

**IN THE SUPREME COURT OF PAKISTAN**  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE GULZAR AHMED.  
MR. JUSTICE FAISAL ARAB.  
MR. JUSTICE IJAZ UL AHSAN.

**CIVIL PETITIONS NO.606 AND 607 OF 2018**

*(Against the Judgment dated 07.12.2017 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Intra Court Appeals No.181 and 196 of 2012).*

Qazi Munir Ahmed.

...Petitioner(s)  
(in both cases)

**Versus**

Rawalpindi Medical College and  
Allied Hospital through its Principal,  
Rawalpindi and others.

**Respondents** (in CP#606/18)

Province of Punjab through Secretary  
Health Department, Lahore and others.

**Respondents** (in CP#607/18)

For the petitioner:      Sardar Abdul Raziq Khan, ASC.  
Syed Rafaqat Hussain Shah, AOR.  
(in both cases)

For the respondents:    Mian Abdul Rauf, ASC.

Date of Hearing:          06.03.2019.

**ORDER**

**IJAZ UL AHSAN, J.-** Through this order, we propose to decide CPLA Nos.606 and 607 of 2018 as common questions of law are involved and both petitions arise out of the same impugned judgment of the Lahore High Court, Rawalpindi Bench, Rawalpindi.

2.            The petitioner seeks leave to appeal against a judgment of the Lahore High Court, Rawalpindi Bench, Rawalpindi, dated 07.12.2017, through which Intra Court Appeals (ICA Nos.196 & 181 of 2012) filed by the Respondents

were accepted, the judgment dated 30.08.2012 passed by the learned Single Judge in Chambers was set aside and the constitutional petition (*W.P.No.2059 of 2011*) filed by the petitioner was dismissed.

3. The brief facts necessary for disposal of this *lis* are that the petitioner was appointed as an ECG Technician in District Headquarters Hospital, Rawalpindi in 2005 on contract basis. In 2009, his services were terminated. He challenged his termination through a representation which was not decided. He therefore approached the High Court in its constitutional jurisdiction. The High Court ultimately directed the Respondents to decide the petitioner's representation. This was dismissed by the departmental authority on 06.08.2011. The petitioner challenged the said order through Writ Petition No.2059 of 2011, which was allowed, vide order dated 30.08.2012. The Respondents feeling aggrieved challenged the said judgment through two separate Intra Court Appeals. These were allowed, vide impugned judgment dated 07.12.2017. Hence, these petitions.

4. The learned counsel for the petitioner submits that the Division Bench of the High Court fell in error in reversing the findings of the learned Single Judge in a mechanical manner. He further maintains that the ICA filed by the Rawalpindi Medical College ("**RMC**"), which was neither a party to the proceedings in the writ petition nor was directly aggrieved of the order dated 30.08.2012, was not competent.

He further maintains that the ICA filed by the Government of Punjab was barred by time and the learned Division Bench erred in law in entertaining the appeals and ultimately accepting the same.

5. The learned counsel for the Respondents on the other hand has defended the impugned judgment. He has pointed out that even if the appeal filed by the Government of Punjab was barred by time, another appeal filed by RMC was admittedly within time. It is settled law that if two appeals against the same impugned judgment are filed, one of which is within time, the other appeal should also be entertained and decided on merit rather than being dismissed on technical grounds thereby creating legal complications and anomalies.

6. We have heard the learned counsel for the parties and carefully examined the record. There is no denial of the fact that the appeal filed by the RMC was within time. As such, even if the appeal filed by the Government of Punjab was barred by time, the learned Division Bench had legal basis and lawful justification to entertain and decide both appeals on merits. Even otherwise, the order of petitioner's appointment was found to be void. Further, in terms of the law laid down by this Court in the judgment reported as Yousaf Ali v. Muhammad Aslam Zia (PLD 1958 SC 104), no period of limitation runs against a void order.

7. As far as the argument of the learned counsel for the petitioner that RMC could not have filed an appeal, suffice

it to say that any aggrieved person whether or not he was a party in a *lis* has the right to approach an appellate forum. Reference in this regard may usefully be made to H. M. Saya & Co. v. Wazir Ali Industries Ltd (PLD 1969 Supreme Court 65). The learned ASC for the petitioner has not been able to convince us either that the appeal filed by the RMC was not competent or that the same was wrongly entertained and decided by the Division Bench.

8. Adverting to the merits of the case, we find that vide letter dated 22.06.2004, the Principal Secretary to the Chief Minister, Punjab had desired that the case of the petitioner for reemployment be placed before the Reemployment Board for consideration on merit. However, it appears that the Medical Superintendent, DHQ Hospital, Rawalpindi without referring the matter to the Reemployment Board, and on his own accord directly appointed the petitioner on contract basis. Such order was clearly in violation of the aforementioned letter as well as beyond the powers of the said office.

9. We have specifically asked the learned counsel for the petitioner that under what authority of the law the Chief Minister had the power to issue directives regarding reemployment of government servants. He has not been able to provide any legally sustainable response to the same.

10. It also appears that the case of one Rizwana Bibi involving identical questions had been dismissed by a Division

Bench of the High Court. The said matter came up for hearing before this Court in CPLA No.155 of 2010 which was dismissed vide judgment dated 15.02.2010. The points of law involved in the petitioner's case are the same regarding which findings have already been relieved and law laid down in Rizwana Bibi's case. As such, the learned High Court was justified in relying on the same and refusing to grant relief to the petitioner.

11. It is also noticed that the petitioner did not implead the Province of Punjab as a party in the constitutional petition. This was despite the fact that the said Government was a necessary and proper party in the case. In the circumstances, even otherwise, the constitutional petition was not competent and was rightly dismissed by the Division Bench. Reference in this regard may usefully be made to Government of Balochistan v. Mir Tariq Hussain Khan Magsi (2010 SCMR 115).

12. We have also noticed that the dispute between the parties related to contract employment. This Court has in various pronouncements settled the law that a contract employee is debarred from approaching the High Court in its constitutional jurisdiction. The only remedy available to a contract employee is to file a suit for damages alleging breach of contract or failure to extend the contract. Reference in this behalf may be made to Federation of Pakistan v. Muhammad Azam Chattha (2013 SCMR 120), where it has been held that it is a cardinal principle of law that a contract employee cannot

press for reinstatement to serve for the left over period and can at the best claim damages to the extent of unexpired period of his service. Therefore, it was correctly held that the petitioner approached the wrong forum in the first place and the learned Single Judge had exceeded his jurisdiction by interfering in a purely contractual matter.

13. The learned counsel for the petitioner has not been able to show us any legal, procedural or jurisdictional error, defect or flaw in the impugned judgment that may require interference by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973. The impugned judgment of the Division Bench is well reasoned, based on settled principles of law on the subject and the conclusions drawn are duly supported by the record. We are therefore not inclined to grant leave to appeal in this matter.

14. For the foregoing reasons, these petitions being devoid of merits stand dismissed. Leave to appeal is refused.

**JUDGE**

**JUDGE**

**JUDGE**

**ISLAMABAD.**

06.03.2019.

ZR/\*

‘Not Approved For Reporting’