

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Constitutional Petition No.D-824/2023

Dr Saeed Ahmed Qazi Versus Province of Sindh and others

Before:

Mr. Justice Muhammad Saleem Jessar
Mr. Justice Nisar Ahmed Bhanbhro

Petitioner: Dr. Saeed Ahmed Qazi
Through Mr. Shafqat Ali Shah,
Advocate.

Respondents: Through Mr. Liaquat Ali Shar
Additional Advocate General, Sindh.

Date of hearing: 11-09-2025

Date of Decision: 11-09-2025

ORDER

Nisar Ahmed Bhanbhro, J.- Through the instant petition, the petitioner has claimed following relief:

- a. To direct the respondents to extend the service of petitioner with effect from 10-08-2022 along with all back benefits/monthly salary and increment thereon as per the promotion and Disciplinary Rules.
- b. To direct the respondents to release the monthly salary of the petitioner without making any further delay.
- c. To direct the respondent No.1 to hold departmental inquiry against the persons involved in misappropriation of accounts and service of the petitioner and if any person found guilty of professional misconduct he may be awarded major punishment of removal from service as well as to submit the report before this Hon'ble Court.

2. Mr. Shafqat Ali Shah learned counsel for the petitioner argued that the petitioner was appointed as Medical Officer on a fixed remuneration of Rs.100,000/- per month, vide notification dated 21.05.2020, issued by the Secretary to Government of Sindh Health Department /Respondent No 1 by exercising the powers conferred under section 03 of the Sindh Epidemic Diseases Act, 2014, to cop up COVID-19 situation. The service of the petitioner was placed

at the disposal of District Health Officer Larkana/ respondent No.5. He argued that the Petitioner joined his duties on 10.06.2020 in the office of Respondent No 5. He argued that the Petitioner was initially appointed for period of 89 days, which was later on extended for period of another 89 days through different notifications until 10-08-2022. He argued that the petitioner was paid monthly salaries till the month of June 2022, he was declined salary for the remaining period without any reason, though Petitioner remained in job and performed his duties diligently. He argued that then District Health Officer (DHO) demanded bribe from petitioner which he refused to pay, therefore, DHO developed personal grudge against the petitioner. He argued that the mala fides of the Respondent No 5 were clear from the fact that signature of the petitioner on muster roll was interpolated through circles, to infer that Petitioner was absent from duty. He argued that that all the medical officers appointed under Sindh Epidemic Diseases Act 2014 were referred to the Sindh Public Service Commission for regularization of their services but the petitioner was singled out by the respondent with mala fide intention and ulterior motives. He prayed to allow this petition.

3. Learned Additional Advocate General controverted the submissions of learned counsel for the petitioner and contended that petitioner remained absent from the duty. He argued that Petitioner put his initials on the absent markings in the muster roll and also put a note "that who is this idiot". He contended that the petitioner was not a suitable person of becoming of a medical officer due to his conduct. He contended that the petitioner was appointed on temporary basis and his services were not continued. However, he concedes to the factual position that the medical officers appointed with the petitioner under the same scheme of law were referred to Sindh Public Service Commission (SPSC) for their regularization in terms of section 03 of the Regularization of Doctors Appointed on Contract or Adhoc Basis, Act 2018. He prayed to dismiss the petition.

4. Heard arguments, perused material made available before us on record.

5. From the scanning of the record, it transpired that the Petitioner was appointed on contingency basis for a period of 89 days by the Respondent No 1 by exercising its powers conferred under section 03 of the Sindh Epidemic Disease Act 2014 in the month of May 2020. The Petitioner was continued in service to the own admission of the Respondents until August 2022, however he was paid salary

until the month of June 2022. In the intervening period the cases of Medical Officers appointed to cope up with Covid 19 pandemic under the same scheme were referred to SPSC to examine their suitability for a regular job in terms of the provisions of the Regularization of Doctors Appointed on Contract or Adhoc, Act 2018. The Petitioner was singled out, and not referred to SPSC for interview and scrutiny.

6. In the identical situation, the medical officers appointed to oversee the COVID-19 pandemic, filed the constitutional petition No. D-1691 of 2022 Re Dr Uroosa Khan Versus Province of Sindh and others etc. before Principal seat of this court at Karachi. The petitions were disposed of through a consolidated order dated 17.03.2023 by directing the Respondent health department to refer the candidature of the Medical Officers SPSC to assess their suitability for appointment on subject post by conducting their interview within one month from the date of the order. It will be conducive to reproduce para No.12 and 13 of the said judgment, which reads as under:

12. During arguments, we have been informed that the petitioners who have served the respondent department as Medical Officers during such difficult times of the pandemic, primarily deserve to be given a fair chance for assessment of their suitability to hold the subject post by SPSC in the given situation as they are still holding the regular posts in Health Department Government of Sindh without the security of service.

13. in the light of the above analogy and more particularly the principles outlined in the judgment passed by the Supreme Court of Pakistan in the case of Dr. Naveeda Tufail and 72 others V. Government of Punjab and others, 2003 SCMR 291, we find it appropriate to direct the competent authority of the respondent-health department to refer the candidature of the petitioner to SPSC to assess their suitability for appointment on the subject posts by conducting their interview within one month from the date of order of this court, and the result of the interview shall be announced and recommendations shall be forwarded to the competent authority for consideration of their appointment regularly, while considering their case for the said purpose, the ratio of judgment passed by the Honorable Supreme Court in the case of Dr. Naveeda Tufail Supra must be kept in mind, in the intervening period, the posts which were being held by the petitioners shall not be filled. An excerpt of the judgment rendered in the case of Dr. Naveeda Tufail is as under:-

“12. We having examined the above scheme find that in the similar circumstances, the Federal Government while giving fair treatment to its employees appointed on ad hoc basis successively framed policies for regularization

through the process of selection by the Public Service Commission. It is stated that all Provincial Governments, except Government of Punjab, following the Federal Government also adopted the policy of regularization and gave their employees the equal treatment. The petitioners, being ad hoc employees of Provincial Government, cannot claim regularization as of right in the light of policy of Federal Government but the principle of equality as embodied in Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, would demand that they while facing the similar circumstances should be treated in the same manner. The principle of equality would impliedly be attracted in favour of the petitioners as they being ad hoc lecturers in the Provincial Government would stand at par to that of the ad hoc employees of the Federal Government and therefore, it would be fair, just and proper to consider their cases for regularization. We having heard the learned counsel for the petitioners and Mr. Maqbool Ellahi Malik, learned Advocate-General Punjab, assisted by Mr. Tariq Mahmood Khokhar, Additional Advocate-General, are of the view that since substantial questions of public importance are involved in the present petitions, therefore, the technical objection that the, questions not raised before the Tribunal, cannot be allowed to be raised before this Court, is not entertained. The authorities in the Education Department, Government of Punjab, while adopting the method of ad hoc appointments as a continuous, policy, created a legitimate expectancy in the mind of petitioners for their retention on regular basis and therefore, we deem it proper to direct that the respondents while seeking guidance from the scheme of regularization of ad hoc employees of Federal Government referred above, will initiate the process of regularization of the petitioners through Punjab Public Service Commission giving the concession as mentioned in the reply filed by the respondents in the Punjab Service Tribunal within a period of one month and meanwhile without prejudice to title right of the selectees of the Public Service Commission for appointment on regular basis, the posts which were being held by the petitioners shall not be filled. It is clarified that the cases of the petitioners shall be sent separately to the Public Service Commission and shall not be tagged with the direct recruits. In case any of the petitioners is not found suitable, by the Public Service Commission, he shall not be entitled to be retained in service. 13. We in the light of above discussion, convert these petitions into appeals and dispose of the same with no order as to costs.”

7. Learned Additional Advocate General when confronted to above position, frankly concedes that the case of the petitioner falls in the same category dealt with by the learned Division Bench of this court in the case of Dr. Uroosa Khan and

others (supra). However, he failed to demonstrate the reason which overwhelmed the department to decline the recommendation of Petitioner for regularization in service by referring his case to SPSC.

8. It is a settled proposition of law, that when a Court of Law or tribunal decides the question of law relating to the terms and conditions of the service of an employee, then all the employees placed in the identical situation would reap the benefit of said judgment, with no compulsion to open a new spate of litigation, deviation from this settled principle would create unrest amongst the same cadre of employees and such an action on the part of authority would tantamount to discrimination, offending the fundamental rights guaranteed under article 4, 9, 25 and 27 of the Constitution.

9. The view finds support from the dictum laid down by the Honorable Supreme Court of Pakistan in the case of Hameed Akhtar Niazi Versus The Secretary Establishment Division, Government of Pakistan and others reported as 1996 S C M R 1185, wherein it is held that:

16. In our view, it will be just and proper to remand the case to the Tribunal with the direction to re-examine the above case after notice to the affected persons and to decide the same afresh in the light of above observations. We may observe that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings; in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum.

10. The Petitioner was given discriminatory treatment to his similarly placed colleagues by refusing to refer his case for regularization to SPSC. Had it been the case that Petitioner was not party to the proceedings in the Petitions filed by his colleagues, even then the Respondents were required to refer his case to

SPSC. The concept of equality is deep rooted in our society; an act of discrimination militates the concept of egalitarian society. Equal treatment with equal opportunity is the foundational concept of law bringing equalitarian within the ranks of the similarly placed persons. In service matters, discrimination occurs when an employer treats an employee less favorably or disadvantageously in comparison to others without any intelligible differentia, the acts of discrimination at workplace seriously undermine working environment and create unrest among employees discriminated who are deprived of the same benefits. In fact, the doctrine of equal treatment is cornerstone of the protection of human rights. The philosophy of equality within the same class or category of workers at the workplace evokes equal opportunities to work. Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, enunciated the principle of equality, stating that all citizens are equal before the law, and are entitled to equal protection of the law, and there shall be no discrimination on any of the basis. Therefore, any discrimination or distinction between one employee and another, within the sphere of legislation or policy, provided that their status is substantially equivalent. Though law favors classification and empowers employer to do reasonable classification within the ranks of its employees but that classification or categorization should be based on reasonable and rationale intelligible differentia.

11. The aforementioned discussion leads us to an irresistible conclusion that the Petitioner has not been dealt in accordance with law and a case for indulgence of this Court for exercise of powers of judicial review conferred under article 199 of the Constitution is made out in favor of the Petitioner. We therefore, allow this petition and direct the respondents to pay monthly salary of the Petitioner from the Month of July 2022 until 10.08.2022 when service of Petitioner was discontinued and refer the case of Petitioner to SPSC for regularization in service in the light of judgment of this Court in the case of Dr Uroosa Khan and others (supra) within period of One month from the date of this order.

The petition stands disposed of in above terms. Office to send copy of this order to Respondents for compliance.

JUDGE

JUDGE

Asghar/P.A