

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2460 of 2019

Syed Muntazim Rizvi
Vs
Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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05) 27-02-2020. M/s Muhammad Shoaib Shaheen and Shaista Chaudhary Advocates, for the petitioner.
Mr Obaid ur Rehman, Law Officer NADRA.
Mr Muhammad Saifullah Gondal, AAG.

Through this petition, the petitioner has assailed order, dated 04.06.2018.

2. The petitioner was appointed on 04.05.2009, as Assistant Manager in scale-06. The National Database and Registration Authority [hereinafter referred to as the **"respondent Authority"**] vide letter, dated 01.03.2012, sought options from all the employees/officials. The cut-off date mentioned in the letter was 29.02.2012. The petitioner was rehired vide order, dated 05.04.2012. The petitioner also exercised his option in response to letter, dated 01.03.2012. It appears that the petitioner after his rehiring in scale-08 continued to serve on contractual

basis because his regularization was not notified. The petitioner's contract expired on 31-12-2016. The latter invoked the jurisdiction of this Court through W.P. No. 4816/2016 which was disposed of vide order, dated 07.12.2017. The matter was remanded to the respondent Authority. The latter after affording an opportunity of hearing to the petitioner has passed the impugned order, dated 04.06.2018. The said order has been impugned through the instant petition.

3. The learned counsel for the petitioner has, inter-alia, contended that the latter was treated differently because other similarly placed employees/officials were granted regularization and the same is being denied to the petitioner; this Court vide judgment, dated 20.12.2016, passed in W.P. No. 4773/2014, titled "Khalid Inayat Ullah Khan v. National Database and Registration Authority, etc." has already held that the cut-off date mentioned in letter, dated 01.03.2012 was not approved by any competent forum; the petitioner is entitled to be regularized in scale-08 and, therefore, denial of his rights is in violation of the fundamental rights guaranteed by the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the 'Constitution'*); reliance has been placed on the case titled "Messers State Oil Company Limited v. Bakht Siddique and others " [2018

SCMR 1181]; the petitioner from 2012 till 2016 was under the impression that the option to be regularized in service was accepted.

4. The learned counsel who has appeared on behalf of the respondent Authority has argued that the petition is not maintainable and in this regard reliance has been placed on the cases titled "Maj. (Retd.) Syed Muhammad Tanvir Abbas and another v. Federation of Pakistan, through Secretary, Ministry of Interior and another" [2019 SCMR 984] and "Commissioner of Income Tax v. Messers Gilani Transport Company" [2017 SCMR 197]; the rehiring of the petitioner vide letter, dated 05.04.2012, was ordered after the options were sought from the employees/officials; the cases of other employees/officials referred to by the petitioner are not similar; the other employees were regularized in the scales in which they were serving at the time when the options were sought and also on the cut-off date mentioned in letter, dated 01.03.2012; the petitioner has not been refused to be regularized in service but his demand of being regularized in scale-08 cannot be accepted; the petitioner is not entitled to be regularized in scale-08 because his rehiring was after the cut-off date and also after the options were sought.

5. The learned counsels have been heard and the record perused with their able assistance.

6. The admitted facts are that the petitioner was appointed in scale-06 as Assistant Manager on 04.05.2009. The respondent Authority sought options from the employees/officials on 01.03.2012. At the time when options were sought the petitioner was serving in scale-06. The petitioner, however, was subsequently rehired in scale-08 on 05.04.2012. The petitioner continued to serve on contract basis till his contract was terminated on 31.12.2016. It is the case of the petitioner that he remained under the impression that his services had been regularized. This assertion raises a factual controversy, which obviously cannot be resolved while exercising jurisdiction under Article 199 of the Constitution. On the date when options were sought from the employees i.e. 01-03-2012, the petitioner was serving in Scale-06. He was, therefore, entitled to be considered for regularization in the same scale. His rehiring vide letter, dated 05-04-2012, was a distinct contract as is evident from a plain reading thereof. The terms and conditions were explicitly mentioned in letter, dated 05-04-2012. He was, therefore, aware that his

appointment in the higher scale was on contractual basis for a period of three years. It also appears from his conduct that he voluntarily continued to serve on the basis of letter, dated 05-04-2012. The petitioner was not entitled to be regularized in the higher scale because that was a subsequent event. The crucial date was decision of the Board to regularize the contract employees. On that date the petitioner was serving in scale-06. As already noted the petitioner accepted his rehiring in the higher scale and continued to serve till the competent authority directed not to extend his contract period. It is also not denied that the petitioner did not raise any objection nor demanded issuance of his regularization notification during the period when he kept serving pursuant to the terms and conditions stipulated in letter, dated 05-04-2012. The judgment referred to by the learned counsel for the petitioner is distinguishable because it is not applicable in case of determination of higher scale granted on the basis of rehiring. With the able assistance of the learned counsels, the impugned order has been carefully perused. It is a well reasoned order and has not been found to suffer from any legal infirmity. The respondent Authority has made an offer to the petitioner based on the facts and circumstances of his case.

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7. For the above reasons, this petition is devoid of merits and accordingly dismissed.

CHIEF JUSTICE

Tanveer Ahmed.