

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Intra Court Appeal No.325 of 2014

Major (R) Waqar Ali Shah and 4 others

Vs.

Nawab Ali and 5 others

Appellants by: Mr. Fiaz Ahmed A. Jandran, Advocate, Mr. M. Shoaib Shaheen, Advocate, Mr. Ali Murad Baloch, Advocate, Mr. Muhammad Haroon, Advocate, Barrister Umar Riaz, Mr. M. Umair Baloch, Advocate, Mr. Sher Afzal Khan, Advocate, Ms. Kashifa Niaz Awan, Advocate, Hafiz Arfat Ahem, Advocate, Mr. Rehman Qaisar, Advocate, Malik Qamar Afzal, Advocate, Mr. Safdar Ahmed, Advocate, Mr. Khalil ur Rehman Abbasi, Advocate, Mr. Anar Khan Gondal, Advocate, Raja Aamir Abbas, Advocate, Mr. Saad Butter, Advocate, Mr. Moheed Rashid Khan, Advocate, Raja Zubair Hussain Jarral, Advocate alongwith Mr. Meharban Khan, A.O. Legal, Mr. Ajmal Ghaffar Toor, Advocate, Mr. Atif Rahim Barki, Advocate in their respective appeals.

Respondents by: Mr. Afan Karim Kundi, Additional Attorney-General, Kh. Imtiaz Ahmed, Standing Counsel, Mr. Rizwan Faiz Muhammad, Mr. Muhammad Asif Khan, Advocate, Mr. Khasro Pervaiz Khan, Additional Secretary, Cabinet Division, Mr. Tariq Mehmood Jahangiri, Advocate, Mr. Muhammad Fazal Siddiqui, Advocate, Mr. Abdul Rehman Siddiqui, Advocate, Syed Sohail Asghar, Advocate & Rabnawaz, Advocate in their respective appeals.

Date of decision: 09.04.2015.

AAMER FAROOQ, J.- Through this judgment we shall decide the instant Intra Court Appeal as well as all the Intra Court Appeals and Criminal Original mentioned hereinbelow:

1. I.C.A. No.335/2014 (*Zulfiqar Ali etc. Vs. F.D.Edu. etc.*)
2. I.C.A. No.338/2014 (*Shamsa Batool etc. Vs. FD Edu. Etc*)
3. I.C.A. No.357/2014 (*Shamim Akhtar etc. Vs.GOP etc.*)
4. I.C.A. No.12/2013 (*Hamid Yar etc. Vs.M.Ashraf etc.*)
5. I.C.A. No.1111/2013 (*Director FGEL. Vs. Kausar Shahin etc*)
6. I.C.A. No.326/2014 (*Mati Rehman etc. Vs. FOP etc.*)
7. I.C.A. No.328/2014 (*Shazim Khan etc. Vs. FOP etc.*)
8. I.C.A. No.331/2014 (*M. Waqar ur Rehman etc. Vs D.G. etc*)
9. I.C.A. No.332/2014 (*Sumera Saeed etc. Vs. D.G etc.*)

10. I.C.A. No.333/2014	(<i>Raja M.Ali etc. Vs. D.G. etc.</i>)
11. I.C.A. No.339/2014	(<i>M. Tanveer etc. Vs. FOP etc.</i>)
12. I.C.A. No.344/2014	(<i>Shamas ur Rehman etc. Vs. FOP etc.</i>)
13. I.C.A. No.347/2014	(<i>Sajjad Ahmed etc. Vs. Nawab etc.</i>)
14. I.C.A. No.349/2014	(<i>Jahangir Ahmed etc. Vs. Nawab etc.</i>)
15. I.C.A. No.352/2014	(<i>Jehan Afsar etc. Vs.MNSF etc.</i>)
16. I.C.A. No.353/2014	(<i>Sibghat Shamim. Vs. FOP etc.</i>)
17. I.C.A. No.354/2014	(<i>Shazi Perveen etc. Vs. FOP etc.</i>)
18. I.C.A. No.355/2014	(<i>Amrina Urooj etc. Vs. FOP etc.</i>)
19. I.C.A. No.356/2014	(<i>Dr. Khurram etc. Vs. FOP etc.</i>)
20. I.C.A. No.359/2014	(<i>Rabnawaz etc. Vs. FOP etc.</i>)
21. I.C.A. No.360/2014	(<i>M. Nawaz etc. Vs. GOP etc.</i>)
22. I.C.A. No.361/2014	(<i>Bushra Akhtar. Vs. GOP etc.</i>)
23. I.C.A. No.366/2014	(<i>Moazzam Shahzad. Vs. FOP etc.</i>)
24. I.C.A. No.378/2014	(<i>Waqar ul Hassan etc. Vs. FOP etc.</i>)
25. I.C.A. No.382/2014	(<i>Ms. Najma. Vs. FOP etc.</i>)
26. I.C.A. No.402/2014	(<i>Chairman PARC. Vs. Syed Ismail etc.</i>)
27. I.C.A. No.489/2014	(<i>Farheen Hassan. Vs. FOP etc.</i>)
28. I.C.A. No.99/2015	(<i>Hisam ud Din etc. Vs. FOP etc.</i>)
29. Crl.Orgl. No.465/2014	(<i>Lubna Naeem Vs. Sami Saeed etc.</i>)

2. All the appeals are directed against the judgment dated 29.05.2014 passed in Writ Petition No.1863/2013 whereby the regularization of services, by the Cabinet Sub Committee, in respect of employees working in various Government/Semi Government Departments as well as Statutory Bodies was held to be without jurisdiction and hence void *ab initio*.

3. During the course of proceedings, before this Court, Federal Government was directed to file a report regarding the Policy for regularization of Contingent/Temporary employees working in Government/Semi Government Departments including the Statutory entities, formulated by the Government in 2008. In response to the direction of this Court Mr. Khusro Pervaiz Khan, Additional Secretary, Cabinet Division appeared in person and apprised that a summary was moved before the Hon'ble Prime Minister and in response thereto the Cabinet Division, Government of Pakistan has issued a notification on 02.04.2015 whereby a Committee has been constituted to look into the matter and decide the cases of regularization on merits. In this behalf the notification by the Government was placed on record.

4. The notification aforementioned is reproduced herein below, for the sake of brevity:

To be published in next issue of Gazzette of Pakistan (Part-I)

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
CABINET DIVISION

Islamabad, the 2nd April, 2015

NOTIFICATION

No.F.2/3/2014-Lit In pursuance of Islamabad High Court orders passed in W.Ps No.1703 and 965/2013 on 10th and 11th September, 2014, respectively and with the approval of the Prime Minister, Committee comprising of the following has been constituted in the Establishment Division:-

Composition

- (a) Mr. Haseeb Athar
(BS-22 an Officer of Secretariat Group)
- (b) Additional Secretary-III,
Cabinet Division, Islamabad
- (c) Joint Secretary (Admn),
Establishment Division, Islamabad
- (d) Joint Secretary/Equivalent,
Law, Justice and Human Rights Division,
Islamabad.

Terms of Reference of the Committee

- i. The Committee shall examine the cases for regularization of Contract/Contingent/Daily Wages employees which are under adjudication in various Judicial For a and have been referred to the Federal Government for consideration/Disposal as per guidelines issued vide O.M. No.10/30/2008-R.II dated 29th August, 2008.
- ii. The prescribed qualification for each post shall be adhered to;
- iii. The Committee shall pass speaking orders in each case after giving an opportunity of hearing to the employees and the respective employers.
- iv. In the event that the Committee comes to the conclusion that there has been discrimination in implementing the policy, the decision shall be communicated to the Secretary, Cabinet Division who shall ensure its implementation without delay.
- v. The Committee shall consider all the petitions deemed to be pending before the Federal Government by treating them as representations.
- vi. The Committee shall identify all such cases in which the employees are eligible under the policy guidelines vide O.M. No.10/30/2008-R.II dated 29th August,2008 and shall refer them to the respective employers for appropriate action.
- vii. The committee shall also decide the cases referred to by the employers where material irregularities/illegalities are identified by the employer and referred to the Committee on case to case basis.
- 2. Establishment Division will be the Secretariat of the Committee and will provide Secretariat assistance to the Committee.

(Hafiz Shahzad Masood)
Section Officer (Lit/Coord)

5. The plain reading of the notification shows that the terms of Reference of the Committee are extensive and provide an opportunity to the

employers as well as the employees to present their cases before it and the Committee shall examine each case on merits. It is also pertinent to mention that the notification has been issued pursuant to an order passed by this Court in Writ Petitions No.1073 and 965 of 2013. We have been informed that the said judgment has attained finality as the august Supreme Court has refused leave. The matter relates to a policy owned by Federal Government and, therefore, beyond the pale of jurisdiction of this Court.

6. In view of above, the instant appeal as well as all the appeals are allowed and the impugned judgment dated 29.05.2014 passed in Writ Petition No.1863/2013 is set aside and all the Government and Semi Government Departments/Government Agencies/Statutory Corporations are directed to approach the Committee for regularization of the employees who fulfill the criteria as laid down in OM No.10/30/2008-R-II dated 29.08.2008 and each case shall be examined on its own merits after giving an opportunity of hearing to the parties. Moreover, in case any employee feels that his/her case has been left out by the employer, he/she can also approach the abovementioned Committee for redressal of grievance and upon the representation, filed by the employee, the Committee after hearing the employer/Department shall decide such like cases on merits.

7. During the course of arguments some of the learned counsels appearing on behalf of the respective Departments contended that in some cases services of employees have been regularized in violation of law or that they did not fulfill the requirements e.g. having obtained the benefit on the basis of a forged document. It is noted that in such a situation the respective Department shall be at liberty to proceed against an employee who may have been regularized illegally. However, any order which may have an adverse effect on the rights of an employee shall be passed after observing the mandatory requirements of due process guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. We have been informed that more than 100,000 employees have already been regularized pursuant to the policy. While implementing the policy irregularities may have been committed in some cases and there is no bar on the respective Departments to proceed in accordance with law on case to case basis. Regularization policy cannot be construed or implemented in a manner which may extend legitimacy to illegally appointed employees. Reference in this regard may be made to paragraph 26 of the judgment of the august Supreme Court in '*Syed Mubashir Raza Jaffri v. Employees Old Age Benefits Institution*' (2014 SCMR 949).

8. Appeals allowed in terms of above directions.

(ATHAR MINALLAH)
JUDGE

(AAMER FAROOQ)
JUDGE

M. Naveed

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