

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

WRIT PETITION NO.1645 OF 2020

Taslim Mumtaz  
VERSUS  
National Bank of Pakistan through its President and 3  
others.

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DATE OF HEARING:                    11.08.2020.

PETITIONERS BY:                    Mr. Muhammad Shoaib  
    Shaheen, ASC and Saif ur  
    Rehman Shah Bukhari,  
    Advocate

RESPONDENTS:                    Mr. Faisal    Mahmood    Ghani  
    Advocate.

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**FIAZ AHMAD ANJUM JANDRAN, J.-** Through the instant writ petition, petitioner impugns office order dated 05.06.2020 issued by the respondent No.1/National Bank of Pakistan (“N.B.P.”), whereby her service contract was not extended/renewed.

2.            The case, setup by the petitioner is that she joined the N.B.P as Assistant Vice President (“AVP”)/Executive initially for a period of three years on contract basis w.e.f. 28.05.2014, which was extended for another period of three years till 30.06.2020 but all of a sudden, she was informed vide impugned order that her contract does not merit consideration for further renewal/extension, despite the fact that she has rendered six years meritorious service and deserves regularization at par with other employees of the N.B.P but she had been treated with discrimination, which led to filing of the instant writ petition.

3.            Learned counsel for the petitioner argued that in view of the law laid down by the Hon’ble Apex Court, the petitioner had legitimate expectation to be considered for regularization after completing maximum period of

probation but was thrown out in sheer disregard to the dictums and the rules of the N.B.P; that the petitioner has gained the status of regular and permanent employee and cannot be treated in arbitrary manner. According to the learned counsel number of other AVPs working under the same umbrella having lesser achievements and average performance at their credit as compared to the petitioner are being retained in service but she is being expelled without any justification, which amounts to discrimination. Learned counsel placed reliance upon case laws reported as **2005 SCMR 100, 2018 SCMR 157, 1996 SCMR 1185 and PLD 2002 SC 326.**

4. On the other hand, learned counsel for the respondent/N.B.P repelled the above submissions, *inter alia*, on the grounds that the employees engaged in the service of the bank on contract basis are not eligible for regularization and pensionary benefits; that contract employee cannot invoke the jurisdiction of this Court in terms of Article 199 of the Constitution due to having status of master and servant; that the petitioner at the time of entering the service herself consented to the provision of the contract that also provides that the same can be terminated by either side on three months notice or pay in lieu thereof. Learned counsel referred clause 5.3 of the rules on the subject. According to the learned counsel, petitioner remained unable to explore any violation of law or any statutory rule and therefore, she being a non-permanent employee is not entitled to regularization and that the case law referred by the learned counsel for the petitioner, pertains to janitorial /workman/lower cadre staff of N.B.P, and are not applicable to the case of the petitioner, who seeks regularization as AVP. Learned counsel placed reliance upon case laws reported as **1999 SCMR 467, PLD 2010 SC 676, 2019 PLC (CS) 928, 2017 SCMR 1979, 2007 PLC (CS) 737, and 2018 SCMR 162.**

5. Heard the learned counsels for the parties and examined the record with their able assistance.

6. The admitted facts of the present case are that petitioner joined the N.B.P as AVP on contract basis, initially for a period of three years, which was extended for another period of three years till 30.06.2020. In order to respond to the submissions made by the learned counsel for the parties at bar, it is necessary to mention that this Court earlier while deciding W.P. No 2741/2017 assailing appointments on contract basis for a period of three years in N.B.P held vide judgment dated 28.01.2019 that it cannot be held that N.B.P could not make appointments on contract basis. It was also held that the N.B.P must not convert the appointments made on contract basis into regular appointment, without competitive process. For ready reference, relevant paras 6 and 7 are reproduced hereunder:-

*“6. The 1973 Rules were framed in exercise of the powers conferred by the provisions of the N.B.P. Act. Rule 17 of the said Rules deals with superannuation and retirement. Rule 17(4) of the said Rules provides that nothing contained in Rule 17 shall apply to any person employed under a contract of service for a fixed term of years. Rule 41 of the said Rules deals with provident and pension funds. The proviso to the said Rules provides inter-alia that employees who are engaged in the service of a bank on contract basis shall not be eligible of pension fund. Similarly, Rule 46 of the said Rules deals with Grades. Rule 46(1) of the said Rules provides that the various scales of pay for the employees, except those employed on contract outside the prescribed scales whose scales of pay will be determined by the Central Board, are prescribed in appendix-V. Accumulative read of the said Rules show that appointments made on contract basis in the N.B.P. have been envisaged and not prohibited by the said Rules. Therefore, it cannot be held that the N.B.P. could not make appointments on contract basis.*

*7. Now the advertisement inviting applications for appointments on contract*

*basis published by the N.B.P. does not provide that such appointments would, with efflux of time, be converted into regular appointments. The dimensions of a competitive process for appointments on contract basis are entirely different from a competitive process for appointments on regular basis. Therefore, the N.B.P. must not convert the appointments made on contract basis into regular appointments without a competitive process."*

7. The respondent/N.B.P assailed the judgment *ibid* through ICA No. 39/2019, while the other side also file appeal bearing No.44/2019 and both were decided through a common judgment dated 30.10.2019 by the Hon'ble Division Bench, whereby the findings with regard to having no bar for appointment of an individual on contract basis by the N.B.P were upheld while it was held that the Board of the N.B.P has absolute authority to change the terms and conditions of the individual and the restriction imposed by the learned Single Judge in Chambers against the N.B.P that "NBP must not convert the appointments made on contract basis into regular appointments without competitive process" was set aside. The relevant paras 7,8 & 9 are reproduced hereunder:-

*"7. We have gone through the findings of the learned Single Judge in Chambers, whereby Rule 17(4) of the National Bank of Pakistan (Staff) Service Rules, 1973, provides that a person can be employed under contract for a fixed term but he is not entitled to pensionary benefits in terms of proviso referred in Rule 41 and the powers were enlisted to the Central Board of the Bank, therefore, learned Single Judge in Chambers has rightly observed that there is no bar for appointment of an individual on contract basis by the NBP, however, the stance referred in Para-7 of the impugned order is different from the rules position, whereby learned Judge in Chambers has put a clog on the authority of NBP not to convert the appointment made on contract basis into regular appointment without a competitive process, although bye-law No.51(vi) of the NBP defines the powers of the Board of NBP, whereby Board can exercise its powers and discharge his duties in accordance with sound banking principle in terms of its regulation and in accordance with direction issued by State Bank of Pakistan from*

*time to time. However, the specific powers of the Board have been conferred in the bye-law No.51(vi) to notify a policy of the bank which covers the absorption, regularization of employees, appointment or recruited under direct contract with bank as well as contract employees which could only be determined by the Board and transfer, posting, remuneration, evaluation criteria, promotions, end service benefits has also been vested to the Board.*

*8. In such scenario the Board is the competent authority of the bank and as such application of principle laid down in PLD 2016 SC 961 (Muhammad Akram V. Registrar, Islamabad High Court and others) is not applicable as the Board of Directors of the Bank are independent and can manage their policy issues within their own parameters in terms of their Articles of Association as well as their regulations and bye-laws. The judgment referred by the appellant Abdul Latif Qureshi in terms of Muhammad Akram case supra is altogether based upon different facts and circumstances from this case.*

*9. On the other hand, the restriction imposed by the learned Single Judge in Chambers upon the NBP is also contrary to the NBP bye-laws as the Board has absolute authority to change the terms & conditions of service of an individual, hence, ICA No.44/2019 is not made out on merit as appellant has failed to justify his case, therefore, the same is hereby dismissed. Whereas, ICA No.39/2019, filed by NBP is allowed to the extent that the restriction imposed by learned Single Judge in Chambers against the NBP that "NBP must not convert the appointments made on contract basis into regular appointments without a competitive process" is set aside as the NBP has empowered its Board of Directors to pass any appropriate order in accordance with bye-laws of the bank as well as regulations."*

8. By following the wisdom laid down in the judgments supra, on the appeal filed by N.B.P itself and got order in its favour, it is held that the Board have been conferred specific powers in the Bye-law No.51(vi) to notify a policy of the bank which cover the absorption, regularization of employees, appointment or recruited under direct contract with bank as well as contract employees which could only be determined by the Board and transfer, posting, remuneration, evaluation criteria, promotion, and service benefits has also been vested to

the Board. In this way, the Board of the N.B.P is competent to convert contract employment into regular.

9. It is settled principle that this Court cannot step into the affairs/functions of the Authority, who is competent to regulate its internal affairs in accordance with own rules and regulations. However, when it is on record that the representation of the petitioner, filed prior to expiry of the contract i.e. 30.06.2020 is pending with the respondent No.1 it would not be just to leave the petitioner in blind-alley as every statutory functionary is under obligation to act in accordance with law and to decide applications, representations, appeals or revisions as the case may be, within reasonable time. As the representation of the petitioner was prior in time than the expiry of the contract i.e. 30.06.2020. Therefore impugned order is not sustainable, it is thus accordingly **set aside**. The respondent No 1 is directed to decide the representation of the petitioner, available at page-17 of the file in accordance with rules and regulations as mentioned in the referred ICA, in either way, through a speaking order by affording due opportunity of hearing to the petitioner within a period of **six weeks** from the receipt of this judgment.

10. As the instant writ petition has been disposed of in the light of findings in supra paras, the case laws relied upon by the learned counsel for the respondent/N.B.P do not remain relevant.

11. In view of above, the instant writ petition stands **disposed of**.

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

\*A.R.Ansari\*

Announced in open Court on : 28 .09.2020.

JUDGE