

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

W.P. No. 1703 of 2013

Muhammad Sajjad, etc

Vs

FOP, etc

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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10-09-2014. Mr Amir Javed, Mr M. Shabbir Bhutta, Mr Ali Murad Baloch, Mr Mehrem Baig, Mr Khizar Hayat Khan, Mr Ghulam Mehboob, Mr Muhammad Ramzan Khan, Mr Umar, Syed Muzhar Naqvi, Khawaja Javid Iqbal, Sadiq Nawaz Khattak, Mr S.A. Matin, Mr Mohammad Riaz Akbar, Mr Pervez Khan, Mr Arshad Mehmood Malik, Mr Shafqat Mehmood, Mr Bilal Hassan Sabri, Mr Muhammad Shoaib Shaheen, Mr Muhammad Umair Baloch, Mr Arbab Alam Abbasi, Mian M. Faisal Irfan, Rana Afsar Ali, Mr Kifayat Ullah Wazir, Ch. Bilal Ahmed and Mr Ghulam Fareed Chaudhry, advocates for the petitioners in their respective writ petitions.

Mr Mohsin Akhtar Kayani, Mrs. Misbah Gulnar Sharif, Sh. Junaid, Raja Zubair Hussain Jaral, Mr Asad Javid Komal, Mr Muntaz Ahmed Bilal, Mr M.D. Shahzad, Mr Waseem ud Din Khattak, Mr Muhammad Arfan Ullah Khan, Mr Abdul Rehman S. Alvi, advocates for the respondents.

Malik Faisal Rafique, DAG and Mr Tallat Abbas Khan, Standing Counsel.

Major M. Ayaz, representative of M/O Interior, Barrister Rizwan Ahmad, Assistant Legal Advisor M/O Foreign Affairs, Ms Shabana Ashraf, Dy. Director (Admn. & Accounts) PNCA, Mr Qamar ul Islam Siddiqui, Mr Anjad Saeed Awan, S.O. Establishment Division, Malik M. Bashir, Assistant Estate Office, Islamabad, Mr Ahsan Ameen, Assistant Director PHA, Mr Tariq Mahmood, Company Secretary, Livestock & Dairy Development Board, Mr Muhammad Gulzar, Legal Supervisor, National Construction ltd. Islamabad and Mr Muhammad Arshad Anjum, A.D. Legal FDE, representatives of the respondents.

Through this consolidated order instant writ petition alongwith the petitions listed in Annexure-A hereto, are being decided.

2. Briefly stated the facts are, that the Federal Government formulated a policy for regularization of employees falling in the category of contractual / daily wagers, and who were in the employment of Ministries, Divisions, Attached Departments / Autonomous Bodies /

Corporations (hereinafter referred to as the “Policy”). The terms and conditions for eligibility were specified in the Policy. A Cabinet Committee was constituted for implementation of the Policy and respective entities falling within its purview were asked to refer the cases of employees who were eligible to be considered.

3. The Ministries / Divisions / Attached Departments / Autonomous Bodies / Corporations (hereinafter referred to as the "Employer") referred their respective lists, which were placed before the Cabinet Sub Committee. The Cabinet Sub Committee, after deliberations made recommendations in each case. It appears that in all the cases the recommendations were subject to meeting some conditions.

4. In the present set of petitions, after having been deliberated by the Cabinet Sub Committee, the petitioners were found eligible and as such were recommended for regularization in accordance with the Policy, after fulfilling certain conditions mentioned in the recommendations. Various grievances have been raised. In most of the cases it is contended that despite the conditions having been fulfilled, the recommendations of the Cabinet Committee have not been implemented. The respective Employers have refused to implement the Policy by failing to regularize the services. However, the common grievance relates to being treated differently from other similarly placed persons. The petitioners, therefore, seek enforcement of their fundamental rights, particular, the right guaranteed under Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the “Constitution”).

5. It is not only a question of violation of Article 25, but also the fundamental rights guaranteed under Articles, 9, 18 and 27 of the Constitution. Discrimination in service matters is always to be deprecated in the strongest words because it leads to devastating consequences. The resentment gives rise to a feeling of being discriminated against, and is a major cause of bad governance, which inevitably affects the general public by violating their fundamental rights as well. It gives rise to a perception that policies are implemented on the

basis of whims, nepotism or for political considerations. Such a perception is enough to erode public confidence in executive authorities and thereby weakens the writ of the State. The principle against discrimination is embedded in the concept of the rule of law. The dictate of law regarding the principle of equality has been aptly explained in the celebrated case of *Brig. F.B. Ali Versus State, PLD 1975 S.C. 506* as follows:

“Equal protection of the laws does not mean that every citizen, no matter what his condition, must be treated in the same manner. The phrase ‘equal protection’ of the laws means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other class of persons in like circumstances in respective of their life, liberty, property or pursuits of happiness. This only means that persons, similarly situated or in similar circumstances, will be treated in the same manner”.

6. The Courts are clogged by cases raising the grievance of discrimination on account of the acts and omissions of the executive authorities. It becomes a matter of concern when the employees of the Federal Government raise this grievance in such a large number. It undeniably manifests a grave wrong in the system, creating an impression that the employees are not being heard and have been left without a remedy. The glaring example of apathy on the part of the executive authorities towards the resolution of grievances of its own employees is evident from the fact that the Federal Public Service Tribunal remains dysfunctional since a long time, forcing helpless aggrieved employees to approach the High Courts. The volume of grievance petitions filed in the High Court’s speaks volumes for depriving bonafide aggrieved employees of an effective forum to redress their grievances. When the State fails to provide inexpensive and effective forums for dispute resolution, it gives rise to an intolerant and chaotic society. The present petitions appears to be a classic example of

employees deprived of effective and inexpensive forums to redress their grievances. Most of them can hardly afford to litigate within their meager means and many retire in pursuit of justice. This seems to be the sad story of the present petitioners. Many ultimately may be declared to have been wronged, but by then it may be too late as 'justice delayed is justice denied'. The fault, I regret to say, has been on account of the indifference of the Employers. In the first place, if the Employers had attended to their grievances in accordance with law in a fair, just and transparent manner, there would have been no need for them to approach this court at a cost. But surely that does not seem to be the case. It is, therefore, a prime duty of the Employers to provide its employees i.e the present petitioners with an inexpensive and effective forum to resolve their disputes.

7. It is no ones case that the Policy is not in accordance with law or that it violates the fundamental rights. The Federal Government accepts it as a lawful Policy. Even otherwise, it is a settled law that courts exercise restraint in matters of Government Policies except when it can be shown that fundament rights have been violated. Policy making is within the exclusive domain of the executive and interference in such domain is not the function of this Court. Reliance is placed on the cases of *Engineer Iqbal Zafar Jhagra and Senator Rukhsana Zubairi...Vs...FOP and others* (2014 SCMR 220), *OGRA through Secretary...Vs...Messrs Midway II, CNG Station and others* (2014 PTD 243), *Secretary Economic Affairs Division, Islamabad and others...Vs...Anwar ul Haq Ahmad and other* (2013 SCMR 1687), *Dossari Travels Pvt. Ltd. and four others...Vs...Messrs Travels Shop Pvt.Ltd and others* (2013 SCMR 1749), *Punjab Public Service Commission and another...Vs...Mst. Ayesha Nawaz and others* (2011 SCMR 1602) and *Wattan Party through President...Vs...FOP through Cabinet Committee of Privatization, Islamabad and others* (PLD 2006 S.C. 697).

8. Therefore, the policy being lawful and accepted by all stake holders is not under challenge. The only question is with regard to its

implementation, so that no employee has a grievance that he or she has been treated differently. This question becomes more important when similarly placed employees have benefited from the Policy and their services have been regularized. It would, therefore, be appropriate if the Federal Government, which accepts the Policy as lawful, provides for an effective forum to redress the grievances of the petitioners in accordance with their right to “due process” guaranteed under Article 10-A of the Constitution.

9. In the light of the above, it was suggested to the parties in the present petitions that the Federal Government, which owns the Policy, may provide an effective forum, and decide the grievances in the present petitions, being the best judge of its own Policy. The parties, their learned counsels and in particular the learned Deputy Attorney General have consented to the said proposal.

10. In the light of the above, through this consent order it is directed as follows:

- (i) *The Secretary, Cabinet Division, Government of Pakistan, shall constitute a Committee within fifteen days, headed by an officer not lower in rank than a Federal Secretary or if it deems appropriate a retired Hon’ble Judge of the Supreme Court, to consider the grievances and pass speaking orders in each case after giving an opportunity of hearing to the employees and the Employer.*
- (ii) *Each Employer in the present petitions shall submit its comments to the Secretary, Cabinet Division within fifteen days for placing before the Committee, constituted in terms of clause (i) above.*

- (iii) *The Committee, after hearing the petitioners and the respective Employer shall pass orders in accordance with law.*
- (iv) *In the event that the Committee comes to the conclusion that there has been discrimination in implementing the policy, the decision shall be communicated to the Secretary, Cabinet Division, who shall ensure its implementation without delay.*
- (v) *Where action is required in fulfilling the conditions as stated in the recommendations made by the Cabinet Sub-Committee, necessary directions shall be issued to the concerned Employer.*
- (vi) *The committee shall process the cases, preferably, within 90 (ninety) days.*
- (vii) *It is expected from the respective Employers that restraint will be exercised in taking action against its employees till the finalization of the proceedings by the Committee, except in cases where disciplinary proceedings have or may be initiated or the services are otherwise liable to be terminated.*
- (viii) *The petitions shall be treated as representations deemed to be pending before the Federal Government.*
- (ix) *The Secretary Cabinet shall ensure that the Federal Government takes necessary steps for making the Federal Service Tribunal fully functional within a period of one month.*

11. All the petitions are, therefore, disposed of in terms of the above directions as consented by all the parties, particularly on behalf of the Federal Government.

12. On a final note it may be emphasized that it is the duty of the executive and all public functionaries to implement its policies in letter and spirit by holding the interests of the employees supreme. It has been consistently held by the superior Courts that public functionaries are under a duty that they must at all times act in a just, fair, equitable and transparent manner. Their decisions must be supported by reasons, so as to avoid any cause for grievance. The Federal Government owes its employees a duty of care, and this court expects the same to be extended to the petitioners. Indeed, the test of good governance will be judged by the manner in which the grievances of the present petitioners shall be redressed.

(ATHAR MINALLAH)
JUDGE

Approved for reporting.

JUDGE

*Asad K/**