

IN THE HIGH COURT OF SINDH, KARACHI

C.P No.D-1155 of 2023

Present:

Mr. Justice Yousuf Ali Sayeed,
Mr. Justice Arbab Ali Hakro,

Petitioner: Zulfiqar Ali s/o Moula Bux
through Mr. Faizan Ali Memon, Advocate

Respondents No.1 to 4: Province of Sindh and others
through Mr. Rafique Rajouri, A.A.G

Date of hearing: 01.10.2024

Date of decision: 01.10.2024

J U D G M E N T

ARBAB ALI HAKRO, J: This Constitutional Petition under Article 199 of the Constitution of Pakistan of Pakistan, 1973 (“the **Constitution**”) has been filed by the petitioner, seeking regularization of his service under the provisions of Section 3 of the Act of 2013¹.

2. The brief facts precipitating the filing of this petition are that Respondent No.3 solicited applications for the appointment to various posts, including that of Assistant, through an advertisement dated 02.02.2012 in various daily newspapers, to which the petitioner duly applied. Subsequent to the recruitment process, the petitioner was selected for the post of Assistant vide an Offer Letter dated 08.06.2012, on a contractual basis initially for one year, extendable subject to satisfactory performance. The petitioner accepted the offer letter, and following the requisite verification, he was appointed as Assistant and assigned to the Directorate Human Rights Scheme ADP No.1588 Free Legal Aid Center at the District Level with a fixed remuneration of Rs.15,000/- per month on a contractual basis. The petitioner further contends that following the enactment of the Act of 2013 and pursuant to its Section 3, the petitioner was deemed to have been regularized. Yet, the Respondents exhibited reluctance to regularize the petitioner. Consequently, the petitioner, along with other employees, instituted C.P No.D-2746/2014 before this Court, which culminated in an Order dated 20.09.2016, wherein it was adjudicated that all employees, including the petitioner, are entitled to regularization in accordance with Section 3 of the Act of 2013, with directives to the Respondents to forward their cases for regularization to the Scrutiny Committee in accordance with the law. Thereafter, in compliance with the aforementioned

¹ Sindh (Regularization of Ad hoc and Contract Employees) Act, 2013 (the “**Act of 2013**”).

Order dated 20.09.2016, the petitioner's case was referred to the Scrutiny Committee, which ultimately recommended the petitioner for regularization as Assistant (BPS-14), and a Summary to this effect was submitted to the Chief Minister by Respondent No.2 on 26.03.2018, for the regularization of the petitioner along with 18 (eighteen) other employees. The petitioner further avers that he received a letter dated 03.09.2020 directing him to appear before Scrutiny Committee No.1 on 07.09.2020, which he duly complied with. Respondent No.2 also, through correspondence, sought verification of the B.Sc. Degree as well as H.S.C. and S.S.C. Certificates from Shah Abdul Latif University, Khairpur, and the Board of Intermediate and Secondary Education, Larkana, respectively, which authenticated the same as genuine via Letters dated 01.11.2021 and 28.10.2021. The petitioner persistently approached the Respondents for the issuance of a Notification for his regularization and also submitted a written request through an application dated 01.02.2023 but received no response. Hence, he has filed the present petition.

3. The notice of this petition was duly issued to the respondents. In response, the Secretary to the Government of Sindh and Respondents No.1 and 3 filed identical comments.

4. At the outset, the learned counsel representing the petitioner has argued that even though the petitioner was recommended by the duly constituted Scrutiny Committee for regularization to the post of Assistant, the Respondents remain reluctant to regularize the services of the petitioner. He has further contended that the Respondents' actions are discriminatory, illegal, and malafide. Additionally, he has argued that the petitioner's case is on par with that of other employees who were regularized under Section 3 of the Act of 2013.

5. Conversely, the learned A.A.G representing the respondents contended that the petitioner was appointed against a project post and not against a regular sanctioned post of the department; therefore, he cannot claim an appointment against a regular post. He further contended that the post of the Petitioner was without a basic pay scale; therefore, he was not eligible to be regularized against the sanctioned post of the department. He also contended that the petitioner's contract was extended from time to time until the life of the project, and the said project/ADP Scheme ended/closed in 2020. Lastly, he prayed for the dismissal of the petition.

6. We have meticulously examined the submissions of the learned counsel for the Petitioner and the Assistant Advocate General and have scrupulously reviewed the record with their assistance. The primary contention of the learned A.A.G is that the petitioner was appointed against a project post and not against a regular sanctioned post of the department; therefore, he cannot claim an

appointment against a regular post. Such contention necessitates examination in light of Sections 2(e)² and 3³ of the Act of 2013. The definition of "post", as provided under Section 2(e), is broad and inclusive. It explicitly states that a "post" not only refers to a position held by an employee in a Government department but also includes a position in a Project of such department in connection with the affairs of the Province. The inclusion of project posts within the definition of "post" indicates that employees appointed to project posts are considered to hold a "post" within the meaning of the Act of 2013. This implies that the distinction between a regular sanctioned post and a project post is not pertinent for the purposes of the Act. Section 3 of the Act of 2013 provides for the regularization of services of employees appointed on an ad hoc and contract basis or otherwise, against posts in BS-1 to BS-18 or equivalent basic scales, who are in service in the Government department and its project in connection with the affairs of the Province, immediately before the commencement of the Act. The provision does not exclude project posts from the scope of regularization. Instead, it encompasses employees appointed against posts in the Government department and its projects. Therefore, the contention of the learned A.A.G that the petitioner was appointed against a project post and not against a regular sanctioned post of the department and, therefore, cannot claim appointment against a regular post is misconceived in light of the provisions of Sections 2(e) and 3 of the Act of 2013. The definition of "post" under Section 2(e) includes project posts, and therefore, employees holding project posts are eligible for regularization under Section 3 of the Act of 2013.

7. Secondly, the learned A.A.G contended that the post of the Petitioner was without a basic pay scale; therefore, he was not eligible to be regularized against the sanctioned post of the department. However, this issue was previously raised and addressed by the learned Division Bench of this Court⁴, wherein the present petitioner was also one of the Petitioners at Sr. No. 18. The Division Bench's decision unequivocally clarifies that employees holding contractual posts, including the petitioner, without a specified basic pay scale are still eligible for regularization. The pivotal factor is the examination of their pay to determine an equivalent basic pay in the government department. Therefore, the contention of the learned A.A.G that the petitioner was not eligible for regularization due to the

² "post" means the post held by an employee in a Government department and includes the post in a Project of such department in connection with the affairs of the Province

³ Regularization of services of employees.---Notwithstanding anything contained in the Act or rules made thereunder, or any decree, Order or Judgment of a court, but subject to other provisions of this Act, an employee appointed on ad hoc and contract basis or otherwise (excluding the employee appointed on daily-wages and work-charged basis), against the post in BS-1 to BS-18 or equivalent basic scales, who is otherwise eligible for appointment on such post and is in service in the Government department and it's project in connection with the affairs of the Province, immediately before the commencement of this Act, shall be deemed to have been validly appointed on regular basis.

⁴ Vide an Order dated 20.9.2016, passed in C.Ps Nos.D-2746/2014, 6771/2014 and 2380/2024

absence of a basic pay scale in his contractual engagement is also misconceived. The earlier decision of the learned Division Bench of this Court establishes that the absence of a basic pay scale does not disqualify an employee from being considered for regularization.

8. As regards the contention of the learned A.A.G that the contract of the petitioner was extended from time to time until the life of the project and that said project/ADP Scheme was terminated/closed in the year 2020, it is pertinent to note that prior to the conclusion of the project, the petitioner and other employees had filed C.P No.D-2746/2014 in the year 2014, which was adjudicated and disposed of vide an Order dated 20.09.2016. In this Order, the Respondents were unequivocally directed to forward the petitioners' cases for regularization to the concerned Scrutiny Committee in accordance with the law. Pursuant to this Order, Scrutiny Committee No.1 meticulously examined the case of the petitioner and other employees, ultimately recommending the petitioner for regularization with a definitive finding that he meets the criteria of eligibility, fitness, and requisite qualifications for regularization. The Minutes of the Meeting of the Scrutiny Committee dated 20.03.2018, which are available on record, substantiate this recommendation. Subsequently, a Summary for the Chief Minister of Sindh was moved on 26.03.2018, wherein the petitioner's name is explicitly listed at Sr. No.14. However, it appears that no Order was passed on this Summary. This fact has neither been refuted by the learned A.A.G nor has the Respondents, in their comments, contested this documentary evidence. The procedural history and the actions undertaken by the Scrutiny Committee, including the recommendation for regularization and the Summary, moved to the Chief Minister, unequivocally establish that the petitioner qualifies for regularization. The termination of the project in 2020 does not impinge upon the petitioner's eligibility for regularization, as the process for regularization was duly initiated and recommended prior to the project's conclusion.

9. In light of the foregoing observations and the legal provisions enshrined in the Act of 2013, it is unequivocally evident that the petitioner is entitled to regularization in accordance with Section 3 of the Act of 2013. Consequently, the petition is hereby **allowed**. The concerned Respondent(s) is/are hereby directed to issue the Notification for the regularization of the Petitioner as Assistant within one month from the date of this Judgment.

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