

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

C.P. No.D — 1950 of 2015.

Present.
Mr. Justice Muhammad Shafi Siddiqui.
Mr. Justice Irshad Ali Shah.

Date of Hearing: 14.10.2020.

Date of order: 14.10.2020.

Petitioners: Through Mr. Ishrat Ali Lohar Advocate.

Respondent: Through Mr. Muhammad Humayoon Khan D.A.G.

J U D G M E N T

MUHAMMAD SHAFI SIDDIQUI, J.- Petitioners claimed to have been appointed by Pakistan Science Foundation, Sindh Agricultural University Tando Jam as Planetarium Assistant and Science Assistant in BPS-11 & 14 respectively. Their appointment letters dated 29.1.2011 and 17.8.2012, as contract employees for a period of 03 months and 06 months respectively were issued. The periods of contract were being extended from time to time and the last extensions in this regard are at page 49 annexure C-7 for petitioner No.1 dated 09.03.2015 and for petitioner No.2 Ghulam Akbar the last extension is available at annexure C-12 dated 19.02.2015.

2. Counsel submits that there were directives of the Federal Government of Pakistan to regularize all employees who were working on contract basis against the post of BPS-1 to 15 in the year 2008 and as a consequence whereof the services of the petitioners are required to be regularized.

3. Notices of these petitions were issued and served upon respondents and they have filed their parawise comments. The contents of the petition are denied. They submitted that there was a complete ban on the recruitment in the year 2011 and 2012 and the temporary appointment on contract of Mr. Muhammad Yahya Dayo and Mr. Ghulam Akbar Dahani were made to meet the

stipulated targets of the organization. There was extreme urgency for such appointments and hence a recourse of temporary appointment was made. The audit team of Directorate General of Commercial Audit conducted audit of Pakistan Science Foundation for the year 2013-14 and it was discovered that the appointment was without following the codal formalities and consequently there was no question of any regularization. It is clarified that in the letter referred by the petitioner for regularization the eligibility criteria for regularization vide Office Memorandum dated 29.08.2008 was issued and it is in respect of only those employees who were working on contract basis against post in BPS-1 to 15 in Federal Ministries / Divisions / Attached Departments / Subordinate Offices / Autonomous / Semi Autonomous Bodies / Corporations and were appointed prior to decision of Cabinet dated 04.06.2008 viz upto 03.06.2008, to be regularized. Hence the petitioners are not entitled and / or stood qualified on account of the criteria laid down in the aforesaid letter. The ban has now been lifted and a proper recruitment policy is to be made strictly on merit as per Policy issued by the Establishment Division after following the codal formalities including but not to the advertisement in national newspapers.

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

5. This petition was filed on 07.09.2015 when the petitioners were not in any kind of employment including the contractual employment on the basis of the extension orders / letters issued from time to time. The petitioners were appointed on contract basis without any codal formalities such as the public advertisement, consideration on merits, consideration of the educational requirement for the subject post as well as interview. These petitioners thus cannot deprive all those who were/are eager to earn a place as regular employee on merit after contest and this is possible only once public advertisement is issued to call applications from all deserving candidates who considered themselves suitable for the post.

6. We are also of the view that had the advertisement been made and the routine procedural requirement was followed even then this advertisement

would not be sufficient as it was for the appointment on contract basis. All those candidates who were considering themselves to be appointed on regular basis might not have applied and were eagerly waiting for a normal regular appointment via advertisement and hence it would deprive all such candidates who were eager for regular appointment. In a recent case of contractual employee, Qazi MUNIR AHMED v. RAWALPINDI MEDICAL COLLEGE AND ALLIED HOSPITAL reported in 2019 SCMR 648, the Supreme Court held that the contract employee was debarred from approaching the High Court in its constitutional jurisdiction and the only remedy available to a contract employee was to file a suit for damages alleging breach of contract or failure to extend the contract. Even such remedy prima facie is not available to the present set of petitioners as they were not the contractual employees when they filed this petition. On account of lapse of contractual period they have lost all such remedies including the one to claim damages.

7. In another case of Miss NAUREEN NAZ BUTT v. PAKISTAN INTERNATIONAL AIRLINES which is unreported matter of Civil Appeal No.451 of 2017. Para-6 the Honourable Supreme Court's observation is reproduced as under:-

"6. We may note that in the judgment relied upon by the learned ASC for the appellant, is distinguishable as the same relates to termination from service under the Removal from Service (Special Powers) Ordinance, 2000. However, in the case relied upon by the learned AOR for the respondents, this Court has noted that the petitioner in that case was appointed as Airhostess on contract by the respondents and when her contract period expired, she was not allowed further service. She filed a Grievance Petition in the Labour Court, which was allowed and the Appeal filed by the respondents was dismissed. However, the Writ Petition filed by the respondents was allowed and the two orders of the Labour Court and the Punjab Labour Appellate Tribunal were set-aside. In the order of this Court, it has been elaborately discussed that the petitioner was a contract employee and after her contract has elapsed, she approached the Court for reinstatement. It was held that such reinstatement could not be made, as the contract employee has no right to be reinstated after termination of the contract period. Further in the case of PIA

Corporation v. Syed Suleman Alam Rizvi and others [2015 SCMR 1545], this Court has held that the employment in Pakistan International Airlines, being not governed by statutory rules, principle of 'Master and Servant' will apply and thus, the Writ Petition before the High Court will not be maintainable. Similar view was also taken by this Court in the case of **Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others** [PLD 2010 SC 676].”

Process was thus devoid of transparency and codal formalities are missing.

8. We thus in view of the consideration of the above facts and circumstances dismissed the petition by a short order and these are the reasons for the same disentitling the petitioners to have their services regularized.

Petition dismissed.

JUDGE

JUDGE

A.