

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.321 of 2018
Muhammad Zubair

Versus

Joint Administrative Officer, Pak PWD and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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28.09.2021

Mr. Muhammad Shahzad Siddiq, Advocate for the petitioner,

Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General,

Mr. S.M. Ibrahim Shah, Law Officer, Pak PWD.

Through the instant writ petition, the petitioner, Muhammad Zubair, impugns office order dated 11.01.2018 issued by the Pakistan Public Works Department (“Pak PWD”), whereby regularization of his services, was withdrawn.

2. The record shows that vide office memorandum dated 16.04.2011, the petitioner was appointed as Helper on daily wages basis with effect from 16.04.2011 to 13.07.2011. The petitioner’s appointment tenure was purely temporary and was liable to termination at any time without assigning any reason. Subsequently, vide orders dated 16.07.2011, 17.10.2011, 24.01.2012, 16.04.2012, 20.07.2012, 16.10.2012, 18.01.2013, 15.04.2013 and 17.07.2013, the petitioner was appointed for periods of 89 days each on daily wages basis. The petitioner’s last appointment was with effect from 15.07.2013 to 12.09.2013.

3. On 15.03.2012, a meeting of the Cabinet Sub-Committee on Regularization of Contract / Daily Wages Employees in the Ministries / Divisions / Attached Departments / Autonomous Bodies / Organizations (“Cabinet Sub-Committee”) took place under the

chairmanship of the Federal Minister for Religious Affairs. In this meeting, several contract and daily wages employees in Pak PWD were considered for regularization of their services. The petitioner was also one of the daily wages employees who were so considered. In the said meeting, the Cabinet Sub-Committee approved the regularization of the said employees, including the petitioner, *“subject to fulfillment of recruitment criteria and completion of one year contract / daily wages service up to 30.03.2012 and availability of posts.”*

4. Vide order dated 14.10.2015, the petitioner’s services were regularized with effect from 30.05.2012. Vide the impugned office order dated 11.01.2018, the petitioner’s regularization was withdrawn. The reason for the said withdrawal was stated to be the non-completion of one year of service by the cutoff date. The said office order dated 11.01.2018 has been impugned by the petitioner in the instant writ petition.

5. Mr. Muhammad Shahzad Siddiq, Advocate, the learned counsel for the petitioner, after narrating the facts leading to the filing of the instant writ petition, submitted that the petitioner had fulfilled all the pre-requisites for the regularization of his services; that the order dated 14.10.2015 whereby the petitioner’s services were regularized was issued pursuant to the Cabinet Sub-Committee’s decision dated 15.03.2012; that the Cabinet Sub-Committee decided to regularize the services of numerous daily wages employees in Pak PWD, including the petitioner; that vide letter dated

06.03.2013 issued by the Cabinet Division, the cutoff date in respect of contract / daily wages employees for completion of one year service for regularization was extended to 15.03.2013; that the petitioner had acquired a strong vested right to continue serving as a regular employee of Pak PWD after his services had been regularized by the competent authority; that the impugned order dated 11.01.2018 was issued without affording an opportunity of hearing to the petitioner; and that the principle of *locus poenitentiae* was attracted in the instant case. Learned counsel for the petitioner prayed for the writ petition to be allowed.

6. On the other hand, Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General submitted another similarly placed employee of Pak PWD namely Raja Muhammad Adeel, whose regularization was also withdrawn, vide common order dated 11.01.2018, had also approached this Court through writ petition No.523/2018 which was dismissed by this Court, vide order dated 10.12.2019; that an *intra* Court appeal No.28/2019 against the said judgment dated 10.12.2018 was also dismissed, vide judgment dated 18.09.2019 passed by the learned Division Bench of this Court; that since the petitioner had not completed one year of service as a daily wage employee, he did not fulfill the recruitment criteria set out in Cabinet Sub-Committee's decision dated 15.03.2012; that under the regularization clause contained in Establishment Division's office memorandum dated 29.08.2008, those employees who were working on daily wages basis were ineligible for regularization; that

the earlier decision to regularize the petitioner's services was void, and therefore, the same was rectified by withdrawing the petitioner's regularization order; and that the petitioner was one of the employees of Pak PWD who were again considered by the Regularization Committee in its meeting dated 27.11.2017 and it was found that they did not fulfill the criteria of regularization contained in the Establishment Division's office memorandum dated 29.08.2008. Learned Deputy Attorney-General prayed for the writ petition to be dismissed.

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition are set out in sufficient detail in paragraphs 2 to 4 above and need not be recapitulated.

8. It is not disputed that the petitioner's services were regularized pursuant to the Cabinet Sub-Committee's decision dated 15.03.2012. In that very decision, it is explicitly stated that the regularization of the daily wages employees of Pak PWD is subject to the fulfillment of the recruitment criteria and the completion of one year daily wages services up to 30.03.2012. Since the petitioner was first appointed on daily wages basis on 16.04.2011 in Pak PWD, he had not completed one year of service by the cut-off date i.e., 30.03.2012 as mentioned in the Cabinet Sub-Committee's said decision. Additionally, the Cabinet Sub-Committee was supposed to take decisions regarding regularization of contract

employees in the light of the eligibility criteria set out in the Establishment Division's office memorandum dated 29.08.2008. Paragraph 2(b) of the said eligibility criteria is reproduced hereinbelow:-

2-(b):- "Those who are working against tenure posts, project posts or daily wages, or those who are being paid from contingent or defence budget are not eligible for regularization."

9. The Cabinet Sub-Committee could not go beyond the mandate circumscribed for it in the Establishment Division's Office Memorandum dated 29.08.2008. At no material stage, had the Cabinet Sub-Committee's mandate expanded by the Federal Cabinet so as to enable it to consider the regularization of daily wages employees. Therefore, the Cabinet Sub-Committee's decision to approve the regularization of daily wages employees was in excess of jurisdiction. In the case of Mst. Saima Malik Vs. Ministry of Capital Administration and Development Division (2018 PLC (C.S.) 186), this Court had the occasion to hold as follows:-

"11. The office memorandum dated 29.08.2008, which contained the regularization policy had not been amended at any material stage by the Federal Cabinet so as to authorize the Cabinet Sub-Committee to regularize the services of contractual or daily wages employees in BPS- 16 and above.

12. It appears that the Cabinet Sub-Committee, in its meeting dated 29.06.2011 noticed that 201 officers of the Capital Administration and Development Division, and 380 officers of the Ministry of Health were working on contract basis for more than one year, and after the devolution of the Ministries to the Provinces on 30.06.2011, the fate of such officers was at stake. In the said meeting, the Cabinet Sub-Committee decided that all the officers who had been appointed on contract basis, and who had completed one year of their contractual employment, or 03 spells of 89 days by 30.04.2011, in the Capital

Administration and Development Division and the Ministry of Health shall be regularized with effect from 29.06.2011, pending approval of the Federal Cabinet as a special case. On 29.06.2011, a summary was submitted by the Establishment Division to the Hon'ble Prime Minister proposing that "all the contract officers who have completed one year of contract or 03 spells of 89 days upto 30.04.2011, of the Ministry of Health, Special Education and Social Welfare/NCCWD/NTD under CAD Division and Ministry of Women Development may be regularized w.e.f. today the 29th of June, 2011, pending approval of the Cabinet as a special case in view of the devolution of these Ministries to the provinces and their requisitions shall be withdrawn by the Ministries/Divisions concerned from the Federal Public Service Commission (F.P.S.C), if not already done". The Prime Minister on 30.06.2011, approved the said proposal. The argument of the learned Deputy Attorney-General that since the Federal Cabinet has not, at any stage, decided to regularize contract employees in BPS-16 and above, the Cabinet Sub-Committee could not regularize contract employees in BPS-16 and above, appears to be correct.

13. The approval made by the Prime Minister on 30.06.2011 to the proposal made in Establishment Division's summary dated 29.06.2011, cannot be termed as an amendment in the office memorandum dated 29.08.2008. An amendment in the said office memorandum could only be made by the Federal Cabinet and none other. The learned counsel for the petitioner was not able to convince me on whether the initial regularization policy dated 29.08.2008 had been amended by the Federal Cabinet so as to authorize the Cabinet Sub-Committee to regularize the services of employees in BPS-16 and above. Therefore, it is safe to hold that the office memorandum dated 29.08.2008 was not amended by the Federal Cabinet at any stage. After holding so, the question that crops up in the mind as to whether the Cabinet Sub-Committee had the power or authority or jurisdiction to regularize the services of contractual employees or daily wagers in BPS-16 and above. The powers and jurisdiction of the Cabinet Sub-Committee were circumscribed by the decision dated 04.06.2008 of the Federal Cabinet. Since the Federal Cabinet had not given the authority to the Cabinet Sub-Committee to regularize the services of contractual employees or daily wagers in BPS-16 and above, the decision of the Cabinet Sub-Committee to regularize the

contractual services of such employees would be in excess of jurisdiction.”

9. As regards the contention of the learned counsel for the petitioner that on account of the principle of *locus poenitentiae*, the respondents were estopped from withdrawing the petitioner’s regularization order, suffice it to say that it is well settled that perpetual rights could not be created on the basis of an illegal order. Under section 21 of the General Clauses Act, 1897, an authority is competent to rescind an illegal order regardless of whether rights are created on the basis of such an order. In the case at hand, the decision of the Cabinet Sub-Committee to regularize the services of the daily wages employees was certainly illegal on account of being beyond the parameters prescribed in the Regularization Policy contained in Establishment Division’s office memorandum dated 29.08.2008. Even otherwise, the office order dated 14.10.2015, whereby the petitioner’s services were regularized cannot be termed as a legal order since the petitioner had not completed one year of service as a daily wagger employee by the cutoff date of 30.03.2012 fixed in the Cabinet Sub-Committee’s decision dated 15.03.2012. Therefore, the principle of *locus poenitentiae* was not applicable in the petitioner’s case.

10. In the case of Nazir Ahmad Panhwar Vs. Government of Sindh, through Chief Secretary, Sindh (2005 SCMR 1814), it has been held as follows:-

“The contention on behalf of the petitioner that the order, dated 24-11- 1997 had been acted upon, therefore, a vested right had been conferred on the petitioner to continue on the

post of Director, (Administration) in Sindh Seed Corporation, in view of the principle of locus poenitentiae is misconceived as this principle can be invoked only in respect of an order which is legal and not in respect of an order which is contrary to and in contravention of any provision of law or the rules made thereunder or a settled provision of law. If any authority is required in support of above proposition the same is available from the judgments in the cases of (i) The Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalaluddin PLD 1992 SC 207 and (ii) Abdul Haque Indhar and others v. Province of Sindh through Secretary Forest, Fisheries and Livestock Department, Karachi and 3 others 2000 SCMR 907. In both the above referred cases this Court had categorically stated that principle of locus poenitentiae would be applicable in respect of an order passed by an authority who was competent to pass an order in accordance with law and that the order so passed was not in violation or contravention of any law and/or rules made thereunder. In the case of Abdul Haque Indhar and others v. Province of Sindh through Secretary Forest, Fisheries and Livestock Department, Karachi and 3 others (supra) this Court categorically pronounced that the concept of locus poenitentiae is the power to recede till a decisive step is taken but it is not a principle of law that order once passed become irrevocable and a past and closed transaction. It was also laid down that if the order was illegal then perpetual right could not be gained on the basis of such an illegal order.”

11. Additionally, in the case of Muhammad Ayub Khan Tanoli Vs. Secretary of Industries and others (2004 CLC 1500), it has been held *inter alia* that the rule of *locus poenitentiae* cannot be extended to an order obtained by fraud or as a result of a mistake. In the case of Aman Ullah Khan Vs. Lahore Development Authority (2004 YLR 1038), it has been held *inter alia* that the principle of *locus poenitentiae* did not apply where the original order was passed against the policy.

12. There is no denying to the fact that the petitioner along with other employees of Pak PWD was afforded an opportunity of personal

hearing by the Regularization Committee. The said Committee did not find the petitioner to have fulfilled the criteria for the regularization of his services as contained in the Establishment Division's Office Memorandum dated 29.08.2008.

13. So far as the ground with regard to extension of cutoff date by the Federal Government is concerned, the same has already been adjudged by the learned Division Bench of this Court, vide judgment dated 18.09.2019 passed in I.C.A.No.28/2019 in the following terms:-

"The Extension of the cutoff date by the Federal Government is of no avail to the appellant inasmuch as Cabinet sub-committee took up the matter the appellant was not eligible."

14. In view of the above, I do not find any infirmity in the impugned office order dated 11.01.2018, whereby the petitioner's regularization was withdrawn. Consequently, the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE