

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:

MR. JUSTICE MUHAMMAD KARIM KHAN AGHA
MR. JUSTICE NISAR AHMED BHANBHRO

C.P. No. D- 199 of 2021

Petitioners: Mohammed Faheem Khan and others
Through Mr Syed Shoa – un – Nabi Advocate

C.P. No. D- 2781 of 2019

Petitioners: Tariq Parvez and others
Through Mr Asif Rauf Tanoli, Advocate

C.P. No. D- 8167 of 2018

Petitioners: Moiz Ali and others
Through Mr Nasir Rizwan Khan, Advocate

Respondents: Through Mr. K.A Waswani, AAG.
M/s. R.B.Qureshi and Javed Ali Sangi, Counsel
for Karachi Development Authority

Date of hearing : 06.03.2025

Date of Announcement: 18.03.2025

ORDER

Nisar Ahmed Bhanbhro, J. We propose to dispose of captioned Petitions through this consolidated Order as they involve a common question of Regularization of Services of Work Charged/ Daily Wager Employees of Karachi Development Authority (KDA).

2. The facts of CPD 199 of 2019 are that the service of Petitioners Six in number were engaged as Beldar and Chowkidar in Karachi Development Authority (**KDA**) on Temporary Basis under work charge establishment in the year of 2005, 2009 and 2012 respectively.

3. The facts of CPD 2781 of 2019 are that the services of Petitioner No 2 were engaged in Grade 07 and services of other 19 Petitioners were engaged in BS 01 to 04 in Karachi Development Authority (**KDA**) on Temporary Basis under work charge establishment in the year of 2009.

4. The facts of CPD 8167 of 2018 are that the services of Petitioners seven in number were engaged as Beldar in BS 01 in Karachi Development Authority (**KDA**) on Temporary Basis under work charge establishment in the year of 2004, 2005 and 2009 respectively.

5. Per claim of the Petitioners they worked in KDA as work charged staff since the dates of appointment, attended jobs regularly, there was no discontinuation in their services. That on completion of three years' probation period, the KDA extended all service benefits to the Petitioners as were available to regular employees, viz-a-viz health facilities, service cards, service books and annual increments. The Petitioners pressed demands for their regularization of services which annoyed Respondents, resulting in stoppage of salaries of Petitioners in CPD 199 of 2019 in the month of December 2017, the Petitioners in CPD 2781 of 2019 and 8167 of 2018 in the month of April 2018. The Petitioners asserted that they served KDA for many years against Regular Vacancies but not considered for Regularization in service, which act on the part of KDA was unlawful, discriminatory, arbitrary in nature and violated the fundamental rights guaranteed under the Constitution. The Petitioners were not treated at Par with

other similarly placed employees, discriminated without any rational cause as during the intervening period services of other employees placed similarly were regularized. The Petitioners prayed for issuing directions to KDA to treat them equally and regularize their services.

6 The Respondent Karachi Development Authority (KDA) in its reply, filed in the shape of Counter Affidavit through its Deputy Secretary Legal Services Mr Moinuddin Athar denied the claim of Petitioners for regularization of services asserting that the services of Petitioners were engaged on temporary basis by the defunct City District Government Karachi, per the terms and conditions of engagement letter, their services were to be dispensed with without assigning any reason on a 24 hours' notice. The Petitioners were no more working with KDA as their engagements were terminated. The Petitioners cannot claim regularization as matter of right, the petition merits dismissal.

7. Mr Shoa un Nabi Learned Counsel for Petitioners in CPD 199 of 2019 contended that the Petitioners were appointed by KDA on work charged establishment against the regular vacancies. They were provided all the benefits of services available to regular employees, there was no discontinuity in the services of Petitioners, they worked in KDA for many years and became Regular Employees by operation of The Sindh (Regularization of Adhoc and Contract Employees) Act 2013 (**the Said Act**). He contended that the Petitioners were not given equal treatment as KDA regularized hundreds of work-charged employees, who were still working on administrative positions after getting promotions. He contended that inaction on the part of KDA to deal Petitioners in accordance with law is arbitrary in nature and violated fundamental rights of the Petitioners. He submitted that this Court under similar circumstances while dealing with the cases of employees in CPD 6241 of 2019 issued directions to Government of Sindh for

regularization of Services of work-charged employees. He prayed for allowing the Petition by taking mercy as the Petitioners were low salaried employees.

8. Mr. Asif Rauf Tanoli Learned Counsel for the Petitioners in CPD 2781 of 2019 adopted the arguments advanced by Mr Shoa un Nabi and submitted a list of employees who according to him were initially appointed as work-charge establishment and later on regularized in services. He prayed for allowing the Petition as prayed.

9. The Petitioners and their Counsel in CPD 8167 of 2018 were called absent without intimation, despite of the fact that it was a date by Court and time fixed matter. With the assistance of Learned AAG we have examined the case of Petitioners and find that case of the Petitioners in the instant constitution petition is identical to those in connected petitions, as they seek same relief of regularization in services, therefore dealt accordingly and decided.

10. Conversely Mr K.A Waswani Learned Additional Advocate General assisted by Mr Javed Ali Sangi Learned Counsel for KDA have opposed the contentions of Petitioners. He contended that the Petitioners were engaged in the engineering wing of KDA on temporary basis, their services were temporary in nature and need based. The terms and conditions of the engagement were accepted by Petitioners therefore they cannot seek regularization. Petitions are devoid of merits and warrant dismissal. He placed reliance on the case of **Vice Chancellor Agriculture University Peshawar and others Versus Muhammad Shafiq and others** reported in **2024 SCMR 527** and **Chief Secretary Government of Balochistan Civil Secretariat Quetta and others Versus Adeel ur Rehman & others** reported in **2024 SCMR 145**.

11. We have heard Learned Counsels for the Parties and examined record with their able assistance.

12. Meticulous perusal of record reveals that Petitioners were engaged in KDA on temporary basis as daily wager / work charge establishment. The services of Petitioners were not covered under the KDA Service Regulations, therefore they cannot claim any of the benefits under the said regulations. In the engagement orders of all the Petitioners there is a clause specifying that the services of Petitioners were temporary and can be terminated on 24-hour notice without assigning any reasons. For the sake of convenience, engagement order of Petitioner Mohammed Faheem Khan in CPD 199 of year 2019 available at Page 23 of the Memo of Petition is reproduced:

OFFICE OF THE ADDITIONAL DISTRICT OFFICER (HRM)

SECRETARIAT K.D.A WING C.D.G.K

No CDGK/ADDL.DO/SECTT/KDA: WING/286

dated: 02.06.2009

ORDER

With the approval of Competent Authority, the 2 Nos Chowkidars mentioned below are hereby **engaged as work charge staff** on initial pay of the scale as mentioned against each plus usual allowances are admissible under the KDA rules in Workshop and Stores Division K.D.A C.D.G.K with immediate effect.

1. Mohammed Furqan Asim s/o Mohammed Irfan BPS – 1 Chowkidar
2. Muhammad Fahim Khan s/o Mohammed Qaseem Khan BPS – 1 Chowkidar

Other terms and conditions of their engagement are as under:

1. The engagement is made as Work Charges of 2 Nos Chowkidars against the valuable land & office in Workshop & Store Division.
2. **The service can be terminated within 24 hour notice without assigning any reason thereof.**
3. To be Pakistani National
4. To be produced NIC

5. His / her upper age limit is relaxed
6. Medical Fitness Certificate from District Officer Medical Services, Health Group of office CDGK.

He should report for duty to the Additional District Officer at Workshop & Store Division KDA wing CDGK.

Sd/
Addl. D.O, Sectt
KDA Wing CDGK

The engagement order of the Petitioners contained a specific clause that they were engaged on work charge basis and could be terminated on 24-hour notice without assigning any reasons. The Petitioners accepted such terms and conditions of engagement and were prevented from claiming a Regular Service under the doctrine of Estoppel.

13. The Contention of Learned Counsel for the Petitioners that the Petitioners were entitled to benefit of Section 3 of the Sindh (Regularization of Ad hoc and Contract Employees) Act 2013 (Act No XXV of 2013) is without force as the legislature in its own wisdom has ousted the operation of Act No XXV of 2013 from daily wages and work charged employees through section 2(d) which excludes them from the definition of employees. The services of Petitioners were not covered under the provisions of Act No XXV of 2013, thus no relief for regularization of services is available to them.

14. Addressing the Contention of Learned Counsel for the Petitioners that other similarly placed employees were regularized by KDA and Petitioners were differently classified without any rationale which act was violation of fundamental rights guaranteed under article 25 and 27 of the Constitution, as such they were entitled for the same relief. We do not find any substance in the plea raised by the Petitioners as no document has been placed on record to substantiate this claim,

even otherwise if this assertion is believed to be correct, needless to say that any such action on the part of KDA would be violation of law, and equal treatment of law cannot be claimed to support a wrong, more so article 25 of the Constitution does not envisage the concept of negative equality, as is demanded by the Petitioners. Work Charge employees are engaged on temporary basis against a particular work for a short period of time, they cannot seek regularization of services as a vested right unless there is any legal or statutory basis for the same, which in the case of Petitioners is lacking.

15. We are mindful of the fact that the Petitioners worked in KDA for a period of more than 9 years, they were paid salaries and enjoyed benefits of services as to those of regular employees, account statement submitted by the Petitioners establishing that they were paid salaries by KDA. The engagement of Petitioners was discontinued by stopping their salaries, without giving them a notice of termination as required under clause 2 of the Engagement Order. Such a termination being verbal in nature was not permissible under any of the laws of Country regulating services and such an act cannot go unnoticed. Continuation of Services of low salaried employees like Beldar and Chowkidar on work charge basis for a period of about 9 years followed by their ouster through a verbal order after sucking their youth cannot be left unchecked, as it resulted into worst sort of the exploitation on the part of KDA an organization created under the statute to discharge its functions in connection with the affairs of Province of Sindh. The High Court being the custodian of the fundamental rights of individuals is under an obligation to protect the same. The Constitution of the Country under articles 3 and 11 casts an obligation upon state to eliminate all forms of Exploitation and Forced Labor. The KDA a state-owned entity/ organization firstly should not engage the services of Labor on Daily Wages or Work Charge Establishment for such long periods of time and if it does so, then such employees must be dealt in

accordance with law. Such elongated engagements on work charge basis leaves a hope to the employees for confirmation, if terminated they are left optionless, as such their future is ruined. Such an Exploitation of Labor class employee at the hands of a state-owned statutory organization cannot be appreciated at all.

16. For the adjudication of controversy in hand, it is necessary to determine the status of such employees and forum if any available under the law to adjudicate the disputes relating to their services. This determination will be helpful in ascertaining the rights of employees placed in the similar situation.

17. Work Charged, Contingency Paid and Daily Wages employees are not covered under the provisions of Civil Service Laws. The status of employees in the said structure is either Contract, Adhoc or Permanent Employees, section 2 of the Sindh Civil Servants Act 1973 defines the Daily Wages, Contingency Paid and Work Charged employees through a negative declaration that they are not Civil Servants. The Petitioners were engaged on Labor Class positions of Beldar and Chowkidar, such engagements find mention in the Sindh Industrial Relations Act 2012 (SIRA), Payment of Wages Act, Minimum Wages Act. and Sindh Terms of Employment (Standing Orders) Act, 2015 (STESOA).

(i) Section 2(xxxii) of SIRA 2012 defines worker and workman as under:

“Worker and Workman”: *mean person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) In an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment be expressed or implied and for the purpose of any proceedings under this act, in relations to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or as a consequence of that dispute or*

whose dismissal, discharge, retrenchment, lay-off or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity.

(ii) Section 2(viii) of SIRA 2012 defines the employer which for the ease of reference is reproduced hereunder:

“EMPLOYER”: *In relation to an establishment, means any person or body of persons, whether incorporated or not, who or which employs workman in the establishment under a contract of employment and included*

(a)

(b)

(c) *In relation to an establishment run by or under the authority of any department of the Federal Government or of the Government, the authority appointed in this behalf or where no such authority is appointed, the head of the department;*

(d) *In relation to an establishment run by or on behalf of a local authority, the officer appointed in this behalf, or where no officer is so appointed, the chief executive officer of that authority.*

Explanation: - For the purpose of distinction from the category of workers or workman, for officers and employees of a department of the Federal Government or the Government or local authority who belong to the supervisor, managerial, secretarial, directorial supervisory or agency staff and who have been notified for this purpose in the official Gazette shall be deemed to within the category of “employer”, and

(e)

(iii) Section 2(ix) of SIRA 2012 defines establishment in the following manner:

“Establishment” *means any office, firm, factory, society, undertaking, company, shop, premises or enterprises in the Province of Sindh, which*

employees workman directly or through a contractor for the purpose of carrying on any business or industry and includes all its departments and branches whether situated in the same place or in different places having a common balance sheet and except in section 25 includes a collective bargaining unit, if any constituted by any establishment or group of establishments;

18. The Respondent KDA being a state-owned Local Authority/ Institution is an entity falls within the limb of definition of **establishment** defined in section 2 of the SIRA 2012. The KDA was established under President's Order No 5 of 1957 aiming at providing public amenities like gardens, parks, public streets, executing works for water supply and sewerage and development related issues of Karachi Division is an establishment providing Public Utility Services defined in Schedule A to section 2(xxiii) of SIRA 2012. The KDA and similar other organizations if engage the services of employees on work charged basis / daily wages, all such employees shall fall under the category of **worker and workmen** hence their services would be governed by the Sindh Terms of Employment (Standing Orders) Act, 2015 (STESOA) and Labor Laws as applicable in the province of Sindh. All such workers engaged on work charged basis shall be mandatorily registerable under the provisions of Sindh Employees Old Age Benefits Act 2014, Sindh Workers Welfare Fund Act 2014, Sindh Employees Social Security Act 2016 and other laws governing the employment of workers.

19. The Petitioners claim to have worked in KDA for many years and allege that their services were discontinued without any order in writing. Such an act if taken by KDA would be violative of law as all the service laws of country bar termination or retrenchment of employees through verbal orders and Standing Order 16 of STESOA 2015 debars removal, retrenchment, discharge or dismissal

from service except by an order in writing. Standing Order 1(b) of STESOA 2015 defines a **Permanent Worker** is a worker who has been engaged on work of permanent nature to last more than nine months and has satisfactorily completed a probationary period of three months in the same or other occupation. To substantiate their claims, the petitioners ought to undergo a test of concrete proof by recording evidence. The dispute between the Petitioner and Respondent KDA in essence involves dispute defined under the SIRA 2012 as an unfair Labor Practice. The Sindh Industrial Relations Act 2012 being a beneficial legislature equally protects the rights of Employer and Employee/ Worker. The Petitioners are **workers and workman** in terms of their job description and work assignments as are defined under the relevant provisions of the SIRA 2012 and the STESOA 2015 discussed supra.

20. We are of the considered view that the Petitioners ought to have availed their remedy available under the SIRA 2012 by giving a grievance notice to the employer (appointing authority) followed by a grievance petition under section 34 of the SIRA 2012 before the Labor Tribunal established under the said act to adjudicate Labor disputes, This Court cannot exercise its writ jurisdiction conferred by article 199 in view of the bar contained in article 212 of the Constitution. The Petitioners chose an incorrect forum for adjudication of their rights by filing Constitution Petition under article 199 of the Constitution before this Court. The Petitioners have an alternate remedy available under the law to agitate their grievance if so advised.

21. Sequel to the above discussion these Petitions are dismissed along with pending applications if any.

Judge

Head of Const. Benches