

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon

## Constitutional Petition No.D-2949 of 2022

**Wamiq Abrar Siddiqui**

Petitioner: Through Mr. Muhammad Ahsan Ghani Siddiqui,  
advocate

Respondents: Mr. Yasir Ahmed Shah, Assistant Attorney General

Date of hearing  
& Decision: 21.02.2023.

## ORDER

Through the captioned petition, the petitioner has prayed as under:

- i. Declare that the impugned action of Respondent No.2 & No.3, of dis-allowing further extension of service contract while the Petitioner was within the legal age bracket for the Job and had been used as an Acting Director General to substitute the then Director General, is illegal, arbitrary and void ab initio.
- ii. Declare that the Petitioner is within his Constitutional Right to claim his wages and allowances along with all outstanding survey Fees for the conducted surveys during the period when the Petitioner was retained to serve without salary/wages.
- iii. Declare that the Petitioner served the Respondents till filing in the stopgap but continued to serve Respondents where-by the Respondents advertised the post on which the incumbent was serving and had also applied for the same as a candidate and that the Petitioner was successful in all procedures and was appointed again but as a fresh candidate and the salary package and perks of the Petitioner were granted as a junior officer whereas the Petitioner was never released from the position until his reappointment, hence the salary Package of the Petitioner should be given as of the senior Chief engineer & Ship Surveyor as permitted for the fifth year of the same post i.e. Basic Pay scale 21.
- iv. That this Hon'ble Court May be pleased to Order payment of all outstanding dues to the Petitioner who has been suffering in this highly inflated cost of lively hood for the last several years without receiving his due salary and perks.
- v. That the Petitioner's post may be converted according to the prevailing scale in accordance to the permanent posts under the governance of the Federal Public Services Commission as was published in the gazette of Pakistan earlier, which was temporarily converted in to contractual job because of non-availability of candidates due to low salary scale existed then.

2. To the above prayers, Mr. Muhammad Ahsan Ghani Siddiqui, learned counsel for the petitioner, contended that respondents No.2 & 3 have failed to discharge their functions under the law when on his oral instructions the Petitioner has been continuously deprived of his two-year's wages and survey fees and other perks under MANAGEMENT POSITION SCALE POLICY No.1/3/2020-c-6 dated 22<sup>nd</sup> June 2020 applicable to the petitioner's

case, which tantamount to 'Misfeasance, Malfeasance and Non-feasance'. Learned counsel submitted that the competence of the Petitioner was acknowledged by the Directorate General Ports & Shipping, and was assured that the Petitioner to continue his services which will fill up the stop gap between the Petitioner's expiry date of contract 22.01.2019 and the beginning of the extension of the contract for two years 22.01.2019 to 22.01.2021, will justify the Petitioner's continued services otherwise the performance of official jobs of signing documents as Chief Engineer And Ship Surveyor on foreign ships calling Pakistan Ports and issuing other Seaworthy Certificates to foreign Ships calling Pakistan Ports during this period when the Petitioner is not occupying the seat of the designated officer officially/legally will render all those documents invalid and all jobs performed will be without the force of law. The Petitioner sent a letter to the authorities in the Ministry of Maritime Affairs, followed by a reminder but to no avail; that this stop-gap from 22.01,2019 to 7.03.2021, it comes to the knowledge of IMO officials, will have serious consequences and may classify Pakistan as a "Rogue state" and may remove Pakistan from the white list of law-abiding states. That the Respondent No 2 & No.3, instead of extending the service contract of the Petitioner called for inducting new staff and advertised in the national newspapers, after completing all formalities the Petitioner was again selected for the post of Chief Engineer examiner & Ship Surveyor, afresh and now is again serving on this post; that this act of the Respondents, has seriously deprived and hurt the Petitioner's right of wages against the services rendered by the Petitioner from 22.1.2019 to 07.03.2021, which totals up to a tune of nearly Rs.90,00,000/- ( Rupees nine Million only), which is a serious violation of Constitution.

3. Mr. Yasir Ahmed Shah, learned Assistant Attorney General, raised the question of maintainability of the instant petition on the premise that this court under Article 199 of the Constitution cannot grant money decree as demanded by the petitioner for payment of his purported outstanding dues of Rs.90,00,000/- and interest accrued thereon including seniority of two years' service. Learned AAG referred to the comments filed by respondents No.1 to 3 and submitted that the petitioner had joined the Directorate General of Ports & Shipping on 22.01.2016 and his contract expired on 24.01.2019. He was again appointed as Chief Engineer & Ship Surveyor (MP-II) on a contract basis w.e.f. 08.03.2021. Per AAG, the petitioner was neither asked by respondents to apply for an extension of service nor was he advised to continue rendering the service. The petitioner was fully aware of the fact that there existed no contract with the respondents. According to AAG, the case for extension in his contract period

w.e.f. 25.01.2019 was submitted to the competent authority (Prime Minister) through the summary for the Prime Minister vide UO note dated 08.01.2020, however, the Prime Minister was pleased not to approve the proposal vide PM's office U.O dated 14.09.2022. He prayed for the dismissal of the instant petition.

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

5. Record of the case file, prima-facie show that the Petitioner was hired on a contractual basis for a period beginning from 22.01.2016 for 2 years till 22.01.2018 as a Chief Engineer Ship Surveyor & Chief Examiner of Engineers in the Ministry of Maritime Affairs (Ports and Shipping Wing). On successful completion of the contract, the petitioner was given an extension of the contract for one year (1 year), till 22.01.2019. It is claimed by the petitioner that despite the completion of the contract, he was asked to continue his services in the respondent department for the reason that the department was expecting for extension of his contract, as such Petitioner continued to render his services as Acting Director General till further directives to be issued to the Petitioner, however, he continued to serve till 26th April 2019, and upon the Director General's return to the Office, the Ministry did not extend his contract vide O.M.No. 1(11)/2020-P&S, dated 23rd October 2020, by utilizing his services for the aforesaid period, without paying the wages/salary, which has triggered the cause of the petitioner to approach this court.

6. The questions raised herein above are whether the petitioner had rendered his services for the respondent department for nearly one year and ten months (1 year 10 months), without salary, and whether he is entitled to the remuneration of Rs.90,00,000/- and interest accrued thereon under the law.

7. In our view, there is no concept of forced labor. In principle, all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily is called forced labor. In the present case, the petitioner claimed that he worked for the respondent department till the decision of the competent authority to discontinue his service.

8. If this is the position of the case, it would be more appropriate to let this issue be resolved by the competent authority of respondents within a reasonable time without discrimination.

9. In view of the above facts and circumstances of the case, we deem it appropriate to refer the matter to the competent authority of the respondent department to ascertain whether the petitioner continued to render the services after the expiry of his contract and/ or till his status of contract employee was made absolute and whether he was duly paid during the intervening period or otherwise.

10. The respondents shall carry out the exercise and decide on the subject within two weeks after providing a meaningful hearing to the petitioner, if he is found to have worked for the respondents for the disputed period, then he shall be paid accordingly. So far as the other ancillary prayers are concerned, the same fall within the ambit of policy decision of the Ministry of Maritime Affairs, Government of Pakistan, for the reason they have declined the proposal of the department vide letter dated 14.09.2020, as such we are not in a position to interfere in the policy decision of the Government of Pakistan under Article 199 of the Constitution.

11. This petition stands disposed of in the above terms. Let a copy of this order be transmitted to the respondents for compliance.

**JUDGE**

**JUDGE**

Nadir\*