

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, **ISLAMABAD**

WRIT PETITION NO.1181 OF 2018

Naveed Ahmad Khan

Vs.

COMSATS Institute of Information Technology, etc

Petitioner by : Raja Saif-ur-Rehman, Advocate.

Respondents by : Mr. Abid Hassan, Advocate.

Date of hearing : 20.07.2020.

LUBNA SALEEM PERVEZ, J. Petitioner, through present petition has
prayed as under:-

“In the present circumstances it is humbly prayed that a decree for declaration may kindly be issued to the effect that:

- a. Petitioner attained status of regular/confirmed/permanent employee after continuous service of two years and after completing his probationary period against a permanent sanctioned post.*
- b. The act by an interim set up within CIIT, of not promoting the petitioner from OG-III to OG-IV is a bias, unlawful and mala fide act of respondents on account of taking into consideration his ACRs/PERs/Reports for a lesser period instead of taking into account the ACRs of a longer period and this action be set aside.*
- c. That all actions taken against the petitioner by the interim Rector CIIT, having long-lasting consequences are illegal and against the law laid down by the apex Court, hence be set aside.*
- d. That petitioner be promoted to OG-IV from the date his juniors were promoted since it is a settled law by now.*
- e. Any other relief this Honorable Court may deem appropriate may also be awarded to the petitioner in the interest of justice.”.*

2. Facts as per petition are that the petitioner joined the Respondent No. 1 on contract basis from January, 2002. The contract of the petitioner was extended, on the same terms and conditions, vide order dated 20.06.2013 upto 30.06.2017 with increase in pay/salary and grant of annual increment. Vide Office Order dated 03.07.2017, the petitioner’s annual increment was withheld due to unsatisfactory

performance, however, the contract was extended upto 30.06.2018. As per Office Order dated 02.08.2018, the contract of the petitioner has been extended up to 30.06.2022 *w.e.f.* 01.07.2018 with annual increment and revised pay/salary on the same terms and conditions as of previous contracts. The grievance of the petitioner is that he continued to be employed on contract basis even after serving the institute since, 2002 on a permanent post. Therefore, in terms of Employees Service Statutes, 2009 he has a right to be regularized. He, thus prayed for a declaration to the effect that after completing the probationary period the petitioner has attained the status of a regular and permanent employee of the respondent.

3. Learned counsel for the petitioner submitted that he is serving the respondent since last 20 years. He argued that COMSATS Institute of Information Technology Employees Service Statutes, 2009, (*hereinafter referred to as ESS, 2009*) are identical with civil servant probation and confirmation rules and referred rules 21 & 22 of the ESS, 2009, and submitted that after successful completion of probationary period, the employee automatically stands regularized on the post unless the period of probation is extended for further period; that the petitioner is a regular employee within the definition provided in rule 4k of the Employees Leave Rules 2006; that he has been appointed on the sanctioned permanent post; that employee retained on contract for more than 12 years has a vested right of regularization; that a discriminatory treatment has been meted out to the Petitioner as the other employees of the respondent have been regularized on the pretext that controversy to the extent of petitioner is subjudice before this court; that according to Serial No. 12 of Esta Code, the cases of Government Servants are also to be considered on merits, without prejudice of pending civil suits or petitions, reliance in this regard was placed on *Islamia University, Bahawalpur Versus Muhammad Hameed Bhatti* (2004 SCMR 649); that due to bias of the officer his increment was

stopped accusing him of non-satisfactory performance without any notice and his case for promotion was not considered in the CSB; that hon'ble Supreme Court in the judgment reported as Nemat Ullah Versus Chairman Governing Body, Worker Welfare Board/Secretary To Government Of KPK, Labour Department (2017 PLC 1) has held that sanction post having statutory rules could not be kept vacant unless abolished by the competent authority. He submitted that the respondent has violated the provisions of statute and rules framed under COMSATS Ordinance, 2000 by not regularizing the petitioner thus the writ be allowed in his favour.

4. On the other hand, the learned counsel for the respondent argued that the petitioner has been appointed on contract basis. He submitted that the COMSATS Institute of information and Technology established, vide Ordinance XXXVIII of 2000 dated 12th August, 2000 has been upgraded as university, vide COMSATS University Act, 2018, and the Ordinance XXXVIII of 2000 has now been repealed; that COMSAT University Islamabad is under the control of Ministry of Science and Technology as per Rules of Business, 1973 (as amended upto 19.08.2019); that the employees of the University are civil servants as such the present petition is not maintainable; that the appropriate forum for redressal of the grievance of the petitioner is Federal Service Tribunal in terms of Article 212 of the Constitution. Hence, instant petition is not maintainable and is liable to be dismissed. Report and parawise comments has also been filed on behalf of Respondent Nos. 1 to 3, wherein, it has been contended that the COMSAT Institute at the time of its creation did not have any permanent post and all the posts were filled on contractual basis with the approval of COMSATS Board of Governors; that the appointments on contract basis are regulated as per terms and conditions of the contract itself; that the provisions for probation laid down by the Government Organizations are not applicable on COMSAT Institute; that the contracts are

renewed/extended for a longer period as per the needs and requirements of the COMSAT Institute; that no employee was forced to sign a fresh/extension of the contract and the employee has authority to accept or reject the contract; that the petition has been filed on the presumption that the petitioner after completing probationary period automatically converted into regular employee.

5. Learned counsel for the parties have been heard and relevant law as well as available record have also been perused.

6. As regards, submission of the learned counsel for the respondent that since, the COMSAT Institute has been upgraded as COMSAT University, vide Act of 2018, and is working under the administrative control of Ministry of Science and Technology its employees are, therefore, civil servants, I am of the view that the petitioner was appointed as a contract employee under the COMSATS Institute Ordinance, 2000, in January, 2002, therefore, the present petition would be decided as per provisions of the Ordinance, 2000. Moreover, the petition has been filed prior to the promulgation of COMSATS Act, 2018.

7. Perusal of the COMSATS Institute Ordinance, 2000 revealed that vide its Section 25, the Board has powers to make rules for carrying out the purposes of the Ordinance and *the terms and conditions of contractual appointment of teachers, researchers and officers* have been provided under rule 25(2)(a). However, the petitioner, while arguing his case, heavily relied on sections 21 & 22 of ESS Rules, 2009 which deals with the probation period of the employees and provides that after successful completion of probationary period the appointment shall become regular and thereafter confirmed after continuous two years' service, if the post and appointment are substantive and the work and conduct of the employee is found satisfactory. The ESS Rules, 2009, have also been perused according to which these rules are framed under section 26 of COMSATS Institute Ordinance, 2000 to

regulate or prescribe matters enunciated therein, for the Institute. Accordingly as per section 26(1)(b) *terms and condition of the service of employees of the Institute including pension, insurance, gratuity, provident fund, benevolent fund and other fringe benefits are provided.* Section 26 titled as “Statutes”, however, in actual terms, empowers the Rector and the Board to draft and approve regulations for the purposes of the Ordinance, 2000. When compared section 25 and 26 of the Ordinance, 2000, it transpired that section 25 grant powers to the Board to make rules while section 26 provides for making regulations approved by the Board. Thus, services of the petitioner, being a contractual employee, is covered under section 25(2)(a) of the Ordinance 2000 and the ESS Rules, 2009 framed under section 26(1)(b) of Ordinance 2000 is not applicable on the case of the petitioner. For facility, provisions of section 25 and 26 of the Ordinance are reproduced below:-

“25. Power to make rules. —(1) *Subject to the provisions of this Ordinance, the Board may make rules for carrying out the purposes of this Ordinance.*

(2) *Without prejudice to the generality of the foregoing powers, such rules may provide for,---*

(a) terms and conditions of contractual appointments of teachers, researchers and officers;

(b) powers and duties of officers and teachers;

(c) conditions under which the Institute may enter into arrangements with other public or private organizations for purposes of instructions, research and other scholarly activities;

(d) conditions of appointment of Professors Emeritus and award of honorary degrees;

(e) efficiency and discipline of the employees of the Institute;

(f) acquisition and administration of properties and investments of the Institute; and

(g) all other matters which under this Ordinance are required to be regulated by rules.

(3) *The Rector, the Director or the Academic Council may propose the draft of the rules for approval of the Board.*

(4) *Any Authority or any other body of the Institute may propose rules, consistent with the provisions of this Ordinance, for approval of the Board, to regulate the conduct of its business.*

26. Statutes. —(1) *Subject to the provisions of this Ordinance, Statutes may be made to regulate or prescribe all or any of the following matters, namely:—*

(a) creation of Faculties, Teaching Departments and other academic units and divisions;

(b) terms and conditions of service of employees of the Institute including pension, insurance, gratuity, provident fund, benevolent fund and other fringe benefits;

(c) efficiency and discipline of the employees of the Institute; and

(d) all matters required to be regulated under the Statutes.

(2) The Rector shall propose draft of the Statutes for approval of the Board.

(3) The Board may approve the Statutes or refer the same back for reconsideration.

(4) No Statute shall be valid until the Board has approved it. ”.

8. The contention of the petitioner that after successful completion of probationary period he automatically became a regular / permanent employee of the respondent is misconceived and not convincing, his reliance on rules 21 & 22 of ESS Rules 2009 of the petitioner is also irrelevant being misconstrued by him as admittedly, the petitioner joined the respondent as a contract employee, vide contract dated 21.01.2002 which have been extended/renewed from time to time with the consent of the petitioner, as such, the terms and conditions of the contract have duly been accepted by the Petitioner by signing the same thus, the contents of the contract between the parties are binding on either of the parties and the petitioner as well as the respondent would be governed through the contract. It is the prerogative of the respondent/employer to regularize any employee by assessing and evaluating his performance according to the policy and governing law.

9. The contention of the learned counsel for the respondent that the petitioner is a civil servant within the meaning of Civil Servant Act, 1973 is also ill founded in view of the fact that the petitioner admittedly is a contract employee of the respondent thus relation between them is of master and servant. In this regard,

reliance has been placed on judgment of this Court passed in case titled ***Wahaj Zulfiqar and others vs. Federation of Pakistan and others (2018 PLC(CS) 1284)***, wherein, it has been held as under:-

“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.”

10. Nutshell of the above discussion is that services of the petitioner, being a contractual employee, are covered under Section 25(2)(a) of the Ordinance 2000, whereas, ESS Rules, 2009 framed under Section 26(1)(b) of the Ordinance 2000 are not applicable on petitioner's case. Moreover, petitioner is not a civil servant within the meaning of Civil Servants Act, 1973 and the relation between the petitioner and respondents is of master and servant.

11. For the reasons discussed hereinabove, instant petition is dismissed as not maintainable.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on this 14th day of September, 2020.

JUDGE

JUNAID