

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A.No.419 of 2019
Dr. Muhammad Abdullah

Versus

Government of Pakistan, Ministry of Science and Technology through its
Secretary

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	27.01.2020	Mr. Abdul Rehman Sheikh, Advocate for the appellant.

Through the instant intra Court appeal, the appellant, Dr. Muhammad Abdullah, impugns the judgment dated 04.10.2019 passed by the learned Judge-in-Chambers, whereby writ petition No.4316/2010 instituted by the appellant against the notification dated 15.04.2010 issued by the Ministry of Science and Technology, was dismissed. Vide the said notification, the appellant's employment contract with the Pakistan Council of Research in Water Resources ("P.C.R.W.R.") was terminated with immediate effect.

2. The record shows that the appellant had superannuated on 04.09.2008 after serving in P.C.R.W.R. Vide notification dated 28.08.2008, the appellant was re-employed as Director (BS-19) on contract basis after his superannuation. The appellant had also applied to be appointed as Chairman of P.C.R.W.R. after his retirement. The appellant had brought on record documents which are in his praise. Vide summary dated 06.08.2008, the appellant, who was experienced scientist in the field, with over thirty three years of service, was proposed to be considered for the appointment as Chairman of P.C.R.W.R. for a period of three years. Although the Prime Minister had not agreed to the said proposal, the

appellant, appointed as Director (BS-19) in P.C.R.W.R. on contract basis. Vide impugned notification dated 15.04.2010, the appellant's appointment on contract basis was terminated with immediate effect. The said notification was assailed by the appellant in writ petition No.4316/2010, which was dismissed on 04.10.2019. The said judgment dated 04.10.2019 has been assailed by the appellant in the instant appeal.

3. Before considering the merits of the case, it ought to be determined first a writ petition could have been filed by the appellant against the termination of his contractual employment.

4. It is a master's prerogative to terminate a servant's contractual appointment if the former does not find the latter's performance to be satisfactory. Such termination can take place in accordance with the terms and conditions of the employment contract. A contractual employee cannot insist for a regular inquiry to be held regarding the employer's satisfaction with the employees' performance. In the case at hand, the notification dated 15.04.2010, whereby the appellant's employment contract was terminated does not, in any manner, stigmatize him.

5. This Court, in exercise of its jurisdiction under Article 199 of the Constitution, can neither declare the termination of the appellant's contractual employment to be unlawful nor hold that his employment contract continues to subsist. The contractual nature of the appellant's employment made his relationship with P.C.R.W.R. as that of master and servant. This being so, if the appellant felt that the termination of his employment contract was unlawful or based on *malafides*, at best, he could file a suit for

damages, subject to law. It is well settled that a contractual employee cannot file a writ petition seeking his reinstatement in service. Reference in this regard may be made to the following case law:-

- (i) Recently in the case of Chairman NADRA, Islamabad Vs. Muhammad Ali Shah (2017 SCMR 1979), it has been held that a contractual employee of a statutory organization cannot invoke the Constitutional jurisdiction of the High Court under Article 199 of the Constitution.
- (ii) The Honourable Supreme Court in the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (PLD 2011 S.C. 132), held as follows:-

"All the employees having entered into contracts of service on the same or similar terms and conditions have no vested right to seek regularization of their employment, which is discretionary with the master. The master is well within his rights to retain or dispense with the services of an employee on the basis of satisfactory or otherwise performance. The contract employees have no right to invoke writ jurisdiction, particularly in the instant case where their services have been terminated on completion of period of contract."

(Emphasis added)

- (iii) In the case of the Federation of Pakistan through Secretary Law Justice and Parliamentary Affairs Vs. Muhammad Azam Chatha (2013 SCMR 120), it has been held as follows:-

"In addition to it, it is a cardinal principle of law that a contract employee instead of pressing for his reinstatement to serve for the leftover period can at best claim damages to the extent of unexpired period of his service."

- (iv) In the case of Trustees of the Port of Karachi Vs. Saqib Samdani (2012 SCMR 64), it has been held as follows:-

"Evidently the above letter reflects that the respondent was in employment on contract basis, hence no vested right was created in his favour for reinstatement in service. It was not the case where the respondent was appointed as a regular employee against any particular quota to give him a valid cause of action. Equally, the impugned judgment is also silent that termination of service of the respondent violated any of his rights, therefore, in our view his reinstatement under the impugned judgment does not appear to have been validly ordered."

(Emphasis added)

- (v) In the case of Syed M. Yahya Vs. First Credit and Investment Bank Limited (2009 UC 656), it has been held *inter-alia* that contractual employment containing specific terms and conditions of service would exclude the application of a general terms and conditions of service applicable to non-contractual employees. Furthermore, it was held that a contractual employee could not invoke writ jurisdiction under Article 199 of the Constitution against his termination from service in accordance with the specific terms and conditions of service contained in the contract.

- (vi) In the case of Muhammad Waqas Gul Vs. Water and Power Development Authority (2015 PLC (C.S.) 144), it has been held as follows:-

"Without going into the question whether the aforesaid clauses will automatically dispense with requirement of rule of natural justice, suffice it to say that non issuance of notice of hearing to the petitioners, will not entitle the petitioners, for revival of their contract of service, rather the remedy of the petitioners, if

any, for wrongful termination would be for damages to the extent of unexpired period of their services, before the competent court of law.”

6. The appellant through his writ petition before the learned Single Bench had raised a grievance regarding the terms and conditions of his employment with P.C.R.W.R. Since the appellant's employment with P.C.R.W.R. was contractual in nature, we hold that the appellant's writ petition was not maintainable and correctly dismissed by the learned Judge-in-Chambers. Consequently, the instant appeal is dismissed with no order as to costs.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan