

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Present:

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Zufliqar Ali Sangi**

C.P. No. D- 2272 of 2012

Liaquat Ali & others	-----	Petitioners
Versus		
Province of Sindh and others	-----	Respondents

C.P. No. D- 34 of 2013

Allah Bux & others	-----	Petitioners
Versus		
Province of Sindh and others	-----	Respondents

C.P. No. D- 65 of 2013

Allah Yar	-----	Petitioner
Versus		
Province of Sindh and others	-----	Respondents

Date of hearing: 18.09.2019, and 02.10.2019

Date of Judgment: 16.10.2019.

Mr. Khadim Hussain Soomro, advocate for petitioners.

Mr. Allah Bachayo Soomro, Additional Advocate General.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. Petitioners' case is that they were appointed on daily wages in Public Health Engineering Department, Government of Sindh, Nawabshah (the department) as Pump Operator, Chowkidar, Beldar Helper respectively in the year 1989 where they continued to serve till 2000 when their service was terminated without even giving them a show cause notice. By means of these petitions they are seeking reinstatement in service.

2. Mr. Khadim Hussian Soomro, learned counsel for Petitioners has argued that the petitioners are seeking reinstatement and as a result regularization of their service in the department on identical points, facts and law, on the basis of which this court has already granted same relief to several colleagues of the

petitioners. He particularly referred to the order dated 22.03.2016 in C.P No.D-1204/2010, the case of Allah Bachayo and 6 others reported in 2016 CLC (C.S.) 1035 in this connection. Further he relied upon several other judgments of this court as well as of the Honourable Supreme Court to strengthen his contention. Of relevance are the judgments passed in constitution petition No.D-3882/2011(the Pakistan State Oil Company); (ii) the case of M/s Hadeed Welfare Trust & another Vs. Syed Muhammad Shoaib & others decided by the Honorable Supreme Court of Pakistan in Civil Petitions No.121-K and 122-K of 2017 maintaining the judgment dated 15.12.2016 passed by this court (2017, PLC (C.S.) 1020); (iii) judgment in constitution petition No.D-3882/2011 decided by this court; (iv) judgment in Civil Petition for Leave to Appeal No.95-K of 2013, C.P. No.D-4920 of 2016 & others decided by the Hon'ble Supreme Court of Pakistan; (v) the judgment of this court dated 01.6.2017 in the constitution petitions No.D-3199, D-4605 and D-5079 of 2013, D-509, D-2034, and D-1091 of 2014 respectively (SBLR 2018 Sindh 134); and (vi) the judgment of the Honorable Supreme Court of Pakistan in Civil Petitions No.409-K to 414-K of 2017. He next argued that the petitioners had continuously worked in the department from 1989 to 2000 on daily wages on permanent posts as such they are entitled to regularization.

3. On the point of laches, as the petitioners have approached this court in the year 2012 after about 12 years of termination of their service in the year 2000, he stated that the laches will not come in the way of petitioners because this court has already entertained similar petitions and allowed them. He made a particular reference in this regard to C.P No.D-2614/2010 and C.P No.D-2138/2012. He lastly prayed for allowing the instant petitions and giving similar treatment/benefits as given in the aforesaid petitions.

4. On the other hand learned AAG opposed these petitions on the ground of laches and further submitted that the cases referred by learned defense are premised on different analogy and facts which are not attracted in the present case.

5. We have considered submissions of the parties and gone through the record made available as well as the case law cited at the bar. Apparently the petitioners are claiming same treatment which per them has already been meted out to their colleagues in the department under the orders of this court passed in several constitution petitions, some of which have been referred above, whereby the petitioners appointed on work charge basis from the year 1986 to 1997 were directed to be regularized with effect from the date when they had completed five years continuous service. Learned AAG has not

disputed that such decisions have been maintained by the Honourable Supreme.

6. Keeping in view such facts, we have scrutinized case of the petitioners. It is not disputed that they had rendered uninterrupted service in the department for more than 5 years like their colleagues who have been granted relief by this court. The appointments of the petitioners in a transparent manner has not been questioned nor their stance that there was nothing adverse in terms of either their qualification or character and that no complaint qua their efficiency in the subject field was received by the Competent Authority during their entire period of service. There appears no reason to deny them same treatment already extended to their colleagues who were placed in a similar situation. In response to plea of the petitioners that their case is similar to the case of Allah Bachayo and 6 others reported in 2016 CLC (C.S.) 1035, we went through the judgment in said case and are of a view that they are not incorrect. For a ready reference operative part of said judgment in support of our above findings, is reproduced hereunder.

“4. We have heard the learned counsel and have perused the material available on record as well as the decision cited at the bar. Insofar as the contention of learned AAG that the petition for the relief as has been sought here is not maintainable before this Court, we tend to disagree with him for the simple reason that the petitioners are seeking equal treatment already meted out to their contemporaries in the department under the aforementioned orders of this court, and have pleaded discrimination in their case in this regard. We have also with respect gone through the case laws relied upon by the learned A.A.G, the facts and circumstances dealt with in those decisions are quite different than the ones being considered here. More so in none of the cases regularization of work charged employees was an issue before the Honourable Supreme Court. We have also considered the contention of learned AAG that in terms of circular dated 10.03.1994 the cut-off date was 01.07.1994 and the services of only those employees could be regularized who had completed five or more years on or before that date. Such argument palpably is in conflict with the judgment of this Court passed in C.P No.D-742/2010 whereby the cases of colleagues of the petitioners appointed on work charged basis in the year 1986 till 1997, like the petitioners, were considered and the respondents were directed to regularize their services from the date when they had completed five years continuous service. The judgment of this Court has been maintained by the Honourable Supreme Court in Civil Petition No.491-K of 2010 and learned AAG has not been able to show any single reason as to why we should not follow the dicta laid down therein. It is strange to note that no such ground as has been stressed by learned AAG here for opposing the case of the petitioners was taken by Mr. Abdul Fattah Malik, learned A.G. Sindh before the Honourable Supreme Court. His case there was that the employees were appointed on work charged basis and not entitled to regularization on permanent basis. A perusal of the order passed in the above civil petition dated 20.12.2010 does not reveal either that the Honourable Supreme Court has considered 01.07.1994 as a cut-off date for regularization of work charged employees. The conditions for regularization of such employees appear to be their 5 years uninterrupted service and having valid

NICs. In para No.5 of the said order, the Honourable Supreme Court has observed as under:-

"From the perusal of the record it appears that by an administrative order dated 10.03.1994, which was issued with the approval of the competent authority, all the departments and offices were directed to regularize the work charged/contingent paid employees, who have rendered five years' continuous service and holding valid NICs. It is not the case of the petitioners that the respondents have not rendered more than five years' service and are not holding valid NICs."

5. We have also had a glance over a circular dated 10.03.1994 heavily relied upon by learned A.A.G to oppose the case of petitioners, it does not even remotely suggest that 1.7.1994 is to be considered as a cut-off date for the contingent employees having 5 years of service to seek regularization. It merely denotes that regularization of the verified employees was to be effected from 1.7.1994 and for such verification a Committee was constituted which was tasked to submit the list of eligible workers to Finance Department who had rendered five years or more continuous service and were in possession of valid NICs. Mr. Abdul Nisar Soomro, Assistant Engineer, Public Health Engineering, Tando Allahyar, who is present along with Manohar Kumar, XEN Public Health Engineering, Tando Allahyar, has confirmed that the petitioners are continuously performing their duties since the date of their appointments (from 1987 to 1997), he has not raised any doubt either over the identification of any of the petitioner to be employee of the department. Although learned AAG has strongly opposed the case of the petitioners for regularization but has not been able to show as to why the petitioners, who are low paid work charged employees and are in continuous service, have not been provided the same benefit, in terms of the Government policy contained in letter dated 10.03.1994, already extended to similarly placed employees. Learned A.A.G and the officials present do not deny either that previously the contingent/work charged employees of the department have been regularized in compliance of decisions of this Court. We are of the view that when this court has already decided a point of law in respect of other similarly placed employees of the department, the department ought to have taken into consideration the case of other employees including the petitioners as well who due to some reasons could not take any legal proceedings to seek their right. For obvious reason, the rule of good governance would demand that the benefit of decision of this Court ought to have been extended to other employees of the department, who were not party to the earlier litigation, instead of compelling them to approach this Court for the same relief, which has already been extended by this Court to other employees. We have not been informed that the case of the petitioners was placed before the Committee for scrutiny in terms of the policy contained in letter dated 10.03.1994, or if so, whether any decision in this regard was made or not.

(Underlined by us)

6. In the facts and circumstances as discussed above, we are of the view that petitioners are entitled to the equal treatment meted out already to the petitioners in C.P No.D-742/2010. Accordingly, we allow the petition with the directions to the respondents to regularize, within 4 weeks from today viz. 22.03.2016, services of the petitioners from the date when they completed their five years continuous service and submit such compliance report through Additional Registrar of this Court."

7. Despite clear observations of this court in above case, which we have underlined to emphasize that the case of petitioners should have been considered and same relief extended in the light of the same, no heed was paid by the department. In our estimation not only the respondents were required to consider the case of the petitioners in the light of above judgment and the other case laws referred by the learned counsel, but they were obliged to extend them benefit of Office Memorandum dated 11th May, 2017 issued by Government of Pakistan, Cabinet Secretariat, Establishment Division for dealing with the cases of, among others, such employees. For the sake of convenience, the same is reproduced herein below: -

**Government of Pakistan
Cabinet secretariat
Establishment division**

No.F-53/1/2008-SP
2017

Islamabad the 11th May,

OFFICE MEMORANDUM

Subject:- Amendment in the Recruitment Policy/Mechanism to Ensure Merit Based Recruitment in the Ministries / Divisions / Sub-ordinate Offices / Autonomous / Semi-Autonomous Bodies / Corporations / Companies/Authorities

The undersigned is directed to state that the Federal Cabinet in its meeting held on 12th April, 2017 has accorded approval of the subject amendment to be inserted as para 1(e) in the Recruitment Policy/Mechanism issued vide this Division's O.M. No.531/2008-SP dated 16th January, 2015 as under: -

“(e) Appointment on Regular Basis of Contract/ Contingent/ Paid/ Daily Wages/Project Employees For the purpose of appointment on regular basis of Contract/Contingent/Paid/Daily Wages/Project employees the following criteria shall be observed: -

(i) All Contract/Contingent/Paid/Daily Wages/ Project employees who have rendered a minimum of one year of service in continuity, as on 1.1.2017 (hereinafter referred to as eligible employees) may apply for appointment on regular basis in the manner prescribed hereinafter provided that the condition of continuity shall not be applicable in case of person(s) employed on daily wages who have completed at least 365 days service.

(ii) For initial appointment to posts in BS-16 and above, the employees shall apply direct to FPSC against relevant/suitable vacancies as and when arising for which they are eligible.

(iii) For initial appointment to posts in BS-1 to BS-15, the eligible employees may apply as per criteria given vide this Division's O.M. No.531/2008-SP dated 16.1.2015 and 3.3.2015 shall be adopted.

(iv) The eligible employees shall be awarded extra marks in interview at the rate of one (01) mark for each year of service rendered upto a maximum of five (05) marks, on the recommendation of the respective selection authorities.

(v) The period served as Contract, /Contingent/Paid/Daily Wages/Project employees shall be excluded for the purpose of determination of upper age limit in addition to relaxation of upper age limit as per existing rules.

(vi) Qualifications prescribed for a post shall be strictly followed in case a person does not possess the prescribed qualifications/experience for the post he/she is applying for he/she shall not be considered for the same.

(vii) The employees must be in good mental and bodily health and free from any physical defect likely to interfere with the discharge of his duties unless appointed against disability quota.

(viii) The advantage of para 1(e) is a one-time dispensation for all Contract/Contingent/Paid/Daily Wages/Project employees for their eligibility to regular appointment.

2. This Division's O.M. of even number dated 16th January, 2015 is modified to the above extent. All Ministries/Divisions are requested to take further action accordingly.

(Attiq Hussain Khokhar)
Director General
Tel:051-9103482

All Ministries/Divisions
Rawalpindi/Islamabad"

8. The case of the petitions on account of being in service for more than 5 years in the Department seems to fall in the scheme of above memorandum, and they are entitled to its benefit.

9. Additionally, we are referring to some of the case law herein below which was cited before us to conclude that the petitioners are entitled to the relief they have prayed for through these constitution petitions. The case of Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and other (2015 SCMR 1257); (ii) Board of Intermediate and Secondary Education, DG Khan and another Versus Muhammad Altaf and others (2018 S C M R 325). Paragraphs No.2 & 3 which are relevant are reproduced as under:-

"2. The respondents were employed by the petitioner-Board, they have been working as Drivers, Clerks, Naib Qasids and Security Guards, for a considerable period of time, on daily wages. Some of them have been so working since the year 1996. However, their employment contracts were terminated after every 89 days and were resumed a day there after. All of them have certainly served the petitioner-Board for not less than nine months, however with artificial breaks, as noted above, this was done to break the continuity of their service with mala fide intent to avoid their regularization. The respondents, despite the fact that their services had matured and were under the law required to be regularized, and instead of doing so, as noted in the judgment of the learned Single Judge, contemplated to make fresh appointments through advertisement, which prompted the respondents to file the writ petition which culminated into the impugned judgment.

3. We in the circumstances as noted above, do not find any lacuna in impugned judgment, legal or otherwise, and find no justification for interfering with the same. The petition is therefore dismissed."

(iii) Board of Intermediate and Secondary Education, Multan through Chairman and another Versus Muhammad Sajid and others (2019 S C M R 233). Relevant paragraphs No.3 is as under:-

3. It is an admitted position that the respondents before us have been working with the petitioner-Board since long, however, in their clumsy attempt to break the continuity of their service, the petitioner has been employing them for 89 days only, and has been re-hiring them for the next 89 days, and thus continued to avail their service for a long period by creating artificial breaks in their service period. The fact that they have, in fact, continuously served the petitioner for a long period of time,

albeit the breaks created by the petitioner, as noted above, clearly shows that they have been performing job of permanent nature and have not been serving on casual posts. Admittedly, similarly placed employees of BISC Rawalpindi, have been regularized in pursuance of the judgment of the High Court, upheld by this Court, as noted above. The learned counsel for the petitioner has not been able to highlight a single feature distinguishing the nature of the respondents' job/employment, disentitling them from regularization. The respondents, in the circumstances, were rightly found eligible and entitled for regularization of their service with the petitioner-Board, and have rightly been so ordered through the impugned judgments and we do not find any justification for interfering therewith. The petitions in the circumstances are dismissed.

10. In the light of above facts and circumstances and the cited case law, the petitions in hand are allowed in the terms whereby the Competent Authority of Respondent-Department is directed to consider the case of petitioners for regularization of their service at par with the case of their colleagues already decided by this court subject to their eligibility and qualification for the given post.

JUDGE

JUDGE