

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

I.C.A. No.551/2014

Capital Development Authority through its Chairman  
Versus  
Hameed Ahmed

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	07-03-2022	Ms Misbah Gulnar Sharif, Advocate for petitioner. Respondent in attendance.

Athar Minallah, C.J.- This appeal is directed against judgment, dated 11-06-2014, passed in W.P. No.2887/2013.

2. Hameed Ahmed son of Muhammad Bashir (*hereinafter referred to as "Respondent"*) was appointed on daily-wage basis vide order, dated 14-12-1992. From time to time, he was re-appointed on daily-wage basis till 26-01-2000, when his services were regularized. He was regularized against the post of Dispenser in BPS-06 with effect from 19-01-2000. Later vide order, dated 21-05-2003, the employment on daily-wage basis was counted with effect from 06-12-1993. Subsequently the date was modified to 14-12-1992. It appears from the record that the petitioner was upgraded to BPS-09 vide notification, dated 25-02-2010. The post of Dispenser was upgraded to BPS-14 upon fulfillment of certain conditions. The

Respondent was upgraded to BPS-14 pursuant to notification, dated 04-06-2010. The Respondent was denied upgradation to BPS-16 on the ground that he had not completed the prescribed period of service. The period during which he served on daily-wage basis was not counted towards his service. The petitioner challenged the refusal to upgrade him to BPS-16 by invoking the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The petition was allowed vide the impugned judgment and the Capital Development Authority was directed to upgrade the Respondent to BPS-16 with effect from 14-12-2012. The learned single judge declared that the Respondent had completed twenty years of service with effect from 14-12-1992.

3. The learned counsel for the Capital Development Authority has been heard at length. The Respondent had appeared in person.

4. It is settled law that contractual employment is not counted as regular service. Moreover, employment on daily-wage basis is not a continuous service because it has to be extended after specified periods. There is also nothing on record to show that the initial appointment of the respondent was made in a transparent manner. The learned single judge while ordering upgradation of the

Respondent appears to have excluded from consideration the principles and law highlighted by the Court in the case titled "*Chairman, Federal Board of Revenue, Islamabad v. Atta Muhammad Masud & others*" [2017 PLC (CS)N 58].

5. The august Supreme Court vide order, dated 29-01-2018, passed in Civil Review Petition No.471-2015, etc. titled "*Managing Director, PTV and another v. Ijaz Hussain Shahid and others*" has explicitly held that the contract employment cannot be counted as regular service. The upgradation of the post of Dispenser to Grade-16 was subject to completion of 20 years' service. The Capital Development Authority was justified in calculating the length of service as per the settled principles and law. Moreover, it appears to us that the Capital Development Authority, while taking decisions regarding upgradation of a post failed to take into consideration the policy of the Federal Government and the principles highlighted by the Court in the aforementioned judgment. Lastly, the principle of locus poenitentiae is not attracted in violation of the settled law. Reliance is placed on the cases titled '*Muhammad Nadeem Arif and others Vs. Inspector-General of Police, Punjab, Lahore and others*' [2011 SCMR 408], '*Executive District Officer (Edu). Rawalpindi Vs. Mst. Rizwana Kausar and 4 others*' [2011 SCMR 1581], '*Nazir Ahmed Panhwar Vs. Government of Sindh through Chief Secretary, Sindh and others*' [2005 SCMR 1814],

*'Executive District Officer (Education), Rawalpindi Vs. Muhammad Younas' [2007 SCMR 1835] and 'The Engineer-In-Chief Branch through Ministry of Defence, Rawalpindi and another Vs. Jalaluddin' [PLD 1992 SC 207].*

6. For the above reasons, the appeal is allowed and the impugned judgment, dated 11-06-2014, is hereby set aside. The Capital Development Authority, while considering the case of the Respondent, is expected to take into consideration the policy of the Federal Government regarding upgradation and the principles highlighted by this Court in the judgment reported as "*Chairman, Federal Board of Revenue, Islamabad v. Atta Muhammad Masud & others*" [2017 PLC (CS)N 58].

(SARDAR EJAZ ISHAQ KHAN)  
JUDGE

(CHIEF JUSTICE)

Luqman Khan/\*