

64/20

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ  
MR. JUSTICE IJAZ UL AHSAN

3 CIVIL APPEALS NO.17 TO 29 OF 2020.

*(Against the judgment dated 18.07.2019 passed by the Federal Service Tribunal, Islamabad in Appeals No.1885(R)CS to 1887(R)CS of 2016 and 1960(R)CS to 1969(R)CS of 2016).*

Pakistan Railways through its Chairman,  
Islamabad and another.

...Appellant(s)  
(in all cases)

Versus

Sajid Hussain.  
Sohail Ahmed.  
Muhammad Imran.  
Abdul Karim.  
Khalid Hussain.  
Liaqat Ali.  
Attiq-ur-Rehman.  
Muhammad Zahid.  
Faisal Yaqoob.  
Wahid Hussain.  
Samar Abbas.  
Barkat Ali.  
Muhammad Arif.

...Respondent(s)

For the Appellant(s):

Mr. Jawad Mahmood Pasha, ASC.  
Raja Ghazanfar Ali Khan, ASC.  
Syed Rafaqat H. Shah, AOR.  
Mr. Habib-ur-Rehman Gillani,  
Secretary, Pakistan Railways.  
Mr. Shoaib Adil, D.S. Multan.

For the Respondent(s):

Mr. M. Ramzan Khan, ASC.  
Mr. M. Sharif Janjua, AOR.  
*(In CA.17/2020)*

Nemo *(in all other cases)*

Date of Hearing:

09.07.2020.

JUDGMENT

IJAZ UL AHSAN, J.- By this single judgment, we  
propose to decide Civil Appeal No.17 of 2020 to Civil Appeals

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No.29 of 2020 as these arise out of a common judgment of the Federal Service Tribunal, Islamabad dated 18.07.2019.

2. Through the instant appeals, the Appellants have challenged a judgment of the Federal Service Tribunal, Islamabad (*"the Tribunal"*) dated 18.07.2019 whereby Service Appeals filed by the Respondents were allowed. The Appellants were directed to extend the benefit of Regularization Policy, 2012 to the Respondents on the same lines as had been given to other TLA (Temporary Labour Appointment) Workers.

3. Briefly stated the facts relevant for decision of these appeals are that the Respondents joined service of the Appellants as TLAs on 15.04.2010 initially for a period of 89 days and after a gap of one day they were reappointed and this process was repeated over years inasmuch as the Respondents continued to serve in the same capacity and under the same system. On the basis of various Regularization Policies announced by the Appellants from time to time, the Respondents approached the Appellants seeking regularization of their services in terms of the Regularization Policies applicable to them. However, such relief was declined. This necessitated the filing of Service Appeals by the Respondents before the Tribunal which were allowed through the impugned judgment dated 18.07.2019.

4. Leave to appeal was granted by this Court vide its order dated 13.01.2020 in the following terms:

*"Learned counsel for the petitioner has relied upon the judgment dated 8<sup>th</sup> October, 2019 passed in the cases titled Divisional Superintendent Pakistan Railways. Vs. Syed Usman Ali, etc (Civil Appeals Nos.864 to 872 of 2017 & CPs.324 to 334 of 2019, etc.) wherein on a very point as involved in these petitions, appeal filed by the appellant was allowed by this Court and the order/judgment of the Federal Service Tribunal was set aside. Leave to appeal is granted in these petitions to consider the points involved. The appeals be prepared on the available record with the liberty to the parties to file additional documents, if any, within a period of one month. As the matter relates to service, let the appeals be listed for hearing immediately after a period of three months."*

5. The main argument advanced by learned ASC for the Appellants in support of the listed appeals is that the Respondents are TLAs and as such they could not claim regularization in view of the fact that no letter of appointment was issued in their favour. In addition, he maintains that the Respondents were employed against project posts and were being paid from the contingency funds under Project Head. Adds that since they were not working against permanent posts they could not claim regularization under various Regularization Policies introduced by the Appellants from time to time.

6. Learned counsel for the Respondents on the other hand has argued that the Respondents had been in continuous employment of the Appellants since 2010. Although appointment letters may not have been issued in their favour by the Appellants, their appointment and continuous working with the Appellants is admitted which is evident from the salary Registers maintained by the Appellants showing continuous employment of the Respondents with them for periods in excess of six years as of 2016. He further points out that the Respondents are still



continuing to be employed with the Appellants without any break of service and squarely fall within the parameters of Regularization Policy, 2012 under which they seek regularization.

7. We have heard the learned counsel for the parties and gone through the record. The Appellants have not at any stage denied the fact that the Respondents have been in continuous service of the Appellants since their initial appointment in 2010 with a gap of one day after expiry of 39 days. The only argument advanced by the learned counsel for the Appellants is that the Respondents are employed against project posts and are paid out of contingency funds under the Project Head. In this regard and on our query a document titled *"agreement for the public road manned level crossing provided at the cost of other Government/Semi-Government Departments and Autonomous Bodies"* has been produced. The said agreement which is executed with various Government Departments including Highways Department and Local Governments envisages construction and maintenance of level crossings falling within the jurisdiction of the respective Departments and local Governments by the Appellant at the cost and expense of such Departments and Local Governments. The agreement also envisages that in addition to maintenance charges of level crossings payable to the Appellants from time to time the Government Departments/Local Governments shall also provide the requisite funds for paying salaries of Gatekeepers appointed

by the Appellants to operate the gates on such level crossings. The question arises whether the aforesaid arrangement can be termed as a project and the Appellants are justified in holding that the Respondents had been appointed against temporary project posts.

8. In ordinary terms the word 'project' is used to denote any undertaking which is for a limited period and after the objective for which the said project has been set up is achieved, funding for the same dries up and employees who were hired for a limited period for duration of the project have to be relieved of their duties owing to the fact that the project has concluded, the funding has ceased and the very basis on which such employees were hired has come to an end.

9. We have considered the arguments of learned counsel for the Appellants that the Respondents have been hired against the project posts but are unable to agree with the same for the following reasons:

- i) Level crossings for all intents and purposes are permanent in nature and in any event the same would continue to exist as long as Trains ply on the tracks passing through areas where level crossings are constructed and gate keepers are hired to operate the gates on such level crossings.
- ii) The posts of gate keepers are permanent in nature in so far as where level crossings exist and gate keepers are hired it cannot possibly be argued that such hiring is for a limited period.
- iii) The arguments of the learned counsel for the Appellants fall short of meeting the

requirements of a project with funding for duration of the project only in view of the fact that neither the so called project nor the funding made available by the Government Departments/Local Governments is for a limited period.

- iv) The arrangement between the Appellants and the Government Departments / Local Governments is of a permanent nature which is evident from the contents of the agreement placed on record. Therefore, we find that the argument of the learned counsel for the Appellants that the Respondents are permanent employees, employed temporarily for duration of the project is misconceived and without lawful basis in addition to being unsupported by the record.

10. It is also an admitted fact that the Respondents were hired by the Appellants who provided them training and uniforms to wear while on duty. As such, the impression sought to be created by learned counsel for the Appellants that it is an arm's length transaction where temporary posts for a limited time project have been created is falsified by the very fact that as of the date of this hearing the Respondents have already rendered services in excess of 10 years and continue to hold their posts. We also notice that the Appellants have from time to time introduced Regularization Policies for regularization of services of the workers appointed on *ad hoc* basis, substitutes, temporary employees and TLAs. In this regard, according to the record, the following Regularization Policies have been implemented by the Appellants over a period of time:



- i) Regularization Policy dated 21.04.1985;
- ii) Regularization Policy dated 08.05.2000;
- iii) Regularization Policy dated 14.01.2008; and
- iv) Regularization Policy dated 20.02.2012.

11. *Prima facie* it appears that Regularization Policy dated 20.12.2012 is attracted to the case of the Respondents which for ease of reference is reproduced below:

"Subject: REGULARIZATION OF CONTRACTUAL AND DAILY WAGE WORKERS.

I am directed to refer to this Ministry's letter of even number dated 18.01.2012 on the above subject under which following eligibility criteria as per direction of the Cabinet Committee on regularization of Contractual and Daily Wage Workers has been circulated. Accordingly, employees meeting the eligibility criteria should be regularized with immediate effect as per following procedure already notified on 18.01.2012. (reproduced below)

A) Contractual Employees:

All contractual employees who have completed at least one year of uninterrupted contractual appointment as on December 31, 2011 are to be regularized except the following:

- i) Contractual employees working against project posts;
- ii) Contractual employees working against posts that are to be filled through the Federal Public Service Commission, and
- iii) Contractual employees who do not possess the prescribed qualifications and eligibility criteria for the posts they have been appointed against.

B) Daily Wage Workers

All daily wage workers who have completed three consecutive terms of appointment of 89 days each as on December 31, 2011 are to be regularized with immediate effect except the following:

- i) Employees working against project posts.
- ii) Employees, if any, working against posts that are to be filled through the Federal Public Service Commission, and
- iii) Employees who do not possess the prescribed qualifications and eligibility criteria for the posts they have been appointed against.

2. Orders of the competent authority should first be obtained for creation of posts to absorb employees

to be regularized. Necessary action should please be taken immediately and a compliance report be submitted to the Ministry within 14 days positively.

3. Details of all contractual or daily wage employees not meeting the yardstick for regularization should be conveyed to this Ministry on the enclosed proforma within three week positively.
4. Case of contractual/daily wage employees working against regular posts to be filled through the Federal Public Service Commission should be dispatched to the Ministry on case-to-case basis with complete justification for regularization. It must also be ensured that no contractual or daily wage employee who has crossed the date of superannuation is regularized.
5. The preceding instructions apply to all posts in BS-1 to BS-17 only."
2. All previous instructions/guidelines issued by this Ministry on the subject issue may be treated as superseded.
3. It is reiterated that all cases of regularization of Contractual and Daily Wage Workers may be finalized on emergent basis and a final report in the matter must be furnished to this Ministry within one week positively.
4. This issues with the approval of competent authority.

Sd/-  
(Gulzar Muhammad)  
Director Establishment"

A plain reading of the above Regularization Policy shows that it deals with regularization of contractual and daily wage workers. In case of contractual employees, the requirement for regularization is that they should have completed at least one year of uninterrupted contractual appointment as on December 31, 2011. However, contractual employees working against project posts have been excluded from the benefit of this Policy. As far as daily wage workers are concerned, the policy envisages that all daily wage workers who have completed three consecutive terms of appointment of 89 days each as on December 31, 2011 are to be regularized. Like contractual workers, the daily wage workers working against project posts are excluded from the benefit of the Regularization Policy, 2012.



12. As far as the argument of the learned counsel for the Appellants that daily wagers/TLAs cannot be regularized, the same runs contrary to the record in so far as daily wagers/TLAs were regularized in the years 2006-07 and even subsequently under the subsequent Regularization Policies as well as verdicts handed down by different Courts. The said argument is also repelled. The cases of TLAs were decided by this Court in Civil Petitions No.720 to 730 of 2006 where it was held that, "the Respondents were working against permanent posts and according to policy of Railways Department, they were entitled to claim regularization. Therefore, the Service Tribunal having taken into consideration this aspect of the cases as well as the judgment of this Court in the case of Ikram Bari. v. National Bank of Pakistan (2005 SCMR 100) had rightly allowed the appeals filed by them and the impugned judgment being unexceptionable would admit no interference". The impugned judgment of the Tribunal is well reasoned and supported by various judgments of this Court. Further, we do not find any legal, procedural or jurisdictional error, defect or flaw in the impugned judgment that may require interference by this Court. The learned counsel for the Appellants has also not been able to persuade us to hold otherwise on any valid, logical or reasonable ground which may be supported by any principle of law on the subject.

13. For the aforementioned reasons, we do not find any merit in these appeals. The same are accordingly dismissed.

Announced in Open Court on 07 Aug. 2020