

ORDER SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT

Intra Court Appeal No. 57 of 2024

Ahsan Allahi Zaheer and another **Vs.** Government of Punjab through Secretary, Primary and Secondary Healthcare Department Punjab Lahore and three others.

S.No. of order/ proceeding	Date of order/ proceeding.	Order with signatures of Judge, and that of parties or counsel, where necessary.
----------------------------	----------------------------	--

09.05.2024 Mr. Mahmood Ahmad Bhatti, Advocate for the appellants.

This Intra Court Appeal has been filed against the order dated 03.05.2024, passed by the learned Single Judge in Chambers in the Writ Petition No.3214 of 2024, whereby the Petition filed by the appellants under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 was dismissed.

2. The brief facts, necessary for the disposal of the instant appeal are that pursuant to the Recruitment Policy 2022, the Chief Executive Officer, Bahawalpur Health Authority (the Respondent No.2) advertised the posts of BS04 within the Bahawalpur Health Authority and amongst others the appellants qualified for the subject matter posts and through letters dated

02.01.2023 were issued Job Offer Letters for the said posts however in terms of Clause 5 of the Job Offer Letters , upon the completion of the initial contract period of one year, the contracts of the appellants were accordingly, not extended and the appellants filed the Writ Petition No.3214 of 2024 under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 assailing the said termination of their contracts, however, the learned Single Judge in Chambers vide the order dated 03.05.2024 dismissed the petition as filed by the appellants, hence, the appeal.

3. The learned counsel for the appellants submitted that the learned Single Judge in Chambers had erred in facts and law while passing the order dated 03.05.2024. The learned counsel for the appellants further argued that the appellants while serving as driver,in the case of the appellant namely Ahsan Alahi Zaheer and as a Security Guard, in the case of the appellant namely Muhammad Zohaib ur Rehman, were employed on contracts and their contracts were terminated without any just and lawful cause. The learned counsel submitted that the learned Single Judge in Chambers failed to advert that the services of the appellants were always satisfactory and the Appointing Authority deprived the appellants of their right to the extension of their contracts .

4. We have heard the learned counsel for the appellants and perused the record.

5. The perusal of the record reveals that pursuant to the Recruitment Policy 2022, the Chief Executive Officer, Bahawalpur Health Authority (the Respondent No.2) advertised the posts of BS04 within the Bahawalpur Health Authority and amongst others the appellants qualified for the subject matter posts and through letters dated 02.01.2023 were issued Job Offer Letters for the said posts. Two clauses of the said Job Offer Letters are important to evaluate the rights of the appellants:

“5- Tenure:

Your appointment will be purely temporary on contract basis for a period of **one year**. However, it will extend on satisfactory performance and in the best public interest.

12- Seniority/regular appointment:

Contract appointment will neither confer any right for regular appointment to the same post nor the service shall be counted towards seniority.” (emphasis supplied)

It is an admitted position that the appellants duly agreed and accepted the terms and conditions contained in the Job Offer Letters . In terms of Clause 5 of the Job Offer Letters , upon the completion of the initial contract period of one year, the contracts of the appellants were accordingly, not extended .We are afraid that the subject matter extension of contracts

cannot be granted to their appellants as of law as well as of right, firstly, for the reasons that on the day when the appellants invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, their status was of employees whose contracts had expired and this Court under its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 through a mandatory injunction cannot force an unwilling employer to extend the contracts of service which has already expired. Secondly, for granting a relief canvassed by the appellants in the petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and now in the instant Intra Court Appeal this Court cannot undertake a factual inquiry. Thirdly, it is not the case of the appellants that non-extension of their contracts suffers from mala fide in law as neither the Contract Policy, 2004 nor the Recruitment Policy 2022 has been challenged nor any statutory instrument or order has been assailed. The nature of challenge put forward by the appellants at maximum can be termed as mala fide in fact, which this Court in the exercise of its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 cannot entertain, as such kind of allegations require

strict factual proof and recording of evidence. It is important to note that the employment of appellants was contractual in nature and being contractual employees, the appellants have no automatic right to continue the employment unless same has specifically been provided in law. Being contractual employees, the relationship between the appellants and respondents will be governed by the principle of master and servant and the appellants have to serve till the satisfaction of their master. Hence, in view of the established principle of law that a contract employee is debarred from approaching this Court in its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for reinstatement or extension of a contract and the only remedy available to a contract employee is to file suit for damages alleging any breach of contract or failure to extend the contract, this Court cannot force the employer to reinstate or extend the contract of the employees, even in case of any wrongful termination. Reliance is placed on case reported as "*Ministry of IPC through Secretary and others v. Arbab Altaf Hussain and others*" (**2014 SCMR 1573**) wherein it has been held as under:-

"Secondly, the employment(s) of the said respondents admittedly was contractual in nature and their services were terminated after due notice as per

their contractual terms and conditions of service. And even on this account the writ petitions were incompetent and had to fail.-----So the writ petitions filed by all other respondents, as mentioned earlier, were liable to be dismissed on these scores."

Reference may also be made to the case titled as "*Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs v. Muhammad Azam Chattha*" (**2013 SCMR 120**) wherein it has been held as under:-

" In addition to it, it is a cardinal principle of law that a contract employee instead of pressing for his reinstatement to serve for the leftover period can at best claim damages to the extent of unexpired period of his service.

15. In Halsbury's Laws of England (3rd Ed.) Vol. 11, p.244 Para 414, it is stated that the measure of damages for wrongful dismissal, is the loss thereby incurred, and that would, subject to the duty of the plaintiff to mitigate, normally be the wages due and payable for the agreed period of service. In the case of *Federation of Pakistan v. Ali Ahmed Qureshi* (2001 SCMR 1733) it has been held that in view of the doctrine of master and servant, the contract of service cannot be specifically enforced, however, in the event of arbitrary dismissal or unwarranted termination of employment, an employee is entitled to sue for damages equal to wages, allowances and other benefits, which would have been otherwise due and payable under the contract of employment. In the case of *Pakistan Red Crescent Society and another v. Syed Nazir Gillani* (PLD 2005 SC 806) it has been held that an employee of a corporation, in the absence of violation of law or any statutory rule, cannot press into service the Constitutional or civil jurisdiction for seeking relief of reinstatement in service and can only claim damages against his wrongful dismissal or termination. While holding so, reference has been made to the cases of *Mrs. M.N. Arshad v. Mrs. Naeema Khan* (PLD 1990 SC 612), *Messrs Malik and Haq v. Muhammad Shamsul Islam Chowdhury* (PLD 1961 SC 531), *Zainul Abidin v. Multan Central Cooperative Bank Limited* (PLD 1966 SC 445), *Chairman, East Pakistan Industrial Development Corporation v. Rustom Ali* (PLD 1966 SC 848), *Abdul Salam Mehta v. Chairman, WAPDA*

(1970 SCMR 40), Lt. Col. Shujauddin Ahmad v. Oil and Gas Development Corporation (1971 SCMR 566), R.T.A. Janjua v. National Shipping Corporation (PLD 1974 SC 146), Principal, Cadet College, Kohat v. Muhammad Shoab Qureshi (PLD 1984 SC 1791), Anwar Hussain v. Agricultural Development Bank of Pakistan (PLD 1984 SC 194), Syed Akbar Ali Bokhari v. State Bank of Pakistan (PLD 1977 Lah. 234), Muhammad Yusuf Shah v. Pakistan International Airlines Corporation (PLD 1981 SC 224) and Evacuee Trust Property Board v. Muhammad Nawaz (1983 SCMR 1275). The same principle has been reiterated in the case of Brig. (R.) Sakhi Marjan v. Managing Director PEPCO (2009 SCMR 708). Reference may also be made to the case of S. S. Shetty v. Bharat Nidhi, Ltd. (AIR 1958 SC 12) wherein the Indian Supreme Court on the same issue has held as under:--

"The position as it obtains in the ordinary law of master and servant is quite clear. The master who wrongfully dismisses his servant is bound to pay him such damages as will compensate him for the wrong that he has sustained. "They are to be assessed by reference to the amount earned in the service wrongfully terminated and the time likely to elapse before the servant obtains another post for which he is fitted. If the contract expressly provides that it is terminable upon, e.g., a month's notice, the damages will ordinarily be a month's wages. ... No compensation can be claimed in respect of the injury done to the servant's feeling by the circumstances of his dismissal, nor in respect of extra difficulty of finding work resulting from those circumstances. A servant who has been wrongfully dismissed must use diligence to seek another employment, and the fact that he has been offered a suitable post may be taken into account in assessing the damages." [Chitty on Contracts, 21st Ed., Vol. (2), p.559 para. 1040].

If the contract of employment is for a specific term, the servant would in that event be entitled to damages the amount of which would be measured *prima facie* and subject to the rule of mitigation in the salary of which the master had deprived him. [Vide Collier v. Sunday Referee Publishing Co., Ltd. (1940) 4 All E.R. 237]. The servant would then be entitled to the whole of the salary, benefits, etc., which he would have earned had he continued in the employ of the master for the full term of the contract, subject of course to mitigation of damages by way of seeking alternative employment. Such damages would be recoverable by the servant for his wrongful dismissal by the master only on the basis of the master having committed a breach of the contract of employment."

The ratio decidendi laid down by the Hon'ble apex

Court in the judgments mentioned supra has further been ratified in judgments reported as

Government of Khyber Pakhtunkhwa Workers

Welfare Board through Chairman v. Raheel Ali Gohar and others (2021 PLC (C.S.) 125), Miss Naureen Naz Butt v. Pakistan International Airlines through Chairman, PIA and others (2020 SCMR 1625) and Qazi Munir Ahmed v. Rawalpindi Medical College and Allied Hospital through Principal and others (2019 SCMR 648).

Even otherwise, in view of the availability of an alternate efficacious remedy/claim of damages/compensation, if any, to the appellants under the law, the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is also barred. Reliance can be placed on *Indus Trading and Contracting Company v. Collector of Customs (Preventive) Karachi and others (2016 SCMR 842)*, *Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others (2011 SCMR 1813)* and *Muhammad Abbasi v. S.H.O. Bhara Kahu and 7 others (PLD 2010 SC 969)*.

The learned counsel for the appellants has been unable to point out any illegality or excess of jurisdiction having been committed by the learned Single Judge in Chambers while passing the impugned order dated 03.05.2024. We find that the impugned order dated 03.05.2024 has been passed by the learned Single Judge in Chambers after going

through the record of the case and taking into consideration the facts and circumstances of the case.

6. In view of the above discussion, this appeal being devoid of merit, is *dismissed in limine*.

(MUHAMMAD WAHEED KHAN) (SADIQ MAHMUD KHURRAM)
JUDGE JUDGE

Approved for Reporting

Judge