

Form No.HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Intra Court Appeal No.60992 of 2023

Manzoor Ahmad

Versus

Federation of Pakistan through Secretary to the Government of Pakistan, Ministry of Energy (Power Division), Islamabad and 4 others

S.No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge and that of parties or counsel, where necessary
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20.09.2023 Mr. Muhammad Shahzad Shaukat, Advocate.

On approval of Board of Directors of National Transmission & Dispatch Company Limited (hereinafter referred to as “NTDC”) a post of Deputy Managing Director was created and advertised in the newspaper. The appellant being eligible applied for the said post and after being interviewed by the Board of Directors, he was shortlisted. The appointment of the appellant was, however, approved finally by the Board in its 221st meeting held on 22nd March, 2022 and formal notification of the appointment of the appellant was issued on 29th March, 2022. In furtherance whereof, the appellant was appointed as Deputy Managing Director (AD&M) on contract basis. A formal contract was also executed, however, he was later on confronted with a letter dated 09th December, 2022, whereby Deputy Secretary Government of Pakistan Ministry of Energy (Power Division) in a letter addressed to the Chairman, Board of Directors, “NTDC” conveyed that the appointment of the appellant has come under extensive scrutiny at higher forums. The said letter, presumably, was on the basis of some complaints against the appellant proceeded to direct the Board of Directors “NTDC” to dispense with the services of the appellant as Deputy Managing Director (AD&M) by serving one month’s notice. The letter was purportedly issued by the Secretary

Power Division. This constrained the appellant to file Writ Petition No.83092 of 2022, which was admitted for regular hearing, however, on withdrawal of the letter dated 09th December, 2022 by the respondents vide letter dated 06th January, 2023 the appellant withdrew his petition vide order dated 02nd February, 2023. This followed a one sided inquiry against the appellant in pursuance to which a report was placed before respondent No.5 for terminating the appointment of appellant. The case of the appellant was, however, placed before the Board of Directors as agenda item No.6, whereby Board in its 247th meeting held on 31st May, 2023 decided to terminate the services of the petitioner without cause followed a letter of termination dated 31st May, 2023. The appellant challenged the notification through Writ Petition No.40827 of 2023 but remained unsuccessful as it was dismissed by way of order dated 16th June, 2023, hence this appeal under Section 3 of the Law Reforms Ordinance, 1972.

2. At the very outset we when confronted learned counsel for the appellant with the Court query as to how the constitutional petition was maintainable on behalf of the appellant being contract employee against his termination, he submitted that the notification of termination would amount to stigmatize the future of the appellant. He added that constitutional petition was maintainable as it offends the fundamental rights of the appellant as guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973.

3. After having heard learned counsel for the appellant at considerable length, we have perused the record.

4. It is an admitted position on the record that the appellant was appointed as Deputy Managing Director (AD&M) being contract employee. Clause 12 of the agreement deals with the termination which reads as under:-

“12. TERMINATION

12.1. Termination At Will: Termination effected without cause shall be considered Termination at will and may be affected by either Party at any time by giving notice of termination to the other Party as follows:

12.1.1. The Company may terminate the Employment at its discretion, without cause, by giving not less than Ninety (90) days' prior written notice of termination at will to the Employee, or payment of three (3) month's salary in lieu of notice.

12.1.2. The Employee may terminate his Employment at any time by giving not less than Ninety (90) days' prior written notice of termination at will to the Company.

12.1.3. Following issuance of a notice of termination at will by the Company or the Employee (as the case may be), the Company shall advise the Employee whether or not it requires the Employee to continue to perform his services as **Deputy Managing Director (Asset Development & Management)** during the notice period, and such decision shall be binding on the Employee.

12.2. Termination For Cause: The Company may terminate the Employment for cause by issuing a notice of termination for cause, which notice shall immediately terminate and cease the Employment from continuing any further. For purposes of this Agreement, cause shall mean:

12.2.1. the Employee's breach of any of the terms of this Agreement, or material breach of the Company's policies, guidelines, regulations or other directions applicable to the Employee from time to time;

12.2.2. the Employee's commissions of act(s) or omission(s) which have, have had, or are likely to have, a material adverse effect on the business, financial condition or reputation of the Company, its subsidiaries or affiliates;

12.2.3. the Employee's conviction (including guilty plea) of any crime of theft, dishonesty or moral turpitude; or

12.2.4. the Employee's omission, dereliction or negligence in the performance of his duties, or breach of any duty of care, duty of good faith or duty of loyalty towards the Company.

12.3. In case the Company terminates the Employment without cause, the Employee shall be entitled to receive **Three (3) month's** severance pay in addition to any salary paid to the Employee in lieu of notice.”

It is thus evident from the agreement itself that the employment of the appellant can be terminated by the company at its discretion without any cause by giving ninety days prior written notice of termination at will to the employee, or payment of three month's salary in lieu thereof.

5. Law is well settled that a contract employee is precluded to invoke the constitutional jurisdiction of this Court with regard to the matters relating to the terms and

conditions of service, as the relationship of such employee and department shall be deemed to be as of master and servant. Needless to reiterate that in the case of breach of any of the terms and conditions of contract or any other issue ensuing therefrom the grieve can only be remedied by filing a suit for damages. Reliance in this respect can be placed on GOVERNMENT OF KHYBER PAKHTUNKHWA through Secretary Forest, Peshawar and others versus SHER AMAN and others (2022 SCMR 406) wherein the Hon'ble Apex Court, while dilating upon the issue in hand held as under :-

“13. Even otherwise, the Respondents were contractual employees of a project which was governed by a MoU. They were employees of a corporate entity. In our opinion, they were governed by the principle of "Master and Servant". The stance taken by the learned High Court is overly simplistic and against the principles of employment law. It is the prerogative of the employer to decide the terms and conditions of an employee's contract. It is not for the court to step into the shoes of the employer and force him to employ someone for whom there is no available post and even if there is one, without following due process, procedure and criteria. The relationship is governed by the principle of master and servant and except in exceptional circumstances; disputes arising there from are beyond the jurisdiction and parameters of the powers of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan. We have asked the learned ASC for the said Respondents to point us to any rule creating a right to regularization of the Respondents. He has been unable to do so. It is trite that regularization cannot take place without statutory backing. The Respondents, being contract employees, were governed by the principle of "Master and Servant" and could not approach the High Court to seek redressal of their grievances. Reliance in this regard is placed on Government of Khyber Pakhtunkhwa, Workers Welfare Board v. Raheel Ali Gohar (2021 PLC (C.S.) Note 125 Supreme Court) where in it was held that:-

"In addition to these issues, we also find ourselves at odds with the fact that the present Respondents approached the High Court in its writ jurisdiction to seek regularization without there being any law conferring a right that may have been denied and was sought to be enforced by way of a petition under Article 199 of the Constitution. It is settled law that as contractual employees, the relationship between the Respondents and the Appellant is governed but the principle of master and servant. In these circumstances, the Respondents did not have the right to approach the High Court to seek redressal of their grievances relating to regularization. As noted above, in case of a contractual dispute the Respondents could have sought appropriate redressal of their grievances before a

competent court of law. However, only by virtue of being contract employees, no automatic right of regularization has accrued in their favour."
(Underlining is ours)

WHAT IS THE EFFECT OF THE TERMS AND CONDITIONS OF THE APPOINTMENT ORDERS OF THE RESPONDENTS?

14. Regularization is a policy matter which necessarily requires backing of the law. In the absence of any law, policy or rules, an employee cannot knock on the door of the High Court for regularization of his/her services. The learned High Court, despite the fact that there is ample material on the record that establishes that the Respondents had agreed to the terms and conditions of their contracts, regularized the services of the Respondents. The Project Policy governing the projects in which the Respondents were working clearly and unequivocally states that after the said projects come to an end, employees working in the said projects would have no right to claim regularization. The same stipulation is made in the service contracts of the Respondents. That being the case, the order of regularization lacked any legal basis or foundation. Reliance in this regard is placed on the case of Khushal Khan Khattak University through Vice-Chancellor and others v. Jabran Ali Khan and others (2021 SCMR 977) wherein, in an identical situation, this court held as follows:-

"The learned counsel for the Respondents has not been able to show us any law which conferred a right upon the Respondents to be regularized. The assertion of the learned ASC that since others were regularized, the Respondents should also be regularized despite there being no statutory basis has not impressed us. As noted above, the Respondents could not claim regularization as a matter of right. Even otherwise, all the appointment orders of the Respondents clearly state that they would have no right to claim regularization. Therefore, the Respondents cannot disown the terms and conditions of their own employment contracts and claim permanent employment when at the very inception of their employment they had accepted contractual employment on the conditions that they would have no right to claim regularization". (Underlining is ours)

The same view was further reiterated by the Supreme Court of Pakistan in the case of PROVINCE OF PUNJAB through Chief Secretary, Lahore and others versus Prof. Dr. JAVED IQBAL and others (2022 SCMR 897). Reference in this regard can also be made to GOVERNMENT OF KHYBER PAKHTUNKHWA, WORKERS WELFARE BOARD through Chairman vs. RAHEEL ALI GOHAR and others (2020 SCMR 2068), Qazi MUNIR AHMED vs. RAWALPINDI MEDICAL COLLEGE AND ALLIED HOSPITAL through Principal and others (2019 SCMR 648), Maj. (Retd.) Syed

MUHAMMAD TANVEER ABBAS and another vs. FEDERATION OF PAKISTAN through Secretary, Ministry of Interior and another (2019 SCMR 984), CHAIRMAN NADRA, ISLAMABAD, through Chairman, Islamabad and another vs. MUHAMMAD ALI SHAH and others (2017 SCMR 1979) and M/o IPC through Secretary and others vs. ARBAB ALTAF HUSSAIN and others (2014 SCMR 1573).

6. After having an overview of the principles settled by the Apex Court in the above referred judgments, we are of the considered opinion that constitutional petition before this Court is not competent. Furthermore the contract of the appellant has been terminated in the light of terms and conditions of his employment contained in the employment agreement, so this Court in exercise of constitutional jurisdiction cannot give new life to a terminated contract. In other words, it would amount to beat the dead horse.

7. So far contention of learned counsel for the appellant that by way of impugned notification of termination of contract the future of appellant has been stigmatized, suffice to observe that from the bare perusal of impugned notification it is crystal clear that termination of contract was without any cause in terms of clause 12.1.1 of the employment agreement.

8. In view of above discussion, we do not entertain any doubt in our mind that order of the learned Single Judge in Chamber resulting into dismissal of the constitutional petition is unexceptionable. The instant appeal thus fails and is **dismissed in limine**.

(CH. ABDUL AZIZ)
JUDGE

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

JUDGE

JUDGE