

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

**PRESENT:**

MR. JUSTICE MIAN SAQIB NISAR  
MR. JUSTICE MUSHIR ALAM  
MR. JUSTICE MAQBOOL BAQAR

CIVIL APPEAL NOS.1359 TO 1363 OF 2014

(On appeal from the judgment dated 24.4.2014 of the Peshawar High Court, Abbottabad Bench passed in Writ Petitions No.276-A to 280-A/2014)

Pir Imran Sajid	...in C.A.1359/2014
Muhammad Saeed	...in C.A.1360/2014
Muhammad Sajid Fariq	...in C.A.1361/2014
Khaliq-ur-Rehman	...in C.A.1362/2014
Atif Ali	...in C.A.1363/2014
	<b>...Appellants</b>

## VERSUS

Managing Director/General Manager (Manager Finance),  
Telephone Industries of Pakistan and others

...Respondents  
(in all cases)

For the appellants: Hafiz S. A. Rehman, Sr. ASC  
Syed Rifaqat Hussain Shah, AOR

For the respondents: Mr. Abdul Rehman Qadar, ASC  
Mr. Ahmed Nawaz Ch., AOR

Date of hearing: 18.5.2015

## ORDER

**MAQBOOL BAQAR, J.-** Leave to appeal in the above cases was granted by this Court, inter alia, to “examine whether despite the petitioners having remained in continuous service of the respondents for a period of one decade as contract employees, no vested rights were created in their favour for grant of relief of their regularization as laid down in the case of **Province of Punjab v. Ahmad Hussain** (2013 SCMR 1547).”

2. Relevant facts of the case, in brief, are that appellants in all the above appeals, except in CA No.1360 of 2014, were appointed in

the Telephone Industries of Pakistan ("TIP") in various junior positions, in the year 2003, through due process and pursuant to the advertisements for such vacancies in a national newspaper, whereas the appellant in CA 1360 of 2014 was so appointed in the year 1992. Initially, all the appellants were appointed on a contract for one year, however, such appointment/employment was extended on year to year basis. Admittedly, 'TIP' a private limited company, is wholly owned, controlled, managed, and financed by the federal government.

3. According to the appellants, their repeated requests for regularization did not find favour with the management of the company. Looking to the plight of the appellants and other contract/daily wages employees of TIP and various other ministries/divisions/ attached departments/ autonomous bodies/ organizations etc., a cabinet sub-committee on regularization of such employees, under the directives of the Prime Minister of Pakistan, held a meeting on 21.2.2013, and after considering the recommendations of the Ministry of Information and Technology, under which ministry TIP functions, and after due deliberations, approved the regularization of 773 contract and 109 daily wages employees of TIP, subject to availability of posts and fulfillment of recruitment criteria. Names of the appellants appear at the 9<sup>th</sup> page of the minutes of the meeting, (page 59 of the paper book). A copy of such minutes was forwarded by the Ministry of Information and Technology to the Managing Director TIP, for implementation, through letter dated 6.3.2013. Through Office Memorandum dated 05.6.2013, the said ministry requested the Managing Director TIP for regularization of the aforesaid 882 employees in terms of the decision of the cabinet sub-committee, and also to submit a comprehensive plan for revitalization of TIP as

directed by the Priority Committee. However, MD TIP did not heed to the above and to the repeated requests made by the appellants for their regularization, from time to time. The appellants were thus constrained to file writ petitions before the learned Peshawar High Court. The petitions were, however, dismissed through the impugned order.

4. At the very outset the learned counsel for the respondents submitted that the learned Peshawar High Court has rightly dismissed the petitions for the reasons; firstly that TIP is a private limited company, with no statutory service rules, and secondly that the appellants were contract employees. He, however, conceded that TIP is wholly owned, controlled, managed and financed by the federal government and is performing functions in furtherance of the affairs of the federation.

5. Keeping in view such status of the company, and the "Function Test" as prescribed and applied by a five member Bench of this Court in the case of **Abdul Wahab and others v. HBL and others** (2013 SCMR 1383), authored by one of us (Mian Saqib Nisar, J.), which test/criterion is fully met in the present case, the status of TIP could not prevent the appellants from seeking constitutional remedy as the company clearly falls within the definition of a "person" as envisaged by Article 199 of the Constitution. The learned counsel for the respondents, in support of his second objection i.e. lack of statutory service rules, relied upon the judgment in the case of Fakhr-ur-Islam Qureshi (Civil Appeal No.424 of 2009), authored by one of us (Mian Saqib Nisar, J.), whereby the said appeal was dismissed on the ground that relationship between the appellant, retired employee and TIP is not governed by statutory rules. Such reliance, in our view, is

wholly mis-placed for the reason, that unlike in the present case the appellants therein were seeking pensionary benefits on the basis of pensionary rules, which rules were non-statutory. Whereas in the present case, the appellants are seeking implementation of the directive of the Prime Minister of Pakistan and the decision of the cabinet sub-committee for their regularization sought to be enforced by the relevant ministry.

6. Admittedly, all the appellants have been serving TIP in their respective position since about last more than twelve (12) years, though on contract basis, however, renewal of their contracts on year to year basis since the inception clearly shows that the nature of their jobs/duties is permanent and not casual or temporary, and that the appellants have been performing their functions/duties to the satisfaction of their employer and further that throughout the whole period their services were required, and have remained useful for and beneficial to the organization. There is no allegation of any misconduct or incompetence against the appellants, rather they have been granted increments from time to time. It has also not been, and indeed, in the facts and the circumstances of the case, could not have been, claimed that the posts held by the appellants and the work carried out by them was of a temporary nature. On record, are letters which show that services of some of those employed on temporary/contract basis have been regularized by the TIP from time to time.

7. In the case of Province of Punjab v. Ahmad Hussain (2013 SCMR 1547), cited in the leave granting order in the present case, the respondent/employee (Ahmed Hussain) was working as storekeeper with the PWD Department on work charge basis for more than 14 years, the authority was, however, reluctant to regularize his services,

though some of his colleagues were regularized, this Court, whilst referring to the judgments in the cases of Province of Punjab v. Gul Hassan (1992 PLC 924), Punjab Seed Corporation v. Punjab Labour Appellate Tribunal (1996 SCMR 1947), Executive Engineer v. Abdul Aziz (PLD 1996 SC 610) and Secretary, Irrigation and Power Department Government of Punjab v. Mohammad Akhtar (2009 SCMR 320), was pleased to uphold the judgment of the learned Lahore High Court, whereby an order of a single bench for regularization of the services of the employee (Ahmed Hussain) was upheld. The relevant portion of which judgment may be beneficial and is reproduced hereunder:-

*"(6) The job of respondent was that of storekeeper. The respondent keeps on keeping the store which has not ceased to exist. The job of a Storekeeper, Plumber, Electrician, Carpenter and Sweeper etc. are permanent jobs by their nature. These services as long the Punjab House at Islamabad exists, are needed by the department and the occupiers of the premises. These services are not to be performed for a day or a couple of days and then to be dispensed with. These services are needed as long the building department exists. It can safely be said that the nature of the jobs is permanent. The respondent employed in the year 1998 and fellow employees having been employed from almost the same time, have been performing their respective duties incessantly. These posts and the duties can by no stretch of imagination be taken to be of temporary nature. The length of the respondent's service indicates and hints at the permanence of the posts. Even the work charge, casual and daily-wages workers, on account of the long continuation in service earn a presumption of regular need of their service obliging the authority to consider with a positive mind the necessity of the regularization of their service. It was so held by the august Supreme Court of Pakistan in (1996 SCMR 1947). The Federal Service Tribunal in Appeal No. 529(L)(C.S/2004) held that those continuously in service for more than 90 days in a Calendar year had attained the status of permanent workman by operation of the West Pakistan Standing Orders Ordinance, 1968, this decision was upheld by the Hon'ble Supreme Court of Pakistan in C.P. No. 1862-L of 2005. The impugned judgment passed by the learned Single Judge of this Court is in consonance with law. This appeal has no merit. It is hereby dismissed."*

8. In addition to the benefit of the above dictum, we may observe here that TIP's *non*-compliance, rather defiance of the decision of the cabinet sub-committee to regularize the services of the appellants, and not heeding to the directive of their Ministry to comply with said decision, compliance whereof is being sought by the appellants, is wholly illegal and malafide. Even otherwise, since as noted earlier, the retention of the appellants by TIP for a period of more than 12 years and repeated renewal of their contracts of employment, clearly show that the posts/positions held by the appellants were/are of permanent nature which were essentially required by TIP for its functioning and that repeated renewal of the appellants' contracts and the increments granted to them show also, that the appellants have been discharging their duties to the satisfaction of their employer and therefore, employing/retaining the appellants on contract, instead on permanent basis was/is wholly malafide, whimsical and unfair. Such practice/conduct has also been deprecated through judicial pronouncements. The appellants have rendered prime time of their life in serving TIP and in the process may now have become overage for any other suitable employment.

9. It is now well established that right to life as envisaged by Article 9 of the Constitution, includes the right to livelihood and as laid down in the case of Abdul Wahab (*supra*), the "right to livelihood, therefore, cannot hang on to the fancies of individuals in authority." Certainly, as has further been held in the said judgment; "it shall unmistakably be permissible that the employment of an employee can be brought to an end, but obviously in accordance with law", whereas in the present case, and as observed earlier, there was/is no justification for not making their employment permanent, and for

keeping their entire career, rather livelihood exposed and susceptible to the whims of the authorities, which also hurts the dignity of the appellants.

10. Indeed the service/employment rules of TIP are non statutory, but such does not prevent the appellants from seeking implementation of the decision/order of the Federal Government/ ministry for their regularization.

11. It hardly needs to be emphasized that the whole edifice of governance of the society has its genesis in the Constitution and laws aimed at to establish an order, inter alia, ensuring the provisions of socio-economic justice, so that the people may have guarantee and sense of being treated in accordance with law that they are not being deprived of their due rights. Provision of Article 4 embodies the concept of equality before law and equal protection of law and save citizens from arbitrary/discriminatory law and actions by the Governmental authorities. Article 5(2) commands that every body is bound to obey the command of the constitution<sup>1</sup>. Every public functionary is supposed to function in good faith, honestly and within the precincts of its power so that persons concerned should be treated in accordance with law as guaranteed by Article 4 of the Constitution. It would include principles of natural justice, procedural fairness and procedural propriety<sup>2</sup>. The action which is malafide or colourable is not regarded as action in accordance with law. While discharging official functions, efforts should be made to ensure that no one is prevented from earning his livelihood because of unfair and discriminatory act on their part.

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<sup>1</sup> PLJ 2007 SC 32

<sup>2</sup> PLD 1999 SC 1026

12. It is now well laid down that the object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but objective can be achieved by following the rules of justness, fairness, and openness in consonance with the command of the Constitution enshrined in different articles including Articles 4 and 25. The obligation to act fairly on the part of the administrative authority has been evolved to ensure the rule of law and to prevent failure of the justice.

13. Looking through the above constitutional prism and keeping in view the facts that the federal government which owns, controls, manages and finances TIP has directed TIP to regularize the appellants, and that admittedly the appellants have initially been appointed in an open and transparent manner and after the vacancies were advertised in the newspapers, one cannot escape the conclusion that the appellants ought to have been regularized.

14. The appeals are, therefore, allowed. The services of the appellants be regularized from the date of decision of the Cabinet Sub-Committee for Regularization.

JUDGE

JUDGE

JUDGE

**Islamabad, the**  
18<sup>th</sup> May 2015

**APPROVED FOR REPORTING**  
Aamir Sh./