

Form No: HCJD/C-121

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Intra Court Appeal No. 312 of 2021

Mir Nawaz and others

Versus

Federal Government Employees Housing Authority, through Director
General, Islamabad and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(05)	02.09.2021	Mr. Mushtaq Hussain Bhatti, Advocate for the appellants. Ms. Kashifa Niaz Awan, Advocate for respondent No.1 .

TARIQ MEHMOOD JAHANGIRI, J:

Through the instant Intra Court Appeal,
the appellants have assailed the Judgment
dated 22.06.2021, passed in writ petition No.
1536 of 2021, whereby, the learned single
Judge-in-Chambers has dismissed the writ
petition.

02. Brief facts of the case are that the
appellants were appointed in FGEHA in
different intervals of time in the last decade
on contingent basis and had been performing
their duties with the respondent Authority
until 27.05.2020, when the latter refused to

regularize their services and advertised the posts vide advertisement dated 05.02.2021, on which petitioners had been rendering their services. The respondent Authority, vide 12th Meeting of its Executive Board, held on 15.04.2021, decided to terminate services of the petitioners; being aggrieved the appellants filed writ petition for issuance of direction for regularization of their services which was dismissed vide impugned judgment dated 22.06.2021.

03. Learned counsel for the appellants *,inter alia,* contends that the appellants have been working in Federal Government Employees Housing Authority / Respondent No. 1, since 2015/16 and their services were liable to be regularized, as the appellants have been working with no break in the service. Despite rendering protracted and continued service the appellants have been denied of any prospects of regular employment by violating the basic policy/rule/law on the subject without any

legal justification, as despite rendering continuous service to the respondent's department, the appellants, till date, are being dealt with in an arbitrary manner, without any regard to their fundamental rights, as their services, despite being eligible to be regularized, have not been regularized till date.

04. That respondents have acted with utter and apparent malafide while dealing with the matters of employment of the appellants. That Hon'ble Supreme Court Of Pakistan since long has deprecated such practice and has held that engaging employees of protracted contract periods without any prospects of regularization is exploitation which is forbidden not only in Islam but prohibited under Constitution of Islamic Republic of Pakistan, 1973. Hence has prayed that the impugned judgment be set aside. Learned counsel has relied upon case law reported as "2005 SCMR 100, 2015 SCMR 1257, 2018 SCMR 1405 and 2018

SCMR 325”.

05. Learned counsel for the respondents has controverted the arguments made by learned counsel for the appellants and stated that the services of the appellants were purely temporary on contingent basis; the same have rightly been terminated by the respondents Authority; the rules and regulations of FGEHA are non-statutory and the Intra Court Appeal is not maintainable and all the actions have been taken in the light of law laid down by the Hon’ble Supreme Court of Pakistan. Learned counsel has relied upon the cases reported as **2021 SCMR 609, 2021 SCMR 767 & 2020 PLC (C.S.) 1419.**

06. Arguments advanced by learned counsel for both the parties have been heard and record has been perused with their able assistance.

07. It is admitted fact that the appellants were appointed on contingent basis during the period 2015-2018. The

offer/appointment letter of the appellants is reproduced as under for ready reference:

"To

**Subject: OFFER OF APPOINTMENT
AS HELPER (BS-01) ON CONTINGENT
BASIS**

Please refer to your application for employment. The competent authority has been pleased to appoint you as Helper (BS-01) in the Federal Government Employees Housing Foundation, Islamabad on contingent basis for a period of 89 days under the rules of Housing Foundation on the following terms and conditions:-

- (i) The appointment shall be purely temporary on contingent basis for a period of 89 days w.e.f the date of joining. His / her services will be liable to be terminated at any time, without assigning any reason.*
- (ii) The appointment will not confer upon his / her any title / right to claim for regular appointment / permanent retention in the Housing Foundation.*
- (iii) Further extension in the service, if any, will be subject to satisfactory performance of the employee.*
- (iv) For other terms and conditions, he / she will be governed under service rules of the Housing Foundation.*

2. If the offer is acceptable to you then you should report for duty within 15 days of the issuance of this letter. In case of failure in joining the duty within prescribed period, this offer shall automatically stand withdrawn. You are also required to submit original

documents for verification at the time of joining.

3. No TA/DA will be paid for joining duty.

*(Faiz Umer Sial)
Assistant Director (HR&M)”*

08. The appellants accepted the terms and conditions mentioned in the offer of appointment letters, the period of contingent appointment on the basis of same terms and conditions was extended from time to time and lastly terminated on 27.5.2021.

09. Section 26 of the Federal Government Employees Housing Authority Act, 2020 empowers the Executive Board to make rules and regulations for carrying out the purpose of the Act.

10. Under Section 26 *,ibid*, the Executive Board of Federal Government Housing Authority has framed the regulations called as **“Federal Government Employees Housing Authority (Service) Regulations, 2020”**.

11. It is admitted that the regulations framed by the Authority has not been

approved by the Federal Government, hence the regulations of the Authority are non-statutory.

12. In the recent judgment passed by larger bench of this Court in **Writ Petition No. 1502/2019 titled as "Waqas Rafi Awan Vs. National Engineering & Scientific Commission (NESCOM), Islamabad through its Chairman, Islamabad and 02 others"** while dismissing about 108 petitions of the employees of strategic organization having non-statutory rules/regulations has held that:

"We, therefore, declare that the effect of the insertion of the proviso in section 15 of the Act of 2010 is to acknowledge the intent of the Majlis-e-Shoora (Parliament) regarding the relationship of the Authority with its employees. The relationship will be governed by the principle of 'master and servant' and the rules regulating the employees and their terms of service will continue to enjoy the status of being non statutory". It has

further been held that:

"We, therefore, declare that the petitioners are regulated and governed under non statutory rules and thus not amenable to the jurisdiction of this Court under Article 199 Constitution. The constitutional petitions are consequently not maintainable and accordingly dismissed."

13. It is well settled that a writ petition is maintainable where the respondent authority violated any provision of law or statutory rules. Employees who are governed by statutory rules can avail the remedy of filing a writ petition before the High Court. It is also well settled that the principle of 'master and servant' was applicable to the employees whose services were not governed by any statutory rules. Employee of a company / organization, owned by the government, in the absence of violation of law or any statutory rule, could not press into service

Constitutional jurisdiction of the High Court in order to seek relief with respect to his employment. References in this regard may be made to the laws laid down in the cases titled as **"Samiullah Narago Vs. Federation of Pakistan" (2012 PLC (C.S.) 1205), "Pakistan Telecommunication Company Limited Vs. Iqbal Nasir" (PLD 2013 SC 132), and "Pakistan International Airline Corporation Vs. Tanveer-ur-Rehman and others" (PLD 2010 SC 676).** In the latter case, it has been held as follows:-

"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"

Reliance is also placed on the cases titled as "**Miss Naureen Naz Butt Vs. Pakistan International Airlines through Chairman, PIA and others**" (2020 SCMR 1625), "**Pakistan Airline Pilots Association and others Vs. Pakistan International Airline and another**" (2019 SCMR 278), "**Pakistan Defence Officers Housing Authority Vs. Mrs. Itrat Sajjad Khan and others**" (2017 SCMR 2010) and "**Abdul Wahab and others Vs. HBL and others**" (2013 SCMR 1383).

14. It is established law that a contingent employee, whose period of contract employment expires by efflux of time, carry no vested right to remain in employment of the employer and the Courts cannot force the employer to regularize, reinstate or

extend the contract of the employee.

15. Reliance may be placed on the following case laws:-

i. In a case titled as "**Messrs Sui Southern Gas Company and others Vs. Zeeshan Usmani and others**" (**2021 SCMR 609**), it has been held by the Hon'ble Supreme Court of Pakistan that:

"Admittedly, the respondents were contract employees and their relationship was governed by the principle of 'master and servant'. This Court in a number of cases has held that contract employees have no vested right to claim regularization".

ii. In a case titled as "**Province of Punjab through Secretary Livestock and Dairy Development Department, Government of the Punjab, Lahore and others Vs. Dr. Javed Iqbal and others**" (**2021 SCMR 767**), it has been held as follows:-

"Persons appointed on contract basis are not civil servants, therefore, their service matters are not governed by the rules framed under Civil Servants Act, 1974. Their appointment is strictly regulated by the terms and conditions of the contract. Their period of contract is between 3 to 5 years and extension is generally granted for a period of 3 to 5 years and not for an indefinite period. On expiry of contract appointment, if no extension is granted, it is ensured that the contract employee is not allowed to continue in service. Contract appointment is liable to be terminated on one month's notice or on one month's pay, in lieu thereof, on either side without assigning any reason. The contract provides that the contract appointment shall not confer any right of regular appointment nor shall such appointment be regularized under any circumstances. A contract employee shall, under no circumstances, claim

conversion of his contract appointment into regular appointment”.

iii. The Hon’ble Apex Court in the judgment passed in Civil Appeal No.451/2017 titled as **“Miss Naureen Naz Butt Vs. Pakistan International Airlines through Chairman, PIA and others” (2020 PLC (C.S.) 1502)** has held *inter-alia* as follows:-

“The law with regard to employment on 'contract basis' is well settled and in this regard, reference may be made to the case of Mubarak Ali and another v. Government of Punjab through Secretary, Industries and Mineral Development Department [1997 PLC (C.S.) 284], wherein the petitioners, who were contract employees, on expiry of their contract service filed Writ Petition in the High Court, which was dismissed and Supreme Court upheld the order of the High Court by

observing as follows:-

"4. The petitioners challenged the order of termination of their services in writ petition filed in the High Court on the ground that they have unfairly discriminated as 16 other persons similarly placed had since been adjusted against other vacancies. The learned High Court, however, on its finding that the petitioners had been appointed on contract basis, therefore, on expiry of the contract period they had been left with no vested right, dismissed the writ petition. It was further observed that the petitioners failed to furnish particulars of the persons against whom they alleged unfairly discrimination.

5. Learned counsel for the petitioners reiterated the same arguments, which did not prevail with the learned High Court. From the perusal of the record it is evident that services of those ad hoc employees were regularized who had been serving as such since 17.1.1989. The

petitioners were neither working as such since 17-1-1989, because they had been appointed in July, 1989, and moreover they were not appointed on ad hoc basis but on contract basis. The learned counsel even at this stage, failed to point out the particulars of the aforementioned 16 persons against whom he claims unfairly discrimination. We, therefore, find no infirmity in the judgment of the learned High Court and dismiss the petition”.

iv. In a case titled as **"Government of Khyber Pakhtunkhwa, Workers Welfare Board through Chairman Vs. Raheel Ali Gohar and others"** **(2020 SCMR 2068)**, the Hon'ble Supreme Court has held that:-

"In any case, Hon'ble Supreme Court in recent judgments has unequivocally held that contractual employees have no automatic right to be regularized unless

the same has specifically been provided for in a law. Most recently, in a judgment of a bench of this Court in Civil Petitions Nos. 4504 to 4576, 4588 and 4589 of 2017 dated 08.01.2013 this court has held that:

"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 court of law. Resultantly, these petitions are converted into appeals and allowed, and the impugned judgment is set aside".

The aforementioned judgment was

further upheld in review vide the order dated 12.09.2018 of this Court in Civil Review Petitions Nos. 61 to 68, 89 to 91, and Suo Motu Review Petition No. 69 of 2018.

v. In a case titled as **"Qazi Munir Ahmed Vs. Rawalpindi Medical College and Allied Hospital through Principal and others"** **(2019 SCMR 648)** the Hon'ble

Supreme Court has held as follows:-

"We have also noticed that the dispute between the parties related to contract employment. This Court has in various pronouncements settled the law that a contract employee is debarred from approaching the High Court in its constitutional jurisdiction. The only remedy available to a contract employee is to file a suit for damages alleging breach of contract or failure to extend the contract. Reference in this behalf may be made to Federation of Pakistan v. Muhammad Azam Chattha (2013 SCMR 120), where it has been held that it is a cardinal principle of law that a contract

employee cannot press for reinstatement to serve for the left over period and can at best claim damages to the extent of unexpired period of his service. Therefore, it was correctly held that the petitioner approached the wrong forum in the first place and the learned Single Judge had exceeded his jurisdiction by interfering in a purely contractual matter".

16. It is trite that where a citizen seeks relief in constitutional jurisdiction, he must point out a right statutory or constitutional which vests in him and has been denied in violation of law. The petitioners have failed to point out any right to seek regularization on the basis of any constitutional guarantee or statutory law or instrument which may have been denied to them. Terms and conditions of their services were governed by their appointment notifications and in our view there was no right of regularization available to the appellants.

17. ICA can be filed when the impugned

judgment of learned Single Judge-in-Chambers is shown to have been delivered against the provisions of law or a result of misreading, non-reading and same has caused mis-carriage of justice or mistakes of law which are liable to be corrected by the Division Bench otherwise.

18. In view of foregoing discussion, instant Intra Court Appeal is not maintainable, hence the same is **dismissed** being meritless.

(MIANGUL HASSAN AURANGZEB) (TARIQ MEHMOOD JAHANGIRI)
JUDGE JUDGE