

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Crl. Org. No.297-W /2019
Rashid Mehmood, etc.
versus
Kamran Azam Butt, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	15.07.2020	

Vide my detailed judgment of even date passed in W.P. No.2084/2019 (Muhammad Irshad Khan, etc. v. Prime Minister Secretariat, etc.) the instant criminal original application is hereby **DISMISSED.**

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 24.07.2020.

JUDGE

Khalid Z.

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.2084/2019

Muhammad Inshad Khan, etc. v. Prime Minister Secretariat & another

Writ Petition No.2379 /2019

Akmal Naeem, etc. v. Prime Minister Secretariat & another

Writ Petition No.3120 /2019

Rashid Mehmood, etc. v. ERRRA through its Chairman

Writ Petition No.3268/2019

Zahid Mehmood Abbasi, etc. v. ERRRA through its Chairman

Writ Petition No.3404/2019

Muhammad Arbab Tabish v. Federation of Pakistan, etc.

Writ Petition No. 3331/2019

Rashid Bin Asfar & another v. ERRRA through its Chairman

Writ Petition No. 3304/2019

Wajid Shifat, etc. v. ERRRA through its Chairman

Writ Petition No.3854 /2019

Afaq Danish, etc. v. ERRRA through its Chairman

Writ Petition No. 4520/2019

Samreen Murtaza v. ERRRA through its Chairman

Writ Petition No.249 /2020

Asif Hayat, etc. v. ERRRA through its Chairman

CrI. Org. No.292-W /2019

Muhammad Sohail, etc. v. Kamran Azam Butt, etc.

CrI. Org. No.297-W /2019

Rashid Mehmood, etc. v. Kamran Azam Butt, etc.

and

CrI. Org. No.331-W /2019

Samreen Murtaza v. Kamran Azam Butt, etc.

Petitioners by:

M/s Ali Nawaz Kharral, Rana Rashid Jawad,
Ummar Zia-ud-Din, Malik Naeem Awan, Abdul
Rahman S. Alvi, Advocates in respective writ
petitions.

Nemo for petitioner in W.P. No.3404-2019.

Respondents by: Mr. Muhammad Imran and Mr. Saeed Ahmad Zaidi, Advocates for ERRA in respective writ petitions.
Barrister Muhammad Mumtaz Ali, AAG.
Zafar Iqbal, Director Legal, ERRA.

Date of Hearing: 15.07.2020.

MOHSIN AKHTAR KAYANI, J: Through this common judgment, I intend to decide the captioned writ petitions and criminal original petitions having similar questions of law and facts.

2. All the petitioners in the abovementioned writ petitions challenged the orders of respondent Authority, whereby their services were not regularized, therefore, this Court, for the purpose of brevity, thinks it appropriate to only refer the facts of W.P. No.2084/2019 as remaining captioned writ petitions i.e. W.P. No.2379/2019, W.P. No.3120/2019, W.P. No.3268/2019, W.P. No.3404/2019, W.P. No.3331/2019, W.P. No.3304/2019, W.P. No.3854/2019, W.P. No.4520/2019 and W.P. No.249/2020 have similar facts, hence, same are not mentioned, but respective learned counsel for petitioners have argued their cases and all those facts have been considered in each case separately.

3. Brief facts as referred in the captioned *W.P. No.2084/2019 (Muhammad Inshad Khan, etc. v. Prime Minister Secretariat & another)* are that the petitioners have challenged the order dated 30.04.2019, passed by the Earthquake Reconstruction and Rehabilitation Authority (*hereafter referred to as "ERRA", "Authority"*), whereby petitioners' services have not been regularized by the respondent Authority. The petitioners have been appointed in their respective Basic Pay Scale (*BPS*) scales in different interval of times initially on probation and deem to be regular employees by efflux of time. Initially 187 posts were created with approval of Prime Minister and same were conveyed to Finance Division through letter dated 27.03.2006. Furthermore, 25 additional posts were also sanctioned on 10.05.2006 and finally 384 posts from BPS-1 to BPS-22 were

created, which have been declared sanctioned posts. The petitioners were appointed after due process i.e. publication of advertisement followed by test and interview conducted by duly constituted committee in terms of Rule 2(XXV) of ERRAs Employees' Service Regulations, 2007 (*hereinafter referred to as "Regulations, 2007"*). The petitioners have performed their duties till June, 2019 and in compliance of judgment passed by this Court in W.P. No.808/2018 (Zohaib Tabassum, etc. vs. FOP), dated 25.03.2019, the respondent Authority was directed to provide an opportunity of hearing to petitioners with respect to their regularization of services in the light of Imran Ahmad case (ICA No.340/2017), which has been upheld by the apex Court vide order dated 13.03.2019, passed in C.P.2792/2019, but the respondent Authority has regretted the regularization of petitioners' services through the impugned order dated 30.04.2019. Hence, the captioned W.P. No.2084/2019.

4. Brief facts referred in the captioned *Crl. Org. No.292-W/2019 (Muhammad Sohail, etc. v. Kamran Azam Butt, etc.)* are that applicant Muhammad Sohail and 02 others have filed W.P. No.3268/2019 before this Court praying for regularization of their services in the respondent Authority, whereby a status quo order, dated 27.09.2019, was issued restraining the respondent not to take adverse action against the petitioners/applicants, however the applicants are not being allowed to enter into the premises of the respondent Authority since October, 2019, even otherwise, the petitioners have not been paid their salaries for the month of October, 2019 and onwards. Hence, the captioned *Crl. Org. No.292-W/2019*.

5. Brief facts referred in the captioned *Crl. Org. No.297-W/2019 (Rashid Mehmood, etc. v. Kamran Azam Butt, etc.)* are that applicant Rashid Mehmood and 02 others have filed W.P. No.3120/2019 before this Court praying for regularization of their services in the respondent Authority, whereby a status quo order, dated 24.09.2019, was issued restraining the respondent not to take

adverse action against the petitioners/applicants, however the applicants are not being allowed to enter into the premises of the respondent Authority since October, 2019, even otherwise, the petitioners have not been paid their salaries for the month of October, 2019 and onwards. Hence, the captioned Crl. Org. No.297-W/2019.

6. Brief facts referred in the captioned *Crl. Org. No.331-W/2019 (Samreen Murtaza v. Kamran Azam Butt, etc.)* are that applicant Samreen Murtaza has filed W.P. No.3854/2019 before this Court praying for regularization of her services in the respondent Authority, whereby a status quo order, dated 06.11.2019, was issued restraining the respondent not to take adverse action against the petitioners/applicants, however the applicant is not being allowed to enter into the premises of the respondent Authority since November, 2019, even otherwise, the petitioner/applicant has not been paid her salary for the month of November, 2019 and onwards. Hence, the captioned Crl. Org. No.331-W/2019.

7. Learned counsel for petitioners contends that Earthquake Reconstruction and Rehabilitation Authority was established through an act of Parliament called ERRA Act, 2011 (*hereinafter referred to as "Act, 2011"*) for the purpose of disaster, damage assessment, recovery, reconstruction and rehabilitation of the area and all posts have been sanctioned, but the petitioners were appointed on contract basis in violation of law; that the terms and conditions of petitioners were regulated under the Regulations, 2007, whereby Regulation 20(2) provides that all matters not expressly provided for in these Regulations the employees of Authority shall be governed by regulations, orders and instructions of the Federal Government issued from time to time, whereby the Establishment Division O.M. at Serial No.96, states that retention of employees on probation after completion of maximum term of probation provided in appointment letter is most undesirable; that Government Servant (Application for Services and Post)

Rules, 1996 are also applicable to ERRRA's employees, which excludes the probation from the category of Government servant and states that person appointed against permanent/sanctioned post as probationer shall not deemed to be a Government servant, even the apex Court has confirmed its status being a permanent employee; that in terms of Regulation 2(XI) of Regulations, 2007, two types of employees have been referred i.e. firstly, who are on secondment/deputationist from other Government departments and secondly, contract/contingent employees on contract for a specified period on specific terms, against sanctioned post of the Authority; that the apex Court in various judgments has categorically held that employees working on projects against appointments on contracts to be eligible for regularization; that there are various other projects of the Federal Government wherein the services of project employees have been transferred to non-development budget, but the petitioners have been meted out with discrimination through the impugned order dated 30.04.2019.

8. Conversely, learned AAG as well as learned counsel for respondent opposed the filing of captioned writ petitions on the grounds that instant writ petitions are not maintainable as all employees are project employees working on contract basis and they have never been given assurance that their services will be declared permanent under any manner despite the fact that posts are sanctioned ones; that the funds available to the Authority are project funds created by the Government for the purpose of earthquake relief and disaster management, as and when the rehabilitation process is completed the project is handed over to respective provinces and as such, the employees could not be hired on permanent basis; that the Authority never represented that employees including the petitioners will be regularized in any manner, rather they will be given additional marks in prospective jobs for their experience, qualification and

age relaxation as per rules; that in the case reported as 2019 PLC (CS) Note 19 (Imran Ahmad vs. Federation of Pakistan), only those employees were considered for purpose of regularization in a project where their project has been converted from development to non-development phase by the Government of Pakistan and as such, the Government has not converted the projects, rather it has been initially agreed between the Ministries for subsuming of ERRA with National Disaster Management Authority (NDMA) and as such, no right is available to the petitioners to claim regularization of their services.

9. Arguments heard, record perused.

10. Perusal of record reveals that services of petitioners were hired by the Earthquake Reconstruction and Rehabilitation Authority (ERRA) against sanctioned post through advertisement, test and interview on contract basis. The respondent Authority was initially established under the ERRA Ordinance, 2007 followed by the Regulations of 2007 and later on the parliament has passed the Act of 2011, however the new regulations have not been formulated in terms of Section 28. All the petitioners have been given their initial positions on the basis of contract for one year, renewable for subsequent years subject to their performance and need of project management unit and as such, their services were extended from time to time on different pay packages. The contract executed with the petitioners contains Clause 12 regarding termination of the contract, whereby the services of petitioners could be terminated on 30 days notice on either side or payment of pay in lieu thereof without assigning any reason.

11. The above referred clause of the contract, including the period specific clause, reflects that there is no permanent character available under the contract in any manner. Learned counsel for petitioners has heavily relied upon the regularization policies of the Federal Government announced on different dates

and has also relied upon the judgment passed by this Court, reported as **2019 PLC (CS) Note 19 (Imran Ahmad vs. Federation of Pakistan)** and claimed that employees of other departments or similarly placed employees have been regularized by the Federal Government on the strength of said judgment. It has further been argued by the learned counsel that the abovementioned judgment was further upheld by the apex Court vide order dated 13.03.2019, passed in C.P.2792/2019 (*Muhammad Imran Khan vs. Federation of Pakistan*).

12. In order to resolve the proposition, it is necessary to go through the relevant law governing the services of petitioners i.e. ERRA Ordinance, 2007 and ERRA Act, 2011, whereby the preamble of the said Act is as under:

WHEREAS it is expedient to constitute an autonomous organization for post disaster damage assessment, recovery, reconstruction and rehabilitation of the areas affected by the earthquake, and to provide for matters connected therewith or incidental thereto.

13. The above referred preamble reflects that that respondent Authority has also been established to deal with disaster affected areas and when the recovery, reconstruction and rehabilitation being the main purpose has been achieved, the role of the Authority stands completed. Similarly, Section 5 of the Act, 2011 deals with functions of the Authority, which are as under:

5. **Functions of Authority.** *Subject to the provisions of this Act, the Authority shall be responsible for all reconstruction, rehabilitation and early, recovery programmes and projects in the affected areas and, towards this end, may perform the following functions, namely:-*

- (a) *To conduct surveys to assess damage and carry out future planning in the affected areas;*
- (b) *To formulate a comprehensive umbrella development program to provide for---*
 - (i) *Reconstruction of the Government buildings and offices, utilities and services, infrastructure, roads, subways and bridges, potable water, drainage system, health and education facilities, tourism, irrigation and agriculture facilities in the affected areas;*

- (ii) *Environmental protection and rehabilitation; and*
- (iii) *Restoration of economic activities and livelihoods;*
- (c) *To prepare resettlement and rehabilitation plan for the affected population in consultation with the respective Governments of the affected areas;*
- (d) *To approve projects, programmes and schemes identified, prepared and submitted by the respective Government of the affected areas;*
- (e) *To take steps for monitoring and evaluation of the approved projects, programmes and schemes.*
- (f) *To prescribe cost-effective technology, building codes or construction guidelines for housing and other buildings in the affected areas to safeguard against future seismic threats.*
- (g) *To facilitate the establishment of the reconstruction related industry and business in the affected areas in consultation with the respective Governments;*
- (h) *To perform such other functions supplemental, incidental or consequential to the purposes and functions aforesaid and any other function assigned to it by the Federal Government in accordance with purpose of this Act; and*
- (i) *To keep the two Houses of Majlis-e-Shoora (Parliament) informed of its activities through six monthly reports of its performance for discussion.*

14. The above referred functions also reflect the time bound character of the Authority which is based upon recovery of affected areas, which is contingent to its complete rehabilitation and recovery, even no permanency has been reflected from these positions. Section 7 of the Act deals with management and administration of the Authority for which a Board has been established under Section 13, which can meet the expenses and carry out the objectives of the Act through the ERRA fund, established under Section 15 of the Act, provided by the Federal Government from time to time, however the officers and employees have been appointed in terms of Section 20 of the Act, which is as under:

20. *Appointment of officers, etc. (1) The Board may, from time to time, appoint such officers, employees, experts and consultants as it may consider necessary for the performance of its functions.*

(2) *The Board shall, prescribe by regulations the procedure for appointment of its officers, employees, experts and consultants and the terms and conditions of their service.*

15. While considering above provisions, the ERRA employees have not been defined in the Act, rather they have been explained in terms of Section 2(xi) of the Regulations, 2007 in the following manner.

(xi) *“ERRA Employee” means a person who is serving in the Authority against a sanctioned post and drawn on secondment / deputation from any authority or department of the Government of Pakistan / a Province / AJK or employed on a contract for a specific period on specific terms, against a sanctioned post of the Authority.*

16. Similarly, the Authority may appoint any Federal/Provincial servant or an employee of an organization set up, managed or controlled by the Government on deputation basis for a specified period on the terms and conditions agreed between the lending agency and the Authority, even the Authority can appoint officers and officials of armed forces for specified period, the employees were also appointed on deputation basis. The Regulations also explain the concept of appointment on contract basis only in terms of Regulation 10 on various posts on the recommendation and approval of competent authority. Even, Regulation 12 categorically states that, *“the service of the contract employee shall be liable to termination one month prior written notice by either side. However it can be terminated without prior notice in case of abolition of the post.”*

17. From comparative analysis of all these provisions, there is not a single provision in the enactments or in the regulations spelling out the permanent character of any job, position or the post for ERRA employees, although all the petitioners have been performing their duties from 2007 to 2019 and they claim that their case was sent to Cabinet Sub-Committee, whereby regularization order in compliance of ICA No.37/2013 has been passed. The matter has been confronted to the respondent Authority, who have taken the stance that on the basis of O.M. dated 08.03.2013, matter was referred to Cabinet Sub Committee on

regularization of contract/contingent employees in their meeting held on 29.01.2013, whereby the Establishment Division through letter dated 04.03.2013 has recalled the said decision of the Cabinet Sub-Committee, therefore, the regularization under the Cabinet Sub-Committee is no more in the field. In this regard, the petitioners have also relied upon judgment of Peshawar High Court, but same is not applicable to the cases of petitioners as the Peshawar High Court has passed the judgment with reference to KPK Regularization Act, whereas no such enactment is available in Islamabad Capital Territory for ERRRA employees and as such, the case is distinguishable from said judgment.

18. I have also considered the parameters laid down in the case of *Imran Khan*, whereby the status of project employees has been referred in Para-123(iii), (iv), (vii), (xi), which are as under:

- iii. *All project employees who are appointed in BPS-16 and above on project could not claim regularization of their services unless their projects have been converted from development to non-development phase by the Government of Pakistan. In such eventuality, all those employees who are working on those projects shall continue to work and if their initial appointments in the project have been made through a transparent manner i.e. advertisement, test, and interview, then their cases be sent to FPSC in terms of Section 11(b) of the Civil Servants Act, 1973 read with the powers referred in Rule 4 & 5 of the FPSC (Functions) Rules, 1978. Their posts and their appointments shall be considered regularized subject to decision of the FPSC on the question of their eligibility, qualification and fitness merely on the basis of opinion of FPSC or conducting test and interview within a period of six Months.*
- iv. *All project employees of BPS-1 to BPS-15 working in projects, which have been converted from development to non-development, shall be considered for the purpose of their regularization of services by their competent authorities while considering their qualification, eligibility, and fitness on case to case basis within the period of six (06) months (as one time exercise), subject to the condition that their initial selection was made through transparent manner i.e. advertisement, test and interview.*
- vii. *All employees who are working on different positions in the statutory organization/companies (controlled by the Federal*

Government) having their own Board of Directors or Board of Governors, has to decide the cases of their employees in accordance with their own service rules independently and regularize the services of those employees without seeking any further approval from the Government of Pakistan, however, such kind of exercise is permissible for one time and in future they shall not hire any person on temporary, daily wages or contract basis.

- xi. The employees, petitioners/appellants (BPS-1 to BPS-15) of those projects which were closed/expired/completed will not be regularized, however they will be given preference as well as additional marks in future jobs due to their experience, qualification and they will also be given age relaxation under the rules.*

19. While considering the above parameters, it is clearly established that petitioners were project employees and as such, their projects have not been converted from development to non-development side, hence their cases do not fall under the parameters set out in the case of *Imran Khan supra*, rather they have no right to claim conversion of their projects from development to non-development as it being a policy matter could not be interfered with by the constitutional court.

20. I have also gone through judgments reported as 2019 SCMR 984 (Maj. (R) Syed Muhammad Tanveer Abbas v. Federation of Pakistan), 2017 SCMR 571 (Muhammad Zaman v. Government of Pakistan, etc.) and 2017 SCMR 1979 (Chairman NADRA, Islamabad v. Muhammad Ali Shah), whereby the test has been laid down to consider the status of employees of any organization as to whether the rules and regulations were statutory or otherwise. Whereas, the regulations having been framed by the ERRa itself under Section 28 of the ERRa Ordinance, 2007 could not be called as statutory regulations, even otherwise, the project employees have no legal right to claim regularization in any manner for having been hired only till the completion of the project and the intent of the employer is clear from the terms and conditions of the contract. However, their

status will also be considered under the concept of contract employees and as such, contract employees are debarred from approaching the High Court in its constitutional jurisdiction as the only remedy available to contract employees is to file suit for damages alleging therein breach of contract or failure to extend the contract. Reliance is placed upon 2013 SCMR 120 (Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs v. Muhammad Azam Chatta) and 2019 SCMR 648 (Qazi Munir Ahmed v. Rawalpindi Medical College and Allied Hospital).

21. It has also been brought on record by the respondent Authority that ERRA is not a permanent establishment and as such, the staff/officers performing their duties are mostly from armed forces through secondment or other officials have been appointed on deputation basis from different government departments, whereas the Federal Government is now in process of subsuming ERRA with the NDMA, who shall decide the fate of those secondments and deputationist officials as to whether they will continue or be reverted to their parent departments. In this backdrop, the respondent Authority is likely to be abolished in near future and matter is now in process of decision making domain of the Federal Government through proposed amendment in the NDMA Act, which is likely to be tabled in the Parliament soon.

22. The respondent Authority has also provided a list of total employees performing their duties in secondments i.e. 62 are from armed forces and 25 officials are on deputation and as such, there is no permanent employee in ERRA as of today. This being official position and stance of respondent Authority, no violation of legal right has been justified by the petitioners, therefore, the captioned writ petitions are not maintainable and the same are hereby DISMISSED. However, if the ERRA has been subsumed in NDMA in future, it is expected that NDMA will consider the fate of present petitioners, if so required,

at priority basis with the protection already given in 2019 PLC (CS) Note 19 (Imran Ahmad vs. Federation of Pakistan).

23. In view of the detailed discussion made above, no contempt is made out on the part of ERRa as the respondent Authority were merely restrained from taking any adverse action against the petitioners, but it does not mean that their services shall continue even after expiry of their respective contract period or termination of their contracts, therefore, no contempt is made out, accordingly, the captioned criminal original applications stand DISMISSED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 24.07.2020.

JUDGE

Khalid Z.

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