

# IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-2934 of 2013

Before:

**Mr. Justice Nadeem Akhtar &**

**Mr. Justice Muhammad Iqbal Kalhoro**

Date of Hearing: 06.11.2014.

Petitioner, Shahid Rahim, through Mr. Abdul Ghaffar, Advocate.

Respondents, Board of Trustees of Karachi through its Chairman, KPT Karachi & another, through Mr. Khalid Javed, Advocate.

Mr. Abdul Qadir Leghari, Standing Counsel.

## **ORDER**

**MUHAMMAD IQBAL KALHORO, J.**-This order seeks to dispose of the instant petition filed by the petitioner to set aside the letter dated 02.07.2013, issued by the respondent No.1 intimating him of expiry of his service period.

2. The case of the petitioner is that his father was working as an Assistant with respondent No.1/Board of Trustees of Karachi Port Trust, Karachi, who died during the service hence the petitioner was appointed as a Peon in terms of the “package for families of deceased employees” as per letter dated 27.07.2011. After his appointment the petitioner continuously worked with respondent No.1 with clean and neat record. There were also other employees working for a number of years on daily wages /contract basis with the respondent No.1 out of which the services of many were regularized. Since 2012 the respondent No.1 had appointed 800 employees on different posts on stipend as well as other basis, whose services were regularized in terms of Prime Minister’s directive No.PM.DIR/2255/D(imp)/PAW/12, dated 10.12.2012. However, more than 100 employees, including the petitioner, appointed on contractual basis

under the assistance package for family of deceased employees who died in service, were not regularized. Instead the respondent No.1 issued a letter dated 02.07.2013 intimating the petitioner that his service period of two years would complete on 26.07.2013. According to the petitioner the other employees of the same cadre were still working with the respondent No.1 but the petitioner was being deprived of his right to employment through the letter stated *ibid*. The petitioner has lastly prayed as under:

*“In view of the above, it is humbly prayed that this Hon’able Court may be pleased to set aside the letter dated 2.7.2013 and direct the Respondent No.1 to regularize the services of the Petitioner and pay him all entitlements /benefits of employment according to law”.*

3. The respondent No.1 filed Para-wise comments raising objections about the maintainability of the petition and disputing the case of the petitioner for regularization of service.

4. Mr. Abdul Ghaffar, learned counsel for the petitioner contended that the petitioner was discriminated against by the respondent No.1 as services of several employees working on contract basis had been regularized in terms of the directives issued by the Prime Minister but the case of the petitioner for equal treatment was ignored. Per learned counsel, in the past the respondent No.1 had regularized the services of a number of employees, who were appointed in terms of assistance package for family of deceased employees after completion of their contract period, however, in the case of the petitioner, instead of making his service permanent the respondent No.1 issued him the impugned letter which amounts to discrimination against him. He further argued that the issuance of the letter informing the petitioner about the culmination of his service was *mala fide* and discriminatory and the implementation whereof would cause hardship and hindrance in the life of the petitioner who was supporting his family. He lastly prayed for setting aside the vires of the subject letter and directing the

respondent to regularize the services of the petitioner by following the past precedents.

5. On the other hand, Mr. Khalid Javed, learned counsel for the respondents questioned the maintainability of the petition in his arguments by contending that the petitioner was a workman as defined in section 2(32) of Sindh Industrial Relations Act, 2013, and in case of any grievance he had the remedy of filing a grievance petition in the Labour Court, therefore the instant petition was not maintainable. He further contended that vide letter /notification dated 1<sup>st</sup> February 2012 the Federal Ministry of Ports and Shipping had conveyed the decision of the Cabinet regarding regularization of those contractual as well as daily wages employees who had completed one year and nine months of service, respectively, but the petitioner's case was not fit for that particular category as he had not completed required one year in service to become eligible for appointment on permanent basis. Per learned counsel, the petitioner was appointed on contract basis for a specific period of two years under the assistance package in accordance with the policy duly approved by the Board, which was meant to provide assistance for a specific period to the son of a deceased employee and such induction into the department was carried out bypassing the normal procedure hence, after the expiry of the contract period the petitioner had ceased to be an employee of the respondent and the petition filed by him was not maintainable. Regarding the impugned letter, learned counsel contended that in accordance with the agreed terms of an agreement which the petitioner signed for his appointment with the respondent, the said letter was issued intimating him that his service period of two years would complete on 26.07.2013 which could not be termed illegal or discriminatory. He vehemently denied that in the past any employee appointed on contract in terms of assistance package had been regularized

by the respondent No.1. Lastly, learned counsel for the respondents prayed for the dismissal of the petition.

6. Mr. Abdul Qadir Leghari, learned Standing Counsel adopted the arguments of the learned counsel for the respondents.

7. Heard and perused the record.

8. The petitioner was appointed under an arrangement called “Assistance package for family of deceased employee who die in service” by the respondent No.1/KPT vide a letter dated 27.7.2011 for a period of two years on contract basis with a condition that one month notice or pay in lieu thereof by either side would be required for termination of the contract. In this regard an agreement designed to govern the terms and conditions of the contract was signed by the parties. A perusal of the agreement, which has been specifically conditioned to remain in force for a period of 02 years only, shows that the petitioner had agreed to be appointed as peon on contract for that period. The scheme of appointing the family member of a deceased employee is a result of a resolution No.248 adopted by the respondent No.1 on 06.08.2009, the item No. V, at serial 2, whereof depicts that originally the proposal being contemplated to provide some help to the bereaved family was that “in case of death of a serving employee, his son or any other family member may be appointed in KPT against the posts in BPS (1-15) subject to fulfillment of prescribed qualification” however what came to be approved by the Board in the meeting was “employment of the posts in BS-1 to BS-15 on two years contract without advertisement subject to fulfillment of prescribed qualification”. The adoption of the above resolution by the KPT is patently in line with the Office Memorandum issued by the Government of Pakistan on 12<sup>th</sup> June 2006 in respect of Assistance Package which provides employment, for the families of government employees who die in service, for the posts in BS-1 to BS-15

on two years contract without advertisement. Dispensing with the requirement of filling up a given post after advertising it is not without any purpose here, it clearly aims to and facilitates a successor of a deceased employee to avoid a competition (which may be a stumbling block) with other candidates aspiring for the similar post(s) so that he could get a job for the time being without any hindrance. The measure appears to be a stopgap in nature and the object behind its introduction is to extend a helping hand for two years to the bereaved family which on account of a sudden death of its supporting member is exposed to an imminent financial crisis.

9. By the impugned letter the petitioner was intimated that his service period of two years on contract, commencing from 27.07.2001, would complete on 26.07.2013. Learned counsel for the petitioner during the course of arguments failed to point out any illegality on the part of the respondent in issuing such letter. The central point in his contentions was about the discrimination against the petitioner and his right to equal treatment which he emphasized by pointing out that previously the respondent No.1 had regularized the services of several contract employees appointed under the assistance package excepting the petitioner whose suitability for the same treatment never came to be recognized or considered by the respondent No.1 which shows disparity in its approach to the petitioner. We examined every document placed on the record to find out any substance and credence in his arguments but could not lay our hands on a proof referring to regularization of service of any contract employee placed in a similar situation like that of the petitioner. The case of the petitioner admittedly does not match with those contract employees who have been appointed by the respondent No.1 after following the prescribed procedure for the appointment. The need to enforce or press the principle of right to equal treatment would arise, when the persons, who are

placed equally or belong to the same class of people, are not being treated equally. It would be discrimination if a person or a group of persons was denied an equal right being extended to and enjoyed by others positioned in the similar situation. Discrimination cannot be without an element of unfavourable bias which has to be proved through concrete and solid evidence. The recourse to mere assertions that an authority has not exercised the discretion fairly, justly and equitably without placing incriminating material on the record in this regard would not bring the act of discretion to be counted as discrimination. The discretion becomes an act of discrimination only when it is improbable, vacillating or erratic exercise or abuse of discretionary authority. The differentiation and inequality of treatment per se would not tantamount to discrimination unless it is shown to be based on no reason or it is proved to be capricious or arbitrary. The petitioner, admittedly, has not been able to bring on record any material suggesting discrimination against or inequality of treatment meted out to him by the respondent No.1. The point in hand has been dealt with by the Hon'ble Supreme Court of Pakistan eruditely in the following two cases, which are reproduced here for ready reference:

1) *Miss Shazia Batool Vs. Government of Balochistan and others* (2007 SCMR 410)

*“The concept of equal protection of law envisages that a person or a class of persons shall not be denied the rights, which are enjoyed by other persons in the same situation.”*

2) *Messrs Arshad & Company Vs. Capital Development Authority, Islamabad through Chairman* (2000 SCMR 1557)

*“6. . . . . We have not been able to agree to persuade ourselves with Ch. Mushtaq Ahmad Khan, Advocate Supreme Court that it is a case of sheer discrimination for the reason that discrimination always involves an element of unfavourable bias which cannot be proved on the basis of bald assertion but requires solid and concrete evidence which apparently is lacking. . . . . It becomes an act of discrimination only when it is improbable or capricious exercise or abuse of discretionary authority. (Underlining is ours)*

10. The petitioner's case for regularization of his service was not found favourable also in terms of the directive issued by the Federal Minister Ports and Shipping for confirming the jobs of contract and daily wages employees who had completed one year and nine months in service respectively. He was lacking required period of one year in service at the relevant time to be eligible for the same benefit. He was appointed on 27.7.2011 whereas the initiative for regularizing the service of the contract employees, stipulating the above condition, came from the Minister concerned on 1<sup>st</sup> February 2012 which means the petitioner was short of almost 6 months of the required period at the relevant time to be considered for appointment on regular basis. In view of the above factual position, no exception can be taken to the respondent No.1's refusal to regularize the service of the petitioner in the light of directions of the Minister concerned. The petitioner's appointment was contractual in nature and was the result of a particular scheme meant to provide some succor to the bereaved family of a deceased employee. It does not confer any vested right upon him to continue in his service on permanent basis without going through a procedure prescribed under the rules /policy for appointment of the posts he was working on. For reliance the case of Government of Balochistan, Department of Health through Secretary, Civil Secretariat, Quetta Vs. Dr. Zahid Kakar and 43 others (2005 SCMR 642) can be cited. Having discussed above we get to the confirmed view that the petitioner has no case on merits. The petition in hand is dismissed accordingly along with the pending applications. However before parting with the order we must observe that in future appointments on the same posts, the petitioner's case be considered sympathetically by the respondent No.1, keeping in view the experience he has

gathered while working there, if he is otherwise found eligible for the same.

Above are the reasons of our short order dated 06.11.2014.

Copy of this order be sent to the respondents for information.

JUDGE

JUDGE