

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4178/2018

Saeed Ahmed

Versus

Director General, Academy of Educational Planning and Management etc.

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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17.10.2019

Ch. Abdur Rahman Nasir, Advocate for the petitioner
Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General.

Through the instant writ petition, the petitioner, Saeed Ahmed, impugns the order dated 14.09.2019, whereby he was informed that his services as a Chowkidar on daily wages basis at the Academy of Educational Planning and Management ("A.E.P.A.M.") Hostel were no longer required.

2. Learned counsel for the petitioner submitted that ever since 09.02.2007, the petitioner had been working on daily wages basis; that after serving for so long, the petitioner had a vested right to be regularized; that the petitioner has made several representations for his regularization but instead of regularizing him, his services were terminated; and that the post against which the petitioner had been working was of a permanent nature. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgment reported as 2018 SCMR 1181.

3. On the other hand, learned Assistant Attorney-General submitted that A.E.P.A.M. was established as an autonomous body on

16.03.1982 - under the erstwhile Ministry of Education; that subsequently, A.E.P.A.M. was given the status of subordinate office of the said Ministry, vide notification dated 15.01.2005; that since the petitioner's services as a Chowkidar were hired on daily wages basis, the instant petition against the discontinuation of his services was not maintainable; that the project for which the petitioner was appointed has been completed; and that no fundamental right of the petitioner has been violated by the discontinuation of his services. Learned Assistant Attorney-General prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the petitioner as well as the learned Assistant Attorney-General and have perused the record with their able assistance.

5. Vide office order dated 10.02.2007, the petitioner was appointed on "*daily wages basis*" in the A.E.P.A.M. Hostel for a daily salary of Rs.172/-. The petitioner continued serving in the said position until 14.09.2019 when he was informed that the services were no longer required and he was released from his duties. The petitioner is seeking his reinstatement in service as well as the regularization of his services.

6. The status of an employee appointed on a daily wages basis is the same as that of a contractual employee. It is the master's prerogative to terminate the servant's contractual appointment if the former does not find the latter's performance to be satisfactory or does not require his services anymore. An employee appointed on daily wages cannot insist for a regular inquiry regarding the employer's satisfaction with the employee's performance. In

the case at hand, the impugned letter dated 14.09.2018 does not, in any manner, stigmatize the petitioner.

7. This Court, in exercise of its jurisdiction under Article 199 of the Constitution, can neither declare the termination of an employee appointed on daily wages basis or on contract basis to be unlawful or to hold that the employment of such an employee continues to subsist. The contractual nature of the petitioner's employment made his relationship with respondent No.1 as that of master and servant. This being so, if the petitioner feels that the termination of his employment was unlawful or based on *malafides*, at best, he could file a suit for damages subject to law. It is well settled that an employee appointed on daily wages or contract basis cannot file a writ petition seeking the reinstatement of his service.

8. 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.”

9. In view of the above, the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham