

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D – 4609 of 2019

Mr. Asadullah & 06 others

Versus

Province of Sindh and 02 others

Date of hearing & order : 07.05.2021

Ms. Benazir Behan, advocate for the petitioners.

Mr. Ali Safdar Depar, AAG.

ORDER

ADNAN-UL-KARIM MEMON, J. Through this order, we intend to decide the captioned petition, whereby the petitioners have prayed for regularization of their services in Reforms Support Unit (RSU) a World Bank Program as Data Entry Operator, Programmer, Web Application Developer/ Management Officer, Data Processing Assistant and Consultant.

2. The necessary facts giving rise to this lis are that the petitioners were contractual employees of RSU. They were working on temporary project posts in the project of the Education Department, Government of Sindh. It was clear from the outset that the project was expired after a certain period, after which the petitioners were to be relieved from their services. The term of the project expired and on such expiry, the petitioners were relieved by RSU. Upon being relieved from their services and denial of their request they have approached this Court.

3. At the outset, we asked learned counsel to satisfy this Court about the maintainability of this petition on the ground that the petitioners were working on the project and the project stood expired and they were relieved from the subject project.

4. To reply to the query, the main arguments advanced by the learned counsel for the petitioners that they were appointed in the year 2014-2015 through a competitive process under the World Bank's Guidelines. Learned counsel emphasized that they have been performing their duties with the entire

satisfaction of their employer, hence their contract extended from time to time. Learned counsel pointed out that respondent No.2 floated a summary on 20.11.2014 to the competent authority, highlighted the importance of the performance of the Information Technology Professionals in IT Data Centre and proposed for the creation of other regular technical posts, which was approved by the worthy Chief Minister Sindh; and, the petitioners continued working on regular posts. Learned counsel asserted that despite the decision of the Provincial Cabinet dated 29.03.2018 for regularization of the contract employees, but the benefit of the same has not been given to the petitioners which are the denial of their fundamental rights. In support of her case, she relied upon in the case of Board of Intermediate and Secondary Education Faislabad through Chairman and others v. Tanveer Sajid and others, **2018 SCMR 1405**, and argued that the Hon'ble Supreme Court has deprecated the practice of keeping the employees temporarily for a long period without confirming or regularizing their services. She further argued that an employee being jobless has no option but to accept and continue with the appointment on whatsoever terms is offered by the employer. She averred that the petitioners with the hope and legitimate expectation for confirmation of their services were performing their duties up to satisfaction, which was time and again recognized by the respondent –RSU. It is urged that right to life as envisaged by Article 9 of the Constitution, includes the right to livelihood and as laid down in various pronouncements of the Hon'ble Supreme Court. Learned counsel insisted that they submitted a joint application dated 11.1.2019 to the competent authority of respondents, requesting for their adjustment against the vacant sanctioned posts in the Data Centre in the Directorate of Human Resource and Training, later on, one of the petitioners was recommended for rehiring; since the above recommendations were not finalized, therefore, they moved a fresh application for their adjustment but to no avail. Per petitioners, respondent No.2 had sent emails regarding the termination of their contract, but no correspondence via courier service has been made as such they are still entitled to continue their job on a regular basis in the light of Cabinet decision as discussed supra and on the basis of various pronouncements of the Hon'ble Supreme Court on the subject, more particularly in the cases of Dr. Anwar Ali Sahito v. Federation of Pakistan, **PLD 2002 SC 101**, and Ikram Bari v. National Bank of Pakistan, **2005 SCMR 110**. Learned counsel for the petitioners has conceded that the petitioners were appointed after the enactment of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, and has heavily relied upon Para 9.10 (b) of the minutes of the meeting of Provincial Cabinet held on 29.3.2018

and argued that Provincial Cabinet has decided to regularize the contract employees vide letter dated 18.04.2018; they fulfil the criteria and are qualified for the job; and, they are working to the satisfaction of the respondent-department. She finally seeks direction to the respondents to regularize their services against the posts held by them and in the meanwhile, they may be directed to release their legal dues emoluments.

5. We have heard the learned counsel for the parties at considerable length and have gone through the record with their assistance.

6. The question of law that falls for the determination by this Court is whether the project employees could be regularized after the expiry of the project?

7. To appreciate the aforesaid proposition, we have to look into the meaning of the project. In regular terms, the word “project” indicates any endeavour which is for a definite period and upon the completion of the said project, employees who were hired for that definite period have to be relieved from their duties. In this regard, reliance is placed on Pakistan Railways through Chairman Islamabad and another v. Sajid Hussain and others, 2020 SCMR 1664, which discusses the word “project”. The relevant portion of the said judgment is reproduced below:

“In ordinary terms, the word ‘project’ is used to denote any undertaking which is for a limited period and after the objective for which the said project has been set up is achieved, funding for the same dries up and employees who are hired for a limited time period for duration of the project have to be relieved from their duties owing to the fact that the project has concluded, the funding has ceased and the very basis on which such employees were hired has come to and end.”

8. At this stage, learned AAG invited the attention of his statement dated 13.4.2021; and, referred to para wise comments filed on behalf of respondents and argued that the services of the petitioners were hired through a third party, on the contract basis, funded by the World Bank. He pointed out that it was explicitly mentioned in clause-v of the contract agreement that such contractual services could not be regularized into Government services. Per learned AAG, the petitioners’ services were terminated as per the mutual agreement signed in 2018 between RSU and petitioners; however, certain individuals were rehired for rapping up the SERP-II Project till 31.03.2019 from the date of expiry of their contractual agreement which is 31.12.2018. In support of his contentions, he

relied upon the contract agreement for consultancy and notification dated 14.02.2019. On the point of summary moved to the worthy Chief Minister Sindh for creation of new posts of officers/ ministerial staff for Data Centre in Education Department, he submitted that it was mentioned in the summary that the petitioners 1, 2, 5 & 7 were paid on services rendered basis.

9. We have noticed that the arguments advanced by learned AAG that the petitioners were employees of RSU and they were never appointed by the Government of Sindh, School Education and Literacy Department, on the regular basis as is evident from their appointment letters, therefore, their cases do not fall within the ambit of Section 3 of The Sindh (Regularization of Adhoc and Contract Employees) Act, 2013.

10. We have also noticed that there is no continuation of the project. This very fact that the project in which the petitioners are alleged to have been appointed is no more in existence; and, such project having not been taken over by the Sindh Government on the non-development side, thus we are unable to understand as to how the petitioners could be regularized on the subject posts when the very project was not in existence.

11. The decision of the Hon'ble Supreme Court of Pakistan cited by her is altogether on a different subject, whereas in the subject matter there is no directive of the Provincial Cabinet in its meeting held on 29.03.2018 about the regularization of the service of the petitioners, prima-facie they do not fulfil the criteria and eligibility for regularization of their job. An excerpt of the minutes of the meeting of the Provincial Cabinet held on 29.03.2018 is reproduced as under:

“ Para 9.10(b): The Cabinet also decided in principle to direct all the Departments to initiate the process of regularization of the contract employee, if they fulfill the criteria, are qualified for the job and they are working to the satisfaction of the respective Departments. ”

12. It is apparent that the cases of petitioners fall outside the ambit of the Act of 2013 as discussed supra on the premise that they were all hired against the project post after the cut-off date i.e. 25.3.2013. Such employees could not by any stretch of the language of the Act be termed or treated as employees hired by the Government of Sindh on regular basis. On the aforesaid proposition, we are fortified with the decisions of the Hon'ble Supreme Court in the cases of the Government of Khyber Pakhtunkhwa v. Jawad Ali and others, 2021 PLC (CS) 341 and an unreported order dated 12.04.2021 passed in Civil Petitions

No.590, 671 and 96 of 2021, therefore, no further deliberation is required on our part on the subject.

13. It is well settled now that regularization is always subject to the availability of post and fulfillment of recruitment criteria. Besides it is well-settled law that a contract employee is debarred from approaching this Court in constitutional jurisdiction, in the light of the law laid down by the Hon'ble Supreme Court of Pakistan in the case of Qazi Munir Ahmed versus Rawalpindi Medical College and Allied Hospital and others, **2019 SCMR 648**.

14. Before parting with this order, we may observe that the Provincial Cabinet is well within its powers to frame policy, however, subject to the law. It is well-settled that if a policy manifestly inconsistent with the Constitutional commands, retrogressive in nature, and discriminatory inter se the populace is not immune from judicial review. Prima-facie the decision of the Cabinet dated 29.3.2018 does not cover the case of the petitioners under Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, as their appointment is after enactment of the said Act i.e. 25.3.2013.

15. The petitioners, in our view, have failed to make out their case for regularization of their service as their case is neither covered under Section 3 of Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, nor falls within the ambit of Policy of Government of Sindh, therefore, the instant petition is hereby dismissed along with the pending application(s) with no order as to costs.

J U D G E

J U D G E

Nadir