

IN THE HIGH COURT OF SINDH, KARACHI

C.P No. D- 4917 of 2020

Date

Order with signature of Judge

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

Petitioners:

Salman Khan & others
Through Mr. Faheem Baloch,
advocate holding brief for Mr. Ali
Asadullah Bullo, Advocate.

Respondent No.1:

Federation of Pakistan,
Through Mr. S. Yasir Ahmed Shah,
Assistant Attorney General.

Respondent No.3:

M/s. Outriders (Pvt) Ltd.
Through M/s. Ch. Azhar Illahi and Gul
Hassan Abbasi, Advocates.

Date of hearing:

12.10.2022.

Date of Order:

12.10.2022.

ORDER

Muhammad Junaid Ghaffar, J.- Through this Petition, the Petitioners seek regularization in the employment of Respondents No. 2 & 3. However, we have already decided this controversy vide our Order dated 22.09.2022 passed in C.P No. D-5333 of 2018 and other connected matters, which reads as under:-

“4. *Heard and perused.*

5. *It is a general principle of law that in the absence of statutory rules of service a writ petition, in service matters, ought not to be entertained². In so far as the issue of functions of the state is concerned, the same was explained by the Supreme Court in the PIAC case³ and reiterated recently in the Pakistan Olympics Association case⁴. While eschewing a voluminous repetition⁵ of the law illumined, it would suffice to observe that no case has been set forth before us to suggest that the respondent*

² 2021 SCMR 609; 2019 SCMR 278; PLD 2010 Supreme Court 676.

³ PLD 2010 Supreme Court 676.

⁴ 2019 SCMR 221.

⁵ Per Mansoor Ali Shah J. in the yet unreported judgment dated 18.08.2020 in Farooq Hussain vs. Shaikh Aftab Ahmed (CRP 104-L of 2019 & connected matters).

company was performing functions connected with the affairs of the state involving exercise of sovereign power⁶.

6. Serious questions of fact have been raised with respect to the status of the petitioners and it was argued that a significant number of them had not been substantiated to even be employees of the relevant third party respondents. The Supreme Court was seized of a similar matter, pertaining to regularization of alleged third party employees, in *Sohaib Iftikhar*⁷, wherein it was held that such disputed questions of fact going to the root of the matter were not open to determination by the High Court in writ jurisdiction.

7. The law with respect to regularization is well settled. The august Supreme Court has maintained that no claim for regularization was merited on mere efflux of time⁸. The primary argument of the petitioners, claiming regularization by purported efflux of time, is conclusively dispelled by this edict.

It has also been held that there was no vested right to seek regularization in absence of any pertinent law, rules or policy⁹. The Courts have deprecated the tendency of temporary employees to invoke the writ jurisdiction seeking regularization¹⁰ as it has been illumined that their relationship is governed by the principles of master and servant¹¹. The Supreme Court in *Sher Aman*¹² has catalogued the contemporary law pertaining to regularization and maintained that regularization requires the backing of law, rules or policy and in the absence thereof no claim in such regard ought to be entertained. It may be pertinent to observe that the petitioners' counsel made no endeavor to identify any statute, rule etc. in pursuance whereof the claim for regularization could be considered.

8. The petitioners' counsel had sought to rely on a leave refusal order in *Bakht Siddique*¹³ to compel this Court to assume / exercise jurisdiction. On the other hand the respondents' counsel had cited a judgment of a five member bench of the august Court in *Farid Ahmed*¹⁴, wherein the mutually exclusive distinction between the very respondent company's employees and those of third parties was conclusively upheld. Similar matters came up before this bench last month in *Muhammad Arif*¹⁵, wherein in view of the binding precedent of recent edicts of the august Court in *Saeed Khoso*¹⁶, *PEPCO*¹⁷ and *Zeeshan Usmani*¹⁸, it was

⁶ PLD 1975 Supreme Court 244; 2000 SCMR 928; PLD 2002 Supreme Court 326; PLD 2005 Supreme Court 806.

⁷ Per Umar Atta Bandial J in *NBP vs. Sohaib Iftikhar* (Civil Petition 425-L of 2014); Unreported order dated 20.06.2018.

⁸ Per Ijaz ul Ahsan J in *Owais Shams Durrani vs. Vice Chancellor Bacha Khan University* reported as 2020 SCMR 2041

⁹ Per Ijaz ul Ahsan J in *Khushal Khan Khattak University & Others vs. Jabran Ali Khan & Others* reported as 2021 SCMR 977

¹⁰ Per Nadeem Akhtar J in *Anjum Badar vs. Province of Sindh & Others* reported as PLD 2021 Sindh 328.

¹¹ Per Ijaz ul Ahsan J in *Govt of KPK Welfare Board vs. Raheel Ali Gohar & Others* reported as 2020 SCMR 2068

¹² Per Muhammad Ali Mazhar J in *Govt of KP vs. Sher Aman & Others* reported as 2022 SCMR 406.

¹³ *State Oil Company Limited vs. Bakht Siddique & Others* reported as 2018 SCMR 1181.

¹⁴ Per Aslam Riaz Hussain J in *Farid Ahmed vs. Pakistan Burmah Shell Limited & Others* reported as 1987 SCMR 1463.

¹⁵ Per Muhammad Junaid Ghaffar J in *Muhammad Arif vs. Federation of Pakistan* (CP D 875 of 2020) and connected petitions; yet unreported order dated 26.08.2022.

¹⁶ Per Ijaz ul Ahsan J in *Southern Gas Company Limited vs. Saeed Ahmed Khoso* reported as 2022 SCMR 1256.

¹⁷ Per Ijaz ul Ahsan J in *Pakistan Electric Power Company vs. Syed Salahuddin* reported as 2022 SCMR 991.

maintained that a writ seeking regularization of service could not be maintained inter alia in respect of a company devoid of statutory rules.

9. *It is apparent that the employment of all the petitioners even with the third party respondents is suspect. A detailed investigation in the factual realm pertaining to the claimed antecedents of each petitioner cannot be conducted in writ jurisdiction¹⁹. It is an admitted position that the respondent company is devoid of statutory rules. It was never the petitioners' case that the respondent company was performing functions connected with the affairs of the state involving exercise of sovereign power. Even otherwise, there is no generic entitlement for regularization²⁰ and the petitioners' counsel did not even endeavor to identify any specific law, rule or policy conferring any entitlement upon the petitioners to be considered for regularization²¹. Therefore, we are constrained to hold that the petitioners have failed to set forth any case for exercise of the discretionary²² writ jurisdiction of this Court."*

In view hereof, petition is misconceived, hence, the same is dismissed along with pending applications.

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¹⁸ Per Sayyed Mazaher Ali Akbar Naqvi J in Sui Southern Gas Company Limited vs. Zeeshan Usmani reported as 2021 SCMR 609.

¹⁹ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.

²⁰ Per Ijaz ul Ahsan J in Govt of KPK vs. Jawad Ali & Others reported as 2021 SCMR 185; Per Mansoor Ali Shah J in Province of Punjab vs. Dr. Javed Iqbal reported as 2021 SCMR 767; Per Ijaz ul Ahsan J in Owais Shams Durrani vs. Vice Chancellor Bacha Khan University reported as 2020 SCMR 2041; Per Miangul Hassan Aurangzeb J in First Womens Bank vs. Muhammad Tayyab reported as 2020 PLC (C.S.) 86.

²¹ Per Ijaz ul Ahsan J in Govt of KPK Welfare Board vs. Raheel Ali Gohar & Others reported as 2020 SCMR 2068;

²² Per Ijaz Ul Ahsan J. in Syed Iqbal Hussain Shah Gillani vs. PBC & Others reported as 2021 SCMR 425; Muhammad Fiaz Khan vs. Ajmer Khan & Another reported as 2010 SCMR 105.