

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.668 of 2018

Waleed Khan

Versus

Workers Welfare Fund through its Secretary and others

Date of Hearing:	10.03.2021
Petitioner by:	M/s Muhammad Umair Baloch and Saif-ur-Rehman Shah Bukhari, Advocates
Respondents by:	Mr. Tahir Mehmood Abbasi, Advocate Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General Mr. Faisal Tariq, Deputy Director, W.W.F.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Waleed Khan, seeks a direction to respondent No.1 (Workers Welfare Fund) to release his salary and other service benefits with effect from 08.09.2017, and also to grant him promotion, seniority, posting, and other service benefits admissible under the applicable rules.

2. The facts essential for the disposal of the instant petition are that on 02.04.2003, the petitioner applied to the erstwhile Ministry of Labour, Manpower and Overseas Pakistanis to be appointed to the post of Assistant Director (BPS-17) in the Workers Welfare Fund ("W.W.F."). Vide office order dated 26.04.2003 issued by W.W.F., the petitioner was appointed as Assistant Director (BPS-17) on *ad-hoc* basis for a period of six months, extendable for another six months, subject to satisfactory performance. The petitioner assumed the charge of his duties on 02.05.2003.

3. Vide letter dated 10.05.2003, W.W.F. requested the Workers Welfare Board, Balochistan ("W.W.B.") to take the petitioner on deputation basis. Vide letter dated 23.05.2003, W.W.B. informed the Secretary, W.W.F. that it had no objection if the petitioner's services were placed at the disposal of W.W.B. Vide office order dated 28.05.2003, W.W.F. relieved the petitioner from his duties in W.W.F. so that he could join his new assignment in W.W.B. The said office order also shows that the petitioner was being sent on deputation on his own request.

4. Apparently, the petitioner had expressed his intention to be permanently absorbed in W.W.B. against the post of Assistant Director (BPS-17). Vide letter dated 24.01.2004, W.W.F. conveyed its no objection to the petitioner's absorption in W.W.B. on permanent basis. Vide letter dated 28.01.2004, the Secretary, W.W.B. asked the Secretary, W.W.F. whether the petitioner's appointment as Assistant Director (BPS-17) in W.W.F. was made on regular or contract basis. Vide letter dated 30.03.2005, W.W.F. sent the petitioner's personal file containing the copies of his bio-data, appointment order and other documents to W.W.B.

5. Vide letter dated 26.02.2005, W.W.F. again informed the Secretary, W.W.B. that it had no objection if the petitioner is absorbed in W.W.B. on a regular basis. The minutes of W.W.B.'s meeting dated 21.05.2005 under the Chairmanship of Secretary, Labour and Manpower Department / Chairman, W.W.B. show that it was decided to permanently absorb the petitioner in W.W.B. In pursuance of the decision taken in the said meeting dated 21.05.2005, W.W.B. issued notification No.4533-88 dated 07.04.2006 whereby the petitioner was permanently absorbed in W.W.B. against the vacant post of Assistant Director (Works) (BPS-17). Almost five years after his absorption in W.W.B., the petitioner was promoted as Deputy Director (Works) (BPS-18), vide W.W.B.'s notification dated 22.02.2011.

6. The matter regarding the absorption of deputationists in W.W.B. was under adjudication before the Hon'ble Supreme Court in criminal original petition No.154/2016 and connected matters. Letter dated 21.11.2016 from the office of the Chief Secretary, Balochistan shows that the Hon'ble Supreme Court had passed orders giving a last chance to the Government of Balochistan for strict compliance with judgments passed in criminal original No.89/2011 (2013 SCMR 1752) and C.R.P.No.193/2013 (2015 SCMR 456) within a period of four weeks.

7. Vide notification dated 28.08.2017, W.W.B. repatriated the petitioner to his parent department i.e. W.W.F. and directed him to relinquish the charge with immediate effect. Reference in the said

notification is also given to the case pending before the Hon'ble Supreme Court.

8. On 06.09.2017, the petitioner relinquished his charge as Deputy Director (Works) (BPS-18) in W.W.B., and on 08.09.2017, he reported his arrival at W.W.F. in Islamabad. The petitioner's grievance is that W.W.F. is not permitting him to join his duties. Ever since his repatriation by W.W.B., he has not been paid his salary. Therefore, in the instant petition, the petitioner has prayed for a direction to W.W.F. to release his salary etc. with effect from 08.09.2017.

9. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the petitioner had served from 02.06.2003 to 07.04.2006 as a deputationist in W.W.B.; that after his permanent absorption in W.W.B. on 07.04.2006, the petitioner served as a regular employee of W.W.B. until his repatriation on 28.08.2017; that the process of the petitioner's permanent absorption in W.W.B. did not suffer from any legal infirmity; that the petitioner's parent department had issued an N.O.C. on two occasions for his permanent absorption in W.W.B.; that due to the petitioner's good performance in W.W.B., he was promoted as Deputy Director (Works) (BPS-18); that in the notification dated 28.08.2017, W.W.B. directed the petitioner to report to W.W.F.; that accordingly the petitioner attended the office of W.W.F., Islamabad to rejoin his duties but was not permitted to do so; that vide letters dated 24.11.2017 and 07.12.2017, the petitioner requested the Secretary, W.W.F. to let the petitioner join his duties and be paid his salary but to no avail; and that the petitioner had a vested right to rejoin his duties in his parent department and be paid his salary. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

10. On the other hand, learned counsel for W.W.F. submitted that the petitioner was not a permanent employee of W.W.F.; that the office orders dated 26.04.2003 and 05.05.2003 issued by W.W.F. clearly show that he was appointed as Assistant Director (BPS-17) on *ad-hoc* basis for a period of six months, extendable to another six months, subject to satisfactory performance; that for the entire duration of his

service in W.W.F., the petitioner's status was that of an *ad-hoc* employee; that at no material stage were the petitioner's services regularized; that although W.W.F. had issued N.O.C.s for the petitioner's permanent absorption in W.W.B. it had, vide letter dated 30.03.2005, sent the petitioner's personal file including his appointment order to W.W.B.; that W.W.B. was well aware that the petitioner's employment in W.W.F. was of an *ad-hoc* nature; that W.W.F. is under no obligation to re-employ the petitioner; and that the petitioner has not challenged W.W.B.'s notification dated 28.08.2017 whereby he was repatriated. Learned counsel for W.W.F. prayed for the writ petition to be dismissed.

11. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 8 above, and need not be recapitulated.

12. In the writ petition, it has been explicitly pleaded that on 26.04.2003, the petitioner had been appointed as Assistant Director (BPS-17) in the W.W.F. "*on ad-hoc basis.*" There is nothing on record to show that the petitioner was appointed to the said post as a result of any competitive process. The very nature of the petitioner's *ad-hoc* appointment implies that it was made otherwise than in accordance with the prescribed method of recruitment of an Assistant Director (BPS-17). W.W.F.'s office order dated 26.04.2003 shows that the petitioner had been appointed only for a period of six months, extendable for another six months, subject to satisfactory performance. After serving in W.W.F. only for a period of thirteen days, the petitioner was sent on deputation to W.W.B. It was on the petitioner's own request that he had been sent to W.W.B.

13. There is nothing on the record to show that at any stage prior to being sent on deputation to W.W.B. the petitioner was regularized or made a permanent employee of W.W.F. An *ad-hoc* or a contract employee cannot be absorbed in the borrowing department unless his services are regularized and he is made a permanent employee in his parent department. The petitioner's absorption in W.W.B. *albeit* with

the consent of W.W.F. would not elevate his status in W.W.F. from being an *ad-hoc* employee into a permanent employee.

14. While issuing an N.O.C. for the petitioner's absorption in W.W.B., W.W.F. was duty bound to have informed W.W.B. of the *ad-hoc* nature of the petitioner's appointment in W.W.F. Learned counsel for the petitioner could not point out any provision of the law which permits the absorption of an *ad-hoc* employee in the borrowing department.

15. W.W.B. had not requested W.W.F. for the petitioner to be sent on deputation to W.W.B. It is W.W.F. which, vide letter dated 10.05.2003, requested W.W.B. to consider taking the petitioner on deputation on priority basis. Subsequently, vide letters dated 24.01.2004 and 26.02.2005, W.W.F. conveyed its No Objection to the Secretary, W.W.B. for the petitioner's absorption in W.W.B. These letters had been sent gratuitously. The delinquent officials in W.W.F. committed an illegality by issuing N.O.C.s for the petitioner's absorption in W.W.B. (borrowing department) knowing full well that his status in W.W.F. (parent department) was only that of an *ad-hoc* employee.

16. Vide letter dated 28.01.2004, W.W.B. asked the Secretary, W.W.F. whether the petitioner's appointment was on regular or contract basis. W.W.F. claims to have sent the petitioner's personal file along with his appointment letter to W.W.B., vide letter dated 30.03.2005 but W.W.B. in paragraph-g of its written comments has pleaded *inter alia* that no reply to its said letter dated 28.01.2004 was received from W.W.F. However, W.W.B. does admit in paragraph-j of its written comments that W.W.F. had sent the petitioner's appointment order to W.W.B. This appointment order clearly showed that the petitioner had not been appointed in W.W.F. on regular basis. Without ascertaining as to whether the petitioner had been made a permanent employee of W.W.F. prior to being sent on deputation, W.W.B. ought not to have absorbed the petitioner. Be that as it may, the petitioner has not challenged his repatriation to W.W.F. in this petition. The petitioner's claim for salary against W.W.F. is based on a misconception either that he is a permanent employee of W.W.F. or that the *ad-hoc* nature of his appointment stands extended beyond the initial period of six months.

17. As mentioned above, the petitioner's absorption in W.W.B. would not transform the *ad-hoc* nature of his appointment in W.W.F. into a permanent one. The petitioner's lengthy pre and post absorption service in W.W.B. would also not result in such a transformation. The vital question that needs to be answered is whether W.W.F. is justified in not letting the petitioner work in W.W.F. and not pay his salary. Since the petitioner's appointment in W.W.F. had always been of an *ad-hoc* nature, this Court cannot direct W.W.F. to take the petitioner on its strength. A writ in the nature of *mandamus* cannot be issued to W.W.F. to extend the period of the petitioner's *ad-hoc* appointment or to make him a permanent employee of W.W.F. This is because the petitioner, having initially been appointed as an *ad-hoc* employee, has no legal right for his services to be regularized or for the period of his *ad-hoc* appointment to be extended. In holding so, reliance is placed on the following case law:-

- (i) In the case of Abu Bakar Farooq Vs. Muhammad Ali Rajpar (2019 SCMR 830), it was held as follows:-

"13. The fact of the matter remains that neither the ad-hoc employee has right to hold the post beyond the period for which he was appointed nor the government has a right to continue with such ad-hoc appointees for such a long period. This situation arises only when the government violates the provision of Rule 3 of the Federal Public Service Commission (Functions) Rules, 1978 and without placing a requisition before Commission for regular appointment fill the post on ad-hoc basis and then keep on extending the period of such ad-hoc appointment and the ad-hoc appointee knowing fully well that his ad-hoc appointment is not in accordance with the prescribed method of appointment and is only a "stop gap" arrangement, till recruitment in accordance with the prescribed method of Appointment is made, clings to such post. Such conduct of the government has always been deprecated by the Courts but such shortcoming/non-adherence to the legal requirements by the competent authority can earn no benefit for the incumbent for the simple reason that bestowing the benefits of regular appointment upon an ad-hoc employee would not only amount to regularizing unlawful appointment and providing premium to the beneficiary of such wrong but would also amount to opening another door of entry into service of Pakistan by frustrating the only prescribed mode of appointment through the Commission."

- (ii) In the case of Muhammad Wasay Tareen Vs. Chief Justice of Balochistan (2005 SCMR 464), it was held *inter alia* that an *ad-*

hoc appointment cannot be equated with a regular appointment, and that an *ad-hoc* appointment by its very definition is of a qualified person but not in accordance with the rules prescribed for regular appointment.

- (iii) In the case of Mrs. Naila Khalid Vs. Pakistan through Secretary Defence (PLD 2003 SC 420), it was held that *ad-hoc* appointment did not confer on an appointee any right or interest to continuous appointment, seniority or promotion and that service of such an appointee could be dispensed with at any moment without assigning any reason.
- (iv) In the case of Dr. Naveeda Tufail Vs. Government of Punjab (2003 SCMR 291) it was held as follows:-

“10. There is no cavil to the proposition that an ad hoc employee has no right to hold the post beyond the period for which he was appointed and it is also not right for the Government to continue ad hoc appointments for number of years without undertaking the exercise of selection on regular basis in the prescribed manner. The ad hoc appointment is appointment of a duly qualified person made otherwise in accordance with prescribed method of recruitment and is made only in exceptional circumstances. This stopgap arrangement as a temporary measure for a particular period of time does not by itself confer any right on the incumbent for regular appointment or to hold it for indefinite period but at the same time if it is found that incumbent is qualified to hold the post despite his appointment being in the nature of precarious tenure, he would carry the right to be considered for permanent appointment through the process of selection as the continuation of ad hoc appointment for considerable length of time would create an impression in the mind of the employee that he was being really considered to be retained on regular basis. The ad hoc appointment by its very nature is transitory which is made for a particular period and creates no right in favour of incumbent with lapse of time and the appointing authority may in his discretion if necessary, make ad hoc appointments but it is not open for the authority to disregard the rules relating to the filling of vacancies on regular basis in the prescribed manner. We may observe that practice of making appointments on ad hoc basis for continuous period without taking steps for fulfilling the vacancies through the process of selection in the, prescribed manner amounts to misuse the authority and this Court at more than one occasions observed that the appointments on ad hoc basis should be discouraged and except in exceptional circumstances, it should not be allowed to continue beyond the period for which the appointment was initially made. The appointments in the public sector is a trust in the hands of public authorities and it is their legal and moral duty to discharge their function as trustee with complete transparency as per requirement of law so that no person who is eligible to hold such posts, is excluded from the

process of selection and is deprived of his right of appointment in service.”

- (v) In the case of Amjad Ali Vs. Board of Intermediate and Secondary Education (2001 SCMR 125), it was held *inter alia* that an *ad-hoc* appointment against a post is only for a fixed period and the appointee has no vested right to claim continuation in service. It was also held that an *ad-hoc* employee had no vested right to challenge the act of termination of his service.
- (vi) In the case of Muhammad Azam Khan Government of N.-W.F.P. (1998 SCMR 204), it was held as follows:-

“The learned Judges of the High Court were right in observing that appointment of the petitioners on contract basis furnished no legal right on them to seek appointment on regular basis. No legal right admittedly flows from the appointment made by the Government and accepted by the petitioners and as such no duty was cast on the respondents/Government to appoint the petitioners as Civil Judges-cum-Judicial Magistrates on regular basis. A writ in the nature of mandamus is not a writ of course or of right. It cannot be claimed as a matter of right. There must be a legal right existing in the petitioners and a corresponding legal duty imposed upon the public officer or the authority for issuance of a direction in the nature of mandamus.”

- (vii) In the case of Federation of Pakistan Vs. Hashim Shah Qureshi (1987 SCMR 156), it was held that mere continuance of employment of a temporary employee for two years or more in service did not *ipso facto* convert the appointment into permanent one.
- (viii) In the case of Muhammad Azam Ali Vs. Government of the Punjab (1985 SCMR 1408), *ad-hoc* Civil Judges had assailed the termination of their services before the Punjab Service Tribunal. Having not obtained any relief from the Punjab Service Tribunal, they filed a civil petition before the Hon'ble Supreme Court. It was held that the termination of their services was in accordance with the law applicable to the *ad-hoc* employees and the terms and conditions on which they were appointed. It was also held that their plea for the continuation of their *ad-hoc* appointment was untenable.

- (ix) In the case of Ghulam Sarwar Vs. Province of Punjab (1982 SCMR 46), it was held *inter alia* that simply by lapse of time, an *ad-hoc* appointment would not become regular.
- (x) In the case of Muhammad Afzal Vs. Government of the Punjab (1982 SCMR 408), it was held as follows:-

“Ad hoc appointments truly so called being not in accordance with the Rules applicable to the service cannot receive either recognition or protection by reference to any of the Rules because they do not imply appointments to the service as such. Such appointments being outside the purview of the Rules cannot for any purpose be treated as conferring a benefit under the Rules. It follows that if the appellants and some of the respondents were truly ad hoc appointees for a certain period they cannot on the basis of Rules claim their seniority from that date whether it was continuous or not.”

18. W.W.F.’s refusal to take the petitioner back in service and not to give him his salary does not suffer from any legal infirmity. But it must be observed that W.W.F.’s act of sending an *ad-hoc* employee on deputation to W.W.B. and subsequently issuing an N.O.C. for his absorption in W.W.B. without extending the period of his time-bound *ad-hoc* appointment or without regularizing his services is an act of sheer mal-administration. Equally to blame is W.W.B. which absorbed the petitioner against a cadre post knowing well that the petitioner was an *ad-hoc* employee of W.W.F. But for such acts on the part of delinquent officials in W.W.F. and W.W.B., this litigation would have been averted.

19. In view of the above, the instant writ petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 19/03/2021

(JUDGE)

Qamar Khan*

APPROVED FOR REPORTING