

ORDER SHEET

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No. W.P. No. 13846/2011

Pakistan Railway, etc. Versus Abdul Rasheed, etc.

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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12.12.2024	Mr. Umer Sharif, Advocate for the petitioners. Mr. Tanveer Ahmad Ghumman, Advocate for respondents No.1 and 2.
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Succinctly, respondents No.1 and 2, alongwith others, filed grievance petition before Punjab Labour Court No.I, Lahore seeking regularization of their services, however, the same was transferred to Punjab Labour Court No.II, Lahore (“Labour Court”) pursuant to order dated, 19.08.2004, passed by this Court in Transfer Application (No.2/2004). Finally, Labour Court dismissed the grievance petition *vide* order, dated 05.09.2005, against which respondents No.1 and 2 filed Labour Appeal No.306/2005 before this Court which was allowed *vide* order, dated 03.07.2006, and the matter was remanded to the Labour Court for decision afresh. During post remand proceedings, services of other employees, petitioners before the Labour Court, were regularized in view of the policy of the Federal Government whereas the names of respondents No.1 and 2 were left out. In view of regularization of their services, rest of the

employees, petitioners before the Labour Court, withdrew their grievance petition on 19.04.2008 whereas respondents No.1 and 2 filed amended grievance petition on 19.07.2008 *inter alia* challenging the advertisement, dated 17.06.2004, got issued by the relevant authority for recruitment against the posts being held by them and prayed for their regularization. The Labour Court accepted the grievance petition filed by respondents No.1 and 2 *vide* judgment, dated 23.10.2009, which was assailed by Pakistan Railways through an appeal but without any success as the same was dismissed by the Punjab Labour Appellate Tribunal, Lahore (“PLAT”) *vide* judgment, dated 17.03.2011; hence, this petition.

2. Learned counsel for the petitioners submits that since terms and conditions of service of respondents No.1 and 2, alongwith others, were being governed under statutory service rules, they were debarred to approach the Labour Court; that since respondents No.1 and 2 were not in service at the time of decision of their grievance petition, the Labour Court could not order for their regularization until and unless they succeeded to get their reinstatement in service through due process; that *bona fide* of Pakistan Railways is evident from the fact that those, who were covered under the policy of Federal Government relating to regularization of daily wage employees, were regularized whereas

respondents No.1 and 2, having been laid off much prior to the introduction of Policy by the Federal Government, were not entitled to regularization; that when Railway Authorities brought on record the copies of attendance register, letters *qua* dispensing with the services of respondents No.1 and 2 as well as their departmental appeals, the Labour Court could not order for their regularization; that admission on the part of respondents No.1 and 2 that they were not in service at the time of decision by the Labour Court, disentitled them for regularization. To fortify his contention relies on Divisional Superintendent Pakistan Railways, Rawalpindi and others v. Syed Usman Ali and others (2021 SCMR 1008), Pakistan Railways through Chairman, Islamabad and another v. Sajid Hussain and others (2020 SCMR 1664), Chairman Pakistan Railways & others v. Arif Hussain and others (2008 PSC 54), Javed Iqbal and 20 others v. General Manager, Pakistan Railways, Headquarter Office Lahore and 2 others (2006 PLC 604) and Muhammad Naeem and 19 others v. Pakistan International Airlines Corporation through Chairman and 7 others (2006 PLC 374).

3. Learned counsel for respondents No.1 and 2, while defending the impugned decisions of the *fora* below, states that as respondents No.1 and 2 had been serving the department since the year 1992, they filed their grievance

petition before the Labour Court on 06.09.2004 seeking regularization of their services wherein injunctive order was issued in their favour and after dismissal of their grievance petition, they promptly approached this Court by filing Labour Appeal wherein this Court granted interim relief *vide* order, dated 03.10.2005 and then after remand of the matter to the Labour Court, the earlier injunctive order issued by the said forum stood revived, thus no penal action could be taken against them during the currency of the said order; that there is distinction between the employees, who work on Ministry of Defence Lines (**MOD Lines**) and those deployed in civil areas and respondents No.1 and 2, alongwith other employees, having been deployed in civil area throughout their service career, were not hit by the bar that employees working on MOD Lines were not amenable to the jurisdiction of the Labour Court; that according to Section 2 (xxx) of the Industrial Relations Ordinance, 2002 (**“Ordinance, 2002”**), any person who has not been appointed in supervisory or managerial capacity fall within the category of worker or workman and he/she can approach the Labour Court and respondents No.1 and 2, having no power of hire or fire, rightly approached the Labour Court for redressal of their grievance; that since respondents No.1 and 2 had been working on daily wage basis, they could not approach the Federal Service Tribunal rather the proper

forum for them was the Labour Court; that it can be seen with the naked eye that there is interpolation in the attendance register against the name of respondent No.1 as the word “P” has been changed into “A” just to show that he remained absent from duty on certain days; that services of respondent No.2 were dispensed with through a note given on a letter concerning promotion of an employee; that discriminatory attitude of the Railway Authorities is evident from the fact that while regularizing the services of other similarly placed persons, respondents No.1 and 2 were denied the said relief and that since there are concurrent findings of facts against the petitioners, the same are immune from interference by this Court in exercise of its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

4. Learned counsel for the petitioners, while exercising his right of rebuttal, states that when respondent No.2, while appearing as PW-1, admitted that he was not in service at the relevant time, the findings of the courts below cannot be considered sacrosanct. Adds that admission on the part of respondent No.2/PW-1 that he did not perform duties three years prior to making his statement before the Labour Court, dis-entitled him for regularization.

5. I have heard the learned counsel for the parties and have also gone through the documents appended with this

petition and those forming part of the record of the Labour Court in addition to the case-law referred at the bar.

6. Firstly, taking up the objection raised by the learned counsel for the petitioners that since respondents No.1 and 2 were employees of Pakistan Railways, they could not approach the Labour Court seeking regularization of their services, I am of the view that it is admitted position that at the time of filing grievance petition before the Labour Court, respondents No.1 and 2 were serving on work charge basis. As per section 3(2) of the Federal Service Tribunal Act, 1973, the Service Tribunal has exclusive jurisdiction in respect of matters relating to the terms and conditions of civil servants including disciplinary matters. The term 'civil servant' has been defined under section 2(a) of the Federal Service Tribunal Act, 1973 according to which a civil servant means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973. In this background, respondents No.1 and 2, being daily wage employees of the Pakistan Railways, could not be treated as civil servants just to oust the jurisdiction of the Labour Court. This Court in the case reported as General Manager, Optical Fibre System Telecom Company Ltd. PTC Headquarter, Islamabad and 2 other v. Abdul Rasheed Khan, Member NIRC Islamabad and another (2000 PLC (CS) 180), while dealing with the matter as to whether the

jurisdiction of Service Tribunal is attracted to daily wage employees, has *inter-alia* held as under:-

“3. The contentions of the learned counsel for the petitioners have no force because of the latest law laid down by the Honourable Supreme Court in Divisional Engineer Phones, Phones Divisions, Sukkur and another v. Muhammad Shahid and others (1999 PLC (CS) 1208), also reported as (1999 SCMR 1526) wherein it has been explicitly held that the persons, like the present contesting respondents, who were admittedly appointed after the creation of the Corporation did not enjoy the status of civil servants and, therefore, they could not avail of remedy in respect of a dispute which related to their terms and conditions of service, before the Service Tribunal, established under the Service Tribunal Act, 1973. The Honourable Supreme Court has also held that the person who belonged to the category of the persons who have been declared as "civil servants" under section 2-A of the Service Tribunal Act, 1973 for the purposes of availing of the remedy before the Service Tribunal in-the absence of a corresponding amendment in the Civil Servants Act, 1973 cannot automatically become "civil servants" within the meaning of Civil Servants Act, 1973.

4. On the strength of the law laid down by the Honourable Supreme Court in Divisional Engineer Phones, Phones Division, Sukkur and another v. Muhammad Shahid and others (supra), it is held that private contesting respondents, who are merely daily wagers, are not civil servants because of the absence of the corresponding amendment in the Civil Servants Act, 1973 and also because admittedly they were taken into employment by the petitioners after the creation of the statutory Corporation. They have, thus, no remedy of an appeal before the Service Tribunal and the bar of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, is not attracted to their case. The proceedings pending before the N.I.R.C.

cannot, therefore, be held to be without jurisdiction.”

If the objection raised by learned counsel for the petitioners is seen in the light of the afore-referred judgment, there leaves no ambiguity that the same does not hold any water.

7. Admittedly, respondents No.1 and 2 filed grievance petition under Section 46 of the IRO, 2002. Section 2 (xxx) of the IRO, 2002 deals with definition of worker/workman. The said provision, for facility of reference, is reproduced herein below:-

“(xxx) "worker" and "workman" means any and all persons not falling within the definition of employer who is employed in an establishment or industry for remuneration or reward either directly or through a contractor, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Ordinance in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off or removal has led to that dispute but does not include any person who is employed mainly in a managerial or administrative capacity.”

If the status of respondents No.1 and 2 is seen in the light of the afore-quoted definition clause, the irresistible conclusion is that since they were not employed in managerial or administrative capacity, they were covered under the definition of workman, thus they rightly filed grievance petition before the Labour Court.

8. It is relevant to note that as per Section 2 (f) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, an industrial establishment means:-

“(f) *“industrial establishment” means—*

(i) *an industrial establishment as defined in clause (ii) of section 2 of the Payment of Wages Act, 1936 (IV of 1936); or*

(ii) *a factory as defined in clause (j) of section 2 of the Factories Act, 1934 (XXV of 1934); or*

(iii) *a railway as defined in clause (4) of section 3 of the Railways Act, 1890 (IX of 1890); or*

[(iv) the establishment of a contractor who, directly or indirectly, employs workmen in connection with the execution of a contract to which he is a party, and includes the premises in which, or the site at which, any process connected with such execution is carried on;

[(v) the establishment of a person who, directly or indirectly, employs workmen in connection with any construction industry;]

According to the afore-quoted provision, Railway falls within the purview of an industrial establishment thus its daily wage/work charge employees cannot be brought out of the jurisdiction of the Labour Court.

9. It is matter of record that during pendency of proceedings before the Labour Court, the Railway Authorities filed application under Order VII rule 11 CPC seeking rejection of the grievance petition filed by

respondents No.1 and 2, along with others, on the point of jurisdiction but said application was dismissed by the Labour Court *vide* order, dated 21.02.2005, and said order having not been challenged any further attained finality. Had the Railway Authorities so serious in respect of point of jurisdiction, they were supposed to challenge the order of the Labour Court, dated 21.02.2005, but having not done so, they acquiesced with the decision of the Labour Court.

10. Insofar as the case-law, referred by the learned counsel for the petitioners, challenging the jurisdiction of the Labour Court to take cognizance of the matter agitated by respondents No.1 and 2 is concerned, I am of the view that the same is inapplicable to the facts and circumstances of the present case inasmuch as in the case of Chairman Pakistan Railway, (supra) not a single word has been uttered by the Hon'ble Supreme Court that Labour Court has no jurisdiction to deal with the cases of work charge employees of Pakistan Railways. Similarly, in the matter of Pakistan Railways through Chairman and others (spura), the Hon'ble Supreme Court of Pakistan maintained the order of the Federal Service Tribunal issuing direction to Railway Authorities to consider the case of the employees before it for regularization and even in the said judgment, the question as to whether the Labour Court has the jurisdiction to dilate upon any issue relating to work charge employees

of Pakistan Railway was not even touched. In this backdrop, the objection raised by the learned counsel for the petitioners against the jurisdiction of the Labour Court is hereby spurned.

11. During arguments, learned counsel for the petitioners put much emphasis on the fact that since respondents No.1 and 2 were serving on MOD Lines, they could not approach the Labour Court. Firstly, since no document showing that respondents No.1 and 2 had been working on MOD Lines has been brought on record during evidence before the Labour Court, the said oral assertion cannot be given any weightage. Secondly, the assertion of learned counsel for respondents No.1 and 2 that they had been working in civil areas, has not specifically been repelled by the learned counsel for the petitioners. Moreover, respondents No.1 and 2, alongwith others, filed grievance petition before the Labour Court *inter alia* praying that since they had already attained the status of permanent workmen, they were entitled for regularization and the advertisement got published by the Railway Authorities for recruitment against the posts being held by them was illegal. Undeniably, the petitioners got published advertisement for recruitment against the post being held by respondent No.1 which for convenience of reference is imaged below:-

درخواستیں مطلوب ہیں

بندر رج ذیل اساسوں کو پُر کرنے کیلئے پاکستان ریلوے لاہور ڈویژن کی حدود کاروبار آئے والے سول
لائسنس رینج سے تعلق رکھنے والے امیدواروں سے درخواستیں مطلوب ہیں۔ کامیاب امیدواروں کو
لاہور ریل میڈیکل آفیسر پاکستان ریلوے لاہور کی جانب سے مقررہ گاہ میں میڈیکل ایگریمنٹیں پاس
کرنا ہوں گی۔

نمبر	تفصیلی	تفصیلی	تفصیلی
1	اسسٹنٹ ہیڈ کلرک / APED	لی ایس-3	17
2	ایگزیکٹو / ہار	لی ایس-1	20

مہم کی جگہ

1- 18 تا 25 سال + 5 سال ماموریت
2- سابق فوجیوں کی صورت میں عمر کی بالائی حد میں دس سال کی رعایت اختیار کر کے انہوں نے مسلح
انواع میں حاصل ملازمت کی ہو جو کسی کم ہونے۔

نوٹس و نوٹس کوٹہ

بحرانی مندرجہ ذیل کوڈ سے مشروط ہے اور کم از کم قابلیت مہم میں کسی قسم کی رعایت نہیں ہوگی۔

1- اپن بیرٹ = 63 لیمٹ
2- برسر ملازمت / ریٹائرڈ اسٹریٹری ریلوے ملازمین کے بچے = 10 لیمٹ + 2 لیمٹ
(مستثنیٰ ریلوے ملازمین جو ملازمت
کے دوران وفات پا گئے۔

3- سابق فوجی 10 لیمٹ
4- بٹاکا (ریلوے کے علاوہ) 5 لیمٹ
5- مقررہ افراد 2 لیمٹ

نوٹس: ریلوے ملازمین کے بچوں کی صورت میں امیدوار کے والدین کو اس امر کا سرٹیفکیٹ پیش کرنا
ہو گا کہ ان کے کسی دیگر بچے نے ریلوے کوڈ کے تحت یہ سہولت حاصل نہیں کی۔
درخواست کے ہمراہ شلک کی جانے والی دستاویز
قومی شناختی کارڈ / ڈرائیو لائسنس / سرٹیفکیٹ / نوٹس واری کاسرٹیفکیٹ (ریلوے ملازم کے بچے ہونے کی
صورت میں) اور تین عدد پاسپورٹ سائز فوٹو گراف اور ایکس کواکسیٹیشن سرٹیفکیٹ

درخواست فارم

درخواستیں مجوزہ فارم پر دی جائیں۔ مجوزہ فارم پاکستان ریلوے کے تمام بڑے بڑے سٹیشنوں سے ایک
روسے کے عوض دستیاب ہیں۔ مجوزہ درخواست فارم کو اس میں درج ہدایات کے مطابق پُر کر کے
رجسٹرڈ ڈاک کے ذریعے لاہور ریل رینج ہڈنڈ پاکستان ریلوے لاہور ڈویژن کی ہڈنڈ لاہور کو ارسال کر
دی جائیں جو ان کے پاس 18 مارچ 2005ء تک پہنچ جائیں گی۔ درخواستوں کے ہمراہ اس میں
اندراج کردہ کی جانب میں انشورمنٹ کی جائیں گی۔

خواہشمند درخواستیں زیر مقرر نہیں آئیں گی اور وہ بھی درخواستیں دیں۔
تمام امیدواروں کو 50% روپے درخواست نہیں لاہور ڈویژن کے کسی سٹیشن کے سٹیشن ماسٹر یا چیف
سکریٹری ایڈمنسٹریشن آفس لاہور سٹیشن کے پاس جمع کرانی ہوگی اور اصل رسید درخواست فارم سے
ہمراہ شلک کر کے ہوں گے۔ قیود دلائل جن پر امیدوار کا پورا مکمل ایک پاپر پر ہر درخواست کے
ہمراہ شلک کر کے ہوں گے۔ مکمل درخواستیں قبول نہیں کی جائیں گی۔ سرکاری ملازمین بشمول ریلوے
ملازمین اپنی درخواستیں گھنٹہ قسط سے ارسال کریں۔
حربی ٹیسٹ / انٹرویو کیلئے بلائے جانے والے امیدواروں کو کسی قسم کا سفر خرچ اور دیگر اخراجات اور
میں کیے جائیں گے۔
کامیاب امیدواروں کو مقررہ میڈیکل ٹیسٹ ریلوے ڈاکٹر یعنی ڈی جی میڈیکل آفیسر سے پاس کرانا ہو
گا۔ جو امیدوار پاکستان کے علاوہ کسی دیگر شہر سے شادی شدہ ہے یا سنگلی کی ہوگی اس کیلئے حکومت پاکستان
کی جواہر پیم ہو گا کہ ان اساسوں کیلئے ایسے امیدوار کو قابل قرار دینے۔
کال لیٹر ذیل امیدواروں کو انہیں کیے جائیں گے آؤ ان کال لیٹر لائسنس تحریری ٹیسٹ کی مدد سے وقت اور
مقام تحریر ہو گا۔
مقام نام کو حقوق حاصل ہیں کہ بلیر کوئی وجہ قائم کسی درخواست / تمام درخواستوں کو مسترد کر دے۔
مقام نام کو حقوق حاصل ہیں کہ حالیہ ایک کے مطابق اساسوں کی تعداد میں کمی ہو گئی ہو۔

ڈویژنل ایگزیکٹو آفیسر

پاکستان ریلوے

Thoughts

From above-imaged advertisement, it is vividly clear that the
petitioners were hired for Civil Line Range, thus, the
assertion of the learned counsel for the petitioners that

respondents No.1 & 2 were hired for MOD Line being contrary to the above advertisement does not hold any substance. In the given circumstances, the case-law, referred by the learned counsel for the petitioners in support of the objection, under discussion is irrelevant.

12. Now taking up the plea of the learned counsel for the petitioners that since respondents No.1 and 2 were not in service at the time of decision by the Labour Court, they could not be regularized. To appreciate the plea of the learned counsel for the petitioners, I have gone through the record of the Labour Court. A perusal of the order sheet of the Labour Court shows that on the preliminary date of hearing viz. 06.09.2004, the Labour Court passed the following order:-

کونسل سائیلان حاضر۔ بعد ٹرانسفر کیس پیش ہوا۔ درج رجسٹر ہووے۔ نوٹس
بنام مدعا علیہم بتقرر 15.09.2004 جاری ہووے۔ نوٹس بردر خواست Stay
بتقرر مقررہ تاریخ جاری ہووے۔ موقف سماعت شد۔ اگر ان کے خلاف ایسا
کوئی حکم نہ صادر ہوا ہو تو تاریخ مقررہ تک ان کو نہ ہٹایا جائے۔

From above, it is crystal clear that Railway Authorities were restrained to remove the petitioners from service, if no order was passed against them till then and the said injunctive order remained intact upto the final decision of the Labour Court on 05.09.2005. Being aggrieved of the judgment passed by the Labour Court dismissing their grievance petition, respondents No.1 and 2, along with others, filed

Labour Appeal No.306/2005 which came up for preliminary hearing before this Court on 03.10.2005 when following order was passed:-

“Learned counsel for the parties have been heard. In order to appreciate the contentions raised on behalf of the both the sides let the record of the Labour Court be requisitioned

C.M. No.1/2005

If the appellants are currently employed and working status quo shall be maintained till the next date of hearing viz 12.10.2005.”

From above, it is vividly clear that parties were directed to maintain *status-quo* and the said injunctive order remained intact till decision of the matter by this Court through order, dated 03.07.2006, when the matter was remanded to the Labour Court. Moreover, when order passed by the Labour Court, dismissing the grievance petition filed by respondents No.1 and 2 and others, was set aside their grievance petition stood revived, as a result, the injunctive order, issued by the Labour Court on 06.09.2004, also became operative which remained intact up to the decision of the matter by the Labour Court during post remand proceedings. In the given scenario, it is more than clear that services of respondents No.1 and 2 were laid off during subsistence of injunctive order, issued by the Labour Court, thus said action on the part of the petitioners could not be used against respondents No.1 and 2 while denying the relief of regularization.

[illegible]

A cursory glance over the above-imaged document shows that with a view to establish that respondent No.1 remained

absent from duty from 01.10.2005 to 05.10.2005, the word “P” was changed into “A”. The said fact alone is sufficient to prove *mala fide* on the part of the Railways Authorities to deal with matter of respondents No.1 and 2.

14. While assisting the Court, learned counsel for the petitioners put much emphasis on the fact that since respondent No.2 filed departmental appeal (Exh.R/4) against his termination from service, he could not seek regularization without his reinstatement. Perhaps, learned counsel has raised said plea in oblivion of the statement of RW-2, who during cross-examination, admitted that referred appeal (Exh.R/4) was not presented to Signal Shop. Even if it presumed that respondent No.2 filed departmental appeal, the same was not relevant especially when respondent No.2, while appearing as PW-2, clarified that he had been agitating the matter before the departmental authorities for assignment of duty.

15. While going through the record of the Labour Court, I have noted that respondent No.2 was terminated from service through letter (Exh.R-3) but perusal of the said document shows that the same related to promotion of one Manzoor Hussain whereas on the margin of the said document a note has been given to the effect that respondent

No.2 was terminated from service. For the purpose of reference, the said document is imaged below:

Pakistan Railways

433
533

No. 402-E/S/RND. Date: 23-09-2005

From: SEE / P/P
P.Rlys: Rawalpindi

Exhibited as: R/B No. 11-1-05
Dated: 11-1-05

AEFO/P/C, Zone
P.Rlys: Lahore.

(71)

Sub Transfer / Promotion of Class II
Electric Staff / RND Zone.

In Compliance With Apo / Lahore letter No
293-E/90 / Pt. II / P2 dt: 17/08/2005.
Mr. Manzoor Hussain s/o Mr. Sohail Ali
is hereby promoted and directed to
your's Zone. W.E of 24-09-2005, FN.
till further orders.

He is also allow to avail usual
note the Journey time. His h.p.c. will follow.
u/s

Terminated the
Barbarz guld s/o
sadiq guld

Copy for information and further n/a.

APED/FLA 1. D.EE/P and E.T. Lahore
again, + the 2. DAO / Lahore.
also noted 3. Apo / T / Lahore.
Employee Name. 4. Mr. MANZOUR Hussain. APED/C, Zone.

Hakim 23/09/05

1-9-2005

ASST. Secy. (Genl. Adm. & Insp.)
RND Zone - P.O. Box No. 4666 PAFK

The above-imaged document speaks loud about the fact that with a view to deprive respondents No.1 and 2 of their right of regularization, the Railways Authorities proceeded to lay them off without adopting due process of law. While taking

note of the conduct of the Railway Authorities towards dispensing with the services of respondent No.1 and 2,

PLAT has *inter alia* observed as under:-

"11. The record shows that about 40 TLA employees were regularized by the competent authority vide order dated 10.09.2009 (page No.117 of the Labour Court file). There is an order passed by one Mr. Muhammad Farooq for Divisional Superintendent Pakistan Railways Lahore which shows that the respondents were discharged from services and in their cases the exact wording of the order reads as follows:

"That Mr. Abdul Rashid S/O Muhammad Sharif & Mr. Babar Gill were working on T.L.A. with one day break after every 89 days against permanent posts. The recruitment of permanent staff as A.P.E.D. were carried out on /10/2005 & the selected staff i.e. APED's were posted against permanent vacancies and these two T.L.A. employees have to be discharged from duty. As per Railway Ministry directives, the T.L.A. staff presently working on T.L.A. were regularized during 10/2007 vide General Manager/ Personnel/Lahore's letter No.803-E/7/4-X/1(APO-IV) dated 07.09.2007 (copy enclosed) after observing all the formalities & were posted against the permanent posts. At that time these employees were not working against T.L.A. as they had been discharged since 2005." (page No. 131 of the Labour Court file).

12. This clearly shows that the respondents were employed against permanent posts and were ousted from service after rendering services of over sixteen years without any show cause notice or any enquiry when they had attained permanent status by the passage of time. This order is visibly repugnant to the provisions of Standing Order 12(3) of the Standing Orders Ordinance, 1968."

16. It is important to observe here that though the stance of the petitioners, throughout the proceedings, has been that since respondents No.1 & 2 were no more in service at the time of announcement of policy by the Federal Government regarding regularization of daily wage employees, they could not avail benefit of said policy but they have not been able to give any reason for non-production of order relating

to termination of respondent No.1 from service. This fact also casts serious doubt about the conduct of the Railway Authorities.

17. There is no cavil with the fact that for seeking regularization, it is incumbent upon the person concerned to prove that he is in service. Insofar as case in hand is concerned, at the cost of repetition it is observed that when respondents No.1 and 2 were in service at the time of filing of their grievance petition in the year 2004, thus any subsequent action by the departmental authorities during currency of injunctive order was subject to scrutiny by the Labour Court, thus no exception can be taken against the decisions of the labour *fora* declaring respondents No.1 & 2 entitled for reinstatement as well as regularization.

18. During the course of arguments learned counsel for the petitioners, with a view to establish that respondents No.1 and 2 were not in service at the time of decision of the matter by the Labour Court, repeatedly referred to statement of PW-2 but has not been able to convince the Court as to how their services could be laid off/terminated during currency of injunctive orders issued by the Labour Court and this Court.

19. While scanning record of the Labour Court, I have observed that while filing reply to the grievance petition,

filed by respondents No.1 and 2, along with others, the Railway Authorities in reply to para 11 of the grievance petition averred as under:-

“11. Admitted to this extent that the temporary labour arrangements are working against the permanent post and they have been directed to submit their applications for recruitment on permanent basis.”

The above stance of the Railway Authorities further strengthen the case of respondents No.1 & 2 for the reason that if they were working against posts of permanent nature they attained the status of permanent nature after expiry of requisite period. If any case-law is required, reference can be made to the case of Pakistan Telecommunication Company Ltd. Through General Manager and another v. Din Muhammad & others (2019 PLC 30). Moreover, if respondents No.1 & 2 attained the status of a permanent workmen much prior to filing the grievance petition, their services could not be terminated without adhering to the procedure laid down under Order 12 of the Industrial and Commercial Employment (Standing Orders), Ordinance, 1968, thus, their termination, without adopting the due process, could not be used to impede the way of respondents No.1 and 2 for regularization.

20. Even otherwise, if any action is taken against a party during pendency of any proceedings before a court of law, the same is subject to scrutiny by the relevant court as it is

clothed with the power to take note of subsequent events while deciding *lis* between the parties. Had respondents No.1 and 2 not been before the courts of law prior to their acclaimed termination, the position might have been different but when the Railway Authorities proceeded to dispense with their services during subsistence of proceedings and especially when the interim injunction was in the field, the jurisdiction of the Labour Court to declare respondents No.1 and 2 as permanent workmen could not be abridged.

21. As per law laid down by the apex Court of the country in the case of *Farhat Jabeen v. Muhammad Safdar and others* (2011 SCMR 1073) concurrent findings of facts recorded by the courts below cannot be upset in Constitutional jurisdiction until and unless they are proved to be perverse or result of arbitrariness which, in my humble estimation, is not the position in the case in hand.

22. For what has been discussed above, I see no force in this petition which is **dismissed** leaving the parties to bear their respective costs.

(Shujaat Ali Khan)
Judge

APPROVED FOR REPORTING

Judge

*M.Tahir**