

JUDGMENT SHEET
LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.319 of 2021

Syed Ali Kazmi

V/S

*Government of Punjab
and others*

JUDGMENT

Date of hearing	26.09.2023
Petitioner(s) by	Mr. Tanveer Iqbal, ASC with Jamil Asghar and Ch. Gulzar Mehdi, Advocates.
Respondent(s) by	Malik Amjad Ali, Additional Advocate General with Abid Aziz, Assistant Advocate General Punjab for the Respondent No.1. Mr. Haroon Irshad Janjua and Arshad Mehmood Malik, Advocates with Abdul Majeed and Muhamamid Ibad, Superintendents/BISE for the Respondents No.2 to 5.

JAWAD HASSAN, J. The Petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “***Constitution***”) by challenging a quasi-judicial order dated 07.06.2018 passed by the Respondent No.2 pursuant to directions issued in W.P.No.2836 of 2017 dated 09.10.2017. The Petitioner has also challenged letter dated 23.09.2020 whereby his application for reinstatement in service was dismissed.

2. Facts of the case, as per petition, are that the Petitioner was appointed as Chairman Personal Staff vide offer letter dated 04.04.2007 on daily wages initially for a period of 89 days which was subsequently extended from time to time and he was terminated on 13.03.2010. He was re-employed on 17.02.2012 and again his services were terminated vide order dated 17.02.2016 on the ground of involvement in a criminal case. The Petitioner, after his bail, approached the Respondents with an

application to allow him to rejoin services alongwith regularization however, his request was not acceded to. Non-decision of that application by the Respondents prompted him to file Writ Petition No.2836 of 2017 which was disposed of vide order dated 07.06.2018 with direction to decide above-stated application pursuant to which impugned order dated 07.06.2018 was passed. Hence this petition.

3. Learned counsel for the Petitioner *inter-alia* contended that the impugned orders are illegal and unlawful; that neither show cause notice was given to the Petitioner nor opportunity of hearing was provided to him; that the Respondents have granted benefit of regularization to certain persons appointed along with the Petitioners but discriminatory treatment has meted out with him; that fundamental rights of the Petitioner are being infringed which need consideration of this Court. He relied on "BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, MULTAN through Chairman and another versus MUHAMMAD SAJID and others" (2019 SCMR 233), "WAPDA through Chairman and others versus ABDUL GHAFFAR and others" (2018 SCMR 380), "KASHIF ZAFAR versus POSTMASTER-GENERAL and others" (2013 SCMR 726) and "GOVERNMENT OF PUNJAB through Secretary Education, Civil Secretariat, Lahore and others versus SAMEENA PARVEEN and others" (2009 SCMR 1).

4. On the other hand, learned counsel for the Respondents filed report and parawise comments and vehemently opposed the arguments advanced by the learned counsel for the Petitioner and prayed for dismissal of the petition on the grounds that the Petitioner was employed on daily wages and after his termination, he has no vested right to be regularized or extension of his contract period; that the Petitioner was treated as per terms and conditions of his daily wages employment which he duly accepted at the time of appointment, therefore, now at this stage he cannot deviate from the same.

5. I have heard learned counsel for the parties and gone through the available record.

6. Admittedly, the services of the Petitioner were engaged by the Respondents purely on daily wages initially for a period of 89 days vide appointment letter dated 16.03.2007, relevant terms and conditions thereof are reproduced hereunder::

- 1 آپ کی تقری خاصتوں عارضی اور یومیہ اجرت کے انتظام کے تحت ابتدائی طور پر عرصہ 89 یام کے لئے ہوگی۔
اطمینان کی صورت میں آپ کی مدت میں توسعی ہو سکے گی۔ تاہم چونکہ یہ انتظام عارضی ہے اس لئے کسی بھی وقت بغیر کوئی وجہ بتائے ختم کیا جاسکتا ہے۔
- 6 یومیہ اجرتی بنیادوں پر تقری کے نتیجہ میں آپ کو باقاعدہ تقری کا استحقاق حاصل نہیں ہوگا اور نہ ہی کسی قسم کا کوئی حق کلیم کریں گے۔
- 7 مقرر لوازمات کی عدم تکمیل اور بروقت ڈیٹی کے لیے حاضر نہ ہونے کی صورت میں تقری نامہ منسوخ تصور ہوگا۔

7. It is quite evident from clause-1 of above that this offer of appointment was only for a period of 89 days which may be terminable without assigning any reason however, it may be extended subject to satisfactory performance. While clause-6 reveals that this daily wages employment neither confer any right of permanent job nor any privilege of regular appointment will be claimed in future whereas clause-7 reveals that this employment could be treated as cancelled in case of non-fulfilment of the prescribed accessories and not appearing for duty on time. Record reveals that the said period of work was extended from time to time and ultimately it was discontinued on 13.03.2010 in terms of clause-7, referred to above. However, on application of the Petitioner, he was re-appointed on 17.12.2012 under the same terms and conditions of initial appointment letter that too was discontinued on 17.02.2016. The Court is of the considered view that the Petitioner, at the time of joining, has accepted all the terms and conditions of his daily wages employment, cannot resile from the same at a belated stage. I fortified my view seeking guidance from the judgment passed by Supreme Court of Pakistan in "Miss NAUREEN NAZ BUTT Versus PAKISTAN INTERNATIONAL AIRLINES through Chairman, PIA and others" (**2020 SCMR 1625**) by upholding the judgment of Division Bench of this Court "PAKISTAN INTERNATIONAL AIRLINES Versus NAUREEN BUTT" (**2017 PLC (C.S.) 923**) holding that "*the established law is that a contract employee, whose period of contract employment expires by afflux of time, carry no vested right to remain in employment*

of the employer and the Courts cannot force the employer to reinstate or extend the contract of the employee". Reliance is also placed on "GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary, Peshawar and others Versus INTIZAR ALI and others" (2022 SCMR 472) wherein the Supreme Court has held that "temporary/contract/project employees have no vested right to claim regularization. The direction for regularization, absorption or permanent continuance cannot be issued unless the employee claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules and against the sanctioned vacant posts, which admittedly is not the case before us. This Court in the case of PTCL v. Muhammad Samiullah (2021 SCMR 998) has categorically held that ad-hoc, temporary or contract employee has no vested right of regularization and this type of appointment does not create any vested right of regularization in favour of the appointee".

8. A ground of long-standing length of service is agitated by the Petitioner. Recently, the Supreme Court of Pakistan in "DEPUTY DIRECTOR FINANCE AND ADMINISTRATION FATA through Additional Chief Secretary FATA, Peshawar and others Versus Dr. LAL MARJAN and others" (2022 SCMR 566) has held that "*long service is not ground for regularization and it has to be supported by legislation and is not an automatically accruing right*". Moreover, it was nowhere mentioned in the appointment letter that it was a job of permanent nature or the same was likely to be permanent in future. Recently, the Supreme Court of Pakistan in "GOVERNMENT OF KHYBER PAKHTUNKHWA through Secretary Forest, Peshawar and others Versus SHER AMAN and others" (2022 SCMR 406) has held as under:

"When an employee accepted a post in a project, he was aware of the fact that the project would come to an end on its completion or cessation of its funding (as the case may be) and with that, his employment would also come to an end. Forcing the Government to "accommodate/adjust" such employees was not only a transgression of the

powers vested with the High Court under Art. 199 of the Constitution, but was also a burden on the Government Exchequer which the court was not at liberty to place. Employer had the prerogative to decide the terms and conditions of an employee's contract, and it was not for the court to step into the shoes of the employer and force him to employ someone for whom there was no available post and even if there was one, without following due process, procedure and criteria".

9. Now the heart of controversy involved in this petition is the grant of benefit of regularization to certain persons appointed with the Petitioner, which according to him, formed basis for discrimination. The counsel for the Petitioner has persistently put much emphasis that the Petitioner was entitled to regularization of his services as the Respondents have regularized similarly placed persons. The fact of appointment of the Petitioner as Chairman Personal Staff initially for a period of 89 days and subsequent extensions therein is not disputed by all hands. The only grievance agitated by the Petitioner is that the Respondents have regularized the services of similarly placed persons while they have refused this relief to the Petitioner for reasons best known to them. While on the other hand, the counsel for the Respondents stated that daily wager cannot be granted the benefit of regularization without advertising the post in terms of order 20.03.2019 of the Supreme Court of Pakistan passed in Civil Petition No.301-L to 309-L and 316-L to 316-L of 2019 and thus benefit of regularization cannot be granted to the Petitioner. As the matter in hand relates to the policy of the Respondents, therefore, Court cannot interfere into it. It is not in the domain of the Courts to embark upon an inquiry as to whether a particular policy is wise and acceptable or whether better policy could be drafted. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of the Constitution. It was for the Respondents to decide how and in what manner the reservations should be made and such a policy decision normally would not be open to challenge subject to its passing the test of reasonableness. The Supreme

Court of Pakistan in "The SECRETARY PUNJAB PUBLIC SERVICE COMMISSION, LAHORE and others Versus AAMIR HAYAT and others" (**2019 SCMR 124**) has held that "courts could not interfere in lawful exercise of discretion by the concerned departments and substitute lawful decisions of the departments, by their own". In case of "M. NAZIR AHMAD Versus MUHAMMAD ASLAM and others" (**2013 SCMR 363**) it was held that "An employer has the discretion to formulate appropriate policy viz.a.viz job qualification and criteria for various positions in line with its peculiar requirements and organizational structure hence no person had a vested right to be appointed on a post rather the authorities made a selection for the post as per criteria set out in Rules/policy and had to find the most suitable candidate for the job who could capably discharge the duties". Reliance is also placed on "SECRETARY ECONOMIC AFFAIRS DIVISION, ISLAMABAD and others Versus ANWARUL HAQ AHMED and others" (**2013 SCMR 1687**) whereby the Supreme Court has held that "educational institutions are independent to follow policy for admission including affairs relating to changing conditions for endowment funds or fee, either under the policy given by the government or adopted by the college". Even otherwise, the Petitioner has neither made party to this petition the named persons nor any document, in this regard, has brought on record by her hence it cannot be said that the Respondents have treated her indifferently or given discriminatory treatment to him. The issue of discrimination has deliberated in details by the Supreme Court of Pakistan in "GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary and others Versus Syed SADIQ SHAH and others" (**2021 SCMR 747**) wherein it has held that:

"Article 25 of the Constitution, guarantees to every person the right to equality before the law and the equal protection of the laws. The expression "equal before law" is a declaration of equality of all persons irrespective of gender, race, religion, colour, caste, creed, status and language etc, implying thereby the absence of any privilege in favour of any individual. The guiding principle of Article 25 is that all persons and things similarly

circumstances shall be treated alike both in respect of privileges conferred and liabilities imposed. Equality before law means that amongst equals should be equal and equally administered and that like should be treated alike. Hence what it forbids is discrimination between persons who are substantially in similar circumstances or conditions. However, Article 25 does not forbid different treatment of un-equals. The rule is rather that alike should be treated equally and that unlike should be treated differently. As a matter of fact all persons are not alike or equal in all respects. Application of the same laws or yardstick uniformly to all of them will, therefore, be inconsistent with the principle of equality. To avoid that situation laws must distinguish between those who are equals and to whom they must apply and those who are different and to whom they should not apply. In fact identical treatment in unequal circumstances would amount to inequality. So a reasonable classification or sub-classification is only not permitted but is necessary if society is to progress. It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the authority.

Persons may be classified or further sub-classified into entities and such entities may be treated differently if there is a reasonable basis for such difference. Article 25 forbids class legislation but it does not forbid classification or differentiation which rests upon reasonable grounds of distinction. The classification however must not be arbitrary, artificial or evasive but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation.

Principle of equality does not mean that every law, policy matter, notification, administrative or executive order etc must have universal application to all the persons who by nature, attainment or circumstances are not in the same position”.

10. As the Petitioner was a daily wager employee and was governed by the principle of master and servant, therefore; he does not have any

vested right to seek extension of the contract/regularization as a matter of right rather it was the prerogative of the competent authority either to dispense with services of such employee or continue with the same by extending the contract or regularizing the services as per the policy. Moreover, it is an established principle that where employment is on contract, there is a relationship of master and servant and in such like cases the constitutional petition under Article 199 of the Constitution is not maintainable. Reliance is placed on "PAKISTAN INTERNATIONAL AIRLINES and others Versus NOUREEN NAZ BUTT" (2017 PLC (C.S.) 923) which has been upheld by the Supreme Court of Pakistan in "Miss NAUREEN NAZ BUTT Versus PAKISTAN INTERNATIONAL AIRLINES through Chairman, PIA and others" (2020 SCMR 1625).

11. Basically, the Petitioner has impugned two orders dated 23.09.2020 and 07.06.2018. First order relates to termination of contract which was passed by the Respondents on the application of the Petitioner for reinstatement/restoration of service whereas second order dated 07.06.2018 was passed pursuant to directions of this Court. In the said order it was observed that during service, the Petitioner had shown poor conduct and his initial appointment was terminated on account of his absence from duty. Pertinently, the impugned order dated 07.06.2018 was passed in the year 2018 but interestingly has been challenged after lapse of almost two years, five months and nineteen days without explaining any convincing reasonable cause for the inordinate delay, as such principle of laches is applicable upon this case as three months' time is considered reasonable for a party to assail an adverse order in writ jurisdiction of this Court. The Supreme Court of Pakistan in "CIVIL AVIATION AUTHORITY through Director General and 3 others Versus Mir ZULFIQAR ALI and another" (2016 SCMR 183) has held as under:

"The respondent No.1, who appeared in person, despite opportunity failed to explain or justify the delay. Since the petition was filed after a lapse of almost 10 years and that too without any justification or explanation for such delay, the same ought to have been dismissed as such"

In "STATE BANK OF PAKISTAN through Governor and another Versus IMTIAZ ALI KHAN and others" (2012 SCMR 280) it has held as under:

"laches is a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its enforcement if it is found by the Court of a law that its case is hit by the doctrine of laches/limitation. Right remains with the party but it cannot enforce it. The limitation is examined by the Limitation Act or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved do not approach the appropriate forum within the stipulated period/time, the grievance though remains but it cannot be redressed because if on one hand there was a right with a party which he could have enforced against the other but because of principle of limitation/laches, same right then vests/accrues in favour of the opposite party".

It was further held by Hon'ble Supreme Court of Pakistan in "MEMBER (S&R)/CHIEF SETTLEMENT COMMISSIONER, BOARD OF REVENUE, PUNJAB, LAHORE and another Versus Syed ASHFAQUE ALI and others" (P L D 2003 Supreme Court 132) as under:

"On account of Laches in setting the machinery of law into motion they have indeed disentitled themselves to the exercise of discretionary and equitable jurisdiction, which in all cases must be exercised in order to foster the ends of justice and to right a wrong. Writ jurisdiction is undoubtedly discretionary and extraordinary in nature which may not be invoked by a party who demonstrates a style of slackness and laxity on his part. Furthermore, if a party does not choose legal remedy available under the Statute strictly speaking Constitutional jurisdiction of the High Court cannot be exercised in his favour. Law is well-settled that a party guilty of gross negligence and laches is not entitled to the equitable relief. One who seeks equity must show that equities lean in his favour. In the facts and circumstances of the appeal we are,

therefore, in no manner of doubt that the High Court was not competent to exercise its writ jurisdiction conferred under Article 199 of the Constitution”.

12. It is well settled principle that law helps the vigilant and not the indolent. Reliance is placed on “AFTAB IQBAL KHAN KHICHI and another Versus Messrs UNITED DISTRIBUTORS PAKISTAN LTD. KARACHI” (1999 SCMR 1326). Moreover, the judgments referred to by learned counsel for the Petitioner cannot be relied upon being distinguishable from the facts and circumstances of the case as each and every case has its own merits.

13. In view of above discussion, I am not inclined to interfere with the impugned order which otherwise have been passed aptly. Resultantly, the instant petition stands dismissed on merit as well as on principle of laches.

**(JAWAD HASSAN)
JUDGE**

*Usman**