

Stereo.HCJDA 38.  
**Judgment Sheet**  
**LAHORE HIGH COURT**  
**RAWALPINDI BENCH, RAWALPINDI.**  
**JUDICIAL DEPARTMENT**

....

**I.C.A No.90 of 2019**

***HOLY FAMILY HOSPITAL, ETC.***

***Versus***

***MUHAMMAD ADEEL, ETC.***

**JUDGMENT**

Date of hearing            **29.11.2021**

Appellants by:            Mr. Tariq Mahmood, Advocate.

Respondents by:        M/s Muhammad Siddique Awan and Raja  
Mehfooz Ali Satti, Advocates.

**MIRZA VIQAS RAUF, J.** By way of this single judgment, we intend to decide the present appeal as well as I.C.As No.95, 96, 97, 98, 99 of 2019 on account of involvement of common question of law and facts in all these appeals.

2.            Facts in brief necessary for adjudication of these appeals are that private respondents (hereinafter to be referred as “respondents”) in all these appeals were appointed on contract basis by the appellants in BS-1 to BS-15. The terms of appointment were though regulated by a contract, however, employments of “respondents” were extended from time to time. On issuance of notifications dated 14<sup>th</sup> October, 2009 by the Services and General Administration Department (Regulations Wing) Lahore conveying the orders of the Chief Minister, Punjab with regard to regularization of services of contract employees in BS-1 to BS-15 in all Autonomous/Semi-Autonomous Bodies/ Special institutions in the Punjab, the “respondents” feeling deprivation filed constitutional petitions (W.Ps.No.2059 of 2013, 2060 of 2013, 2061 of 2013, 2062 of 2013, 2063 of 2013, 2064 of 2013 and 2065 of 2013), which were placed before learned Single Judge in Chamber. All the

petitions were allowed through judgment dated 12<sup>th</sup> March, 2019 and the appellants were directed to regularize the services of the “respondents” in terms of regularization policy dated 14<sup>th</sup> October, 2009 forthwith, hence these intra court appeals before us in terms of Section 3 of the Law Reforms Ordinance, 1972 (hereinafter to be referred as “Ordinance, 1972”).

3. Mr. Tariq Mahmood, Advocate representing the appellants contended that notifications dated 14<sup>th</sup> October, 2009 were not applicable to the “respondents” as they were not appointed under the Contract Policy, 2004 rather their appointments were made by the orders of the Board of Management against temporary posts. It is contended with vehemence that “respondents” are bound by terms and conditions of service as contained in the appointment letters. Learned counsel submitted that since the “respondents” were working against temporary posts, so their services cannot be regularized as no permanent post to this effect is available in the appellants’ hospital. Learned counsel submitted that with the promulgation of Punjab Regularization of Service Act, 2018, the “respondents” were precluded to claim their regularization in view of notification dated 14<sup>th</sup> October, 2009. It is further added that constitutional petitions were not maintainable as the Province of Punjab was not made party. It is maintained that even otherwise, constitutional petitions were accepted when those were at preadmission stage, which is in violation of High Court Rules and Orders. Learned counsel emphasized that the order under appeal is not tenable under the law. In order to supplement his contentions, learned counsel has placed reliance on Qazi MUNIR AHMED v. RAWALPINDI MEDICAL COLLEGE AND ALLIED HOSPITAL through Principal and others (2019 SCMR 648), Miss NAUREEN NAZ BUTT v. PAKISTAN INTERNATIONAL AIRLINES through Chairman, PIA and others (2020 SCMR 1625), GOVERNMENT OF KHYBER PAKHTUNKHWA through Secretary Agriculture, Livestock and Cooperative Department Peshawar and others v. SAEED-UL-HASSAN and others (2021 SCMR 1376) PROVINCE OF PUNJAB through Secretary Agriculture Department, Lahore and others v. MUHAMMAD ARIF and others (2020 SCMR 507).

4. Conversely, M/s Muhammad Siddique Awan and Raja Mehfooz Ali Satti, Advocates representing the “respondents” submitted that

appointments of the “respondents” were under the Contract Appointment Policy, 2004 and they also fulfilled the requirements of Rules 18, 19, 20, 21 and 21-A of the Punjab Civil Servants (Appointment & Conditions of Services) Rules, 1974. It is contended with vehemence that the “respondents” were eligible to be regularized and as such constitutional petitions were rightly accepted. Learned counsel submitted that the judgment passed by the learned Single Judge in Chamber is unexceptionable and the appellants are questioning the same only on technical grounds. Learned counsel submitted that constitutional petition (W.P.No.3378 of 2010) of similarly placed employees was accepted against which the appellants filed C.P.No.2385 of 2010 but the same was dismissed. It is contended that regularization of the “respondents” was rightly directed by the learned Single Judge. In support of their contentions, learned counsel have placed reliance on BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, FAISALABAD through Chairman and others v. TANVEER SAJID and others (2018 SCMR 1405), Pir IMRAN SAJID and others v. MANAGING DIRECTOR/GENERAL MANAGER (MANAGING FINANCE) TELEPHONE INDUSTRIES OF PAKISTAN and others (2015 SCMR 1257) and PROVINCE OF PUNJAB THROUGH Secretary Communication and Works Department and others v. AHMAD HUSSAIN (2013 SCMR 1547).

5. Heard. Record perused.

6. It is an admitted fact that appointments of the “respondents” were made on contract basis and they were appointed as Sub-Engineer (BS-11), Telephone Operator (BS-7), Security Supervisor (BS-11), Lab Attendant (BS-3), Lab Attendant (BS-3) and Junior Clerk (BS-7) respectively with the approval of the Board of Management of Rawalpindi Medical College and Allied Hospitals, Rawalpindi. The “respondents” were initially appointed on contract for a period of one year from the date of appointment, which was terminable on the expiry of contract period unless extended further. It is an undeniable fact that period of contract was extended from time to time. In the meanwhile, two simultaneous notifications were issued on 14<sup>th</sup> October, 2009 by the Government of Punjab Services and General Administration Department (Regulations Wing), whereby it was notified that in exercise of powers conferred upon him by Rule 23 of the Punjab Civil Servants

(Appointment & Conditions of Services) Rules, 1974 (hereinafter to be referred as “Rules, 1974”), the Chief Minister, Punjab is pleased to order appointments on regular basis in relaxation of the relevant service rules of the employees in BS-1 to 15 recruited on contract basis under the provisions of the Contract Appointment Policy issued by the S&GAD in 2004 against the posts presently held by them in various Government Departments of the Punjab with immediate effect.

7. The “respondents” while considering themselves being eligible to be regularized under the said notifications, initially waited for sometime and then filed the constitutional petitions mentioned hereinabove. The learned Single Judge in Chamber proceeded to direct the appellants to regularize the “respondents” in terms of Regularization Policy dated 14<sup>th</sup> October, 2009 forthwith. While forming the above opinion, reference was also made to an order dated 26<sup>th</sup> August, 2010 passed in W.P.No.3378 of 2010.

8. Since the entire claim of the “respondents” hinges upon notifications dated 14<sup>th</sup> October, 2009 and the appellants on the contrary have seriously questioned the applicability of the said notifications to the case of the “respondents”, so it had become a core issue requiring determination but before adverting to the moot point, we would first like to address the objections raised by the appellants on the maintainability of the constitutional petitions.

9. In the constitutional petitions, the “respondents” arrayed the Secretary Health, Government of Punjab, Lahore, Secretary Finance, Government of Punjab Lahore, Director Finance RMC and Allied Hospitals, Rawalpindi alongwith appellants in the array of respondents seeking a direction to regularize them. Article 174 of the Constitution of the Islamic Republic of Pakistan, 1973 ordains that the Federation may sue or be sued by the name of Pakistan and a Province may sue or be sued by the name of the Province. Admittedly due compliance was not made to the said mandatory provision of law while filing the constitutional petitions, which sole fact is sufficient for dismissal of constitutional petitions. Reference in this regard can be made to PROVINCE OF PUNJAB through Secretary Excise and Taxation Department, Lahore and others v. MURREE BREWERY COMPANY LIMITED (MBCL) and another (2021 SCMR 305), Qazi MUNIR AHMED v.

RAWALPINDI MEDICAL COLLEGE AND ALLIED HOSPITAL through Principal and others (2019 SCMR 648), GOVERNMENT OF BALOCHISTAN, CWPP&H DEPARTMENT and others (2010 SCMR 115) and Haji ABDUL AZIZ v. GOVERNMENT OF BALOCHISTAN through Deputy Commissioner, Khuzdar (1999 SCMR 16).

**10.** Adverting to the second objection relating to the maintainability of the constitutional petition on the ground that it was allowed without formal admission, suffice to observe that Part-J Volume-V of Rules and Orders of the Lahore High Court, Lahore provides the rules for the issue of orders/directions under articles 199 and 202 of the Constitution of the Islamic Republic of Pakistan 1973 and Clause 27 of the letters patent. Part II thereof deals with the constitutional remedies. In terms of Rule 3, ordinarily constitutional petition shall be laid before a Single Bench by the orders of the Hon'ble Chief Justice, which may summarily dismiss the same or pass such order as it may deem necessary. Part-II does not recognize issuance of any pre-admission notice. By virtue of Rule 4-subject to directions of the Court, notice of every application shall be served on all parties directly affected and for this purpose the applicant shall file within a week of the admitting order as many authenticated copy of the application and affidavit as there are parties to be served and the prescribed process fee, provided that at the hearing of the application any person, who desires to be heard in opposition to the application and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with a notice and subject to such condition as to costs as the Court may deem fit to impose. The respondents in writ petition should be required, when notices are issued, to file written statement, counter-affidavit, if any, and other documents on which they rely at-least two days before the hearing. In the nutshell, Part-II provides that in case of admission of the petition, notice(s) be issued to the party(s). The above are the procedural requirements, which are meant to enable the respondents in the constitutional petition to defend their cause before the Court and issuance of notice is necessary so that they should not remain condemned unheard. We have noticed that on placement of the petition before the learned Single Bench by way of order dated 16<sup>th</sup> September 2013 copy of the petition was handed over to the learned Law Officer, who was directed to ensure submission of report and para-wise comments by the

appellant as well as respondent No.2 herein. It is evident from the record that the appellant as well as the proforma respondents were having their due representation before the learned Single Bench when the constitutional petitions were accepted. In this context, we would also like to make reference to the book “JUDGING With Passion” authored by Mr. Asif Saeed Khan Khosa, former Chief Justice of Pakistan, wherein in Part III relating to the suggestions, he also expressed his views about the issuance of pre-admission notices in the following words: -

**8. Issuing pre-admission notices exposes lack of confidence or laziness**

“Now that the volume of laws and the number of law reports have swelled to enormous proportions it may not be humanly possible for a Judge to have all the laws of the land written on the sleeves of his gown. The minimum requirement now is that a Judge should be well versed at least with the basic principles governing different branches of the law and he should be intellectually capable and equipped to assimilate with the growing and changing laws. My experience tells me that a Judge deficient in this regard is prone to adjourning cases and delaying decisions because of his lack of confidence or insufficient assistance. The growing tendency in the Lahore High Court to issue pre-admission notices to the respondents in cases fixed for urgent or motion hearing had been found by me to be a classic example in this respect. To put it bluntly, issuing a pre-admission notice to a respondent at the stage of urgent or motion hearing of a case more often than not amounts to a Judge declaring that he does not want to admit the case to regular hearing but at the same time he either does not have the confidence to dismiss it in *limine* or he is too lazy to go through the file at such a stage and wants the respondent to appear and help him in dismissing the case without admitting the same to regular hearing. Sometimes a pre-admission notice is issued to a respondent so as to secure his early appearance enabling the Judge to decide the main case expeditiously but that objective can more appropriately be achieved by admitting the case to regular hearing and then issuing a notice to the respondent for an early date. I believe that contriving of varying approaches by individual Judges in such regards destroys the normal practices and procedures of the court and creates chaos and disharmony at the institutional level. At the urgent or motion hearing of a case the counsel for the petitioner comes prepared with his case and if the Judge is ready to take the trouble of going through the file of the case with his assistance then fifteen minutes of today can save fifteens hours of tomorrow. Such an exercise can also save a respondent from unjustified expense and delay in justice. I had found that the innovation regarding issuance of pre-admission notices was contributing significantly towards the increasing pendency of cases before the Lahore High Court. ‘A stitch in times save nine’ is not just a *cliche*, it is based upon accumulated wisdom and is worth paying heed to.”

**11.** We are, thus, inclined to say that issuance of pre-admission notice is clearly alien to the Rules and Orders of the Lahore High Court, Lahore. It is however, observed that since the appellants were having due intimation and they were duly represented through a counsel, so mere formal in-admission of the constitutional petition would be a technicality having no adverse effect on the merits of the case.

**12.** Now advertng to the matter in issue, it is noticed that in order to provide for the establishment and management of Medical & Health Institutions in the Punjab, Punjab Medical & Health Institutions Act, 2003 (hereinafter to be referred as “Act, 2003”), was promulgated wherein Government of Punjab was vested with the power to establish such medical institutions or health institutions as it deemed fit and to apply the “Act, 2003” to any existing medical institutions or health institutions. By virtue of Section 3(2) of the “Act, 2003”, the notified medical institutions were given the status of a body corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property as prescribed and may, by its name, sue and be sued. The administration and management of the affairs of the medical institutions was vested with the Board appointed by the Governor whereas administration and management of health institutions was vested in such body or person as may be notified subject to directions of the Government of Punjab. Section 2(a) of the “Act, 2003” provides the definition of the Board as under: -

- (a) **“Board”** means the Board of Management of the Medical and Health Institution:

Similarly, Sections 2(c) & (d) provide the definitions of “Health Institution” and “Medical Institution” respectively in the following manner:-

- (c) **“Health Institution”** means a Hospital with or without Training Centre/Centres a laboratory or a medical facility notified as such:
- (d) **“Medical Institution”** means Medical College or Medical Institute alongwith the attached Hospital/Hospitals, and Training Centre/Centres notified as such:

The composition of the Board of Management is laid down in Section 6 of the Act *ibid*, which reads as under:-

6. **Board of Management.**—(1) The Board of a Medical Institution shall be the principal governing body of the Institution, and shall comprise the following :--
- (a) The Secretary to Government of Punjab, Health Department or his representative not below the rank of Additional Secretary:
  - (b) Secretary to Government of the Punjab, Finance Department or his representative not below the rank of Additional Secretary:
  - (c) The Principal/Head of the Institution:
  - (d) The Chairman of the Academic Council and, if he is not the Principal, then a representative/nominee of the academic council:
  - (e) Six non-official members from amongst eminent retired professors of medical colleges, renowned retired doctors from the general cadre, management experts/retired civil and military officers, distinguished citizens, notable jurists and financial experts.
- (2) The Medical Superintendent of the main teaching hospital shall be the Secretary of the Board.
- (3) The selection of non-official members shall be made from a panel of three individuals, for each vacancy, prepared by the Health Department and approved by the Government.
- (4) The non-official members shall hold office for a term of four years and shall be eligible for reappointment.
- (5) The non-official members shall not be entitled to any perks and privileges under this Act.
- (6) The Government may remove a non-official member of the Board, without assigning any reason, before the expiry of his tenure.
- (7) The Chairman of the Board shall be elected by all the members of the Board from amongst the non-official members at the first meeting.
- (8) No act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Board.
- (9) Any non-official member of the Board may, by a notice in writing under his hand, addressed to Government, resign his office.



- (10) The Chief Minister of the Punjab may constitute an Administration Committee to perform functions of the Board till such time the Board becomes functional or for the period the Board is unable to perform its functions due to any reasons.

**13.** Moving further, we observe that Section 9 of the “Act, 2003” provides the manner of appointment of Officers and employees, which is reproduced below for ready reference and convenience:-

- 9. Appointment of officers and employees.**—(1) The Government or, as the case may be, the Board may appoint such persons in the service of Institution, as may be necessary, on the recommendations of the Special Selection Board:

Provided that Government or, as the case may be, the Board may temporarily fill up an existing vacancy on *ad hoc* basis for a period of six months or till the arrival of the new incumbent recommended by the Special Selection Board, whichever is earlier.

- (2) The existing employees shall continue to be governed by the Punjab Civil Servants Act, 1974 and the rules made thereunder

**14.** As already observed that the appointment of the “respondents” was made with the approval of the Board of Management on contract basis. As per terms and conditions of the contract agreement the appointment was initially offered for the period of one year as per Clause 2 of the contract appointment. It is clearly stipulated in the contract of appointment that it shall not confer any right upon the respondents for regular appointment, which is reproduced below:-

“3. This appointment shall not confer any right upon you for regular appointment nor shall this appointment be regularized under any circumstances.”

**15.** The “respondents” are claiming regularization on the basis of notification dated 14<sup>th</sup> October 2009, which reads as under:-

No.DS(O&M)5-3/2004/CONTRACT(MF). In exercise of the powers conferred upon him by rule 23 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, the Chief Minister, Punjab is pleased to order appointments, on regular basis, in relaxation of the relevant service rules, of the employees in BS-1 to 15, recruited on contract basis under the provisions of the Contract Appointment Policy issued by the S&GAD in 2004

against the posts presently held by them in various Government Departments of the Punjab, with immediate effect. However, the contract employees working against posts in various projects /programmes/PMUs/PMOs and other time-bound (one-time) development activities shall not be covered by this notification.

2. For the purpose of this notification, the Chief Minister, Punjab has further been pleased to withdraw the posts in BS-11 to 15 presently held by the contract employees, as mentioned in rule 16 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 from the purview of the Punjab Public Service Commission in terms of rule 5 of the Punjab Public Service Commission (Functions) Rules, 1978.

3. These appointments will, however, be subject to fulfillment of requirements of rule 18, 19, 20, 21 and 21-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974.

4. The contract appointees on their regular appointment shall remain on probation in terms of section 5 of Punjab Civil Servants Act, 1974 and rule 7 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974.

5. The service period of contract employees shall not be counted for any purpose (pension, gratuity, leave, etc.) on their appointment under the Punjab Civil Servants Act, 1974 and the rules framed there-under. The salary component of such employees shall be in accordance with the pay scales plus the usual allowances prescribed for the posts against which they are being appointed. They will, however, not be entitled to the payment of 30% social security benefit in lieu of pension or any other pay package being drawn by them.

6. However, pay of the contract employees being appointed in the basic pay scales shall be fixed at the initial of the respective pay scales and the increment(s) already earned during the contract appointment period shall be converted into Personal Allowance. The pay of those appointed on the basis of pay package will be fixed in consultation with the Finance Department. The decision of the Finance Department in this behalf shall be final. The Finance Department shall constitute an Anomalies Committee to resolve the issues arising out of appointments of contract employees on regular basis.

7. The contract employees who do not intend to be appointed on regular basis should furnish their option to this effect in writing within 30 days from the date of issuance of their appointment letters by the respective appointing authorities. They may continue with their present employment as per terms and conditions of their contract. However, no extension in their contract period shall be allowed. Those who intend to be appointed on regular basis need not apply. The option once exercised shall be final.

(Underlining supplied for emphasis)

From the bare reading of the notification it is manifestly clear that the same was made applicable to the employees in BS-1 to BS-15 recruited on contract basis under the provision of the contract appointment policy issued by the S&GAD in 2004.

**16.** After having a glimpse of the Contract Appointment Policy, 2004, we have noticed that Part VI of the Contract Appointment Policy, 2004 deals with appointment on contract basis, which reads as under:-

- (i) Appointment on contract basis is to be made through the appropriate selection committees as notified by the Government.
- (ii) Under the provisions of Rule 4 of the Punjab Public Service Commission (Functions) Rules, 1978 contract appointments are excluded from the purview of the PPSC. However the Departments should preferably adopt the channel of PPSC even for contractual appointment against posts, which otherwise fall within the purview of PPSC under Sub Head V above, by seeking relaxation of Rule 4 *ibid* from the Chief Minister.
- (iii) The Service Rules applicable to various posts shall be applicable also in case of appointment on contract basis. If, however, the Service Rules for a post have not been framed, the departments are advised to get them framed in consultation with the Regulations Wing of S&GAD and with the approval of the Chief Minister.
- (iv) Where Service Rules for posts to be filled on contract basis are not available or where the department intends to adopt qualifications etc., different from those provided in the Service Rules, comprehensive criteria regarding proposed qualification, experience, age, appointing authority etc., may be got approved from the Chief Minister after consultation with the Regulations Wing, as per provisions of sub head VII-2 below.
- (v) As a result of shift towards contract appointment, the feeding cadres for posts required to be filled by promotion under the relevant service rules, are expected to diminish. This means that after sometime, regular Government servants may not be available for appointment to posts reserved for promotion under the rules. In order to ensure that the posts do not remain vacant simply on the grounds that regular employees are not available in the feeding cadre for promotion, the Departments should review the existing service rules and propose appropriate amendments so as to add a provision that, "if none is available by promotion then by initial recruitment." Moreover, the qualification, age and experience for initial appointment against such posts shall also be got incorporated in the service rules, if it does not exist already, by placing the case before the Service Rules Committee.
- (vi) To provide better prospects for selection (on contract) against higher posts to the contract employees, the departments should carry out an exercise to rationalize the existing service rules. With the depletion of regular employees in the feeding cadre,

the percentage of posts reserved for promotion should be reviewed.

- (vii) Persons appointed on contract basis are not civil servants, therefore; their service matters shall not be governed by the rules framed under the Civil Servants Act, 1974. Their appointment shall be strictly regulated by the terms and conditions of their contract.

- (viii) Appointment on contract basis shall be non-pensionable.

**17.** It is apparent from the above that appointment under the above said policy is to be made through appropriate selection committees as notified by the Government. The “respondents” are admittedly the employees of the appellants, who are medical and health institutions, the administration and management of which vests in the Board appointed by the Governor or in the body or persons as may be notified subject to direction of the Government in the light of Sections 5 and 6 of the “Act, 2003”. In order to carry out the object of the “Act, 2003” in exercise of the powers conferred upon him under Section 18 of the “Act, 2003”, Governor of the Punjab was pleased to make the Punjab Medical and Health Institution Rules, 2003 (hereinafter to be referred as “Rules, 2003”). Rule 10 of the Rules *ibid* lays down two kinds of categories of the employees. (a) Government employees appointed to an institution by transfer or promotion, who shall be subject to all relevant rules or the Government and (b) employees in service of the institution appointed on contract. In terms of sub-rule 3, the institutions may create their own funds to provide for contributory pension fund (CPS), benevolent fund (BF), ground insurance (GI) and general provident fund (GPF) for employees of the institutions, without creating any financial liability for the Government and may make regulations for their operation with the approval of the Government.

**18.** Schedule V appended with the “Rules, 2003” deals with the delegation of financial and administrative powers in terms whereof it is within the domain of the Board of Governors to create temporary posts, which shall be subject to the following conditions: -

- i. The expenditure shall be met within the resources of the hospital/college subject to availability of funds.

- ii. Instructions issued by the competent authority regarding staff composition and work standard shall be strictly observed.
- iii. The posts created on a rate or scale of pay shall be approved by the Board of Governors.
- iv. A post of OSD shall be created only by the Board of Governors.

**19.** From the joint analysis of the Contract Appointment Policy, 2004, the “Rules, 2003” and relevant provisions of the “Act, 2003” reproduced hereinabove, it can safely be inferred that the “respondents” were not appointed under the Contract Appointment Policy, 2004, as such the notification dated 14<sup>th</sup> October, 2009 is not attracted to their case. So far judgments referred by the learned counsel for the “respondents” in the cases of BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, FAISALABAD through Chairman and others v. TANVEER SAJID and others (2018 SCMR 1405), Pir IMRAN SAJID and others v. MANAGING DIRECTOR/GENERAL MANAGER (MANAGING FINANCE) TELEPHONE INDUSTRIES OF PAKISTAN and others (2015 SCMR 1257) and PROVINCE OF PUNJAB THROUGH Secretary Communication and Works Department and others v. AHMAD HUSSAIN (2013 SCMR 1547), it is observed that in the said cases, though the employees were either daily wagers or contract employees but they were working for a considerable long time against the permanent posts and as such the Hon’ble Supreme Court of Pakistan directed their regularization in service. The facts of the said cases are thus quite distinguishable as compared to the present case. The “respondents” were since appointed by the Board of Management against temporary posts under the “Act, 2003”, so they cannot claim similar treatment.

**20.** It is well recognized principle of law that an employee cannot claim regularization of the service as his vested right. Even otherwise, law relating to the matter of regularization of service has gone under a radical change with the passage of time. In somewhat similar circumstances, in the case of *Qazi MUNIR AHMED* supra; the Hon’ble Supreme Court of Pakistan dismissed the petition seeking leave to appeal against the judgment of this Court passed in I.C.As. No.181 and 196 of 2012 and it was held that

employees are precluded to invoke the constitutional jurisdiction of the High Court. The above principles were later on reiterated in the case of Miss NAUREEN NAZ BUTT v. PAKISTAN INTERNATIONAL AIRLINES through Chairman, PIA and others (2020 SCMR 1625).

21. It is oft repeated principle that creation of post/posts is within the domain of executive which authority cannot be assumed by the Court in exercise of constitutional jurisdiction. In a recent pronouncement, in the case of GOVERNMENT OF KHYBER PAKHTUNKHWA through Secretary Agriculture, Livestock and Cooperative Department Peshawar and others v SAEED-UL-HASSAN and others” (2021 SCMR 1376), the Hon’ble Supreme Court of Pakistan, while dealing with the matter akin to the issue at hand, held as under: -

“8. ....

A bare perusal of the afore-noted clause of the Project Policy makes it clear that employees, who were employed in a project, would stand terminated, on the completion of the project. The only exception is that the said employees would be re-appointed on need basis if the project is extended over any “new phase or phases”. The record reveals that the Respondents were terminated after the projects in which they were appointed came to an end or, were converted to the regular side. The learned High Court in the impugned judgments has held that the Respondents had a vested right to be regularized, on the basis of satisfactory service, because of the conversion of different projects to the regular side. We are unable to agree with the view taken by the High Court for the reason that it is by now a settled principle of law that, long or satisfactory contractual service does not confer a vested right for regularization as conversion from contractual to regular appointment requires statutory support. We note that, even in those Appeals before us where posts were created on the regular side, such as C.A. No.255 of 2020 and C.A 301 of 2020, the posts in question were limited. If the Government has created a limited number of posts on the regular side, the learned High Court could not have stepped into the shoes of the appointing authority and order the regularization of each Respondent irrespective of availability of regular posts. Appointments on the regular and newly created posts was to be made through advertisement, open competition through a transparent process via the Khyber Pakhtunkhwa Public Service Commission. It was essentially a policy matter within the domain of the Executive. The High Court therefore erred in law in interfering with the same for no valid or justifiable reason.

9. The creation of a post or posts on the regular side does not confer, in the absence of any statutory support, an automatic right of regularization in favour of the employees employed on contractual basis against project posts. Therefore, we hold that the conclusion reached by the High Court in this regard is not sustainable.”

**22.** As regards the contention of learned counsel for the “respondents” that similarly placed employees have already been directed to be regularized vide order dated 26<sup>th</sup> August, 2010 passed in W.P.No.3378 of 2010, suffice to observe that said order was passed on the basis of conceding statement of learned Law Officer that the said employees fulfill the requirement of Rules, 18, 90, 20, 21 and 20A of the “Rules, 1974” and are entitled to be regularized in service according to the regularization policy. It was also conceded that pursuant to an advertisement published by the Medical Superintendent, District Headquarters, Rawalpindi, all the petitioners (employees) had applied for regularization and had been selected on merits for being regularized in posts in question. Though said order was later on assailed through C.P.No.2385 of 2010 but leave was declined vide order dated 2<sup>nd</sup> November, 2011 with the following observations: -

- “2. Learned counsel for the petitioners stated that the Policy did not apply to the respondents as they were employed against a time bound project. Admitting regularization of the service of 17 contract employees, he tried to draw distinction that although they were contract employees of the time bound project yet they were working against regular posts. We are afraid, this distinction is unsubstantiated and too unreal to hold against the admitted discrimination. The learned counsel also conceded that in view of the above impugned judgment, all the respondents have already been regularized. The petitioners also admitted before the High Court that the respondents duly fulfilled the requirements of the Rules and were also entitled to be regularized in accordance with the Regularization Policy. We also do not find any dissimilarity in the case of the respondents.
3. There is no merit in this petition which is dismissed. Leave is declined.”

The case of the “respondents” is not at par with the said employees and even if there is any conceding statement against the law in some previous round that would not operate as estoppel against the appellants. Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 though guarantees the right of equality of citizens but such right is founded on an intelligible differentia, which distinguished persons or things that were grouped together from those, who have been left out. Right of equality is always to be weighed amongst equal in all respects and it is not necessary that every citizen shall be treated alike in all eventualities. If some cause is based and structured on a wrong order or benefit that cannot be made basis for claiming similar treatment under the garb of discrimination. Guidance in this respect

can be sought from SECRETARY ECONOMIC AFFAIRS DIVISION, ISLAMABAD and others v. ANWARUL HAQ AHMED and others (2013 SCMR 1687). Reference to the above can also be made to PROVINCE OF PUNJAB through Chief Secretary and another v. SAMUEL BHATTI and others (2009 SCMR 1034), SHAHID AHMED v. OIL AND GAS DEVELOPMENT COMPANY LTD. through Managing Director, Islamabad and others (2014 SCMR 1008) and GOVERNMENT OF THE PUNJAB through Chief Secretary, Lahore and others v. Ch. ABDUL SATTAR HANS and 29 others (2015 SCMR 915).

**23.** In a recent past, in the case of PROVINCIAL SELECTION BOARD, GOVERNMENT OF KHYBER PAKHTUNKHWA through Chairman/Chief Secretary, Khyber Pakhtunkhwa v. HIDAYAT ULLAH KHAN GANDAPUR (2021 SCMR 1904), the Hon'ble Apex Court while dilating upon the scope of article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, held as under: -

“We are sanguine that the catchphrase and expression “two wrongs don't make a right” symbolizes a philosophical benchmark in which a wrongdoing is made level or countered with another wrongdoing. In fact this maxim is used to reprimand or repudiate an unlawful deed as a reaction to another's misdemeanor. A wrong order or benefit cannot become a foundation for avowing equality or equal opportunity for enforcement of treatment alike rather such right should be founded on a legitimate and legally implementable right. A wrong order cannot be allowed to carry on which hardly confers any right to claim parity or equality. The respondent could not claim that if something wrong has been done in the case of Zahid Arif, therefore, the same direction should be given in his case also for committing another wrong which would not be setting a wrong to right but would be moving ahead and perpetuating another wrong which is disapproved and highly deprecated. No case of any sort of discrimination is made out. The concept of equal treatment could not be pressed into service by the respondent which presupposes and deduces the existence of right and remedy structured on legal foothold and not on wrong notion or whims.”

**24.** There is yet another important aspect that during the pendency of the constitutional petition before the learned Single Bench, the Punjab Regularization of Service Act, 2018 was promulgated, which provides a detailed mechanism qua the regularization of the services of contract employees. The “respondents” if are desirous for the regularization of their service, they may have a resort to the provisions of the said Act and if they move for the said purpose, their cases shall be decided in accordance with law.



**25.** The nutshell of above discussion is that the learned Single Judge in Chamber, while allowing the constitutional petitions of the “respondents” has proceeded on wrong premises and thus impugned judgment is fraught with illegalities.

**26.** For the foregoing reasons, all these appeals are **allowed**. Resultantly, judgment dated 12<sup>th</sup> March, 2019 is **set aside**. As a sequel thereof constitutional petitions No.2059 of 2013, 2060 of 2013, 2061 of 2013, 2063 of 2013, 2064 of 2013 and 2065 of 2013 shall be deemed to be **dismissed** with no order as to costs.

**(Raheel Kamran)**  
**JUDGE**

**(Mirza Viqas Rauf)**  
**JUDGE**

*Announced in open Court on \_\_\_\_\_*

**JUDGE**

**JUDGE**

**Approved for reporting.**

**JUDGE**

**JUDGE**