

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
 CP Nos. D-1901, 1902, 479 of 2014
 and D-2600 of 2015

Date Order with Signature(s) of Judge(s)

For rehearing

25.01.2023

Mr. Ali Asadulla Bullo, advocate for the petitioners

Mr. Mukhtiar Ali, advocate for respondent

Mr. Abdul Jalil Zubedi, AAG a/w Khalid Mahmood Memon, Deputy Director Bureau of Curriculum Wing Sindh Jamshoro

ORDER

ADNAN-UL-KARIM MEMON, J. – All these petitions were heard together and are being disposed of by this common judgment as common questions of law and facts are involved therein

2. Through these Constitutional Petitions filed by the petitioners under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, they have prayed that their temporary contractual appointments / services be regularized in Bureau of Curriculum & Extension Wing Sindh Hyderabad at Jamshoro, inter-alia, on the ground that they have served in the respondent / Bureau of Curriculum more than sufficient time on sanctioned budgetary posts and performed their duties as since 2012, in different sections of the respondent-Bureau, inter-alia on the ground that it is the consistent practice of the Respondent-Bureau to hire persons on a contract basis and thereafter regularize them. They further submitted that the contractual employees cannot be subjected to discriminatory treatment; that Petitioners are entitled to similar treatment in respect of regularization under which their similarly placed colleagues have been regularized vide different office orders; that the Petitioners are qualified persons to hold the subject posts. In the end, Petitioners submitted that the decision of the scrutiny committee constituted by the respondents and subsequently terminating their service by the competent authority is liable to be reversed and their service is liable to be restored and regularized by the respondent-Bureau.

3. Learned counsel for the petitioners argued the main question of regularization involved in these cases has already been decided by a learned Division Bench of this Court, by holding, inter alia, that the petitioners therein shall be deemed to have been validly appointed on regular basis. It was also contended by him that it would be prejudicial to the petitioners if they are not regularized at this stage after serving for a considerable period and after spending the prime period of their professional life with the respondents. According to them, if the petitioners are not regularized and their

services are eventually dispensed with, they will not be able to seek fresh employment at any other place, and in such an eventuality their professional career will come to an end much before their expected age of superannuation.

4. learned AAG, has opposed the petitions inter-alia, on the ground that the petitioners were appointed on a contract basis by an incompetent person / the then Director Professor Khair Muhammad Zardari without codal formalities and it was specifically mentioned in the appointment orders of the petitioners that they could not claim regularization and further that they were being employed for a specific period, therefore, no further indulgence of this Court is required on the subject regularization. He further submitted that regularization has to be supported by legislation and is not an automatically accruing right. He emphasized that regularization is not a vested right but requires a statutory basis which is admittedly absent in the instant cases. As such, the petitioners merely rely on the fact that other colleagues have been regularized and so should they, which is not a legal ground per se. He added that where a contractual employee wishes to be regularized, he must demonstrate the statutory basis for such a claim, in the absence of which, relief cannot be granted solely on the principle of "similarly placed". Such a course of action would be tantamount to making one right out of two wrongs which is not permissible in the law. He asserted that this Court is supposed to interpret the law and apply it in letter and spirit and this Court cannot go beyond what the law is, and what interpretation permits. He added that this Court lacked jurisdiction to provide relief to the petitioners under Article 199 of the Constitution. He submitted that the petitioners are no more on their jobs which factum has been disclosed by this Court vide order dated 31.5.2022, besides there is no recruitment record of illegal appointees available in the Directorate of the respondent-Bureau; therefore, the question of regularization of their terminated service has lost its significance. He also relied upon the compliance report filed on behalf of respondents whereby the committee declined to regularize the services of the petitioners. Learned AAG referred to the compliance report filed on behalf of the respondent-Secretary School Education & Literacy Department, Government of Sindh as well as the statement filed by the Incharge Director of the Bureau dated 30.5.2022 and submitted that in compliance and pursuance of the orders passed by this Court, the cases of all the petitioners were examined and concluded beyond any doubt that all the petitioners were illegally appointed on contract basis in violation of rules and regulations, however, based on orders passed by this Court they had been paid salaries for the period during they served under their contract employment till 2012. They ceased to be in employment after the year 2012 and are not serving in any capacity beyond the expiry of the contract period. He, therefore, prayed for the dismissal of this petition.

5. We have heard learned counsel for the petitioners and the learned Additional Advocate General Sindh at great length and with their assistance have minutely examined the material available on record including the order dated 13.10.2011

passed by this Court in C.P. No. D-961 of 2009 whereby respondents were directed to take appropriate action if they deem it proper concerning the alleged irregularities in the appointment of the petitioners against the rules subject to initiating proper inquiry and after affording the proper opportunity of hearing to the petitioners. Since only the questions of law are involved in these petitions and all the petitioners are admittedly contractual employees, we need not discuss the facts of each case, however, we have been informed that petitioners were heard by the competent authority in compliance with the aforesaid orders passed by this Court.

6. The origin of the present dispute appears to date back to the year 2009 when purported appointments were made under the signature of one Professor Khair Muhammad. It appears that Professor Khair Muhammad made appointments with the number of persons including the present Petitioners on a contract basis. It appears that subsequently show cause notices dated 01.8.2009 were issued to all the appointees directing them to show cause as to why their recruitments/appointments having been made in violation of the rules should not be set aside. It further appears that consequent upon the issuance of these show cause notices, payment of salary was stopped. Some of the affected persons filed petitions being C.P.No.D-538/2009 and others at this Circuit Court Hyderabad. The petitions were disposed of by order dated 29.9.2009. It appears from the order that the petitions were disposed of in terms that the concerned department was directed to continue paying salaries to the petitioners, but this was without prejudice to any final action being taken against the petitioners in terms of the show cause notices that had been issued to them. In reaction to the aforesaid orders of the Court, the Provincial Government issued the order dated 07.10.2009, which order is impugned through present petitions. It appears that some of the persons affected by their termination filed a petition being C.P.No.D-961/2009. This petition was disposed of vide order dated 13.10.2011. After having considered the matter, a learned Division Bench of this Court was pleased to set aside the order dated 07.10.2009, referred to above, but this was however, without prejudice to the right of the concerned department to take appropriate action against the concerned persons based on alleged irregularities in their appointments, but subject to initiating proper inquiry and after providing an opportunity of hearing to them.

7. In terms of the statement filed by learned AAG, it appears that after the last order passed by this Court on 13.10.2011, a three Members committee was constituted on 07.12.2011. It appears that the remit of this Committee was to consider the cases of the persons who were allegedly appointed in 2009 based on orders issued by aforesaid Professor Khair Muhammad. It appears that the aforesaid Committee had issued show cause notices and submitted that the petitioners were illegally appointed on the contract basis without codal formalities and now they are no more in service.

8. It is an admitted position that the petitioners are contractual employees and thus their status and relationship are regulated and governed by the principle of

“master and servant”. The Hon’ble Supreme Court has been pleased to hold in its numerous pronouncements 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 regular appointment, or to claim regularization, or to approach this Court in its constitutional jurisdiction to seek redressal of his grievance relating to regularization; in fact they are debarred from approaching this Court in its constitutional jurisdiction and the only remedy available to them is to file a Suit for damages alleging breach of contract or failure on the part of the employer to extend the contract and/or terminating their services; 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/her existing posts on regular basis; a contract employee, whose period of contract expires by efflux of time, carry no vested right to remain in employment of the employer and the courts cannot compel the employer to reinstate him/her or to extend his/her contract; and, no rights would accrue to a de facto holder of a post whose right to hold the said post was not established subsequently as in the present case, the respondents have specifically asserted that the petitioners were illegally appointed on contract basis in clear violation of rules and regulations and they are not more in service of respondents. If this is the position of the case, this Court cannot hold the petitioners qualified for the subject posts as their appointments made by the then Director Khair Muhammad are sketchy.

9. In view of the above well-settled law consistently laid down by the Hon’ble Supreme Court, the petitioners, being contractual employees having no vested right for regular appointment or to seek regularization of their services, are debarred from invoking the constitutional jurisdiction of this Court. Thus, these petitions filed by them are not maintainable on this ground alone and are liable to be dismissed.

10. Prima-facie, the reasons assigned by the Respondents through the compliance report dated 07.3.2022 and 31.5.2022 cannot be discarded on the analogy put forward by the petitioners. Even otherwise, the regularization of the service is based upon the length of service of the employee and in this case, petitioners are no more in service with effect from 2012 and onwards as informed by the respondents through compliance reports, therefore, their case does not fall within the ambit of policy decision of the Government of Sindh.

11. As a result of the above discussion, all these petitions and applications pending therein are dismissed with no order as to costs

JUDGE

JUDGE