

JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.30999/2023

Hasnain Afzal etc. Vs. Government of Punjab etc.

Date of hearing	25-10-2023
Petitioners by	Hafiz Sarfraz Ahmad Baguka, Advocate.
Respondents by	Mr. Omer Farooq Khan, Assistant Advocate-General, Punjab.

ABID AZIZ SHEIKH, J. In this Constitutional Petition, the petitioners have challenged the order dated 18.04.2023 (**impugned order**) passed by respondent No.2, whereby petitioners' representation to treat them as "regular employees" instead of "permanent workmen" has been declined.

2. The relevant facts are that the petitioners were appointed on purely temporary/daily wages basis in the Punjab Local Government Board (**Board**) in year 2011-2012 and since then they are performing their duties. In previous round of litigation, the petitioners filed various writ petitions, including Writ Petition No.116480/2017, which were allowed by this Court vide judgment dated 10.10.2019 in terms of the judgment dated 16.12.2016, passed in Writ Petition No.7910 of 2016. The respondent-department challenged the said judgment dated 10.10.2019 in Appeal before the Division Bench of this Court, however, subject to outcome of the Appeal the petitioners were declared as "permanent workmen" in terms of the Standing Order No.1(b) of Industrial and Commercial Employment

(Standing Orders) Ordinance, 1968 (**Ordinance of 1968**), through separate orders of even date i.e. 12.03.2020 by the department. The petitioners, being aggrieved of the aforesaid orders, filed their representation on the ground that they are to be regularized with the Board instead of declaring them as “permanent workmen”, however, their representation has been declined through the impugned order, hence, this Constitutional Petition.

3. Learned counsel for the petitioners submits that number of similar employees have already been regularized by the Board/Department, therefore, the petitioners cannot be treated as “permanent workmen”. He submits that the orders, declaring the petitioners as “permanent workmen”, are not only contrary to the judgments of this Court dated 16.12.2016 & 10.10.2019 but also against the case law developed on the subject from time to time.

4. Learned Law Officer, on the other hand, submits that the petitioners being “daily wagers” could only be treated as “permanent workmen” under the provisions of the Ordinance of 1968 and cannot be treated as “regular employees or civil servants”, who can only be appointed through competition on open merit. He submits that the petitioners’ appointments as “permanent workmen” are in line with the law laid down by the Supreme Court of Pakistan in “PROVINCE OF PUNJAB

through Secretary Communication and Works Department and others. Vs. AHMAD HUSSAIN” (2013 SCMR 1547) and the Departmental Policies dated 27.12.2019 & 29.01.2021.

5. I have heard learned counsel for the parties and perused the record with their able assistance. There is no dispute that the petitioners No.1 to 6 & 8 were enrolled as “daily wagers” in year 2011, whereas petitioner No.7 was engaged as “daily wager” in year 2012 with the Board and all the petitioners are seeking their regularization on the basis of judgments dated 16.12.2016 and 10.10.2019 by this Court, being “daily wagers” with the Board for long period of time. However, admittedly no rules/regulations, criteria or standards for appointment of daily wagers were prescribed at the relevant time by the Board and the petitioners were not enrolled after advertising the posts through competition on open merit. Under Section 187(2) of the Punjab Local Government Act, 2022 (**Act XXXIII of 2022**), the employees of the Punjab Local Government service shall be appointed through the Punjab Public Service Commission (**PPSC**) and under Section 187(4) of the Act XXXIII of 2022, all the employees of Punjab Local Government, appointed through PPSC against sanctioned posts on contract basis prior to commencement of the Act XXXIII of 2022, shall stand regularized in Punjab Local Government service on completion

of their contracts period. No provision in any relevant previous law of the Local Government or Policy of the Board has been referred to, under which daily wagers who were not enrolled through open merit competition, shall be treated as regular employees of the Board or civil servants merely due to afflux of time rather the employee, on work charged basis or paid from contingencies or who is a worker or workman, has been specifically excluded from the definition of “Civil Servant” described under Section 2(b) of the Punjab Civil Servant Act, 1974 (**Act of 1974**).

6. The relevant law, which provides protection to the daily wagers who have been performing their duties against permanent posts for long period of time, is Para 1(b) of the Schedule attached to the Ordinance of 1968. For ready reference the aforesaid provision is reproduced hereunder:-

“(b) A “permanent workman” is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lock-out or strike) or involuntary closure of the establishment and includes a badli who has been employed for a continuous period of three months or for one hundred and eighty-three days during any period of twelve consecutive months.”

Under aforesaid Para 1(b) of the Schedule, attached to Ordinance of 1968, “permanent workman” is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment. In similar situation, a “daily wager” working with the Communication and Works Department, Government of the Punjab, sought his regularization due to afflux of time and the Supreme Court of Pakistan in case of “Province of Punjab Vs. Ahmad Hussain” (2013 SCMR 1547) *supra* held that service of a “daily wager” shall be governed by the Ordinance of 1968 and he shall be treated as “permanent employee”. The relevant part of the judgment is reproduced as under:-

“Thus, it is held that service of respondent shall be governed by Standing Order Ordinance, 1968 and he shall be considered permanent employee, as he is performing his duties continuously for more than 9 months since 1998 and the learned High Court has rightly issued writ in his favour.”

(Emphasis supplied)

The Supreme Court of Pakistan, in aforesaid judgment, did not treat “daily wager” as “regular employee or regular civil servant” rather specifically recorded that his services shall be governed by Ordinance of 1968 and he will be considered as “permanent employee”.

7. At this juncture, it is pertinent to note that the petitioners are seeking their regularization in view of this Court's judgment dated 10.10.2019, in which cases of the petitioners were decided in the same terms as of the judgment dated 16.12.2016, passed in Writ Petition No.7910/2016. For convenience, the concluding Paras No.7 & 8 of judgment dated 16.12.2016 are reproduced hereunder:-

"Earlier in an identical matter, involving similar issue Writ Petition No.826/2011 titled "Ahmad Hassan etc. Vs. Government of the Punjab" was filed by some similarly placed employees which was allowed by this Court, vide order dated 06.12.2012 against which the respondents-department filed ICA No.11 of 2011. A learned Division Bench of this Court, vide order dated 14.3.2013, upheld the order of the Single Bench of this Court. Aggrieved the respondent-Department filed Civil Petition No.708 of 2013 before the Hon'ble Supreme Court of Pakistan, which was also dismissed with cost of Rs.50,000/. The judgment of the Hon'ble Supreme Court of Pakistan is reported as Province of Punjab through Secretary Communication and Works Department and others Vs. Ahmad Hassan (2013 SCMR 1547). In this view of the matter, the case of the present petitioners being at par with the petitioners of the cited case, they are also entitled to the same relief.

For what has been discussed above, all the writ petitions mentioned in para 1 of this judgment are allowed and the respondents are directed to proceed for regularization of services of the petitioners immediately."

The concluding part of this Court's judgment dated 16.12.2016 (on basis of which petitioners' writ petitions were allowed),

shows that same has been decided in view of the law settled in “Province of Punjab Vs. Ahmad Hussain” (**2013 SCMR 1547**) *supra*, where the Supreme Court specifically considered the “daily wager” as “permanent employee” and not “regular employee or civil servant”. The direction, in this Court’s judgment dated 16.12.2016, to regularize the services has to be read in context of the Ordinance of 1968 and the aforesaid judgment of the Supreme Court relied upon, which means to regularize the petitioners being daily wagers as “permanent employees/workmen” under the Ordinance of 1968. The word “regularization” cannot be construed to treat “daily wagers” as “regular employees” of the Board or “civil servants”, as such interpretation will not only be against the law settled by the Supreme Court in “Province of Punjab Vs. Ahmad Hussain” *supra* but also go beyond the specific provision of Para 1(b) of the Schedule to the Ordinance of 1968 and Section 2(b) of the Act of 1974, and will amount to circumvent the entire due process of open merit competition, required for appointments of civil servants and regular employees in Public Sectors, including the Board.

8. The argument of petitioners that their appointments as “permanent workmen” and not as “regular employees” are contrary to the case law developed from time to time, is also

misconceived. The case law on the subject shows that similar proposition came up before the Supreme Court in “Punjab Seed Corporation v. Punjab Labour Appellate Tribunal” (**1996 SCMR 1947**), where the respondent was appointed as “Field Supervisor” on temporary basis on 25.06.1980 and continued as such till 30.07.1991, when his services were terminated. The said writ petitioner challenged his termination order before the Labour Court on the ground that he was a “permanent workman” and as such his services cannot be terminated without due process of law. The petitioner in said writ petition was reinstated in service and the order was maintained up to the Supreme Court. In “Ikram Bari and 524 others v. National Bank of Pakistan through President and another” (**2005 SCMR 100**), the daily wagers were regularized in service as permanent employees of National Bank but there was a Policy of the Bank to absorb daily wagers subject to qualification but same was applied on pick and choose basis, hence, direction was issued to the Bank to absorb the petitioners/daily wagers as per Policy (however, in present case admittedly there is no such policy of the Board to absorb daily wagers as regular employees). In “Secretary Irrigation and Power Department, Government of Punjab, Lahore and others v. Muhammad Akhtar and others” (**2009 SCMR 320**), “Province of Punjab through Secretary and others v. Ahmad Hussain” (**2013**

SCMR 1547) and “Pir Imran Sajid and others v. Managing Director and others” (**2015 SCMR 1257**), in crux it was held that “work charged employee”, who was working for more than 90 days against post of permanent nature in a project which continued more than nine months, attains the status of “permanent employee” under the provisions of the Ordinance of 1968. In “Board of Intermediate and Secondary Education, Faisalabad through Chairman and others Versus Tanveer Sajid and others” (**2018 SCMR 1405**), Board of Intermediate and Secondary Education, DG Khan and another Versus Muhammad Altaf and others” (**2018 SCMR 325**) and Board of Intermediate and Secondary Education, Multan through Chairman and another Versus Muhammad Sajid and others” (**2019 SCMR 233**), the daily wagers were regularized on the ground that they were performing job of permanent nature for long period of time with artificial breaks and were also discriminated. In aforesaid judgments, Para 1(b) of the Schedule, attached to Ordinance of 1968, has not been specifically mentioned but the law developed on the basis of said provision was applied from time to time to regularize the services of daily wagers as permanent employees.

9. It is relevant to note that the Supreme Court in “Secretary, Irrigation and Power Department Government of Punjab, Lahore and others Vs. Muhammad Akhtar and others” (**2009**

SCMR 320) though upheld the judgment of the Labour Court, whereby the “work charged employees” were regularized, however, the question that whether such employees can be treated as civil servants, was kept as an open question to be decided in some other appropriate case. The relevant part of the judgment is reproduced hereunder:-

“The question whether such employees were to be treated to be civil servants was not seriously agitated by the petitioner department at the appropriate stage. Prima-facie, in view of the definition contained in section 2 of Punjab Civil Servant Act, 1974, the work-charged employees did not fall within the category of Civil Servants. However this point needs to be examined further in some other appropriate case.”

(emphasis supplied)

The aforesaid judgment was though followed by the Supreme Court of Pakistan in “Province of Punjab Vs. Ahmad Hussain” (**2013 SCMR 1547**) *supra*, however, the “daily wagers” were not directed to be regularized rather they were directed to be considered as “permanent employees” under Ordinance of 1968.

10. Recently, in “BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, BAHAWALPUR etc. Versus SHER MUHAMMAD and others” (**PLJ 2022 SC 35**), the matter for regularization of services of the “daily wagers” in Board of Intermediate and Secondary Education, Bahawalpur came up before the Supreme Court, where the daily wagers were not

regularized as “regular employees” rather with consent of the parties, it was held that posts should be advertised and Board of Intermediate & Secondary Education will give maximum of 5% additional marks for their past services as daily wagers. The relevant observations are as follows:-

“3. We have considered the proposal and gone through the record of the case, as well as, the Rules, and are of the view that said posts should be advertised as per the Rules. However, in all fairness to the respondents, they may be given a maximum of five percent additional marks for their past service as daily wagers with the Board, while evaluating their candidature on open merit after public advertisement. We leave it to the Board to decide what percentage within the five percent be granted to various respondents keeping in view their length of service as daily wagers. Let this exercise be undertaken in the next months. The public advertisement for these posts must specify this requirement so that anyone applying for fresh recruitment is aware of this facility being extended to the daily wagers.”

11. The arguments of the petitioners that similarly placed “daily wagers” have been regularized, therefore, they are also entitled for the same relief, has also no basis. More or less in similar situation, same question came up before the Islamabad High Court in “Waseem Riaz and 119 others Versus Ministry of Capital Administration and Development (CADD) through Secretary and another” (**2019 PLC (C.S.) 403**). In said case, the petitioners were appointed on daily wage basis in Pay Scale 16 & 17 without observing the principle of transparency, and in

pursuant to recommendations by the Sub-Committee of the Cabinet, they were conditionally regularized vide Notification dated 08.02.2013 in service i.e. subject to availability of posts. The petitioners sought implementation of the Notification for regularization through Constitutional Petition, however, same was dismissed mainly on the ground that civil servant can only be appointed under the provisions of the Civil Servant Act, 1973 and the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and the department had no power to regularize the petitioners by superseding or overriding the statutory provisions of Act and Rules. It is also held that no discrimination can be claimed in such situation. The relevant part of the order is reproduced hereunder:-

“40. The provisions of the Act of 1973 and the APT Rules have been discussed in detail. A civil servant, therefore, can only be appointed against a permanent post in the manner provided under the relevant law and after following the mandatory requirements which have been prescribed under the Act of 1973 and APT Rules. The Cabinet Sub-Committee was not vested with power or jurisdiction nor could have substituted the role of the Commission under the Act of 1973 and the APT Rules in context of appointments made in pay scales 16 and 17. The approval regarding regularization of the petitioners purportedly granted by the Sub-Committee of Cabinet in its meeting held on 13-12-2012 was ultra vires the Act of 1973 and the APT Rules. Likewise, the Capital Administration and Development Division was not vested with

power or jurisdiction to regularize the petitioners by superseding or overriding the statutory provisions of the Act of 1973 and the APT Rules.

41. Neither the Act of 1973 nor the APT Rules were amended in order to give effect to the policy of regularization. Moreover, the initial appointments of the petitioners on daily wage basis were made in violation of the principles of transparency and thus void. There is no force in the argument that since other similarly placed persons have been regularized, therefore, the petitioners cannot be treated differently. It is settled law that an illegality cannot be made a ground for discrimination nor would give rise to rights being accrued in favour of the petitioners. Reliance is placed on cases titled "Khalid Saeed vs. Shamim Rizvan and others" [2003 SCMR 1505] and "Mst. Mukhtar Begum and others v. Ala-ud-Din and others" [1999 SCMR 914]."

From above case law, it can easily be deduced that enrollment through daily wages, without any prescribed criteria, standards and transparent procedure, cannot be a route to become civil servant or regular employee in Public Sectors, including the Board rather "daily wager" can only be treated as "permanent employee/workman" under the Ordinance of 1968.

12. The legal question that whether the petitioners are entitled to be treated even as "permanent employees/workmen" is still a *sub-judice* matter in Appeal, however, *prima facie* the provisions of the Ordinance of 1968 are applicable to the Board, as admittedly the Government of Punjab, Services & General

Administration Department (Regulations/O&M Wing), vide Notification dated 29.01.2021, applied daily wager Policy in line with the Ordinance of 1968 to various departments as under:-

“3. STATUS OF WORK CHARGED EMPLOYEES, DAILY WAGERS & CONTINGENT PAID STAFF.

- i. *According to Section 2(b) of the Punjab Civil Servants Act, 1974, a person who is employed on work-charged basis, or who is paid from contingencies or who is a worker or workman as defined in the Factories Act, 1924 (XXV of 1934) or the Workmen's Compensation Act, 1923 (VIII of 1923) are excluded from the definition of 'civil servant'. Hence, the status of civil servant is beyond their scope.*
- ii. *In order to regulate the services rendered by existing work-charged and such other employees, their status needs to be clarified. The Hon'ble Supreme Court of Pakistan in its judgment in Civil Petition No.708 of 2013 (2013 SCMR No.1547) has determined the status of work-charged employees. It has been held by the August Supreme Court of Pakistan that services of a daily wage employee shall be governed by the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 and he shall be considered as a permanent workman if he is performing his duties continuously for more than 9 months. Hence, in such cases, where the Labour Courts have passed such direction to regularize the services of the daily wage / work charge employees, they may be declared as 'Permanent Workman' only, in light of Punjab Industrial & Commercial Employment Standing (Orders) Ordinance 1968.”*

13. Under the aforesaid Policy, the daily wagers are to be treated as permanent workmen as per law settled by the Supreme

Court in “Province of Punjab Vs. Ahmad Hussain” (2013

SCMR 1547) *supra* and the provisions of the Ordinance of 1968.

The impugned appointment orders dated 12.03.2020 of the petitioners as “permanent workmen” subject to Appeal are not only in line with the relevant law but also the aforesaid Policy. It is needless to observe that the aforesaid Policy is not under challenge in this Writ Petition.

14. In view of above discussion, no illegality or infirmity is found in orders dated 12.03.2020, whereby the petitioners were treated as “permanent workmen” and consequently their representation was declined by respondent No.2 through the impugned order. Accordingly, this Writ Petition being meritless is **dismissed**.

**(ABID AZIZ SHEIKH)
JUDGE**

Approved For Reporting

JUDGE

Arsalan