

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

**Constitutional Petition No.D-260 of 2018
(M.A No.2551 of 2023)**

Present:

**Mr. Justice Muhammad Saleem Jessar
Mr. Justice Zulfiqar Ali Sangi**

Petitioner Mazhar Ali Qazi / Kalhoro : In person

Secretary, to Government of Sindh, Local Government Dept. Sindh and others Respondents No.1 to 3 : through Mr. Abdul Hamid Bhurgri, Add. Advocate General, Sindh along with Mr. Shoaib Ahmed, ADLG Ratodero, on behalf of RDLG Larkana

Chief Municipal Officer, Municipal Committee Ratodero, Respondent No.4 : through Mr. Rafique Ahmed K. Abro, Advocate.

Date of Hearing : 20.12.2024

Date of Judgment : 08.01.2025

ORDER

Muhammad Saleem Jessar, J.- By means of this constitutional petition, the petitioner has sought following reliefs:

That this Hon'ble Court may be pleased to direct respondents to consider case of petitioner sympathetically for regularizing his service keeping in view his services already rendered and the experience, so also in view of provision of the "Sindh (Regularization of Adhoc and Contract Employees) Act, 2013".

2. Brief facts giving rise to filing instant petition, as disclosed by the petitioner, are; that the petitioner was appointed as "HELPER" in Municipal Committee, Ratodero (District Larkana) on Contract basis vide Order No.4641, dated 01.11.2013 and he had been working there on purely vacant post. He further stated that father of the petitioner was serving in the Municipal

Committee Ratodero and after his death the petitioner was appointed on "Contract" basis. The petitioner moved an application before respondent No.4 (Chief Municipal Officer Ratodero) for regularization of his services, whereupon respondent No.4 vide his letter No.748 dated 26.4.2017 sought for permission for regularization of services of the petitioner from respondent No.2 (Director Local Government, Larkana Division). Thereafter, respondent No.2, vide his letter No.127 dated 03.5.2017 forwarded application of the petitioner duly recommended by respondent No.4, to the respondent No.1 (Secretary Local Government Department, Sindh), for grant of permission for regularization of his service, but respondent No.1 paid no heed to the request made by the petitioner as well as the recommendation of respondent No.4.

3. The petitioner further stated that the Provincial Assembly of Sindh, Government of Sindh has passed an "Act", namely (The Sindh "Regularization of Adhoc and Contract Employees" Act, 2013), thereby services of all the employees appointed on Adhoc and Contract Basis or otherwise have been regularized, but the services of the petitioner have not been regularized till date. According to the petitioner, he went from pillar to post and also approached the respondents many times, but no heed was paid towards his grievance. In such circumstances, the petitioner filed instant petition with aforesaid prayers.

4. It appears that this petition was disposed of vide order dated 21.05.2019 in the following terms:

"Mr. Ali Nawaz Ghanghro, Advocate for the Petitioner a/w Petitioner.

Mr. Abdul Ghaffar Shaikh, Advocate for respondent No.4 a/w Ghulam Murtaza Buledi, Chief Municipal Officer, Municipal Corporation, Ratodero (Respondent No.4.)

Mr. Amir Ahmed Narejo, State Counsel.

Learned counsel for respondent No.4 files Statement of respondent No.4, which is taken on record and copy whereof has been provided to the learned counsel for the petitioner. The content of the Statement is reproduced below:

"I do hereby submit that at present there is ban for the appointment/regularization of the employees in Municipal Committee Ratodero/Sindh. It is hereby assured that as and when the ban for appointment / regularization is lifted by the Government of Sindh the petitioner's services will be regularized. It is further assured that the present

service of the petitioner will not be touched and he will be working as usual"

Learned counsel for the petitioner after going through the Statement expresses satisfaction and seeks disposal of instant constitutional petition. Order accordingly."

5. The order dated 15.01.2020, depicts that on said date, M/s. Zahid Khemtio, Additional Secretary, Local Government Department, Ali Anwar Ruk, Regional Director, Larkana and Ghulam Murtaza Buledi, CMO Ratodero were present alongwith Mr. Liaquat Ali Shar, Addl. A.G. Learned counsel for respondent No.4, Chief Municipal Officer, Ratodero, made a statement that the ban on appointment and regularization of the employees in Municipal Committee, Ratodero has been lifted. However, still permission had not been accorded by the Local Government Department Sindh for the appointment against vacant posts. He further stated that as soon as permission is accorded, the services of the petitioner, who had served on contract basis for 7 years on contingency basis, shall be regularized against existing post. On such statement, the petitioner, who was present in Court, being satisfied, sought disposal of this petition. Accordingly, the petition was disposed of alongwith pending applications.

6. However, as the services of the petitioner were not regularized despite above statement, the petitioner filed a contempt application being M.A. No.1043/2020.

7. On 08.07.2020 when the case was fixed in Court, Mr.Zahid Hussain Khemtio, Additional Secretary, Local Government Department, Government of Sindh filed a Statement on behalf of respondent No.1, alongwith certain documents and submitted that file of the petitioner had been floated to the Secretary to Government of Sindh, Law Department for his legal opinion. He assured that once the legal opinion is furnished by the concerned, the services of the petitioner shall be regularized in terms of the directions contained under earlier order dated 15.01.2020. On 11.08.2020, when the contempt application was fixed in Court, petitioner filed a statement for withdrawal of contempt application submitting that the issue had stood resolved therefore, he does not want to press contempt application which was dismissed as not pressed.

8. Thereafter, again the petitioner moved another contempt application being M.A. No.1858/2020 against the respondents. The matter was then being adjourned on one pretext or the other, mostly at the request made on behalf of the respondents / contemnors. However, on 19.04.2023 contempt application was again withdrawn by the petitioner, accordingly the same was dismissed as withdrawn.

9. The petitioner again moved a contempt application being M.A. No.2551/2023 against the respondents for alleged defiance of the Court's order regarding regularization of petitioner's services.

10. On 19.03.2024, when the case was fixed for hearing of contempt application, the Petitioner, who was present in person, stated that the petition was disposed of upon the statement filed by respondent No.4 to the effect that as and when the ban for appointment / regularization is lifted by the Government of Sindh, the petitioner's services will be regularized. According to the petitioner, since the time of order dated 21.5.2019, six years had passed and the ban had also been lifted away, even then the case of petitioner was not being considered by the respondents/department.

11. On 26.03.2024 alleged Contemnors submitted that they had no objection if the services of petitioner are regularized; however, subject to approval by the competent authority i.e. Secretary, Government of Sindh, Local Government Department, Karachi.

12. On 09.9.2024, learned counsel for the petitioner stated that despite the undertaking given by No.4, Chief Municipal Officer, Municipal Corporation Ratodero, services of the petitioner have not been regularized, therefore, notice was issued to respondent No.4 and he was directed to be present in Court alongwith a detailed reply as to why induction of the petitioner as regular employee has not taken place till date.

13. On 20.12.2024, Petitioner was present in person. Mr. Abdul Hamid Bhurgri, Addl. A.G. was also present along with Mr.Shoaib Ahmed, ADLG Ratodero on behalf of RDLG, Larkana. Mr. Rafique Ahmed K. Abro, advocate for Chairman, Municipal Committee, Ratodero was also present. Petitioner submitted that he has been working with the department right from 2013 and on the statement of respondent No.4 made before this Court, his services were

directed to be regularized against existing post in terms of order dated 15.01.2020. He further submitted that since the directions contained in order dated 15.01.2020 were not complied with, therefore, he maintained M.A. No.1858/2020, followed by the listed application (M.A. No.2551/2023). It was observed that the officer present in the Court on particular date viz. 20.12.2024 was also present on last two dates of hearing viz. 19.3.2024 and 26.3.2024 and had raised no objection if services of the petitioner are regularized. However, learned AAG opposed the listed application on the ground that per policy, as stated by the Secretary concerned, case of the petitioner does not come within its ambit. The petitioner in rebuttal submitted that he is a disabled person and since order passed by this Court was not assailed by the respondents, it has attained finality, therefore, any objection raised at a later stage cannot be considered at this juncture.

14. It seems that the petitioner has been working as Helper on contract basis for last several years and has been performing his duties to the satisfaction of his superiors. As regards the plea taken by the respondent No.4 in his comments that the petitioner has not been performing his duties satisfactorily, such plea does not appeal to common sense because; had the petitioner's performance not been satisfactory, then as to why the respondents No.3 and 4, admittedly, recommended his case for regularization and sent the same to respondent No.1. It, therefore, seems that the plea of unsatisfactory performance has been raised for the first time by the respondents in their comments to the averments made in the petition, in order to make out a defence.

15. Before touching and discussing the undertaking given by the respondent on 21.5.2019 and affirmed from time to time during the proceedings of instant petition which create a valuable right in favour of the petitioner for his regularization, it may be observed that, even otherwise, the petitioner having served satisfactorily for several years on contract basis against a vacant post, deserves to be regularized. The Superior Courts, from time to time, have held that regularization of the employees working on contract and adhoc basis should be undertaken without any discrimination.

16. In this connection, reference may be made to the case of *Dr. IQBAL JAN and others Vs. PROVINCE OF SINDH and others*, reported in 2014 PLC

(C.S.) 1153 [Sindh High Court] wherein, while dealing with the point of implementation of Sindh Regularization of (Contract and Adhoc Employees) Act, 2013, a Division Bench of this Court held as under:

“9. While implementing the Act, it is the responsibility of Government to apply and allow the benefit to all employees placed in equal and similar circumstances without any discrimination and not to pick and choose the employees for conferring the benefit or advantage of this law. It is also an admitted position that learned Advocate General (Sindh) conceded before Hon'ble Supreme Court that after promulgation of the Act, appeals before Supreme Court have become infructuous as law has given them blanket protection as regards their appointment. We would also like to hold that when the law giver declares or promulgates any beneficial law it is his responsibility to implement it across the board with an open heart and benevolence without any conservative or rigid approach. The law under discussion is a beneficial statute proclaimed with the sole aim to provide and secure the rights of a particular category or class of employees for their betterment and to safeguard and preserve the contractual or ad hoc employment into a permanency. The letter of law enshrines that the efforts should be made to bequeath the benefit and its advantage to all the deserving employees in rem rather than to seek ways and means to deprive them on one or the other pretexts which is against the norms of good governance. It is often seen in the labour and service matters that laws are made but somehow or the other, its implementation is delayed so that every individual has to recourse to the court of law for its benefit and advantage and wait for considerable time. Had the law implemented in its letter and spirit, this would have lessen or decrease an unnecessary burden on the court's docket but on the contrary what we have experienced in some other cases also that despite promulgation of law with a broader spectrum which is a laudable effort, the contractual/ ad hoc employees are forced to first knock the door of this court for implementation which virtually made the spirit of law redundant.”

17. In the same judgment, while dealing with fundamental rights of the citizens, particularly equity and equal treatment to all citizens and relying upon earlier judgments on the point, it was held as under:

“8. In the judgment authored by one of us (Muhammad Ali Mazhar, J), 2013 PLC (C.S.) 121 (Muhammad Akram Solangi and others v. D.C.O, Khairpur and others), it was held that reading of Article 4 of the Constitution of Islamic Republic of Pakistan shows that it incorporates the doctrine of equality before law or equal protection of law and no action detrimental to the life, liberty, body, reputation or property of any person could be taken except in accordance with law. Public functionaries were supposed to function in good faith honestly and within the precincts of his power so that person concerned should be treated in accordance with law. Good governance is largely dependent upon upright, honest and strong bureaucracy particularly in written Constitution wherein important

role of implementation has been assigned to bureaucracy. Object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind. Such objective can be achieved by following rules of justness, fairness and openness in consonance with command of Constitution enshrined in different Articles including Articles 4 and 25 of the Constitution. Once it is accepted that the Constitution is supreme law of country, no room is left to allow any authority to make departure from any of the provisions of law and rules made thereunder. Article 3 of the Constitution makes its incumbent upon the state to ensure elimination of all forms of exploitation and the gradual fulfillment of fundamental principles from each according to his ability, to each according to his work. Under Article 38 of the Chapter, Principle of policy, it is provided that the state shall secure the well-being of the people, irrespective of sex, caste, creed, or race by raising their standard of living by preventing concentration of the wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of right between employer and employee and landlord and tenant. In the above context, the Hon'ble Supreme Court in the case of Ikram Bari reported in 2005 SCMR 100 held that Islamic welfare state is under obligation to establish a society, which is free from exploitation wherein social and economic justice is guaranteed to its citizens. Objectives Resolution, by virtue of Article 2-A of the Constitution, has been made substantive part of the Constitution which unequivocally enjoined that in State of Pakistan the principles of equality, social and economic justice as enunciated by Islam would be fully observed which would be guaranteed as fundamental rights. Principles of policy contained in Article 38 of the Constitution also provide that the State should secure the well-being of the people by raising their standards of living and by ensuring equitable adjustment of rights between employer and employees and provide for all citizens, within the available resources of the Country, facilities for work and adequate livelihood and reduce disparity in income and earnings of individuals. State is obliged under Article 3 of the Constitution, to ensure the elimination of all forms of exploitation and gradual fulfillment of the fundamental principle, from each according to his ability, to each according to his work."

18. In the case of *HAKIM ALI UJJAN and others Vs. PROVINCE OF SINDH and others*, reported in 2012 P L C (C.S.) 127 [Sindh High Court], a Division Bench of this Court held as under:

"...a person who has served for more than three years in a permanent post in pay scales 1 to 4 cannot be thrown out on the ground that he was employed on contract basis. Hence, a case for absorption in service on permanent basis is made out for the reason that job is not of such a nature which requires specialization or high qualification. It is an admitted position that for the last more than three years the petitioners are working in their respective posts and are being paid their salaries. At no stage during subsistence of their contract any of them was terminated for being incompetent or found unsuitable for

the job for any justifiable reason. There cannot be two sets of employees working on the same post in government service, one employed on contract basis and the other on permanent basis, though the post is of a permanent nature. In the present case the manner in which the petitioners are being treated is highly unreasonable.

19. In the case of *CHAIRMAN, PAKISTAN RAILWAYS and others Vs. ARIF HUSSAIN and others (2008 P L C (C.S.) 240 [Supreme Court]*, a Full Bench of Honourable Supreme Court held as under:

*“Besides, it is evident from the record that respondents were working against the permanent posts and according to policy of railways department, they were entitled to claim regularization, therefore, the Service Tribunal having taken into consideration this aspect of the cases, as well as judgment of this Court in the case of *Ikram Bari v. National Bank of Pakistan (ibid)*, had rightly allowed the appeals filed by them and impugned judgment being unexceptionable, would admit no interference.”*

20. In the case of *AYAZ AHMED MEMON Vs. PAKISTAN RAILWAYS, MINISTRY OF RAILWAY, ISLAMABAD through Chairman and another*, reported in **2011 PLC (C.S.) 281 [Sindh High Court]**, Petitioner was employed on contract basis for a period of three years, but said contract continued from year to year and his service continued for more than 7 years, therefore, Petitioner had prayed that he be treated as permanent employee with all consequential benefits. Consequently, a Division Bench of this Court held that *“If the post on which the petitioner was appointed, was a permanent one it should have been filled over during the last 6 years or so, but that had not been done.”* It was observed that *such was one of the most nefarious kinds of exploitation that a person was recruited on contract for a post of permanent nature and was continued as such from year to year; keeping that person on the tenterhooks of uncertainty with the sword of termination of contract permanently hanging over his head by nothing, but the most fragile thread of one knotted eyebrow of a superior.* It was further held that *such a situation could not and should not be allowed to be countenanced.* Ultimately, the concerned Department was directed *to assess the suitability of the petitioner for permanent absorption on the post.*

21. In instant case, the petitioner invoked extra-ordinary constitutional jurisdiction of this Court after having been disappointed by the irresponsible attitude and failure of the competent authority viz. Respondent No.1 to regularize his services although petitioner’s case had been duly recommended by respondents Nos.3 and 4.

22. During pendency of the petition, on 21.5.2019, respondent No.4 gave undertaking, assurance and consent that as and when the ban on the appointment / regularization is lifted, the petitioner's services will be regularized. However, when such undertaking and assurance was not acted upon for a considerable time, petitioner was compelled to initiate contempt proceedings against the officers concerned. Again on 15.01.2020, learned counsel for respondent No.4, Chief Municipal Officer, Ratodero, stated that the ban on appointment and regularization of the employees in Municipal Committee, Ratodero **has been lifted**; however, still permission was not accorded by the Local Government Department Sindh for the appointment against vacant posts and as soon as permission is accorded, the services of the petitioner, shall be regularized against existing post. On such statement, the petitioner withdrew his contempt application. However, as the services of the petitioner were not regularized despite above statement, the petitioner was again handicapped and, thus, filed another contempt application being M.A. No.1043/2020. Then the case was being fixed on various dates but the respondents, on one pretext or the other and on lame excuses, sought adjournments for years. The petitioner was being assured that his grievance would be redressed, resultantly, he was persuaded to withdraw contempt applications. However, lastly he moved listed contempt application being M.A. No.2551/2023.

23. It appears that this petition was filed in the year 2018 and more than 6 years have passed and he has been roaming from pillar to post for achieving his legitimate valuable right which accrued to him pursuant to the undertaking and assurance given by the respondents.

24. Needless to emphasize that when an order is passed, direction is given or process is issued by a Court on the basis of an undertaking given in the Court, then the person in whose favour undertaking and / or assurance is given, acquires a valuable right, and simultaneously the person(s) who floated, violated and disobeyed such orders passed on the basis of undertaking, make themselves liable for prosecution for the contempt of Court in terms of Article 204 of the Constitution, Islamic Republic of Pakistan, 1973. In instant case on various occasions the respondents / alleged contemnors made statements before this Court that the services of the

petitioner shall be regularized; however, till date the needful has not been done on one pretext or the other.

25. However, in the best interest of justice and in order to overcome the miseries and agonies suffered by the petitioner for the last several years, we deem it proper and feasible to convert listed contempt application into an application under Section 151, CPC. Order accordingly. Office to assign it proper number as per institution. Consequently, the respondents, particularly Respondent No.1, are directed to regularize the services of the petitioner as per their undertaking vide order dated 21.5.2019 with effect from 15.01.2020 when it was stated at bar that the ban on the appointment / regularization **had been lifted**.

26. Since the petitioner is running from pillar to post for his right for a long time, it is expected that such regularization process shall be completed expeditiously; but, in any case, not later than within **two months** from the date of this order under intimation to this Court. Learned Additional A.G. is directed to provide a certified copy of this Judgment to the concerned authorities in the department for compliance. It may be clarified that if the needful is not done within the stipulated period, it shall be deemed to be willful defiance and disobedience of this Court's order within the meaning of Article 204 of the Constitution of Islamic Republic of Pakistan, 1973.

27. Office to provide certified copy of judgment to the office of Addl. Advocate General, Sindh, for correspondence and compliance.

JUDGE

JUDGE

Larkana

Approved for reporting

Dated: 08th January, 2025