

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 4725/2018

Engr. Aitzaz Ahsan

V/s.

Federation of Pakistan, etc.

Writ Petition No. 2294/2019

Engr. Syed Umar Ali Shah

V/s.

Federation of Pakistan, etc.

Petitioners by: **Syed Javed Akbar Shah, Advocate in W.P No.4725/2018.**

Mr. Haroon-ur-Rasheed, Advocate in W.P No.2294/2019.

Respondents by: **Barrister Muhammad Mumtaz Ali, AAG.**
Sheikh Rizwan Nawaz, Advocate for PEC.
Mr. Armaghan Saqib Khan, Advocate for PEC.

Date of Hearing: **23.10.2019.**

MOHSIN AKHTAR KAYANI, J:- Through this common judgment, I intend to decide both the captioned writ petitions as common question of law and facts are involved in both these writ petitions.

2. In W.P No.4275/2018 Engineer Aitzaz Ahsan has prayed for regularization of his service with effect from 29.08.2017, whereas in W.P No.2294/2019, petitioner Engineer Syed Umar Ali Shah has prayed for regularization of service and has also challenged the new offer letters issued to different individuals by the PEC in the fresh recruitment.

3. Learned counsel for petitioner/Engineer Aitzaz Ahsan contends that petitioner was appointed as Assistant Registrar in BPS-17, on contract basis by respondent No.2/PEC w.e.f. 29.08.2017 but his contract was not extended after 19.12.2018, despite the fact that he was performing his duties with utmost due diligence; that other similarly placed employees were regularized by the respondent in the year 2015 and petitioner was discriminated.

4. Learned counsel for petitioner/Engineer Syed Umar Ali Shah contends that petitioner was appointed as Assistant Registrar in Grade-17 by respondent/PEC on contract basis w.e.f. 10.02.2017 and due to his excellent performance his employment contract was extended from time to time up to 18.12.2018 but his service has not been regularized nor extension in contract has been given by respondent No.2, whereas other similarly placed employees were regularized by respondent No.2 in the year 2010 and 2015 respectively; that vacancies announced by respondent No.2 through advertisement have been filled by way of test and interview and two lists were prepared in which petitioner's name was reflected at S.No.06 of the minute sheet but PEC has cancelled the entire recruitment process and re-advertised the post afresh and provisionally offer letters were issued to the candidates, who are nearer and dearer to the respondent authority.

5. Conversely, learned counsel for the PEC contends that petitioner Engineer Aitzaz Ahsan has secured 39 marks in the process of recruitment and has not achieved the minimum threshold to be called in interview. Similarly, petitioner Engineer Syed Umar Ali Shah was initially engaged on contract basis without any test and interview and even without advertisement, however, the post has been advertised in which Engineer Syed Umar Ali Shah has participated and has obtained 39 marks on merit, whereas he has not qualified the threshold of the least available merit in which last successful candidate was

called for interview, who had obtained 56 marks and as such both the petitioners are not entitled to be appointed on the regular basis and after issuance of appointment letters, the positions retained by the petitioners are no more vacant. Regarding cancellation of earlier recruitment process, learned counsel for the respondent/PEC contends that while finalizing the earlier selection process the competent authority observed that the process was not carried out in an organized manner and due to leakage of the confidential record the process was cancelled.

6. Arguments heard, record perused.

7. Perusal of record reveals that services of both the petitioners were engaged by the PEC on the basis of contract for period of 06 months as Assistant Registrar BPS-17, dated 24.05.2016 and 10.02.2017 without any advertisement, test and interview, whereas both the petitioners claim that they are entitled for regularization of their services with PEC. The content of their appointment letters clearly spells out that their appointment on contract basis and they were not given any assurance for regularization of their services, terms & conditions of appointment of the petitioners are as under:-

- a. *On lump sum pay of Rs.72,868/- per month.*
- b. *The contract will be valid for three months.*
- c. *Your services may be terminated by the Competent Authority during this period without notice and assigning any reason.*
- d. *This contract agreement/offer shall not entitle you for any right to seek regularization of job and pay protection at any stage.*
- e. *You shall not be entitled for any other remuneration under the salary, pay fixation, medical benefit, Eid Bonus or any post-employment benefit etc.*

8. The above referred appointment letter discloses that appointment was made on 03 months basis or on contract basis which could be terminated at any time without assigning any reason, even no right has been extended in favour

of petitioners. Both the counsel have been confronted regarding claim of the petitioners for regularization of their services to justify as to whether regularization policy 2009, 2011, 2015 are applicable in this regard, whereby both the counsel have failed to justify their legal right under any regularization policy especially when both the petitioners are not entitled to be considered under the said policy in any manner.

9. Learned counsel for the petitioners have further argued that petitioners are seeking their right to be regularized in terms of judgment passed by the Division Bench of this Court in ICA No.340/2017 reported as 2019 PLC (C.S)N 19 Islamabad (Imran Ahmed and others Vs. Federation of Pakistan), wherein they have agitated their right under para-123(vii), which is reproduced as under:-

vii. All employees who are working on different positions in the statutory organization/companies (controlled by the Federal Government) having their own Board of Directors or Board of Governors, has to decide the cases of their employees in accordance with their own service rules independently and regularize the services of those employees without seeking any further approval from the Government of Pakistan, however, such kind of exercise is permissible for one time and in future they shall not hire any person on temporary, daily wages or contract basis.

10. While considering the above background, I have gone through the para-wise comments of PEC, wherein it has been observed that PEC was established under Pakistan Engineering Council Act, 1975 and recruitments/appointments as well as terms & conditions of service of officers as well as ministerial staff of PEC are governed by the rules called as Pakistan Engineering Council Employees Service Rules, 1999, which provides the hiring and termination of contractual employees at any time without issuing show cause notice and services of the petitioners have been concluded on 18.12.2018.

11. Perusal of record further reveals that that PEC has notified the recruitment process, whereby petitioners have applied in the fresh recruitment and secured only 39 marks in the test and in over all merit whereas the last candidate who was called for interview had obtained 56 marks and as such both the petitioners have failed to qualify in the fresh recruitment process.

12. Besides the above referred background, petitioners have also been heard in persons in terms of judgment passed by Division Bench of this Court in ICA No.340/2017 reported as 2019 PLC (C.S)N 19 Islamabad (Imran Ahmed and others Vs. Federation of Pakistan), and petitioners have not been regularized by the competent authority after application of relevant rules and regulations. There is no cavil to the proposition that petitioners were initially appointed on contract basis and their offer of employment/contract does not give them any right for regularization, however, authorities can consider the same under Imran Ahmed case supra and as such petitioners were failed to achieve the requisite standard, even otherwise, petitioners have initially appointed in the PEC without any advertisement, test and interview, which itself is not protected under the law, whereas petitioners contended that number of individuals were regularized in the year 2015 and they were discriminated. Such type of allegation could only be verified in a proper inquiry if the PEC comes to the conclusion that previous recruitment have not been made in accordance with law and they have every right to recheck every appointment, however, at this stage, any previous illegality does not provide any protection to the petitioners, who are otherwise are not eligible to be appointed as they failed in the fresh recruitment process.

13. It is trite law that any person who was appointed on contract basis has no right to file writ petition in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for his termination of his services especially when

his service rules are non-statutory, he can at the most approach the Court of competent jurisdiction for recovery of damages as settled in 2019 SCMR 648 (Qazi Munir Ahmed Vs. Rawalpindi Medical College and Allied Hospital through Principal and others).

14. At last the cases of the petitioners have been placed in juxtaposition with the direction passed by this Court in Imran Ahmed Case, however, they have been given due opportunity of hearing but the competent authority has regretted their request being not eligible and as such petitioners have failed to justify any of their personal right which have been violated. Hence, instant writ petitions are misconceived and the same are hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 29.10.2019.

JUDGE

Zahid

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