

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

WRIT PETITION NO.1863/2013

ABDUL RAHEEM

Vs.

GOVT. OF PAKISTAN & ANOTHER,

PETITIONER BY:

Hafiz S.A. Rehman, ASC, Muhammad Anwar Mughal, M/s Muhammad Shoaib Shaheen, Umair Baloch, Abdul Rehman Siddiqui, Ch Asghar Ali, Tariq Mehmood Jehangiri, Mohsin Bhatti, Syed Mumtaz Mazhar Naqvi, S.A. Mateen, Naseem Hussain, Nabeel Rehman, Mr Sajjad A. Satti, Anar Khan Gondal, Barrister Humayun Nawaz Khan, Syed Tassawar Hussain Shah, Mohammad Amin Farooqi, Abdul Rahim Bhatti and Atta ur Rehman, Mian Muhammad Zafar Iqbal, Fiaz Ahmed A. Jandran, Ch. Asghar Ali & Ms. Neeli Khan, Mian Muhammad Faisal Irfan, Noman A. Farooqi and Naseem Hussain, Advocates for petitioners in their respective petitions.

RESPONDENTS BY:

M/s Fazal-ur-Rehman Khan Niazi, learned DAG and Haseeb Muhammad Chaudhary, standing counsel.

M/s Maqbool Elahi Malik, Salman Maqbool Malik, Sh. Iftikhar Ahmed, Mirza M. Ansar, Mr. Sajjad A. Satti, Hafiz Naeem, Rehan Moin, Muhammad Idrees Ch, Rehan Seerat, Advocates for respondents in their respective petitions.

M/s Tahir Mehmood Abbasi and Muhammad Umar Sohaib Pirzada for applicant in C.M. No.1735/14 in W.P. No. 1863/2013

M/s Masood Akhtar Ch. J.S (Admn), Shahid Dayo, D.S (Admn).

Mr. Mohtasimbillah Rana, Section Officer and Syed Zeeshan Raza Zaidi, S.O Estt. Division.

Mr. Muhammad Miraj Khan, S.O, Law, CADD,

Mr. Zahoor Ahmad Arain, Assistant, /o Finance.

Mr Amir Ali, Dy. Asst. Director, FGEHF

Mr Muhammad Arshad Anjum, A.D. Legal, FDE

M/s Muhammad Imran, DD Law NHA.

Mr. Ahsan Amin (A.D) PHA Foundation.

Mr. Haroon Rashid, Assistant Director, FPSC.

Mr Muhammad Abdullah, Asst. Director (Legal Affairs) & Khalid Hussain Jamali M/o Foreign Affairs.

DATE OF SHORT ORDER: 29.05.2014

DATE OF DETAILED JUDGMENT: 10.07.2014

SHAUKAT AZIZ SIDDIQUI; J. Through short order dated 29.05.2014 Writ Petition Nos. **1863, 2260, 2628, 2527, 2559, 2735, 2815, 3111, 3181, 3443, 4013, 4017, 4213, 4381 of 2013, 2321 of 2011 and 2462, 2563 of 2014** were disposed of which is reproduced herein below:-

*"For the reasons to be recorded later on, the **Writ Petition Nos.1863, 2260, 2628, 2527, 2559, 2735, 2815, 3111, 3181, 3443, 4013, 4017, 4213, 4381 of 2013, 2321 of 2011 and 2462, 2563 of 2014** are being disposed of together with the declaration that Cabinet Sub Committee is not mandated under the law and constitution to regularize the services of employees inducted in the Government, Semi-Government departments as well as statutory bodies and to assume the role of appointing/competent authority. The Cabinet for that matter cannot evolve a procedure, introduce any policy, and adopt a mechanism which is in direct violation of statutory law, Constitution of Islamic Republic of Pakistan and principle of natural justice, fair play and transparency. The Cabinet Sub-Committee cannot take any decision which may result into demotion of rule of law and negation of merit to be prevailed in the Country. The question of regularization of employees was outside the domain of the Cabinet Sub-Committee as the persons brought to the different departments through back door, dubious procedure, formula based on nepotism, favouritism, malafide and aimed to achieve the political designs have been shielded. It is an admitted fact that in most of the cases even the prescribed procedure was not followed and no competitive process was evolved.*

2. *While seeking guidance from the latest judgment of the Hon'ble Supreme Court of Pakistan, passed in Constitution Petition No.06/2011 titled as 'Syed Mubashar Raza Jafri Vs. Employees Old Age Benefit Institute, this court hereby held that all the persons whose services have been regularized as a result of decision of Cabinet Sub-Committee is of no legal effect, void-ab-initio and non-existence.*

3. *The competent authorities of the respective departments are directed to take decision with regard to regularization of those employees who fulfilled the prescribed qualification and entered the organization/department as a result of competitive process against the vacant sanctioned posts. Rest of the appointments have no legal sanctity, therefore, fate of their future may be decided in accordance with the judgment passed by the Hon'ble Supreme Court of Pakistan referred above and instant judgment."*

2. By this detail Judgment all the above mentioned Writ Petitions are being disposed of together as these involve similar questions of law and facts arising out of directives issued by the Cabinet Sub Committee for regularization of services of daily wages/contract employees of the Federal Government and its autonomous bodies/corporation, etc. having one year length of service up to the age limit of 50 years. Petitioners in writ petition No.2260/2013, writ petition No.3111/2013 as well as writ petition No.4213/2013 have called into questions the power and authority of

the Cabinet Sub Committee to issue such like directive as well as the appointments made in pursuance thereto and Petitioners in all other petitions have somewhat prayed for regularization of their services at the touch stone of the said directive.

3. Petitioner Nawab Ali had initially filed Const. Petition No.86/2011 before the Honourable Supreme Court of Pakistan which was remitted to this Court vide order dated 22.05.2013 for its disposal while treating it as Writ Petition. For convenience the said order is reproduced as hereunder:

“After hearing learned Counsel for the parties, the following order is passed with consent:-

- a) The petitions along with CMAs shall be sent to the Islamabad High Court and will be treated as writ petitions pending before the said Court.*
- b) The parties have been served and are represented before us; they are directed to appear before the Registrar of the Islamabad High Court on 29.05.2013 whereafter the Registrar, Islamabad High Court shall bring the matter to the attention of Honorable the Chief Justice for adjudication of these petitions.*

Since matters of importance relating to employment opportunities and the burden on the State Exchequer are involved, we are hopeful that the Islamabad High Court shall decide these petitions expeditiously and if possible within three months before the questions arising in these petitions prima-facie appear to be simple and straightforward.”

4. Petitioner Nos. 2 to 11 and Respondent Nos. 5 to 21 in Writ Petition No.1863/2013 were impleaded on their own applications; the amended memo of parties was submitted by the petitioner No. 1 accordingly. The respondents were directed to file their report and parawise comments. The concise statement filed by the respondent No. 4 before the Honourable apex Court was treated as such.

In the meanwhile, the rest of the petitions mentioned hereinabove were also entrusted to this Court, wherein all the respondents were afforded full opportunity to advance their point of view through the report, parawise comments and arguments.

5. Learned Counsel for the Petitioner in WP No. 2260/2013 Mr. Abdur Rehman Siddiqui, Advocate has contended that since the impugned

appointments/regularizations have been made only in pursuance of the aforesaid directive issued by the Cabinet Sub Committee, without adhering to the legal process and prescribed manner as required under Section 5 of the Civil Servants Act, 1973 read with the provisions contained under the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, the Federal Public Service Commission Ordinance, 1977, FPSC (Functions) Rules, 1978 as well as the statutes and rules of the Corporations and Autonomous Bodies where under the said manner has been prescribed.

Learned Counsel further argued that the impugned directive as well as the regularization orders are hit by Article 18 read with Articles 4, 9 & 25 of the Constitution of Islamic Republic of Pakistan (hereinafter referred to as the Constitution). As per the learned counsel, the said appointments being politically motivated and without the due process of law are liable to be set aside in view of case law reported as PLD 1995 SC 530, 1995 SCMR 999, 2002 SCMR 1124, 2007 PLC(CS) 849, 1993 SCMR 1284, NLR 1994 (Services) 1, 1996 SCMR 1349, 2000 SCMR 1720, 2004 PLC (CS) 1235 and PLD 2012 SC 132 and the very latest judgment of the Supreme Court of Pakistan dated 17.03.2014 in Const. Petition No.6/2011 (EOBI case).

6. Learned counsel of the rest of the petitioners in WP No.2260/2013 namely Muhammad Anwar Mughal, Advocate an associate of Hafiz S.A. Rehman, Advocate and Mian Bilal Bashir while adopting the arguments of Mr. Abdur Rehman Siddiqui, Advocate have added that even the NHA employees who were ordered to be regularized without sanctioned posts were not paid from the regular budget which is also illegal and unlawful and the same deserve to be reversed.

7. Mr. Tariq Mehmood Jehangiri, Advocate for the Petitioners in WP No. 4213/2013 has also adopted the aforesaid arguments. He further added that NHA had to shift the development budget meant for construction of roads in order to pay the salaries of the aforesaid employees who are working against the posts which are not sanctioned so far. He further submitted that the NHA Chairman time and again has requested the Finance Division to allocate special budget for payment of their salaries but no response has so far been received

there from, which means that Federation is not concurring the sanction of the said posts, thus the services of the said employees are liable to be terminated.

8. On the other hand, Mr. Maqbool Elahi Malik, Advocate, Raja Aamir Abbas, Advocate, Sheikh Iftikhar Ahmad, Advocate as well as Raja Muhammad Asghar, Advocate have contested the above mentioned writ petitions on behalf of the Respondent employees and that of NHA respectively. They have argued that the Petitioner has no locus standi to assail the directive of the Cabinet Sub Committee which enjoys the Executive Authority of the country. They also attached the appointment of some of the Petitioners whose initial appointment was also tainted with legal flaws. Learned Counsel added that, by virtue of the said directive, legal rights have stood created in favour of the respondent employees. It is settled principle of law that if an order has taken legal effect, the same cannot be reversed or withdrawn to the disadvantage of the employees. It has been further submitted that the NHA authorities were legally obliged to obey the said directive issued by the Cabinet Sub Committee. The Writ Petitions are, therefore, liable to be dismissed being devoid of merits.

9. The remaining writ petitions pertain to the employees of Education department who have either been regularized and are seeking benefits on the basis of said regularization or those who have prayed for regularization of their services being placed in similar circumstances. On behalf of the said petitioners, Mr. Fayyaz Ahmad Jandran, Advocate appearing in WP No.3443/2013, submitted that since services of the Petitioners have been regularized vide notifications dated 08.02.2013 & 18.02.2013, hence they are entitled to assume their respective duties and payment of salaries accordingly. Mr. Muhammad Shoaib Shaheen on behalf of private respondents in WP No. 3111/2013, etc. contended that since services of their colleagues have been regularized vide judgment of this Court dated 24.09.2012 in WP No.2014/2012 with subsequent direction in Crl. Org. No. 259/2012, hence they are entitled to the similar relief in view of 1996 SCMR 1185, 2005 SCMR 100, 2010 SCMR 739, 2002 SCMR 71, 2002 SCMR 82 and PLD 2003 SC 724. The other learned counsel of the petitioners who are seeking similar relief have advanced their point of view on similar grounds.

10. I have heard the arguments of both the sides and perused the record. The issues involved in all the petitions revolve around regularization of the services of contract/daily wages employees as per directive issued by the Cabinet Sub Committee. Therefore, primary question needs to be addressed is that **under which authority of law, the Cabinet Sub Committee was justified to pass such like directive.** For determining the said question, Article 90 of the Constitution required to be referred whereby it has been provided that executive authority of the federation shall be exercised in the name of the President by the Federal Government, which includes the Prime Minister and Federal Ministers but the said authority has to be exercised subject to the Constitution. It means that whenever the authority is exercised, it has to be within the limits prescribed by the Constitution. Article 90 of the Constitution is reproduced here under:-

The Federal Government.—(1) Subject to the Constitution, the executive authority of the Federation shall be exercised in the name of the President by the Federal Government, consisting of the Prime Minister and the Federal Ministers, which shall act through the Prime Minister, who shall be the chief executive of the Federation.

(2) In the performance of his functions under the Constitution, the prime Minister may act either directly or through the Federal Ministers.

Cabinet is component of the Federal Ministers and Advisers which are appointed under Article 91 of the Constitution which reads as under:-

“91..The Cabinet.—(1) There shall be a Cabinet of Ministers, with the Prime Minister at its head, to aid and advise the President in the exercise of his functions.”

Under Article 99(2) of the Constitution, Federal Government is obliged to specify the manner by rules in which orders and other instruments are to be made and executed which is reproduced as under:-

“99. Conduct of business of Federal Government.—(2) The (Federal Government) shall by rules specify the manner in which orders and other instruments made and executed (in the name of the President) shall be authenticated, and the validity of any order or instrument so authenticated, and the validity of any order or instrument so authenticated shall not be questioned in any court on the ground that it was not made or executed by the President.”

It is abundantly clear from the above constitutional provisions that neither the Prime Minister nor the members of the Federal Cabinet are permitted to perform their functions beyond the legal provisions i.e.

Constitution, Statutory Law & the Rules. Needless to mention that there is an old adage of jurisprudence that "Nobody is above the law". That is why the Rules of Business 1973 were duly framed so as to conduct the business of the Federal Government. Under the said rules, although there is a concept of Cabinet Sub Committees on different subjects yet there is no such like provision regarding intervention of the Cabinet Sub Committee regarding governing the terms and conditions of the services of the employees. However, Cabinet Sub Committee can recommend any reformation in the services structure which can be approved by the Cabinet squarely in accordance with law and the Constitution.

11. The learned counsel for the Petitioners have rightly pointed out that appointments in the civil service has to be made in prescribed manner as required under Section 5 of the Civil Servants Act, 1973 read with the provisions contained under the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, the Federal Public Service Commission Ordinance, 1977, FPSC (Functions) Rules, 1978. For reference Section 5 of the Civil Servants Act, 1973 is reproduced as under:-

"5. Appointments.- *Appointments to an All Pakistan Service or to a civil service of the Federation or to a civil post in connection with the affairs of the Federation, including any civil post connected with defence, shall be made in the prescribed manner by the President or by a person authorized by the President in this behalf.*

Similarly, the procedure for appointments in corporations/autonomous bodies has been prescribed under their relevant statutes and rules. For instance, in the case of NHA, the said manner has been provided under Sections 13 & 14 of the National Highway Authority Act, 1991 read with Rule No. 12 & 13 of the NHA Employees Service Rules, 1995, further read with Rule Nos. 3, 4, 5 & 6 of Chapter-1, Rule Nos. 1 & 2 of the Chapter-3 read with the items contained under Schedule-IV of the NHA Employees (Appointment & Promotion) Rules, 1995. For reference sections 13 and 14 of the National Highway Authority Act, 1991 are reproduced hereunder:-

"13. Appointment of officers, servants, etc.---

(1) the authority may from time to time employ such officers and servants, or appoint such experts or consultants, as it may consider necessary for the performance of its functions, on such terms and conditions as it may deem fit.

(2) *Notwithstanding anything contained in sub-section (1), any rules made, or orders or instructions issued, by the Authority, or in the terms and conditions of service of any person employed by or serving under the Authority, the Authority may at any time terminate the services of any person, after giving him not less than sixty days notice or pay for the period by which such notice falls short of sixty days.*

(3) *Service under the Authority is hereby declared to be service of Pakistan and every person holding a post under the Authority, not being a person who is on deputation to the Authority from any Province, shall be deemed to be a civil servant for the purposes of the Service Tribunals Act, 1973.*

“14. Recruitment and conditions of service.”— *The Authority shall, with the approval of the Council, prescribe the procedure for appointment and terms and conditions of service of its officers and servants.*

12. In both the cases, the said prescribed manner includes; issuance of proclamation in the national press so as to afford equal access to the citizens of Pakistan as per Article 18 read with Articles 4, 9 & 25 of the Constitution; determination of merit by adjudging qualification, experience, age limit, eligibility, suitability, physical fitness and prescribed quota through FPSC/Departmental Selection Board/ Departmental Selection Committee etc. Admittedly the said process has utterly been deviated from, rather it will be justified to say that by virtue of the directive so issued by the Cabinet Sub Committee, all the aforesaid legal provisions and Articles of the Constitution have stood held in abeyance. Thus, the said appointments/regularizations are void, ab initio as the Cabinet Sub Committee was neither empowered to issue such like directives nor the said directive was binding upon the respective competent authorities. It has rightly been argued that the said appointments/regularizations are tainted with political motive which is evident from the meeting of the Cabinet Committee dated 13.09.2011 wherein a political leader of Pakistan People's Party namely Ch. Manzoor Ahmad, Chairman, Peoples Labour Bureau/Member of Central Executive Committee (CEC) of PPP was also in attendance despite the fact that he was not a member of the Cabinet. As per the learned counsel the then political regime at first instance engaged their favorites on contract basis in different departments of the Federal Government/ Autonomous bodies and Corporations and adopted a novel procedure for regularization of their services, thus they are inducted through back door channel instead of laid down procedure.

13. Admittedly to safeguard fundamental rights of the citizen and to maintain transparency in appointments against the posts under the Federal Government as well as in the public sector organizations/ autonomous bodies/corporations, the Parliament to the best of its collective wisdom, has guaranteed the certain measures which everybody is obliged to observe. It goes without saying that for appointments in the Civil Service of the Federal Government against the post of BPS-16 and above, duty has been assigned to FPSC and the posts BPS-1 to 15 have to be filled through Departmental Selection Committee of the concerned Ministries and Divisions. The competent authority for appointments as such for BPS-1 to 19 is the Secretary of a Ministry or Division and for BPS-20 and above, the said authority vests in the Prime Minister of Pakistan. In this hierarchy, a Minister has no role whatsoever. Similarly, the appointments in autonomous bodies/corporations are to be made through their concerned Board/Selection Committee by adopting the procedure prescribed by their statutes and service regulations respectively. In this regard, neither any Secretary of a Ministry nor any Minister or even the Prime Minister of Pakistan has any role whatsoever, except in appointments of the Heads/Chief Executive Officers or Members of Board of Governors/Directors, etc.

14. Keeping in view the aforesaid legal position, a Minister/MNA whosoever has been deliberately kept away from the said appointments so as to avoid any political influence. It will be worthwhile to note that almost every Division has been attached with a Ministry except the Establishment Division which regulates the services of the Civil Servants that is why there is no concept of Cabinet Sub Committee to regulate the said services in any manner whatsoever. Instead, the Honourable Apex Court time and again has been pleased to specifically declare that Ministers or MNAs etc. have no role in the service structure and any order passed under influence of the Minister or MNA was always set aside having been treated as politically motivated. It is also matter of record that the Honourable Supreme Court of Pakistan has been consistently directing the bureaucracy not to obey such like illegal orders passed by the Minister/MNAs, reference in this behalf is made to PLD 1995 SC 530 titled *Zahid Akhtar Vs. Govt. of Punjab etc.*, 1995 SCMR 999, *Abdul Rashid Vs. Riaz-ud-Din & others*, 2002 SCMR 1124, *Syed Sikandar Ali Shah Vs. Auditor*

General of Pakistan & another & 2007 PLC(CS) 849, Secretary Education NWFP, Peshawar & two others Vs. Mustameer Khan & another.

15. Moreover, the Honourable Supreme Court of Pakistan vide its famous judgment dated 17.03.2014 in Const. Petition No.6/2011, etc. titled as Syed Mubashir Raza Jaffery Vs. EOBI, etc. declared that Cabinet Sub Committee had no authority or power to issue a directive for regularization of services of the Contractual/Daily Wages Employees. The operative part of the same is reproduced as under:-

"27. As a sequel of above discussion, both these petitions are allowed and disposed of in the following terms:-

- (a) All the illegal appointments, deputations and absorptions made in the EOBI, as detailed in the report of fact finding committee on recruitment/appointment, are declared to be without lawful authority and of no legal effect. Accordingly their services stand terminated forthwith;*
- (b) All these vacancies and other available vacancies in EOBI shall be advertised and filled afresh strictly in accordance with applicable rules and regulations, subject to prescribed quota, requisite qualifications and merit criteria, for which the Chairman, EOBI shall be personally responsible to ensure transparency;*
- (c) The matter regarding all the illegal appointments, including the appointment of Raja Azeem ul Haq Minhas in the World Bank, shall be investigated by the NAB authorities; the respondents Nos.3 to 7 and all others directly or indirectly involved in the process of such illegal appointments on the basis of corruption, nepotism and political exigencies shall be proceeded against in accordance with law with intimation regarding compliance of these direction to this Court within two months.*
- (d) Office shall prepare and maintain a separate file for initiating contempt proceedings, under Article 204 of the Constitution and other enablaign provisions of contempt laws, against all those who are, prima facie, found guilty of violation or forder dated 21.01.2011 in H.R.C No.48012-P of 2010, particularly in the process of appointment of 238 employees/officials during the period September 2011 to May 2012.*

Above said judgment being a judgment-in-rem is also attracted on the case in hand and this Court is obliged to obey the same while deciding the instant case. According to informations placed before the Court, Petition seeking review of Judgment in EOBI case also dismissed by the august Supreme Court. Similarly, the Honourable Supreme Court of Pakistan vide numerous judgments has always been pleased to declare any appointment made without adopting the due process of law to be void, ab-initio, illegal and

without lawful authority, in this regard reliance is being placed on 1993 SCMR 1284, NLR 1994 (Services) 1, 1996 SCMR 1349, Abdul Jabbar Memon's case, 2000 SCMR 1720, Capt. Retd. Muhammad Naseem Hijazi Vs. Province of Punjab etc. 2004 PLC (CS) 1235, Muhammad Mazhar Alam Vs. Director Land Record, Board of Revenue Punjab, Lahore & 05 others and PLD 2012 SC 132, Muhammad Yasin Vs. Federation of Pakistan, etc. Thus, it can safely be held that all the appointments/regularizations under challenge made by National Highway Authority and education department are hit by the aforesaid constitutional/legal provisions as well as on the touchstone of the legal principles settled by the Apex Court in the aforesaid judgments. It is a matter of great concern that even the directive was issued by the Cabinet Sub Committee for regularization of more than one thousand NHA officers and employees without having sanctioned posts and in utter disregard of the legal consequences. If the said directive of the Cabinet Sub Committee and the appointments/regularizations so made are allowed to sustain that will not only tantamount to usurpation of powers of the relevant authorities but will also be snatching away the guaranteed fundamental rights from the citizen of Pakistan which otherwise cannot be abridged even by an act of Parliament. Therefore, as enshrined under Article 8 of the Constitution. The Cabinet Sub Committee being answerable to the Parliament cannot adopt a course which does not fall even within the purview of the Parliament itself.

16. In compliance of the order of this court passed on 15.07.2013, Mr. Muhammad Rafique Tahir, Joint Education Advisor, M/o Capital Administration & Development, Islamabad filed a comprehensive report with regard to recruitments made in the Education Department in the last three years in all scales. The conclusive part of the said report is reproduced here under:-

"7. Overall Data of Employees Engaged/Regularized/recommended for regularization by the Cabinet Sub-Committee on Regularization.

i. Overall 2448 employees (341 contract + 2507 daily wages) including 1779 teaching and 1069 non-teaching employees have been engaged by different attached department/subordinate offices under Education Wing of Capital Administration & Development Division, Islamabad.

- ii. *Out of total 2848 employee, 719 employees have been regularized and adjusted against posts, while, 1106 employees have been regularized subject to availability of posts and yet to be adjusted.*
- iii. *1023 employees (contract + daily wages) are still working in different institutions but are not regularized by the Cabinet Sub-Committee on Regularization due to non-fulfillment of criteria for regularization i.e (01 year contract period and 03 spell of 89 days as daily wager at the time of regularization).*

Observations:

- i. *The above regularization has been made in violation of the Supreme Court's judgment in Constitutional Petition No.42 of 2007 dated 04.02.2011, Section 11(B) of Civil Servant Act, 1973 and Rule 5 of FPSC (Functions) Rules, 1978.*
- ii. *The daily wages employees were appointed as stop gape arrangement by incompetent authority against non-existing, (non-sanctioned) posts out of student funds without designation and pay scale. Neither competitive process was adopted nor provincial/regional quota observed. No merit was observed in appointment of Contract and engagement of Daily Wages employees. Moreover, faculties on voluntary basis have also got regularized whose testimonials were neither scrutinized nor they were formally engaged.*
- iii. *The procedure regarding appointment on contract and then further extension was not made as per laid down procedure. The extension in most of cases was made contrary to rules and without consent of FPSC. In some cases the contract employees got stay order from courts and then remained on contract services beyond two years.*
- iv. *In some cases, the sanctioned posts were referred to FPSC for regular recruitment and the process was in the final stage when the contract employees working against the posts were regularized by the Cabinet Sub-Committee, withdrawing the cases from FPSC.*
- v. *No record regarding withdrawal/suspension of FPSC authority for recruitment in BS-16 and above by the competent forum/authority i.e Parliament and authorizing the Cabinet Sub-committee is available .*
- vi. *The project employees were regularized contrary to the declared policy of regularization.*
- vii. *Posts are not available for adjustment of employees regularized subject to availability of posts.*
- viii. *The Cabinet Sub-committee for regularization is disbanded and the policy for regularization is not in practice.*

Similarly the letter dated 05th Sept. 2013 written by Director Recruitment NHA to the SO (Roads-I) Ministry of Communications, Government of Pakistan, Islamabad placed on record regarding illegal appointment and regularization in National Highway Authority during previous five years is of great significance which is reproduced as under:-

NATIONAL HIGHWAY AUTHORITY
(Recruitment Section)

27-Mauve Area, G-9/1,

No.1 (17)/Admn ®/NHA/13/506

Islamabad, the 05th Sept. 2013

Mr. Asghar Ali,
Section Officer (Roads-I),
Ministry of Communications,
Government of Pakistan,
Islamabad.

Subject: **ILLEGAL APPOINTMENT AND REGULARIZATION IN NATIONAL HIGHWAY AUTHORITY IN PREVIOUS FIVE YEARS.**

Reference Ministry of Communications letter No.7F.No.10(3)11 Roads dated 1st. August 2013 on the subject noted above.

2. It is apprised that the views/comments on the application of Mian Bilal Bashir Advocate Supreme Court of Pakistan are as under:-

- i) **The existing regular strength of NHA is 1735 posts, out of which 1195 x posts are filled.** Moreover, 11 x deputationists are posted against regular posts.
- ii) NHA appointed 997 x contract employees against PC-1 strength, 81 x other employees were also appointed on contract basis against temporary created posts of Trauma Centers on Motorways for five years. Contract employees become to 1078 out of which services of 1060 x employees (979 x contract employees appointed against PC-1 strength and 81 x employees of Trauma Centers) have been regularized on the recommendations of Cabinet Sub Committee. Whereas, 18 x contract employees of PC-1 strength are still working on contract basis.
- iii) 994 x employees were also appointed by NHA against PC-1 posts on daily wage basis and regularized on the recommendations of Cabinet Sub Committee. Out of which 24 x employees of this category have left their job and 970 x employees are still working in NHA.
- iv) 7 x employees of BS-1 who were initially appointed in NHA on regular basis were declared surplus in 2001 due to Rightsizing of NHA on the direction of Chief Executive of Pakistan. The said employees were adjusted against PC-1 posts for the purpose of pay and allowances till the availability of regular posts. All these 7 x employees are still working in NHA and drawing salary against PC-1 posts.
- v) 19 x Ex-NTC employees appointed afresh on regular basis in HHA on the orders of Honourable Islamabad High court, Islamabad against supernumerary posts created by NHA Executive Board are working in NHA.
- vi) 419 x ex-sached contract employees re-instated and regularized under Sacked Employees Re-instatement Act 2010 are also working in NHA against supernumerary posts created by NHA Executive Board.
- vii) **Till 29.08.2013, 3670 employees are serving in NHA on regular basis as per detail given above.**
- viii) A case for creation of regular posts by the NHA Executive board for adjustment of all such contract/daily wage employees whose services

have been regularized has been processed. However, the case has been pending due to status quo order passed by the Honourable Lahore High Court Lahore in Writ Petition No.5242 of 2013 titled "Amir Haider etc. Vs. GM NHA Lahore and others".

3. ***It is admitted fact that during the last five years all appointments on contract/daily wage basis were made in NHA without conducting written test.***

4. *This issues with the approval of Member (Admn) NHA, please.*

(Asghar Ali Sarhadi)
Director (Recruitment)

CC.

- SO to Chairman NHA.
- PA to Member (Admn) NHA.

As is evident from the observations recorded by the Joint Education Advisor and contents of letter by Director Recruitment NHA, thousands of employees brought to set ups without due process, rather through highly questionable mode. To my mind big number brought more serious consequences; therefore, same cannot be allowed to remain intact on the ground that large number of employees may affect adversely.

17. It is well settled law that principles of good governance demand that if a particular thing is prescribed to be done in a particular manner, the same has to be done in that manner and not otherwise. It is in this view of the matter that in order to uphold and maintain the rule of law in the country, the Honourable Supreme Court of Pakistan in the recent years has not only delivered the landmark and celebrated judgments on the subject but it has also laid down the golden principles to be followed for the times to come. In this behalf, the reliance is placed on judgments cited as PLD 2009 Supreme Court 789, Sindh High Court Bar Association, etc. Vs. Federation of Pakistan, etc. PLD 2009 SC 789 & 879, Dr. Mobashir Hassan Vs. Federation of Pakistan, etc. PLD 2010 SC 1, Shahid Orakzai, etc. Vs. Pakistan, PLD 2011 SC 365, Muhammad Yasin Vs. Chairman OGRA, PLD 2012 SC 132, Mir Muhammad Idrees, etc. FOP, etc., PLD 2011 SC 213, Hamid Mir, etc. Vs. FOP, etc. PLD 2013 SC 244 and judgment of this court cited as Muhammad Ashfaq Ahmad Vs. Ali Arshad Hakeem, etc. 2013 PLC(CS) 1463. By virtue of the said judgments, the Honourable Apex Court was pleased to remove a good number of Judges of the superior courts who were neither recommended through legal/constitutional process nor their appointments were approved by the constitutional authorities. Even the defunct

Islamabad High Court was abolished/dissolved, having been established without adopting the constitutional process. More so, the statute namely NRO which was hit by the fundamental rights was struck down. Similarly, the appointments of Chairman NAB who was even former Judge of the Honourable Supreme Court of Pakistan, the Chairman OGRA, the President NBP, the Chairman PEMRA and Chairman FBR were rightly declared illegal and having been made without adopting the due process of law.

18. In view of the aforementioned constitutional and legal provisions duly supported by the case law so cited, all the appointments/regularizations having been made pursuant to the directive issued by the Cabinet Sub Committee are void, ab initio, illegal and without lawful authority. It is also settled proposition of law that contract appointments are always subject to the terms set out in the contract itself and they cannot claim regularization as a matter of course as laid down by the Honourable Supreme Court Pakistan in the case of Khawaja Muhammad Asif. Vs. FOP, cited as 2013 SCMR 1205, State Life Insurance Employees Federation of Pakistan Vs. FOP, etc. as well as 1994 SCMR 1341, State Life Insurance Employees Federation of Pakistan Karachi Vs. Federal Govt. of Pakistan & two others. Reliance has also been placed on 2013 SCMR 120, Federation of Pakistan Vs. Muhammad Azam Chattha, 2006 SCMR 1545, Shoukat Babar Virk & others Vs. Syed Amjad Ali Shah & others, 2005 SCMR 642, Govt. of Baluchistan, Department of Health Vs. Dr. Zahida Kakar & 43 others, 1998 SCMR 1930, Agha Saleem Khurshid & another Vs. Federation of Pakistan & others, 2004 PLC (CS) 758, Maj. Rtd. Nisar Ali Vs. Pak Atomic Energy Commission & another & 2005 PLC (CS) 1447, Nadeem Ahmed Vs. Pakistan State Oil Company Ltd. & another.

19. Since the said directive issued by the Cabinet Sub Committee void, ab initio, and without lawful authority, hence the superstructure built thereon has to fall on the ground automatically in view of PLD 1958 SC 104 and perpetual rights cannot be gained on the basis of such like void and illegal directives and for that matter guidance may be sought from the law laid down by the Honourable Supreme Court of Pakistan in the case of Engineer In Chief Branch through Ministry of Defence etc. Vs. Jalaluddin PLD 1992 SC 207, Abdul Haque Indhar, etc. Vs. Province of Sindh, etc. 2000 SCMR 907, Nazir Ahmad

Panhawar Vs. Government of Sindh, 2005 SCMR 1814 and Muhammad Siddique through LRs. Vs. Punjab Service Tribunal 2007 SCMR 318.

20. Contention of the learned counsel for employees who are seeking regularizations or benefits on the basis thereof are, therefore, devoid of any force. They cannot even claim to be treated accordingly having been similarly placed on the touchstone of discrimination or in view of the case law cited by them particularly Hameed Akhtar Niazi's case 1996 SCMR 1185 and so on as no benefit can be claimed on the basis of void orders. The other judgments cited by the learned counsel as 2005 SCMR 100, Ikram Bari & 524 others Vs. National Bank of Pakistan and another, 2010 SCMR 739, Secretary Schools, Govt. of Punjab Education Department & others Vs. Yasmin Bano, 2002 SCMR 71, Abdul Samad & others Vs. Federation of Pakistan & others, 2002 SCMR 82, Engineer Narain Das & another Vs. Federation of Pakistan and others and PLD 2003 SC 724, Managing Director Sui Southern Gas Company Ltd. Karachi Vs. Ghulam Abbass & others are absolutely distinguishable having no nexus with the case in hand. More so, none of the learned counsel appearing from the other side has been able to cite even a single judgment of the Honourable Apex Court or for that matter of a High Court whereby the said question of validity of the directive so issued by the Cabinet Sub Committee was even determined or declared within the four corners of law. As regards, the appointments of the petitioners suffice to say that the said question is not before me as the same has not been called into question in any manner whatsoever. I am not persuaded by the arguments of the learned Counsel for employees, who appointed besides the prescribed procedure and competitive process that employees may be allowed to continue as it is not their fault but the authority that they inducted in a dubious manner. Ultimate beneficiaries are the employees and they were fully aware that their appointments were being made on extraneous considerations and not as per requirement of law. Moreover, to allow such like motivated and polluted act to remain in field and breath would result into reviewing the **"doctrine of necessity"** which as a result of historical struggle has been buried by apex Court for all times to come. During the course of arguments this Court inquired from the learned counsel of employees as to whether services of an employee can be regularized without adopting the due

process of law, they were of the view that neither the said process can be deviated from nor any authority whatsoever including the Cabinet Sub Committee was empowered to make such like recommendations. Nonetheless, it is their case that since services of a good number of employees have been regularized pursuant to the directive so issued by the Cabinet Sub Committee, hence it has created certain rights in favour of the said employees and simultaneously it has caused a discrimination to the remaining employees whose services have not been regularized.

21. Last but not the least, even the competent authorities including the Prime Minister of Pakistan have never even been empowered to relax the laid down procedure and prescribed manner except in a hardship case. So the manner having been adopted for eroding the legal provisions can hardly be subscribed. There is no legal or constitutional provision or any dictum laid down by the Honourable Supreme Court which might have allowed the executive order to override the constitutional, legal and statutory provisions. This country has already suffered so many setbacks. We can see the examples of Steel Mills, Pakistan International Airlines and Pakistan Railways and such like other Institutions which have collapsed only because of having been over burden by over employments. If the appointments against unsanctioned posts without allocation of financial budget are allowed to continue that will amount to support and contribute in breakdown of the said institutions.

These are the reasons of my short order dated 29.05.2014.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

Approved for Reporting.

"Waqar Ahmad"

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