

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Muhammad Ali Mazhar  
Mr. Justice Syed Hasan Azhar Rizvi

**Civil Petitions No.278-K and 279-K OF 2022**

Against the judgment dated 03.12.2021 passed by High Court of Sindh, Karachi in CPs No.D-3081 and D-4120/2019

Waqar Ahmed & others  
Aaqib Ali and others

(in CP 278-K/22)  
(in CP 279-K/22)  
...Petitioners

**Versus**

The Federation of Pakistan through Secretary  
Cabinet Secretariat, Establishment Division,  
Islamabad & others

...Respondents

For the Petitioners:

MaliK Naeem Iqbal, ASC  
Mr. M. Iqbal Chaudhry, AOR

For the Federation:

Mr. Khaliq Ahmed, DAG

For Respondent No. 3  
(KPT):

Mr. Ahmed Pervaiz, ASC  
Syed Imtiaz Shah, Legal Head (KPT)

For Respondent No. 4  
(Aquatech):

Mr. M. Saleem Thapadewala, ASC

Date of Hearing:

02.08.2024

**Judgment**

**Muhammad Ali Mazhar, J.** The aforementioned Civil Petitions for leave to appeal are directed against the common judgment dated 03.12.2021, passed by High Court of Sindh, Karachi, in C.Ps. No.D-3081 and D-4120 of 2019, whereby both the Constitution Petitions were dismissed along with the pending applications.

2. As a matter of fact, the petitioners had filed constitutional petitions in the Sindh High Court for regularization of their services in Karachi Port Trust ("**KPT**") and also prayed for restraining orders against the respondents to prevent them from taking any adverse action. The basic plea raised in the High Court was that KPT engaged the workers directly in the year 2006/2007; however, the petitioners were later

engaged through a contractor, while similarly situated employees were regularized in pursuance of the decision of the Cabinet Sub-Committee for regularization of employees in BS-01 to BS-15. It was further alleged that after their appointment, the petitioners always performed their duties to the utmost satisfaction, but despite performing duties on posts of permanent nature, they were not treated as permanent employees. Rather, some projects which were initially implemented by KPT were also handed over to M/s Jaffar Brothers and subsequently to M/s Aquatech Infrastructures Limited. The petitioners approached the High Court of Sindh with the grievance that they performed their duties in KPT for more than 6 to 15 years, hence they have the legitimate expectation for regularization in service rather than being treated as the employees of the contractor, M/s Aquatech Infrastructures Limited ("**Aquatech**").

3. The learned counsel for the petitioners argued that the learned High Court failed to take into consideration that the petitioners were working under the command and control of KPT since 2006, hence, they are entitled for regularization, but the impugned judgment was passed under the misconception that after expiry of contract, the employees cannot be regularized. It was further contended that the petitioners were terminated in violation of the interim order passed by the High Court. It was further averred that the petitioners were low paid employees working since 2006, hence they had a legitimate expectation of regularization in service in view of their length of service, qualification, and experience. It was further argued that the petitioners' case squarely falls within the scope of the decision of the Federal Cabinet Committee, but the High Court failed to consider and appreciate that a vested right accrued in favour of the petitioners which was denied without any lawful justification.

4. The learned counsel appearing for Respondent No.3 (KPT) argued that the petitioners were never engaged by KPT; instead, but they were the employees of the contractor Aquatech, hence, they have no vested right to claim regularization of service in KPT. It was further argued that there was a genuine outsourcing arrangement with the contractor which was executed after inviting applications from interested parties through newspaper proclamations. It was further averred that there is no relationship of employer and employee between KPT and the

petitioners and admittedly, they were the employees of the contractor and such arrangement has already expired and the contract is no more in field.

5. The learned counsel for Respondent No.4 (contractor) argued that all the petitioners were employed by Aquatech; however, no such contract is currently in effect. He also referenced some letters that govern the relationship. It was further avowed that the aforesaid contract was for 5 years which has now been terminated. For some unpaid dues owed by KPT, the company has already initiated appropriate legal proceedings in a court of law.

6. The learned DAG argued that since the petitions were not maintainable for regularization of service, hence the learned High Court rightly dismissed the same. He further argued that there was no relationship of employer and employee between KPT and the petitioners, therefore, the claim of regularization of service against KPT was unjustified. He further argued that there must be some policy for regularization for which the appropriate remedy is not a writ jurisdiction; instead, the petitioners should have sought an appropriate remedy before an appropriate forum in accordance with law.

7. Heard the arguments. The bone of contention between the parties is that the petitioners approached the learned High Court under the constitutional jurisdiction to claim their regularization in the service of KPT with consequential benefits, while according to the rival contentions, they were never employed by KPT, but were employed by Aquatech (Respondent No.4). The learned counsel for the petitioners, on the other hand, argued that the petitioners were in fact the employees of KPT but in order to circumvent the laws, KPT executed a sham-arrangement with Aquatech.

8. By and large, the rationale for outsourcing is essentially advocated to enhance the cost-effectiveness and every entrepreneur has the right and discretion to develop a proficient business stratagem and, according to the business plan, may outsource certain activities to an external force or outsourcing agency, who is then responsible for accomplishing the job and arranging manpower under its own

supervision and control. However, in the case at hand, it was not clear that the petitioners were directly employed by KPT; rather, it was through an outsourcing contractor. Therefore, for all practical purposes, the Federal Cabinet decision could not be applied to deal with cases of contractual employees engaged by an outsourcing contractor to fulfill any job or task. Respondent No.4 has also pleaded that their contract is no more in the field and they also instituted legal proceedings for the recovery of their unpaid dues. Furthermore, it is well settled that the claim of regularization of service must be recognized through some law and/or policy across the board with certain parameters and procedure in any organizational and administrative structure for its enforcement. The extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), is destined to dispense with an expeditious remedy in cases where the illegality or impropriety of an impugned action can be established without any exhaustive inquisition or recording of evidence, but if some convoluted or disputed question of facts are involved, the adjudication of which can only be determined by the Courts of plenary jurisdiction after recording evidence of the parties, then incontrovertibly the High Court cannot embark on such factual controversy.

9. The only ground for non-suiting the petitioners was that under Article 199 of the Constitution, the regularization of the contractual employees was not possible due to unavailability of any law or policy meant for such purpose in the writ jurisdiction. We are sanguine that in the peculiar facts of the case, such observation of the learned High Court is based on the correct articulation of law, but at one fell swoop, we are also mindful that in the relationship of master and servant, unless it is regulated by some specific law in the future, an aggrieved person may seek recourse by filing a lawsuit in the civil courts, but if the relationship is regulated and governed under the labour laws meant for Industrial Relations including the application of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("Standing Orders"), or any analogous provincial legislation which promulgated after the 18<sup>th</sup> Amendment in the Constitution, the proper remedy for an aggrieved worker is to approach the Labour Court or the National Industrial Relations Commission ("NIRC"), as the

case may be, for redressal of his grievance. Here, certain fundamental issues were congregated which need to be established and resolved; that is to say, whether the petitioners were actually employed by the contractor and, despite this engagement, whether they could claim regularization or permanency in their jobs as employees of KPT; and whether the outsourcing arrangement between KPT and the contractor was genuine or was based on a sham-arrangement to circumvent the obligations and benefits arising from labour laws; and finally, whether the petitioners, by serving several years against the permanent posts, without any gaps have thus attained the status of permanent workers by virtue of the Standing Orders. All these crucial disputed questions or factual controversies could not be decided by the High Court in the writ jurisdiction. Even under the Standing Orders, the scheme of law provides certain parameters for claiming regularization or permanency in service, which could neither be decided without recording the evidence of the parties nor without adverting to the actual relationship of employer and employee.

10. Time and again, it was held by this Court in numerous judgments that a writ does not lie under Article 199 of the Constitution against an organization having no statutory rules of service. Likewise, it was held numerously that for regularization of service of contractual employees, writ only lies if it is permissible under some law and policy decision across the board, provided that the said organization is amenable to the writ jurisdiction of the High Court under Article 199 of the Constitution. Even in the case of Faraz Ahmed vs. Federation of Pakistan through Secretary, Ministry of Communications, Government of Pakistan (2022 SCMR 1680 = 2022 SCP 238) (authored by one of us), it was specifically held that contractual employees have no vested right to regularization, but their regularization may be considered subject to their fitness, suitability and the applicable laws, rules and regulations of the Department. They have no automatic right to be regularized unless the same has specifically been provided for in the law, and they must demonstrate statutory basis for such a claim, in the absence of which, relief cannot be granted. However, in the present context, it is reiterated that if any such person is covered under the definition of "worker" under the labour laws, they can seek remedy, as

provided under the labour laws, by filing a grievance petition for the enforcement of the Standing Orders.

11. The aforesaid important aspect should have been examined and considered by the petitioners at the initial stage for deciding the invocation of the best available, lawful, and expeditious remedy, as mere filing of a constitution petition and invoking the jurisdiction of the High Court under Article 199 is not the solution of all problems or miseries. Another important aspect that cannot be lost sight of is that both the constitution petitions were filed in the High Court on 30.04.2019 and 18.06.2019, and were dismissed on 03.12.2021, after more than 2 years. Sometimes due to availing the wrong remedy, the actual remedy provided under the law for redressal becomes frustrated or wrecked by the efflux of time. So it is better that, while filing the constitution petition in the High Court, the petitioner should confidently mention, after due diligence, whether the arrayed respondent has any statutory rules of service or not, and if the case is based on regularization of contractual services by means of a constitution petition, then in such scenario also, the memo of petition should explicate and identify the law under which the regularization of contractual services is being sought or claimed. At the same time, due to absenteeism of such relevant particulars or any ambiguity or doubts, the Office may also raise objections as to the maintainability of the petition and invite the attention of the Court so that such objection may be taken up at the very initial stage and if the petition is not found maintainable within the rigors of Article 199 of the Constitution and is dismissed at the preliminary stage or withdrawn, then at least, in such set of circumstances, the aggrieved person may be able to seek an appropriate remedy within time rather than pursuing the wrong remedy before the wrong forum. Of course, for implementation of labour laws/Standing Orders in the case of worker/workman, the law has already provided a remedy before the Labour Court or the NIRC, as the case may be, for which the precise procedure is provided on how to lodge grievance petitions under the provisions of the Industrial Relations laws.

12. After arguing the case at some length, the learned counsel for the petitioners, on instructions, submits that the petitioners will seek

appropriate remedy in accordance with law. However, it is clarified that if any proceedings are instituted in accordance with law, the concerned Court/Authority shall decide the matter independently on its own merits without being influenced by any observation of the learned High Court in the impugned judgment. The Civil Petitions are disposed of in the above terms.

Judge

Judge

KARACHI  
2<sup>nd</sup> August, 2024  
Mudassar  
Approved for reporting