

IN THE HIGH COURT OF SINDH, SUKKUR BENCH, SUKKUR
C.P No.D-390 of 2018

Before: Mr. Justice Zafar Ahmed Rajput
Mr. Justice Shamsuddin Abbasi

Petitioners: Wajeesh Kumar and another
through Mr. Sarfraz A. Akhund,
advocate

Respondents No.1 to 3: Zarai Tarqiati Bank Limited
through Mr. Faheem Majeed
Memon, advocate

Respondent No.4: Federation of Pakistan through
Mr. Aamir Bhutto DAG

Date of hearing: 13.09.2022

Date of decision: 13.09.2022

ORDER

Shamsuddin Abbasi, J: Petitioners were appointed as sweepers in Zarai Tarqiati Bank Limited (ZTBL) on contract basis in the year, 2003 & 2004 on monthly salary of Rs.5,000/-. Their contract was extended from time to time by enhancing their salaries from Rs.5000/- to Rs. 8000/- in the year 2013. They have maintained this petition for regularization of their services.

2. Learned Counsel for the Petitioners submits that identical petition bearing C.P. No.D-1218 of 2013 was allowed by this Court vide order dated 05.12.2017, whereby services of contract employees of Z.T.B.L. were regularized. The respondent bank preferred civil Petition No.312 of 2018 which was dismissed by the Hon'ble Supreme Court of Pakistan vide order dated 08.03.2019. He further submits that this Court in C.P. No.D-241 of 2020 has also regularized the services of Drivers working with Respondent Bank (ZTBL) on the basis of judgment passed by Hon'ble Supreme Court; hence Petitioners are also entitled for same the relief.

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3. On the other hand, learned Counsel appearing for Respondent Bank has vehemently opposed for allowing the captioned petition on the ground that petition is not maintainable as the same hit by principle of laches as there is delay of 16 years in filling this Petition; therefore the same is and is liable to be dismissed.

4. Learned DAG has also adopted the same arguments advanced by learned Counsel for Respondent Bank; however he has admitted the fact that this Court as well as Hon'ble Supreme Court have maintained these petitions and allowed the same by regularizing the services of contractual employees of ZTBL.

5. Heard learned Counsel for the Petitioners, Respondent Bank as well as DAG and perused the material available on record.

6. There is no denial of the fact that the petitioners are working as Sweepers in Respondent Bank (ZTBL) since last 18 years without any gap in their services. It is a matter of record that this Court has allowed identical petitions whereby services of the contractual employees of ZTBL were regularized in C.P. No.D-1218 of 2013 vide order dated 05.12.2017. The relevant portion of said order is reproduced here as under:-

"Petitioners have invoked the jurisdiction of this Court with the prayer that their services in respondent No.1-Zarai Taraqiati Bank Limited (ZTBL) may be regularized in the light of decision of the Honourable Supreme Court of Pakistan in Civil Appeals Nos. 378 to 383 of 2009 (at page 47) and a reported decision as 2009 SCMR page 1.

The undisputed facts are that petitioners were appointed on contract basis as Drivers in respondent / ZTBL and were later transferred to Kisan Support Service (Pvt) Limited, a subsidiary of ZTBL with fresh contract of employment.

Mr. Sarfraz A. Akhund learned counsel for the petitioner has referred to the internal decision of respondents' Human Resources Department, whereby the services of one of the employees has been regularized in view of the aforementioned decision of the Honourable Apex Court. It was further argued by the petitioners' counsel by relying upon another unreported decision of learned Division Bench of this Court handed down in C.P. No.D-923/2009 (at page 67 of the Court file), in which the above dicta of Honourable Supreme Court was followed and contractual employment of persons were

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changed into the regular one. The above unreported decision also relates to the same respondents/ZTBL and its other senior executives.

On the other hand counsel for the Respondents-Bank has relied upon his pleadings / parawise comments and stated that it is the discretion of an employer to decide that which employees should or should not be regularized and even retained by an organization. When queried, he replied that the afore-mentioned decision of Honourable Supreme Court was given in different back drop as the persons/employees in those cases litigated by first invoking the jurisdiction of Labour Court and not directly of this Court, as is done by present petitioners.

We have considered the arguments of both sides, in view of the afore referred judicial pronouncements involving the identical issues and that too relating to the same respondents-ZTBL, there is hardly any room left for the respondents to distinguish the rule laid down in the above decision from the present case.

Consequently, following the dicta laid down in the afore mentioned judgments, the present petition is accepted as prayed.

Parties to bear their own costs".

7. Respondents have impugned said order before Hon'ble Supreme Court of Pakistan in Civil Petition No.312 of 2018, which was dismissed and leave was declined. The relevant portion of order dated 08.03.2019 is reproduced here as under:-

"The only point in issue raised by the learned counsel for the petitioner against the impugned judgment dated 05.12.2017 by the learned High Court is that the respondents were contract employees of the petitioner until 2006 where-after they were recruited by an associated Company, namely Kisan Support Service (Pvt.) Limited ("KSSL"). After leaving the employment of the petitioner, the respondents cannot claim relief against their former employer. Additional documents have been filed by the petitioner under C.M.A.No.652 of 2018. These show that the recruitment of drivers for KSSL was carried out on 31.08.2006 by the Zonal Office Staff of the petitioner at Sukkar and not by the management of KSSL. The selection panel worked for the petitioner who made the fresh appointments of the respondents for performing the same duties as before except that they were now employees of KSSL. We agree with the learned counsel for the respondents that the fresh appointments made by KSSL are cover for persons providing services to the petitioner. In the circumstances, we do not see any merits to the objection taken by the learned counsel for the petitioner. The petition is dismissed and leave to appeal is declined."

8. Since this Court has already granted relief in identical petition and the said order has also been maintained by Hon'ble

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Supreme Court. Pursuant to above position, this Court has also allowed another petition bearing No. D-241/2020 vide order dated 29.03.2022. We found the case of the Petitioner at par with case of the Petitioners of said Petitions. Petitioners are rendering their uninterrupted services since last 18 years; hence there is no force in the arguments of learned council for respondents on the point of laches. In view of above, captioned petition is allowed as prayed, with no order as to cost.



JUDGE



JUDGE