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JUDGMENT SHEET

LAHORE HIGH COURT LAHORE

JUDICIAL DEPARTMENT

Writ Petition No.41101 of 2023

Muhammad Atif, etc. Vs. Government of Punjab, etc.

J U D G M E N T

Date of Hearing:	17.05.2024
Petitioner by:	Mahar Saqib Mahmood, Advocate.
Respondents by:	Mr. Muhammad Saad Bin Ghazi, Assistant Advocate General alongwith Abdul Sattar, Litigation Officer, Office of C.E.O. Education, Faisalabad.

Anwaar Hussain, J. Briefly stated facts of the case are that the petitioners were admittedly employed by the School Education Department, Punjab on contract basis, and are no more in service, on account of termination of their contracts, *inter alia*, for the reason that they could not obtain the requisite qualification of B.Ed, within the stipulated period of time.

2. By way of factual background, it has been noted that petitioner No.1 was appointed in accordance with the recruitment policy for the year 2013-2014 *vide* order dated 18.04.2014, and he joined the duty on 21.04.2014, whereas, the remaining two petitioners were appointed under the recruitment policy for the year 2011-2012, *vide* order dated 24.08.2012 and they joined the duty on 30.08.2012. The appointments were valid for a period of five years. In terms of the applicable policy for the relevant years, the petitioners were obligated to complete the necessary qualification (of B.Ed) within a period of three years. There is a distinction in the factual matrix of the case, *inter se* the petitioners, inasmuch as by virtue of notification dated 03.09.2018, petitioners No.2 and 3, recruited in terms of policy for the year 2011-2012, were

allowed to obtain the requisite qualification till the expiry of their contract. Hence, the cut-of-date for obtaining requisite qualification in case of petitioner No.1 was 17.04.2017, whereas in case of the other two petitioners was 23.08.2017. Petitioner No.1 completed qualification on 18.10.2019, whereas petitioner No.2 obtained the said qualification on 04.10.2018 and petitioner No.3 obtained the qualification on 30.10.2017 and in this manner, all three petitioners have admittedly obtained requisite qualification after the crucial cut-of-date. There is another important factual aspect of the matter that the petitioners, earlier, approached this Court through filing of independent constitutional petitions bearing W.P. No.69656 of 2019, W.P. No.21326 of 2019 and W.P. No.13151 of 2019. In said cases, admittedly, interim relief, to continue with the service till decision of those petitions, was granted to petitioners No.1 and 3 only and not petitioner No.2. The above-referred petitions, alongwith other similar matters, were taken up by this Court, and through a consolidated judgment dated 04.06.2021 (passed in W.P. No.13151 of 2019, titled “*Muhammad Akmal Khan v. Government of the Punjab, etc.*”), the same were disposed of with multiple observations/directions to the respondent department. The respondents were, *inter alia*, directed to review the individual cases keeping in view the observations of this Court, however, insofar as the cases of the petitioners who failed to obtain the requisite qualification, within the cut-of-date were concerned, order of their termination was upheld by this Court, through order dated 04.06.2021.

3. Learned counsel for petitioners while referring to the case of one Hussain Farabi belonging to District Okara, states that similarly placed persons were allowed to complete the educational qualification beyond the period envisaged under the employment contract and therefore, the petitioners are entitled to the same relief. He has placed reliance upon cases reported as “*Government of Khyber Pakhtunkhwa through Secy.*

Agriculture and others v. Adnanullah” (2016 SCMR 1375); and “Mst. Ghulam Zuhra Jahangir and another v. Vice-Chancellor, University of the Punjab, Lahore and 8 others.” (2020 PLC (C.S.) 285).

4. Conversely, learned Law Officer submits that the law/policy on the subject is unequivocally clear that those employees who have not obtained requisite qualification within stipulated period of time were liable to be terminated and further clarity in this regard was given by the Administrative Secretary, *vide* letter dated 03.09.2018, whereafter across the Province, the employees/petitioners who had not obtained the requisite qualification within cut-of-date, were terminated and the order(s) were upheld by this Court in terms of Paragraph No.5(iv) of the judgment dated 04.06.2021. Adds that the petitioners have not assailed the said order in appeal and the present petition amounts to seeking review of order date 04.06.2021 that is not permissible. Further contends that in an identical matter, similar question of law ended up before this Court in ICA No.58940 of 2019 titled “Muhammad Arshad Mahmood v. Chief Executive Officer/District Education Authority, Faisalabad, etc.” and a learned Division Bench has held that those employees who could not obtain requisite qualification of B.Ed, within the stipulated period of time, have no right to seek any extension in the said period.

5. In rebuttal, learned counsel for the petitioners submits that the petitioners’ case falls under paragraph No.5(ii) of judgment dated 04.06.2021 passed in case of Muhammad Akmal Khan supra, whereof this Court has observed that if any similarly placed Educator has been regularized and given relaxation, the same relief shall be extended to the present petitioners as well. Regarding delay in filing of the present petition, learned counsel for the petitioners explains that time was consumed to obtain copies of orders in identical matter of similarly placed person, Hussain Farabi referred above, therefore, the present petition has been filed with delay. He also referred to order dated

04.10.2021 passed in case of one Syed Atta-ul- Mustafa of District Faisalabad whose services have also been regularized, after giving relaxation in time to complete the requisite qualification.

6. Arguments heard. Record perused.

7. The nub of the matter is to examine whether the petitioners who were admittedly required to obtain B.Ed qualification within stipulated period of time are entitled to be reinstated in service after having obtained the qualification, after the expiry of the contractual period.

8. Before rendering the decision in the present case, it will be appropriate to browse the outcome of the earlier round of litigation initiated by similarly placed persons including petitioners, which ended up in findings dated 04.06.2021 in case of Muhammad Akmal Khan supra, as also decision of a learned Division Bench of this Court in case of Muhammad Arshad Mahmood supra. Learned Division Bench of this Court held as under:

“Through this ICA, the Appellant has impugned order dated 25.4.2019 passed by the learned Single Judge in WP No.24738/2019.

2. The facts of the case are that the Appellant was appointed as SESE (Math) vide order dated 17.3.2012 on contract basis for a period of five years. In terms of clause 4 of the appointment letter, the Appellant was required to acquire qualification of B.Ed within three years. However, the period was further extended up to five years vide letter dated 3.9.2018. The Appellant failed to acquire the requisite qualification within the stipulated period, hence his contract was terminated vide order dated 13.2.2019 and subsequently his representation was also rejected vide order dated 2.4.2019. Feeling aggrieved, the Appellant filed WP No.24738/2019 which was dismissed in limine vide impugned order dated 25.4.2019. Hence this appeal.

3. The basic grievance of the Appellant is that his contract was terminated without issuance of notice and without affording him an opportunity of hearing.

4. After hearing the learned counsel for the Appellant we find no illegality with the impugned order as the learned Single Judge has rightly found that the Appellant being a contractual employee has no vested right. It has been held in the case titled “Federation of Pakistan, Chamber of Commerce and Industry, Karachi Vs Ali Ahmed Qureshi” (2001 SCMR 1733) that *in the event of arbitrary dismissal or termination of a contract employee he is entitled to sue for damages equal to wages and other benefits*. It has also been held in the case of “Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs Vs Muhammad Azam Chattha”(2013 SCMR 120) that *contract employee cannot press for reinstatement; at the best he can claim damages for the unexpired period of his contract in the event of termination*.

5. Therefore in view of the settled principle, the learned Single Judge has rightly held that the Appellant has no vested right on the basis of which he was entitled to relief in a constitutional petition.

6. Under the circumstances, the instant appeal is **dismissed**. The impugned order dated 25.4.2019 passed by the learned Single Judge in WP No.24748/2019 is maintained.”

Whereas the petitioners’ earlier round of litigation culminating into judgment dated 04.06.2021, in case of Muhammad Akmal Khan supra, holds as under:

“5. Consequently, the aforesaid Petitions are disposed of in the following terms:

- (i) The case of each Petitioner shall be examined independently by the concerned competent Authorities of the Education Department and decided within a period of one month from the date of this order after hearing each Petitioner with respect to his respective educational qualification in the light of observations made in this Order.
- (ii) Each Petitioner shall be treated at par with similarly placed Educators recruited and regularized under the Recruitment Policy, 2012 or under the Act, as may be applicable, and

accorded the same treatment as provided to such other Educators. Likewise, if any other relaxation is provided to similar placed Educators, the Petitioners shall also be entitled to benefit from the same.

- (iii) The Petitioners, whose cases are decided in their favour would stand reinstated and regularized in the similar manner as other Educators have been regularized and the issue of back benefits, if not already in service, shall be decided by the competent authority in each case independently in accordance with law.
- (iv) Those Petitioners who have not qualified the requisite educational qualification within time shall be deemed to have been terminated with effect from the date of their earlier termination as in the case of other Educators after the decision as aforesaid.
- (v) To give effect to the directions passed above, the termination letters of the Petitioners are set aside from the date of termination till the decision as aforesaid with respect to respective show cause notice issued to each Petitioner which shall be deemed to be pending.
- (vi) Office shall transmit a copy of this Order to the Secretary Schools, Government of the Punjab with the direction to transmit the same to the relevant authorities for implementation of this Order in the light of aforesaid directions.
- (vii) W.P. No. 227042/2018 seeking extension of service contract and release of salaries is dismissed being specifically barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973.”

(Emphasis supplied)

9. Perusal of the record reveals that the case of the petitioners clearly falls under Para 5(iv) quoted hereinabove. Their termination

was admittedly upheld. They had an opportunity to immediately file an appeal. Admittedly, the same has not been done. At that point of time, the petitioners had no idea as to whether any Hussain Farabi of District Okara or Syed Atta-ul-Mustafa of District Faisalabad had been given any extension. *Prima facie*, the present petition has been filed to take a chance on the basis of principle of similarly placed persons and amounts to review of the judgment dated 04.06.2021.

10. Learned Law Officer was confronted as to why some relaxation and deviation from the uniform policy (not to extend time to any Educator to obtain B.Ed after cut-of-date) has been made in cases of Hussain Farabi and Syed Atta-ul-Mustafa. On instructions of the departmental representative, learned Law Officer stated that an inquiry is underway and disciplinary proceedings have been initiated against the delinquents who deviated from the policy and created exceptions like cases of Hussain Farabi and Syed Atta-ul-Mustafa. He has also relied upon the judgment cited as “Vice-Chancellor Agriculture University, Peshawar and others v. Muhammad Shafiq and others” (2024 SCMR 527) to contend that the principle of similarly placed persons is no ground to seek any relief from this Court. Argument of learned Law Officer has force. In case of Muhammad Shafiq supra, the Supreme Court of Pakistan while dealing with the question of regularization, on the basis of principle of similarly placed persons, has held as under:

- “6. It is well settled that there is no vested right to seek regularization for employees hired on contractual basis unless there is any legal or statutory basis for the same. The process of regularization requires backing of any law, rules or policy. It should adhere to the relevant statutory provisions and government policies. In the absence of any of the same, a contractual employee cannot claim regularization. Applying the principles settled by this Court to the proposition at hand, it becomes

clear that the Respondents have no automatic right to be regularized unless the same has specifically been provided for in law or policy which in the present case is not available. Any regularization without the backing of law offends the principles of fairness, transparency and meritocracy and that too at the expense of public exchequer. The Impugned Judgment has also erred in law by failing to take into account that where a contractual employee wishes to be regularized, he must demonstrate statutory basis for such a claim, in the absence of which, relief cannot be granted solely on the principle of “similarly placed persons”. Article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities. It comes into operation when some persons are granted a benefit in accordance with law but others, similarly placed and in similar circumstances, are denied that benefit. But where a person gains, or is granted, a benefit illegally, other persons cannot plead, nor can the court accept such a plea, that the same benefit must be allowed to them also in violation of law. Thus, the ground of discrimination also does not stand, because in order to establish discrimination it is important to show that the earlier act was based on law and policy, which has not been the case here. Thus, with respect to the first question raised, we are of the view that the regularization of the Respondents cannot take place without the backing of any law, rule or policy and without an open and transparent process based on an objective criteria, as discussed above.”

(Emphasis supplied)

11. The judgment in case of Muhammad Shafiq supra unequivocally has laid down the contours as to how the Courts are to examine the matter where principle of similarly placed person is agitated. If relief is given to one person against the applicable policy and/or law, the same cannot be the ground for the grant of same relief in another case. Two

wrongs are not going to make one right. This is the crux of the case of Muhammad Shafique *supra*. Similarly, the case of Adnanullah *supra* is not of any help to the petitioners inasmuch as in the said case the petitioners therein were project employees and the said project was converted to non-development side and some of the employees were regularized but the petitioners of the said case were not given the same relief and hence, the Peshawar High Court ruled in their favour and the judgment of Peshawar High Court was upheld by the Supreme Court of Pakistan. There was no violation of, or any deviation from, any applicable policy or law, which is apparent in the instant case as the petitioners could not obtain qualification in accordance with the applicable policy *albiet* few (Hussain Farabi and Syed Atta-ul-Mustafa) have been given undue favour. Even otherwise, the case of Hussain Farabi and Syed Atta-ul-Mustafa is also not of any help to the petitioners inasmuch as the benefit of Para-5(ii) of the judgment dated 04.06.2021 was to be extended to such petitioners if any similarly placed person was regularized prior to the passing of the said judgment and not in negation of the said judgment. It is well evident that orders in favour of Hussain Farabi dated 27.09.2022 and Syed Atta-ul-Mustafa dated 04.10.2021 were passed after the decision by this Court in case of Muhammad Akmal Khan *supra* was rendered.

12. The question of similarly placed person and scope of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 can also be examined from another angle. The requirement to complete B.Ed qualification was fully applicable across the Province of Punjab and hundreds of other employees of the Education Department who could not obtain the said qualification were not extended relief (by way of extension to complete B.Ed) and only two instances have been brought before this Court i.e., case of Hussain Farabi and Syed Atta-ul-Mustafa. This fact itself indicates that the Department is consistent across the Province by adhering to the applicable policy, clarified *vide* letter dated

03.09.2018 issued with approval of the Administrative Secretary, and majority of such employees were not extended any relief. If doctrine of similarly placed person is to be applied, the petitioners should also not be extended any such relief as any *contra* decision (like in case of Hussain Farabi and Syed Atta-ul-Mustafa), will become a case of reverse discrimination *qua* those individuals across the Province who have been denied the extension and their constitutional petitions were dismissed by this Court and they remained unsuccessful in appeals as happened in case of Muhammad Arshad Mahmood *supra*. A learned Division Bench of this Court has already settled the specific issue in terms of judgment rendered in case of Muhammad Arshad Mehmood *supra* and this Court is obligated to follow the same. Moreover, the petitioners should have been vigilant and approached the higher forum by filing ICA against the judgment dated 04.06.2021 rendered in case Muhammad Akmal Khan *Supra*, which the petitioners failed to do.

13. In view of the preceding discussion, this petition has no force, hence, the same is **dismissed**. No order as to costs.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge