

Stereo. H C J D A 38.
Judgment Sheet
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
W.P No.41334/2023

Qadeer Ali etc. *Versus* Province of Punjab etc.

J U D G M E N T

Date of Hearing	20.05.2024
Petitioners by:	Mr. Abuzar Salman Khan Niazi, Advocate. Mr. Zain Sheikh, Advocate.
Respondents by:	Mr. Muhammad Saad Bin Ghazi, Assistant Advocate General, Punjab alongwith Tariq Ismail, Litigation Officer and M. Suleman Akash, Law Officer, Social Welfare & Bait-ul-Maal Department.

Anwaar Hussain J: Through this single judgment, present as well as connected constitutional petition, bearing W.P No. 86015/2023 are being decided, simultaneously, as common question of law is required to be adjudicated, which is articulated as under:

“Whether an employee of a project that has been converted from the development side to non-development side, is entitled to be regularized, as a matter of right?

2. The present petitioners are employees of the project, namely, Establishment of *Musafir Khana (Panah Gah)* at different locations of Lahore whereas the petitioners of connected petition, bearing W.P No.86015/2023, are employees of Old Age Home and *Panah Gah-Afiat*, at different locations of the Province of Punjab. Both the projects are hereinafter referred to as **“the Projects”**.
3. By way of factual background, it has been noted that the petitioners were appointed in the Punjab Social Welfare and *Bait-ul-*

Maal Department, on contract basis, in BPS-01 and BPS-11, and their contracts were extended from time to time and admittedly, are still in service. The Projects were started on the development side, however, the same have been converted from Development (Current) Budget to Non-Development (Regular) Budget, *inter alia*, *vide* Notifications dated 02.09.2021 and 30.05.2023, therefore, prayer has been made in both these petitions that services of the petitioners be regularized, from the date of their initial appointments.

4. Learned counsel for the petitioners aver that since the Projects have been converted from the development to the non-development side, therefore, the petitioners are entitled to regularization. Place reliance on judgment dated 05.05.2014 passed by the Supreme Court of Pakistan in **Civil Appeal Nos. 275 and 276 of 2014** titled “Government of the Punjab through Secretary Environment Protection Department, Lahore, & another v. Maqsood Ahmed & others”.

5. Conversely, learned Law Officer submits that no doubt the Projects have been converted from the development to the non-development side, on 02.09.2021, however, it does not mean that the petitioners are to be regularized as a matter of right. Contends that for every new project/scheme, staff is hired on temporary basis and such appointees are governed by the terms and conditions of their offers of appointment whereas the terms and conditions of the civil posts are governed by the Punjab Civil Servants Act, 1974, the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 and service rules of the department concerned read with the policy in *vogue*, therefore, the petitioners, after conversion of the projects from the development to the non-development, can neither be regularized nor can be allowed to continue unless in accordance with uniform policy of the government formulated in this respect, which in present case mandates qualification of the petitioners through competitive

process. Adds that the department has already advertised the posts of the Projects for recruitment thereagainst and rights of the petitioners have been duly safeguarded in terms of letter dated 06.06.2022 issued by the Services and General Administration Department, Lahore, as the petitioners will be given extra marks for their service rendered during the life of the Projects, as also age relaxation *qua* the said period of service, at the time of recruitment and due to the interim relief granted in favor of the petitioners, said recruitment process could not be completed. Places reliance on the law laid down by the Supreme Court in case titled “Government of Khyber Pakhtunkhwa through Chief Secretary and others v. Muhammad Younas” (2021 SCMR 1045), to contend that employees of a project are not entitled to regularization, as a matter of right.

6. In rebuttal, learned counsel for the petitioners submit that the judgment cited as Muhammad Younas supra is *per incuriam* as the earlier judgment passed by the Supreme Court in case Maqsood Ahmed supra was not considered and in case of such conflict between the earlier and the subsequent judgments, as per law of precedents, the former judgment is to be followed. Place reliance on case titled “Mst. Samrana Nawaz and others v. M.C.B. Bank Ltd. and others” (PLD 2021 SC 581) in support of their contentions.

7. Arguments heard. Record perused.

8. Before addressing the nub of the matter, which is to determine whether the petitioners are entitled to regularization, as a matter of right, it will be appropriate to address the legal question as to which of the two judgments of the Supreme Court is to be followed in the instant case. In case of Maqsood Ahmed supra, the Supreme Court held as under:

“5. After considering arguments advanced by the learned counsel for the parties and having perused the

record, we have come to the conclusion that *the employees of the project (which project has now become a permanent non-development department of the Government) cannot just be thrown out of their employment* for the simple reason that the position on which they were working which are said to be the laboratories are still existing and have become permanent laboratories of the Government and the employees who were employed in the project are still required to work in the said laboratories. *In this situation the appropriate manner in which the grievance of respondents can well be redressed is that the Government should consider the cases of the respondents for their regularization in service on merits.*”

(Emphasis supplied)

Whereas in case of Muhammad Younas *supra*, the Supreme Court held as under:

“18.We, therefore, find that the conclusion of the learned High Court that the benefits of the Regularization Act, 2009 to the extent of regularization of service were available to the Respondents is clearly based on incorrect appreciation and interpretation of the law and is unsustainable.”

Similarly, in case of Mst. Samrana Nawaz *supra*, the Supreme Court has held that in case of conflict between the two opinions of the Court, the former judgment is to be followed, which is trite law. However, it is to be noted that there is no disconnect between the above referred two judgments of the Supreme Court inasmuch as in case of Maqsood Ahmed *supra*, the Supreme Court held that the project employees are entitled to be considered for regularization as similarly placed persons had already been granted such relief whereas in case of Muhammad Younas *supra*, the relief was not extended for the reason that there was a Project Policy in vogue, in the KPK province, which contemplated that the project employees can be re-appointed on need basis, if the project is extended over any phase or phases and that if the project is regularized, the posts are to be filled through Public Service Commission and/or Departmental Selection Committee.

Therefore, it is not a situation where there is any conflict between the two judgments of the Supreme Court and hence, question of following the earlier judgment in the light of *dicta* laid down in case of Mst. Samrana Nawaz *supra* does not arise.

9. There is yet another aspect of the matter from which the present matter can be examined as there is a major distinction in the circumstances when the judgment in case of Maqsood Ahmad *supra*, dated 05.05.2014 in C.A. Nos. 275 & 276 of 2014 was passed and when the present case is being decided inasmuch as there was no policy in field regarding regularization of project employees in the year 2014, to safe guard their rights, whereas, at present, the regularization of the project employees is backed up by a uniform policy of the Government of Punjab, which envisages certain safeguards and advantages for such employees, in terms of letter dated 06.06.2022, that contemplates as under:

- “...viii. While making recruitment, the project employees may be allowed relaxation in upper age for the period they have served in the project.
- ix. For experience, in the relevant field including the experience or project, two marks per year upto the maximum of 10 marks shall be granted to project employees for recruitment in BS-1 to BS-15.”

It is well evident that the above quoted safeguards are in place for the benefit of the project employees including the petitioners. It is essentially a policy matter falling within the domain of the executive. This Court in exercise of judicial review cannot navigate beyond and above the policy set out by the executive limb of the State, for project employees, as this would surely amount to the judicial overreach. Therefore, a direction cannot be passed to the respondents for

regularization of service of the petitioners, as of right, without advertising the posts for general public.

10. Admittedly, the petitioners are in service *albeit* on contract, and the Projects have been converted in to non-development side and the posts have been advertised for the recruitment, therefore, the petitioners may apply for the same, if they have not already done and the respondents are directed to make the recruitment against the Projects' posts on regular basis, strictly adhering to and complying with the safeguard extended for the projects employees, in terms of letter dated 06.06.2022.

11. Before parting with, it is also imperative to spell out that the respondents have intended to continue the Projects and converted the same from the development to non-development side. Any organization aims at continuity in its working and functions which may run into difficulty if the serving employees are ousted from the service and asked to compete in the process. Therefore, it is prudent that the petitioners, who are admittedly in service, are allowed to continue to work till the completion of the process of recruitment, on regular basis, through competitive process and further continuation of the petitioners would be determined only if they qualify and stand on the merit list.

12. **Disposed of** in above terms.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting.

Judge