

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3495 of 2020
Dr. Ayesha Haider and others
Versus

Federation of Pakistan through Secretary, Cabinet Division and others

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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01.12.2020	Mr. Khurshiad Ahmad Khan, Advocate for the petitioners, Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General, Mr. Noor Ullah, Assistant, for respondent No.4/ F.M.&D.C.
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Through the instant writ petition, the petitioners, who are contract employees serving in the Federal Medical and Dental College ("F.M.&D.C."), seek a direction to the respondents to regularize their services in the same manner as the services of similarly placed employees were regularized.

2. Learned counsel for the petitioners submitted that in response to the advertisement issued by the F.M.&D.C., the petitioners participated in the competitive process for appointment against different posts on contract basis in the F.M.&D.C.; that after the petitioners were successful in their interview before the Departmental Selection Committee, they were appointed in the F.M.&D.C. on contract basis; that the services of thirteen similarly placed employees in the F.M.&D.C. were regularized vide Cabinet Division's notification dated 30.10.2012 pursuant to the recommendations made by the Cabinet Sub-Committee on regularization of contract employees etc.; that the period of the petitioners' employment contracts was extended from time to time; that the petitioners are still serving on

contract basis in the F.M.&D.C.; that the petitioners had filed a writ petition before this Court seeking the regularization of their services; that pursuant to the order passed by this Court, the Committee constituted by the Federal Government for the regularization of the services of contract employees etc. considered the petitioners' cases, on 19.04.2016, observed *inter alia* that since the petitioners who appointed after the cut-off date of 03.06.2008, they did not fulfill the criteria laid down in the Establishment Division's Policy Guidelines dated 29.08.2008 for the regularization of their services; that additionally the said Committee observed that the petitioners had been treated in a discriminatory manner; and that vide letter dated 28.01.2020, the Principal, F.M.&D.C. advised the Federal Public Service Commission ("F.P.S.C.") to regularize the petitioners' services without subjecting them to test or interview since they had been working on contract for eight years. 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, the learned Assistant Attorney-General submitted that all posts in BPS-16 and above fall within the purview of the F.P.S.C.; that the petitioners are seeking the regularization of their services against posts in BPS-16 and above in the F.M.&D.C.; and that the regularization of the petitioners' services without referring their cases to the F.P.S.C. would be a violation of the law. The learned Assistant Attorney-General prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the petitioners as well as the learned

Assistant Attorney-General and have perused the record with their able assistance.

5. The petitioners were appointed against different posts in the F.M.&D.C. on contract basis. The validity period of their employment contracts was extended from time to time. The petitioners are still working on contract basis in the F.M.&D.C. against posts in BPS-16 and above. The petitioners are seeking the regularization of their services without going through any test or interview conducted by the F.P.S.C.

6. Indeed, thirteen contract employees in the F.M.&D.C. had been regularized vide Cabinet Division's notification dated 30.10.2012 pursuant to the recommendations of the Cabinet Sub-Committee on the regularization of contract employees etc. The petitioners want to be meted out the same treatment so that they are regularized without their cases being referred to the F.P.S.C.

7. The dimensions of a competitive process for appointment on contract basis are entirely different from that of a competitive process for appointment on permanent basis. The petitioners cannot expect their contractual services to be converted into an appointment of permanent nature without proving their ability in a test and interview. Upon their regularization, the petitioners will gain the status of civil servants. This status cannot be given to the petitioners without passing the test and interview conducted by the F.P.S.C. Rule 3(1)(i) of the Federal Public Service Commission (Functions) Rules, 1978, provides that the F.P.S.C. shall conduct tests and examinations for recruitment to all posts in connection with the affairs of the Federation in BPS-16 and above or

equivalent. Since all civil posts in BPS-16 and above are within the purview of the F.P.S.C., the issuance of a direction to regularize the petitioners' services without reference to the F.P.S.C. would indeed be a violation of the law. In paragraph 123(v) of the judgment in the case of Imran Ahmad Vs. Federation of Pakistan (2019 PLC (C.S.) Note 19), this Court held as follows:-

“All persons, appellants/petitioners who have been appointed on the posts of BPS-16 and above for temporary and ad-hoc basis may also be given similar treatment and their cases be sent to FPSC in terms of Section 11(b) of the Civil Servants Act, 1973 read with the powers referred in Rules 4 and 5 of the FPSC (Functions) Rules, 1978 and it is the prerogative of the commission to decide their fitness and eligibility on the basis of their qualification after obtaining fresh test/interview or directly by giving opinion on the fitness and eligibility of appellants/petitioners, the Federal Government shall issue approval of those employees as regularized subject to the decision of the FPSC, however till the completion of the entire process their services shall not be terminated (if they are still working against those posts). It is made clear that this is one time dispensation on the basis of exceptional and hardship cases and not to be considered as alternate mode of appointment in future. The process must be completed within six months.”

8. True, the services of thirteen contract employees in the F.M.&D.C. were regularized without subjecting them to any test or interview conducted by the F.P.S.C. but it would not be appropriate for this Court to comment on the regularization of their services since they are not parties to this petition.

9. During the course of the arguments, learned counsel for the petitioners submitted that since the petitioners had submitted a representation to the Principal, F.M.&D.C. for the waiver of the requirement of the test and interview

by the F.P.S.C., this Court ought to direct the Principal, F.M.&D.C. to decide the said representation. It would not be appropriate for this Court to issue such a direction since the Principal, F.M.&D.C. in his letter dated 28.01.2020 to the F.P.S.C. has taken the view that it would be “*unwise & unjust*” to subject the petitioners to a test and interview after a lapse of eight years. The views expressed by the Principal, F.M.&D.C. in the said letter are in consonance with the position taken by the petitioners in the instant petition. Since it is the F.P.S.C. and not the Principal, F.M.&D.C. which is to conduct the petitioners’ test and interview for the regularization of their services, a reference to the Principal, F.M.&D.C. would not be in order.

10. In view of the above, I do not find any merit in this petition, which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

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