

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

**I.C.A. No.108 of 2017**  
**Muhammad Qasim and others**  
**Versus.**  
**Federation of Pakistan through Secretary, Ministry of Overseas**  
**Pakistanis & Human Resource Development and another**

| 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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| <b>14.11.2017</b> | Sayyed Umar Sohail Shah, Advocate for the appellants.<br>Mr. Shabbir Abbasi, learned Assistant Attorney-General.<br>Mr. Mohsin Raza Gondal, Deputy Director, BE&OE on behalf of respondents No.1 & 2. |
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Through the instant Intra Court Appeal, the appellants impugn the judgment dated 27.02.2017, passed by the learned Single Judge-in-Chambers, whereby writ petition No.3873/2016 instituted by the appellants, was dismissed. In the said writ petition, the appellants had sought a direction to the respondents to regularize their services with effect from the date of their initial appointment, and paid them all consequential benefits.

2. Learned counsel for the appellants submitted that on 10.12.2010, the appellants were appointed as Data Entry Operators (BPS-12) on contract basis in the Bureau of Emigration and Overseas Employment (“B.E&O.E.”); that B.E&O.E. is an attached department of the Ministry of Overseas Pakistanis and Human Resource Development; that the terms and conditions of the appellants’ appointment were set out in their letters of appointment; that the appellants’ contractual appointment was extended from time to time without any gap in their service; that the appellants’ contractual service was due to

expire on 30.06.2014; that even after 30.06.2014, the appellants' services were not terminated, and they continued performing their duties in the hope that their contracts will be extended; that since the appellants were performing an important task of feeding data on which the statistics of the emigrants depend upon, the officials at the B.E&O.E. had recommended the continuation of the appellants' services on permanent basis; that similarly placed persons in the respondent departments were regularized by the Cabinet Sub-Committee for regularization; that on 12.09.2014, the appellants applied for the extension of their contracts; that vide letter dated 16.10.2014, Sheikh Aftab Ahmed, Minister of State requested the Secretary, Ministry of Overseas Pakistanis and Human Resource Development, to give sympathetic consideration to the appellants' case to regularization; that Writ Petition No.4711/2014 instituted by the appellants before this Court was disposed of, vide order dated 24.03.2016, with the observation that the committee constituted pursuant to the order dated 10.09.2014, passed by this Court in Writ Petition No.1703/2013, should consider the appellants' cases for regularization without further delay; that despite the said orders the appellants have not been regularized; and that since the appellants had completed more than one year of contractual service, they deserve to be regularized.

3. Learned counsel for the appellants further submitted that the learned Judge in-Chambers erred by not appreciating that persons similarly placed as the appellants had already been regularized; that the appellants had completed one year of contractual service and therefore,

deserved to be regularized; that despite the expiry of their contract period on 30.06.2014, the appellants had continued to perform their duties; that during the pendency of the appellants' writ petition, the respondents had initiated the appointment process against 23 posts of the same cadre i.e. Data Entry Operator; and that the respondents should have regularized the appellants instead of initiating a fresh appointment process. Learned counsel for the appellants prayed for the appeal to be allowed, and for the impugned judgment dated 27.02.2017, to be set aside. Furthermore, learned counsel for the appellants prayed for a direction to the respondents to regularize the appellants' services with effect from the date of their initial appointment. In making his submissions, learned counsel for the appellants placed reliance on the cases of Government of Khyber Pakhtunkhwa Vs. Adnan Ullah (2017 PLC (C.S.) 307), and Rizwan Javed Vs. Secretary, Agriculture and Livestock (2017 PLC (C.S.)712).

4. On the other hand, the learned Assistant Attorney-General, assisted by Mr. Mohsin Raza Gondal, Deputy Director, B.E&O.E., submitted that vide letter dated 20.04.2015, respondent No.2 had already requested respondent No.1 to place the appellants' names before the committee constituted for the regularization of contract employees; that the appellants were appointed after eighteen additional posts of Data Entry Operator were created in the year 2009 purely on temporary basis and for a specific time period; that the salaries of the contractual employees appointed against the said posts were paid from the State Life Insurance Emigrants Fund; that the appellants were initially

appointed on 11.12.2010, for a period of six months only; that the appellants' contract period was extended on three occasions; that the appellants' contract period expired on 30.06.2014; that after 30.06.2014, the appellants stopped performing their duties, because their contractual employment was not extended; that the appellants were not appointed against regular posts in B.E&O.E., and their salaries were not paid from the regular budget of B.E&O.E.; and that the impugned judgment passed by the learned single Judge-in-Chambers does not suffer from any legal infirmity. Learned Assistant Attorney-General prayed for the appeal to be dismissed.

5. We have heard the contentions of learned counsel for the appellants as well as the learned Assistant Attorney-General, and have perused the record with their able assistance.

6. At the very outset, it may be observed that the appellants, in their writ petition, have not pleaded that they were offered appointment by respondent No.2 after participation in a competitive process. Learned counsel for the appellants could not satisfy us as to whether the contractual employment offered to the appellants was after an open and transparent competitive process. Be that as it may, the record shows that on 10.12.2010, all the appellants, save appellant No.3, were offered appointment to the post of Data Entry Operator (BS-12) on contract basis for a period of six months by B.E&O.E. The terms and conditions of their employment are set out in the letters by which the said appointment was offered. Paragraph 01 of the said letter clearly provides that the appointment was purely on temporary

basis for a period of six months, and that it would automatically terminate after completion of the said period. Paragraph 12 of the said letter provides that the appointment shall be liable to termination on thirty days notice or payment of salary in lieu of notice, without assigning any reason. Admittedly, the appellants' contractual appointment was extended on three occasions. The appellants' contractual appointment was not extended beyond 30.06.2014. Whether or not the appellants continued to perform their duties beyond 30.06.2014, is a disputed question of fact which cannot be resolved without the recording of evidence.

7. It is our view that the dimensions and parameters of a competitive process for a permanent appointment and a contractual/temporary appointment are altogether different. Competition for a contractual/temporary employment is not as aggressive and competitive as competition for a permanent employment. Many vying for permanent employment would not bother applying for contractual/temporary employment. This is more so when there is no representation in the advertisement inviting applications for contractual/temporary employment that the same would somehow transform into a permanent employment. If a person employed purely on temporary basis is to be given a permanent employment without any competitive process it would amount to stealing a march on hundreds of thousands of able would-be applicants who did not apply for temporary/contractual employment, but would have applied had they known that the contractual employment would, without any

further competitive process, turn into permanent employment. The conversion of a person's temporary/contractual employment into permanent employment without any transparent competitive process, would be a clear violation of Articles 3 and 9 of the Constitution. Equal opportunity in public employments is a constitutional mandate. The principle of *"each according to his ability to each according to his work"* can only be achieved by appointing meritorious candidates in the public sector through strict competition. Such competition for a permanent employment in the public sector cannot be given a go-bye simply because a contractual employee, desirous of his employment being made regular/permanent, was given contractual employment through a competitive process. The equality clause enshrined in the Constitution is to be followed scrupulously by the public sector. The youth of this Islamic Republic burning the midnight oil to secure permanent employment in the public sector through an open competitive process would be let down and demoralized if the contractual employment of persons like the appellants is converted into permanent employment without a competitive process. Such a relaxation would be a bad precedent to a large number of qualified people aspiring for permanent employment in the public sector.

8. Learned counsel for the appellants did not place on record any provision in respondent No.2's service Rules under which the appellants' temporary/contractual employment could be converted into a permanent employment. For this Court to grant the relief prayed for by the appellants in their writ petition would be

tantamount to rewriting the provisions of their employment contracts. Admittedly, the appellants, during their contractual employment were not working against sanctioned posts. Furthermore, they were being paid out of State Life Insurance Emigrants Fund.

9. The case law relied upon by the learned counsel for the appellants is distinguishable, inasmuch as in the said cases the appellants were seeking the benefit of the statute viz North West Frontier Province Employees (Regularization of Services) Act, 2009. In the case at hand, there is no statute under which the appellants are seeking regularization of their services.

10 In view of the above, this appeal being devoid of merits is dismissed. There shall be no order as to costs.

**(ATHAR MINALLAH)  
JUDGE**

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**Approved for reporting.**

M. A Raza\*

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