

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Intra Court Appeal No. 290 of 2021

Muhammad Haleem Shah and others

Versus

Federal Government Employees Housing Authority, through Director
General, Islamabad and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(02)	12.07.2021	Mr. Sher Afzal Khan Marwat, Advocate for the appellants.

TARIQ MEHMOOD JAHANGIRI, J:

Through the instant Intra Court Appeal,
the appellants have assailed the Judgment
dated 22.06.2021, passed in writ petition No.
1536 of 2021, whereby, the learned single
Judge-in-Chambers has dismissed the writ
petition.

02. Brief facts of the case are that the
appellants were appointed as Security
Supervisors / Security Guards in department
of Federal Government Employees Housing
Authority / respondent No. 1 in the year
2015/16 on contract basis for a term of one
year vide offer of appointment letters.
Subsequently the contract / appointment of

the appellants was extended from time to time and expired in the year 2020/21. Appellants were performing their duties till the expiry of their contract, instead of regularizing their services the respondent advertised the posts of Security Supervisors / Security Guards vide advertisement dated 05.02.2021.

03. Learned counsel for the appellants *inter alia* contends that the appellants have been working in Federal Government Employees Housing Authority / Respondent No. 1, since 2015/16 and their services were liable to be regularized, as the appellants have been working with no break in the service. Despite rendering protracted and continued service the appellants have been denied of any prospects of regular employment by violating the basic policy/rule/law on the subject without any legal justification, as despite rendering continuous service to the respondent's department, the appellants, till date, are being dealt with in an arbitrary manner, without any regard to their fundamental

rights, as their services, despite being eligible to be regularized, have not been regularized till date.

04. That respondents have acted with utter and apparent malafide while dealing with the matters of employment of the appellants. That Hon'ble Supreme Court Of Pakistan since long has deprecated such practice and has held that engaging employees of protracted contract periods without any prospects of regularization is exploitation which is forbidden not only in Islam but prohibited under Constitution of Islamic Republic of Pakistan, 1973. Hence has prayed that the impugned judgment is liable to be set aside. Learned counsel has relied upon case law reported as "2005 SCMR 100, 2015 SCMR 1257, 2018 SCMR 1405 and 2018 SCMR 325".

05. Arguments heard, record perused.

06. It is admitted fact that the appellants were appointed on contract basis in the year 2015/16. The offer / appointment letter of the appellants is reproduced as under for ready reference;

"To

_____."

**SUBJECT: OFFER OF APPOINTMENT OF
SECURITY GUARD FOR A PERIOD OF
ONE 1 YEAR ON CONTRACT BASIS.**

*Please refer to your application for employment. You are hereby offered the post of **Security Guard Supervisor** in the Federal Government Employees Housing Foundation on the following terms and condition.*

- i. The appointments shall be purely temporary on contract basis for a period of **one (1) year** w.e.f. the date of joining. His services will be liable to terminated at any time without assigning any reason.*
- ii. The monthly salary is fixed / lump sum amounting Rs. **20,000/-** only without any other remuneration / facility.*
- iii. The appointee will not confer upon his / her any title / right to claim for regular appointment / permanent retention in the housing foundation nor shall confer any right for being placed in the gradation / seniority list of the cadre group to which the subject post belongs.*
- iv. Leave; As admissible under the revised leave rules 1980 however provisions contained in rules 5c, 8, 11, 14, 16, 17, 18, 18a, 19, 27, 33, 34,*

35, 36 and 39 of rules ibid shall not apply.

v. Pension; pension in respect of previous service, if any shall continue to be drawn in addition to pay.

vi. The appointment during the period of contract shall be liable to termination on 30 days notice on either side or payment of monthly pay in lieu thereof without assigning any reason / non submission of character / clearance certificate from; local police station.

vii. The appointee shall submit medical fitness certificate from the authorized government hospital at the time of his / her joining.

2. If the above terms and conditions of appointment are acceptable to you, you should report for duty within 15 days of the issuance of this letter. In case of failure in joining the duty within prescribed period, this offer shall automatically stand with drawn.

You are also required to submit original documents for verification at the time of joining.

3. No TA/DA will be paid for joining duty.

4. This issues with the approval of competent authority.

*(FAIZ UMAR SIAL)
Assistant Director (HR & M)''*

07. The appellants accepted the terms and conditions mentioned in the offer of appointment letters, the contract period on the basis of same terms and conditions was extended from time to time and lastly it expired in the year 2020/21 (*month of January 2021*).

08. It is 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.

09. Reliance may be placed on following case laws:-

i. In a case titled as “**Messrs Sui Southern Gas Company and others Vs. Zeeshan Usmani and others**” (**(2021 SCMR 609)**), it has been held by the Hon’ble Supreme Court of Pakistan that:

“Admittedly, the respondents were contract employees and their relationship was governed by the principle of 'master and

servant'. This Court in a number of cases has held that contract employees have no vested right to claim regularization".

- ii. In a case titled as "**Province of Punjab through Secretary Livestock and Dairy Development Department, Government of the Punjab, Lahore and others Vs. Dr. Javed Iqbal and others**" (2021 **SCMR 767**), it has been held as follows:-

"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".

iii. The Hon'ble 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 unfair 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”.

iv. In a case titled as **"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.

v. In a case titled as ***"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".

10. 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. Terms and conditions of their services were governed by their appointment notifications and in our view there was no right of regularization available to the appellants.

11. ICA can be filed when the impugned

judgment of learned Single Judge-in-Chambers is shown to have been delivered against the provisions of law or a result of misreading, non-reading and same has caused mis-carriage of justice or mistakes of law which are liable to be corrected by the Division Bench otherwise.

12. In view of foregoing discussion, instant Intra Court Appeal is not maintainable, hence the same is dismissed in limine being meritless.

(MIANGUL HASSAN AURANGZEB) (TARIQ MEHMOOD JAHANGIRI)
JUDGE JUDGE

Approved for reporting.

Bilal /-