

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

W.P.No.1614 of 2018  
Khalid Masood and others

**Versus**

**Bahria University through its Registrar and others**

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	<b>13.09.2021</b>	<b>Mr. Shahzad Ali Rana, Advocate for the petitioners, Mr. Muhammad Shafiq-ur-Rehman Dab, Advocate for Bahria University / respondents No.1&amp;2.</b>

Through the instant writ petition, the petitioners impugn the appellate order whereby their departmental appeals against their termination from service were declined.

2. Learned counsel for the petitioners submitted that the petitioners were employed in Bahria University on the basis of employment contracts; that the employment period was not fixed in the employment contracts; that the Service Rules 2002 were in vogue when the petitioners were employed; that the petitioners had attained the status of regular employees since they contributed to the CP Fund and did not receive any gratuity; that under Section 9(3)(f) of the Bahira University Ordinance, 2000, the Rector can make an appointment on contract basis for a period not exceeding two years; that the petitioners had been serving at Bahria University for more than a decade; that under Section 32 of the said Ordinance, an employee holding a permanent post cannot be removed or compulsorily retired without being given a reasonable opportunity of showing cause against the action proposed to be taken; that at no material stage was any show cause notice issued to the petitioners; that under Section 30 of the said Ordinance, the petitioners were to retire from service upon attaining the age of sixty years;

that vide letters dated 24.10.2016, the petitioners' employment contracts were terminated under clause 10.3.6 of the statutes of Bahria University; and that Bahria University's stance in the said letters that the petitioners could not work as contract employees for more than five years is erroneous inasmuch as they had attained the status of permanent employees. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for Bahria University took an objection to the maintainability of the petition on the ground that the said university did not have any statutory service rules, and that since the petitioners' relationship with the said university was on the basis of an employment contract, they could not invoke the Constitutional jurisdiction of this Court to seek their reinstatement in service. He further submitted that the petitioners' employment contracts had been terminated strictly in accordance with the law inasmuch as the employment contracts entitled Bahria University to terminate the employment contracts on three months' notice; and that throughout the period of the petitioners' employment with Bahria University was contractual in nature. Learned counsel for respondents No.1 and 2 prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. Petitioner No.1 (Khalid Masood) was appointed as Clerk at Bahria Institute of Management and Computer Sciences vide employment contract dated 10.01.2001. Clause 6 of the said contract provided that it could be

terminated at any time by either party on giving to the other party three calendar months' notice in writing of such intention to determine the same or by giving three months' salary in lieu of such notice.

6. Petitioner No.2 (Muhammad Saleem) was appointed as Computer Operator at Bahria Institute of Management and Computer Sciences vide employment contract dated 01.09.2009. Clause 3 of the contract provides that petitioner No.2's employment shall be subject to unilateral termination by either party with a notice of 15 days or in *lieu* thereof payment of 15 days basic salary.

7. Petitioner No.3 (Imtiaz Hussain) was appointed as Senior Clerk at Bahria Institute of Management and Computer Sciences vide employment contract dated 01.09.2006. Clause 3 of the contract provides that petitioner No.3's employment shall be subject to unilateral termination by either party with a notice of 15 days or in *lieu* thereof payment of 15 days basic salary.

8. Vide letters dated 24.10.2016, the petitioners' employment contracts were terminated by giving an advance notice of one month. The petitioners' departmental appeals against the said letters were turned down vide the impugned order.

9. In the first instance, I propose to decide the objection taken by the learned counsel for Bahria University to the maintainability of this petition. After the execution of the petitioners' employment contracts, there is nothing on the record to show that the contractual nature of the petitioners' employment was changed by Bahria University into regular or permanent employment.

10. In this view of the matter, a writ petition filed by such an employee against the termination of his services is not maintainable.

11. 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. A contractual employee cannot insist for a regular inquiry to be held regarding the employer's satisfaction with the employees' performance. In the case at hand, the impugned letters dated 24.10.2016 whereby the petitioners' employment contracts were terminated does not, in any manner, stigmatize them.

12. This Court, in exercise of its jurisdiction under Article 199 of the Constitution, can neither declare the termination of the petitioners' contractual employment to be unlawful nor hold that the petitioners' employment contracts continue to subsist. The contractual nature of the petitioners' employment made their relationship with Bahria University as that of master and servant. This being so, if the petitioners feel that the termination of their employment contracts were unlawful or based on *malafides*, at best, they could file a suit for damages, subject to law. 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."*

13. The petitioners through the instant writ petition have raised a grievance regarding the terms and conditions of their employment with Bahria University. Since the petitioners' employment with Bahria University was contractual in nature, I hold that the instant petition is not maintainable. Additionally, this Court has recently vide judgment dated

14.05.2019 passed in writ petition No.2386/2018 titled "Pervaiz Khan Vs. Bahria University etc." held *inter alia* that the Service Regulations Statute, 2016 of Bahria University is non-statutory in nature. This is yet another ground for the dismissal of this petition as not maintainable. Consequently, the instant petition is dismissed as not maintainable. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

Sultan\*