

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2862/2019
Choudhry Muhammad Akhtar Gill
Versus
Director General PBC and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	05.08.2019	Mr. Muhammad Waqas Malik, Advocate for the petitioner.

Through the instant writ petition, the petitioner, Choudhry Muhammad Akhtar Gill, impugns letter dated 02.08.2019, issued by the Pakistan Broadcasting Foundation ("P.B.F."), whereby his entry was banned in the P.B.F International College, H-9, Islamabad on the ground that his contract for appointment as Principal of the said College had expired on 31.05.2019. The contents of the said letter dated 02.08.2019 show that the ban on the petitioner's entry in the said College was imposed because despite the termination of the contract, he was attending the College and issuing administrative orders.

2. The petitioner also seeks a direction to the respondents not to exceed the authority of the Board of Management and to act in accordance with the Memorandum of Understanding dated 24.09.1999.

3. Learned counsel for the petitioner submitted that the petitioner's contractual appointment as Principal of the P.B.F. International College could only have been terminated by the Board of Management; that the post of the Principal of the said College was advertised on 28.04.2019; that the petitioner's writ petition against the said

advertisement was held by this Court not to be maintainable; that thereafter, the petitioner filed a civil suit before the learned Civil Court at Islamabad; that vide order dated 20.05.2019, ad-interim injunction was declined by the learned Civil Court; that the petitioner's appeal against the said order dated 20.05.2019 was disposed of, vide order dated 04.07.2019, passed by the learned Appellate Court with the direction to the learned Civil Court to expeditiously decide the petitioner's application for interim injunction; that furthermore, it was ordered that until the decision on the petitioner's application for grant of interim injunction, the ad-interim injunction granted by the learned Appellate Court, on 25.05.2019, would hold the field; that subsequently, vide order dated 26.07.2019, the petitioner's contempt petition was dismissed by the learned Civil Court; that the said order dated 26.07.2019 has been assailed by the petitioner before this Court in another petition; and that the issuance of the impugned letter dated 02.08.2019 has furnished the petitioner with a fresh cause of action for the institution of the instant petition. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

5. The petitioner was appointed as the Principal, O.P.F. Boys College (P.B.C. Campus), Sector H-9, Islamabad for a period of two years on the basis of contract dated 30.10.2002. One of the terms of the said

contract was that the petitioner's appointment was liable to termination on one month's notice. The period of the petitioner's contractual appointment was extended from time to time.

6. The Board of Management of the P.B.F. International College, in its meeting dated 02.11.2015, extended the period of the petitioner's contractual appointment for three years. The petitioner is also the Secretary of the Board of Management.

7. Apparently, an advertisement was published on 28.04.2019, inviting applications for appointment as Principal of the said College. Aggrieved by the said advertisement, the petitioner filed a civil suit for declaration and permanent injunction before the learned Civil Court at Islamabad. Along with the said suit, the petitioner filed an application for interim injunction. Vide order dated 20.05.2019, the learned Civil Court declined the grant of an ad-interim injunction in the petitioner's favour. The said order was assailed by the petitioner in an appeal before the Court of the learned Additional District Judge, Islamabad. Vide ad-interim order dated 25.05.2019, the learned Appellate Court passed an injunction restraining the finalization of the appointment process of the Principal, P.B.F. International College initiated through advertisement dated 28.04.2019. Vide judgment dated 04.07.2019, the petitioner's appeal was disposed of with the direction to the learned Civil Court to decide his application for interim injunction expeditiously. Furthermore, it was directed that until the decision on the said application,

the ad-interim injunction granted by the learned Appellate Court on 25.05.2019 would hold the field.

8. Vide letter dated 09.07.2019, Ms. Sadia Mukhtar was appointed as the acting Principal of the said College. This prompted the petitioner to file an application for contempt of Court. Vide order dated 26.07.2019, the learned Civil Court dismissed the contempt petition filed by the petitioner and held that the appointment of the acting Principal had not violated the orders dated 25.05.2019 and 04.07.2019, passed by the learned Appellate Court. The said order dated 26.07.2019 has been assailed by the petitioner before this Court in another petition.

9. Vide letter dated 02.08.2019, issued by P.B.F., the petitioner was banned from entering the premises of P.B.F. International College on the ground that his employment contract had already expired.

10. The petitioner's application for interim injunction has till date not been decided by the learned Civil Court. At least there is nothing on the record to show that the said application has been decided. The petitioner's suit for declaration, etc. is also pending before the learned Civil Court. In the said suit, the petitioner has prayed for a declaration to the effect that the Board of Management is the competent authority for taking any decision as a consequence of the advertisement dated 28.04.2019. The petitioner has challenged the competitive process for the appointment of the Principal,

and wants to continue serving as the Principal of the said College.

11. The petitioner's relationship with his employer is based in a contract. A copy of the said contract was not filed with the petition. It was only after the Court asked the learned counsel for the petitioner to produce the same before the Court then it was brought on the record. There is no material on the record to show that the term of the petitioner's employment contract was extended beyond 31.05.2019. This Court cannot rewrite the petitioner's employment contract and hold that it is still valid and subsisting.

12. Even otherwise, this Court, in exercise of its jurisdiction under Article 199 of the Constitution, can neither declare the expiry of the petitioner's contractual employment to be unlawful nor hold that his employment contract continues to subsist. It is an admitted position that there are no statutory rules governing the petitioner's relationship with the respondents. The contractual nature of the petitioner's employment made his relationship with the respondents as that of master and servant. The terms of the petitioner's employment contract empowered P.B.F. to terminate his employment by giving one month's notice. This being so, if the petitioner feels that the termination of his employment contract was unlawful or based on *malafides*, at best, he could file a suit for damages subject to law. It is well settled that a contractual employee cannot file a writ petition seeking his continuation or reinstatement in service.

Reference in this regard may be made to the following case law:-

(i) Recently, in the case of Chairman NADRA, Islamabad Vs. Muhammad Ali Shah (2017 SCMR 1979), it has been held that a contractual employee of a statutory organization cannot invoke the Constitutional jurisdiction of the High Court under Article 199 of the Constitution.

(ii) The Honourable Supreme Court in the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (PLD 2011 S.C. 132), held as follows:-

“All the employees having entered into contracts of service on the same or similar terms and conditions have no vested right to seek regularization of their employment, which is discretionary with the master. The master is well within his rights to retain or dispense with the services of an employee on the basis of satisfactory or otherwise performance. The contract employees have no right to invoke writ jurisdiction, particularly in the instant case where their services have been terminated on completion of period of contract.”

(Emphasis added)

(iii) In the case of the Federation of Pakistan through Secretary Law Justice and Parliamentary Affairs Vs. Muhammad Azam Chatha (2013 SCMR 120), it has been held as follows:-

“In addition to it, it is a cardinal principle of law that a contract employee instead of pressing for his reinstatement to serve for the leftover period can at best claim damages to the extent of unexpired period of his service.”

(iv) In the case of Trustees of the Port of Karachi Vs. Saqib Samdani (2012 SCMR 64), it has been held as follows:-

“Evidently the above letter reflects that the respondent was in employment on contract basis, hence no vested right was created in his favour for reinstatement in service. It was not the case where the respondent

was appointed as a regular employee against any particular quota to give him a valid cause of action. Equally, the impugned judgment is also silent that termination of service of the respondent violated any of his rights, therefore, in our view his reinstatement under the impugned judgment does not appear to have been validly ordered."

(Emphasis added)

(v) In the case of Syed M. Yahya Vs. First Credit and Investment Bank Limited (2009 UC 656), it has been held *inter-alia* that contractual employment containing specific terms and conditions of service would exclude the application of a general terms and conditions of service applicable to non-contractual employees. Furthermore, it was held that a contractual employee could not invoke writ jurisdiction under Article 199 of the Constitution against his termination from service in accordance with the specific terms and conditions of service contained in the contract.

(vi) In the case of Muhammad Waqas Gul Vs. Water and Power Development Authority (2015 PLC (C.S.) 144), it has been held as follows:-

"Without going into the question whether the aforesaid clauses will automatically dispense with requirement of rule of natural justice, suffice it to say that non issuance of notice of hearing to the petitioners, will not entitle the petitioners, for revival of their contract of service, rather the remedy of the petitioners, if any, for wrongful termination would be for damages to the extent of unexpired period of their services, before the competent court of law."

13. The petitioner through the instant writ petition has raised a grievance regarding the terms and conditions of his employment with P.B.F. Since the petitioner's employment with

P.B.F. was contractual in nature, I hold that the instant petition is not maintainable and the same is, therefore, dismissed in limine with no order as to costs. The petitioner is at liberty to apply for a relief before the learned Civil Court, where his civil suit is already pending.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Wahid
Ahtesham*