

IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS

Constitution Petition No.D-109 of 2024
(*Agha Irfan Ali and others Vs. Province of Sindh and others*)

DATE ORDER WITH SIGNATURE OF JUDGE

Before:

Adnan-ul-Karim Memon, J.

Amjad Ali Bohio, J.

Date of hearing & Order 26.08.2024

Mr. Zameer Hussain Ghumro advocate for the petitioners.

Mr. Muhammad Sharif Solangi, Assistant A.G.

=

ORDER

Adnan-ul-Karim Memon, J. This petition has been brought by the petitioners to seek their regularization of service in the defunct office of District Coordination Officer Umerkot, inter-alia on the ground that they were appointed on various posts of BPS 1 to 11 on contingent basis in the years 2008 to 2011; that the Petitioners are nonetheless entitled to the same treatment as meted out with their colleagues whose services have been regularized; and, this was the reason, that 10 petitioners filed memo of amended title on 05-03-2024 to pursue the case for regularization of their services, as other petitioners No.2 to 13, & 15 to 21, 25 to 35 & 37 with view their petition vide statement dated 05-03-2023. Per learned counsel, a similar argument was accepted by the Supreme Court in the case of Aqeel Shazad and others Vs the Government of Khyber Pakhtunkhwa. (2020 SCMR 1425) and contingent staff was regularized and the case of the petitioner was akin. He prayed for allowing this petition.

2. The learned counsel's argument suggests that the primary difference between contingent employees and work-charged employees lies in their relationship with the employer. Contingent employees have a temporary relationship, while work-charged employees likely have a more permanent or ongoing relationship. The counsel also highlights that despite their similarities, there are other significant differences between these two types of workers. These differences are presumably enough to justify the inclusion of contingent employees in the Sindh (Regularization

of Adhoc and Contract Employees) Act 2013, while daily wages and work-charged employees might be excluded.

3. The A.A.G argued that the petitioners' appointment was contingent, and they could not claim regularization. He contended that regularization requires a statutory basis, which is absent in this case. Merely being employed for a long time does not entitle one to regularization. The A.A.G. emphasized that regularization is not a vested right but requires a statutory basis. Relying on the fact that other colleagues have been regularized is not a legal ground. The A.A.G. stated that contractual employees must demonstrate a statutory basis for regularization, and relief cannot be granted solely on the principle of "similarly placed." Such a course of action would be making one right out of two wrongs, which is not permissible in the law. The A.A.G. asserted that the Court should interpret and apply the law strictly and cannot go beyond what the law permits. He added that this Court lacked jurisdiction to provide relief to the petitioners under Article 199 of the Constitution.

3. This petition was dismissed for non-prosecution vide order dated 6.10.2022 and a restoration application bearing M.A No 13412 of 2022 has been filed on 1.11.2022, which is hereby restored to its original position, and the same petition stands disposed of along with the pending application(s) on the premise that if the colleagues of the petitioners, employment is retained by the respondent department and the case of the petitioners falls within the ratio of Judgment rendered by the Supreme Court in the case of Aqeel Shazad and others (supra), then the competent authority may look into their ordeal and re-consider their decision, either to retain them along with their colleagues or pass appropriate order after hearing the petitioners, if they are in service.

JUDGE

JUDGE