

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

CPNo.D-2200 of 2021

Hussain Bux Ujjan

and 02 others

Petitioners:

Through Mr. Waqarullah Korejo, advocate

Respondent No.1 to 4:

Through Mr. Abdul Jalil Zubedi, AAG

Respondent No.5:

Nemo

Date of hearing

& Decision:

12.01.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. – Petitioners have called in question the vires of minutes of the meeting dated 05.10.2020, whereby the Scrutiny Committee re-scrutinized their case for regularization of their services and unanimously decided not to recommend their candidature for regularization on the plea of poor performance as contract employees.

2. Petitioners have alleged that their cases were put up before the Scrutiny Committee on 04.09.2020 wherein minutes in this regard were prepared and the Committee, without assigning valid and cogent reasons scantily and vaguely, did not consider their cases for regularization which action is impugned through the captioned petition before this Court. Per petitioners, this Court vide order dated 08.09.2020 directed the respondent department to place the cases of petitioners for reconsideration of their regularization under Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, and pass a speaking order, however, nothing has been done and the Committee simply rejected their case on account of alleged poor performance, though they have no such record to say that the petitioners could not perform well during their tenure of service and on the contrary, they have regularized the services of their colleagues, which is a discriminatory attitude on their part.

3. Learned counsel for the petitioners has referred to the memo of the petition and grounds raised therein and submitted that regularization of the employees is not a part of the terms and conditions of service for which there need to be some statutory rules but it depends upon terms of equity that a person who has given his prime life and youth to a department is always kept in dark and his services were taken in very exploitive manner. So it is on that principle the petitioners have approached this Court for regularization of their service just to enforce their fundamental rights in terms of Articles 9 and 25 of the Constitution. Per learned counsel, the post of petitioners is permanent and petitioners had been satisfactorily working on the permanent post for the past many years on a contract basis and were/are liable to be absorbed in service in terms of Section 3 of the Act, 2013, which is a beneficial legislation and protects their fundamental rights. Learned counsel further submitted that it is the responsibility of the respondent department to allow the petitioners to serve the department without discrimination. Learned counsel emphasized that the only source of income of the petitioner is their salary which has been stooped for so many years and it is very difficult for them to run their daily expenses. Learned counsel submitted that the compliance report/minutes of the meeting dated 05.10.2020 is not compliance in terms of the order dated 04.03.2020 passed by this court in the aforesaid matter. Learned counsel prayed for directions to respondent No.1 to scrutinize the matter for regularization of the services of the petitioners and provide them equal treatment in terms of Section 3 of the Act, 2013.

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

5. As per learned AAG, petitioners were hired purely on a contract basis for a specified period which does not confer any right of regular appointment. He further submitted that due to their poor performance, their contract was not extended beyond 31.12.2013 and the scrutiny committee did not recommend their case for further retention, their cases were considered in terms of the Act, 2013 twice by the Committee but were rejected due to lack of qualification, unsatisfactory performance, and other reasons. He prayed for the dismissal of this petition.

6. We have noticed that the Scrutiny Committee No.3 reconsidered the cases of the petitioners for regularization of their services and after proper scrutiny of their testimonials and rejected their candidature. It is well settled now that regularization of service is always subject to the performance of contractual service in its proper perspective which factum has been shown to have been lacking in the present case, though the matter was remitted by this court to the competent authority who after evaluation of the candidature of the petitioners rejected their regularization of service and this court is not a position to reject the claim of the respondent department on the plea of petitioners that they had performed well during their tenure of service in 2012-2013, which factum is disputed by the respondent department and this court under Article 199 of the Constitution cannot decide the disputed questions of facts.

7. The petitioners, in our view, have failed to make out their case for regularization of their service in terms of the report submitted by the respondent department as their case is neither covered under Section 3 of Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, nor falls within the ambit of Policy of Government of Sindh, therefore, the instant petition is found to be not maintainable based on disputed questions of facts and is hereby dismissed along with the pending application(s) with no order as to costs.

JUDGE

JUDGE

Nadir*