

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-8180 of 2019

(Sajf Shujaat & others v Government of Sindh & others)

Date	Order with signature of Judge
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Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul-Karim Memon

Date of hearing and Order: 17.12.2024

Petitioners present in person

Mr. Ali Safdar Depar, APG.

ORDER

Adnan-ul_Karim Memon, J: Petitioners seek this court's order declaring respondents' actions illegal and unconstitutional, recognizing their prior service rendered on a contract basis, and promoting them to the post of Junior Clerk BS-11.

2. The facts of the case are that the petitioners applied for regularization and promotion from the post of Naib Qasid to Junior Clerk. They submitted their applications in September 2016 to the competent authority but to no avail, despite a letter and reminder from the Section Officer to the respondent department in 2016, however, no action has been taken.

3. The petitioners who are present in person submit that the petitioners were regularized in 2016 but their promotion was not considered. He further argues that under the Sindh (Regularization of Adhoc and Contract Employment Act, 2013), the government has regularized contract employees while maintaining their seniority with effect from the date of their initial appointment on a contract basis. Therefore, they request this court to order the petitioners' promotion to Junior Clerk based on their seniority.

4. Learned A.A.G, Sindh has contended that the instant Petition is not maintainable under the law; that the petition is based on false allegations and misconceived, hence liable to be dismissed with cost on the ground that the issue of seniority was not raised by the Petitioners No. 1 & 2 when they accepted the terms and conditions of their service at the time of their regularization. It is further contended that the services of the Petitioners were not regularized from the date of appointment on a contract basis. It is next contended that their seniority will be determined in the light of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975. He prayed for dismissal of the instant Petition.

5. We have heard the Petitioners who are present in person as well as learned AAG and perused the material available on record.

6. The fundamental query that finalizes the controversy in hand is whether the seniority of the Petitioners can be reckoned from the date of their induction in service as an ad-hoc and contract appointment or from the date of regular appointment under Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013? And whether promotion and seniority are absolute rights, and contractual service cannot be considered for promotion.

7. In the above context, we refer to Sub-Section (4) of Section 8 of the Sindh Civil Servants Act, 1973 reproduced herein below: -

“Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment of such civil servant to that post, service cadre: Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter seniority as in the lower post.”

8. The Sindh Regularization Act of 2013 states that ad-hoc and contract employees should be regularized immediately after the Act's commencement. The question is whether employees regularized under this Act can be granted seniority retroactively to their initial appointment date. In this regard, we refer to Section 2(b)(ii) of the Sindh Civil Servants Act, 1973, which reads as under:-

2.(b) “civil servant’ means a person who is a member of an All-Pakistan Service or a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, but does not include – (ii) A person who is employed on contract, or on the work-charged basis or who is paid from contingencies;

9. We also refer to Rule 10(1) and (2) of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975, which reads as under:-

“10 (1) subject to the provision of rule 11, the seniority of a civil servant shall be reckoned from the date of his regular appointment. (2) No appointment made on adhoc basis shall be regularized retrospectively.”

10. The Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975 state that seniority is determined by the date of regular appointment. Therefore, even after regularization under the 2013 Act, seniority cannot be granted retroactively.

11. We refer to Section 2(a) of the Sindh Civil Servants Act, 1973, which reads as under:-

(a) “ad hoc appointment” means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending the recruitment in accordance with such method;

12. In essence, ad-hoc appointments cannot be regularized retroactively. Seniority is calculated from the date of regular appointment,

not from the start of ad-hoc or contract service. Therefore, the request for retroactive regularization is incorrect.

13. We have reviewed the respondent's comments, which seem to suggest that the regularization should have been effective from the date of the 2013 Act's promulgation.

14. Given the legal analysis on the subject issue, we are of the view that the claim of the petitioners for retroactive regularization from their initial contract appointment and promotion thereon, from that angle is not legally sound, besides promotion and seniority, not absolute rights, they are subject to rules and regulations if the recruitment rules of the subject post permit the case of the petitioners for promotion may be considered, however, we are clear in our point of view that contractual service cannot be considered for seniority and promotion as the seniority is reckoned from the date of regular appointment and promotion depends upon seniority cum fitness, subject to availability of vacancy subject to the approval of the competent authority.

15. This petition is found to be not maintainable and is dismissed accordingly with pending application (s).

JUDGE

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