

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2828 of 2019

Riaz ud Din and others

Versus

Federation of Pakistan through its Secretary, Ministry of National
Food Security and Research and others

Date of Hearing:	20.02.2020.
Petitioners by:	Mr. Majid Rashid Khan, Advocate.
Respondent by:	Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General. Mr. Muhammad Umair Baloch, Advocate for respondents No.3 to 5. Mr. Amjad Hussain Shah, Deputy Director, Federal Seed Certification and Registration Department. M/s Mureed Hussain Jassra and Abdul Samad Shaikh, Section Officers, Ministry of National Food Security and Research.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners impugn the notification dated 17.07.2019 issued by the Ministry of National Food, Security and Research (“**Ministry of N.F.S.&R.**”), whereby respondents No.3 to 5’s services as Seed Certification Officers (BS-17) were regularized with effect from 11.07.2013.

2. Notification (SRO 742(I)/2005), dated 19.07.2005 issued by the erstwhile Ministry of Food, Agriculture and Livestock, provides the method, qualifications and other conditions of appointment against the various posts in the Federal Seed Certification & Registration Department (“**F.S.C.&R.D.**”).

3. Vide advertisement published on 26.09.2005 by F.S.C.&R.D., applications were invited for appointment on contract basis against eleven posts of Seed Certification Officers (Field) in the development project called “Establishment of Seed Testing Laboratories and Rehabilitation of existing Laboratories” (hereinafter referred to as “**the Project**”). The method, qualifications and other conditions of appointment against posts in the said Project were provided in the notification (SRO

742(I)/2005), dated 19.07.2005 issued by the erstwhile Ministry of Food, Agriculture and Livestock.

4. The competitive process carried out pursuant to the said advertisement culminated in the appointment of respondents No.3 to 5 as Seed Certification Officers (Field). The minutes of the meetings dated 13.05.2006, 15.05.2006 and 16.05.2006 of the Departmental Selection Committee constituted by the Ministry of Food, Agriculture and Livestock show that the said Committee had evaluated respondents No.3 to 5 along with other candidates and given them marks on the basis of their technical knowledge, general knowledge and personality. The said minutes show that respondents No.3 to 5 along with seven other candidates had been recommended by the Departmental Selection Committee for appointment as Seed Certification Officers (Field) on contract basis.

5. Respondents No.3 to 5 along with two other contract employees had filed writ petition No.1951/2009 before this Court praying for their services to be regularized. The said writ petition was allowed by this Court vide order dated 31.12.2012 with the direction for the petitioners' cases to be sent to the Cabinet Sub-Committee on regularization of contract / daily wages employees in the Ministries / Divisions / Attached Departments / Autonomous Bodies / Organizations, etc. It was also ordered that till the decision of the Cabinet Sub-Committee, no adverse action shall be taken against the petitioners (i.e. respondents No.3 to 5 herein).

6. In compliance with the order dated 31.12.2012 passed by this Court in writ petition No.1951/2009, the Cabinet Sub-Committee, in its meeting held on 29.01.2013, discussed and approved the regularization of the services of five officers including respondents No.3 to 5 with effect from 23.05.2009. The minutes of the Cabinet Sub-Committee's said meeting show that the Project had been transferred to non-development budget under Finance Division's U.O. dated 08.06.2009. The said U.O. shows that the Finance Division had agreed to the conversion of 60 posts in the Project from development to non-development.

7. On 26.06.2013, a meeting of the committee constituted in the Ministry of N.F.S.&R. to resolve the regularization cases approved by the Cabinet Sub-Committee was held. The minutes of the said meeting show that the Project had been transferred to the non-development side, and that the committee discussed and approved the request of the F.S.C.&R.D. to adjust the five employees against regular vacant positions in F.S.C.&R.D. with immediate effect.

8. Vide notification dated 11.07.2013 issued by F.S.C.&R.D., the services of five employees in F.S.C.&R.D., including respondents No.3 to 5, were regularized with immediate effect. This notification was issued pursuant to the said decision of the Cabinet Sub-Committee taken on 29.01.2013.

9. It appears that five years after the regularization of respondents No.3 to 5's services, F.S.C.&R.D. proposed that the cases of the officers in the F.S.C.&R.D. whose services were regularized in 2012-13 should be referred to the Federal Public Service Commission ("F.P.S.C.") for consideration afresh. Vide letter dated 26.09.2018, Ministry of N.F.S.&R. opined that the said proposal of F.S.C.&R.D. was irrational and against the policy instructions issued by the Establishment Division vide office memorandum dated 11.05.2017.

10. On 21.06.2018, the Division Bench of this Court passed judgment in intra Court appeal No.340/2017 titled "Imran Ahmad and others Vs. Federation of Pakistan and others" and connected matters. This is a detailed judgment regarding the legality of the orders passed for the regularization of services of contract and daily wages employees in Ministries / Divisions / Attached Departments / Autonomous Bodies / Organizations, etc. In paragraph 123(ix) of the said judgment, the following direction was given:-

"ix. Employees who are already working in different Ministries, Divisions, etc. whose their services have been regularized; they should not be disturbed as their cases fall within the ambit of past and closed transaction, subject to conditions that they were appointed in accordance with law in a transparent manner."

11. After the said judgment was announced, the cases of respondents No.3 to 5 for the regularization of their services were again considered. Office memorandum dated 24.07.2018 issued by the Ministry of N.F.S.&R shows that respondents No.3 to 5 were amongst six employees whose services were regularized in the F.S.C.&R.D. pursuant to the decision taken by the Cabinet Sub-Committee, and with prior approval of the competent authority i.e. the then Secretary, Ministry of N.F.S.&R. Vide notification dated 17.07.2019 issued by the Ministry of N.F.S.&R., the services of respondents No.3 to 5 were yet again regularized with effect from 11.07.2013 as Seed Certification Officers (BPS-17). The said notification was issued with the approval of the competent authority i.e. the then Secretary, Ministry of N.F.S.&R.

12. On 30.07.2019, eight Seed Certification Officers submitted a representation to the Secretary, Ministry of N.F.S.&R. against respondents No.3 to 5's regularization of services. The primary ground taken in the said representation was that respondents No.3 to 5's services could not have been regularized without referring their cases to the F.P.S.C. in terms of paragraph 123(iii) of the said judgment which is reproduced herein below:-

“iii. All project employees who are appointed in BPS-16 and above on project could not claim regularization of their services unless their projects have been converted from development to non-development phase by the Government of Pakistan. In such eventuality, all those employees who are working on those projects shall continue to work and if their initial appointments in the project have been made through a transparent manner i.e. advertisement, test, and interview, then their cases be sent to FPSC in terms of Section 11(b) of the Civil Servants Act, 1973 read with the powers referred in Rule 4 & 5 of the FPSC (Functions) Rules, 1978. Their posts and their appointments shall be considered regularized subject to decision of the FPSC on the question of their eligibility, qualification and fitness merely on the basis of opinion of FPSC or conducting test and interview within a period of six Months.”

13. Having not received any response to the said representation, three out of the eight officers who had submitted the said representation filed the instant writ petition praying for the setting aside of the notification dated 17.07.2019, whereby

respondents No.3 to 5's services were regularized with effect from 11.07.2013 as Seed Certification Officers (BPS-17).

14. When the instant writ petition was filed, steps were being taken to consider respondents No.3 to 5 along with other Seed Certification Officers for promotion against the vacant posts of Deputy Directors (BPS-18) in the F.S.C.&R.D.

15. Learned counsel for the petitioners, after narrating the facts leading to the filing of the instant petition, submitted that the impugned notification dated 17.07.2019, whereby the services of respondents No.3 to 5 were regularized with effect from 11.07.2013 is liable to be declared unlawful on the touchstone of the law laid down by the Division Bench of this Court in the judgment dated 21.06.2018 passed in intra Court appeal No.340/2017 and connected matters; that under the said judgment, employees appointed in a project which is converted from development to non-development should be referred to the F.P.S.C. provided their appointments were made in a transparent manner i.e. advertisement, test and interview; that the impugned notification dated 17.07.2019 could not have been issued without respondent No.3 to 5's cases for the regularization of their services being considered by the F.P.S.C.; that the Ministry of N.F.S.&R. committed an illegality by not showing compliance with the directions in paragraph 123(iii) of the said judgment by not referring respondents No.3 to 5's cases to the F.P.S.C.; that the earlier notification dated 11.07.2013, whereby respondents No.3 to 5 were regularized was not lawfully issued, and the Secretary, Ministry of N.F.S.&R. had vide letter dated 27.11.2013 issued directions for the withdrawal of the said notification which was stated to have been issued without completing the codal formalities; that respondents No.3 to 5's regularization could not have been made with retrospective effect; that the retrospective regularization of respondents No.3 to 5's services have placed the petitioners at a lower level in the seniority list of officers in the F.S.C.&R.D.; and that respondents No.3 to 5's regularization with retrospective effect is the result of nepotism and

favouritism. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

16. On the other hand, learned counsel for respondents No.3 to 5 submitted that the said respondents had been appointed as Seed Certification Officers (BPS-17) on contract basis in the year 2005 after a competitive process and in a transparent manner i.e. advertisement, test and interview; that in the year 2009, the Project in which respondents No.3 to 5 were appointed was converted from development to non-development; that after the said conversion, respondents No.3 to 5's cases for the regularization of their services were considered by the Cabinet Sub-Committee pursuant to the order dated 31.12.2012 passed by this Court in writ petition No.1951/2009; that vide notification dated 11.07.2013 issued by the F.S.C.&R.D., respondents No.3 to 5's services were regularized with immediate effect; that after the amended regularization policy was issued on 11.05.2017, the Ministry of N.F.S.&R. opined that reference to the F.P.S.C. of the employees already regularized in the year 2012-13 was irrational and against the spirit of the regularization policy; that after the judgment dated 21.06.2018 passed by this Court in intra Court appeal No.340/2017 and connected matters, respondents No.3 to 5's cases for the regularization of their services were reconsidered in the light of the said judgment; that since respondents No.3 to 5 had been lawfully regularized in the past, their cases came within the category of past and closed transaction; that consequently, vide impugned notification dated 17.07.2019, respondents No.3 to 5's services were regularized with effect from 11.07.2013; that since earlier notification dated 11.07.2013 had been issued for the regularization of respondent No.3 to 5's services, that is why the impugned notification provides that respondents No.3 to 5's regularization is to be with effect from 11.07.2013; and that since respondents No.3 to 5 have the relevant experience and expertise to be considered for promotion as Deputy Directors (BPS-18), no legal infirmity has been committed by the F.S.C.&R.D. for considering them for promotion against the said posts. Learned counsel for

respondents No.3 to 5 prayed for the writ petition to be dismissed.

17. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

18. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 14 above, and need not be recapitulated.

19. The vital question that needs to be answered is whether the regularization of respondents No.3 to 5's services through the impugned notification dated 17.07.2019 falls foul of the law laid down and the directions given by the Division Bench of this Court in the judgment dated 21.06.2018 passed in intra Court appeal No.340/2017 and connected matters.

20. There is no denying the fact that respondents No.3 to 5 were appointed as Seed Certification Officers (BPS-17) on contract basis in the year 2005 after they participated in a competitive process in response to the advertisement dated 26.09.2005. It is also not disputed that their credentials have been evaluated by a selection committee which had recommended their appointment on contract basis. Respondents No.3 to 5 were considered for the regularization of their services by the Cabinet Sub-Committee pursuant to the order dated 31.12.2012 passed by this Court in writ petition No.1951/2009. Pursuant to the decision taken by the Cabinet Sub-Committee, in its meeting dated 29.01.2013, to regularize the services of respondents No.3 to 5, notification dated 11.07.2013 was issued by the F.S.C.&R.D., whereby respondents No.3 to 5's services were regularized with immediate effect. Although the Secretary, Ministry of N.F.S.&R. had reservations as to the regularization of respondents No.3 to 5's services, the fact remains that the said notification dated 11.07.2013 was not recalled at any stage.

21. After the regularization policy was amended on 11.05.2017, the Ministry of N.F.S.&R. opined that referring the regularization cases of the employees who were already regularized in the year 2012-13 to the F.P.S.C. was irrational and

against the spirit of the policy instructions issued by the Establishment Division. The judgment dated 21.06.2018 passed by the Division Bench of this Court in intra Court appeal No.340/2017 and connected matters resulted in the reconsideration of respondents No.3 to 5's cases for the regularization of their services in the light of the law laid down in the directions given in the said judgment. This process resulted in the issuance of the impugned notification dated 17.07.2019.

22. Now, it is an admitted position that when respondents No.3 to 5's cases for regularization of their services were considered by the Cabinet Sub-Committee pursuant to the orders passed by this Court, the Project in which the said respondents had been employed on contract basis had already been converted from development to non-development. The Finance Division, vide U.O. dated 08.06.2009, had agreed to the conversion of 60 posts in the Project to be converted from development to non-development.

23. Since a notification regarding respondents No.3 to 5's regularization of services had been issued on 11.07.2013 pursuant to the decision taken by the Cabinet Sub-Committee, the cases of respondents No.3 to 5 would come within the meaning of past and closed transactions in terms of paragraph 123(ix) of the judgment dated 21.06.2018 passed in intra Court appeal No.340/2017 and connected matters.

24. As regards paragraph 123(iii) of the said judgment, this, in my view, would pertain to those employees appointed in a project converted from development to non-development whose services had not been regularized at any stage in the past. The cases for the regularization of such employees, who were appointed in a transparent manner (i.e. advertisement, test and interview) had to be referred to the F.P.S.C. In the case at hand, since respondents No.3 to 5 had been regularized in the past vide notification dated 11.07.2013, there was no need to refer their cases to the F.P.S.C. for the regularization of their services. The said notification had not been recalled at any material stage. Therefore, after the said judgment passed by the Division Bench

of this Court, the regularization of respondents No.3 to 5's services with effect from 11.07.2013 (i.e. when the earlier notification for the regularization of their services was issued) does not suffer from any legal infirmity.

25. As regards the promotion of respondents No.3 to 5, till date no promotion order has been issued in their favour. Therefore, it would not be appropriate at this premature stage for this Court to give a finding on whether or not they were fit to be considered for promotion.

26. In view of the above, the instant writ petition, being devoid of merits, is dismissed.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2020.

(JUDGE)