

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No. 1495 of 2020

Dr. Muhammad Abaid Ullah
Versus
Federation of Pakistan & others.

Petitioner by: Mr. Sanaullah Khan Advocate
Respondent No.1 by: Ch. Abdul Jabbar, AAG.
Respondents No.2 & 3 by: Mr. Abid Hassan, Advocate

Date of Hearing: 07.09.2020

Ghulam Azam Qambrani, J: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has invoked the jurisdiction of this Court, with the following prayer:-

“In view of the above, it is most respectfully prayed that after summoning the record of the case, the impugned order dated 24.02.2020 may kindly be set aside and the respondents may be directed to pay the outstanding salary of the petitioner without any further delay and since the impugned order is against their own rules, therefore, the respondents may be directed to extend the contract of the petitioner till the completion of whole the contract.”

2. Brief facts of the case as stated by the petitioner are that he completed his Ph.D degree in Bio Sciences from COMSATS University, Islamabad since 2015 and in the year 2018, the respondents invited applications through advertisement for Postdoctoral Fellow under the Agriculture Linkages Program (ALP)-PARC, Islamabad titled “Use of Rhizobium spp to enhance the nutritive value and yield of lentil genetic resources” at Department of Bio-Sciences C.U.I. The petitioner applied for that fellowship and after evaluation of petitioner’s credentials, he was shortlisted for the

interview and finally the Interview Committee recruited him for the said position w.e.f 01.07.2018 vide letter dated 10.07.2018. According to performance of the petitioner and submission of first annual report, the PARC released the 2nd year funds to C.U.I. The original Principal Investigator of the project strongly recommended the extension of the contract of the petitioner vide letter dated 24.06.2019. The initial contract expired on 30.06.2019, however the petitioner continued un-interrupted work on the assurance of his immediate boss that formal letter of extension will be issued in due course of time and the petitioner was assured that letter of extension in his contract shall be issued soon and since the formal extension letter for extension in his contract had not been issued, therefore, his pay would be released at the time of issuance of formal extension letter. Further stated that the petitioner worked according to his best abilities to the whole eight months along-with his colleagues as well as the principal with the profound expectation that his contract has been extended and formal extension letter shall be issued accordingly and the petitioner shall be paid whole salary and due to such expectations the petitioner borrowed considerable amount from his friends and family members, whereas on receiving impugned letter dated 24.02.2020 the petitioner was shocked that his contract has not been extended; that the petitioner submitted departmental appeal on 03.03.2020 before the respondent, but despite lapse of considerable time, no reply has so far been received; that the act of the respondent is illegal, without lawful authority, against the fundamental rights of the petitioner and is liable to be set aside.

3. Learned counsel for the petitioner has contended that he kept on working with the respondents for eight months, but the respondents did not pay any salary for the said period; that the impugned letter clearly depicts that the petitioner was directed to obtain clearance and proceed as per C.U.I Rules, meaning thereby that the respondents were aware that the petitioner has been performing duties without pay; that the respondents have extended the contract of his colleagues but denied such right to the petitioner,

which is against the spirit of Article 25 of the Constitution; that the departmental authorities are bound to use discretion in a fair and just manner while dealing with such like cases.

4. On the other hand, learned counsel for the respondents has opposed the contention raised by learned counsel for the petitioner contending that the petitioner was a contractual employee; that it was a one year fixed project, which expired on 30.06.2019 and no further extension thereof was granted, therefore, the petitioner has no right for claiming any extension thereof; that there is no evidence that the petitioner has served for eight months with the respondents; that factual controversies are involved in the matter; that COMSATS Institute of Information Technology is a statutory body corporate established under a statute i.e. The COMSAT Institute of Information Technology Ordinance, 2000 and it has been granted the status of a Degree Awarding Institute; that the petitioner was purely a project based contractual employee of the University as per terms of his employment contract, therefore, the instant writ petition is not maintainable.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

6. Perusal of the record reveals that the respondents invited applications through advertisement for Postdoctoral Fellow under the Agriculture Linkages Program (ALP)-PARC, Islamabad titled "Use of Rhizobium spp, to enhance the nutritive value and yield of lentil genetic resources" at Department of Bio-Sciences C.U.I. The petitioner applied for the same and the Interview Committee recruited him for the said position w.e.f 01.07.2018 vide letter dated 10.07.2018. The original Principal Investigator of the project strongly recommended extension of the contract of the petitioner vide letter dated 24.06.2019, whereas the initial contract expired on 30.06.2019, but as per the petitioner he continued un-interrupted work on the assurance of his immediate boss that formal letter of extension will be issued in due course of time and the petitioner was

assured that letter of extension of his contract shall be issued soon and his pay shall be released at the time of issuance of formal extension letter, whereas he received the impugned letter dated 24.02.2020, whereby contract of the petitioner was not extended by virtue of termination of his contract.

7. The pros and cons lead this Court to a well-founded conclusion that the regularization in service cannot be claimed as vested right. In this case, the petitioner had accepted the terms and conditions of his engagement through letter dated 10.07.2018 and now has approached this Court and as per clause 2 of the said letter, it is clearly written that "***His services can be terminated by giving one month prior notice on either side***". So far as the discriminatory treatment is concerned, nothing has been placed on record to show any discriminatory treatment.

8. It is an established principle that where employment is on contract, there is a relationship of master and servant and in such like cases the Constitutional petition under Article 199 of the Constitution is not maintainable. In case titled "Lt. Col. Rtd. Aamir Rauf v. Federation of Pakistan through Secretary M/o Defence and 3 others" (2011 PLC (CS) 654), this Court had held that if an employee working on contract basis, is aggrieved of his termination the only remedy available was an action for damages and no direction could be issued to force the unwilling employer to keep the petitioner in service. Similar principle was laid down by the Hon'ble Supreme Court of Pakistan in case titled "Nadeem Ahmed v. Pakistan State Oil Company Limited and another" (2005 PLC (C.S.) 1447).

9. Record also reveals that in the letter dated 24.02.2020 whereby the contract of the petitioner has not been extended, it is clearly mentioned that he is advised to obtain clearance and proceed as per C.U.I Rules on the matter. In view of the same, as the representation of the petitioner dated 03.03.2020, is still pending, the respondents are directed to consider the case of the petitioner

sympathetically and decide his representation on humanitarian grounds. Petitioner is directed to appear before respondent No.3 on **21.09.2020**, alongwith a certified copy of this judgment, who is directed to decide the representation of the petitioner, strictly in accordance with law, preferably within the period of one month after receipt of copy of this judgment, under intimation to the office of this Court for perusal in Chamber.

10. In view of the above direction, this petition stands **disposed of**.

Ghulam Azam Qambrani
Judge

Announced in Open Court, on this 11th day of September, 2020.

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Judge

S.Akhtar