

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

CP No. D- 2358 & 2622 of 2019

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Date of hearing 30.11.2021

Date of decision: 30.11.2021

Petitioners: Faisal Shah Muhammad and others in CP No. D-2358 of 2019 through Mr. Pervaiz Tariq Tagar, Associate of Ayaz Hussain Tunio, Advocate.

Petitioners: Ghulam Fareed Mangi in CP No. D- 2622 of 2019 through M/s. Sajid Ali Gorar, Muhammad Nawaz Panjphoto and Asif Ali Abro, Advocate

Mr. Rafiq Ahmed Dahri, Asstt: A.G.

ORDER

ADNAN-UL-KARIM MEMON, J: - The case of the petitioners is that they are working as contract employees at Gorakh Hill, Development Authority, and their contracts were subsequently extended; that during the contract period the petitioner No.3 in CP No. D- 2358 of 2029 moved an application for upgradation of post from BPS-16 to BPS-17 on 19.9.2014 and vide order dated 1.10.2014 the post was upgraded; that subsequently the petitioners have been approaching the respondents for regularization of their services but they keep them on false hopes; that recently several contractual employees have been fired from BPS 02 to 14, therefore, they have serious apprehension that they might be fired and on the contrary Deputy Secretary (Regulation) for Secretary to Government of Sindh has regularized the services of contract employees of Law Department, Government of Sindh vide notification dated 13.8.2015, therefore, under the Constitution of Pakistan they are also entitled to the same treatment. They lastly prayed for allowing the instant petition.

2. At the outset we asked learned Counsel for the petitioners as to how these petitions are maintainable under Article 199 of the Constitution.

3. Mr. Sajid Ali Gorar, learned counsel for the petitioner in C.P No.D-2622 of 2019 argued that the petitioners were contractual employees and their contractual services were terminated when they filed these petitions. It is stated that some contractual employees have been retained in the services of Gorakh Hill. It is stated that it is the case of discrimination. In support of his contention, he relied upon the case of Province of Sindh and Others versus Ghulam Fareed and Others [2014 SCMR 1189] and argued that failure of respondents to regularize the services of the petitioners is discriminatory, illegal, unlawful, and in violation of principles of natural justice; that the petitioners have been appointed after advertisement in a fair, transparent and meritorious manner as prescribed by law, hence their appointments should have been made on regular basis; that petitioners are highly qualified and termination of their services without any reason or justification will cause severe loss to them; that the petitioners have rendered remarkable services to the department which is evident from the fact that since 2014 their contractual period is being extended; that the petitioners are working on the posts which are permanent and because of constitutional guarantee they have a legitimate expectation of their regularization. He lastly prayed for allowing the instant petition. In support of his contention, he relied upon the cases reported in 2015 SCMR 1257, 2016 SCMR 1756, 2017 PLC (C.S) 26, 2017 PLC (C.S) 1020, 2018 SCMR 1181.

4. Conversely, learned Asstt: A.G. has raised the question of maintainability of this petition on the premise that the petitioners have no vested right to seek regularization of their service as they were hired on a contractual basis and there was no legal and statutory protection provided to their terms and conditions of service. He prayed for the dismissal of this petition. In support of his contention, he relied upon the cases of Qazi Muneer Ahmed v. Rawalpindi Medical College and others (2019 SCMR 648).

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

6. The case of the petitioners is that they were appointed on a contract basis in the year 2014, 2016, and 2018 in Gorakh Hill Development Authority and the period of contract was extended from time to time but despite several assurances, their services have not been regularized rather now their services have been terminated by the incompetent authority.

7. It has now been settled by the apex court that employees who have entered into contracts of service on the same or similar terms and conditions have no vested right to seek regularization of their employment, which is discretionary with the master, and the master is well within his rights to retain or dispense with the service of employees based on performance. The Hon'ble Supreme Court in the case of Owais Shams Durani and others versus Vice-Chancellor Bach Khan University, Charsadda and another (2020 SCMR 1041) has held: -

“Admittedly, the petitioners' appointments were made in terms of section 11(5)(d) of the Act, 2012 which limits the power of the Vice-Chancellor to create temporary posts and make appointments to a maximum period of three years. There is no denial of the fact that the petitioners worked for three years and thereafter their contracts expired with afflux of time and even otherwise the power on the basis of which the appointments were made exhausted itself by operation of law”.

8. We have noticed that the petitioners were appointed without a competitive process as no advertisement was published and the medical fitness of the petitioners was not checked and the appointments were made without framing recruitment rules. It is well-settled law that all posts in various grades should be filled after those are properly advertised in the press etc, indicating the requirements of the particular post viz. qualification, age, experience, etc, so that on the one hand Government gets the best available talent and on the other hand all eligible persons are provided equal opportunity to compete for the various jobs. Prima facie, without adherence to the competitive process, the appointments were made in violation of law and the judgments of the Hon'ble Supreme Court pronounced from time to time on the subject issue. This practice is a prima facie violation of fundamental rights as Article 18 of the Constitution guarantees to every citizen freedom of profession. The law on the subject is very clear that appointments on vacant posts in BPS-01 to BPS-15 is to be made after completion of all codal formalities and laid down procedures in a transparent manner and if

any appointment is found in violation of prescribed recruitment rules/policy or in excess of budgetary provision of the post, the same shall be treated as illegal and unauthorized. It is also well settled that no candidate shall be appointed to a post unless after such medical examination as Government may prescribe.

9. We have also noticed that certain appointments have been made in BPS-17 in respondent authority which falls within the exclusive domain of Sindh Public Service Commission; therefore, their case is hit by the judgment rendered by this Court in the case of Badar Anjum and others v. Province of Sindh and Others (2021 PLC (C.S.) 1040. The ratio of the judgment shall apply mutandis mutandi to the case of petitioners, who are working in BPS-16 and above.

10. So far as the case of petitioners who were appointed in BPS-01 to 15 without codal formalities as discussed supra, that is not protected, therefore, their case does not fall within the ambit of Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013.

11. In light of the discussion supra, these petitions being not maintainable are dismissed with no order as to cost.

JUDGE

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