HCJD/C-121

JUDGMENT SHEET

IN THE SLAMABAD HIGH COURT, ISLAMABAD

Writ Petition No.17 of 2021

Mr. Asif Raza and two others
Versus
National Police Foundation (Security Services) Islamabad through its Managing Director and another

Petitioners by	**:**	**Ms. Raheema Khan, AHC**
Respondents by	**:**	**Syed Khawar Ameer Bokhari, Advocate** **Mr. Farrukh Shahzad Dall, Assistant A-G.**
Date of Hearing	**:**	**18.06.2021**

Babar Sattar, J:- Through this petition, the petitioners have prayed for issuance of a direction to the respondent No. 1 to regularize the services of the petitioners from the date of their initial appointment, with all consequential benefits.

2. Learned counsel for the petitioners states that the petitioners are contract employees serving in respondent No.1 for the period of eight, five and four years, respectively, against permanent posts and yet continue to serve on contract basis even though employees who are peers of the petitioners and others serving in lower grades have been confirmed. Learned counsel further states that respondent No.1 was created through Notification No.02(210)-Home/91.(V.I), dated 07.02.1993, which was confirmed by letter dated 20.04.1993 that respondent No.1 is a Semi-Government Organization falling within the domain of the Ministry of Interior. That respondent

No.1 is headed by a serving Inspector General of Police and therefore this writ is maintainable.

3. The arguments of the learned counsel for the petitioners with regard to the maintainability of the petition as well as entitlement of the petitioners to being confirmed as permanent employees of respondent No.1 are as follows. She contended that respondent No.1 was an entity acting in connection with the affairs of the state in view of the functions test laid down by the august Supreme Court in ***Federal Government Employees Housing Foundation Vs. Mohammad Akram Ali Zai (2002 PLC CS 1655).*** She submitted that National Police Foundation **("NPF")** which was the parent of respondent No.1 was established under the order of the Federal Government. That the Federal Government provided bulk of its finances and it was controlled by the Federal Government as evidenced from the fact that the CEO of respondent No.1, which is supposedly a private limited company incorporated under the Companies Act, 2017, is a serving officer of the Police Service of Pakistan and therefore, all three components of the functions test laid by the august Supreme Court were satisfied in the instant case. She further submitted that it had been held by the august Supreme Court in ***Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257)*** that employees serving against permanent positions who continued to provide services for more than 90 days in a calendar year in a commercial or industrial establishment attained the status of permanent workman by operation of the West Pakistan

(Standing Orders) Ordinance, 1968. And that the said principle would apply in the instant case where petitioners were not project employees but were dispensing services against a post that was of a permanent nature and respondent No.1 had continued to extend their contractual employment year after year which was in breach of the law laid down by the august Supreme Court in the case of ***Pir Imran Sajid***. She further contended that peers of the petitioners, who were also contractual employees, had been granted permanent employment on the basis of a memorandum issued by the Establishment Division of the Federal Government dated 11.05.2017, which applied to autonomous bodies/corporations/ companies/authorities. And consequently, by not affording the same treatment and not granting the petitioners the status of permanent employees pursuant to Establishment Division's Office Memorandum, the petitioners had been treated in a discriminatory manner in breach of Article 25 of the Constitution. She further submitted that even if this Court comes to the conclusion that respondent No.1 is not performing services in connection with affairs of the State or that the terms and conditions of service of the petitioners are not regulated by rules and regulations that are statutory in nature, this petition is one for enforcement of fundamental rights of the petitioners and would be maintainable in view of Article 199(1)(c) of the Constitution.

4. Learned Assistant Attorney-General submitted that NPF was established under the Charitable Endowments Act 1890, for the welfare of serving and retired police officers and martyrs of

police force and their dependents. The scheme of administration of NPF was settled by SRO No.334 (1)/1975 dated March 14, 1975. That NPF had been conferred with powers to make investments under clause 2 sub clause 7 part IV of the constituent document of NPF. He relied on the law laid down by the august Supreme Court in ***Zia Ullah Khan Niazi Vs. Chairman Pakistan Red Crescent Society (2004 SCMR 189)*** where it was held that a charitable organization run on the basis of donations would not be treated as a person performing functions in connection with the affairs of the State, even where the President of Pakistan was the President of such entity and the Minister of Health, Government of Pakistan was the ex-officio vice President. He contended that in view of the functions test laid down by the august Supreme Court in ***Pakistan International Airline Corporation Vs. Tanvir ur Rehman and others (PLD 2010 SC 676)*** as well as ***Red Crescent Society,*** respondent No.2 could not be regarded as a person performing functions in relation to the affairs of the Federation. He further submitted that respondent No.2 was not undertaking police functions and was only providing security services to private citizens, and that such services were distinguished from the exercise of police powers by the State through its police force.

5. Learned counsel for respondent No.1 stated that it had been held in orders passed by Judges-in-Chambers as well as by Divisional Benches of this Court that NFP was not a person performing functions in connection with the affairs of the Federation and that a writ petition was not maintainable against

the NPF under Article 199 of the Constitution. And consequently the instant petition was not maintainable. He relied on ***I.C.A. No.17/2012 (The Managing Director, NPF, etc Vs. Ghazanfar Abbas Gillani, etc), I.C.A. No.218/2015 (National Police Foundation through its Treasure/Managing Director, etc Vs. Sher Zaman and another), I.C.A. No.07/2019 (Muneer Hussain Vs. National Police Foundation through its Director General), W.P. No.3395/2013 (Residents Welfare Society NPF and another Vs. National Police Foundation Housing Society through its Managing Director and others), I.C.A. No.218/2015 (National Police Foundation through its Treasure/Managing Director, etc Vs. Sher Zaman and another), W.P. No.888/2008 (Maqsood Ahmad, President, Social Welfare Society Vs. Managing Director, NPF and another) and W.P. No.2906/2015 (Tasneem Fatima Vs. Federation of Pakistan, etc).*** He further submitted that the petitioners were hired on contract basis and no illegality had been committed by respondent No.1 in not conferring on them the status of permanent employees. He submitted that respondent No.1 provides security services in its capacity as a private company. When the scope of services dispensed by respondent No.1 expands due to grant of contracts by private persons, its human resource needs increase and it hires more employees. When, however, the quantum of business shrinks due to reduction of contracts for provision of services, it needs to dispense with the services of employees. Consequently, it cannot grant permanent employment to employees merely

because they have continued to serve for a certain period. His contention was that the petitioners have not been providing services against posts that are of a permanent nature and that they have no vested right to seek permanent employment with respondent No.1.

6. I have reviewed the judgments passed by this court in relation to the status of NPF. Respondent No.1 is a wholly owned subsidiary of the NPF. It has been incorporated as a private limited company and 98 % of its shares are owned by NPF. NPF itself was established by the Federal Government under the Charitable Endowment Act, 1890, as a trust, with seed money in the amount Rs.20 million funded by the Federal Government. The NPF has been created for the purpose of providing for retired employees and the *shuhada* of police service and their dependents. Provision of retirement benefits and the obligation to cater for the welfare of employees of the Pakistan Police Service or their dependents upon the demise of an employee during service appears to be a function that the state ought to be responsible for. Further, the administration of NPF appears to be under the control of the Federal Government as serving officers of the Police Service of Pakistan are sent to run NPF on deputation basis in exercise of powers of the Federal Government under Section 10 of the Civil Service Act, 1973. In view of such facts, it is conceivable that NPF could possibly fall within the functions test laid down by august Supreme Court in ***Tanvir ur Rehman***.

7. It is also questionable whether respondent No.1, as a wholly-owned subsidiary of the NPF, can claim to be a private

company when it was created through a grant of Rs.7.5 million issued by the Federal Government and its Chief Executive Officer is a serving Grade-21 Officer of the Police Service of Pakistan. Whether or not the constituent document of the NPF authorizes it to establish businesses by incorporating private companies, such as respondent No.1, as opposed to making passive investments to utilize its endowment fund in order to generate revenue to realize the purposes for which NPF was created, is a further question that arises in relation to the purpose for which respondent No. 1 has been created. It is also mind-boggling that while providing security to citizens of the State through its police force is a quintessential State responsibility, the Federal Government has authorized the creation of the trust in the form of NPF, which in turn has incorporated a private security company headed by a Chief Executive Officer who is a Grade-21 Officer of the Police Service of Pakistan to provide private security services to citizens in Islamabad, essentially in competition with the State or, with due respect, due to the failure of the State to ensure the security of its citizens which then requires affluent citizens to seek private security from security companies, such as respondent No.1, upon payment of consideration. In the present case, the legality of the creation of respondent No.1 or the legal authority of NPF to establish and operate a business on a day-to-day basis or the authority of the Federal Government to post serving officers of the Police Service of Pakistan to head an entity incorporated as a private company providing security services have arisen incidentally and are not questions that form the main subject

matter of the petition. The Court will, therefore, exercise restraint and not render any finding in relation to such questions, which may come up for adjudication in an appropriate petition.

8. Further, the decisions of this Court rendered by Divisional Benches, referred by the learned counsel for respondent No.1, stating that NPF is not a person not performing functions in connection with the affairs of the State, are binding upon this Court in view of the law laid down by the august Supreme Court in ***Multi Line Associates Vs. Ardeshir Cowasjee and 2 others (PLD 1995 SC 423)***. And consequently, even though this Court might have reached a different conclusion by applying the functions test to NPF, it is bound by the conclusion reached in such decisions regarding the status of NPF. And it can therefore not conclude that respondent No.1, as a wholly-owned subsidiary of NPF, is performing functions in connection with affairs of the state.

9. As aforesaid, on the question of maintainability this Court is bound by the precedents referred to above and as respondent No.1 is not performing function in relation to affairs of the Federation, this writ is not maintainable under Article 199(1)(a) of the Constitution, to give effect to the terms and conditions of service of the petitioners. The learned counsel for the petitioner had argued, in the alternative, that this writ is maintainable to give effect to the ratio of the august Supreme Court's decision in ***Pir Imran Sajid vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan (2015 SCMR 1257)*** and also under Article 199(1)(c)

of the Constitution, as it involves the rights of the petitioner guaranteed under Article 25 of the Constitution. Let us consider these contentions now.

10. Contract employees have no vested right to be treated as permanent employees even when they are employed by the government. They have no vested right to be considered for regularization and treated at par with those who have been inducted through a competitive process run by the Federal Public Service Commission in compliance with requirements of initial appointments as prescribed under the rules framed under the Civil Servants Act of 1973. The law on the entitlement of contract employees to seek regularization has been clarified by the august Supreme Court by holding the contract employment is not comparable to regular employment and an employee has no vested right to seek the transformation of his employment relationship from the former category to the latter. It has been held in ***Sui Southern Gas Company Vs. Zeeshan Usmani (2021 SCMR 609)*** that:

> ***"This Court in a number of cases has held that contract employees have no vested right to claim regularization. This Court in the case of Government of Khyber Pakhtunkhwa Workers Welfare Board v. Raheel Ali Gohar (2020 SCMR 2068) has categorically held that contractual employees, who are governed by the principle of 'master and servant' do not have the right to approach the High Court in its Constitutional jurisdiction to seek redressal of their grievances relating to regularization…this Court in Naureen Naz Butt v. Pakistan International Airlines (2020 SCMR 1625) while relying on earlier judgments of this Court has held as under:-***
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> > ***"Thus, the established law is that a contract employee, whose period of***

> ***contract employment expires by afflux of time, carries no vested right to remain in employment of the employer and the Courts cannot force the employer to reinstate or extend the contract of the employee."***

11. The distinction between contractual employment and regular employment and the reasons why a constitutional court is loath to interfere with the human resource policy of an employer has been explained most recently by the august Supreme Court in ***Province of Punjab through Secretary Livestock and Dairy Development Department, Government of the Punjab, Lahore and others v. Dr. Javed Iqbal and others (2021 SCMR 767)***. The relevant excerpts of the judgment are as follows:

> ***In order to appreciate the contentions of the parties it is important to understand the scheme of contractual and regular appointment under the Provincial Government. The Contract Appointment Policy was conceived after the Government realized that regular mode of appointment is not suitable for most of the Government sector assignments due to administrative and financial factors. The rationale behind the contractual mode of appointment is based on financial and economic reasons, as well as, administrative reasons. According to the Policy, the financial constraints of salary and pension under regular appointment had become unsustainable. Besides several administrative reasons associated with the regular employees also tilted the scales in favour of the contractual mode of appointment: large scale absenteeism of regular employees; poor performance leading to poor service delivery; cumbersome accountability mechanism systems; huge administrative costs of transfer and promotions, etc.; no concept of performance based indicators; contract mode being more flexible to tap in the best human resource available in the market; latest management practices in the***

developed world also recommended contract mode of appointment. These reasons led to development of two separate schemes of appointment. Persons appointed on contract basis are not civil servants, therefore, their service matters are not governed by the rules framed under Civil Servants Act, 1974. Their appointment is strictly regulated by the terms and conditions of the contract. Their period of contract is between 3 to 5 years and extension is generally granted for a period of 3 to 5 years and not for an indefinite period. On expiry of contract appointment, if no extension is granted, it is ensured that the contract employee is not allowed to continue in service. Contract appointment is liable to be terminated on one month's notice or on one month's pay, in lieu thereof, on either side without assigning any reason. The contract provides that the contract appointment shall not confer any right of regular appointment nor shall such appointment be regularized under any circumstances. A contract employee shall, under no circumstances, claim conversion of his contract appointment into regular appointment.

…[A] contractual employee is appointed under a scheme, which is totally different from that of regular appointment and a contractual appointee does not enjoy the right to be appointed on regular basis or to be readily shifted into the regime of regular appointment. It does not matter if the appointment on contract is through the same process of public advertisement and scrutiny through Punjab Public Service Commission, it is still a contractual appointment for a limited period of time and is different from a regular appointment by virtue of which a person attains the status of a civil servant. This distinction between the two streams of services is important to address the question posed at the beginning of this judgment.

Regularization of a contract employee is, therefore, a fresh appointment into the stream of regular appointment. A contractual employee for the first time becomes a civil servant. It is underlined that contractual employees enjoy no vested right to regularization (see Contract

Appointment Policy) much less to be regularized from any particular date.

12. An employee has a right to militate against termination from employment in breach of the law. Such right accrues where it can be construed from the framework prescribed by law or protected by law that the employment is of a nature which has been afforded security of tenure or a procedure is prescribed to order termination and the termination order passed is in breach of such statutory framework protected by law. An employment relationship may provide for termination for cause or for termination for convenience. In the latter case where a contract for provision of services provides that an employee can be terminated at the convenience of the employer, the need to furnish cause cannot be read into the employment contract by a Court if an employer has retained the freedom to let go of an employee who is not needed by the employer upon expiry of the contractual term of employment. In such milieu, it is not for a court to say that the employer must keep the employee in permanent service or else the actions of the employer will be found to be in breach of the fundamental rights of the employee. Except when protection to the term of employment is granted by statute or rules or regulations framed thereunder (which provisions of law would then override the terms of a contract between the parties regarding the termination of the employment relationship) a court cannot renegotiate the terms of employment on behalf of the parties and read into the employment contract a provision for grant of permanent employment to a contractual employee, which

doesn't otherwise exist in the contract negotiated and agreed by and between the parties.

13. The State is under no obligation to provide direct employment to all adult employable citizens of the country. The Principles of Policy enshrined in the Constitution require the State to conduct its affairs such that it creates employment opportunities for citizens. But the Constitution does not envisage the State as an employer of all adult citizens who cannot find gainful employment within the private sector. And such function cannot be foisted upon the State out of sympathy for unemployed citizens. Even in relation to employment within companies and corporations owned and managed by the Government, it is not for the Court to interfere with the human resource policy as noted by the august Supreme Court in ***Dr. Javed Iqbal***, unless the actions of the Government are found to be in breach of the law.

14. The contention that the petitioners have a right to seek transformation of their contractual employment into regular employment under the law laid down by the august Supreme Court in ***Pir Imran Sajid*** is misconceived. In ***Pir Imran Sajid*** the petitioners were seeking enforcement of a decision of the cabinet wherein it was decided that employees, who fell within the definition of workmen, in a corporation owned and controlled by the Government of Pakistan were to be treated as permanent employees. The jurisprudence that has evolved within the domain of labour law, with regard to recognition of employment status of workmen as "permanent workmen" if

they fall within the definition of Para 1(b) of Schedule of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("**Standing Orders Ordinance**"), read together with Standing Orders 10 and 12 of the Standing Orders Ordinance that regulates the procedure to be followed prior to termination of a workman, cannot be imported and applied as part of the body of principles that guide the application of service law. In the event that an employee qualifies as a workman and the nature and length of his service is such that meets the test which places him within the category of a permanent workman, Standing Order 12 of the Standing Orders Ordinance affords him certain procedural protections that are to be complied with before an order terminating his services can be passed.

15. The body of jurisprudence that has enumerated when a workman is to be considered a permanent workman and what procedure is to be followed prior to terminating his service has no relevance to private employment relationships or even government employees and their service, whether or not they are civil servants. This body of jurisprudence developed under labour law cannot be imported into service law to create a vested right for a government employee to have his contractual employment converted into permanent employment merely because such employee has served against a post of a permanent nature for more than 9 months. Learned counsel for the petitioners has failed to identify any statutory provision that creates a right in favor of contractual employees, even those hired by government departments, to seek transformation of

contractual employment into permanent employment. ***Pir Imran Sajid*** cannot be read as a precedent laying down such law. The transformation of contractual employment into permanent employment has been undertaken in the past as a consequence of regularization policies of the government and jurisprudence in such regard has evolved in relation to implementation of decisions of the government taken in implementing such policy framework. There also exist provincial statutes that provide a mechanism for regularization and in ***Dr. Javed Iqbal*** the august Supreme Court has interpreted the statute promulgated by the Province of Punjab. There is, however, no statute promulgated by Parliament and given effect within the Islamabad Capital Territory which creates a right or a process for transformation of contractual employment to permanent employment.

16. In the instant case the petitioner has failed to make out a case that it has a fundamental right to be treated as a permanent employee of respondent No.1. Or further that the petitioners have been treated in breach of Article 25 of the Constitution because their employer has created distinctions between services of employees that it wishes to retain and services of employees that it wishes to dispense with. It cannot be held that such distinctions, which must be made within the scope of the human resource policy of any employer, fall foul of Article 25 of the Constitution. Within the realm of private employment, the terms of the contract for service determine the rights and entitlements of the employer or an employee and no question of breach of Article 25 can arise where an employer

retains the services of certain employees on the basis of its HR Policy and performance of employees and dispenses with the services of others.

17. In view of the above, the petition is neither maintainable in view of Article 199(1)(a) of the Constitution nor under Article 199(1)(c) of the Constitution and is therefore ***dismissed.***

(BABAR SATTAR)
JUDGE

Announced in open Court on 03.08.2021.

JUDGE

Approved for reporting.

M.A. Raza