

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS

Constitution Petition No.D-634 of 2024

DATE ORDER WITH SIGNATURE OF JUDGE

Before
Adnan-ul-Karim Memon, J
Amjad Ali Bohio, J

Date of hearing & Order 12.08.2024

Mr. Imran Chaudhary, Advocate for petitioners
Mr. Abdul Rauf Arain, Advocate for respondent No.04
Mr. Ayaz Ali Rajpar, A.A.G Sindh,

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ORDER

Through these Constitutional Petitions filed by the petitioners under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, they have prayed that their temporary contractual appointments/services be regularized in the office of Executive Engineer Public Health Engineering Division Mirpurkhas, inter-alia, on the ground that they have served in the respondent / Engineering Division Mirpurkhas more than sufficient time on sanctioned budgetary posts and performed their duties as since 2019, in different sections of the respondent- Engineering Division Mirpurkhas, inter-alia on the ground that it is the consistent practice of the Respondents to hire persons on a contract/daily wages basis and thereafter regularize them. They further submitted that the contractual employees cannot be subjected to discriminatory treatment; that Petitioners are entitled to similar treatment in respect of regularization under which their similarly placed colleagues have been regularized vide different office orders; that the Petitioners are qualified persons to hold the subject posts. In the end, Petitioners submitted that the decision of the respondents to withhold their salary is liable to be reversed and their services are liable to be regularized.

2. Learned counsel for the petitioners argued the main question of regularization involved in these cases has already been decided by a learned Division Bench of this Court, by holding, inter alia, that the petitioners therein shall be deemed to have been validly appointed on

regular basis. It was also contended by him that it would be prejudicial to the petitioners if they are not regularized at this stage after serving for a considerable period and after spending the prime period of their professional life with the respondents. According to them, if the petitioners are not regularized and their services are eventually dispensed with, they will not be able to seek fresh employment at any other place, and in such an eventuality their professional career will come to an end much before their expected age of superannuation.

3. Learned AAG, has opposed the petition inter-alia, on the ground that petitioners were appointed temporarily to maintain the urban water supply and drainage schemes of Taluka Mirpurkhas. However, the Government of Sindh has not released the budget to pay the salary to the petitioners and now their salary amount become a liability, according to the respondent department in the year 2022 Government of Sindh has revised the policy of operation and the maintenance of water supply and drainage schemes and vide Notification dated 04-11-2022, the control of all urban water supply and drainage schemes had been handed over to concerned Municipal Committee authorities along with all assets/components/liabilities for further operation and maintenance, therefore in the light of above notification Municipal authorities has taken over the control of urban water supply and drainage schemes of Taluka Mirpurkhas including employees appointed against said schemes and now it is the liability of the Municipal Corporation Mirpurkhas, and HR Public Health Engineering Department is not in a position to take any action regarding their claims. However the claims petitioners have been calculated and such claim has been forwarded to the Finance Department, Government of Sindh for releasing the budget for clearance of their liabilities. He agreed that as and when funds are received previous dues of the petitioners will be cleared.

3. The aforesaid stance of the office of Executive Engineer Public Health Engineering Division Mirpurkhas has been refuted by the Municipal Corporation Mirpurkhas on the premise that the petitioners are not employees of the Municipal Corporation Mirpurkhas as such they are not liable to pay the dues of the petitioners.

4. We have heard learned counsel for the petitioners and the learned Additional Advocate General Sindh as well as the learned counsel representing the Municipal Corporation Mirpurkhas at great length and with their assistance have minutely examined the material available on

record including the order dated 23-07-2024 passed by this Court whereby respondents were directed to resolve the subject issue.

5. Since only the questions of law are involved in this petition and all the petitioners are admittedly contractual/daily wages employees, we need not discuss the facts of the case, however, we have been informed that petitioners have not been paid their dues in compliance with the aforesaid orders passed by this Court.

6. It is an admitted position that the petitioners are contractual/daily wages employees and thus their status and relationship are regulated and governed by the principle of “master and servant”. The Hon’ble Supreme Court has been pleased to hold in its numerous pronouncements that a contract employee, whose terms and conditions of service are governed by the principle of “master and servant”, does not acquire any vested right for regular appointment, or to claim regularization, or to approach this Court in its constitutional jurisdiction to seek redressal of his grievance relating to regularization; in fact they are debarred from approaching this Court in its constitutional jurisdiction and the only remedy available to them is to file a Suit for damages alleging breach of contract or failure on the part of the employer to extend the contract and/or terminating their services; after accepting the terms and conditions for contractual appointment, the contract employee has no locus standi to file a Constitutional Petition seeking writs of prohibition and or mandamus against the authorities from terminating his/her service and or to retain him/her on his/her existing posts on regular basis; a contract employee, whose period of contract expires by efflux of time, carry no vested right to remain in employment of the employer and the courts cannot compel the employer to reinstate him/her or to extend his/her contract; and, no rights would accrue to a de facto holder of a post whose right to hold the said post was not established.

7. We, on the basis of contentions of the parties with the material produced before us, have reached the conclusion that the petitioners have served the respondents as per the statement of Executive Engineer Public Health Engineering Division Mirpurkhas and the remaining dues of the petitioners needs to be cleared without loss of time, therefore we direct the Chief Secretary, Sindh to constitute a Committee headed by him and comprising of the Secretary of concerned Department as well as head of the Municipal Corporation Mirpurkhas, to conduct an inquiry as to why

the salaries of the petitioners has been withheld as discussed in the preceding paragraphs and subsequent events, after providing ample opportunity of hearing to the Petitioners and fix responsibility in the matter and take action against the delinquent officials strictly in accordance with law and if the petitioners are entitled to the salary their due salary be released forth forthwith and submit report to this Court through Additional Registrar of this Court, within a period of one month.

8. The captioned Petition is disposed of in the aforesaid terms along with pending Application[s].

JUDGE

JUDGE

"Ali Sher"