

Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No. 3439 of 2019/RWP.

WASA Rawalpindi and another
Versus
Punjab Labour Appellate Tribunal, Lahore etc.

JUDGMENT

Date of hearing: 28.11.2023.

Petitioners by: Raja Mohsin Abbas, Advocate.

Respondents by: Khawaja Muhammad Arif, Advocate for respondents No.3 to 7, 10, 11, 13 & 16.

Mr. Naseer Ahmad Tanoli, Advocate for respondents No.8, 9, 12, 14, 15 & 16.

Shujaat Ali Khan, J:- Shorn of unnecessary details, the facts, forming factual canvass of this petition, are that respondents No.3 to 7, alongwith others, filed Grievance Petition (No.264/2010) before the Punjab Labour Court No.6, Rawalpindi (**the Labour Court**) seeking regularization of their services against the posts held by them which was accepted *vide* judgment, dated 14.12.2012, against which the department filed an appeal (RI-80/2013) before the Punjab Labour Appellate Tribunal, Lahore (**PLAT**), Camp at Rawalpindi, which was

disposed of *vide* order, dated 01.06.2013, on the statement of departmental authorities. Later on, the department assailed the decisions of the Labour Court as well as PLAT before this Court by filing W.P. No.1902 of 2013/RWP which was disposed of *vide* order, dated 11.06.2015. Thereafter, services of said respondents, alongwith others, were regularized by the department *vide* Office Order bearing No.DAF/WASA/501/446, dated 07.08.2015.

Similarly, respondent No.10, alongwith others, moved Grievance Petition (No.51/2013) before the Labour Court seeking direction for regularization of his service against the post held by him which was accepted *vide* judgment, dated 20.05.2014 against which the department filed an appeal (RI-333/2014) before PLAT which was dismissed *vide* judgment, dated 16.06.2015. The department challenged the decisions of the Labour Court as well as PLAT before this Court by filing W.P. No.2736 of 2015/RWP which was dismissed *vide* order, dated 02.11.2015. Thereafter, service of the said respondent, alongwith others, was regularized by the department *vide* Office Order bearing No.DAF/WASA/501/682, dated 16.12.2015.

Likewise, respondents No.8, 9 & 11 to 14, alongwith others, instituted Grievance Petition (No.64/2013) before the Labour Court seeking regularization of their services against the posts held by them which was accepted *vide* judgment, dated

20.05.2014 against which the department filed an appeal (RI-332/2014) before PLAT which stood dismissed *vide* judgment, dated 16.06.2015. The department put a challenge to the decisions of the Labour Court as well as PLAT before this Court by filing W.P. No.2735 of 2015/RWP which was dismissed *vide* order, dated 02.11.2015. Later on, services of said respondents, alongwith others, were regularized by the department *vide* Office Order bearing No.DAF/WASA/501/683, dated 16.12.2015.

On the same footing, respondents No.15 & 16, alongwith others, preferred Grievance Petition (No.101/2015) before the Labour Court seeking regularization of their services against the posts held by them which was accepted *vide* judgment, dated 04.02.2016, against which the department filed an appeal (RI-130/2016) before PLAT which was dismissed *vide* order, dated 26.05.2016. Later on, the department assailed the decisions of the Labour Court as well as PLAT before this Court by filing W.P. No.2956 of 2016/RWP which was dismissed through order, dated 16.11.2016. Thereafter, services of said respondents, alongwith others, were regularized by the department *vide* Office Order bearing No.DAF/WASA/501/830, dated 26.01.2017.

2. In the second round, the private respondents filed complaints under sections 33(8), 65 & 66 of the Punjab Industrial Relations Act, 2010. Through order, dated 16.10.2018, the Labour Court directed the Managing Director and the Director

(Admin) WASA, Rawalpindi, to regularize services of the private respondents (petitioners therein) against the posts mentioned in Para No.7 of said order and fixed the matter for compliance, for 20.11.2018. Being aggrieved of order, dated 16.10.2018, the department filed revision petition (RI-515/2019) before PLAT which was dismissed *vide* judgment, dated 20.09.2019; hence this petition.

3. Learned counsel representing the department submits that while implementing the decisions of the Labour Court, which remained intact upto this Court, services of the private respondents were regularized against the posts mentioned by them in their Grievance Petitions, thus, they were debarred to file implementation petitions out of which present petition has emanated. Adds that while passing the impugned verdicts both the *fora* below failed to consider that no party can claim relief beyond its pleadings. Further adds that both the forums below omitted to note that after regularization of their services the private respondents have been enjoying perks and privileges of a regular employee, hence, they could not approach the Labour Court seeking regularization against the posts other than those mentioned by them in their Grievance Petitions. Argues that not only their respective designations were mentioned in the Grievance Petitions but the same were also incorporated in their

affidavits, hence, they were estopped to claim anything contrary to the recitals of the said documents.

4. Mr. Naseer Ahmad Tanoli, Advocate for respondents No. 8, 9, 12, 14, 15 & 16 states that since services of his clients were not regularized against the posts for which they were appointed, no illegality has been committed by the *fora* below while rendering the impugned decisions.

5. In rebuttal to the arguments advanced by learned counsel representing private respondents No. 8, 9, 12, 14, 15 & 16, learned counsel for the department states that since service rules for WASA employees were framed in the year 2012 and the employees, who were deficient in respect of eligibility criteria against the posts held by them, were regularised against other available posts, thus, no ill-will or *mala-fide* can be attributed to WASA authorities in that regard.

6. Khawaja Muhammad Arif, Advocate appearing on behalf of respondents No.3 to 7, 10, 11, 13 & 16, while supporting the impugned decisions, states that there is no mention of any designation under Standing Order No.1(b) of the Schedule attached with Industrial & Commercial Employment (Standing Order) Ordinance, 1968 (**the Ordinance, 1968**) in terms of section 2(g) thereof, thus, the private respondents were entitled for confirmation against the posts on which they were working at the relevant time. Adds that section 33(8) of the Punjab

Industrial Relations Act, 2010 (**PIRA, 2010**) empowers the Labour Court to get enforced its decision, thus, no illegality was committed by *fora* below while rendering the impugned decisions.

7. While rebutting the arguments advanced by learned appearing on behalf of respondents No.3 to 7, 10, 11, 13 & 16, learned counsel for the department states that according to the law laid down in Mahmood-ul-Hassan v. Munir Ahmad and 3 others (2018 MLD 771) no relief can be given to any party beyond its pleadings and when the private respondents themselves incorporated their designations in their respective Grievance Petitions, they could not be awarded anything in excess thereof.

8. I have heard learned counsel for the parties at considerable length and have also gone through the documents, annexed with this petition, as well as the case-law, cited at the bar.

9. It is admitted position that the private respondents filed four sets of Grievance Petitions by incorporating nomenclatures of the posts held by them. According to Standing Order No.1(b) of the Schedule attached with the Ordinance, 1968, a workman who performs duties for more than three months against a post of permanent nature attains status of a permanent workman. When the private respondents themselves incorporated their respective designations in their Grievance Petitions, no contrary

view could be adopted by the *fora* below while dealing with implementation petitions.

10. Indisputably, the Grievance Petitions filed by the private respondents were accepted by the Labour Court and the said decisions remained intact upto this Court. A bare reading of the decisions rendered by the Labour Court, accepting the Grievance Petitions filed by the private respondents which were upheld by the PLAT as well as this Court, shows that there was no mention of any designation against which the private respondents were to be regularized. However, while dealing with implementation petitions, the Labour Court and PLAT introduced scheme of designations of the private respondents, for the first time, in utter violation of Standing Order No.1(b) *ibid* and their earlier decisions, which had attained finality.

11. The inconsistent attitude of the private respondents is evident from the fact that on the one hand Khawaja Muhammad Arif, Advocate, representing respondents No. 3 to 7, 10, 11, 13 & 16, pleaded that the private respondents were entitled to regularization against the posts being held by them in terms of Standing Order No.1(b) *ibid*, irrespective of any service rules framed by the department subsequently, but on the other was unable to convince this Court as to how the private respondents can claim particular designations in violation of Standing Order No.1(b) *ibid* as it speaks about permanent status of a workman

on completion of three months against a post likely to be continued for more than nine months.

12. It is well established by now that the Executing/Implementing Court cannot sit over the judgment/decision implementation whereof has been sought. Reliance in this regard is placed on the case reported as Irshad Masih and others v. Emmanuel Masih and others (2014 SCMR 1481), Tauqeer Ahmad Qureshi v. Additional District Judge, Lahore and 2 others (PLD 2009 SC 760) and Mst. Naseem Akhtar and 4 others v. Shalimar General Insurance, Company Limited and 2 others (1994 SCMR 22). Though learned counsel representing the private respondents addressed the Court at length but has not been able to convince this Court as to how the private respondents were entitled to regularization against the posts out of those mentioned in their Grievance Petitions or for which they were not eligible.

13. This Court is cognizant of the fact that respondents No.8, 9, 12, 14, 15 & 16 were not regularized against the posts mentioned by them in their Grievance Petitions, however, the explanation provided by the learned counsel representing the department that as they did not fulfill the eligibility criteria for appointment/regularization against the posts being held by them in terms of the service rules framed for the employees of WASA Rawalpindi, in the year 2012, being persuasive, cannot be

discarded lightly. Though, learned counsel appearing on behalf of the private respondents claimed that the eligibility of their clients was to be determined at the time of their induction in service but when they completed the requisite period, they were entitled for regularization against the post being held by them but I do not agree with the learned counsel for the reason that it is admitted position that the private respondents were hired without adopting the due process, thus, their eligibility to hold any post on regular basis could not be bypassed especially when the service rules were framed by WASA much prior to issuance of orders regarding their regularization. Had the private respondents been inducted in service upon fulfilment of requisite criteria they could have claimed exemption from the scrutiny at the time of regularization of their services. A learned Division Bench of this Court in the case of University of Agriculture and others v. Tasneem Kausar and others (2018 PLC (C.S.) Note 183), while dealing with the powers of the competent authority to determine the eligibility of an employee for regularization has *inter-alia* concluded as under:-

“16. In our view suitability and eligibility of a candidate cannot be compromised at the cost of length of service or any other consideration without going through a process and any such exercise would be against the dictates of Articles 240 and 242 of the Constitution.....”

If the explanation provided by the learned counsel representing the department is considered in the light of the afore-quoted

decision of a learned Division Bench of this Court there leaves no ambiguity that the same is worth consideration.

14. It is imperative to note that *bona-fide* of the departmental authorities is established from the fact that instead of dispensing with the services of the employees, who were deficient in respect of eligibility criteria, *vis-à-vis* the service rules framed in the year 2012, regularized them against other available posts. In this scenario, instead of forming any adverse opinion against the departmental authorities same should be lauded and the impugned direction issued by the Labour Court, upheld by PLAT, to the Managing Director and the Director (Admin), WASA, Rawalpindi does not seem to be reasonable.

15. While addressing the Court, learned counsel representing the private respondents took specific plea that since grievance of their clients with respect to their regularization in terms of their appointment orders was not redressed, their implementation petitions were maintainable and no illegality was committed by the Labour Court while issuing impugned direction. In this regard, I do not see eye-to-eye with learned counsel for the private respondents for the reason that if the private respondents were of the view that still any grievance existed in respect of their regularization, instead of filing implementation petitions they were supposed to file fresh Grievance Petition(s). In this

backdrop, the impugned decisions rendered by the *fora* below are not sustainable.

16. Now coming to the case-law, referred by Mr. Tanoli, I am of the view that the same is inapplicable to the facts and circumstances of the present case inasmuch as in the said case the petitioners were inducted in service upon fulfilment of eligibility criteria prevalent at that time whereas in the matter in hand the service rules were framed first time in the year 2012, their eligibility to hold a post on regular basis was to be determined by the departmental authorities in the light of the said rules. Moreover, the rules in the referred case were also relaxed by the Chief Minister of the province which is not the position in the case in hand. Thus, the said case is polls apart from the case in hand.

17. For what has been noted above, I have no hesitation to hold that the Labour Court travelled beyond its jurisdiction while issuing the impugned direction. Likewise, PLAT instead of applying its independent mind toed the line of the Labour Court, thus, their findings cannot be considered as sacrosanct. Consequently, this petition is **accepted** and the impugned decisions of the *fora* below are **set-aside** with no order as to costs.

Judge

Approved for Reporting.

Judge