

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.3754/2018

Naveed Sadiq, etc.

versus

Aviation Division through Secretary Aviation, Islamabad, etc.

Crl. Org. No.381-W/2018

Naveed Sadiq, etc.

versus

Dr. Saqib Aziz, Secretary Aviation, Islamabad, etc.

Crl. Org. No.302-W/2019

Naveed Sadiq, etc.

versus

Dr. Saqib Aziz, Secretary Aviation, Islamabad, etc.

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

Respondents by: Barrister Amna Warsi and Barrister Ayesha Warsi, Advocates.

Date of Hearing: 28.11.2019.

MOHSIN AKHTAR KAYANI, J: By way of this common judgment, I intend to decide the captioned writ petition and criminal original applications for involving common facts and parties.

2. Through the captioned writ petition the petitioners being work charge employees in the Civil Aviation Authority ("CAA") have prayed that they be declared as workmen and respondents be restrained to terminate the services of the petitioners being regular employees.

3. Similarly, the petitioners/applicants through their captioned criminal original petitions have prayed for initiation of contempt of Court proceedings against the respondent authority (CAA) for willful defiance of the orders dated 16.10.2018 & 18.04.2019, passed by this Court in the captioned writ petition.

4. Briefly the petitioners have alleged that they were appointed in the year between 2010 to 2016 in CAA against the posts of permanent nature,

who kept on rendering their services on regular basis until the respondent authority started giving artificial service breaks to the petitioners in the year 2014. The respondent authority, however, had assured the petitioners that their cases for regularization of their services are in process as per provisions of the West Pakistan Industrial & Commercial Employment (Standing Orders) Ordinance, 1968 (*hereinafter referred to as "Ordinance of 1968"*), but of no avail. Hence, the captioned writ petition.

5. Likewise, brief facts referred in the captioned criminal original applications are that despite having been passed restraining order in the captioned writ petition, the respondent authority in violation of status quo order dated 16.10.2018 has terminated the services of the petitioners on 26.10.2018. Similarly, in compliance of this Court's order dated 27.03.2019, passed in the captioned writ petition, the Director General, CAA submitted an affidavit on next date of hearing i.e. 18.04.2019 to the effect that no person(s) is/are being appointed or are required against the project positions on which the petitioners were hired, but the respondent authority made fresh recruitments against the same posts on contract basis. Hence, the captioned criminal original applications.

6. Learned counsel for petitioners contended that the superior Courts have repeatedly held that employees appointed against the posts of permanent nature have a right to be regularized on the same; that the respondent authority in the past has followed the principle of 09 months of service required for regularization of services and regularized 3743 employees, pursuant to judgment passed by the apex Court in this regard, whereas the petitioners had been rendering their services for about 7 to 8 years, which is more than the period prescribed by the apex Court for permanency of services of an employee, therefore, a declaration to the effect that petitioners after nine months of continuous service have attained the status of permanent workmen be issued.

7. Conversely, learned counsel for the respondent authority while opposing the captioned writ petition and criminal original applications contended that petitioners have approached this Court with unclean hands as they have concealed relevant facts that they had been engaged on work charge basis for a specific work and not against regular posts; that if the petitioners claim to be workmen in terms of the West Pakistan Industrial & Commercial Employment (Standing Orders) Ordinance, 1968, even then the instant writ petition is not maintainable in view of the availability of alternate remedy.

8. I have heard the arguments and gone through the record.

9. Perusal of the record reveals that the petitioners claim to be permanent workmen, who were appointed in between 2010 to 2016 in Civil Aviation Authority and seek direction for regularization of their services as they have completed 9 months service in terms of requirement for the status of workmen. The petitioners have also claimed status of CAA as commercial establishment, whereby their services cannot be terminated due to permanent status.

10. On the other hand, CAA has submitted para-wise comments, in which they have taken stance that all the petitioners have been engaged on "Work Charge basis" against PC-1 namely "New Islamabad International Airport" on local basis for specific work and these petitioners were never engaged against regular posts, whereas their expense of salary for work charge was catered from the cost of PC-1/project and their services cannot be termed as regularized due to non-availability of permanent posts. Similarly, respondent No.2 also claims that CAA does not fall within definition of commercial establishment and if the stance of the petitioners is acknowledged that the petitioners are workmen in terms of Industrial and Commercial Employment (Standing Orders) Ordinance 1968, the instant writ petition is not maintainable as the petitioners have alternate efficacious remedy under the law.

11. In order to resolve the controversy, it is necessary to go through the status of CAA at first instance. CAA was initially established under Civil Aviation Ordinance, 1960 to make better provisions for the control of manufacture, possession, use operation, sale import and export of aircraft, the control and regulation of air transport services, and the control and development of aerodromes in Pakistan, whereby the Federal Government is empowered to make rules for implementation of international conventions and to deal with the affairs of Civil Aviation. In the year 1982, another ordinance called as Civil Aviation Authority Ordinance, 1982 was promulgated to establish the authority defined in section 3 of the ordinance, whereby Federal Government shall notify in official gazette to be known as the Civil Aviation Authority shall be responsible for the regulation and control of civil aviation activities and to develop infrastructure for the promotion of safe, efficient, adequate, economical and properly coordinated civil air transport service in Pakistan. The powers and functions of the Authority have been given in section 5 of the Ordinance, whereby the authority can frame different schemes and it would be controlled and managed by Board in terms of section 7, in which composition of Board has also been defined, whereby the members of the Board have been notified by the Federal Government. The CAA shall be headed by Director General, who is Executive Head of the Authority in terms of section 9 of the Ordinance, who can perform all those functions, which have been assigned to him by the Executive Committee or by the Board. Section 12 of the Ordinance deals with employees, officers of the Civil Aviation Authority, whereby the Authority can appoint any officer, servant, expert and consultant as it may consider necessary for the performance of its functions, however, in order to regulate the affairs of the officials, the Authority can prescribe regulations for their appointment including their terms and conditions, however, all those officials

of CAA including officers, servants, experts and consultants would be public servants in terms of section 13 of the Ordinance.

12. To cope with the affairs of the CAA employees, CAA Service Regulations, 2014 were promulgated, which are complete code of service of the employees/officials of CAA with the approval of the Board in exercise of powers conferred by section 27 of Civil Aviation Authority Ordinance, 1982 read with section 12 of the Ordinance. These regulations are called as the Civil Aviation Authority Employees (Appointment, Promotion, Transfer and other Service Terms and Conditions) Regulations, 2014, wherein different kinds of employees have been defined. As per Regulation 1(h), the contract employee means a person engaged for rendering service for a specified period on terms and conditions governed by a contract. Similarly, Regulation 1(aa) defines permanent post, which means that a post sanctioned by the Authority without prescribed time limit. Regulation 1(ff) provides the concept of regular employee, which means a permanent employee who has been confirmed after completing the probation period successfully. Definition of temporary employee has been provided in Regulation 1(jj), which means an employee who has been appointed against a temporary post sanctioned for a specific period or appointed on temporary basis against a permanent post.

13. Besides the above referred definitions, the other important Regulations, which deal with the affairs of temporary or short term posts are reproduced as under:-

"18. AD-HOC AND TEMPORARY APPOINTMENTS:

- (1) *In case where the Competent Authority is of the opinion that it is necessary in the interest of the Authority to immediately fill a post falling vacant, may fill the post on ad-hoc basis after forwarding the requisition to the prescribed Selection Board through Human Resource Directorate, for a period not exceeding six months.*
- (2) *The Competent Authority shall make all ad-hoc appointments subject to the conditions prescribed below:-*
 - i. *The person to be appointed is duly qualified in accordance with the prescribed criteria under the regulations and orders for the time being in force;*

- ii. *The appointment shall be made as per the prescribed procedure on merit determined by the objective criteria;*
 - iii. *The appointment order/letter certifies that a requisition has been forwarded to the prescribed Selection Board through Human Directorate; and*
 - iv. *The appointment to be made subject to termination or revision.*
- (3) *Provided further that ad-hoc appointment shall not confer any right on the person so appointed in the matter of regular appointment to the same post or service count towards seniority in the pay group.*

19. TEMPORARY OR SHORT-TERM, POSTS:

- (1) *The Authority subject to discharge of its functions may create temporary post[s] for a duration not exceeding 12 months.*
- (2) *In case where the Authority decided that a temporary post may continue for a duration exceeding 12 months it shall pass specific order as to the date of abolition of such post.*
- (3) *Such temporary post[s] shall be filled by the Competent Authority for a specified period according to the conditions prescribed under clause (2) of Regulation 18.*
- (4) *The Authority shall advertise all such posts in newspapers of nationwide circulation.*
- (5) *The Authority shall have the power to revoke or terminate the service of any person[s] so appointed against such temporary post[s].*

20. CONDITIONS FOR APPOINTMENTS ON TEMPORARY POST:

- (1) *Financial resources required for temporary post[s] shall be approved by the Authority prior to any appointment made on such post.*
- (2) *The salary package for such post shall include pay and benefits as prescribed by the Authority.*
- (3) *All appointments shall remain subject to minimum educational qualification, experience as prescribed in Schedule-1 of the advertised eligibility criteria.*
- (4) *Such appointments will be made for a short period not exceeding 12 months or such duration as determined by the Authority at the time of creation of post.*
- (5) *Provided that the Authority may abolish any such post before 12 months or expiry of an extended duration.*
- (6) *An appointed person or employee on a post abolished under clause (5) shall have no lien against such post for any financial benefit or any remaining period or count towards seniority as the case maybe.*
- (7) *Provided that in case an employee of the Authority is appointed on a temporary post he shall have no lien against his substantive post/pay group after a period of 12 months.*
- (8) *In case a temporary post is abolished before 12 months period the said employees shall revert to his post against which he holds a lien.*

21. CONTRACT APPOINTMENT:

- (1) *Subject to upper age limit criteria of the Federal Government, the contractual appointment shall be made in accordance with the procedure prescribed by the Authority from time to time.*

- (2) *The terms and conditions for appointment on contract shall be determined by the Authority on case to case basis, save in accordance with any other regulations of the Authority for the time being in force."*

14. In view of above position, in Civil Aviation Authority Ordinance, 1982 and CAA Service Regulations 2014, the employees have been defined as contract employees, regular employees, temporary employees and no other kind of employees has been defined. Therefore, in order to ascertain status of the petitioners their initial appointment letters are key documents to be considered. I have gone through the appointment letters appended with the instant writ petition by the petitioners against the posts of Qasid, Security Guard, Office Assistant, Computer Operator, Spray man Horticulture, Horticulture helper, Skilled Mali, Store Man Horticulture, MT Supervisor, which reveal that all these employees were appointed on Work Charge Basis by the Project Directorate in CAA in Islamabad International Airport Project (IIAP) for different days i.e. 30 days, 45 days, 89 days and in these appointment letters the salaries of the employees were fixed on monthly basis, however, it has specifically been mentioned in clause 2 of appointment letters that "your appointment is purely on temporary basis and your services can be dispensed with any time without giving any notice." This aspect establishes that all these appointments were made against the temporary posts being temporary employment as the employment was for specific period although the petitioners have performed their duties for numbers of years with artificial break of the contract period of 30 days, 45 day, 89 days, which has not been recognized by the Superior Court as the artificial break does not convert status of the petitioners or affect their rights.

15. As per stance of the petitioners, they fall within definition of workmen after completion of their 9 months service in CAA as they have attained status of permanent workmen. In order to resolve this issue, it is necessary to go through the definition of workman given in section 2(i) of the Industrial And

Commercial Employment (Standing Orders) Ordinance, 1968, whereby *workman* means “any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or electrical work for hire or reward”. Similarly, section 2(b) defines *commercial establishment* as “an establishment in which the business of advertising, commission or forwarding is conducted, or which is a commercial agency, and includes a clerical department of a factory or of any industrial or commercial undertaking, the office establishment of a person who for the purpose of fulfilling a contract which the owner of any commercial establishment or industrial establishment employs workmen, a unit of a joint stock company, an insurance company, a banking company or a bank, a broker’s office or stock-exchange, a club, a hotel, a restaurant or an eating house, a cinema or theatre, and such other establishment or class thereof, as Government may, by notification in the official Gazette, declare to be a commercial establishment for the purpose of this Ordinance”. Likewise, Section 2(f) defines *industrial establishment* as “an industrial establishment as defined in clause (i) of section 2 of the Payment of Wages Act, 1936 or a factory as defined in clause (i) of section 2 of the Factories Act 1934 or a railway as defined in clause (4) of section 3 of the Railways Act, 1890 or the establishment of a contractor who, directly or indirectly, employs workmen in connection with the execution of a contract to which he is a party, and includes the premises in which, or the site at which, any process connected with such execution is carried on”. Similarly, the application of sub-section 4 of section 1 of the said Ordinance certifies that it applies to every industrial establishment or commercial establishment wherein 20 or more workmen are employed, directly or through any other person whether on behalf of himself or any other person, or were so employed on any day during the preceding twelve months but it qualifies with proviso that nothing in this Ordinance shall apply to Industrial & commercial establishments carried on by or under the authority of the Federal or Provincial Government, where statutory rules or service, conduct or discipline are applicable to the workmen employed therein.

16. In view of above position, the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 provides basic concept of classification of workman, working time, holidays, wages, groups incentive scheme, bonus, termination of employment, closure of establishment, retrenchment, punishments and strikes etc. , hence, this law is to be called complete code for the workmen to recognize their rights in terms of International Labour Standards settled by International Labour Organization as Pakistan being signatory of International Labour Organization Conventions but it provides exclusion of those industrial or commercial establishments, which are under the authority of Federal Government or Provincial Government and their rules are statutory.

17. The other important question needs consideration of this Court is whether the CAA falls within the definition of industrial or commercial establishment in terms of the Industrial and Commercial Employment (Standing Orders) Ordinance 1968. From the perusal of the said legislation, it become quite clear that the CAA neither falls within the definition of factory nor it manufactures any goods or deals with any business of development, forwarding commercial agency or commercial undertaking. The question regarding nature of working of Civil Aviation Authority has to be seen in the light of its powers and functions in terms of Section 5 of the Pakistan Civil Aviation Authority Ordinance, 1982, which deals with development of infrastructure for safe, efficient, adequate, economical and properly coordinated civil air transport service in Pakistan as Civil Aviation Authority is licensing authority to any air service for regulation of air traffic service of air staff, navigation services and issues relating to aerodromes to the country. This aspect of Civil Aviation Authority does not reflect the nature of working of Civil Aviation Authority within the concept of industry and commercial establishment in any manner. Hence, the employees who claim to be the workmen in an industry and commercial understanding do not fall within

such parameters which have been laid down by Civil Aviation Authority Ordinance, 1982, even Section 23 of the Pakistan Civil Aviation Authority Ordinance, 1982 excludes application of Industrial Relation Ordinance, 1969, which was enacted for the purpose of carrying out the affairs of workmen, which shows the very intention of the legislature to protect CAA from being exposed to courts of law qua the rights given to other workmen under Industrial Relations Ordinance, 1969.

18. The concept of Work Charge Employees can be considered in terms of Factories Act, 1934 and as such the Work Charge Employees were employed for some specific project and are paid out of the funds of that organization. The appointment letters of the petitioners reflect that their nature of job is:-

- (i) Temporary
- (ii) Against specific work
- (iii) Which is terminable due to completion of work or due to expiry of time.

19. Section 23 of the Pakistan Civil Aviation Authority Ordinance, 1982 has been inserted by the legislature in order to show their intention to exclude the temporary employees for seeking their remedies provided under Industrial Relations Ordinance, 1969 being procedural law and to avoid legal actions initiated by temporary employees. The Civil Aviation Authority Service Regulations have been framed U/S 27 read with section 12 of the Pakistan Civil Aviation Authority Ordinance, 1982.

20. The concept of temporary post has been used by the CAA due to their day to day assignments and the projects are for specific period and in some cases the project of CAA including Islamabad International Airport is for longer period, which would end at the termination/completion of the project/job, which does not mean that the temporary employees are considered to be permanent as defined in their conditions for appointment mentioned in Regulation 20 of CAA Service Regulations 2014, which

specifically say that a person appointed on temporary post shall have no lien against substantive post after period of 12 months, therefore, claim of the petitioners for regularization of their service being permanent workmen is neither recognized in terms of the Pakistan Civil Aviation Authority Ordinance, 1982, nor under CAA Service Regulations 2014 although their minimum rights can be seen under International Labour Standards like in case of West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, which recognizes the concept in terms of International Labour Organization Conventions, but it does not convert their status of permanent workmen as referred in PLD 1996 SC 160 (Executive Engineer, Central Division, PAK. P.W.D. Quetta vs. Abdul Aziz and others). The said judgment of Apex Court is for those establishments, which fall within concept of West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 as well as in Industrial Relations Ordinance, 1969.

21. It is trite law that project employees cannot claim employment beyond the period of project, whereas the petitioners were contract employees and were appointed for specific project as such they had accepted the terms and conditions before joining service and once the project has been closed, the employees cannot hide behind the concept of regularization for permanent post by claiming that they were performing their duties, which are of permanent nature. It is now well settled that Civil Aviation Authority has non-statutory rules as held in 2011 SCMR 523 (Muhammad Nawaz vs. CAA) and the said view has further been recognized in 2017 SCMR 2010 (Pakistan Defence Officers Housing Authority vs. Mrs. Itrar Sajjad Khan) and 2013 SCMR 1383 Abdul Wahab vs. HBL). The concept of regularization has been settled in another case reported as 2019 P L C (C.S) 25 (Abdul Shakoor Sheikh vs. FOP and 6 others), wherein the concept of regularization has not been recognized in cases where the initial appointment of the incumbent is on

contract/Work Charge Basis, as such the project employees cannot claim employment beyond the period of completion of the project as held in 2017 SCMR 1201 (Government of KPK vs. Ihsan Ullah).

22. The question relating to status of project employees have also been discussed and settled by this Court in case reported as 2019 PLC (CS) Note 19 Islamabad (Imran Ahmad, etc. vs. FOP, etc.), wherein it has been settled that the employees of projects converted from development to non-development side by the Government of Pakistan could have been considered for regularization of their services by competent Boards of those establishments created by statutes having Board of Governors. However, in case of closure of projects or its non-conversion from development to non-development side, such employees of those projects have no legal right to claim regularization of their services or conversion of their temporary position into permanent posts.

23. In this case, the petitioners are claiming their right of being permanent workmen in terms of Industrial Relation Ordinance, 1969 at the initial stage as well as on the basis of present law i.e. Industrial Relations Act, 2012, but the entire discussion referred above clearly spells out that the petitioners have been engaged against the project of New International Islamabad Airport, which clearly reflects that their services were required till completion of the project or earlier, if they have been terminated. Although, they have performed their duties beyond the period of 09 months, which covers their position as of a permanent workman to some extent. Nonetheless, since the CAA does not fall within the definition of commercial and industrial establishment, hence the working of the petitioners on their work charge posts is only to be considered within the time limit of the project and not beyond that, therefore, for the purpose of academic discussion the petitioners could claim themselves being the permanent workmen within the project, but this eventuality does not give them the status of a workman of CAA.

24. In view of above discussion, the petitioners have failed to demonstrate from record and the law that they fall within the definition of permanent workmen, especially in the light of Pakistan Civil Aviation Authority Ordinance, 1982 and as such, the CAA is not a commercial or industrial establishment, hence, the instant writ petition bears no merit, therefore, the same is hereby **DISMISSED**.

25. As the instant writ petition has been dismissed, therefore, the question of contempt of Court does not arise, hence, the captioned **Crl. Org. No.381-W/18** and **Crl. Org. No.302-W/2019** also stand **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: **11.12.2019**.

JUDGE

R. Anjam.