

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D – 5850 of 2018
Zeeshan Usmani V/S Federation of Pakistan & 02 others

Constitutional Petition No. D – 5851 of 2018
Mst. Saima Ather V/S Federation of Pakistan & 02 others

Date of hearing 13.03.2020
& decision : 07.04.2020

Mr. Faizan Hussain Memon, advocate for the petitioners.
Mr. Asim Iqbal, advocate for respondents 2 and 3.
Mr. Muhammad Nishat Warsi, DAG.

JUDGMENT

ADNAN-UL-KARIM MEMON, J. We intend to dispose of the captioned petitions by way of this single order as the aforesaid petitions have same circumstances, questions of law and facts.

2. The case of the petitioners, in nutshell, is that they were appointed in Sui Southern Gas Company Ltd. (SSGC) as Executive in Information Technology and Medical Services Department in Grade-I respectively, on contract basis vide office letter dated 14.11.2012. They continued to serve them till 31.12.2017, but their services were not regularized. They have approached to this Court for regularization of their services and seek similar treatment as meted out with their colleagues by this Court vide common judgment dated 19.01.2018 passed in the case of Kamran Mallah and others vs Federation of Pakistan and others, 2019 PLC CS 41. The aforesaid Judgment was maintained by the Hon'ble Supreme Court vide order dated 12.03.2018 passed in Civil Petitions Nos. 67-K and 68-K of 2018.

3. Mr. Asim Iqbal, learned counsel for respondent-company, contends that in number of Judgments this Court has held that contractual employees have no right to be regularized in service until and unless there is a law provided to that effect. Per learned counsel, the contract employee has to serve till the pleasure of his master and in case of any wrongful termination he cannot seek his reinstatement in service, but at the best have the right to seek compensation for his wrongful termination in accordance with law. He next contended that the

services of the petitioners have already ended in December 31, 2017, therefore, they are not entitled for reinstatement, even for regularization. In support of his contentions, he relied upon the cases of Qazi Munir Ahmed vs. Rawalpindi Medical College and Allied Hospital and others, **2019 PLC CS 928**, Amir Jamil V/S University of Karachi & others, **2018 PLC CS 542**, Javed Akhtar V/S Secretary, Education and Literacy Department, Government of Sindh & others, **2019 PLC CS 989**, Irrudiyandan Francis V/S Deutsche Bank A.G., **2019 PLC (C.S.) 1028**, Shahzad Gohar V/S Government of Punjab and Aitchison College, **2018 PLC (C.S.) Note 1**, Government of Balochistan, Department of Health through Secretary V/S Dr. Zahida Kakar & others, **2009 PLC (C.S.) 206**, Raja Iviz Mahmood and others V/S Federation of Pakistan & others, **2018 SCMR 162** and unreported order dated 25.09.2019 passed by the Honorable Supreme Court in Civil Petition No.3445 of 2019 and argued that the dispute between the parties relates to contract employment and a contract employee is debarred from approaching this Court in its constitutional jurisdiction. He next submitted that order dated 12.03.2018 passed by the Honorable Supreme Court in the aforesaid proceedings was based upon the policy of regularization issued by the respondent-company and the case of petitioners was not covered by the said policy, they remained on contract and their contractual period stood expired in the year 2017, therefore, the instant petitions are not maintainable. He lastly prayed for dismissal of the captioned petitions.

4. Mr. Faizan Hussain Memon, learned counsel for the petitioners has refuted the claim of the respondent-company that this Court vide Judgment delivered in the case of Kamran Mallah as discussed supra has granted certain relief(s) to the employees of SSGCL and the case of the petitioners is akin, therefore, same relief be granted to the petitioners; that it will be just and proper to grant the benefit of the above judgment to the cases of petitioners in the light of principle set forth by the Honorable Supreme Court in the case of Hameed Akhtar Niazi V/S Secretary Establishment Division, Government of Pakistan and others, **1996 SCMR 1185**. In support of his contentions he relied upon the cases of Pir Imran Sajid and others V/S Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others, **2015 SCMR 1257**, Government of Khyber Pakhtunkhwa and others V/S Adnanullah and others, **2016 SCMR 137** and unreported judgment dated 26.02.2019 passed by the learned Division Bench of High Court of Baluchistan, Quetta in C.Ps No.540, 674, 675, 676 and 677 of 2017 and argued that the services of the petitioners in the aforesaid matter were terminated by the respondent-company, which orders of termination were set aside. The aforesaid judgment

of learned Baluchistan High Court was assailed before the Honorable Supreme Court in Civil Petitions No.1313 to 1317 of 2019 and the same was maintained vide common order dated 07.01.2020.

5. We have heard learned counsel for the parties and perused the material available on record as well case law cited at the bar.

6. At this juncture, learned counsel for the respondent-company pointed out that only those contract employees who could obtain 60% marks in the prescribed test were regularized and since the petitioners could not achieve the targeted marks, therefore, their services were not regularized as their contract ended in the year 2017; and, they were relieved from their respective posts.

7. We do not agree with the contention of learned counsel for the respondent-company for the reason that on the similar analogy, this Court vide common judgment dated 19.01.2018 passed in Constitutional Petitions No.D-3759 & 4422 of 2017 disposed of the same by directing the respondent-Company to consider the cases of the Petitioners for regularization of their service in accordance with law, however, the policy introduced by the respondent-company for regularization of service was discussed at length and the same was repealed. The aforesaid judgment was assailed before the Honorable Supreme Court in Civil Petitions No.67-K and 68-K of 2018. The Honorable Supreme Court vide order dated 12.3.2018 observed as under:-

“2. Learned ASC for the petitioner contends that in number of judgments, this Court has held that contractual employees have no right to be regularized in the service unless and until there is a law provided to that effect. Per counsel the contract employees have to serve till the pleasure of their master and in case of any wrongful termination they cannot seek their reinstatement but at the best have the right to seek compensation for their wrongful termination in accordance with law. It was, therefore, contended that directing the petitioner to consider the regularization of the contract employees through the impugned judgment is not in consonance with law laid down by this Court. However, the learned ASC has frankly conceded that the petitioner has framed a policy for regularizing the service of the contract employees and almost all such employees who have cleared the prescribed test were regularized. The respondents however, could not clear the test prescribed for the regularization, therefore, they were denied regularization. In the circumstances, when the petitioner-Company has itself framed a Policy to regularize the services of the contract employees, the only question which needs to be seen is as to whether the respondents have been treated alike. Mr. Azim Iqbal, ASC while referring to the Uniform Recruitment and Promotion Policy submitted that only those contract employees who could obtain 60% marks in the prescribed test were regularized and since

the respondents could not achieve the targeted percentile, therefore, their services were not regularized. It was submitted that policy prescribed for regularization comprised of 35% PMS rating 35% aptitude test 20% interview evaluation and 10% service tenure and a successful candidate had to obtain 60% marks. Counsel further referred to the Summary of NTS results showing that none of the respondents have attained 60 marks. However, perusal of NTS result sheet reflects that except Muhammad Sumair Gul Ansari, all the respondents had achieved more than 35% marks in the aptitude test conducted by NTS. So far as PMS rating, interview evaluation, service tenure respectively having 35, 20 and 10 marks, nothing has been placed before us to show that the respondents could not achieve the targeted percentile. 5. In the circumstances, no case for interference is made out. These petitions, as a consequence, are dismissed and leave declined.”

8. We have noticed that the case of the petitioners is akin as decided by this Court in the aforesaid referred cases, as such Petitioners are entitled to similar treatment as given to their similarly placed colleagues for their regularization and absorption, as nothing adverse against them in terms of qualifications, character and performance in their respective fields was observed by the Competent Authority of the respondent-company, during their entire period of service.

9. The case laws cited by learned counsel for the respondent-company is distinguishable from the facts and circumstances of the present case.

10. In the light of above facts and circumstances of the case, the instant petitions are disposed of in the terms whereby the competent authority of respondent-company is directed to consider the case of the petitioners without any discrimination for regularization of their service in accordance with law, and dicta laid down by the Honorable Supreme Court vide unreported order dated 12.03.2018 passed in Civil Petitions No.67-K and 68-K of 2018, as discussed in the preceding paragraph, within a period of two months from the date of receipt of this judgment.

11. These petitions are disposed of in the above terms with no order as to costs.

JUDGE

JUDGE

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