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JUDGMENT SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

W. P. No. 15270 / 2023

Province of Punjab and 05 others **VERSUS** **Jaffar Ahmed and 02 others**

W. P. No. 15295 / 2023

Province of Punjab and 04 others **VERSUS** **Mubashar Ali Shahzad and 02 others**

JUDGMENT

Date of Hearing	09.05.2023
Petitioner(s) by:	Mr. Asad Abbas Dhoher, Assistant Advocate General
Respondent(s) by:	Malik Amir Mukhtar, Advocate

ABID HUSSAIN CHATTHA, J. This Judgment shall decide the titled Writ Petitions since identical questions of law and fact are involved in both the Petitions. Jaffar Ahmad, Respondent No. 1 in Writ Petition No. 15270 / 2023 and Mubashar Ali Shahzad, Respondent No. 1 in Writ Petition No. 15295 / 2023 shall be collectively referred to as (the “**Respondents**”).

2. The titled constitutional Petitions are directed against the impugned Judgments dated 02.08.2022 and 17.11.2022 passed by Labour Court No. 5, Sargodha (the “**Labour Court**”) and the Punjab Labour Appellate Tribunal, Lahore (the “**Appellate Tribunal**”), respectively, whereby, the grievance Petitions filed by the Respondents under Section 33 of the Punjab Industrial Relations Act, 2010 (the “**PIRA Act**”) were accepted and the Respondents were regularized in the service as “permanent employees” against the posts for which they were already serving on work charge basis under the Petitioner Department from the date of appointment. It was also held that the Respondents shall enjoy all the benefits of a regular and permanent employee of the Petitioner Department as admissible under the relevant rules and laws.

3. In Writ Petition No. 15270 / 2023, Respondent No. 1 instituted a grievance Petition alleging therein that he was appointed as Baildar on 16.07.2016 by the Irrigation Department, Government of the Punjab on work

charge basis against the regular post. He possessed unblemished record and has been performing his duties to the entire satisfaction of his superiors. He was accordingly, entitled for regularization in the service since he falls within the definition of workman as defined under the PIRA Act and the Industrial & Commercial Employment (Standing Orders) Ordinance, 1968 (the “**Standing Order**”). It was further asserted that the Respondent had completed his probationary period and had attained the status of permanent workman and also served grievance notice before filing of the grievance Petition.

4. In connected Writ Petition No. 15295 / 2023, Respondent No. 1 filed his grievance Petition alleging therein that he was appointed as Driver on work charge basis against the permanent post on 18.11.2018 by the Irrigation Department, Government of the Punjab. He had completed his probationary period and having satisfactory service to his credit was entitled to be regularized in service.

5. The Petitioners in their written reply resisted the grievance Petitions both on legal and factual plane. It was submitted that appointment of the Respondents was primarily on work charge basis and there was a separate procedure for regular appointment through advertisement and due process of law. The Respondents do not fulfill the criteria of workmen and as such, cannot be regularized. It was emphasized that the PIRA Act and the Standing Order were not applicable to the cases of the Respondents.

6. The Labour Court found that the Respondents were appointed as Baildar and Driver in the Irrigation Department on 16.07.2016 and 18.11.2018 on work charge basis for a limited period but that period was extended from time to time with short intervals. Such artificial breaks in continuation of service through deliberate short intervals have been deprecated by the Apex Court in its various pronouncements. The Respondents have remained employees for a number of years in service. Therefore, by relying upon cases titled, “Punjab Seed Corporation through Managing Director and another v. Labour Court No. 9, Multan through Presiding Officer and 2 others” (2015 PLC 232); and “Managing Director, Sui Southern Gas Company Ltd., Karachi v. Ghulam Abbas and others”

(PLD 2003 Supreme Court 724), the Labour Court held that the Respondents fell within the definition of “workmen” as envisaged under Section 2(i) of the Standing Order and were competent to institute the grievance Petitions before the Labour Court. Hence, the Petitions were allowed primarily based upon the length of service of the Respondents for having rendered services for more than 03 years against the temporary post and in this context, it was held that the Respondents had been recruited against permanent posts.

7. In Appeals, the Appellate Tribunal, while relying upon case titled, “Secretary, Irrigation and Power Department Government of Punjab, Lahore and others v. Muhammad Akhtar and others” (2009 SCMR 320) held that Irrigation Department was an establishment under Section 2(ix) of the PIRA Act. It further opined that Section 2(c) of the Punjab Regularization of Services Act, 2018 (the “**Regularization Act**”) specifically provides that the Regularization Act does not apply to work charged and daily wages employees of the Government Departments which means that prevalent labour laws shall apply to all workmen employed in all Government Departments. The cases titled, “Board of Intermediate and Secondary Education, DG Khan and another v. Muhammad Altaf and others” (2018 SCMR 325); and “Board of Intermediate and Secondary Education, Faisalabad through Chairman and others v. Tanveer Sajid and others” (2018 SCMR 1405) were also relied upon to hold that artificial break of a few days while issuing appointment letter for 89 days of service would be considered a malafide on the part of the Department and would be construed as continuous service. The Appellate Tribunal further noted that Article 1(b) to the Schedule of the Standing Order stipulates that a permanent workman is a workman engaged in a work of permanent nature and as such, it was not necessary that he was employed against the permanent post and a workman attains the status of a permanent workman if he has continuously worked for longer than 09 months in a job of permanent nature. Accordingly, it was declared that the PIRA Act and the Standing Order are fully applicable to the case of the Respondents and in consequence thereof, the Appeals filed by the Petitioners were dismissed.

8. Learned Law Officer submitted that the Respondents temporarily employed on work charge basis were not entitled to be regularized as the PIRA Act and the Standing Order were not applicable to the case of the Respondents since the Irrigation Department, Government of the Punjab was not an Industrial & Commercial establishment and was excluded from their purview having statutory rules of service governing the workmen employed by the Department. He relied upon cases titled “Province of Punjab and 3 others v. Gul Hassan and 33 others” (**1992 PLC 924**); “Quetta Municipal Corporation through Administrator and another v. Registrar, Trade Unions, Balochistan, Directorate of Labour and Manpower, Quetta and 3 others” (**1995 PLC 151**); “Sh. Ahmad Sadiq v. Chief Settlement Commissioner and others” (**PLD 1974 Supreme Court 368**); “The Management of Municipal Committee, Mianwali v. (1) The General Secretary, Municipal Muhammirs Union and (2) The 1st Industrial Court” (**PLD 1968 Lahore 395**); “Technical Education and Vocational Training Authority through Chief Operating Officer and another v. Hafiz Naseer and 2 others” (**2016 PLC 360**); “Lahore Development Authority and others v. Hafiz Abdul Khaliq and others” (**2019 PLC 175**); and “Province of Punjab through Secretary, Irrigation Department, Jhang v. Sajjad Naseem and 3 others” (**2022 PLC 44**) to substantiate his claim.

9. Conversely, learned counsel for the Respondents submitted that the PIRA Act and the Standing Order were fully applicable to the case of the Respondents. Reliance was placed on cases titled, “Khalid Mehmood v. State Life Insurance Corporation of Pakistan and others” (**2018 SCMR 376**); “Fauji Sugar Mills through General Manager v. Mehmood Ahmed” (**2006 PLC 630**); “Abdul Ghafoor and others v. The President National Bank of Pakistan and others” (**2018 SCMR 157**); and Muhammad Altaf case (*supra*).

10. The point for determination before this Court is as to whether the PIRA Act and the Standing Order were applicable to the case of the Respondents and the impugned Judgments had been passed in consonance with law. The first proviso of Section 1(4)(c) of the Standing Order provides that it shall not

apply to industrial and commercial establishments carried on by or under the Federal or any Provincial Government, where statutory rules of service, conduct or discipline are applicable to the workmen employed therein. There is no denial on the part of the Respondents that the temporary employment was governed by statutory rules. Similarly, Section 1(3)(b) of the PIRA Act specifically provides that it shall not apply to any person employed in the administration of the state other than those employed as workmen by the Railway and Pakistan Post. The Departments of the Government of the Punjab do not figure in the definition of “establishment” as defined in Section 2(ix) of the PIRA Act. The definition of “workman” as stipulated in Section 2(xxi) of the PIRA Act only extends to a person not falling within the definition of employer who is employed in an establishment or industry. As such, it is conspicuously clear that a daily wager employed in Government Department is excluded from the application of the PIRA Act. The question of jurisdiction of the Labour Court and the Appellate Tribunal with respect to an employee working for a Government Department was directly considered in case titled, “Province of Punjab through Secretary Population Welfare Department and 2 others v. Farzana Basharat and 2 others” (**2020 PLC 260**), wherein, it was held in paragraph No. 6 as under:-

“The term 'commercial establishment' is defined in Section 2(b) of the Standing Orders to mean an establishment in which business of advertising, commission or forwarding is conducted and includes a clerical department of a factory or of any industrial or commercial undertaking, the office establishment of a person who for the purpose of fulfilling a contract with the owner of any commercial establishment or industrial establishment, employs workmen, a unit of a joint stock company, an insurance company, a banking company or a bank, a broker's office or stock-exchange, a club, a hotel, a restaurant or any eating house, a cinema or theatre, and such other establishment or class thereof, as Government may, by notification in the official Gazette, declare to be a commercial establishment. Section 1 of the Standing Orders clearly provides in its proviso that nothing in this Ordinance shall apply to industrial and commercial establishments carried out by or under the authority of the [Federal] or any Provincial Government, where statutory rules of service, conduct or discipline are applicable to the workmen employed therein. Admittedly, Respondent No. 1 worked for a government department, which is not a commercial establishment under the Standing Orders, as it does not fall under the definition of commercial establishment nor has it been notified as a commercial establishment which is a fundamental

requirement under the Standing Orders. Furthermore, as per the proviso to Section 1, the Standing Orders will not apply to Federal or Provincial government department, where statutory rules of service, conduct or discipline are applicable to the workmen employed. In this case, this fact was totally overlooked as Respondent No. 1 sought regularization as a post of a government department. In the same way, PIRA defines establishment as any office, firm, factory, society, undertaking, company, shop, premises or enterprise in the Punjab, which employs workmen directly or through a contractor for the purpose of carrying on any business or industry and includes all its departments and branches, whether situated in the same place or in different places having a common balance sheet and except in section 25 includes a collective bargaining unit, if any, constituted in any establishment or group of establishments. Section 1(3)(b) of PIRA provides that this Act will not apply to a person employed in the administration of the State. Consequently, a government department does not fall under the Standing Orders or PIRA. This was totally overlooked by both the Labour Courts and the Labour Appellate Tribunal which failed to consider the fact that Respondent No.1 worked for a government department and did not fall under the Standing Orders or PIRA."

In the aforesaid Judgment, it was also held that regularization of an employee is governed under the Regularization Act which importantly excludes persons employed on work charge basis. A government employee must advance his claim of regularization under the Regularization Act and if the claim of the employee was prior to its enforcement, then on the strength of the policy and the notification that addresses the issue of regularization in contrast to merely seeking regularization based on the length of service under the PIRA Act or the Standing Order for the reason that regularization prerequisites existence of a sanctioned post with budget.

11. Similarly, in case titled, "Parks and Horticulture Authority and others v. Ejaz Ahmad Sial" (**2020 PLC (C.S.) 214**), it was held that there is no vested right to be regularized in the service and regularization in the first instance is an executive function requiring sanctioned post as it involves financial considerations upon Government exchequer. In the instant Petitions, it was established from record that the Respondents were not recruited on regular basis through advertisement and due process of law but were temporarily employed and as such, could not be regularized as there were no sanctioned posts against which they could be absorbed. Further, reliance is placed on cases titled, "Province of Punjab through Secretary Agriculture

Department, Lahore and others v. Muhammad Arif and others” (2020 SCMR 507); “Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others v. Sher Aman and others” (2022 SCMR 406); and “Deputy Director Finance and Administration FATA through Additional Chief Secretary FATA, Peshawar and others v. Dr. Lal Marjan and others” (2022 SCMR 566).

12. It, therefore, follows that the Courts below fell in error to hold that the PIRA Act and the Standing Order were applicable to the case of the Respondents. The case law relied by learned counsel for the Respondents is distinguishable for the reason that applicability of the PIRA Act and the Standing Order upon an employee is required to be determined with respect to the status of an employer as an industrial or commercial establishment. It is also noted that jurisprudence evolved on the subject holds that regularization is not a vested right of any employee but is dependent on a right based on law or policy. Moreover, mere length of service is not the sole basis to seek regularization.

13. In view of the above, the titled constitutional Petitions are allowed and in consequence thereof, the impugned Judgments dated 02.08.2022 and 17.11.2022 are set aside having been rendered without jurisdiction.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

Abu Bakker