intermediate and Secondary Education, Faisalabad through Chairman and others v. Tanveer Sajid and others' (2018 SCMR 1405), relied upon by the learned counsel for the petitioners, wherein, after making threadbare and exhaustive discussion, the Honorable Supreme Court has observed that:

“7. This Court in the case of Dr. Anwar Ali Sahto v. Federation of Pakistan (PLD 2002 SC 101), held that even contract employees could be reinstated in service in appropriate cases if such appointment had become permanent by efflux of time. A similar view was taken in the case titled as Abdul Sattar v. Sui Northern Gas Pipelines Limited (2001 SCMR 1935). In the case of Ikram Bari v. National Bank of Pakistan (2005 SCMR 110) the Court after relying upon the afore-noted judgment held that persons, who have served for more than three years, without a break of more than 15 days, are entitled to regularization of their services. Relevant portion from the said judgment is reproduced below:-

"15. It is difficult to countenance the approach of the Bank that the temporary Godown staff and the daily wages employees should be continued to be governed on disgraceful terms and conditions of service for an indefinite period. In view of section 24-A of the General Clauses Act 1897, the National Bank was required to act reasonably, fairly and justly. An employee being jobless and in fear of being shown the door had no option but to accept and continue with the appointment on whatever conditions it was offered by the Bank. ...

18. In our view, the conditions of three years length of service with not more than 15 days break between the consecutive appointments and termination of service imposed by the Tribunal for regularization of service of employees are quite reasonable and are also in line with the policy decisions taken by the Bank itself from time to time"

In the case of Ejaz Akbar Kasi v. Ministry of Information and Broadcasting (PLD 2011 SC 22), contract employees of PTV Corporation who approached this Court for regularization of their services on the ground that they had worked for many years on contract basis, therefore, deserved to be considered for regularization, were directed to be regularized. The review petition filed against the said judgment was dismissed. In the case of Pir Imran Sajid v. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan (2015 SCMR 1257) this Court held as under:-

"6. Admittedly, all the appellants have been serving TIP in their respective position since about last more than twelve (12) years, though on contract basis, however, renewal of their contracts on year to year basis since the inception clearly shows that the nature of their jobs/duties is permanent and not casual or temporary, and that the appellants have been performing their functions/duties to the satisfaction of their employer and further that throughout the whole period their services were required, and have remained useful for and beneficial to the organization. There is no allegation of any misconduct or incompetence against the appellants, rather they have been granted increments from time to time. It has also not been, and indeed, in

the facts and the circumstances of the case, could not have been, claimed that the posts held by the appellants and the work carried out by them was of a temporary nature. ...

9. It is now well established that right to life as envisaged by Article 9 of the Constitution, includes the right to livelihood and as laid down in the case of Abdul Wahab (supra), the "right to livelihood, therefore, cannot hang on to the fancies of individuals in authority." Certainly, as has further been held in the said judgment; "it shall unmistakably be permissible that the employment of an employee can be brought to an end, but obviously in accordance with law", whereas in the present case, and as observed earlier, there was/is no justification for not making their employment permanent, and for keeping their entire career, rather livelihood exposed and susceptible to the whims of the authorities, which also hurts the dignity of the appellants.

10. Indeed the service/employment rules of TIP are non-statutory, but such does not prevent the appellants from seeking implementation of the decision/order of the Federal Government/ministry for their regularization.

11. It hardly needs to be emphasized that the whole edifice of governance of the society has its genesis in the Constitution and laws aimed at to establish an order, inter alia, ensuring the provisions of socio-economic justice, so that the people may have guarantee and sense of being treated in accordance with law that they are not being deprived of their due rights.

13. Looking through the above constitutional prism and keeping in view the facts that the federal government which owns, controls, manages and finances TIP has directed TIP to regularize the appellants, and that admittedly the appellants have initially been appointed in an open and transparent manner and after the vacancies were advertised in the newspapers, one cannot escape the conclusion that the appellants ought to have been regularized."

In another case (H.R.C. No. 16360/2009), this Court took suo motu notice of non-regularization of Lady Health Workers and other staff working in the Province of Punjab for many years and directed the concerned authorities to regularize their services. Thereafter, pursuant to the order of this Court (passed in CrI. Original Petition No. 15/2012 in H.R.C. No. 16360/2009), the services of Lady Health Supervisors, Accounts Supervisors, Lady Health Workers, Drivers and other PMU Staff of the National Programme for Family Planning and Primary Healthcare Punjab were regularized vide Notification dated 29.7.2016.

8. Turning to the instant case, the respondents-employees have been working with the petitioner-BISEs for a long period of time ranging between 3 to 12 years, as mentioned in the impugned judgments by the learned High Court. Though they were initially appointed for a period of 89 days but after the expiry of said period, their contracts were renewed from time to time for further periods of 89 days at a time with an artificial break of 1 or more days. It seems that the motive behind such artificial break was to avoid regularization of their services on the pretext that they were not continuously in service. Since the respondents were in service for a long time, it clearly shows that the posts they were occupying were permanent in nature and not casual or temporary. It further indicates that the services of respondents were not only required but also beneficial to the department and that they (respondents) had been performing their duties with due diligence to the satisfaction of the authorities. Noting has been placed on the record that may show anything to the contrary.

9. With regard to the submission that the respondents have not appeared in the written test through NTS, suffice it to say that the respondents are mostly Class-IV employees and inducted in service many years ago. As such, at the time of their recruitment there was no requirement of appearing in the said test. Further, while working on the respective posts,

their performance was satisfactory and for that reason their contracts were renewed from time to time. It has not even been alleged that the performance of any of the respondents was below par. In such a situation, the superior Courts have always exercised their extraordinary constitutional jurisdiction with compassion and in favour of the employees. Needless to observe that the Federal as well as the Provincial Governments have regularized hundreds of daily-wagers, work-charge and contract employees working in various Departments and Organizations. Thus, on the basis of the above, we are in complete agreement with the learned High Court that the respondents-employees are entitled for regularization of their services.”

8. At this moment in time, the petitioners hinge on the minutes of the meeting of the Cabinet Committee dated 29.08.2012, which prima facie show that contract employees who have completed one year of satisfactory service are required to be regularized and the names of petitioners are also appearing in the list of employees of the Directorate General of Training and Research (Customs) Karachi (page 149 to 173).

09. Thus, while considering the case of the present petitioners in the light of the law laid down in the aforementioned cases, particularly, the BISE, Faisal Abad's case (Supra), as well as the decision of the Cabinet Committee dated 29.8.2012, this Court concludes that they are 'similarly placed' with the employees of the other departments and entitled to the same treatment as extended to them.

10. In the wake of the foregoing discussion, the petitions are disposed of with the directions to respondent No.2 to consider the case of petitioners for regularization of their services in terms of the Cabinet Sub-Committee decision dated 29.8.2012 and more particularly in the light of ratio of the judgments of the Hon'ble Supreme Court as discussed in the preceding paragraphs. The aforesaid exercise shall be completed within two months from the date of order of this Court. The pending applications are also disposed of.

JUDGE

JUDGE

Nadir