

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**C.P.No. D-2196 of 2022**

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DATE            ORDER WITH SIGNATURE OF JUDGE(S)

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1. For orders on office objection.
2. For hearing of MA-6158/2023
3. For hearing of MA-3893/2023
4. For hearing of MA-3894/2023
5. For hearing of MA-11768/2023
6. For hearing of MA-9513/2023
7. For hearing of main case.

**08-8-2023**

Mr. Mian Taj Muhammad Keerio, Advocate for petitioner.

Mr. Habib-ur-Rehman Jamali, Advocate for NADRA.

Mr. Ghulam Abbas Sangi Assistant Attorney General for Pakistan.

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The petitioner's counsel has filed this petition "yet again" to count the entire service of the petitioner in O-6 scale (equivalent to BPS-17 for the purpose of privileges), towards length of service having been regularized, with all consequential back benefits of BPS-17, with questions regarding its maintainability, which were prevailed earlier.

We have heard the learned counsel and perused the record.

It seems that earlier also two petitions (being C.P.No.D-3140 of 2018 and C.P.No.D-380 of 2019) were filed, one of them by petitioner, which were heard and decided. The memo of first petition is available at Page-343. It is beneficial to consider the two prayer clauses of the present petition and the petition that was filed earlier by petitioner, for the disposal of this petition, as required under the law.

It seems that in the earlier petition, petitioner claimed to count the length of his service rendered as contractual employee towards seniority of the petitioner from the date of his joining i.e. 23.09.2002, which was a

contractual period, whereas in the instant petition as well, by attempting to modify the language of the prayer clause-a, the petitioner has again attempted to misrepresent by counting the entire service of the petitioner in BPS-17, as his regular service. There were some questions regarding its maintainability.

Learned counsel was then confronted with the judgment of this Court delivered on 8<sup>th</sup> February, 2022 in the referred petition, when the Division Bench of this Court was pleased to dismiss it as not being maintainable on the consideration of already recognized principles, whereas, the representation in the form of an appeal, after dismissal was ordered, to be decided by NADRA. The said appeal has already been decided wherein such considerations, as claimed by petitioner were regretted. The said order has attained finality.

Petitioner has opted to have his service regularized by virtue of a regularization order of all contractual employees on 6<sup>th</sup> March, 2012, and hence this understanding of law cannot be revisited by this bench in yet another petition with same facts and circumstances and the same prayer clauses with some twisted words. It is also apparent that he himself surrendered when he opted for the regularization on 6<sup>th</sup> March 2012 when such services were not counted / considered under the act of 2013. Earlier petition was filed seven years later and this is delayed by a decade since regularization. It could not have been counted as the contractual appointment was in the absence of any transparent and codal formalities and the deserving candidates were deprived to have been appointed on regular basis and regular appointment was avoided at the relevant time and the discretion was exercised by authority under the act. The Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 also provides that such contractual length of services could only be seen if the employee otherwise entitled too. This entitlement has a significant meaning and role in the exercise of discretion. This is perhaps the

discretion to be exercised by the authority under act 2013. In our view a premium of this wrong appointment on contractual basis against the sanctioned post cannot be extended to an individual unless criteria under the act is met. Further, in relation to seniority issue, it is settled that seniority of an employee is to be counted from that of his regular appointment and thus no consequential benefit could be granted, as prayed in prayer-a and b. Consequential reliefs cannot be granted when petitioner fails in obtaining primary relief.

When for the second time these facts were confronted regarding non-maintainability of petition and was given an option to reconsider his decision that this is a decided controversy, he insisted for an order of the Court.

Hence, in view of above, we are of the view that this petition with same prayer was neither maintainable earlier as held nor as of now and we are constrained to dismiss this petition with the cost of rupees 25,000/- to be deposited with the High Court Clinic.

J U D G E

J U D G E

Ahmed/Pa