

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP. 2886 — 2012

Aziz Ahmad Malik
Vs

Titled

Federation of Pakistan

(a) Judgment approved for reporting

☒ Yes ☐ No

(b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made.

Yes ☒ No

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).

Jayash
Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

FORM NO.HCJD/C
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

W.P.No. 2886 of 2012

Aziz Ahmed Malik
V;
Federation of Pakistan & another

Petitioner by : Hafiz S.A.Rehman, Advocate for the petitioner.
Respondent No.1 by : Malik Zahoor Akhtar Awan, Standing Counsel.
 Noshad Khan, SO Ministry of Law.
Respondent No.2 by : Mr. M. Jahangir Wains, Advocate

Crl. Org. No.68-W-2013

Aziz Ahmed Malik
Vs.
Akhtar Hussain Zahid & Another

Petitioner by : Hafiz S.A.Rehman, Advocate for the petitioner.
Respondent No.1 by : Mr. M. Jahangir Wains, Advocate
Respondent No.2 by : Malik Zahoor Akhtar Awan, Standing Counsel.
Date of hearing : 27.02.2013.

NOOR-UL-HAQ N. QURESHI J.

Through this single

judgment, writ petition as well as criminal original captioned above are being disposed of.

The petitioner has invoked writ jurisdiction of this Court seeking following relief:-

"It is, therefore, most respectfully prayed that an appropriate writ may graciously be issued declaring that the Notification dated 03.09.2012 appointing Respondent No.2 as Chairman, Drug Court, Lahore is illegal, malafide and without proper and judicious application of mind, unjust, unfair and also against the constitutional provision as enshrined in Article 4, 9, 10-A, 14 & 25 of the Constitution of Islamic Republic of Pakistan, 1973 and as a consequence thereof the charge assumption of Respondent No.2 as Chairman, Drug Court, Lahore in the absence of petitioner and after office hours is of no legal effect and without lawful authority and the petitioner is still holding the charge of the post of Chairman, Drug Court, Lahore with all its necessary perks and privileges. It is further prayed that Respondent No.1 may be refrained from cancelling/withdrawing or terminating the Notification dated 15.02.2012 in any manner whatsoever. Any other relief which this Hon'ble Court may deem fit and proper be also granted accordingly."

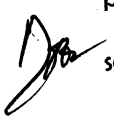
Whereas, through the criminal original, the petitioner seeks prosecution of the respondents for violating the orders of this Court dated 06.09.2012 passed in main writ petition through which respondents were directed not to recall the notification dated

[Signature]

15.02.2012 issued in favour of the petitioner. Moreover, to suspend operation of impugned FIR as well as to release salary of the petitioner in terms of order referred above has been requested.

2. Brief facts emerging from the present writ petition are that petitioner was appointed as Chairman, Drug Court, Lahore vide Notification dated 15.02.2012 for a period of 02-years on contract basis with effect from the date of assumption of charge or till further orders, whichever is earlier. In pursuance of the said Notification, the petitioner assumed the charge of above referred Post on 16.02.2012. On 03.09.2012, respondent No.2 entered into the office of the petitioner in his absence after office hours, as he has been appointed as Chairman, Drug Court, Lahore vide Notification of even date on contract for a period of 02-years on standard terms and conditions w.e.f. the date he assumes the charge. Against the said Notification, the petitioner has preferred this writ petition.

3. Learned counsel for the petitioner has argued that Notification dated 03.09.2012 issued by respondent No.1 is illegal, malafide, without any lawful authority, or legal effect and violative of provisions of the Constitution as enshrined in Article 4, 9, 10-A, 14 & 25; the said Notification has not been issued in supersession/cancelling or rescinding of earlier Notification dated 15.02.2012, whereby the petitioner as appointed on the very Post for a period of two years. Impugned notification has been issued without determining the value of earlier notification dated 15.02.2012. Notification dated 03.09.2012 has been issued for another Drug Court u/s 31 (I) of the Drug Courts Act, 1976, it should have specify the territorial limits or the class of cases in respect of which, one of them shall exercise jurisdiction under the said Act. It means that respondent No.1 has issued two notifications against the same post. The petitioner was appointed for 02-years and not on contract basis, as has been mentioned in the notification of respondent No.2, which clearly stipulates the wordings "on standard terms and conditions". In the Notification dated 15.02.2012, the wordings "or till further orders whichever is earlier" clearly shows that petitioner has been appointed for not less than two years, whereas these words are missing in the impugned notification, which indicate that services of respondent No.2 can be terminated at any time. Respondent No.2 has occupied the seat/chair of the petitioner in his absence after office hours, hence it is not possible for the petitioner to perform his duties. As the petitioner has not relinquished the charge of the said post, therefore, respondent No.2 has illegally taken over the charge. The



respondents have acted with gross negligence and in clear violation of law and Constitution with malafide and on political consideration. Thus Notification dated 03.09.2012 is also violative of principles of Promissory Estoppel. Learned counsel for the petitioner has relied upon the following case law:

- | | | | |
|----|--------------------|----|-------------------|
| a) | 2007 PLCCS-703 | b) | 2005 PLCCS-80 |
| c) | 2003 PLCCS-736 | d) | 2002 PLCCS-233 |
| e) | 1992 PLCCS-259 | f) | 2004 SCMR 1419 |
| g) | PLD 2009 Kar. 203 | h) | PLD 1989 Lah. 175 |
| i) | PLD 1979 Quetta-45 | j) | 1992 CLC-115 |
| h) | 1990 CLC 773 | | |

4. Learned counsel for respondent No.2 has raised a preliminary objection that present writ petition is not maintainable in its present form, as the petitioner has concealed material facts. As the Notification dated 03.09.2012 was issued, hence working of petitioner till filing of this writ petition is denied; respondent No.2 assumed the charge of Chairman, Drug Court, Lahore on 03.09.2012 during the court hours in presence of two other members, hence allegation of entering after office hours and in the absence of petitioner is not correct. Notification dated 03.09.2012 and order for termination of contract of the petitioner has been issued by the competent authority simultaneously. The petitioner should have moved to respondent No.1 for redressal of his grievance instead of invoking writ jurisdiction. Lastly, he has argued that as the Notification dated 03.09.2012 has been issued in accordance with law and by the competent authority, hence instant writ petition may be dismissed with exemplary cost.

5. The learned Standing Counsel while representing respondent No.1 has argued that petitioner was appointed as Chairman, Drug Court, Lahore on 16.02.2012 for two years or till further orders. The word further orders empowers the appointing authority to terminate the service of a contract employee by giving one month notice or one month pay in lieu thereof. The services of the petitioner were terminated strictly in accordance with para-14 of the terms and conditions of the contract vide impugned notification, hence this petition is liable to be dismissed. The notification dated 03.09.2012 was issued after obtaining approval of the competent authority and in accordance with the contract agreement. The Drug Courts are established under the Drugs Act, 1976 and one Court is established for one administrative Division of Province of Punjab; as Notification for appointment of respondent No.2 was issued after the termination of


contract appointment of the petitioner, hence question regarding territorial jurisdiction of the drug court does not arise. The contract appointments are regulated under the standard terms and conditions of contract prescribed by the Federal Government and contract of petitioner was terminated in view of para-14 of the said terms and conditions. The words "or till further orders whichever is earlier" clearly depicts that the contract appointment can be terminated at any time before the prescribed period given in the appointment letter. He lastly argued that since the contract appointment of the petitioner was terminated in accordance with prescribed rules/regulations after obtaining prior approval of the competent authority, hence the petitioner has no cause of action. He has prayed for dismissal of the instant writ petition.

6. Arguments heard, record perused. The relevant provisions of law quoted also perused as well as authorities referred.

7. Before discussing the merits and demerits of the case, I would like to clarify here that during the course of arguments controversy with regard to genuineness of some of the documents arose. The court, therefore, was constrained to pass order requiring the respondents to place both the summaries before the Court.

8. Beside the arguments advanced on behalf of both the contestants for same post i.e Chairman Drug Court, Lahore some malfeasance on the part of law department appeared. By securitizing the matter, it appeared that neither legal requirements nor procedure is followed as such while floating summaries in respect of both the cases and thereafter the correspondence by issuing notification are not in transparent manner. In both the cases, mannerism adopted is very fishy, sketchy and based upon favouritism when the legal requirements have been frequently flouted. Before discussing the matter further, I would prefer to discuss the very issue raised by learned counsel for the petitioner with regard to the distinct features of the appointment. For convenience it is necessary to reproduce both the notifications here in below:

"In exercise of the powers conferred by section 31(2) of the Drug Act, 1976 the Federal Government is pleased to appoint Mr.Aziz Ahmed Malik, Advocate, Lahore as Chairman, Drug Court, Lahore, for a period of two years on contract basis with effect from the date of assumption of charge or till further order which ever is earlier."

 "In exercise of the powers conferred by section 31(2) of the Drug Act, 1976 the Federal Government has appointed Syed Akhtar Hussain Zahid, District and Sessions Judge (Retd) as Chairman, Drug Court, Lahore, on contract for a period

of two years, on standard terms and conditions with effect from the date he assumes charge of the post."

Though it is tried to convince that by mentioned 'till further order' denotes totally different nature of appointment to that of contract of two years. From the perusal of both the notifications, it is transpired that except standard conditions specified in the notification of appointment of Syed Akhtar Hussain Zahid, there is no any significant feature. The insertion of words 'till further orders' not provides any other presumption except the counting of period either from charge or till further orders which ever is earlier. From the date of assuming charge, the period of contract automatically started, which confines the period of two years only not beyond that. There fore, in my humble view, it is a similar type of contract period specified in both the notifications except that of "standard terms and conditions".

9. Number of persons since appointed on contract, therefore to institutionalize the method standard terms and conditions introduced by the Establishment Division has been specified in the following words:

"Since a number of person are now being engaged on contract it was decided to institutionalize the method by drawing up a standard letter of contract containing the terms and conditions of contract appointment. Accordingly a standardized form of contract has been prepared in consultation with Ministry of Finance and Law Division. All the Ministries/ Divisions are requested to use the standard form in all contract cases, in future."

Every contract is required to be supported by standard terms and conditions mentioned in ESTACODE required to be followed. Condition No.14 defines termination or extension of the contract which is also reproduced here in below:

"The appointment during the period of contract shall be liable to termination on 30-days notice on either side or payment of basic pay in lieu therefore, without assigning any reason".

Surprisingly, other important ingredients required to be followed have not been mentioned in the standard terms and conditions issued at the time of issuance of notification for assuming charge.

10. When, it is requirement to be followed by the person employed on contract basis, rest of the instructions are also required to be followed. At the end of conditions there are some endorsement which defines the acceptance within period stipulated and in case of non acceptance same will be treated as cancelled. Therefore, such endorsement is also reproduced here in below:



"If you accept the above terms and conditions of appointment please send your acceptance by registered post to the Establishment Division/Ministry of Defence/Ministry..... (Division/.....Department so as to reach the Establishment Division/Ministry of Defence/Ministry of.....(..... Division/department within one month of the date of this letter."

"If the above terms and conditions of appointment are acceptable to you, please send your written confirmation by registered post or personally so as to reach the undersigned within one month of the date of this letter".

"This offer of appointment will be treated as cancelled if you do not convey acceptance thereof or resumed duty within the time specified in para-2 above.

11. On referring such terms and conditions which are known as standard terms and conditions to be followed by department as well as person employed on contract, in case if such instructions are not followed, it would be considered incomplete contract.

12. The case of petitioner Aziz Ahmed Malik as disclosed during the course of arguments by his counsel that he was not offered to sign such terms and conditions of contract either in its acceptance or refusal. Record shows that though terms and conditions of contract were seems to have been issued on 15.3.2012 containing signatures of Section Officer Noshad Khan on the very same day of notification for charge assumption has also been issued.

13. It is totally based upon imagination that a notification for assumption of charge was issued on the very same day but the petitioner was kept ignorant of the terms and conditions of contract employment when it is to be followed as integral part of the contract.

14. In case of respondent it is observed that notification in his favour was issued on 03.9.2012 and terms and conditions of contract were issued and signed by same section officer on 11.9.2012 whereas received and accepted by Syed Akhtar Hussain Zahid on 16.9.2012. on the very same day notification for charge assumption has also been issued. In this regard, I have also carefully examined the summary floated for the Prime Minister with regard to the appointment of Syed Akhtar Hussain Zahid as Chairman Drug Court, Lahore on contract basis. Surprisingly, in the very same summary at Para-4, it is contended that the contract of Mr.Aziz Ahmed Malik will be terminated.

At the same time of contractual employment, how it can be terminated by enforcing its condition No.14, specifying the procedure of termination as referred above. From para-4



or the summary entirely, there appear no reason of replacing Syed Akhtar Hussain Zaidi in place of Mr.Aziz Ahmed Malik when both were considered from advocates.

15. From the prusal of record it depict that in both the cases neither the procedure is followed nor the prescribed guidelines by SI.No.89 of ESTACODE referred above is taken into consideration. Therefore, in my humble view both contractual employments are nothing but have been issued as a result of favouritism.

16. Reasons for cancellation/termination in case of Mr.Aziz Ahmed Malik have not been assigned nor reasons for employment of Syed Akhtar Hussain Zahid have been assigned. Even requirement of 30-days notice or payment of basic pay in lieu thereof has not been fulfilled.

17. The Hon'ble Supreme Court of Pakistan, while entertaining Constitution Petition Nos.23/2012 & 11/2012 and other Criminal Miscellaneous, Criminal Original and HR cases, observed the continuous conduct of the functionaries to ignore constitution and law therefore by enunciating principles, issued guidelines.

18. For the appointment, removal and promotion, the Hon'ble Supreme Court observed that same must be made in accordance with law and rules made there-under. For convenience, the relevant portion of the above referred judgment is also reproduced hereunder: -

"22. The principles of law enunciated hereinabove can be summarized as under: -

- i) Appointments, Removals and Promotions: Appointment, removals and promotions must be made in accordance with the law and the rules made there-under; where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.
- ii) Tenure, posting and transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.
- iii) Illegal Orders: Civil servants owe their first and foremost allegiance to the law and the Constitution. They are not bound to to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule-based norms; instead, in such situations, they must record their opinion and, if necessary, dissent.
- iv) OSD: Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing and are judicially reviewable. If at all an officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed at the earliest".



19. The functionaries are not with prerogative or unfettered discretion to delay such type of matters by adopting the procedure beyond the rules and onward to rectify their mistakes by issuing supporting notifications and additional orders as they did in both the instant cases.

20. Primarily, it is the suitability of the Executive of the State, but when it is brought to the notice of the court, it would incumbent upon the court to decide the fate of such illegalities by issuing such directions and declaration in accordance with mandate provided by the Constitution.

21. I am therefore of the considered view that both incomplete contract employments are nullity in the eye of law. The notifications dated 15.02.2012 & 03.09.2012 have been issued as colourful exercise of the powers and same being contrary to law are declared to be null, void and capriccios as well.

22. The authorities are therefore directed to process the case for appointment of the Chairman, Drug Court, Lahore by adopting proper procedure as laid down under the law, rules framed there-under and the guideline provided by the Establishment Division, which is required to be followed in its letter and spirit.

23. With these observations/directions, instant writ petition as well as criminal original stand disposed off.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Announced in open court on 04.03.2013.

JUDGE

Approved for Reporting

Aws
Zawar

Blue Slip added,

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