

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

Mr. Justice Naimatullah Phulpoto  
Mr. Justice Adnan-ul-Karim Memon

**Constitutional Petition No.D-5503 of 2019**

**Abdu Ahad Shaikh  
& 36 others;**

Petitioners through : Mr. Zamir Hussain Ghumro, advocate

Respondents  
through : Mr. Ali Safdar Depar, AAG along with Dr.  
Jamaluddin, Chairman, Shaheed Benazir Bhutto  
Housing Cell.

Date of hearing : **25.04.2022**

Date of order : **10.05.2022**

**ORDER**

**Adnan-ul-Karim Memon, J.** Petitioners have approached this Court for regularization of their service in Shaheed Benazir Bhutto Housing Cell (**SBBHC**).

2. Mr. Zamir Hussain Ghumro, learned counsel for the petitioners, has argued that Provincial Cabinet has decided to regularize the contract employees vide letter dated 18.04.2018; petitioners fulfilled the criteria and are qualified for the job to continue; and, they are working to the satisfaction of the respondent- SBBHC. He emphasized that the decision of the Cabinet is binding upon the respondents to regularize the services of the petitioners as their case falls within the ambit of policy decision as discussed supra. He urged that under the constant policy of other Provincial Governments to regularize the services of contractual employees working in different projects of the Government and because of their qualification and performance they have the legitimate expectancy of being regularized; and, the respondents are violating the fundamental rights of the petitioners guaranteed under Articles 2, 3, 4, 9, 10-A, 11, 14, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. He emphasized that the petitioners are well qualified and have requisite experience after the initial appointment, in terms of The Sindh Civil Servants Act, 1973 and rules framed thereunder. He further argued that employment is the source of livelihood and the right of livelihood is an undeniable right to a person, therefore, the petitioners who have served the respondent- SBBHC, for such a long period would deserve to be given a fair chance of regularization in the given situation; that on account of their experience of the subject posts, they are fit and qualified to retain the said posts on regular basis. Besides, as the cases of the petitioners squarely fall within the ambit of the non-development project side posts, thus their services are to be treated regularly. In support of his contentions, he relied upon the cases of *Pir Imran Sajid and others versus Managing Director/Regional Manager (Manager Finance) Telephone Industries of Pakistan, 2015 SCMR 1257*, *Ahmad Din and another v. Government of Khyber Pakhtunkhwa Agriculture, Live Stock and Cooperatives Department Peshawar through Secretary and 03 others, 2014 PLC (CS) 806*, and

**unreported order of this Court dated 22.02.2022** passed in CP No.D-7528 of 2018 and CP No.D-4291 of 2020. He lastly prayed for allowing the instant petition.

3. We have heard learned counsel for the parties and carefully examined the record and case law cited at the bar.

4. Basically, the object of recruitment to any service or post is to secure the most suitable person who answers the demands of the requirements of the job. Regular appointments are made as per rules. The concept of Regularization means to make regular. Once the services are regularized, the appointment can become substantive (i.e. permanent) and cannot be terminated without giving a reasonable opportunity of being heard. Normally the appointments are made in a prescribed manner, but exigencies of work may sometimes call for making appointments on adhoc or temporary basis. The concept of adhoc appointments means appointments for special and particular to last for a particular period. An Adhoc appointment made and continued from time to time does not get automatically regularized. There are judgments of the Hon'ble Supreme Court on the subject that if an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his/her case for regularization provided he/she is eligible and qualified according to the rules and his/her service record is satisfactory and his/her appointment does not run counter to the policy of the Government. The right of regularization of a person appointed on a purely contractual basis would depend on the expressed and/or implied terms of the contract. A person appointed on a purely contractual basis by the Government on the specific express condition that his/her services shall be liable to be terminated at any time without giving any notice or assigning any reason and that the tenure of the appointment is for a limited period and would not have any right to be absorbed in regular cadres has no right to be absorbed permanently. Besides that merely, the length of ad hoc, temporary, and/or contract/casual employment is no ground to regularize the service and to convert it into permanent service and such appointees do not acquire any right enforceable by the Court of law.

5. Per learned AAG, the main object of Shaheed Benazir Bhutto Housing Cell is to provide a home to poor and needy people in the Province of Sindh. He emphasized that the question of regularization of service of the petitioners could only arise when their appointment was made in regular mode of service rules, prescription of a qualification. He also submitted that regularization of service could be made when persons worked for a long period of more than a decade, however subject to the law. At this juncture, we asked the Chairman SBBHC who is present in Court, whether the petitioners were appointed through the competitive process in SBBHC; and appraise this Court about the legal status of SBBHC. He submitted that petitioners were appointed in December 2016 on a contract basis and their contract had long ago expired on 31.12.2020, therefore, they were relieved from their respective positions since 01.01.2021, as such no further indulgence of this Court is required on the issue of regularization of their services. About the status of SBBHC, he submitted that in the year 2016 SBBHC was just a Housing Cell created by way of a Summary floated to the competent authority, however, in the year 2017 SBBHC got the status of the attached department of Sindh Local Government in terms of the Sindh Government Rules of Business, 1986. At this stage, the

learned counsel for the petitioners has submitted that since SBBHC has been converted into a non-development side by legalizing the Housing cell, the petitioners were appointed on a contract basis and were in employment/service for several years and Project on which they were appointed have also been taken on the regular Budget of the Government of Sindh, therefore, their status as Project employees has ended once their services were transferred to the attached Department of Government of Sindh, in terms of the Sindh Government Rules of Business, 1986. The Government of Sindh is required to treat the petitioners at par, as it cannot adopt a policy of cherry-picking to regularize the employees of certain other Projects while terminating the services of other similarly placed employees, therefore, the services of the petitioners need to be regularized in terms of the ratio of the judgment passed by the Honorable Supreme Court in the case of Government of KPK through Secretary, Agriculture v. Adnanullah and others **2016 SCMR 1375**. In the alternative, he requested that the petitioners shall continue to hold the posts on which they are serving at present under the orders of this Court, till the life of the project as per condition laid down therein.

6. As per the statement of Chairman SBBHC, at the time of the initial appointment of the petitioners, there was no legal status of the SBBHC. If this is the position of the case, the Government of Sindh, being the custodian of public money, continued to hire the services of the petitioners on contract in different lower and higher grades without budgetary sanction. Primarily Government of Sindh was/is under a constitutional obligation to protect the fundamental rights of the public at large as per the judgment of the Hon'ble Supreme Court in the case of Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others, (**PLD 2012 SC 132**). The Superior courts are bound to protect the fundamental rights of citizens in the exercise of the jurisdiction conferred via Article 199 of the Constitution. The Honorable Supreme Court in the case of Action against Distribution of Development Funds by Ex-Prime Minister (**PLD 2014 Supreme Court 131**), has settled the aforesaid proposition, after a detailed consideration of the different Articles of the Constitution of the Islamic Republic of Pakistan and the applicable rules.

7. Coming to the issue of regularization of the services of the petitioners in SBBHC, we may observe that mere long service is no ground for regularization of service, as the regularization of service has to be supported by the legislation and policy decision and is not an automatically accruing right, both the factum are admittedly missing in the instant case. It is well settled now that regularization of service is always subject to the availability of posts with budgetary provision and fulfillment of recruitment criteria. As such, the petitioners merely rely on the fact that other persons of different departments of the Government of Sindh have been regularized under the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 and Cabinet decision so should they be considered accordingly, which is not a legal ground per se, for the reason that the Provincial Cabinet is well within its powers to frame policy, however, subject to the law. It is well-settled law that if a policy is manifestly inconsistent with the Constitutional commands, retrogressive in nature, and discriminatory inter-se the populace is not immune from judicial review. The decision of the Cabinet dated 29.3.2018

does not cover the case of the petitioners as well as under Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, as their appointment is after the promulgation of the said Act i.e. 25.3.2013. The decision of the Hon'ble Supreme Court of Pakistan in the case of Pir Imran Sajid and others, cited by the learned counsel is altogether different on the premise that the names of candidates were specifically recommended for regularization by the Cabinet, 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 fulfill the criteria and eligibility for regularization of their job on the aforesaid analogy. On the proposition of contractual appointments and regularization of service of employees, the judgments of the Hon'ble Supreme Court of Pakistan are providing guiding principles in the cases of Government of Baluchistan V/S Dr. Zahida Kakar and 43 others (2005 SCMR 642), Dr. Mubashir Ahmed V/S PTCL through Chairman, Islamabad, and another (2007 PLC CS 737), Abid Iqbal Hafiz and others v. Secretary, Public Prosecution Department, Government of the Punjab, Lahore, and others, PLD 2010 Supreme Court 841, Federation of Pakistan v. Muhammad Azam Chattha (2013 SCMR 120), Muzafar Khan & others V/S Government of Pakistan & others (2013 SCMR 304), Abdul Wahab and others v. HBL and others (2013 SCMR 1383), Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and others, 2017 SCMR 1979, Raja Iviz Mehmood and another v. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others, 2018 SCMR 162, Qazi Munir Ahmed versus Rawalpindi Medical College and Allied Hospital and others, 2019 SCMR 648, Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals, 2019 SCMR 984, Province of Punjab through Secretary Agriculture Department, Lahore, and others Vs. Muhammad Arif and others (2020 SCMR 507), and Miss Naureen Naz Butt vs Pakistan International Airlines and others (2020 SCMR 1625).

8. In principle where a contractual employee wishes to be regularized, he must demonstrate the statutory basis for such a claim, in the absence of which, extraordinary relief under Article 199 of the Constitution of Pakistan, 1973, cannot be granted, solely on the principle of similarly placed employees. The Honorable Supreme Court in its various pronouncements has emphasized that such a course of action would be tantamount to making one right out of two wrongs which is not permissible in the law. Primarily, this Court under Article 199 of the Constitution has to interpret the law and apply it in letter and spirit and cannot go beyond what the law is, and what interpretation permits. In such a situation this Court lacks the jurisdiction to provide relief under Article 199 of the Constitution. On the aforesaid proposition, we are guided by the decisions of the Honorable Supreme Court in the cases of Muhammad Ishaque v. Province of Sindh through Secretary and 4 others, 2021 PLC (CS) 51, Syed Muhammad Ali Asad Jaffery v. Province of Sindh, through Secretary, Local Government Tughlaq House Karachi and 2 others, 2018 PLC (CS) Note 162, Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock and Cooperative Department Peshawar and others, 2022 PLC (CS) 164, Muhammad Ali and 11 others v. Province of

KPK through Secretary, Elementary and Secondary Education, Peshawar and others, 2012 SCMR 673, Deputy Director Finance and Administration FATA through Additional Chief Secretary FATA, Peshawar and others, 2022 SCMR 566 and Government of Khyber Pakhtunkhwa through Secretary Forest Peshawar and others v. Sher Aman and others, 2022 PLC (CS) 164.

9. During the hearing, learned AAG referred to the statement dated 15.03.2022 and submitted that the respondent department floated a summary for the Chief Minister Sindh about anomalies in the contractual recruitment process conducted in December 2016 in the Housing Cell and recommended for termination of the contractual service of the staff hired in the excess of the vacant posts. He also informed that the competent authority is contemplating extending the contractual service of the petitioners in the Housing Cell. Be that as it may, it is for the competent authority to look into the matter at their end under law.

10. For the aforesaid reasons, the petitioners, in our view, have failed to make out their case for regularization of their service in SBBHC; therefore, the instant petition is hereby dismissed along with the pending application(s) with no order as to costs.

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