

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Ijaz Hussain Shahid etc. Vs. Managing Director, Pakistan Television Corporation, Islamabad etc.

**Ch. Nadeem Iqbal, Assistant Controller
Personnel, PTV Headquarters, Islamabad.**

Muhammad Iftikhar etc. VS. Managing Director, Pakistan Television Corporation, PTV HQs, Islamabad etc.

Ch. Nadeem Iqbal, Assistant Controller
Personnel, PTV Headquarters, Islamabad.

Sangeen Jalal etc. VS. Ministry of Information and Broadcast through its Secretary, Islamabad etc.

**Ch. Nadeem Iqbal, Assistant Controller
Personnel, PTV Headquarters, Islamabad.**

Sangeen Jalal etc. VS. Ministry of Information and Broadcast through its Secretary, Islamabad etc.

Respondents by: Mr. Shahid Mehmood Khokhar, Advocate.

W.Ps No.1403 & 1548/2018, 2984/2015 & Crl. Orgs. No.437/13, 392-W/2015, 393-W/2015, 394-W/2015, 292-W/2013, 383-W/2016, 209-W/2015, 175-W/2015, 134-W/2015 & 109-W/2015.

Ch. Nadeem Iqbal, Assistant Controller
Personnel, PTV Headquarters, Islamabad.

Crl. Org. No.392-W/2015.

Mazhar Iqbal VS. **Muhammad Maalik, M.D. PTV etc.**

Applicants by: Sardar Abdul Razzaq Khan, Advocate.

Respondents by: Mr. Shahid Mehmood Khokhar, Advocate.

Ch. Nadeem Iqbal, Assistant Controller
Personnel, PTV Headquarters, Islamabad.

Crl. Org. No.393-W/2015.

Muhammad Yousaf Khan VS. **Muhammad Maalik, M.D. PTV etc.**

Applicant by: Sardar Abdul Razzaq Khan, Advocate.

Respondents by: Mr. Shahid Mehmood Khokhar, Advocate.

Ch. Nadeem Iqbal, Assistant Controller
Personnel, PTV Headquarters, Islamabad.

Crl. Org. No.394-W/2015.

Muhammad Naseer Hashmi VS. **Muhammad Maalik, M.D. PTV etc.**

Applicant by: Sardar Abdul Razzaq Khan, Advocate.

Respondents by: Mr. Shahid Mehmood Khokhar, Advocate.

Ch. Nadeem Iqbal, Assistant Controller
Personnel, PTV Headquarters, Islamabad.

Crl. Org. No.292-W/2013.

Nida Fatima etc. VS. **Syed Athar Ali Shah etc.**

Applicants by: Hafiz Arfat Ahmed Chaudhry & Ms. Kashifa Niaz Awan, Advocates.

Respondents by: Mr. Shahid Mehmood Khokhar, Advocate.

Ch. Nadeem Iqbal, Assistant Controller
Personnel, PTV Headquarters, Islamabad.

Crl. Org. No.383-W/2016.

Muhammad Nawaz & another VS. **Saba Mohsin, M.D. PTV etc.**

Applicants by: Hafiz Arfat Ahmed Chaudhry & Ms. Kashifa Niaz Awan, Advocates.

W.Ps No.1403 & 1548/2018, 2984/2015 & Crl. Orgs. No.437/13, 392-W/2015, 393-W/2015, 394-W/2015, 292-W/2013, 383-W/2016, 209-W/2015, 175-W/2015, 134-W/2015 & 109-W/2015.

Respondents by: Mr. Shahid Mehmood Khokhar, Advocate.
Ch. Nadeem Iqbal, Assistant Controller
Personnel, PTV Headquarters, Islamabad.

Crl. Org. No.209-W/2015.

Muhammad Amir Bashir VS. Muhammad Malick, Managing Director, PTV, Islamabad etc.

Applicant by: Hafiz Arfat Ahmed Chaudhry & Ms.
Kashifa Niaz Awan, Advocates.

Respondents by: Mr. Shahid Mehmood Khokhar, Advocate.
Ch. Nadeem Iqbal, Assistant Controller
Personnel, PTV Headquarters, Islamabad.

Crl. Org. No.175-W/2015.

Muhammad Kashif Rana etc VS. Muhammad Malick, M.D. PTV, Islamabad etc.

Applicants by: Mr. A. Ammar Sehri, Advocate.

Respondents by: Mr. Shahid Mehmood Khokhar, Advocate.
Ch. Nadeem Iqbal, Assistant Controller
Personnel, PTV Headquarters, Islamabad.

Crl. Org. No.134-W/2015.

Aftab Ahmed etc. VS. Muhammad Malick, Managing Director, PTV, Islamabad etc.

Applicant by: Hafiz Arfat Ahmed Chaudhry & Ms.
Kashifa Niaz Awan, Advocates.

Respondents by: Mr. Shahid Mehmood Khokhar, Advocate.
Ch. Nadeem Iqbal, Assistant Controller
Personnel, PTV Headquarters, Islamabad.

Crl. Org. No.109-W/2015.

Chaudhry Nadeem Iqbal etc. VS. Muhammad Malick, M.D., PTV, Islamabad etc.

Applicants by: Hafiz Arfat Ahmed Chaudhry & Ms.
Kashifa Niaz Awan, Advocates.

Respondents by: Mr. Shahid Mehmood Khokhar, Advocate.
Ch. Nadeem Iqbal, Assistant Controller
Personnel, PTV Headquarters, Islamabad.

Date of Hearing: 12.06.2019.

MOHSIN AKHTAR KAYANI, J:- Through this single judgment, I intend to decide the abovementioned writ petitions and criminal originals involving similar subject matter.

2. In writ petition Nos.1403 & 1548/2018, the petitioners have made following prayer:-

“In the light of what has been discussed above, it is humbly prayed that judgment passed by Supreme Court of Pakistan in C.P 48/2009 as well as CRP 471/2015 may kindly be implemented in its true letter and spirit by issuing following directions to the respondents in line with decision in C.P 48/2009 as well as CRP 471/2015.

- a. *A direction be issued to respondents not to withdraw the letter of regularization of petitioners, which has been issued in favour of petitioners by implementing decision of C.P 48/2009.*
- b. *A direction be issued to respondents to finalize the seniority list, because all rounds of litigation have come to an end after announcement of a decision in favour of petitioners by the apex court.*
- c. *Direction be issued to respondents to conduct/grant/award the long awaited due promotions to the petitioners in accordance with their seniority, which is to be reckoned from the dates of their regular appointment i.e. 20.02.2006.*
- d. *Direction be issued to respondents to calculate the back benefits after consulting the concerned department and grant the back benefits to the petitioners accordingly.*
- e. *Direction be issued not to make any promotions affecting the rights of petitioners till the final decision of present Writ Petition.”*

3. In writ petition No.2984/2015, the petitioners have made following prayer:-

“It is, therefore, respectfully prayed that this Honorable Court may graciously be pleased to:

- A. *Declare that the advertisement dated 14-03-2015 appeared in Daily Jang/Express and all acts subsequent thereto are illegal, unlawful, arbitrary and unwarranted and unconstitutional being violative of the public policy and Article 3, 4, 9 and 25 of the Constitution;*
- B. *Direct the respondent No.2 to immediately regularize the petitioners alongwith all consequential benefits which includes but not limited to seniority and monitory benefits from their initial dates of joining;*
- C. *Grant any other relief this Honorable Court deems fit and just in the circumstances of the case;*
- D. *Grant costs of the case.”*

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4. Through above referred criminal original petitions, the petitioners have prayed for initiation of contempt of Court proceedings against the respondents for defying the judgment dated 07.08.2014 passed by this Court.

5. Learned counsel for the petitioners contend that the petitioners have been appointed on different positions through public advertisement, test and interview by the competent authority of PTVC, however, their colleagues, who have been appointed later in time have been given regularization w.e.f. initial appointment on the basis of decision passed in CRP No.471/2015; that the petitioners have been given regularization in some of the cases from the date of their initial appointment and the respondents authority have now issued show cause notice dated 17.04.2018 as to why their regularization w.e.f. their initial date of appointment should not be withdrawn; that all these employees, who have been given regularization must have been given seniority as per their eligibility and direction be issued to PTVC to settle the question of seniority from the date of initial appointment and not from the date of regularization and seniority list be issued accordingly.

6. Conversely, learned counsel for PTVC contends that the advertisement, on the basis of which the petitioners have been appointed is only meant for contractual employees and it has not been considered as permanent employment in terms of PTV Employees Service Rules and he has referred different classifications of employees in terms of rule 4.01, which are (i) 4.02 contract employees, (ii) 4.03 permanent employees, (iii) 4.04 probationer, (iv) 4.05 temporary employees, (v) 4.06 casual employee, (vi) 4.07 trainee, (vii) 4.08 apprentice and (viii) 4.09 deputationists; that after final judgment of the Apex Court, the regularization given to one set of the petitioners w.e.f. their initial appointment is required to be withdrawn as the subsequent regularization orders have been applied prospectively and as such PTVC is in process to create balance all sets of employees to harmonize their employment structure; that contract employees cannot be given status as of permanent employees, who were posted on permanent sanctioned posts, whereas the petitioners were not appointed on permanent posts, therefore, they cannot claim their regularization from the date of their initial appointment on contract.

7. I have heard the arguments and perused the record.

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8. From perusal of the record, it has been observed that the petitioners are seeking implementation of orders passed in C.P No.48/2009 and CRP No.471/2015 in terms of Article 187(2) of the Constitution. The record reflects that two sets of employees were appointed on different times on different terms and conditions and as per stance of the petitioners, they have been appointed on regular posts and they have been placed on probation for two years and after completion of probation period, they have attained status of regular employees and in comparison to their status other employees were appointed on contract, therefore, they have been considered for the purpose of regularization from the date of order of regularization and not from the date of their initial appointment.

9. In order to resolve the controversy, I have gone through the judgment passed by Apex Court in C.P No.42, 48, 50 & 60/2009, wherein Apex Court vide order dated 04.11.2010 passed following orders on two sets of petitions:-

“5. Thus for the forgoing reasons Petitions Nos.42, 40 and 62 are accepted and the cases are sent to the PTV management for considering their cases for the purpose of regularization or otherwise in view of the observations made hereinbefore.

6. As far as Petition No.48 is concerned, this case is different from above petitions because they were regularly appointed on probation for a period of two years from 20.02.2006, whereafter their probation period has not been extended and the letters of permanent employment have not been issued in their favour. Learned counsel appearing for the respondent Corporation has stated that non-issuance of such letter on expiry of probation clearly indicates that they have completed the probation period without any stain on their performance and now they are in the employment of PTV. Be that as it may if it is the stand of the Corporation, they are directed to issue the letters of permanent employees to those employees who have successfully completed their probationary period. As such this petition is disposed of accordingly.”

10. The above referred order has further been taken into consideration by five members bench of Apex Court in CRP No.471/2015, wherein following order has been passed vide judgment dated 28.01.2018:-

“12. With the help of the learned counsels for the parties, we have closely examined in great detail the Order of this Court reported as Ejaz Akbar Kasi's case (Supra). The principle as enunciated thereby is that the contract employees of PTV are entitled to be considered for regularization by the Board of Directors of PTV. There is no finding or direction that such regularization should be from the date of their initial appointment on contract basis. In the aforesaid Order, a reference has been made to the judgment of this Court in the case reported as Ikram Bari (Supra). Even in the said case,

regularization was not directed from the date of initial appointment. Perhaps by way of the impugned judgments, the learned High Courts have read more the Ejaz Akbar Kasi's case (Supra) then is enumerated therein. A reference has been made by the learned counsel to the case reported as Chairman, Pakistan Railway (Supra). Suffice it to say that the said judgment pertains to the interpretation of Article 371-A the Civil Service Regulations (CSR). The learned counsels for the Respondents have not been able to show how the said Article of the CSR is applicable to the case of the Respondents, hence, the judgment is not applicable to the facts and circumstances of the case at hand.

13. In view of the above, it is clear and obvious that the Respondents i.e. contract employees of the PTV were entitled to be regularized but not from the date of their initial appointment nor were entitled to any back benefit from the date of such appointment. However, the persons regularly employed on probation were alone entitled to be treated as regular employees.

14. Consequently, Civil Appeal No.658 of 2015 is allowed and the judgment dated 18.03.2015 of the learned High Court of Balochistan passed in Constitution Petition No.642 of 2012 is set aside and the said matter along with Civil Appeal No.659 of 2015 and Civil Petitions Nos.3268 & 3269 of 2015 are disposed of in the above terms. Civil Misc. 1446 of 2016 for impleadment of party is dismissed in view of the foregoing reasons."

11. Keeping in view above referred ratio of Apex Court, I have gone through the status of employees provided in PTV Employees Service Rules, the two major kinds of employees, whose status has been disclosed in this case as well as in other cases have been provided in rule 4 Classification of Employees, Groups and Pay Scales, wherein contract employee and permanent employee have been referred as under:-

"4.02 *Contract Employee means an employee with whom a specific contract of employment has been executed. Contract employee will be bound by these rules subject to the terms stated in the contract.*

4.03 *Permanent Employee means an employee who has been engaged on a permanent basis against a sanctioned post, and who has satisfactorily completed his probation period in the same post or in any other post in the Corporation including breaks due to illness, accident, leave, etc."*

12. While considering above referred two kinds of employees, it is very much clear that a contract employee shall remain on contract and he cannot be considered as permanent employee by any stretch of imagination. Even otherwise, contract document placed on record is acknowledged by both the sides arisen out of the public advertisement of recruitment, there is no cavil to the proposition that a person on the very first day, who has applied against the post of contract has

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knowledge that he is applying for contract post and only referring word probation in the contract employment does not mean that he will be treated as permanent employee, however, learned counsel for the petitioners have heavily relied upon the terms of contract, therefore, one of the contract document is referred as under:-

"PAKISTAN TELEVISION CORPORATION LIMITED

*Federal TV Complex
Constitution Avenue,
Islamabad.*

Ref:No.HPP/170/1564

*IJAZ HUSSAIN SHAHID
S/D/O FEROZE DIN
TAJAMMUL HOUSE NEAR THE HOUSE OF
SIRAJ UL HAQ, ADVOCATE MASTERS STREET,
RAILWAY ROAD, SHAKAR GARH, DISTT.
NAROWAL.*

Dear Sir,

Consequent upon your interview by the Selection Committee held at PTV World, Islamabad, the management is pleased to engage you as Trainee Producer News & Current Affairs (on contract) w.e.f. 20.02.2006.

*2. Your **contract employment** will be subject to the following terms and conditions:-*

- i. You will be on probation for a period of two years during which you will be entitled to monthly salary package of Rs.20000/- per month.*
- ii. your performance during probation period shall be assessed quarterly. On successful completion of probation period, **your contract would be extended by another three years with revised pay package.***
- iii. You will be entitled to leave with pay for 21 days in a calendar year subject to having continuous service of six months or more.*
- iv. you will be entitled to medical facility for self, wife and children as per provisions in PTV-Service Rules.*
- v. **your contract employment shall be terminable on one month's notice from either side.***
- vi. you will not engage yourself in any work or carry out any other assignment, direct or indirect for any other agency/organization in any capacity, failing which your contract shall be terminated without any notice.*
- vii. you shall be subject to all rules and regulations of the Corporation prevailing for the time being and coming in to force from time to time.*

3. It the above terms and conditions are acceptable to you, please sign a copy of this letter and return as a token of your acceptance and report for duty to the General Manager, PTV World, Islamabad. Your permanent posting will be declared after you undergo one month's training at PTV-Academy Islamabad.

Yours faithfully,

(MUHAMMAD AFZAL MALIK)
Controller
Administration & Personnel"

13. The above referred details have been considered with able assistance of learned counsel for the parties and learned counsel for the petitioners have relied upon PLD 2003 SC 724 (Managing Director Sui Southern Gas Company Ltd. Karachi vs. Ghulam Abbas), wherein it has been held that if the probation period of an employee is not extended, he shall be deemed to be permanent employee from the date of his employment. He also referred 2007 PLC (CS) 727 (FOP vs. Gohar Riaz), it has been held that a person, who was appointed and placed on probation for two years clearly establishes regular nature of his appointment. Learned counsel has also relied upon 2011 PLC (CS) 836 (Mrs. Abida Parveen Channar vs. High Court of Sindh), PLD 2002 SC 728 (Imdad Magsi vs. Karachi Water and Sewerage Board) & 2012 PLC (CS) 127 (Hakim Ali Ujjan vs. Province of Sindh), wherein it has been held that employee was no more on probation after lapse of long period and he has acquired status of confirmed employee.

14. I have no doubt about the principles settled in the above mentioned case laws, however, in order to settle the question as to whether the petitioners are contract employees or permanent employees, the PTVC Authorities are competent to determine such question, especially on the basis of advertisement and the terms of the contract or the letter of appointment under PTV Employees Service Rules. The rules provided and placed before this Court clearly spell out that sanctioned post is permanent post and probation is only provided in the case of permanent employee under rule 4.03, whereas in comparison to the said position contract employee is meant for specific period as it is explained in rule 4.02, which cannot be given status of permanent employment. However, on the other hand conduct of PTVC is not above board, who hired services of different persons for the last 20 years or more than that on contract basis on different positions through advertisement, the contract spells out that they are contract employees for specific period and in the contract document as well as advertisement it has been referred

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that on successful completion of initial period of contract, they will be given further term of three years and as such their initial period was referred as to be on probation. This aspect reveals that their initial period of contract where they have been called on probation period is only meant for further three years contract and it does not convert their contract into status of permanent employee and even this aspect has clearly been explained by Apex Court in para 13 of the order in CRP No.471/2015 dated 29.01.2018 and settle all the questions, this Court is bound to implement the judgment of Apex Court in terms of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973. High Court has to implement the decision of Hon'ble Supreme Court as held in 1999 SCMR 2868 (Khushi Muhammad vs. Inspector General of Police Punjab), 2007 YLR 3191 (Umer Gul vs. Government of Sindh), 1994 MLD 2424 (Sabir Zameer Siddique vs. Government of the Punjab) & PLD 2011 [Karachi] 451 (Amanullah Khan Yousafzai vs. Federation of Pakistan), therefore, this Court has to give equal treatment to all those, who are similarly placed, therefore, keeping in view above discussion, the employees, who had applied against contract posts referred in their initial advertisement are of contractual nature as per PTV Employees Service Rules, they will be treated as contract employees. They cannot claim permanent employment character on the ground that word probation has been used in their employment contract, which is only meant for next three years contract under clause 2(ii) of the contract letter. The arguments advanced by learned counsel for the petitioners to claim that by using word probation and completion of probation in the contract means permanent employment is incorrect view, therefore, I have no hesitation to hold that all the petitioners are contract employees in terms of rule 4.02 of PTV Employees Service Rules and by virtue of regularization order their status have become permanent, their seniority, promotion and their benefits have to be concluded on the basis of status, which was acquired on the date of decision passed by PTVC Board prospectively at the time of passing of order of regularization as held in order dated 29.01.2018 passed by Apex Court in CRP.471/2015 titled *Managing Director, PTV and another vs. Ijaz Hussain Shahid and others*. Para 13 of the same is reproduced as under:-

“13. In view of the above, it is clear and obvious that the Respondents i.e. contract employees of the PTV were entitled to be regularized but not from the date of their initial appointment nor were entitled to any back benefit from the date of such appointment. However, the persons regularly employed on probation were alone entitled to be treated as regular employees.”

15. I have also gone through the show cause notice and I have no hesitation to hold that PTVC Board is competent to issue such kind of notice, therefore, all those employees, who have assailed the show cause notice have to answer the notice and PTVC Board or the competent authority shall decide the fate of these employees within period of 02 months in accordance with law.

16. Keeping in view above background, the PTVC Board or competent authority of PTVC shall pass speaking order on case to case basis while considering the law as well as the judgment of Apex Court dated 29.01.2018 passed in CRP No.471/2015 and if any employee with or without probation was appointed on contract shall be considered as contract employee and his regularization has to be given prospective effect from the date of order of regularization as and when the same was passed.

17. As far as the CrI. Org. Petitions filed by different petitioners are concerned, the respondents have taken the stance that due to pendency of the matter before Hon'ble Supreme Court of Pakistan, their cases could not be decided. The respondents are directed to decide the cases of the petitioners (in contempt petitions) in the light of observations made in para-15 above. All the writ petitions as well as criminal originals alongwith C.Ms stand dispose of.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 28.06.2019.

JUDGE