

IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-2715 / 2022

Date Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Petitioner: Mumtaz Ali Babar,
Through Mr. Faizan Hussain Memon,
Advocate.

Respondent: Federation of Pakistan & Others.
Through Mr. Syed Yasir Shah, Assistant
Attorney General.

Date of hearing: 02.12.2022.

Date of Order: 02.12.2022.

ORDER

Muhammad Junaid Ghaffar, J: Through this Petition, the Petitioner seeks setting aside of a purported decision of Respondents for not recommending him for regularization. At the very outset, Petitioner's Counsel has been confronted as to the order impugned in this Petition and he has referred to Page 229 which in fact is a response by the office of Accountant General Sindh filed in C. P. No. D-1791 of 2012 (in which present petitioner was also one of the petitioners) at Sukkur Bench of this Court and while confronted Petitioner's Counsel has not been able to satisfactorily respond to our query as to how this could be termed as an order which could be impugned in this Petition as it is simply a response to some contempt proceedings in the said Petition.

2. We have heard the Petitioner's Counsel on maintainability of this Petition and have also perused the record. It reflects that earlier the Petitioner along with various other Petitioners, in essence sought a similar / identical relief of regularization by way of C. P. No. D-1791 of 2012 filed at Sukkur Bench of this Court. The same was decided vide order dated 20.04.2015 and the relevant portion of the said order reads as under:-

"It is contended by the petitioners that they were appointed as Key Punch Operators in the Project to Improve Financial Reporting and Auditing (PIFRA), which is under direct supervision of the Accountant General Sindh financed by the Auditor General of Pakistan Islamabad. It is further contended that the petitioners were appointed sometime in May 2009 and they have been receiving their monthly salaries uptill September, 2011 whereafter the

respondents have malafidely and unlawfully stopped their salaries. It is further submitted that all the petitioners were appointed on contract basis and they have been discharging their functions to the complete satisfaction of their superiors. It is also submitted that a meeting of the Cabinet Sub-Committee on regularization of Daily Wages/Contract Employees of various Ministries/Divisions/Attached Departments/Autonomous Bodies/Organizations etc was held on 29.06.2011 and the following policy/criteria was set for regularization:

- a) Contract Employees who have completed one year of satisfactory service shall be regularized;
- b) Daily wages workers employed for 89 days (one spell) and completed three spells of their services shall be regularized in conformity with the order of the Apex Court;
- c) The case of Contract Employees of BPS-16 and; above may be submitted to the Committee for regularization of their services through Cabinet decision instead of FPSC;

It is further contended by the petitioners that they are employees of the Ministry of Finance and they also entitled to regularization as they have completed more than one year of their satisfactory service. The learned counsel submitted that discriminatory treatment in violation of Article 25 of the Constitution of Pakistan, 1973 has been given thus the respondents be directed to mete out the similar treatment to the petitioner as has been given to other contractual employees of the Ministry of Finance.

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04. In view of the above discussion, the instant petition is disposed of by giving specific directions to the respondents to consider the case of the petitioners strictly in line with the criteria/guideline, laid down by the Cabinet Sub-Committee as discussed above and if the petitioners fall within the said criteria then their case may be considered for regularization. This exercise shall be completed within three months of receipt of this order and compliance report should be submitted to the Incharge Additional Registrar of this Court. Let a copy of this order be sent to the Accountant General Sindh, Karachi, Auditor General of Pakistan, Islamabad and Secretary Finance, Government of Pakistan, Islamabad for strict compliance."

3. Thereafter, the Petitioner filed a contempt application in respect of the above order and the same was dismissed on 17.02.2022 in the following terms:-

"Contempt application has been filed in respect of order dated 20-04-2015. Operative part of which reads as under:

"04. In view of the above discussion, the instant petition is disposed of by giving specific directions to the respondents to consider the case of the petitioners strictly in line with the criteria/guideline, laid down by the Cabinet Sub-Committee as discussed above and if the petitioners fall within the said criteria then their case may be considered for regularization. This exercise shall be completed within three months of receipt of this order and compliance report should be submitted to the Incharge Additional Registrar of this Court. Let a copy of this order be sent to the Accountant General Sindh, Karachi, Auditor General of Pakistan, Islamabad and Secretary Finance, Government of Pakistan, Islamabad for strict compliance."

Thereafter, reply has been filed and it has been stated that the Petitioners were hired for a specific project; therefore, their regularization cannot be considered. On perusal of the order and the response, it reflects that no case for contempt is made out. Accordingly, contempt application is dismissed."

4. Perusal of the record reflects that now once again the same relief has been sought by way of a fresh Petition and that too at the Principal Seat, instead of Sukkur Bench, apparently on the pretext that statement of the Accountant General Sindh filed pursuant to contempt proceedings before the Sukkur Bench is an order of the Respondents giving a fresh cause of action. The said statement reads as under:-

"Para 1.2.3 No Comments

Para 4 Subject petition was disposed off by the Honourable High Court with the direction to the respondents as follows,

"to consider the case of the petitioner strictly in line with the criteria/guidance laid down by the Cabinet Sub-Committee, and if petitioners fall within the said criteria then their case may be considered for regularization".

Accordingly, the subject cases were considered in the light of cabinet sub-committee decision as conveyed vide Establishment Division Q.M No.10/30/2008-R-II Islamabad the 29th August 2011, wherein Para 2(b) provides that

"Those who are working against tenure posts, project posts or daily wages, or those who are being paid from contingent or defence budget are not eligible for regularization"

Since the petitioners were hired against PIFRA Project, therefore, their regularization does not fall under said criteria as envisaged at Para 2(b) of Establishment Division O.M referred above, thus this office has complied the order of honourable High court in its letter and spirit

Sd/-
AHSAN ALI KEHAR
Accountant General Sindh

5. From perusal of the above order on contempt application and the statement of Accountant General Sindh, it does not reflect that there is any fresh cause of action or for that matter, the Court while dismissing the contempt application has observed so. In fact, it has not even been observed that the petitioner can agitate the matter any further by way of a new petition. We are afraid the contention of the Petitioner as pleaded is not only misconceived; but appears to be an attempt to obtain fresh orders in respect of an issue which already stands decided in his Petition by Sukkur Bench. We in our Constitutional jurisdiction cannot reopen or for that matter re-examine the issue afresh when it already stands adjudicated. If the Petitioner was aggrieved in any manner by the order on his contempt application, he ought to have availed further remedy as may be available in law; but at least not by way of a fresh petition. If at all any fresh order was passed by the Respondents pursuant to disposal of the Petitioner's Petition by the Sukkur Bench, then perhaps, it might have given a fresh cause of action to initiate

fresh proceedings. Admittedly, this is not so. The Petitioner has come before this Court by treating the statement of the Accountant General Sindh filed pursuant to contempt proceedings as an impugned order or an order giving rise to a fresh cause of action; however, this appears to be misconceived; hence cannot be entertained.

6. Lastly, we may observe that in essence the Petitioner has sought the same relief i.e. his regularization in this petition which was also the relief already sought in his petition before the Sukkur Bench. Section 11 of Civil Procedure Code in Explanation V very clearly provides that any relief claimed in the plaint which is not expressly granted by the decree, shall for the purposes of this section be deemed to have been refused and in this matter petitioners prayer regarding regularization stands decided if at all not refused. Hence, this petition is otherwise hit by *Resjudicata* as there is no fresh cause of action as contended.

7. Accordingly, by means of a short order in the earlier part of the day this Petition being misconceived and not maintainable was dismissed and these are the reasons thereof. This is though a fit case to impose costs; however, showing restraint the petitioner is warned to be careful in future, failing which heavy costs may be imposed in pursuing such frivolous litigation.

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