

IN THE HIGH COURT OF SINDH, AT KARACHI

Before:-

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-7563 of 2018

Irshad Ahmed Siyal and others V/S Province of Sindh & others.

Date of hearing

& decision: 11.02.2020

Mr. Faizan H. Memon, advocate for the petitioners.

Mr. Ali Safdar Depar, Assistant Advocate General alongwith Dr. Altaf Hussain Shaikh, Chief Technical Officer (Litigation), Health Department, Government of Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J: Petitioners have approached this Court for regularization of their service in Health Department, Government of Sindh.

2. Mr. Faizan H. Memon, learned counsel for the petitioners, has conceded that the petitioners were appointed after the promulgation of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 and has heavily relied upon Para 9.10 (b) of the minutes of the meeting of Provincial Cabinet held on 29.3.2018 and argued that Provincial Cabinet has decided to regularize the contract employees vide letter dated 18.04.2018 ; they fulfill the criteria and are qualified for the job ; and, they are working to the satisfaction of the respondent-department. He emphasized that the Prevention and Control of Hepatitis Program Sindh has been converted into non-development and their case falls within the ambit of Section 3 of Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 ; pursuant to constant policy of other provincial governments to regularize the services of contractual employees working in different projects of government and in view of their qualification and performance they have legitimate expectancy of being regularized ; and, the respondents are violating the fundamental rights of the petitioners. He lastly prayed for allowing the instant petition by giving similar treatment / benefits as given in C.P No.D-4920 of 2016 and other connected petitions vide common order dated 12.9.2019. In support of his contentions, he relied upon the case of Pir Imran Sajid and others versus Managing Director/Regional Manager (Manager Finance) Telephone Industries of Pakistan, 2015 SCMR 1257.

3. We have heard learned counsel for the parties and carefully examined the record and case law cited at the bar.

4. We have noticed that the petitioners 1 to 4 were appointed as Laboratory Technician (BPS-09), petitioner No.5 as Data Processor and petitioner No.6 as Office Assistant (BPS-06), Hepatitis Prevention and Control Program Sindh, on contract basis with fixed pay in the years 2013 to 2017. Admittedly, the petitioners

have not initially been appointed in an open and transparent manner, therefore, no vested right with regard to regularization of their service can be claimed.

5. The decision of the Hon'ble Supreme Court of Pakistan cited by him is altogether on different subject on the premise that the names of candidates were specifically recommended for regularization by the Cabinet, whereas in the subject matter there is no directive of the Provincial Cabinet in its meeting held on 29.03.2018 with regard to regularization of the service of the petitioners, prima-facie they do not fulfill the criteria and eligibility for regularization of their job. An excerpt of the minutes of the meeting of Provincial Cabinet held on 29.03.2018 is reproduced as under:

“ Para 9.10(b): The Cabinet also decided in principle to direct all the Departments to initiate process of regularization of the contract employee, if they fulfill the criteria, are qualified for the job and they are working to the satisfaction of the respective Departments. ”

6. It is well settled now that regularization of the services of the petitioners on the premise that regularization is always subject to availability of post and fulfillment of recruitment criteria, apparently the petitioners have not initially been appointed in an open and transparent manner through the prescribed competitive process as the vacancies were not advertised in the newspaper. Besides it is well-settled law that a contract employee is debarred from approaching this Court in constitutional jurisdiction, in the light of the law laid down by the Hon'ble Supreme Court of Pakistan in the case of *Qazi Munir Ahmed versus Rawalpindi Medical College and Allied Hospital and others*, **2019 SCMR 648**.

7. Before parting with this order, we may observe that the Provincial Cabinet is well within its powers to frame policy, however, subject to law. It is well-settled that if a policy manifestly inconsistent with the Constitutional commands, retrogressive in nature, and discriminatory inter se the populace is not immune from judicial review. Prima-facie the decision of the Cabinet dated 29.3.2018 does not cover the case of the petitioners under Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, as their appointment is after promulgation of the said Act i.e. 25.3.2013.

8. The petitioners, in our view, have failed to make out their case for regularization of their service as their case is neither covered under Section 3 of Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013, nor falls within the ambit of Policy of Government of Sindh, therefore, the instant petition is hereby dismissed along with pending application(s) with no order as to costs.

JUDGE

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