

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No.597 of 2013
Imran Khalid and others
Versus

Secretary Cabinet, Government of Pakistan, Islamabad and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	30.01.2020	Rana Kashif Saleem, Advocate for the appellants. Mr. Muhammad Aftab Ahmed, learned Assistant Attorney-General.

Through the instant intra Court appeal, the appellants impugn the order dated 26.03.2013 passed by the learned Judge-in-Chambers, whereby writ petition No.1291/2013 filed by the appellants, was dismissed in *limine*.

2. Learned counsel for the appellants submitted that in the year 2009, the appellants had been employed on contract basis by the Health Services Academy which was under the administrative control of the erstwhile Ministry of Health; that the periods of the appellants' employment contracts were extended from time to time; that in the year 2008, the Government of Pakistan had formulated a policy for the regularization of contract employees; that a Sub-Committee had been constituted to consider the regularization of contract employees; that contract employees similarly placed as the appellants had been regularized; that discriminatory treatment was meted out to the appellants by not regularizing their services; that since the appellants had completed more than one year of contractual service, their services were liable to be regularized; that all of a sudden, vide order dated 12.03.2013, the appellants' employment contracts were terminated; that the termination of the appellants' services were

unlawful and discriminatory; and that the learned Judge-in-Chambers erred by not appreciating that the appellants had been employed by the Ministry of Health and not by US-AID.

3. On the other hand, learned Assistant Attorney-General submitted that since the appellants were contract employees, they could not file a writ petition against the termination of their services; that the appellants were project employees, and therefore their services could not be regularized; and that the impugned order dated 26.03.2013 does not suffer from any legal infirmity. Learned Assistant Attorney-General prayed for the appeal to be dismissed.

4. We have heard the contentions of the learned counsel for the appellants as well as the learned Assistant Attorney-General and have perused the record with their able assistance.

5. The record shows that on 15.10.2009, the appellants were employed on contract basis in the Health Services Academy, which was under the administrative control of the erstwhile Ministry of Health. The appellants had been employed for a period of one year. Subsequently, on 22.09.2011, the period of the appellants' contractual employments had been extended. Vide office order dated 12.03.2013, the appellants were relieved from their duties on successful completion of their contract period.

6. The appellants not just want the office order dated 12.03.2013, whereby they were relieved from their duties to be set-aside, but also seek a direction to the respondents to regularize their services. The learned Judge-in-Chambers held that the appellants were project employees working against a US-AID funded project, and

that the US-AID had expressed a *“no cost extension after 31.03.2013”*.

7. The terms and conditions of the appellants' employment provided that the employment contract was terminable on thirty days' notice or payment of basic pay in lieu of such a notice. When the appellants' contractual employment was extended, they furnished an undertaking in which it was clearly provided that the employment contract did not confer any right to claim permanent absorption at the Health Services Academy or in any private sector entity. In view of such an undertaking, the appellants had no basis for being aggrieved by being relieved from duty on the completion of their contract period. The appellants' contractual employment with the Health Services Academy came to an end almost seven years ago. The Health Services Academy is no longer under the administrative control of the erstwhile Ministry of Health but the Higher Education Commission.

8. It is a master's prerogative to terminate a servant's contractual appointment if the former does not find the latter's performance to be satisfactory. Such termination can take place in accordance with the terms and conditions of the employment contract. In the case at hand, the office order dated 12.03.2013, whereby the appellants were relieved from their duties upon completion of their contract period does not, in any manner, stigmatize them.

9. This Court, in exercise of its jurisdiction under Article 199 of the Constitution, can neither declare the said relieving order issued after the completion of the appellants' contract period to be unlawful nor hold that the appellants' employment contracts continue to subsist after a

lapse of almost seven years. The contractual nature of the appellants' employment made their relationship with Health Services Academy as that of master and servant. The terms of appellants' employment contract empowered the Health Services Academy to terminate their employment by giving one month's notice or one month's salary in lieu of such notice. It is well settled that a contractual employee cannot file a writ petition seeking his 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.”

10. Furthermore, it must be appreciated that contractual employment does not transform into a regular employment by simple efflux of time without a regularization order or a provision in the contract providing for a contractual employment to become regular after a lapse of a specified period.

11. The petitioners through their writ petition had raised a grievance regarding the terms and conditions of their employment with the Health Services Academy. Since the appellants' employment with the Health Services Academy was contractual in nature, we hold that the writ petition filed by the appellants was not maintainable. Consequently, the instant appeal is dismissed with no order as to costs.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE