

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

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

**Constitutional Petition No.D-4401 of 2020**

*(Mst. Salma v. Province of Sindh and 04 others)*

Mr. Manzoor Hussain Khoso, advocate for petitioner  
Mr. Muhammad Wasiq Mirza, advocate for respondents No.3 to 5  
along with Dr. Ashar Afaq, Registrar DUHS  
Mr. Ali Safdar Depar, AAG

Date of hearing and order: **07.04.2022**

## **ORDER**

Through the captioned Constitutional Petition, the petitioner is seeking direction to the respondent- Dow University of Health Sciences Karachi (**DUHS**) to withdraw the letter dated 29<sup>th</sup> June 2020, whereby her service as Head Nurse was dispensed with; the petitioner has prayed that she may be allowed to continue with the service. Petitioner also seeks direction for the release of her salaries in the intervening period.

2. Mr. Manzoor Hussain Khoso, learned counsel for the petitioner, has contended that vide office letter dated 19.01.2015, the petitioner was appointed by respondent-University on contract as a Registered Nurse, initially for the period from 19.01.2015 to 30.06.2015. He next contended that the above engagement of the petitioner continued for about five and a half years due to her satisfactory performance. However, vide impugned letter dated 29.06.2020, she had been informed that her contract could not be renewed by the competent authority and as such her services were no more required for the respondents with effect from 01.07.2020. Learned counsel also pointed out that the actual matter is that she made complaint regarding physical sexual assault against the officials of the respondent university which was unilaterally inquired by the Committee and opined against the petitioner on the premise that no physical and verbal sexual assault was made and this was the reason petitioner's contract was not renewed vide letter dated 29.06.2020. learned counsel for the petitioner added that this was an unfortunate opinion of the Committee against the registered Nurse. He prayed for allowing the instant petition.

3. Mr. Muhammad Wasiq Mirza, learned counsel representing respondents No.3 to 5, has filed a statement dated 07.04.2022 and submitted that petitioner was appointed as Head Nurse for 06 months on a contract basis with effect from 19.10.2015 to 30.07.2020. Per learned counsel petitioner was first posted at Dow University Hospital, thereafter, she was transferred to LT & HBSP vide Memorandum dated 11.01.2017. She was further transferred to OICD vide Memorandum dated 18.06.2019 on her application where she specifically stated that she could not properly perform her duty and she may be transferred to OICD. In addition, the petitioner had a poor attendance record as evident

from the attendance roster/register. Further, the petitioner had been issued multiple warnings and Explanation letters on the grounds of self-granted leave, leaving the station without information, and being negligent in performing her duties. During the Pandemic, DUH had been and continues to be, at the forefront of the battle against coronavirus in Pakistan. Learned counsel further submitted that the dynamics of the hospital rapidly transformed to avoid any catastrophes and bear the burden, thereby, strict adherence to attendance and punctuality was observed along with employees' performance. He submitted that the petitioner has an unprofessional behavior of persistently leaving the station/duty place/ward, which was highly objectionable on her part. Despite giving her multiple warning letters, she was facilitated and was treated in a lenient manner. No disciplinary case was initiated against her, regardless of her poor attendance record. Such negligence towards her duty shows her irresponsible attitude towards her job, therefore, taking into account her Performance Evaluation, she was not offered a further contract. Learned counsel further submitted that this is not the case of discrimination as other Registered Nurses were working in the hospital whose contracts were not renewed on similar grounds. Learned counsel referred to various documents attached to his statement dated 07.04.2020 and further submitted that allegations leveled by the petitioner could not be proved through the inquiry committee. He lastly prayed for the dismissal of the instant petition.

4. We have heard learned counsel for the petitioner and the learned counsel representing DUHS at great length and with their able assistance have minutely examined the material available on record.

5. Attending the submissions of the learned counsel representing the respondent university that the petitioner was a contractual employee and thus her status and relationship were/ are regulated and governed by the principle of "master and servant".

6. Primarily, the stance of the respondent-university is that a contract employee, whose terms and conditions of service are governed by the principle of "master and servant", does not acquire any vested right for a regular appointment, or to claim regularization, or to approach this Court in its constitutional jurisdiction to seek redressal of his grievance relating to regularization; that, he/she is debarred from approaching this Court in its constitutional jurisdiction and the only remedy available to him/her is to file a Suit for damages alleging breach of contract or failure on the part of the employer to extend the contract; after accepting the terms and conditions for contractual appointment, the contract employee has no locus standi to file a Constitutional Petition seeking writs of prohibition and/or mandamus against the authorities from terminating his/her service and or to retain him/her on his existing post on regular basis; a contract employee, whose period of the contract expires by efflux of time, carries no vested right to remain in the employment of the employer and the courts cannot compel the employer to reinstate him/her or to extend his/her contract; and, no right would accrue to a de facto holder of a post whose right to hold the said post was not established subsequently. Be that as it may, we are only concerned whether the impugned order dated 29.06.2020

does disclose the reason for not renewing the contract which has been continued from 19<sup>th</sup> January 2020 without any pause.

7. In the present case, the petitioner was appointed as a Registered Nurse vide office letter dated 19.01.2015, initially for the period from 19.01.2015 to 30.06.2015. The above engagement of the petitioner continued for about five and a half years due to her satisfactory performance and this was the reason she continued to serve till 29<sup>th</sup> June 2020. However, vide impugned letter dated 29.06.2020, she had been informed that her contract could not be renewed by the competent authority and as such her services were no more required for the respondent DUHS with effect from 01.07.2020. It is urged that due to the length of her service and also given her satisfactory performance, the petitioner is entitled to be continued in her services.

8. As per the policy decision of the Cabinet Division, Government of Pakistan, a person who has served in a Government-owned and controlled organization/public Sector University for three consecutive terms of 89 days is entitled to be regularized. In the present case, the petitioner has served for five and half years, however, the only reason put forward on behalf of the respondent university against her reinstatement is that her contract period expired in June 2020, which reason by itself would not debar the petitioner from the right conferred by the policy decision of the Cabinet Division, seeking her reinstatement and subsequent regularization of service based on her service record.

9. Primarily, the post of Registered Nurse is permanent, in nature, in the public sector Universities' hospitals. The arguments of the learned counsel that the performance of the petitioner throughout her service remained poor, if this is the position, let the respondent-university to look into this aspect of the matter afresh, if she continues to remain adamant, then appropriate action shall be taken against the petitioner under law, therefore, prima facie, the suggestion as put forward by the learned counsel for the respondents could not be taken into consideration at this stage and point in time as the petitioner has continued to serve with the respondent university for a longer period and after consuming her sufficient time she will not be able to obtain another assignment in another Hospital. On the aforesaid proposition, we are fortified with the decision of the Honorable Supreme Court in the case of *Ikram Bari v. National Bank of Pakistan* (2005 §CMR 100), *Ejaz Akbar Kasi v. Ministry of Information and Broadcasting* (PLD 2011 §C 22), *Board of Intermediate and Secondary Education Faisalabad and others v. Tanveer Said and others*, 2018 §CMR 1405 and *Board of Intermediate and Secondary Education Multan and others v. Muhammad Said and others* 2019 §CMR 233.

10. The Honorable Supreme Court has condemned the practice of keeping the employees temporarily for long periods without confirming or regularizing their services. It has been held that an employee being jobless and in fear of being shown the door has no option but to accept and continue with the appointment on whatever terms a job is

offered by the employer. Such consent to continue to work as a temporary employee is not like free consent between the employees, on the one hand, and employers on the other. A person so employed is not in a position to bargain with the employers/departments which are in a disproportionately dominating bargaining position as compared to the employee and the employer could always coerce them to waive their legal protection and accept contractual terms or face the risk of losing their jobs. Reference is given in the cases of Pakistan v. Public at Large (PLD 1987 SC 304) and Sui Southern Gas Company Ltd. v. Ghulam Abbas (PLD 2003 SC 724).

11. In this view of the matter, we are of the firm view that the case of the present petitioner is at par with the petitioners of the cited case, she is also entitled to the same relief. The dictum laid down by the Honorable Supreme Court in the cases of Government of Punjab v. Sameena Parveen and others (2009 SCMR 1), Secretary (Schools), Government of Punjab, Education Department and others v. Yasmin Bano (2010 SCMR 739), Province of Punjab through Secretary Communication and Works Department and others v. Ahmad Hussain (2013 SCMR 1547), Pir Imran Sajid and others v. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257) and Pakistan Railways and others Vs. Sajid Hussain and others (2020 SCMR 1664) are also relevant to resolving the controversy at hand.

12. In the light of the above, the instant petition is allowed in terms that the competent authority of the respondent university shall reconsider her request for continuation of service on a contract basis, in the light of the ratio of the judgments passed by the Honorable Supreme Court in the cases discussed in the preceding paragraphs, without discrimination, after providing meaningful hearing to the petitioner.

13. In the intervening period, the issue of salary of the petitioner with effect from 29.06.2020 to date shall be decided by the respondent university. The aforesaid exercise shall be undertaken within two weeks.

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