

JUDGMENT SHEET
INTHE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.4558 of 2016

Riaz Akbar and another
Versus
Federation of Pakistan through Secretary, Establishment Division,
Government of Pakistan, Islamabad and 04 others.

Date of decision: **24.02.2021**
Petitioners by: **Mr.Muhammad Umair Baloch, Mr. Saif-Ur-Rehman Shah Bukhari and Ms.Fariha jaffar, Advocates.**
Respondents by: **Mr. Saqlain Haider Awan, learned Assistant Attorney-General.**

TARIQ MEHMOOD JAHANGIRI, J. :- The
petitioners have filed the instant writ petition with
the following prayer;

"It is respectfully prayed that writ petition may kindly be issued that impugned orders dated 29.06.2016, 21.09.2016 and termination orders 28.11.2014 may kindly be set-aside and by directing the respondents to reinstate the petitioners in service and may also regularize the service of the petitioners from the date of his initial appointment, in the same manner as similarly placed employees referred to above were regularized, with all consequential benefits.

It is also prayed that during the pendency of this Writ petition the impugned orders may kindly be suspended in the best interest of justice".

2. The facts of the case are that the petitioners were initially appointed as FM Airframe (AFR) Fitter (BPS-15) in Aircraft Manufacturing Factory, Pakistan Aeronautical Complex Board, Kamra, on regular basis vide letter dated 16.08.2006, afterwards respondent No.5 converted their appointments from regular to contract vide letters

dated 03.01.2013. The petitioners served the department and in the meanwhile, government introduced the policy for regularization of contract / daily wages employees etc. However, the petitioners were not given the benefit of said policy so the petitioners filed Writ Petition No.923 / 2013 before this Honourable Court for regularization of their services which was finally decided vide judgment dated 07.03.2013, wherein it was held that ;-

"Vide my judgment of even date delivered in connected W.P. No.587 of 2011 re: Arshad Mahmood Vs. Chairman, Sacked Employees Review Board, Establishment Division Islamabad, etc instant writ petition is also accpeted with a direction that cases of all the petitioners be sent to the Cabinet Sub Committee for consideration. If the petitioners are entitled for regularization, in accordance with the Govt. Policy, the services be regularized. The process be completed within 15-days. However, till decision of the Committee, no adverse action shall be taken against the petitioners".

3. In spite of the order dated 07.03.2013 the services of the petitioners were not regularized, so the petitioners filed a contempt petition wherein, vide order dated 11.09.2014, their cases were sent to the Committee for regularization of services of contract / daily wages employees but again their services were not regularized rather the respondents have issued the impugned termination letter dated 28.11.2014 and the Committee for

regularization of services of contract / daily wages employees issued impugned order dated 29.06.2016 wherein it is mentioned that being contract employees appointed after cut of date and also paid out of defence budget, the petitioners do not fulfil the criteria laid down in para-2(b), of the policy guidelines issued vide Establishment Division's O.M.No.10/30/2008-R-II dated 29 August, 2008 and on the basis whereof respondent No.5 has issued impugned order dated 21.09.2016 for return of service card etc.

4. The respondents submitted parawise comments wherein it is stated that the said regularization policy was not applicable in case of the petitioners. Respondent No.5 advertised posts in newspaper on 12.02.2006 with the heading AIRCRAFT MANUFACTURING FACTORY (JF-17 PROJECT) Pakistan Aeronautical. It is clearly mentioned in the advertisement that post against which the petitioners applied was purely a contract vacancy. The petitioners applied and were selected against their posts, appointment letters dated 16.08.2006 were issued. Subsequently another letter for appointment on contract basis was issued on 03.01.2013 wherein the period of contract was mentioned as two years w.e.f. 03.01.2013 to 31.12.2014 and same was accepted by the petitioners without any hesitation and they

joined the services wilfully and without any complaint. The contract of the petitioners was expired on 31.12.2014 and thereafter the petitioners were not employees of the respondents' organization.

5. Learned counsel for the petitioners contends that it was a vested right of the petitioners that their services should have been regularized as the petitioners were appointed on regular basis and their appointments were converted from regular to contract illegally in the year 2013 i.e after almost six years of regular appointment, the committee for regularization of the Federal Government employees has wrongly rejected the cases of the petitioners as the petitioners were fulfilling the criteria laid down in the policy guidelines issued by the Federal Government and has prayed for regularization of services of the petitioners. Learned counsel for the petitioners has relied upon the cases reported as *"2009 SCMR 1, 2020 SCMR 1425, 2020 SCMR 1664, 2019 PLC (C.S.) 103, 2019 SCMR 233, 1997 SCMR 1477, 2018 SCMR 1181, 2005 SCMR 100, 2003 PLC(C.S.)796, 2015 SCMR 1257, 2012 PLC(C.S.) 1220 and 2018 PLC (C.S.) 387.*

6. On the other hand, learned Assistant Attorney-General has contended that services of the petitioners were purely on contract basis in JF-

17 Project and after the expiry of contract w.e.f. 31.12.2014 they are no more in service of the respondents' organization, hence no question of their regularization exists.

7. Arguments heard, record perused.

8. As it is evident from record that the petitioners accepted services on contract basis with the respondents vide contract appointment letters dated 03.01.2013 wherein it is categorically mentioned that the petitioners were appointed on contract basis as FM Airframe Fitter (BPS-15) in JF-17 AMF PAC Kamra for a period of two years w.e.f. 03.01.2013 to 31.12.2014. It is further mentioned that the appointment during the period of contract shall be liable to termination on 30 days written notice on either side or payment of one month pay in lieu, thereof without assigning any reasons. It is further mentioned that if the terms and conditions of contract appointment are acceptable, then to report for duty within a period of seven days. The petitioners accepted the terms and conditions of contract and joined their duties. After the expiry of contract on 31.12.2014, the petitioners left the service. One of the petitioners namely Riaz Akbar (petitioner No.1) has attained the age of superannuation and cannot join the service whereas the petitioner No.2 is out of service since last more than six years.

9. It is the established law that a contract 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.

10. In a recent judgment of identical matter passed by this Court in Writ Petition No.1799/2019 titled as *"Rehmat Ullah Vs. Federation of Pakistan and others"* A contractual employee of Pakistan Aeronautical Complex, Kamra, applied for regularization of services but his writ petition was dismissed vide order dated 07.10.2020. On the basis of a decision of Division Bench of this Court in I.C.A. No.340/2017 titled as *"Imran Ahmed and others Vs. Federation of Pakistan and others"* (2019 PLC (C.S.)N 19 Islamabad), wherein it is held that:-

(iv) All project employees of BPS-1 to BPS-15 working in projects, which have been converted from development to non-development, shall be considered for the purpose of their regularization of services by their competent authorities while considering their qualification, eligibility, and fitness on case to case basis within the period of six (06) months (as one time exercise), subject to the condition that their initial selection was made through transparent manner i.e. advertisement, test and interview.

The said decision of this Court has also been upheld by the Honourable Supreme Court of

Pakistan vide order dated 13.09.2019 passed in CP No.2792/2018.

11. The above mentioned direction of this Court passed in Imran Ahmed case, if applied in the instant matter, it has been clearly established that services of the petitioners have already been terminated on 31.12.2014 and even project was not converted from development to non-development, hence case of the petitioners could not be considered for the purpose of regularization under any circumstances.

12. The Honourable 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."

Further, in the case of "Government of Balochistan, Department of Health through Secretary, Civil Secretariat, Quetta v. Dr. Zahida Kakar and 43 others" [2005 SCMR 642], the Hon'ble Supreme Court has observed as follows:

"5. It is an admitted fact that the service of the respondents was on purely temporary basis and specifically on contract. Such appointment terminates on the expiry of contract period or any extended period on choice of the employer or appointment authority. Prima facie, it does not create any vested right."

And further, in the case of "Muzaffar Khan and others v. Government of Pakistan and others" [2013 SCMR 304], the Hon'ble Supreme Court has observed as follows:

"Be that as it may, the fact remains that the petitioners are contractual employees and on that

score according to the consistent view of this Court do not have vested right for regular appointment. See Government of Balochistan v. Zahida Kakar (2005 SCMR 642)."

13. In the case of **"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.

14. In the similar case of **"Chairman NADRA, Islamabad and another Vs. Muhammad Ali Shah and others"** (2017 SCMR 1979) the Hon'ble Apex

Court has held as follows:-

"The writ or constitutional jurisdiction of the High Court under Article 199 of the Constitution could not be invoked by a contractual employee of a statutory organization"

15. In the case of **"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. Their terms and conditions of services were governed by their appointment notifications and in my view there was no right of regularization available to the petitioners and their services were correctly terminated as per terms and conditions of service on the basis of which they were appointed.

17. For the reasons recorded above, the instant writ petition is dismissed being meritless.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

APPROVED FOR REPORTING