

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP D 1878 & 1717 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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CP D 1878 of 2023

1. For order on office objection
2. For order on Misc. No.9195 of 2023
3. For order on Misc. No.9196 of 2023
4. For hearing of main case

CP D 1717 of 2023

1. For order on Misc. No.8531 of 2023
2. For order on Misc. No.8532 of 2023
3. For hearing of main case

20.04.2023

Mr. Moulvi Iqbal Haider, advocate for the petitioners

The petitioners claim to have obtained *ad hoc* / contractual appointment with the Health Department in the wake of the Covid-19 crisis in 2020 and have preferred this petition to essentially seek regularization of their service in BS-17. At the very onset, learned counsel was confronted with respect to the maintainability hereof; *inter alia* as to what vested rights did the petitioners have to seek regularization, what was the law pursuant whereof such a claim was preferred and most importantly how could regularization of service in BS-17 be sanctioned in any event in view of the pronouncements of the august Supreme Court. Learned counsel remained unable to articulate a cogent response on either count.

The Supreme Court has maintained in *Ali Azhar Khan Baloch*¹ that a post in BS-17 could only be filled through a competitive examination process after an advertisement. It was specified that the Sindh Government was devoid of any authority to bypass the mandatory requirements, essential to maintain transparency in the process of induction and to ensure merit, and seek recourse through any parallel process. The Supreme Court was pleased to hold that appointments in BS-16 to BS-22 could only be made through the competitive process delineated in the law.

The august Court maintained in *Khushal Khan*² that the High Court lacked jurisdiction to revive, amend or alter contracts; there was no vested right to seek regularization in the absence of any legal and statutory basis for the same; and that temporary employees had no automatic right to be regularized. A Division Bench of this Court has held in *Anjum Badar*³ that such employees had no vested right for regular appointment or even to seek regularization of their services, hence, were debarred from invoking the Constitutional

¹ Per Amir Hani Muslim J in *Ali Azhar Khan Baloch vs. Province of Sindh* reported as 2015 SCMR 456; at paragraph 198.

² Per Ijaz ul Ahsan J in *Khushal Khan Khattak University & Others vs. Jabran Ali Khan & Others* reported as 2021 SCMR 977.

³ Per Nadeem Akhtar J in *Anjum Badar vs. Province of Sindh & Others* reported as PLD 2021 Sindh 328.

jurisdiction of this Court. The law is now well settled that such employees are devoid of any generic entitlement for regularization⁴.

Petitioners' counsel sought to place reliance upon the *Regularization of Doctors Appointed on Contract or Ad Hoc Basis Act 2018*, however, such reliance appears to be manifestly misconceived. While we consciously eschew any observation upon the said enactment, since the *vires* thereof is not under scrutiny before us, section 3 thereof clearly extends the benefit sought to be conferred upon *those holding appointment on the commencement of the Act*. It is patently obvious that the present petitioners were not holding any relevant office / appointment upon the date of commencement of the aforesaid enactment. Therefore, in the absence of any law demonstrated before us to confer any entitlement upon the petitioners to be considered for regularization⁵, no case is set forth to entertain these petitions.

Article 199 of the Constitution contemplates the discretionary⁶ writ jurisdiction of this Court and the said discretion *may* be exercised in appropriate circumstances. In the present matter no case has been set forth before us for invocation of the writ jurisdiction. In view hereof, while granting the urgent applications the petitions and listed applications are hereby dismissed in *limine*.

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⁴ 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.

⁵ Per *Ijaz ul Ahsan J* in *Govt of KPK Welfare Board vs. Raheel Ali Gohar & Others* reported as 2020 SCMR 2068;

⁶ 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.