

IN THE HIGH COURT OF SINDH KARACHI

Before:

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

Constitutional Petition No.D-69 of 2022

(Agha Shoaib Abbas and 06 others v. The Province of Sindh and 04 others)

Syed Ali Ahmed Zaidi, advocate for the petitioners
Mr. Ali Safdar Depar AAG alongwith Azeem Shah, Director/Law Officer,
Information Department, Government of Sindh.

Date of hearing &
Order : **12.04.2022**

ORDER

The Petitioners have called in question the vires of the minutes of the second meeting of Scrutiny Committee-I about the regularization of contract employees of Weekly Magazine `Sindh Manzar` of Information Department, Government of Sindh, whereby the Committee after perusal of available record and thorough discussion concluded as under:

- i. The posts of the incumbents were advertised and they were appointed with the approval of the Competent Authority. However, minutes of the Selection Committee are not available on record to properly assess and evaluate the recruitment process.
 - ii. The services of the incumbents were hired on contract basis on fixed pay, and they have been drawing fixed salaries from the sanctioned budget of lumpsum amount under head of account "A03919-1 Payment of Other for services rendered-Others.
5. After careful evaluation on case to case basis, the Scrutiny Committee recommended as under:
- a. 22 employees, who do not meet the eligibility criteria in terms of qualification, experience, age, or those who have left service or resigned are not recommended for regularization
 - b. 07 employees, who meet the required criteria can be regularized against equivalent vacant posts of BPS-1 to BPS-8 in the Department
 - c. Regularization orders of eligible persons may be issued after verification of education testimonials from the concerned institutions"

2. It is, *inter alia*, contended on behalf of the petitioners that this Court vide judgment dated 11.10.2018 passed in CP No.D-527/2018, directed the competent authority of the respondent department to take a fresh decision for regularization of the service of the petitioners and others, without discrimination, however, subject to budgetary sanction, their qualification, and eligibility; learned counsel further contended the candidature of 22 employees including the petitioners was rejected on the premise that petitioner lacked the eligibility criteria for regularization. He next contended that the contractual employees cannot be subjected to discriminatory treatment; that Petitioners are entitled to similar treatment in respect of regularization under which their similarly placed colleagues have been regularized; that the Petitioners are qualified persons to hold the subject posts. Learned counsel further

submitted that the decision of the respondent is liable to be reversed in terms of the ratio of the judgment dated 11.10.2018 passed by this court in CP No.D-527/2018. He also prayed that endorsement of the competent authority on the summary dated 16.1.2020 may be declared nullity in the eyes of law. For convenience sake, an excerpt of the judgment dated 11.10.2018 is reproduced is as under:

"13. In view of the peculiar facts and circumstances of the present case, while invoking the jurisdiction conferred upon this Court under Article 199 of the Constitution, we hereby declare the impugned action/orders of the official Respondents to fix the period of service of the petitioners i.e. 30.6.2018 to be in violation of strict and prohibitory command as contained under Article 25 of the Constitution, more particularly, in view of decisions rendered by the Honourable Supreme Court of Pakistan and this Court in the cases of Dr. Iqbal Jan & Ors Vs. Province of Sindh & others (2014 PLC (C.S) 1153, Dr. Bashir Ahmed & Ors Vs. Province of Sindh & others (2016 PLC (C.S) 179), Bakht Siddique Vs. Federation of Pakistan (2017 PLC (C.S) 1192), Rizwan Javed Vs. Secretary of Agriculture Livestock (2017 PLC (C.S) 712 [FB]), Government of KPK Vs. Adnan ullah (2016 SCMR 1375 [FB]), PSO Vs. Bakht Siddique (2018 SCMR 1181), Sikandar Ali Malik Vs. Province of Sindh in CP No.D-4751/2016 (unreported judgment), Board of Intermediate & Secondary Education Faislabad Vs. Tanveer Sajid & Ors (2018 SCMR 1405) & Unreported Judgment dated 22.02.2018 passed in CP No.D-2598/2016 Rashid Ali Memon Vs. Chief Secretary and others, because the Petitioners have been treated with sheer discrimination, which cannot be approved on any premise whatsoever.

14. In the light of facts and circumstances of the case discussed above the instant Petition is hereby disposed of with directions to the Competent Authority of the Respondent-department to take a fresh decision so far as the matter of the Petitioners is concerned for regularization of their service, without any discrimination, in accordance with law subject to the budgetary sanction, qualifications and eligibility of the Petitioners and this exercise shall be completed within a period of two months from the date of receipt of this Judgment.

15. Petition stands disposed of in the above terms along with the listed application(s)."

3. Learned AAG has referred to the para-wise comments filed on behalf of the Secretary Services, General Administration and Coordination Department, Government of Sindh and submitted that the services of 39 contract employees have been regularized under the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013. He further submitted that the candidature of the petitioners has been rejected on the ground of ineligibility for the subject posts. He prayed for dismissal of the instant petition.

4. We have heard learned counsel for the parties and perused the material available on record.

5. 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 an ad-hoc or temporary basis. The concept of ad-hoc 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 ad-hoc 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.

6. Primarily, the fresh decision has been taken by the respondent department whereby the service of the petitioners has not been regularized on the plea that they lacked the eligibility requirements in respect of qualification, experience, and age. It is a well-settled principle of law that merits include qualification for certain posts, and the compliance report prima-facie shows the contrary position; and, this court cannot convert disqualification of the petitioners into qualification for the subject posts. Besides that, it is well-settled law, that before finalizing a fit candidate by the competent authority or Selection committee, for the appointment/regularization of service, the testimonials and antecedents of each candidate shall be considered under the prescribed benchmarks, to maintain a level playing field and evenhanded competition amongst all candidates, the qualification and competency in all fairness should be considered and adjudged under the qualification notified. The dictum laid down by the Honorable Supreme Court in the case of Government of Punjab through Secretary (S&GAD) Lahore and another vs. Zafar Maqbool Khan and others, **2012 3CMR 686**, has held that the eligibility of a candidate had to be determined under the advertisement for the post, service rules governing the appointment and any amendment or instruction backed by the law. Furthermore, in absence of any malafide or illegality the competent authority's decision to nonsuit the petitioners for the regularization process, cannot be interfered with in the Constitutional Jurisdiction of this Court unless it is shown that the petitioners are not fulfilling the criteria set forth by the competent authority which is not the case in hand.

7. If this is the position of the case, we are not in a position to sit in appeal against the findings of fact of the Scrutiny Committee constituted in pursuance of the judgment dated 11.10.2018 passed by this court in CP No.D-527/2018.

8. For the aforesaid reasons, the petitioners, in our view, have failed to make out their case for regularization of their service in Weekly Magazine `Sindh Manzar` of Information Department, Government of Sindh; therefore, the instant petition is hereby dismissed along with the pending application(s) with no order as to costs.

JUDGE

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