

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.30365/2022

**Malik Muhammad Vs. Government of the
Yaqoob etc. Punjab etc.**

Dates of Hearing	29-03-2023 and 03-04-2023
Petitioners by	Chaudhary Maula Bakhsh Gondal, Advocate.
Respondents by	Mr. Omer Farooq Khan, Assistant Advocate-General, Punjab alongwith Baby Tabassum, Law Officer and Malik Noman Aslam Bhatti, Legal Advisor M.C. <i>Renala Khurd.</i>

ABID AZIZ SHEIKH, J. Through this Constitutional Petition, the petitioners have challenged the orders dated 15.04.2022, 05.01.2021, 21.12.2020 & 28.10.2016 passed by the respondents.

2. Relevant facts are that defunct Tehsil Municipal Administration, *Renala Khurd (TMA)*, advertised various posts of Drivers & Helpers in BS-1 to BS-4 vide Advertisements dated 11.06.2006 and 20.08.2007 (**Advertisements**). The age limit for said posts was 18 to 25 years and after applying upper age relaxation allowed across the board, the maximum upper age limit was 30 years. The petitioners, who were few months beyond upper age limit of 30 years, were granted age relaxation for period beyond 30 years under Section 5(3) of the Punjab

Local Council Services (Appointment and Conditions of Service) Rules, 1983 (**Rules**) by the concerned TMA vide letters dated 30.08.2006 and 09.10.2007. The petitioners No.1 to 3 were consequently appointed on contract for a period of three years vide appointment order dated 30.08.2006 and petitioners No.4 & 5 vide order dated 31.08.2007. The contract of the petitioners No.1 to 3 was also further extended. In meanwhile the Regularization Policy dated 14.10.2009 was issued by the Services & General Administration Department (Regulation Wing), Government of Punjab (**Regularization Policy**), to regularize the services of contract appointees in BS-01 to BS-15. The said Regularization Policy was also adopted to regularize the services of employees from BS-01 to BS-15 of the Local Government vide Notification dated 07.11.2009 (**Notification**). The petitioners were, however, not regularized on the ground that they were overage at the time of recruitment. The petitioners being aggrieved filed Writ Petition No.14135 of 2010 which was disposed of by this Court on 12.04.2016 with direction to respondent No.2 to decide the representation of the petitioners. The said respondent, vide order dated 28.10.2016, rejected the representation on the ground that the petitioners were overage at the time of contract appointment, hence, cannot be regularized under the Notification. The petitioners again

filed Writ Petition No.35620 of 2016, which was allowed by this Court on 13.10.2020 and matter was sent back to respondent No.2 to pass reasoned and speaking order. The said respondent after giving hearing on 08.12.2020, dismissed the representation on 21.12.2020, and also terminated the services of the petitioners on 05.01.2021. The petitioners again filed Writ Petition No.844/2021, which was disposed of on 21.10.2021 with direction to respondent No.1 (Chief Secretary, Punjab) to decide the matter against the impugned order as well as termination order. The respondent No.1 through impugned order dated 15.04.2022 dismissed the appeal of the petitioners, hence, this Constitutional Petition.

3. Learned counsel for the petitioners submits that the age beyond the prescribed age in Advertisements was already relaxed by the Competent Authority and once the said age relaxation orders were implemented and the petitioners were not only appointed on contract but also allowed to complete their tenure of three years', subsequently their regularization cannot be denied on this ground.

4. Learned counsel for the respondents as well as learned Law Officer, on the other hand, submits that under the Regularization Policy and Notification the services of only those contract employees could be regularized who fulfilled the

criteria of age, qualification and physical fitness etc. at the time of their contract employment. He submits that all the petitioners being beyond the prescribed age limit of 30 years in the Advertisements at the time of their contract employments, they were not entitled for their regularization and their services were lawfully terminated. Submits that impugned orders do not suffer from any illegality.

5. I have heard the learned counsel for the parties and perused the record.

6. There is no dispute that in the Advertisements the prescribed age limit was 18 to 25 years and after applying five years' age relaxation allowed by the Government of Punjab across the board, the maximum upper age for appointment against the posts in-question was 30 years. However, it is also admitted position on record that the age of the petitioners beyond 30 years was relaxed by the Tehsil Municipal Officer (**TMO**) concerned under the Rule 5(3) of the Rules vide order dated 30.08.2006 in respect of petitioners No.1 to 3 and order dated 09.10.2007 in respect of petitioners No.4 & 5. Under Proviso to Sub-rule (3) of Rule 5 of the Rules, the appointing Authority being competent Authority can allow upper age limit up to five years. The perusal of appointment orders dated 30.08.2006 and 31.08.2007 shows that same have been issued

by the TMO upon recommendation of the Selection Committee. Therefore, the upper age of petitioners was relaxed under Rule 5(3) of the Rules by the same Authority who appointed the petitioners. It is neither case of the respondents that appointing Authority was not competent nor it is claimed that age relaxation orders dated 30.08.2006 and 09.10.2007 were recalled/cancelled being issued illegally or by incompetent Authority. Rather record depicts that the said relaxation of age order dated 30.08.2006 in respect of petitioners No.1 to 3 was duly acted upon and the said petitioners were not only appointed on contract for a period of three years but after completing their terms they were also granted extension. In respect of petitioners No.4 & 5, though upper age relaxation order was issued on 09.10.2007 after their appointment on 31.08.2007 but again neither those petitioners' service contracts were terminated being beyond prescribed age nor the upper age relaxation order dated 09.10.2007 was recalled/cancelled till date rather they were allowed to complete their tenure of three years and in meanwhile the Regularization Policy and Notification were issued.

7. In the above circumstances, vested right accrued in favour of the petitioners and under the doctrine of *locus poenitentiae* now they cannot be denied regularization under the

Regularization Policy and Notification on the ground that their age at the time of recruitment was beyond 30 years. The age relaxation orders, passed by the appointing Authority under the Rules, being not set-aside/cancelled during the contract service of the petitioners, the respondent-department was estopped subsequently to deny regularization under Regularization Policy or Notification on the ground that the petitioners at the time of appointment were beyond the prescribed age of 30 years.

8. In similar situations, the hon'ble Supreme Court and learned High Courts of different provinces from time to time applied the doctrine of vested rights and *locus poenitentiae* in following case law.

i) In “INSPECTOR GENERAL OF POLICE, QUETTA and another Vs. FIDA MUHAMMAD and others” (**2022 SCMR 1583**), hon'ble Supreme Court held as under:

“11. The doctrine of vested right upholds and preserves that once a right is coined in one locale, its existence should be recognized everywhere and claims based on vested rights are enforceable under the law for its protection. A vested right by and large is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances. In fact, it is a right independent of any contingency or

eventuality which may arise from a contract, statute or by operation of law. The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order but in this case, nothing was articulated to allege that the respondents by hook and crook managed their appointments or committed any misrepresentation or fraud or their appointments were made on political consideration or motivation or they were not eligible or not local residents of the district advertised for inviting applications for job. On the contrary, their cases were properly considered and after burdensome exercise, their names were recommended by the Departmental Selection Committee, hence the appointment orders could not be withdrawn or rescinded once it had taken legal effect and created certain rights in favour of the respondents.”

- ii) In “Mst. BASHARAT JEHAN Vs. DIRECTOR-GENERAL, FEDERAL GOVERNMENT EDUCATION, FGEI (C/Q) RAWALPINDI and others” (**2015 SCMR 1418**), the hon’ble Apex Court held as under words:-

“20. Once a right is accrued to the appellant by appointment letters issued after complying with all the codal formalities could not be taken away on mere assumption and or supposition and or whims and fancy of any executive

functionary. Such right once vests, cannot be destroyed or withdrawn as legal bar would come into play under the well doctrine of locus poenitentiae, well recognized and entrenched in our jurisprudence (One may refer to Director, Social Welfare, N.W.F.P., Peshawar v. Sadullah Khan (1996 SCMR 1350). ”

- iii) In “PAKISTAN INTERNATIONAL AIRLINES CORPORATION through Chairman and others Vs. SHAHZAD FAROOQ MALIK and another” (2004 SCMR 158) it is held as under:-

“There is no cavil with the proposition that the authority has the power to undo the act done by it but such provision would be subject to the relevant laws and the Rules and would be applicable only in those cases where under the relevant law or the Rules a different intention does not appear. In the present case, the Corporation has its law and the Rules which govern the service under the Corporation. The authority could remove the employee who has been appointed in violation of the Rules but such action could be taken when no decisive steps had been taken in pursuance of the appointments. In the instant case, the respondents after their appointment were confirmed in service by the P.I.A.C., hence, valuable rights had accrued to them which could not be interfered with only on the ground that they were irregularly appointed by the P.I.A.C itself unless there were other allegations against them, in view of the principle of locus poenitentiae.”

- iv) In “CHAIRMAN, SELECTION COMMITTEE / PRINCIPAL, KIND EDWARD MEDICAL

COLLEGE, LAHORE and 2 others Vs. WASIF

ZAMIR AHMAD and another” (1997 SCMR 15),

hon’ble Supreme Court observed as under:-

“The decision of the petitioners to give admission to the respondent No.1 was implemented in letter and spirit. He, therefore, cannot be deprived of his vested right which he had earned on the basis of act of the petitioners.”

- v) In “CHIEF SECRETARY, GOVERNMENT OF SINDH and another Vs. SHER MUHAMMAD MAKHDOOM and 2 others” (PLD 1991 Supreme Court 973), august Supreme Court held as under:-

“It is quite apparent that restrictions in para. 4 of the Revenue Department’s Notification mentioned above, pertain to the appointment as Mukhtiarkar and in the case under consideration will have no bearing for the reason that respondents were granted exemptions in accordance with circulars, requirements of which were duly fulfilled by them and not only that but exemptions were implemented and they receive, necessary training, as such valuable rights had accrued to them which could not be interfered with. In this context, reference can be made to section 20 of General Clauses Act and guidelines laid down in the case of Pakistan v. Muhammad Himayatullah Farukhi (PLD 1969 Supreme Court 407), in which it is held that principle of locus poenitentiae is available to the Government or relevant authorities and further authority which is competent to make order has power to undo it, but such

order cannot be withdrawn or rescinded once it has taken legal effect and created certain rights in favour of any individual. It appears that Service Tribunal has allowed appeals of the respondents mainly on this ground with cogent reasons in support thereof.”

- vi) In “PAKISTAN THROUGH THE SECRETARY, MINISTRY OF FINANCE Vs. MUHAMMAD HIMAYATULLAH FARUKHI” (PLD 1969 Supreme Court 407) the doctrine of *locus poenitentiae* applied in following terms:-

“There can hardly be any dispute with the rule as laid down, in these cases that apart from the provisions of section 21 of the General Clauses Act, locus poenitentiae, i.e., the power of receding till a decisive step is taken, is available to the Government or the relevant authorities. In fact, the existence of such a power is necessary in the case of all authorities empowered to pass orders to retrace the wrong steps taken by them. The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights.”

- vii) In “QURAT-UL-AIN Vs. QAZI ZIAN-UL-ABADEEN and others” (2020 PLC (C.S) 400), hon’ble Supreme Court (AJ & K) held as under:-

“We deem it proper to observe here that although, the Gold Medal is not awarded

for M.Phil degree, but in view of the peculiar facts of the case especially when a right had already been accrued to the respondent in the light of the policy prevailing at the relevant time, the appellant cannot be benefited on such ground. As the respondent has got the top merit position in the selection process, therefore, he cannot be deprived of his right for appointment by making any subsequent amendment in the rules/policy already holding the filed.”

- viii) In “AAMIR TUFAIL CHAUDHARY Vs. GOVERNMENT OF PUNJAB and 2 others” (2018 PLC (C.S.) 493), this Court held as under:-

“It is settled principle of law that once a decisive step has been taken by the relevant authority the same cannot be retracted since it has vested valuable rights. The offer letter was issued to the Petitioner and the Petitioner in consequence whereof fulfilled all the terms and conditions of the offer letter by having his degrees verified and having a fresh medical examination. The Respondents under the principle of locus poenitentiae cannot deny the Petitioner the post as valuable rights had accrued to the petitioner and the same could not be recalled.”

- ix) In “AMMAD AHMAD Vs. NATIONAL HIGHWAY AUTHORITY through its Chairman and 5 others” (2018 PLC (C.S) Note 187), this Court observed as follows:-

“15. Under the law, decisive step taken by the authority cannot be withdrawn. Law is well settled that once a right is created by

extending benefit for no default of a person, the same cannot be taken away on mere assumption, supposition, whims and fancy. Such right, once vested, could not be destroyed or withdrawn as legal bar would come into play under the doctrine of locus poenitentiae. Even in presence of any legal defect in initial appointment, principle of locus poenitentiae would not permit competent authority to undo same after a long time and remove incumbent from service.”

- x) In “ADNAN AHMED Vs. PROVINCE OF SINDH through Chief Secretary to the Government of Sindh and 8 others” (**PLD 2022 Sindh 542**), the hon’ble Sindh High Court held as under:-

“The respondents received letters for their appointment and are working on their respective post after completing the formalities which includes verification of their testimonials “Domicile and PRCs”. It is settled by now that once a right is accrued to the appellant by appointment letters issued after complying with all the codal formalities could not be taken away on mere assumption and or supposition and or whims and fancy of any executive functionary. Such right once vests, cannot be destroyed or withdrawn as legal bar would come into play under the well doctrine of locus poenitentiae, well recognized and entrenched in our jurisprudence.”

- xi) In “REHMAT SANOBER Vs. BALOCHISTAN PUBLIC SERVICE COMMISSION through

Chairman and 2 others” (2015 PLC (C.S) 1246),

the hon’ble Balochistan High Court held as under:-

“10. So, we can confidently observe that the petitioner was under protection of the earlier policy of the Government of Balochistan as mentioned in the publication dated 22.02.2013 and even now when this matter is going to be decided the age limit provided by Notification dated 25th February, 2013 is no more in the field. We are satisfied to hold that this is a policy matter and the relaxation in upper age limit extended by the Government of Balochistan earlier was not in violation of any fundamental right or a law nor did it suffer from any infirmity, inherent legal defect or want of authority. Thus, in these circumstances, the principle of ‘Locus Poenitentiae’ fully attracts in this case and a legal vested right accrued to the petitioner cannot be taken away.”

(emphasis supplied)

9. The contract appointment orders in respect of petitioners were not only issued after complying codal formalities but they also completed their contract tenure, hence, vested right accrued in their favour and the respondents are estopped under the principle of *locus poententiae* discussed above to deny regularization of the petitioners on the ground that they were overage at the time of their contract appointment. It is also settled law that parties should not be made to suffer for action or inaction of the authority who was obliged to follow the law.

In this regard, reliance is placed on “Province of Punjab through Secretary, Agriculture, Government of Punjab and others Vs. Zulfiqar Ali” (2006 SCMR 678).

10. In view of above discussion, this Writ Petition is **allowed** and by setting-aside the impugned orders, the respondents are directed to reinstate and regularize the services of the petitioners forthwith.

(ABID AZIZ SHEIKH)
JUDGE

APPROVED FOR REPORTING

JUDGE

Arsalan