Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.68366 of 2023

Wajid Ali. Vs. The Govt. of Punjab & others.

JUDGMENT

Date of hearing: 19.04.2024.

Petitioner by: M/s Naveed Ahmad Khawaja and Ch. Muhammad Sarwar, Advocates for the petitioner in this petition as well as in Crl. Org. No.80328-W of 2023.
Mr. Usman Ilyas Qureshi, Advocate for the petitioner in W.P. No.60404 of 2023.

Respondents by: Rana Shamshad Khan, Additional Advocate-General, Punjab, alongwith Muhammad Atif, Section Officer (Archives) S&GAD.

Shujaat Ali Khan J: -

C.M. No.3 of 2023.

The applicant, Mr. Junaid Sattar Butt (petitioner in W.P. No.60404 of 2023 hereinafter to be referred as "**the applicant**") has filed this application under Order 1 rule 10 CPC seeking his impleadment in the array of the respondents and for striking out

names of respondents No.1, 3 & 4 in W.P. No.68366 of 2023 (**this petition**).

2. Learned counsel appearing on behalf of the applicant states that since his client filed W.P. No.60404 of 2023 (**connected petition**) much prior to filing of this petition, he is a necessary party in this petition. Further adds that when the intent of the applicant is to safeguard the national exchequer, he is entitled to be impleaded as a party in the public interest.

3. While opposing this application, learned counsel representing Wajid Ali (petitioner in this petition—hereinafter to be referred as "**the petitioner**") submits that in this petition the petitioner has claimed regularization of his services with which the applicant has no concern rather such question is to be decided by the departmental authorities, hence, he cannot be allowed to join as a party in this petition.

4. Learned Law Officer, while opposing this application, submits that the applicant, being alien to the question of regularization, cannot be arrayed as a party.

5. After hearing learned counsel for the applicant and the petitioner as well as learned Law Officer, I have noted that the applicant has filed this application seeking his impleadment in

this petition and striking out names of respondents No.1, 3 & 4 in this petition. The sole reason advanced by the applicant, in support of this application, is that he filed the connected petition prior to filing of this petition, thus, he is a necessary party. There is no cavil with the proposition that when a person falls within the definition of a 'necessary party' or 'proper party', he can be added as a party in a *lis* by a court, even without filing of a formal application in that regard. Since the applicant has no concern with prayer made by the petitioner in this petition, thus, the applicant is neither a necessary nor proper party.

6. Now coming to the prayer of the applicant for striking out names of respondents No.1, 3 & 4, I am of the view that respondent No.1, being administrative head in the Civil Secretariat, cannot be considered as unnecessary party. Likewise, impleadment of respondent No.3 is necessary to decide the question, relating to regularization of services of the petitioner, vis-à-vis financial intricacies and respondent No.4 being immediate Supervisory Officer of the petitioner has rightly been impleaded in this petition.

7. For what has been discussed above, I see no force in this application which is hereby **dismissed**.

MAIN CASE

8. Through this single judgment, I intend to decide this petition, the connected petition and Crl.Org.No.80328-W of 2023 (contempt petition) having commonality of law and facts.

9. Briefly put, the facts, as spelt out in this petition, are that pursuant to an advertisement, got published by the Punjab Public Service Commission **(PPSC)**, pursuant to the requisition sent by the Secretary, Archives & Libraries Wing, S&GAD, Lahore (**respondent No.2**), the petitioner applied against the post of Assistant Director (Records) BS-17. Upon conclusion of the recruitment process, appointment of the petitioner was recommended by the PPSC to respondent No.2, through Communication, dated 28.01.2020. Resultantly, the petitioner was appointed against the aforesaid post, on contract basis for a period of three years through Appointment Order, dated, 04.03.2020 and he assumed the charge of the post on 09.03.2020. Since the petitioner completed three years' mandatory service, he made various requests before the competent authority for regularization of his services in the light of the Punjab Regularization of Service Act, 2018 **(the Act, 2018)** but as the same were given deaf ear, the petitioner

has filed this petition seeking regularization of his services against the subject post.

10. Insofar as the factual background of the connected petition is concerned, the applicant has prayed for issuance of writ of *quo-warranto* against the petitioner (respondent No.8 the connected petition).

11. As far as contempt petition is concerned, the petitioner has agitated non-compliance of order, dated 17.10.2023, passed by this Court, under C.M. No.2 of 2023, in this petition.

12. Mr. Naveed Ahmad Khawaja, Advocate, representing the petitioner submits that since the petitioner was appointed against the subject post on the recommendations of PPSC, respondent No.2 was bound to regularize his services in terms of section 4 of the Act 2018; that mere pendency of complaints could not be used to deny regularization to the petitioner; that *mala fide* conduct of the respondents is evinced from the fact that though the petitioner continued to serve the department till the year 2023 but they turned down his request for regularization on the ground that since he was no more in service, he was not entitled for regularization of his services; that if the petitioner was not in service, at the time of filing this

petition, as to how monthly salaries were transferred in his bank account pursuant to pay slips for the months of September and October 2023; that it is a case of clear discrimination inasmuch as services of many other similarly placed persons, whose contracts were not only expired but the same were also not extended, were regularized whereas same relief has been denied to the petitioner; that satisfactory service of the petitioner can be affirmed from the comments, recorded by his superiors, in his Annual Confidential Reports (ACRs) and that contemptuous conduct of respondent No.2 is evinced from the fact that though this Court through order, dated 17.10.2023, restrained the respondents from dispensing with services of the petitioner but he was stopped to work after second day of November, despite having knowledge about the said order.

13. In support of connected petition, learned counsel for the applicant submits that since the petitioner was deputed against the post meant for PMS Officers, he was not eligible for posting against the subject post and that as the petitioner did not fall within the category of PMS Officers, he could not be appointed as Drawing and Disbursing Officer (DDO), hence, connected petition deserves acceptance.

14. Learned counsel for the petitioner, while opposing connected petition, submits that since the petitioner was deputed against the post of Section Officer by respondent No.2, being the competent authority, he had no other option but to comply with the orders passed by the competent authority; that since the petitioner was posted as DDO with the approval of the Finance Department, the applicant has no cheeks to raise any objection in that regard; that the applications/complaints, filed against the petitioner, having been found false and frivolous, the same could not be used to deny regularization to the petitioner and that contumacious conduct of the applicant is established from the fact that though he is civil servant but he was found involved in active practice before this court while concealing his official job whereupon criminal case bearing FIR No.459/2024 has been registered against him, on 25.01.2024, at Police Station Civil Lines, Lahore, in respect of offences under sections 419, 420, 468 & 471 PPC read with the provisions of the Legal Practitioners and Bar Councils Act, 1973 and that the applicant is in the habit of filing frivolous complaints against his superiors and co-employees and upon conclusion of departmental proceedings initiated against him *inter alia* on the allegations of filing frivolous complaints against the co-

employees, through Office Order, dated 12.01.2024, issued by respondent No.2, penalty of stoppage of annual increment for five year and reduction to three lower stages in his pay scale for a period of five years has been imposed against him.

15. Learned Law Officer, while opposing this petition, states that since no final order has been passed by the competent authority, the same is premature. Adds that it is in the fitness of things that the matter be referred to respondent No.4, being the competent authority, to decide question relating to regularization of services of the petitioner with specific reference to the point of discrimination. Further adds that in the event of any adverse order by the competent authority in relation to regularization of his services, the petitioner would be equipped with alternate remedy of appeal, hence no interference is called for in these proceedings.

16. In relation to connected petition, learned Law Officer states that since the petitioner is no more in service, connected petition for all intents and purposes has become infructuous.

17. I have heard learned counsel for the parties at considerable length and have also gone through the documents,

appended with these petitions in addition to the case-law cited at the bar.

18. Firstly, taking up the plea of the learned Law Officer that since no order has been passed by the competent authority, matter be referred back to it, I am of the view that in the ordinary circumstances, firstly the competent authority should deal with the issue relating to regularization of an employee but when the respondents, in particular respondent No.2 (the competent authority), have opposed the paryer of the petitioner in this petition tooth and nail and in the light of the conduct portrayed in the succeeding paragraphs, referring the matter back to the competent authority would not serve any useful purpose rather it would be an exercise in futility. In this backdrop, I do not agree with the suggestion floated by the learned Law Officer.

19. It is admitted position that the petitioner was appointed against the post of Assistant Director (Records) in the Archives & Libraries Wing of S&GAD upon recommendation of the PPSC. Section 4 of the Act 2018 deals with procedure relating to regularization of services of a contract employee which for convenience of reference is reproduced herein below:-

> *4. Procedure for regularization.– (1) The case of a contract employee appointed on the recommendations of the Commission shall be submitted to the appointing authority for regularization without reference to the Commission or the Scrutiny Committee.*
>
> *(2) If the post falls within the purview of the Commission but the contract employee was appointed otherwise than on the recommendations of the Commission, the case shall be referred to the Commission for recommendations*
>
> > *Provided that notwithstanding anything contained in this subsection and subject to section 3 of the Act, the Chief Minister may, in relaxation of the provisions of the relevant rules, in the public interest, specify posts and regularize the services of the contract employees, without reference the case to the Commission.]*
>
> *(3) If the post is outside the purview of the Commission, the case of a contract employee shall be placed before the Scrutiny Committee constituted under the Act for recommendations.*

According to subsection (1) of the afore-quoted provision, the case of a contract employee, appointed on the recommendations of the PPSC, is to be submitted to the competent authority for regularization. Insofar as matter of the petitioner is concerned respondent No.4 put up the matter of the petitioner for regularization before respondent No.2 with positive note but instead of regularization of services of the petitioner, respondent No.2 referred matter to different subordinates for inquiry/opinion in utter disregard to section 4 *ibid*. The matter did not end there as respondent No.2 did not regularize the services of the petitioner despite favourable recommendations

by the authorities to whom matter was referred by him. This fact alone is sufficient to believe that respondent No.2 failed to perform his duties in line with the provisions of section 4 *ibid*.

20. Brain Drain is one of the burning issues being faced by the country in these days. In my humble opinion, beside other factors the maltreatment towards the persons selected through competitive process, at the hands of the persons at the helm of the affairs in government departments, in respect of their future prospects and refusal to grant their rights is the main reason. The dismal picture of the affairs portrayed herein shows that the respondents are trying their hard to keep the petitioner aloof from the benefit of regularization of his services despite the fact that his case was not only covered under the provisions of the Act, 2018 but was also recommended by the immediate supervisory officer for more than once. If the issue of brain drain is to be redressed, such like acts should be deprecated and the lawful rights of the citizens should be given to them even without interference of the Courts.

21. The sole reason advanced by the respondents, in their report and parawise comments, opposing request of the petitioner for regularization, is that he was not in service after 08.09.2023. The said stance of the respondents stands belied

from the contents of the documents, placed on record by the petitioner through miscellaneous application (C.M.No.1 of 2024) in this petition. The said documents contain letter, dated 02.10.2023, addressed by him to the Additional Secretary (Admn.), Government of the Punjab, S&GAD and letter dated 03.10.2023 addressed by him to the Section Officer (Accounts-II/NG), Government of the Punjab, S&GAD. The said communications are imaged below for ready reference: -

No. AD(R) (S&GAD) (E&A)8/2023
GOVERNMENT OF THE PUNJAB
SERVICES AND GENERAL ADMINISTRATION DEPARTMENT
(ARCHIVES & LIBRARIES WING)

adrpunjabarchives@gmail.com
042-99211873

Dated Lahore, the 2nd October,2023

To,

The Additional Secretary (Admn),
Government of the Punjab,
S&GA Department.

Subject: **REPATRIATION SERVICES OF MR MUHAMMAD ADIL SAEED (PMS/BS-17) SECTION OFFICER, ARCHIVES & LIBRARIES WING, S&GAD.**

I am directed to refer to the subject cited above and to state that the services of Mr. Muhammad Adil Saeed, Section Officer (Archives) (PMS/BS-17) Archives & Libraries Wing, S&GAD are no more required in Archives & Libraries Wing, S&GAD, therefore, the services of said officer may be withdrawn.

2. I am further directed to request you that any suitable officer may be posted as Section Officer (BS-17) in Archives & Libraries Wing, S&GAD at the earliest, please.

(WAJID ALI)
ASSISTANT DIRECTOR (RECORDS)

adrpunjabarchives@gmail.com
042- 99211873

No. AD(R)(S&GAD)(E&A)13/2021.
GOVERNMENT OF THE PUNJAB
SERVICES AND GENERAL ADMINISTRATION DEPARTMENT
(ARCHIVES & LIBRARIES WING)

Dated Lahore, the 3rd October, 2023

To,

The Section Officer (Accounts-II/NG),
Government of the Punjab,
S&GAD.

Subject: **PROVISION OF IBANS TO OFFICE OF THE ACCOUNTANT GENERAL PUNJAB / CONFIRMATION OF WORKING STRENGTH UNDER DDO HEAD LO-5622/ SO (ACCOUNTS-II/NG).**

I am directed to refer to your office letter No. So(Accounts-II) S&GAD/1-17/2021-22 dated 19.09.2023 on the subject noted above.

2. It is pertinent to mention here that all the officials as per provided list who are drawing their salaries against regular / contract posts under head LO-5622 have been re-checked and to verify / confirm that all the officials' names on enclosed proforma are working in Archives & Libraries Wing, S&GAD **(Proforma enclosed).**

(WAJID ALI)
ASSISTANT DIRECTOR (RECORDS)

Moreover, monthly salary slips for the months of September and October 2023 were not only issued to the petitioner but salary was also transferred in his bank account. For convenience of reference, salary slips of the petitioner for the above-said months are imaged below:-

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Government of Punjab
Accountant General Punjab, Lahore
Monthly Salary Statement (September-2023)

Personal Information of Mr WAJID ALI d/w/s of MUHAMMAD FEROZ
Personnel Number: 32098185 CNIC: 3340203589487 NTN:
Date of Birth: 13.06.1992 Entry into Govt. Service: 31.08.2018 Length of Service: 05 Years 01 Months 002 Days

Employment Category: Regular / Contract
Designation: ASSISTANT DIRECTOR 20000035-Services & General Admin
DDO Code: LO5621-Section Officer (Accounts-I) Gazetted Government of the Punjab S&GAD
Payroll Section: 021 GPF Section: 004 Cash Center:
GPF A/C No: GPF Interest Free **GPF Balance:** 79,610.00 (provisional)
Vendor Number: 31088142 - WAJID ALI
Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 17 Pay Stage: 3

Wage type		Amount	Wage type		Amount
0001	Basic Pay	55,330.00	1001	House Rent Allowance 45%	6,650.00
1842	Social Security Ben - 30%	13,521.00	1926	Special Allow 20% (2009)	4,925.00
1963	Medical Allow 15% (16-22)	1,846.00	2222	Utility Allowance	15,000.00
2249	Civil Secretariat All@50%	55,330.00	2347	Adhoc Rel Al 15% 22(PS17)	5,246.00
2379	Adhoc Relief All 2023 30%	16,599.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3609	Income Tax	-10,245.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax
Payable: 158,442.75 Recovered till SEP-2023: 66,243.00 Exempted: 0.48- Recoverable: 92,200.23

Gross Pay (Rs.): 174,447.00 **Deductions: (Rs.):** -10,245.00 **Net Pay: (Rs.):** 164,202.00

Payee Name: WAJID ALI
Account Number: 7900283603
Bank Details: HABIB BANK LIMITED, 220845 CHOWK BAZAR APE. CHOWK BAZAR APE., BAHAWALPUR

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address:
City: LAHORE Domicile: - Housing Status: No Official
Temp. Address:
City: Email: glotterwajid@gmail.com

System generated document in accordance with APPM 4.6.12.9(30442477/20.09.2023/v3.0)
** All amounts are in Pak Rupees*
** Errors & omissions excepted (SERVICES/04.10.2023/22:11:09)*

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Government of Punjab
Accountant General Punjab, Lahore
Monthly Salary Statement (October-2023)

Personal Information of Mr WAJID ALI d/w/s of MUHAMMAD FEROZ
Personnel Number: 32098185 CNIC: 3340203589487 NTN:
Date of Birth: 13.06.1992 Entry into Govt. Service: 31.08.2018 Length of Service: 05 Years 02 Months 002 Days

Employment Category: Regular / Contract
Designation: ASSISTANT DIRECTOR 20000035-Services & General Admin
DDO Code: LO5621-Section Officer (Accounts-I) Gazetted Government of the Punjab S&GAD
Payroll Section: 021 GPF Section: 004 Cash Center:
GPF A/C No: GPF Interest Free **GPF Balance:** 79,610.00 (provisional)
Vendor Number: 31088142 - WAJID ALI
Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 17 Pay Stage: 3

Wage type		Amount	Wage type		Amount
0001	Basic Pay	55,330.00	1001	House Rent Allowance 45%	6,650.00
1842	Social Security Ben - 30%	13,521.00	1926	Special Allow 20% (2009)	4,925.00
1963	Medical Allow 15% (16-22)	1,846.00	2222	Utility Allowance	15,000.00
2249	Civil Secretariat All@50%	55,330.00	2347	Adhoc Rel Al 15% 22(PS17)	5,246.00
2379	Adhoc Relief All 2023 30%	16,599.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3609	Income Tax	-10,288.00	4200	Professional Tax	-100.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax
Payable: 158,827.50 Recovered till OCT-2023: 76,531.00 Exempted: 0.86- Recoverable: 82,297.36

Gross Pay (Rs.): **174,447.00** **Deductions: (Rs.):** **-10,388.00** **Net Pay: (Rs.):** **164,059.00**

Payee Name: WAJID ALI
Account Number: 7900283603
Bank Details: HABIB BANK LIMITED, 220845 CHOWK BAZAR APE. CHOWK BAZAR APE., BAHAWALPUR

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address:
City: LAHORE Domicile: - Housing Status: No Official
Temp. Address:
City: Email: glotterwajid@gmail.com

System generated document in accordance with APPM 4.6.12.9(30442477/20.10.2023/v3.0)
** All amounts are in Pak Rupees*
** Errors & omissions excepted (SERVICES/01.11.2023/23:37:11)*

The contents of the afore-imaged documents are sufficient to denounce claim of the respondents that the petitioner was not in service at the time of filing of this petition before this Court, on 16.10.2023. If the petitioner was not in service after 08.09.2023 as claimed by the respondents, as to how petitioner could address such important communications to different authorities against the wishes of the competent authority.

22. It is important to mention over here that Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973

mandates that every citizen should be dealt with in accordance with law. Undeniably, the relevant law in the matter of the petitioner was/is the Act, 2018 which envisages that a contract employee, who completes three years of service, is entitled to regularization but inaction on the part of respondent No.2 to regularize services of the petitioner in line with the provisions of the said enactment constitutes willful defiance of the fundamental right of the petitioner guaranteed under the afore-referred provision of the Constitution. The conduct of respondent No.2 denying regularization to the petitioner entails stern action.

23. It is relevant to note that Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 provides shield against any kind of discrimination by the authorities at the helm of affairs of the government or its institutions. Any act of discrimination on the part of the administrative authorities has been deprecated by the Hon'ble Supreme Court in the cases reported as *Ejaz Akbar Kasi v. Ministry of Information and Broadcasting* **(PLD 2011 S.C. 22)** in the following words:-

> *"4. Be that as it may, we are not inclined to agree to the reasons which prevailed upon the Board in not regularizing the Group 4, 5 and 6 when at the same time the employees of other Groups as noted hereinabove were regularized beside other individual*

> *persons whose names have also been mentioned hereinbefore. This Court has laid down a criteria in respect of such employees who have somehow identical contentions in the case of Ikram Bari and others v. National Bank of Pakistan through President and another (2005 SCMR 100). Therefore, we are of the opinion that the case of the petitioners deserves to be considered by the Board of Directors for the reasons noted hereinabove as they cannot be discriminated without any cogent reason by violating the provisions of Article 25 of the Constitution and at the same time after having spent a considerable period of their lives in the Organization performing duties on contract basis. It is also the duty of the Organization to protect their fundamental rights enshrined in Article 9 of the Constitution."*

Insofar as the case in hand is concerned, discriminatory attitude of the respondents is established from the fact that on the one hand the petitioner has been denied regularization on the point that he was not in service after 08.09.2023 as his period of contract was never extended thereafter but on the other regularized the services of Syed Muhammad Awais Abid, Junior Clerk (BS-11) through order, dated 03.03.2023 despite the fact that his period of contract expired on 28.01.2023 and the same was not extended any further. Likewise, services of one Muhammad Adil, Research Officer (BS-17), appointed for three years through Office Order, 01.03.2017, were regularized through Office Order, dated 29.04.2020, despite the fact that his contract expired at the end of February, 2020. For facilitate of

reference, appointment as well as regularization letters of the aforesaid persons are imaged below: -

GOVERNMENT OF THE PUNJAB
SERVICES AND GENERAL ADMINISTRATION
DEPARTMENT
(OFFICIAL LANGUAGE COMMITTEE)

Dated Lahore, the 29th January, 2020

ORDER

No OLC(Admn)22-1/2019/14 In pursuance of the recommendation of the Punjab Public Service Commission, **Syed Muhammad Awais Abid S/O Syed Abid Hussain Shah** is appointed as **Junior Clerk (BS-11)** on contract basis for three years in Official Language Committee, S&GAD with immediate effect as per terms and conditions issued vide this office letter No OLC(Admn)22-1/2019/09, dated 15th January, 2020

TAHIR YOUSAF
Secretary, Archives & Libraries
S & G A D

GOVERNMENT OF THE PUNJAB
SERVICES AND GENERAL ADMINISTRATION
DEPARTMENT
(OFFICIAL LANGUAGE COMMITTEE)

Dated Lahore, the 3rd March, 2023

ORDER

No.OLC(Admn)21-4/2009/16. Consequent upon the promulgation of "The Punjab Regularization of Service (Amendment) Act, 2019" read with "Punjab Regularization of Service Act, 2018" and having accomplished three years satisfactory contractual service thereof, the Competent Authority is pleased to regularize the contractual services of Syed Muhammad Awais Abid S/o Syed Abid Hussain Shah Junior Clerk (BS-11), Official Language Committee, S&GAD recommended by the Punjab Public Service Commission under Section 4 (1) of the Act ibid, with effect from 30th January, 2023.

2. However, his services are hereby regularized against the post presently held by him on the following terms and conditions in pursuance of the letter No.SO(ERB)(S&GAD)5-19/2018/Act(Amendments) dated 10.01.2020 issued by Regulations Wing, S&GAD.

3. The contractual services rendered by him shall not be counted towards pensionary benefits or for any other purposes, whatsoever.

4. His pay shall be fixed at the initial stage of his pay scale and the increment (s) earned by him during the contract period shall be converted into Personal Allowance however, no other privilege shall be allowed to him.

5. He shall be placed at the bottom of the seniority list of the respective cadre and shall rank junior to the other civil servants, if any.

6. His inter-se-seniority on regularization shall be determined on the basis of his continuous service on contract and if the date of continuous service of two or more

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contract employees is same, the employee elder in age shall be ranked Senior to the younger;

7. If he does not want to be regularized, he shall be required to furnish his option to the appointing authority within Sixty days from the issuance of this order, otherwise it shall be deemed to have opted for regularization.

8. He is regularized under "The Punjab Regularization of Service (Amendment) Act, 2019" and is ceased to be governed under the Contract Appointment Policy, 2004 and he shall be governed by the terms and conditions as laid down in the Punjab Civil Servant Act, 1974.

SECRETARY, ARCHIVES & LIBRARIES WING,
S & G A D

No. & Date Even

A copy is forwarded for information and necessary action to: -

1. The Accountant General Punjab, Lahore. (Pay Roll-21)
2. The Director (Archives) Archives & Libraries Wing, S&GAD
3. The Deputy Secretary (Archives & Libraries), S&GAD.
4. PS to the Secretary, Archives & Libraries Wing, S&GAD.
5. The Assistant Director (Records), Archives & Libraries Wing, S&GAD.
6. All Section Incharges, Official Language Committee, S&GAD.
7. Cashier, Official Language Committee, S&GAD.
8. Official concerned.

Adeel 03/03/23
(KASHIR ADEEL)
Administrative Officer
Official Language Committee,
S&GAD

GOVERNMENT OF THE PUNJAB
SERVICES & GENERAL ADMINISTRATION DEPARTMENT

(ARCHIVES & LIBRARIES WING)

Dated Lahore the 1st March, 2017

ORDER

No. AD (R) (S&GAD) 15-CRO/2009 (P-I). In pursuance of recommendation of the Punjab Public Service commission, Mr. Muhammad Adil S/o Syed Hadayat Ali Shah is appointed as Research Officer (BS-17) on Contract Basis for the period of three years (03 years) in Archives & Libraries Wing, S&GAD with immediate effect, as per terms and conditions issued vide this office letter No. AD(R)(S&GAD)15-CRO/2009(P-I) dated 15.02.2017

AHMAD RAZA SARWAR
SECRETARY ARCHIVES & LIBRARIES WING
S&GAD

No. & Date Even:

A Copy is forwarded for information and necessary action to:-

1. The Accountant General, Punjab.
2. The Secretary, Punjab Public Service Commission, Lahore W/r to his letter No. PSC-RD-1/2016/276-RD dated 13.12.2016
3. The Section Officer (Accounts), S&GAD.
4. The Research Officer (II), Archives & Libraries Wing, S&GAD
5. P S to Secretary Archives & Libraries Wing, S&GAD.
6. P A to Director (Archives), Archives & Libraries Wing, S&GAD.
7. The Officer Concerned
8. Office order File.

(MADIHA QAYYUM)
ASSISTANT DIRECTOR (RECORDS)

P/17

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GOVERNMENT OF THE PUNJAB
SERVICES AND GENERAL ADMINISTRATION DEPARTMENT
(ARCHIVES & LIBRARIES WING)
Dated Lahore, the 29 April, 2020

ORDER

No.AD(R)(S&GAD)52-CRO/2017. Upon promulgation of Punjab Regularization of Service (Amendment) Act, 2019 and its Section 2 and Section 3 read with Section 4 and Section 6 of Punjab Regularization of Service Act, 2018 the Competent Authority is pleased to regularize the contractual services of **Muhammad Adil S/o Syed Hadayat Shah, Research Officer (BS-17), Archives & Libraries Wing, S&GAD** appointed on Contract basis through Punjab Public Services Commission for a period of 3-Years and now have continuous 3 Years contract services is hereby regularized with effect from 15-03-2020

2. However, his services are hereby regularize against the posts presently held by him on the following terms and conditions in pursuance of the letter No.PAP/Legis-2(30)2019/2164 dated 13-12-2019.-

Appointments:

1) Subject to the Act and the fulfillment of the conditions for regularization, the appointing authority shall, in a case converged under sub Section (3) of Section (1) of the Act, regularize the service of the contract employee with immediate effect

2) The service rendered by a contract employee shall not be counted for pensionary benefits or for any other purposes, whatsoever.

Determination of Seniority:

1) A contract employee who is regularized shall be placed at the bottom of the seniority list of the respective cadre and shall rank junior to the other civil servants

2) The inter-se-seniority of the contract employees, on regularization shall be determined on the basis of their continuous service on contract and if the date continue service of two or more contract employees is same the employee older in age shall rank senior to the younger

Pay Fixation: A contract employee, on regularization, shall be allowed by initial stage of the respective pay scale and the increment(s) earned by him during the contract employment shall be converted into personal allowance but no other privilege allowed to a contract employee shall be admissible.

Option for regularization: A contract employee, who does not wish to be regularize shall furnish his option to the appointing authority within 60-Days from the commencement of the Act ibid, otherwise he shall be deem to have opted for regularization

Legal Framework: A contract employee, regularized under the Punjab Regularization of Service (Amendment) Act, 2019 shall cease to be governed under the Contract Appointment Policy 2004 and his terms and conditions of the contract shall be regulated under the Punjab Civil Servant Act, 1974 and the rules framed their under.

TAHIR YOUSAF
SECRETARY ARCHIVES & LIBRARIES WING, S&GAD

When confronted with the position, portrayed above, learned Law Officer has not been able to rebut the plea of learned counsel for the petitioner that the aforesaid persons were regularized on a date when their contracts were not intact and there have no distinguished feature as compared to the petitioner and those whose services have been regularized through afore-quoted letters.

24. In the report and parawise comments, some of the respondents have adopted the plea that since certain complaints were filed against the petitioner, his services could not be regularized. The said stance of the department stands negated from the contents of the report, submitted by the Deputy Secretary (A&L), on 11.09.2023, wherein he concluded that the complaints, filed against the petitioner, were baseless and devoid of facts and endorsed the recommendations/proposals for regularization of services of the petitioner. Relevant portion from the report is reproduced herein below:-

Findings

1. It is concluded that Mr. Wajid Ali while performing his duties as DDO observed the relevant PPRA Rules and financial formalities against the expenditures made during the previous financial year 2022-23.

> *2. All the record has been maintained properly (in view of the audit to be conducted by the Audit authorities shortly).*
>
> *3. That the complaints made against him are baseless and devoid of facts.*
>
> *4. During scrutiny of record, the undersigned found no such irregularity which is of serious nature.*
>
> *5. It is proposed that the complaints may be rejected, please.*

The above-quoted findings of Deputy Secretary (A&L), having not been challenged before any higher forum, had attained finality, thus, the contrary view adopted by some of the respondents in their report and parawise comments is not worth consideration.

25. Even otherwise, mere pendency of a complaint/ application and that too by a co-employee, cannot be used to deny a vested right of a government servant whose performance otherwise has been assessed satisfactory. Further, when the performance of the petitioner was evaluated by his Reporting Officers while recording their remarks in his Annual Confidential Reports, respondent No.2 was not justified to refer the matter to different authorities to adjudge his suitability/ eligibility for regularization against the subject post.

26. Accumulative study of the material brought on record by the respondents in the shape of their report and parawise comments and other allied documents brings it to limelight that the applicant was all out to get the petitioner penalized. For the purpose, he instituted various complaints against the petitioner and his superiors. Being fed up with the attitude of the applicant towards filing frivolous complaints against his superiors and co-employees, respondent No.2 being competent authority ordered for holding of an inquiry *inter-alia* into the allegation of filing frivolous complaints by the petitioner. Upon conclusion of the inquiry proceedings, the competent authority through Office Order, dated 12.01.2024, imposed multiple penalties against the applicant. Office Order, under discussion, for convenience of reference is imaged below: -

Government of the Punjab
Services & General Administration Department
(Archives and Libraries Wing)

Dated Lahore, the 12th January, 2024

ORDER

No. ADR(S&GAD)55-CRO/2016. WHEREAS, disciplinary proceedings were initiated against **Mr. Junaid Sattar Butt,** Cameraman (BS-12) (hereinafter **"accused official"**) on account of following allegations:

i. *He has stolen primary documents / personal files of Mr. Zeeshan Idrees, Cameraman and Mr. Junaid Sattar Butt, Cameraman / Photographer from the department.*
ii. *He is in habit of lodging fake and frivolous applications against the officers and officials of Archives & Libraries Wing and continuously defaming the officers and officials by his subversive activities.*
iii. *He always uses abusive language against the Officers, previous Secretary and even threatened them. He has also threatened the use the arms against the officers.*
iv. *He was found involved in subversive and nefarious / wicked activities and provoked rebellion among the employees of Archives and Libraries.*
v. *He has been found using the official information which he is otherwise not authorized to hold. The office of Director (Archives) is tangled to provide him this information in violation of Official Secrets Act and Conduct Rules 1966 which is glaring violation of the Act and Rules ibid. and he is also using this information to harass and intimidate willing workers.*

2. **AND WHEREAS,** the Competent Authority/Secretary, Archives & Libraries Wing, S&GAD, ordered to hold an inquiry into the allegations under section 3 and 5 of the Punjab Employees Efficiency, Discipline, and Accountability Act, 2006 (**'Act'**) and appointed Hafiz Muhammad Toufique, Director, Public Libraries Punjab, Lahore as the Inquiry Officer and Mr. Shayan Javed, Research Officer-II, Archives and Libraries Wing, S&GAD as Departmental Representative through an order dated 20.09.2022.

3. **AND WHEREAS,** the Inquiry Officer submitted his report to the Competent Authority on 09.05.2023 with the findings that charges at **Sr. No. ii & iii** were proved while there was insufficient material to prove remaining charges. The Inquiry Officer recommended the imposition of one or more penalties under section 4(1)(a) of the Act ibid. The Inquiry Officer has, further in his findings, apprised the authority of his misconduct and threatening attitude against the Inquiry Officer himself during the course of inquiry. The accused official kept using delaying tactics to prolong the inquiry by asking for the provision of irrelevant/unnecessary documents. The Departmental Representative had also lodged a complaint against his intimidating/threatening attitude.

4. **AND WHEREAS,** the accused official was served Show Cause-cum-Personal Hearing Notice under Section 13(4) of the PEEDA Act, 2006 on 18.05.2023, whereby the Competent Authority appointed Mr. Muhammad Azhar Hayat as **Hearing Officer** in the instant case. However, the Hearing Officer regretted to conduct personal hearing due to his personal reasons. After that, he was given an opportunity of personal hearing by the Competent Authority himself on 10.10.2023 under Section 13(c) of the Act ibid. He was heard at length and all the relevant record was perused.

5. **AND WHEREAS, charges at Sr. No. ii & iii** relating to lodging of fake and frivolous applications against the officers and officials of the department to defame them and that of intimidating behavior and threat to use arms, stood proved. In addition, use of abusive language by the accused is an act of gross misconduct. The statements of the witnesses fully corroborate the charges levelled against the accused official.

6. **NOW THEREFORE,** I, Nasir Iqbal Malik, Secretary, Archives & Libraries Wing, S&GAD being Competent Authority/Appointing Authority in the instant case, for reasons recorded therein above and in exercise of powers vested upon me under section 2(f)(ii) of the Act ibid, am of the view that, act of lodging fake and frivolous applications, use of intimidating behavior and abusive language, and act of threatening officers/officials squarely falls within the mischief of misconduct as defined in the Act ibid. Therefore, I, Nasir Iqbal Malik, keeping in view the gravity of proven charges, hereby impose penalties of **"withholding of one increment for five years"** and **"reduction to three (03) lower stages in his pay scale for a period of five years"** in terms of Section 4(1)(a)(ii) and 4(1)(a)(iv) of the Act ibid upon the accused official.

Announced on: 12/1/2024.

N.I. Malik.
(NASIR IQBAL MALIK)
Secretary, Archives & Libraries Wing,
S&GAD

No. & Date Even:

1. The Accountant General, Punjab, Lahore (Pay Roll-21).
2. The Chief Librarian, Quaid-e-Azam Library, Bagh-e-Jinnah, Lahore.
3. Director (Archives), Archives & Libraries Wing, S&GAD
4. The Section Officer (Accounts-II), S&GAD.
5. PS to Secretary, Archives & Libraries Wing, S&GAD.
6. Mr. Junaid Sattar Butt, Cameraman/BS-12, Archives & Libraries Wing, S&GAD.

Section Officer (Archives)
Archives & Libraries Wing, S&GAD

If the authenticity of the complaints, filed by the applicant against the petitioner is seen in the light of the afore-quoted order, passed by respondent No.2, it becomes crystal clear that

the applicant being habitual complaint filer, his complaints could not be used against the petitioner to deny him the relief of regularization especially when the said complaints were found false and frivolous.

27. The sluggish attitude of respondent No.2 is also evinced rom the fact that matter relating to regularization of services of the petitioner was put up before respondent No.2 by the Director, Archives & Libraries Wing (respondent No.4) with the following recommendations:-

> *"The undersigned is immediate senior officer of A.D.(R) and I monitor his official working, conduct and performance. The undersigned has not found any negligence and misconduct committed by Mr. Wajid Ali. Moreover, Ex-Director (Archives) issued independently explanation letters, complaints and allegations etc. without my consent, report and approval of the competent authority.*
>
> *Now, Mr. Wajid Ali, A.D (Records) (BS-17) has fulfilled all the prerequisite mandatory conditions for regularization in service and he was appointed against a regular post of the department. His three years performance evaluation reports are satisfactory and no PEEDA enquiry is pending against him (Flag-E & F).*
>
> *In view of above, it is submitted that the appointing authority of Mr. Wajid Ali, Assistant: Director (Records) is Secretary, Archives & Libraries Wing, S&GAD (Flag-G) and the worthy Secretary is the competent authority to grant approval for issuance of order of regularization in service of Mr. Wajid Ali, A.D.(Records) from the expiry date of his three year's contract w.e.f. 09-03-2023 under the Punjab Regularization of Service Act, 2018 read with Punjab*

Regularization of Service (Amendment) Ordinance, 2019 (Flag-H).

Submitted for approval please.

(Syeda Shamim Asghar Ali)
Director (Archives)
08-08-2023

Though respondent No.2 had no authority to refuse regularization to the petitioner against the subject post but he directed to confirm his performance and conduct as DDO in the light of observations of the Inquiry Officer and his ex-Director but when the Deputy Secretary (A&L) endorsed recommendations contained in Para 82-N regarding regularization of services of the petitioner then the Secretary *malafidely* did not pass any order thereon leaving he petitioner in lurch which fact alone speaks loud about failure of respondent No.2 towards performance of his duty in relation to regularization of services of the petitioner in the light of the provisions of the Act, 2018.

28. It is important to mention over here that after issuance of injunctive order by this court on 17.10.2023, the petitioner submitted application before respondent No.2 seeking permission to mark his attendance whereupon respondent No.2 passed following order on 03.11.2023:-

> *"Maintain the status as it was at the time of the order of the Court"*

After passing the above-quoted order, respondent No.2 down-marked the matter to Section Officer (Archives) who, instead of honouring the order issued by this Court coupled with the afore-quoted order passed by respondent No.2, tried to mislead the competent authority as well as this Court by contending that since the petitioner was not in service at the time of filing of this petition the injunctive order issued by this court was inconsequential. Further, contumacious conduct of Section Officer (Archives) is also established from the fact that though application of the petitioner (C.M.No.1 of 2023) seeking permission to place on record additional documents was allowed by this court through order dated, 01.03.2024, but he tried to render the said order ineffective by submitting a report with his signatures on behalf of respondent No.2 before the HRC Wing of this Court, on 16.04.2024, which fact renders it crystal clear that the real perpetrator behind the agony of the petitioner is the said Section Officer who not only successfully deceived the competent authority in respect of matter relating to regularization of the petitioner but also tried to mislead this Court by active concealment or twisting of material facts.

29. There is no cavil with the fact that the respondents could file reply to the application, submitted by the petitioner or they could move for recalling of the order passed therein but they could not file any report in relation to the said application when the same was allowed by this Court, subject to all just and legal exceptions. Further, the documents attached therewith by the petitioner being public one, their impunity could not be allowed to be objected by the Section Officer, who was not party in this petition. Moreover, as no legal or just exception has been pointed by the learned Law Officer against entertaining of the additional documents, their authenticity cannot be disputed at the whims of a Section Officer, whose conduct throughout the proceedings before this Court was contumacious.

30. It has not been denied by respondents' side that prior to the expiry of extended period of contract the case of the petitioner for regularization was put up before the competent authority with positive note. In this backdrop, the case of the petitioner was also covered under the principle of legitimate expectancy. The apex court of the country in the case of *Dr. Naveeda Tufail and 72 others v. Government of Punjab and others* **(2003 SCMR 291)** while dealing with the point relating to lawful expectancy of a contract employee, whose contract

was earlier extended by the competent authority, for regular appointment, has *inter alia* held as under:-

> *"12.***** The authorities in the Education Department, Government of Punjab, while adopting the method of ad hoc appointments as a continuous, policy, created a legitimate expectancy in the mind of petitioners for their retention on regular; basis and therefore, we deem it proper to direct that the respondents while seeking guidance from the scheme of regularization of ad hoc employees of Federal Government referred above, will initiate the process of regularization of the petitioners through Punjab Public Service Commission giving the concession as mentioned in the reply filed by the respondents in the Punjab Service Tribunal within a period of one month and meanwhile without prejudice to tile right of the selectees of the Public Service Commission for appointment on regular basis, the posts which were being held by the petitioners shall not be filled……*

Further, this Court in the case of *Mst. Ghulam Zuhra Jahangir and another v. Vice-Chancellor, University of the Punjab, Lahore and 8 others* **(2020 PLC(CS) 285)** while dilating upon the issue, under discussion, has *inter alia* observed as under:-

> *"Such extension in the tenure of service of the petitioners has undeniably created a legitimate expectancy in their mind with reference to their retention in the service on regular basis. Otherwise it is matter of serious concern that a person who has already served 10 years in institution governed by the Government if thrown out from the service, at this juncture of time meaning thereby he would be deprived of any service in any of the institution under the government due to age and would tantamount to discrimination as some of the co-employee have already been regularized and the case of the petitioners is squarely hit by Article 25 of the Constitution of Islamic Republic of Pakistan, 1973."*

If the case of the petitioner is adjudged in the light of the afore-quoted judgments there leaves no ambiguity that principle of legitimate expectancy for regularization against the post held by him is fully attracted.

31. The inconsistent conduct of respondent No.2 is established from the fact that on the one hand while filing the report and parawise comments in this petition, he opposed the prayer of the petitioner for regularization on the premise that he being not in service after 08.09.2023, was not entitled for regularization but on the other gauged his service as satisfactory while recording his remarks in the Annual Confidential Reports of the petitioner. Further when respondent No.2 imposed major penalties against the applicant *inter-alia* on account of filing frivolous complaints against his seniors and co-employees, the complaints filed by the applicant could not be used to the dis-interest of the petitioner depriving him of his regularization.

32. Insofar as registration of criminal case against the applicant is concerned, suffice it to note that the same having no connectivity with the subject-matters of these petitioners, this Court knowingly restraining itself to comment upon the said matter lest it may prejudice the case of either side before the relevant forum.

33. Now coming to the connected petition, I have noted that since the petitioner is no more in service, the connected petition for all intents and purposes has become infructuous, thus, no further proceedings are required therein.

34. As far as contempt petition is concern, though I have observed willful defiance of order, passed by this Court, on 17.10.2023, in this petition under C.M. No.2 of 2023 but using maximum restraint I am not initiating contempt proceedings against the respondents.

35. For what has been discussed above, **this petition is accepted** and respondent No.2 is directed to extend the contract period of the petitioner w.e.f. 09.08.2023 and issue formal letter *qua* regularization of his services with effect from completion of three years of his service from the date of his initial appointment, upon fulfillment of all codal formalities.

36. Insofar as **connected petition and contempt petition are concerned, the same are disposed of** with no order as to costs.

Judge

Approved for Reporting

Judge

Jamil*