

JUDGMENT SHEET**PESHAWAR HIGH COURT, MINGORA
BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)****1) W.P. No. 1043-M/2018**

Jawad Khan son of Zahid Khan

v/s

National Database & Registration Authority
(NADRA) through its Chairman at Islamabad &
others**2) W.P. No. 1044-M/2018**

Ghulam Saddiq son of Ali Bahadar

v/s

National Database & Registration Authority
(NADRA) through its Chairman at Islamabad &
others

&

3) W.P. No. 1045-M/2018

Amjad Ali son of Fazal Maula

v/s

National Database & Registration Authority
(NADRA) through its Chairman at Islamabad &
others**CONSOLIDATED
JUDGMENT**Date of hearing: **01.12.2020**

Present;

Muhammad Yar Malezai, Advocate
for petitioners.Mr. Fawad Ahmad, Legal Officer for
NADRA/respondents.

WIQAR AHMAD, J.- Through this judgment, we intend to dispose of W.P. No. 1043-M, W.P. No. 1044-M and W.P. No. 1045-M of 2018. Petitioners in all the writ petitions have been having a similar case. National Database & Registration Authority (hereinafter referred to as “**NADRA**”) invited applications for the post of Call Centre/ Customer Service Executive in O-4 scale (NADRA Special Scale) from eligible candidates by getting their proclamation published in daily newspapers on 14.08.2011. Petitioners applied for appointment on the posts. They participated in the process of recruitment. The NADRA authorities conducted their test and interview for the subject posts. In the end, they were not appointed on the post of Call Centre/ Customer Service Executive in O-4 scale but were rather appointed as Data Entry Operators for training purposes vide appointment order dated 10.01.2012. Petitioners have contended in their petitions that they accepted the said offer because it had been coupled with a promise that they would be appointed to the advertised posts on completion of one month on-job training after qualifying the review test and interview which had been promised to be conducted shortly. They further asserted that even after successful completion of training and getting qualifying scores

in the review test and interview they could not be appointed to the posts for which they had applied but were appointed on the same posts of Data Entry Operator on 23.04.2012. One of their colleague who had been similarly placed with petitioners in all these petitions had raised a similar grievance before this Court by filing his writ petition No. 549-M/2012 which was allowed by this Court through its judgment dated 28.03.2018. Petitioners have stated that after knowing about successful outcome of his similarly placed colleague, they got courage, broke the shackles of their fear and ventured into filing the instant constitutional petitions before this Court.

2. Respondents were summoned who filed their comments, where in Para 2 they have mainly supplied their defence to the instant constitutional petitions couched in similar words in all these cases. Said Para is reproduced from their comments in the case of "Jawad Khan v/s Chairman NADRA & others";

"That the position of Customer Service Executive for newly established call Centre at Swat was advertised in daily newspaper "The Mashriq" on 14th August 2011. The eligibility criterion for the said post was Graduation with one-year experience. The petitioner applied for the post of Customer Service Executive and short listed for test/interview. During interview, the board clearly informed all the candidates who have qualified the test that their initial selection will be Data Entry operator ("DEO") on daily wages basis

for a period of one month for on-job training because no candidate was found suitable for the position of Customer Service Executive. Office letter was issued to the petitioner as DEO on daily wages basis vide No. NADRA/HR/APP/35/CC/Swat dated 10th January 2012 (Copy enclosed as Annexure-A) in which all terms & conditions were clearly mentioned regarding further selection as Customer Service Executive. The petitioner accepted the offer letter and joined as DEO on daily wages basis and the same was not objected by him at that time. After completion of one month on-job training as per office letter, all candidates who have been selected as DEO on daily wages basis were reviewed through test/interview. In this regard, review test was held on 20th & 21st February, 2012 at Call Centre Swat. Candidates whose performance were outstanding during the training and also qualified the test/interview were selected as Customer Service Executive in O-4 scale at Call Centre Swat. The petitioner appeared in review test but due to overall poor performance during one month on-job training, the board recommended that Mr. Jawad Khan is not suitable for the post of Customer Service Executive. However, instead of terminating his service, he was posted as DEO on short term basis against requirement of NADRA Registration Office Malakand on 23.04.2012 for period of six months. Which has been executed from time to time based on Organization requirements.”

3. Learned counsel appearing on behalf of petitioners started his arguments by submitting that facts of the instant cases depicts worst kind of exploitation of the petitioners and that also at the hands of an authority created and established by the Federal Government through a Statute, with public money. He pressed into service the guarantee against exploitation provided under Articles 3 and 4 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred to as “*the Constitution*”). In order to bolster his submissions, he also relied upon

judgments reported as 1995 SCMR 650, 2005 SCMR 100, PLD 2013 Supreme Court 268, 2016 SCMR 1299, 2016 SCMR 2146, 2014 PLC (C.S.) 987, 2017 CLC 1002, 2017 PLC (C.S.) 1270, 2018 PLC (C.S.) 133, 2018 PLC (C.S.) 292, 2019 PLC (C.S.) 1139 and 2019 MLD 87. The learned counsel further added that petitioners in the cases in hand had been similarly placed with petitioner of W.P. No. 549-M of 2012 whose writ petition has been allowed by this Court, and declining the relief to petitioners would amount to discrimination. He also relied upon judgments of Hon'ble Supreme Court of Pakistan in the case of "Hameed Akhtar Niaz v/s The Secretary Establishment Division, Government of Pakistan and others" reported as 1996 SCMR 1185 and the case of "Government of Punjab, through Secretary Education Lahore and others v/s Sameena Parveen and others" reported as 2009 SCMR 01.

4. Mr. Fawad Ahmad, Legal Officer appearing and arguing the case on behalf of NADRA relied upon judgments of Hon'ble Apex Court reported as 2017 SCMR 571, 2017 SCMR 1979 and 2019 SCMR 984 and stated that since rules of the corporation have not been statutory,

therefore the petitioners in all these petitions could not agitate their grievance before this Court which grievances have been arising out of their services in the corporation and the instant writ petitions have not been maintainable. He further added that the writ petitions were hit by the principle of laches as the cause of action had admittedly been accrued to petitioners on 10.01.2012 while they had approached this Court in the year 2018.

5. We have heard arguments of learned counsel for the parties and perused the record.

6. It was a strange way in which petitioners, in all the writ petitions, have been treated by the recruiting authorities in NADRA. They had invited applications for the posts of Call Centre/Customer Service Executive in O-4, petitioners had applied for the said posts, their test and interview has admittedly been conducted for the subject posts. In the end, they have been handed over an order of appointment as Data Entry Operators in a grade and scale much below the posts for which they had applied. It was also understandable that due to the extraordinary high rate of unemployment the petitioners would have felt themselves compelled to accept the offer even if it was much below the post

for which they had applied. It is not a hidden truth that a very high proportion of unemployed youth are available in Pakistan, unfortunately, while relatively lesser jobs are available. The ratio become much worse when it comes to employment in public sector corporations. People no doubt prefer jobs in public sector corporations. We are therefore not inclined to accept the plea of NADRA recruiting authorities that petitioners had not been found qualified for the advertised posts, therefore they had been offered lower posts which had been accepted by them and that they had been estopped from agitating the said grievance before this Court. They may have felt themselves compelled because of their circumstances to accept the offer but it is very difficult for us to digest or allow such like treatment to be meted to petitioners. Job seekers in this country may have been numerous but each one of them deserves respect being citizen of the land as well as fair treatment according to law as it had been their fundamental rights guaranteed under Article 4 of the Constitution.

Said article reads;

A.4 Right of individuals to be dealt with in accordance with law, etc.-(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be and of every other person for the time being within Pakistan.

It was in such circumstances that this Court has allowed writ petition of a similarly placed petitioner vide its judgment dated 28.03.2018 passed in W.P. No. 549-M/2012 by observing;

"We are not persuaded with the arguments of learned counsel for the respondents, that the performance of petitioner was poor that he could not be appointed to the subject post of Call Data Executive, the conduct of the petitioner also provides sufficient force to this view as he is pursuing his remedy from the year 2012 through the instant writ petition and by now he must have gained sufficient experience required for the subject post. Therefore, we feel that the instant writ petition should be allowed and so respondents are directed to appoint the petitioner to the post of Call Centre Executive as advertised through advertisement in daily newspaper dated 14.08.2011 but from today and not with retrospective effect. There shall be no order as to costs."

Had the petitioners been not found suitable for the job, they may have been refused and the seats may have been re-advertised. It is also very strange to note that among the whole lot of applicants not a single person was found suitable for the job, in this age of unemployment where normally a large number of people apply for jobs whenever advertised. This is common observation that whenever jobs are advertised in public sector corporations, people having more qualification than the one required, and having more expertise than needed for the job comes forth and offer their services. In such a situation this is not believable that

the recruiting authorities of NADRA would not have found even a single person capable of appointment to the post of Customer Service Executive for simply running a Call Data Centre in a District. It was not a post of an astronaut nor was running of Call Data Centre a rocket science. The plea of respondents is therefore not found appealable to a reasonable mind.

Article 3 of the Constitution mandates the State authorities to ensure elimination of all forms of exploitation and gradual fulfillment of the fundamental principle, from each according to his ability, to each according to his work. We do not find the petitioners to have been treated fairly over the years and unfair treatment of the petitioners at the hands of an employer in public sector domain is not at all acceptable. It has been held by this Court in its earlier judgment rendered in the case of "Dr. Shamsheer Ali Khan and 27 others v/s Government of Khyber Pakhtunkhwa through Secretary Finance and 2 others" reported as 2019 MLD 87 that when actions of a public body were found unfair or unreasonable, same can be corrected by constitutional court on the principle of legitimate expectation and promissory estoppel. It was further highlighted in the judgment that the doctrine of promissory estoppel and legitimate expectation were

equitable doctrine evolved by the judges while adjudicating upon the complaints lodged by aggrieved parties against an unfair and arbitrary action of the government. Relevant part of the observations is reproduced hereunder for ready reference;

"The argument of the learned counsel for the respondents that writ to the respondent can only be issued, when the government or for that matter the respondent institution has taken an action in disregard of some law, can't be endorsed. It is by now settled law that the actions of the respondent while dealing with the people, if are unfair or unreasonable, can be corrected by the Constitutional Court on the principles of legitimate expectations and promissory estoppel. The doctrine of promissory estoppel and legitimate expectation are equitable doctrine evolved by the Judges while adjudicating upon the complaint lodged by the aggrieved party against an unfair and arbitrary action of the government. It falls in sphere of neither contract nor statutory estoppel. It can be said that if the government promises to any person and the promise is not inconsistent with the law of the land and not against the public interest, then afterwards the government cannot refuse to abide by its promise and in case the government acts inconsistent with its promise, then the said action of the government is subject to the judicial review by the constitutional Court."

7. The objection of representative of respondents regarding the instant writ petitions being barred by principle of laches, cannot be taken to the effect to deprive the petitioners from a right to which they had otherwise been entitled. Petitioners were found to have been similarly placed with petitioner in W.P. No. 549-M/2012, which have already been allowed by this Court and we were also informed that

said judgment had already been implemented by respondents. When a similarly placed employee would be working as Customer Service Executive while petitioners are allowed to continue their job as Data Entry Operators, they would no doubt get discriminated and deprived from treatment according to law. Learned counsel for respondents has additionally been relying on one of the conditions given in the appointment order wherein it has been stated that the terms of offer have been strictly confidential and upon acceptance same would form the basis of contract with NADRA. His assertion in this respect is also considerable that the terms of appointment being dictated to be confidential, may have resulted in certain apprehensions in the mind of petitioners that taking the matter to a Court of law might cause them more harm than benefit.

8. Laches has been relevant in grant or refusal of discretionary or equitable reliefs and is considered relevant, but it has never been taken as an absolute bar, in cases where petitioners were found entitled to a relief which has already been granted by Courts of law to similarly placed other petitioner. A six member Bench of Hon'ble Supreme Court of Pakistan has held in the case of Saddaqt Ali Khan through LRs and others vs. Collector Land Acquisition

and others reported as *PLD 2010 Supreme Court*

878, in this respect ;

“And what is further deducible from the long line of judgments, some of which have been quoted above, is that once a judicial determination, be it of a point of fact or of a point of law, has been made and if such a determination covers not only the ones litigating before the Courts but some others also, then the dictates of justice would command that the benefits accruing from such a determination should not be restricted only to the litigating parties but should be extended even to those who had not indulged in litigation unless there were some extra-ordinary un-exceptionable reasons to the contrary and that all powers, including the powers inherent in the Courts be invoked for the purpose. This would not only ensure justice for all but would also have the effect of eliminating un-necessary litigation. And respectfully following these judgments, we endorse the views expressed therein.”

Further reliance in this respect may be placed on judgment in the case of Umar Baz Khan through L.Hrs vs Syed Jehanzeb and others reported as *PLD 2013 Supreme Court 268*. In the case of Hameed Akhtar Niazi vs. The Secretary, Establishment Division, Government of Pakistan and others reported as *1996 SCMR 1185*, Hon'ble Supreme Court of Pakistan had held that “if the Service Tribunal or Supreme Court of Pakistan decides a point of law relating to terms and conditions of service of a civil servant, which covers not only the case of civil servant who

litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demanded that the benefit of such judgment is extended to other civil servants." The dictates of just administration of a public sector corporation would also require that similar treatment is extended to petitioners of the instant petitions and they are given same benefit. Further reliance in this respect may be placed on judgment of Hon'ble Supreme Court of Pakistan in the case of Government of Punjab, through Secretary Education, Civil Secretariat, Lahore and others vs Sameena Parveen and others reported as 2009 *SCMR 1*. The bar of laches, in such circumstance, may conveniently be ignored by a constitutional Court.

9. The other objection of respondents regarding the fact that the instant constitutional petitions have not been maintainable due to the reason that service rules of the petitioners have not yet been clothed with the attire of statutory rules. It is sufficient to say that grievances of the petitioners have been arising from unfair treatment meted to them at the time of their appointments. Their grievance has not arisen

when the rules of NADRA authorities had become applicable to them. In other words, they have not been agitating any of the grievance of violation of un-statutory rules of NADRA. Appointments were made by NADRA authorities under the powers vested in it by section 35 of the National Database and Registration Authority Ordinance, 2000 (hereinafter referred to as "*the Ordinance*"). NADRA has been established under section 3 of the Ordinance. Sub-sections (1), (2) and (3) of section 3 are relevant in this respect, which are reproduced hereunder for ready reference;

(1) As soon as may be, but not later than thirty days after the commencement of this Ordinance, the Federal Government shall, by notification in the Official Gazette, establish an Authority to be known as the National Database and Registration Authority for carrying out the purposes of this Ordinance.

(2) The Authority shall be a body corporate, with power to acquire, hold and dispose of property, having perpetual succession and a common seal and shall by that name sue and be sued.

(3) The Authority shall consist of a Chairman, also to be called the Registrar General of Pakistan, and [not less than] five members to be appointed by the Federal Government.

The purpose, objects, functions and powers of the authority have been given in detailed in section 5 of the Ordinance which leaves no doubt that it had been performing governmental functions. Reproduction of sub-sections (1), (2) and (3) of section 5 would also be beneficial for the present discourse, which are accordingly reproduced hereunder;

(1) The purpose and objects of the Authority shall be to formulate and implement policies and plans for;

(a) the development and establishment of an improved and modernized system of registration in the country through appropriate means including technologically advanced, effective and efficient means like computerization, automation, creation of databases, data warehousing, networking, interfacing of databases and related facilities and services;

(b) the broadening of the registration base to bring within its purview all persons and things, wherever and whatever they may be, to the extent and in the manner laid down in this Ordinance; and

(c) the establishment and maintenance of multi-purpose databases, data warehousing, networking, interfacing of databases and related facilities and services.

(2) The purposes of developing, establishing or maintaining a registration or database system may include facilitation of identification, planning, or any other purpose permitted by law.

(3) The Authority may take such measures and exercise such powers and perform such functions as it considers necessary for carrying out the purposes of this Ordinance.

The above reproduced section clearly shows that NADRA has been performing governmental functions, directly under the authority of the Federal Government which is also evident from section 3 of the Ordinance and thus there has been no doubt that NADRA has been amenable to the constitutional jurisdiction of this Court. The question that writ petition of an employee in respect of violation of non-statutory rules of NADRA, is not maintainable is a different question altogether. If grievance of an employee arose out of any adverse order passed against him during his service, under the un-statutory rules, a

writ petition before a High Court would no doubt be non-maintainable according to ratios of judgments in the case of "Chairman NADRA Islamabad through Chairman and another v/s Muhammad Ali Shah and others" reported as 2017 SCMR 1979 as well as in the case of "Maj. (Retd.) Syed Muhammad Tanveer Abbas and another v/s Federation of Pakistan through Secretary, Ministry of Interior and another" reported as 2019 SCMR 984, but as stated earlier grievances of the petitioners have not been arising out of violation of the un-statutory rules but their very appointments in NADRA. Any assailed action of NADRA authorities at the time of appointments would no doubt be amenable to constitutional jurisdiction of this Court, for the reason that NADRA has itself been amenable to constitutional jurisdiction of this Court. In the case of "Pakistan Telecommunication Co. LTD Through Chairman v/s Iqbal Nasir" reported as "PLD 2011 Supreme Court 132", Hon'ble Supreme Court of Pakistan has expressly held that PTCL had been amenable to writ jurisdiction of the High Court but writ petition of an employee arising out of violation of non-statutory rules would not be maintainable. The distinction between the two questions is necessary for the purpose of instant adjudication. Since grievances of

the petitioners in the instant constitutional petitions have not been arising out of violation of any service rules of NADRA, but has been arising out of their first appointment in NADRA, facts of these cases would therefore be distinguishable from facts of cases of the private parties in the judgments reported as 2017 SCMR 1979 and 2019 SCMR 984.

10. In light of what has been discussed above, we allow the instant writ petitions and direct the respondents to treat petitioners of these connected matters similar to petitioner of W.P. No. 549-M of 2012. All the petitioners shall be appointed to the posts Call Centre/Customer Service Executive with effect from the date from which said petitioner has been ordered to be given the post of Customer Service Executive. They shall squarely be placed equal to him in all respects and shall not be discriminated in any manner.

ANNOUNCED
Dt: 01.12.2020

JUDGE

JUDGE

Office
22/12/2020