# JUDGMENT SHEET
# IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
# JUDICIAL DEPARTMENT.

I.C.A. No.510 of 2016
First Women Bank Ltd.
**Versus**
Muhammad Tayyab and others

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| **Date of Hearing:** | 06.02.2018 |
| **Appellant by:** | M/s Shahid Anwar Bajwa, and Faiza Naseer Chaudhry, Advocates |
| **Respondents by:** | Chaudhry Muhammad Arif, Advocate for respondent No.1 in I.C.A.No.510/2016 to 515/2016. |

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**MIANGUL HASSAN AURANGZEB, J:-** Through this common judgment, we propose to decide the intra court appeals No.510/2016 to 515/2016 since they entail common questions of law and fact. In the said appeals, the appellant, First Women Bank Ltd., has challenged judgment dated 07.11.2016, passed by the learned Judge-in-Chambers, whereby writ petitions No.2573/2016, 2484/2016, 2485/2016, 2487/2016, 2488/2016, and 2497/2016, were allowed, and the appellant was directed to process the cases of the petitioners in the said writ petitions for the regularization of their services within a period of six months.

2. Learned counsel for the appellant submitted that the private respondents had been working on daily wages basis and had been working in the said capacity for a number of years until they were employed on contract basis; that the tenure of the private respondents' employment contracts was extended from time to time; that vide letters dated 24.05.2016, the private respondents were expressly informed that their contractual service would not be extended any further; that in June, 2016, the private respondents filed writ petitions before this Court praying *inter-alia* for a direction to the appellant to regularize their services with effect from the date when they were initially appointed on daily wages basis; that the appellant's letters informing the private respondents as to the appellant's decision not to extend their contractual employment were also challenged in the writ petitions; and that vide consolidated judgment dated 07.11.2016, writ petitions No.2573/2016, 2484/2016, 2485/2016,

2487/2016, 2488/2016, and 2497/2016, were allowed and the appellant was directed to process the cases of the petitioners in the said writ petitions for regularization.

3. Learned counsel for appellant further submitted that the regularization policy dated 29.08.2008 did not apply to the appellant bank; that since the appellant bank did not have statutory service rules, the writ petitions filed by the private respondents were not maintainable; that the appellant bank was incorporated under the provisions of the Companies Ordinance, 1984; that not a single name of the appellant banks' employee was sent for regularization to the Cabinet Sub-Committee; that in 2010 the appellant bank regularized the services of officers in the clerical cadre; that this Court did not have the jurisdiction to direct the appellant bank to regularize the private respondents; that there was an economic rationale in dispensing with the private respondents' contractual services; that since the private respondents were 'workmen', they had a remedy before the Labour Court; and that since the period of the private respondents' contractual employment had lapsed, they could not file writ petitions seeking the regularization of their services.

4. Furthermore, it was submitted that when the regularization policy dated 29.08.2008 came into force, 28% share of the appellant bank vested in the National Bank of Pakistan and the Ministry of Women Development, and the rest of the shares were owned by private bodies; that the learned Judge in-Chambers erred by placing reliance on the case of Imran Sajid Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan (2015 SCMR 1257), since the appellant bank was not wholly owned by the Federal Government; and that presently the Government of Pakistan owned majority share holding in the appellant bank. Learned counsel for the appellant prayed for the appeals to be allowed and for the impugned judgment dated 07.11.2016 to be set-aside.

5. On the other hand, learned counsel for the private respondents submitted that the private respondents had worked for several years with the appellant bank; that respondent No.1 (Muhammad Tayyab) in I.C.A. No.510/2016 was twice recommended for regularization; that

during their contractual employment, the private respondents had been promoted by the appellant bank; that the private respondents instituted the writ petitions, because the appellant bank was taking steps to outsource the employment of workmen for the positions on which the private respondents were working; that the said steps being taken by the appellant bank amounted to exploitation; that since the private respondents had worked on contract basis for the respondents bank for a considerable period of time, they had a vested right and legitimate expectancy for their services to be regularized; that the private respondents have no hope to be employed elsewhere after having been laid off by the appellant bank; that when the writ petitions were filed, 87% of the share holding in the appellant bank was owned by the Federal Government; that the Federal Government appoints the President of the appellant bank; and that the private respondents had approached this Court for the enforcement of their fundament rights enshrined in the Constitution. Learned counsel for the private respondents prayed for the appeals to be dismissed.

6. We have heard the contentions of the learned counsel for the contesting parties, and perused the record with their able assistance.

7. It is not disputed that all the private respondents had worked as daily wagers and contractual employees with the appellant bank for periods stretching from six years to fourteen years. The Federal Cabinet, in its meeting dated 04.06.2008, took the following decision:-

> *"The Cabinet decided, in principle, to regularize all contract employees in BS 1 to 15 and equivalent. A Committee comprising Ministers for Labour & Manpower, Finance, Law & Justice and Deputy Chairman Planning Commission would work out the modalities of regularization of these employees. The Committee would also review the contracts of persons appointed in higher positions in Government/public sector entities and finalize its recommendations within a week."*

8. In pursuance of the said decision of the Federal Cabinet, the Establishment Division (Cabinet Secretariat), issued Office Memorandum dated 29.08.2008, which contained the eligibility criteria for the regularization of contract employees. It is an admitted position that neither did the appellant bank send the private respondents names to the Sub-Committee of the Cabinet on Regularization of contract/daily wages employees in the Ministries/ Divisions /Attached

Departments/ Autonomous Organizations etc. ("the Cabinet Sub-Committee"), nor did the private respondents apply for their cases for regularization to be referred to the the Cabinet Sub-Committee.

9. It is also an admitted position that the private respondents worked as daily wage/contract employees for several years before they were informed that their contractual employment was to be discontinued. The private respondents, in their writ petitions, did not pray for the reference of their cases before any committee constituted by the Federal Government for the consideration of their cases for regularization. They simply sought a restraint against the termination of their employment contracts; and a direction to the appellant bank to regularize their services from the date when they were appointed on daily wages/contract basis.

10. The dates on which the private respondents were appointed on daily wage/contract basis, and the dates on which their contractual service was to terminate are set out herein below:-

| S. No. | Name | Respondent and I.C.A. Nos. | Designation | Date of appointment | Last contract date |
|---|---|---|---|---|---|
| 1. | Muhammad Tayyab | Respondent No.1 in I.C.A.No.510/2016 | Machine Operator | 17.11.2005 | 14.04.2015 |
| 2. | Muhammad Asghar Idrees | Respondent No.1 in I.C.A.No.511/2016 | Messenger | 02.02.2001 | 29.12.2004 |
| 3. | Amjad Khan | Respondent No.1 in I.C.A.No.512/2016 | Messenger | 17.02.2003 | 30.06.2015 |
| 4. | Sher Aman | Respondent No.1 in I.C.A.No.513/2016 | Messenger | 06.03.2000 | 30.06.2015 |
| 5. | Muhammad Nasir Satti | Respondent No.1 in I.C.A.No.514/2016 | Messenger | 27.08.2005 | 27.06.2014 |
| 6. | Ziaqat Khan | Respondent No.1 in I.C.A.No.515/2016 | Messenger | 25.01.2001 | 27.06.2014 |

11. This Court, in exercise of its jurisdiction under Article 199 of the Constitution, could neither declare the termination notices to be unlawful nor hold that the employment contracts of the private respondents continue to subsist after the termination notices. It is an admitted position that there are no statutory rules governing the private respondents' relationship with the appellant bank. Until the filing of the writ petitions, the private respondents' employment was contractual in nature. This made their relationship with the appellant bank as that of master and servant. This being so, if some of the private respondents were aggrieved by the termination of their employment contracts, at best, they could have filed suits for

**damages. It is well settled that a contractual employee cannot file a writ petition seeking his reinstatement in service. Reference in this regard may be made to the following case law:-**

**(i) Recently in the case of Chairman NADRA, Islamabad Vs. Muhammad Ali Shah (2017 SCMR 1979), it has been held *inter-alia* that a contractual employee of a statutory organization cannot invoke the constitutional jurisdiction of the High Court under Article 199 of the Constitution.**

**(ii) The Honourable Supreme Court in the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (PLD 2011 S.C. 132), held *inter-alia* as follows:-**

> ***"All the employees having entered into contracts of service on the same or similar terms and conditions have no vested right to seek regularization of their employment, which is discretionary with the master. The master is well within his rights to retain or dispense with the services of an employee on the basis of satisfactory or otherwise performance. The contract employees have no right to invoke writ jurisdiction, particularly in the instant case where their services have been terminated on completion of period of contract."***
> **(Emphasis added)**

**(iii) In the case of the Federation of Pakistan through Secretary Law Justice and Parliamentary Affairs Vs. Muhammad Azam Chatha (2013 SCMR 120), it has been held *inter-alia* as follows:-**

> ***"In addition to it, it is a cardinal principle of law that a contract employee instead of pressing for his reinstatement to serve for the leftover period can at best claim damages to the extent of unexpired period of his service."***

**(iv) In the case of Trustees of the Port of Karachi Vs. Saqib Samdani (2012 SCMR 64), it has been held *inter-alia* as follows:-**

> ***"Evidently the above letter reflects that the respondent was in employment on contract basis, hence no vested right was created in his favour for reinstatement in service. It was not the case where the respondent was appointed as a regular employee against any particular quota to give him a valid cause of action. Equally, the impugned judgment is also silent that termination of service of the respondent violated any of his rights, therefore, in our view his reinstatement under the impugned judgment does not appear to have been validly ordered."***
> **(Emphasis added)**

**(v) In the case of Syed M. Yahya Vs. First Credit and Investment Bank Limited (2009 UC 656), it has been held *inter-alia* that**

**contractual employment containing specific terms and conditions of service would exclude the application of a general terms and conditions of service applicable to non-contractual employees. Furthermore, it was held that a contractual employee could not invoke writ jurisdiction under Article 199 of the Constitution against his termination from service in accordance with the specific terms and conditions of service contained in the contract.**

**(vi) In the case of Muhammad Waqas Gul Vs. Water and Power Development Authority (2015 PLC (C.S.) 144), it has been held *inter-alia* as follows:-**

> ***"Without going into the question whether the aforesaid clauses will automatically dispense with requirement of rule of natural justice, suffice it to say that non issuance of notice of hearing to the petitioners, will not entitle the petitioners, for revival of their contract of service, rather the remedy of the petitioners, if any, for wrongful termination would be for damages to the extent of unexpired period of their services, before the competent court of law."***

**12. It is well settled that where the conditions of service of an employee of a body performing functions in connection with the affairs of the Federation were governed by statutory rules, any action prejudicial against such an employee in derogation or in violation of statutory rules could be set-aside by the High Court in exercise of writ jurisdiction. In the case at hand, it is admitted position that there are no statutory rules governing the private respondents' relationship with the appellant bank. Learned counsel for the private respondents could not even point out any non-statutory service rule which had been violated by the appellant bank while terminating the private respondents' employment contracts.**

**13. It is a master's prerogative to terminate a servant's contractual appointment if the former does not find the latter's performance to be satisfactory or does not require his services any more. A contractual employee cannot insist for a regular inquiry to be held regarding the employer's satisfaction with the employees' performance. In the case at hand, the notices whereby the employment contacts of the private respondents were terminated do not, in any manner, stigmatize the latter.**

**14. The private respondents want permanent employment with the appellant bank without going through a competitive process for it. The mere fact that they were given contractual employment after a test or an interview could not make out their case for the conversion of their contractual employment into a permanent employment. It may be mentioned that vide order dated 14.11.2017, passed by the Division Bench of this Court in I.C.A. No.108 of 2017, titled, "Muhammad Qasim and others Vs. Federation of Pakistan through Secretary, Ministry of Overseas Pakistanis & Human Resource Development and another", it was held *inter-alia* as follows:-**

> ***"7. It is our view that the dimensions and parameters of a competitive process for a permanent appointment and a contractual/ temporary appointment are altogether different. Competition for a contractual/temporary employment is not as aggressive and competitive as competition for a permanent employment. Many vying for permanent employment would not bother applying for contractual/temporary employment. This is more so when there is no representation in the advertisement inviting applications for contractual/temporary employment that the same would somehow transform into a permanent employment. If a person employed purely on temporary basis is to be given a permanent employment without any competitive process it would amount to stealing a march on hundreds of thousands of able would-be applicants who did not apply for temporary/contractual employment, but would have applied had they known that the contractual employment would, without any further competitive process, turn into permanent employment. The conversion of a person's temporary/contractual employment into permanent employment without any transparent competitive process, would be a clear violation of Articles 3 and 9 of the Constitution. Equal opportunity in public employments is a constitutional mandate. The principle of "each according to his ability to each according to his work" can only be achieved by appointing meritorious candidates in the public sector through strict competition. Such competition for a permanent employment in the public sector cannot be given a go-bye simply because a contractual employee, desirous of his employment being made regular/permanent, was given contractual employment through a competitive process. The equality clause enshrined in the Constitution is followed scrupulously by the public sector. The youth of this Islamic Republic burning the midnight oil to secure permanent employment in the public sector through an open competitive process would be let down and demoralized if the contractual employment of persons like the appellants is converted into permanent employment without a competitive process. Such a relaxation would be a bad precedent to a large number of qualified people aspiring for permanent employment in the public sector."***

**15. An employee of a company, just like the appellant bank, whose majority shareholding is owned by the federal government, in the absence of violation of law or any statutory rule, could not press into**

**service the constitutional jurisdiction of the High Court in order to seek relief with respect to his employment. Reference in this regard may be made to the law laid down in the cases of "Samiullah Narago Vs. Federation of Pakistan (2012 PLC (C.S.) 1205), and Pakistan International Airline Corporation Vs. Tanveer-ur-Rehman, (PLD 2010 SC 676)". In the latter case, it has been held as follows:-**

> ***"19. However, this question needs no further discussion in view of the fact that we are not of the opinion that if a corporation is discharging its functions in connection with the affairs of the Federation, the aggrieved persons can approach the High Court by invoking its constitutional jurisdiction, as observed hereinabove. But as far as the cases of the employees, regarding their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable to the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the Court of competent jurisdiction."***

**16. The reliance by the learned Judge in Chambers on the case of Imran Sajid Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan *(Supra)* is misplaced since in the said case the Cabinet Sub-Committee had already recommended that the contractual services of the employees of the Telephone Industries of Pakistan be regularized. Despite the said recommendations, the management of Telephone Industries of Pakistan was not regularizing the services of the beneficiaries of the said recommendations. The case at hand is distinguishable inasmuch as there has not been, at any material stage, any recommendation made by the Cabinet Sub-Committee to regularize the services of the private respondents. Furthermore, even if it is held that a writ petition against the appellant bank is maintainable, since it does not have any statutory service rules, a writ petition filed by its employee or former employee with respect to the terms and conditions of his service would not be maintainable on the touchstone of the law laid down in the case of Pakistan International Airline Corporation Vs. Tanveer-ur-Rehman *(Supra)*.**

**17. Learned counsel for the private respondents could not point out any "law" under which the contractual employment of the private respondents could be regularized. It may be mentioned that recently,**

**vide order dated 08.01.2018, passed in civil petition No.4504/2017, titled "Workers Welfare Board K.P.K. Vs. Nemat Ullah" and connected matters, the Hon'ble Supreme Court allowed the petitions filed by the Workers Welfare Board K.P.K. against the judgment of the Hon'ble Peshawar High Court, whereby the services of contractual employees were directed to be regularized. In the said order dated 08.01.2018, it was held *inter-alia* as follows:-**

> ***"Having heard the learned counsel for the parties, we find that contractual employees have no right to be regularized until there is a law provided to that effect and we are not confronted with any such legal proposition. They are the contractual employees and they have to serve till the pleasure of their master and in case of any wrongful termination, which according to them has taken place, they cannot seek the reinstatement. At the best, they can only have the compensation for the wrongful termination by applying to the competent authority law. Resultantly, these petitions are converted into appeals and allowed and the impugned judgment is set aside."***

**18. The private respondents through their respective writ petitions (by challenging the termination notices, and seeking the regularization of contractual services), had raised grievances regarding the terms and conditions of their employment with the appellant bank. Since the appellant bank's service rules are not statutory in nature, we hold that the writ petitions filed by the private respondents were not maintainable. Therefore, the instant appeals are allowed. The impugned judgment dated 07.11.2016, is set-aside, and the writ petitions instituted by the private respondents are dismissed as not maintainable. There shall be no order as to costs.**

**(AAMER FAROOQ)**
**JUDGE**

**(MIANGUL HASSAN AURANGZEB)**
**JUDGE**

**ANNOUNCED IN AN OPEN COURT ON _____/2018**

**(JUDGE)** **(JUDGE)**

*Qamar Khan** **APPROVED FOR REPORTING**