

IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-2628 & 3301 of 2022

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Adnan-ul-Karim Memon

Petitioners:
in C. P. No. D-2628 / 2022

Mumtaz Ali Panhwar & Others,

Petitioners:
in C. P. No. D-3301 / 2022

Ghulam Muhammad Dotio & Others,
Through M/s. M. M. Aqil Awan & Danish
Rashid, Advocates (in both Petitions).

Respondents:

Province of Sindh & Others,
Through Mr. Ali Safar Deeper, AAG.
(in both Petitions).

Date of hearing:

26.03.2024

Date of Order:

04.06.2024

ORDER

Muhammad Junaid Ghaffar, J: Through this Petition, the
Petitioners have sought the following relief(s): -

- a. That Respondents may be directed to give the same treatment to the Petitioners as has been accorded to the contingency employees of Left Bank Out fall Drainage project through legislation or otherwise.
- b. That this Honorable Court would be pleased to declare that all the appointments made on contract/contingent basis being violative of Article 4. 38 and the pronouncement made by the Honorable Supreme Court on this subject, are illegal and unlawful with the further restraint that no such appointment would be made in future exception the regular appointment.
- c. That Respondents may kindly be restrained in future from converting the permanent/regular work in the form of project and all the regular works of the type involved in defunct NPIW and SIAPEP may be carried out on regular basis through regular employees by the concerned department itself.
- d. That this Honorable Court may be pleased to direct the Nazir of this Honorable Court to release the salaries of the Petitioners deposited with the Nazir with effect from October 2014 to June 2015, after their due verification and in accordance in Law and procedure.
- e. That this Honorable Court would be pleased to declare that the appointment made of the Petitioners against the post of Naib Qasid, Rodman and Chowkidar with the prefix of contingent basis is treated in Law as regular appointment on regular basis.

In Alternate

- f. That this Honorable Court would be pleased to direct the Respondents to finalize the proceedings in the light of initiatives and direction mentioned in Para 19 and 20

of this Petition and pass the final order of regularization of Petitioners within a shortest possible period.

- g. That this Honorable Court would be pleased to direct the Respondents to regularize services of Petitioners with effect from their date of appointment on contingent basis made in the year 2007 or in alternate with effect from the year 2019 or with effect from the time as deem fit and proper to this Honourable Court with all consequential service benefits.
- h. That Respondents may kindly be restrained from passing any adverse order against the Petitioners as a counter blast on filing of this Petition and be restrained specifically from terminating their services or stopping their salaries during pendency of this Petition.
- i. Any other relief(s) this Hon'able Court may deem fit and proper in the facts and circumstances of the case may kindly granted.
- j. Cost of the petition to be borne by the Respondents."

2. Learned Counsel for the Petitioners has contended that the Petitioners were appointed as Naib Qasid and Drivers on Contingency basis for a period of 89 days and in support thereof he has referred to Page 297 which is an appointment order of one of the Petitioners dated 22.08.2019. According to him, though these appointments were made for a specified project; however, these posts are permanent in nature as without such appointments and permanency, no project can proceed or materialize. Per learned Counsel, in terms of Article 4 of the Constitution it is the right of every citizen to be dealt with in accordance with law, whereas, repeatedly the Petitioners have been appointed for a period of 89 days which is not sanctioned by law, and therefore, the Petitioners must be deemed to be appointed on permanent basis. He has contended that the project known as "National Programme for improvement of Water Courses" is a permanent project, being dependent on foreign funding, and different names are assigned to this programme. According to him, on such basis, instead of appointing the Petitioners on permanent basis, a contingency employment is offered so as to deprive the Petitioners from their rights of a permanent job. To further support his arguments, reliance has also been placed on PC-I available at Page 119. Per learned Counsel, the moot question is that whether this ad-hocism amounts to exploitation, and whether, it is in consonance with any law or not. According to

him this needs to be addressed by this Court as time and again the Respondents have indulged into such contingency and temporary appointments depriving the citizens of this country to have any permanent employment. Per learned Counsel, there is a series of Judgments, wherein, the Courts have time and again regularized the services of such category of employees and the present set of Petitioners are also fully entitled for such benefit as their case is identical on facts. He has placed reliance on various reported cases¹.

3. On the other hand, learned Assistant Advocate General has opposed the Petitions on the ground that the primary prayer of regularization cannot be granted as recently the Hon'ble Supreme Court in ***Vice Chancellor Agricultural University***² has been pleased to hold that in absence of any Policy, Rules or Law, courts cannot grant the relief of regularization to any employee, and therefore, these Petitions are liable to be dismissed. He has further contended that it was repeatedly claimed that the Petitioners are in service for many years; however, the last appointment placed on record is of the year 2019 which has no concern or connection with the earlier

¹ Muhammad Jan and 3 others V. The Government of Baluchistan and another (2017 PLC (C.S.) 1471), Messrs State Oil Company Limited V. Bakht Siddique and others (2018 SCMR 1181), Gul Muhammad and 4 others V. Province of Sindh and 4 others (2010 PLC (C.S.) 1169), Naveed Iqbal Wadho and others V. Province of Sindh and others (2010 PLC (C.S.) 1395), Government of NWFP (Now KPK) and others V. Kaleem Shah and others (2011 SCMR 1004), Board of Intermediate and Secondary Education, Multan and another V. Muhammad Sajid and others (2019 PLC (C.S.) 539), Chairman, Pakistan Railways and others V. Arif Hussain and others (2008 PLC (C.S.) 240), Pir Imran Sajid and others V. Managing Director / General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257), Izhar Ahmed Khan and another V. Punjab Labour Appellate Tribunal, Lahore and others (NLR 1999 Lahore 59), Water & Power Development Authority V. Abass Ali Malano & Others (NLR 2004 Service 12), Water & Power Development Authority V. Abass Ali Malano & Others (2004 SCMR 630), Jawaid Ghafoor V. Pakistan Civil Aviation Authority and another (2010 PLC (C.S.) 276), Ayaz Ahmed Memon V. Pakistan Railways, Ministry of Railway, Islamabad and another (2011 PLC (C.S.) 281), Government of North West Frontier Province and others V. Abdullah Khan and others (2011 PLC (C.S.) 775), Secretary, Ministry of Defence, Rawalpindi and others V. Muhammad Miskeen (1999 SCMR 1296), Ejaz Akbar Kasi and others V. Ministry of Information and Broadcasting and others (2011 PLC (C.S.) 367), Pakistan Telecommunication Company Limited and another V. Muhammad Zahid and 29 others (2010 SCMR 253), Abdul Rehman and others V. National Bank of Pakistan and others (2011 PLC (C.S.) 234), Pakistan Muslim League (N) and others V. Federation of Pakistan and others (PLD 2007 SC 642), Shah Nawaz and 36 other V. Province of Sindh and 4 others (C.P. No. D-7529/2018), Secretary (Schools), Government of Punjab, Education Department and others V. Yasmeen Bano (2010 SCMR 739), Dr. Bashir Ahmed and others V. Province of Sindh and others (2016 PLC (C.S.) 179), Sarfraz Ahmed V. Government of Sindh (2006 PLC (C.S.) 1304), Pakistan Railways and another V. Zafarullah, Assistant Electrical Engineer and others (1997 SCMR 1730), Dr. Naveeda Tufail and 72 others V. Government of Punjab and others (2003 PLC (C.S.) 69), Ikram Bari and others V. National Bank of Pakistan and others (2005 PLC (C.S.) 915), Shamsul Haque Mahar and others V. Province of Sindh and others (2013 PLC (C.S.) 1046).

² Vice Chancellor Agricultural University of Peshawar, V. Muhammad Shafiq (2024 SCMR 527)

appointments, whereas, the conditions stipulated in the appointment order have been accepted by the Petitioners and therefore, no vested right is created in their favor. According to him, there is no compulsion in law for the Government to make appointments only on permanent basis as according to him, it is purely a matter of policy and is dependent on the funding as well as the projects conceived from time to time. He has prayed for dismissal of instant Petitions.

4. Heard learned Counsel for the Petitioners as well as learned AAG and perused the record. Before proceeding further, it would be advantageous to refer to the appointment order available at Page 297 in respect of one of the Petitioners which reads as under: -

**“DIRECTORATE GENERAL
OF FARM WATER MANAGEMENT,
SINDH HYDERABAD.**

NO.DG/OFWM/SIAPEP/Admin(M-114)/ 188 /2019
Hyderabad dated the 22/08/2019

OFFICE ORDER

With the approval of Competent Authority **Mr. Mumtaz Ali Panhwar S/o Ameer Bux Panhwar** having **CNIC No. 41201-0979260-7** is hereby engaged as **Naib Qasid** on contingency basis for the period of 89 Days, in District **Dadu** and conditions with immediate effect till further orders.

- That the engagement on contingency basis is subject to fresh approval on expiry of every 89 days.
- That he will be paid fixed salary amounting to Ra 15000/- per month.
- His engagement will be purely on Contingency basis for 89 days.
- His engagement could be discontinued at any time without any notice
- His engagement is subject to the availability of funds
- If at any stage it is found that the incumbent is unwilling and habitual absconder or violates the Government rules and regulations then his engagement will be discontinued without issuing any prior notice.

“If all terms and conditions mentioned above are accepted, the incumbent should join duty within 10 days in concerned district office.”

Sd/-
**(THARU MAL DODANI)
DIRECTOR GENERAL”**

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5. Form perusal of the above order, it reflects that the Petitioner has been engaged as Naib Qasid on contingency basis for a period of 89 days in District Dadu on various terms and conditions which include that the engagement is on contingency basis and is subject to fresh approval on expiry of every 89 days. The condition further provides that the engagement can be discontinued at any time without notice, whereas, this will also be subject to availability of the funds. As to the above, even there appears to be no dispute that Petitioners have accepted these terms and conditions. The claim of the Petitioners Counsel that they have been in employment continuously is not substantiated from the record placed before us and when confronted, learned Counsel has relied upon another appointment order of the year 2007, and on perusal thereof, it does not reflect that both these appointments have any nexus with each other. Therefore, as to the claim of the Petitioners that they have been regularly employed for a continuous period is also not borne out from the material placed before us. As to the contention that these posts are permanent in nature including the project in question it will suffice to observe that no supporting material to that effect has been placed before us. It is not the case of the Petitioners that they were appointed against vacant posts of any permanent nature. It is also not borne out from the record that the project in question was ever accorded permanence by the Government or was made part of the regular budget. In the same manner, the posts in question have never been made regular or permanent posts falling within the budget of the Government. They are admittedly dependent on the funds provided by the loan giving or donor agencies. Mere prolongation of the project does not *ipso-facto* demand that the posts and appointment shall be mandatorily regularized. The law in this regard is settled that such project employees are not entitled for any regularization after completion of the project. In our opinion, insofar as it

relates to contract employees of the project, it is the prerogative of the project management to determine which employees are required for the extended period and stage of the project for effective implementation of the same. No vested right exists in favour of a particular employee to insist that the management should be directed to retain his services and extend his contract. The argument of the learned Counsel for the Petitioners that a direction be issued to the Respondent for legislation allowing regularization of the Petitioners as has been done in case of some other employees does not appear to bear any merit inasmuch as the Courts are not required to issue any direction to the executives for carrying out any such legislation. It is purely a policy matter and the prerogative of the executives as to whether a set of employees are required to be regularized or not.

6. It is also a matter of record that these Petitioners as well as some other employees approached this Court by way of C. P. No. D-764/2013 and other connected matters wherein, their case was that they are all engaged as part of the project known as **“National Programme for improvement of Water Courses”** and were appointed on contingency basis and sought a declaration that they are entitled to be regularized. The learned Division Bench of this Court in a detailed opinion dated 18.05.2017 has considered the entire case law which has also been relied upon in the instant matter and was pleased to dismiss the said Petitions with certain observations as to future employments. The said Judgment admittedly, and as stated at the bar, (except one disabled petitioner who otherwise was also unsuccessful on merits) was never impugned by the present set of Petitioners any further. Therefore, the petition is otherwise (at least to the extent of common petitioners) is also hit by Resjudicata as the facts and issue, including the name of the project in hand were same.

7. On 12.03.2024, an order was passed by this Court whereby, the Petitioners Counsel was confronted that the case of *Vice Chancellor Agricultural University Peshawar* (supra) which is the latest view of the Hon'ble Supreme Court in respect of regularization of contract or temporary employees, and today while arguing learned Counsel has not been able to distinguish the said judgment except that this judgment is per in-curium. We are least impressed by this argument inasmuch as even an obiter dicta is binding on High Courts under Article 189 of the Constitution. Not only this, even otherwise, the argument as to the said view of the Supreme Court is per in-curium is misconceived and liable to be discarded. It would be advantageous to refer to Para 6 & 7 of the said Judgment which reads as under:-

“6. It is well settled that there is no vested right to seek regularization for employees hired on contractual basis unless there is any legal or statutory basis for the same.³ The process of regularization requires backing of any law, rules or policy.⁴ It should adhere to the relevant statutory provisions and government policies.⁵ In the absence of any of the same, a contractual employee cannot claim regularization. Applying the principles settled by this Court to the proposition at hand, it becomes clear that the Respondents have no automatic right to be regularized unless the same has specifically been provided for in law or policy which in the present case is not available. Any regularization without the backing of law offends the principles of fairness, transparency and meritocracy and that too at the expense of public exchequer. The Impugned Judgment has also erred in law by failing to take into account that where a contractual employee wishes to be regularized, he must demonstrate statutory basis for such a claim, in the absence of which, relief cannot be granted solely on the principle of “similarly placed persons.”⁶ Article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities. It comes into operation when some persons are granted a benefit in accordance with law but others, similarly placed and in similar circumstances, are denied that benefit. But where a person gains, or is granted, a

³ Faraz Ahmed v. Federation of Pakistan (2022 PLC 198); Government of Khyber Pakhtunkhwa v. Sher Aman and others (2022 SCMR 406); Vice Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa v. Tanveer Ahmad (2022 PLC (C.S.) 85); Pakistan Telecommunication Company Ltd. v. Muhammad Samiullah (2021 SCMR 998); Messrs Sui Northern Gas Company Ltd. v. Zeeshan Usmani (2021 SCMR 609); Khushal Khan Khattak University v. Jabran Ali Khan (2021 SCMR 977); Pakistan Telecommunication Company Ltd. v. Muhammad Samiullah (2021 SCMR 998); Government of Khyber Pakhtunkhwa v. Saeed-Ul-Hassan (2021 SCMR 1376); Muzaffar Khan v. Government of Pakistan (2013 SCMR 304); Government of Balochistan, Department of Health v. Dr. Zahid Kakar (2005 SCMR 642).

⁴ Government of Khyber Pakhtunkhwa v. Sher Aman and others (2022 SCMR 406); Government of Khyber Pakhtunkhwa, Workers Welfare Board v. Raheel Ali Gohar (2020 SCMR 2068).

⁵ Government of Khyber Pakhtunkhwa v. Intizar Ali (2022 SCMR 472); Pir Imran Sajid v. Managing Director Telephone Industries of Pakistan (2015 SCMR 1257).

⁶ Deputy Director Finance and Administration FATA v. Dr. Lal Marjan (2022 SCMR 566).

benefit illegally, other persons cannot plead, nor can the court accept such a plea, that the same benefit must be allowed to them also in violation of law.⁷ Thus, the ground of discrimination also does not stand, because in order to establish discrimination it is important to show that the earlier act was based on law and policy, which has not been the case here. Thus, with respect to the first question raised, we are of the view that the regularization of the Respondents cannot take place without the backing of any law, rule or policy and without an open and transparent process based on an objective criteria, as discussed above.

7. At this juncture, it is underlined that the process of regularization is a policy matter and the prerogative of the Executive which cannot be ordinarily interfered with by the Courts⁸ especially in the absence of any such policy. It does not befit the courts to design or formulate policy for any institution, they can, however, judicially review a policy if it is in violation of the fundamental rights guaranteed under the Constitution. The wisdom behind non-interference of courts in policy matters is based on the concept of institutional autonomy which is defined as “a degree of self-governance, necessary for effective decision making by institutions of higher education regarding their academic work, standards, management, and related activities...”⁹ Institutional autonomy is usually determined by the level of capability and the right of an institution to decide its course of action about institutional policy, planning, financial and staff management, compensation, students, and academic freedom, without interference from outside authorities.¹⁰ The autonomy of public institutions is not just a matter of administrative convenience, but a fundamental requirement for the effective functioning of a democratic society, as public sector organizations are guardians of the public interest. Democracy, human rights and rule of law cannot become and remain a reality unless higher education institutions and staff and students, enjoy academic freedom and institutional autonomy.¹¹ More recently, the concept has in its longstanding and idealized form been well captured in the Magna Charta Universaitum 2020 that states “...intellectual and moral autonomy is the hallmark of any university and a precondition of its responsibilities to society.”¹²

8. From perusal of the aforesaid observations, it clearly reflects that all the arguments which have now been raised by the Petitioners Counsel including discrimination and applicability of Article 25 of the Constitution has been dealt with by the Hon’ble Supreme Court and has been pleased to hold that any regularization without the backing of law offends the principles of fairness, transparency and meritocracy and that

⁷ Muhammad Yasin v. D.G. Pakistan, Post Office (2023 SCMR 394).

⁸ Waqas Aslam v. Lahore Electric Supply Company Limited (2023 SCMR 549); Province of Punjab through Chief Secretary, Lahore v. Prof. Dr. Javed Iqbal (2022 SCMR 897).

⁹ Chapter V, Recommendation concerning the Status of Higher-Education Teaching Personnel (1997) UNESCO < <https://en.unesco.org/about-us/legal-affairs/recommendation-concerning-status-higher-education-teaching-personnel?>>

¹⁰ OECD, Governance and Quality Guidelines in Higher Education: A Review of Governance Arrangements and Quality Assurance Guidelines (2005).

¹¹ Khyber Medical University v. Aimal Khan (PLD 2022 SC 92).

¹² Principles, Values and Responsibilities, Magna Charta Universaitum (2020).

too at the expense of public exchequer. It has been further observed that any contractual employee who wishes to be regularized, has to demonstrate statutory basis for such a claim and in absence of which the relief so prayed for cannot be granted solely on the principle of “*similarly placed persons*”. It has been held that where a person gains or is granted a benefit illegally, other persons cannot plead, nor can the court accept such a plea, that the same benefit must be allowed to them also in violation of law. The Hon’ble Supreme Court has perhaps, set the controversy at naught through the above judgment and now any regularization can only be ordered by a Court when there is some *law, rule or policy* duly adopted and issued by the Government and only then its enforcement can be sought and done by the Court. There appears to be no exception any more insofar as the claim of regularization is concerned.

9. Despite being confronted with the aforesaid observations of the Supreme Court and the fact that the said judgment is now in field, Petitioner’s Counsel has made his best possible efforts to argue and buttress his submissions with numerous judgments of the courts as reproduced hereinabove which has consumed considerable time of this Court, which otherwise, could have been spent on deciding other important matters. As already observed, even an obiter dictum, at times is also a binding precedent and this Court must not presume that Supreme Court in *Vice Chancellor Agricultural University Peshawar* (supra) was not aware of the earlier precedents being relied upon by the Petitioner’s Counsel. Such line of arguments is misconceived; hence, liable to be discarded. In view of these observations, this appears to be a fit case to impose heavy costs on the Petitioners; however, showing restraint, we deem it not to do so; however, the Petitioners are warned to be careful in future as apparently, in their earlier

effort before this Court, they had remained unsuccessful as well.

10. In the case of *Province of Punjab*¹³ in somewhat identical circumstances, a set of Petitioners claiming to be contract employees under the World Bank (IDA) assisted project titled “Punjab Irrigated Agriculture Productivity Improvement Project” during continuance of their employment approached the learned High Court seeking regularization of their contractual employment against project posts. The petitions were disposed with directions to the Secretary Agriculture to treat the petitions as representations and decide the same after affording an opportunity of hearing them. The said representations were rejected, which was impugned by way of fresh petitions and the same were allowed against which Intra Court Appeals were also dismissed. The Government of Punjab approached the Supreme Court and while setting aside the order of regularisation and allowing the Appeals it was observed as follows;

10. It is clear and obvious from the record that the respondents were appointed afresh under the World Bank assisted development project w.e.f. 01.07.2012 on contract basis, initially for a period of three years. Under condition XVIII titled "Tenure", the project posts were sanctioned only for the period and the period of employment was to be automatically terminated if not extended on expiry of the contract period. It appears that the gestation period of PIPIP expired on 30.06.2017, therefore, services of the respondents automatically stood terminated. Although the World Bank has provided additional financing to PIPIP from 30.06.2017 till 30.06.2021, on the basis of the terms of conditions of such extension, the contracts of some of the employees were not extended. We do not find any force in the argument of learned counsel for the respondents that they were discriminated against in so far as contracts of some of the contract employees were extended while those of others were not. In our opinion, in so far as it relates to contract employees of the project, it is the prerogative of the project management to determine which employees are required for the extended period and stage of the project for effective implementation of the same. No vested right exists in favour of a particular employee to insist that the management should be directed to retain his services and extend his contract.

¹³ Province of Punjab v Muhammad Arif (2020 SCMR 507)

11. In the case of **Government of Khyber**¹⁴ again in somewhat similar circumstances, the case of project employees landed in Supreme Court and while once again deciding the issue against such set of employees the Supreme Court held as under;

8. A bare perusal of the appointment orders of the Respondents reveal that they were appointed on contractual basis in the Skill Development Centers by TUSDEC, a fully owned subsidiary of PIDC which is a state corporation working under the Ministry of Industries and Production. It was deal from the outset that the Respondents were temporary employees of the project authorities and hence were not the employees of the Department. Subsequently, the project was handed over to the Provincial Government, which upon taking charge of the said project advertised various posts for making ad hoc appointments. It is pertinent to note that the Respondents did not apply to the advertised appointments and instead filed constitutional petitions before Peshawar High Court.

9. It is well settled law that where a project employee is recruited by a Company for a definite period of time, such an employee does not under any circumstances either directly or by implication become an employee of the provincial government. Therefore, it is apparent that the cases of the respondents clearly fall outside the ambit of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 as they were all hired against project posts by TUSDEC and the project itself was to be executed by the Company under the control of the Federal Government for a requisite period of time before it was handed over to the Provincial Government. For the said Act to apply, it is the Provincial Government that must employ the individual. We are therefore, in no manner of doubt that there is a qualitative and conceptual difference between contract employees covered by the provisions of the 2009 Act and the temporary employees hired by TUSDEC during the time they operated the project before handing it over to the provincial government. Such employees cannot by any stretch of the language be termed or treated as employees hired by the KP Government. In these circumstances, the benefit of the Regularization Act, 2009 was not available to them.

12. Lastly, Petitioners Counsel has also placed reliance on some interim orders of the Supreme Court dated 23.8.2016 and 20.03.2017 in Civil Appeal No.33-K & 34-K of 2016 (*Province of Sindh v Dr. Bashir Ahmed & Others*) and contended that taking guidance from the same, this Court must proceed further in accordance with such observations and call explanation and record from the Respondents. To that we may observe, that such observations of the Supreme Court were interim in nature and are not a binding precedent, whereas, admittedly the said case was finally withdrawn vide order dated 29.08.2017 and

¹⁴ Government of Khyber Pakhtunkhwa v Shahzad Iqbal (2021 SCMR 675)

was never decided finally. In the case of Umar Farooq¹⁵, the Supreme Court has been pleased to dilate upon the effect of its interim orders and their applicability as a precedent for future purposes. It has been held that it would give such orders a degree of permanence and continuity quite contrary to its stated interim nature and it would be as though the matters in which the order was made had been finally decided and disposed of. This according to the Supreme Court is never the spirit of their interim orders. Therefore, the contention of the Petitioner's Counsel on this account as well seems to be farfetched and without any legal or justifiable basis.

13. In view of hereinabove facts and circumstances, in our considered view, no case of indulgence or exercising any discretion is made out, whereas, the issue now finally stands decided against the Petitioners by the Apex Court, these Petitions being misconceived are hereby ***dismissed***.

Dated: 04.06.2024

J U D G E

J U D G E

Arshad/

¹⁵ Umar Farooq v Sajjad Ahmed Qamar order dated 30.1.2024 | CPLA No.210 of 2024 and other connected matters