

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

Crl. Org. No.136-W/2017
Asim Fawad Mirza & 25 others
versus

Tariq Mehmood Khan, Secretary Ministry of Interior, Islamabad & 02 others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	09.03.2021	Mr. Muhammad Abdul Rafeh, Advocate for applicants. Barrister Muhammad Mumtaz Ali, AAG. Nadeem Arshad, S.O. Establishment Division. Malik Shifa Ullah, A.D. (Lit.), Directorate General of Immigration & Passports. Haroon Rasheed (Deputy Director), Javed Akhtar (Deputy Director) and Muhammad Arshad, Assistant Director, FPSC.

Through the captioned criminal original application, the applicants have prayed for initiation of contempt of Court proceedings against the Ministry of Interior and Directorate General of Immigration & Passports for not complying with the consolidated order of this Court, dated 10.09.2014, passed in W.P. No.1703/2013.

2. Succinctly, the Federal Government formulated a policy for regularization of services of contractual / daily wagers' employees working in Ministries, Divisions, Attached Departments, Autonomous Bodies or Corporations on certain terms and conditions, regarding which a Cabinet Sub-Committee was constituted for deliberations over the matters falling under the policy, per se, the Cabinet Sub-Committee declared the applicants eligible for regularization of their services in the Directorate General of Immigration & Passports, however the said department failed to comply with the

recommendations put forward by the Cabinet Sub-Committee, which compelled the applicants to file writ petition before this Court. The writ petition filed by applicants along with other connected matters have been disposed of by learned Single Judge in Chambers vide consolidated order dated 10.09.2014 with the direction to the respondent department to decide the cases in accordance with the terms settled in the said consolidated order, as such, the respondent department remained adamant in not complying with the direction of this Court. Hence, the captioned criminal original application.

3. Learned counsel for applicants contends that despite clear direction of this Court, the services of applicants have not been regularized by the respondent department till now, as such, the delay is unjust and utter disrespect of the order passed by this Court, which is intentional disobedience on the part of respondent department, therefore, contempt of Court proceedings may be initiated against the respondent department with the direction to regularize the services of the applicants.

4. Conversely, learned AAG along with representatives of Establishment Division, Directorate General of Immigration & Passports (D.G. I&P) and Federal Public Service Commission (FPSC) contend that consolidated order passed by this Court, dated 10.09.2014, is being complied with as the documents of applicants are being scrutinized, whereafter they will be called for test and interview by the FPSC to determine their suitability for retention in services or otherwise, as such, no disobedience has been committed by the respondent department / Ministry to the order in question.

5. Arguments heard, record perused.

6. Perusal of record reveals that applicants are seeking initiation of contempt of court proceedings against respondents for non-compliance of order passed by this Court in W.P. No.4635/2013, dated 09.12.2015, which has been disposed of by this Court with direction to the respondents to resolve the issues of regularization in accordance with judgment passed by this Court in W.P. No.1703/2013, dated 10.09.2014. The applicants were appointed through a transparent process in the Directorate General of Immigration & Passport on contract basis and are still on contract till date, however after passing of the orders by this Court the matter has been referred to the concerned Ministry to be resolved the same in line with order dated 10.09.2014, whereby following directions were given:

- (i) *The Secretary, Cabinet Division, Government of Pakistan shall constitute a Committee within fifteen days, headed by an officer not lower in rank than a Federal Secretary or if it deems appropriate a retired Hon'ble Judge of the Supreme Court, to consider the grievances and pass speaking orders in each case after giving an opportunity of hearing to the employees and the Employer.*
- (ii) *Each Employer in the present petitions shall submit its comments to the Secretary, Cabinet Division within fifteen days for placing before the Committee, constituted in terms of clause (i) above.*
- (iii) *The Committee, after hearing the petitioners and the respective Employer shall pass orders in accordance with law.*
- (iv) *In the event that the Committee comes to the conclusion that there has been discrimination in implementing the policy, the decision shall be communicated to the Secretary, Cabinet Division, who shall ensure its implementation without delay.*
- (v) *Where action is required in fulfilling the conditions as stated in the recommendations made by the Cabinet Sub-*

Committee, necessary directions shall be issued to the concerned Employer.

- (vi) *The committee shall process the cases, preferably, within 90 (ninety) days.*
- (vii) *It is expected from the respective Employers that restraint will be exercised in taking action against its employees till the finalization of the proceedings by the Committee, except in cases where disciplinary proceedings have or may be initiated or the services are otherwise liable to be terminated.*
- (viii) *The petitions shall be treated as representations deemed to be pending before the Federal Government.*
- (ix) *The Secretary Cabinet shall ensure that the Federal Government takes necessary steps for making the Federal Service Tribunal fully functional within a period of one month.*

7. During the process of applicants' cases, this Court passed a judgment resolving the controversy of employment on contract basis through ICA No.340/2017 (Imran Ahmad vs. Federation of Pakistan), reported as **2019 PLC (CS) Note 19 Islamabad**, which has been upheld by the apex Court, whereby new guidelines had been highlighted i.e. the employees working on BPS-16 and above had to be regularized subject to decision of FPSC on the basis of their eligibility, qualification and fitness. Accordingly, the cases of applicants have been processed, though the respondent department has recommended all the applicants with the request that written test may not be conducted and only interview is required. As such, the FPSC under their law is an independent body to consider the cases of applicants and on the basis of their own decision they are in process of scrutinizing the documents of the employees / applicants, who have been called for test/ interview by the FPSC to determine their suitability for retention in service or otherwise. This aspect has

also been strengthened by the report submitted by FPSC in this Court.

8. Learned counsel for applicants contends that conduct of written test amounts to denial of applicants' rights as they cannot be subjected to the condition to pass the test again, per se, such kind of argument is not legally permissible, especially when the FPSC is bound by their own law and it is their right to evaluate any individual whose services are required to be regularized after conducting written test, interview or any other process, which could not be curtailed, eliminated or restricted in any manner.

9. The law officer of FPSC categorically stated before this Court that they are in process of issuing schedule for test and interviews of the applicants for regularization of their services under the law. In such scenario, since the respondents are already in the process of scrutiny and are complying with the terms settled in questioned order of this Court as well as in recent pronouncement of this Court passed in the case of *Imran Ahmad supra*, hence, no contempt is surfaced.

10. In view of above, no contempt is made out on the part of respondents, therefore, instant criminal original application is misconceived and the same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.