
Dates of hearing: 11 and 12.6.2001.

ORDER

Qazi Muhammad Farooq, J.--The above-mentioned petitions for leave to appeal are being disposed of by this common judgment on account of similarity of questions of law and facts involved therein.

2. The petitions are directed against the judgment dated 26.2.2001 of a learned Full Bench of the Lahore High Court, Lahore whereby the writ petitions filed by the petitioners to challenge the order dated 5.8.2000 in regard to termination of their services were dismissed with the observations that, if so advised, they may approach the Service Tribunal for redressal of their grievance and in case they choose to do so the Service Tribunal shall consider the question of limitation sympathetically.

3. Briefly stated the relevant facts are that through an advertisement published in the newspapers on 13.11.1995 applications were invited by the Government of the Punjab to fill-up certain vacancies of Lecturers in the Education Department on *ad hoc* basis for a period of one year. The petitioners applied for the advertised posts and in due course were interviewed and selected by the Divisional Selection Boards and offered the posts of Lecturers on *ad hoc* basis in BPS-17. The terms and conditions of appointment were highlighted and clearly specified in the letter offering the appointment. The petitioners accepted the offer and were duly appointed as *ad hoc* Lecturers in BPS-17 in their respective subjects on difference dates in the month of February, 1996 and posted in different colleges. One of the terms and conditions of service was that they will serve in a purely temporary capacity for a period not exceeding one year and shall automatically be terminated on the expiry of stipulated period unless extended by prior order or on the arrival of selectees of the Punjab Public Service Commission whichever is earlier or upto the date on which permanent incumbents of the posts resume duty. The period was extended by the Government of Punjab from time to time and ultimately the services of the petitioners were terminated/dispensed with wide order dated 5.8.2000 issued by the Special Secretary Higher Education Punjab. It will be pertinent to mention that a few petitioners whose services were terminated alongwith the remaining petitioners were appointed as *ad hoc* Lecturers prior to 13.11.1995.

4. Most of the petitioners are represented by Mr. A.K. Dogar, learned Senior ASC, who raised the following contentions with great vehemence to assail the impugned judgment:--

- (i) The petitioner being *ad hoc* employees cannot invoke jurisdiction of the Service Tribunal. An *ad hoc* employee is neither a 'civil servant' nor 'holder of a civil post, on in the 'service of the province' within the meanings of Sections 2 and 4 of the Punjab Service Tribunals Act, 1974 and Section 2 (b) of the Civil Servants Act 1974 for more than one reason. His employment is not made in accordance with the prescribed method of recruitment and he becomes a civil servant after his employment is regularized. He has no terms and conditions of service as his service in fact starts after regularization. His employment can be terminated on one month's notice or one month's pay in lieu thereof and his service is neither counted towards seniority nor he is entitled to promotion.
- (ii) The expression 'terms and conditions' mentioned in Article 212 of the Constitution is relatable to regular employees only who have been appointed in accordance with the method prescribed for such employment.
- (iii) Section 4 of the Punjab Service Tribunals Act is *ultra vires* the provisions of Article 212 of the Constitution as the latter does not contemplate the establishment of a Court of appellate jurisdiction but that of original jurisdiction. A Court of exclusive jurisdiction is always a Court of original jurisdiction. The Constitution has also not envisaged filing of a representation and expiry of 90 days before filing of an appeal.

The establishment of the Service Tribunal is mentioned in the Chapter of the Constitution which pertains to Judiciary, therefore, it is necessary that its Chairman and all the members are judicial officers.

A.K. Dogar contended that the order was *mala fide* and the question raised by the petitioners pertained to determination of the nature of their appointment, which was altered by subsequent events, and not enforcement of terms and

conditions of their service, therefore, the matter fell within the exclusive jurisdiction of the High Court. He further contended that termination of services of the petitioners on the ground that they were no more qualified for the posts of Lecturers is relatable to the qualification and fitness of the petitioners to hold the posts and not to the terms and conditions of their service, therefore, the jurisdiction of the Service Tribunal is ousted. It was also contended that the petitioners were selected by a competent forum set up by the Government and had worked for a considerable long time, therefore, the High Court ought to have assumed jurisdiction to determine whether the rights and interest created through the decisive steps taken by the Government after their appointment were taken away in accordance with law or not. It was lastly contended that a case for decision of the writ petitions on merits by the High Court was made out on equitable grounds as well because the petitioners, who have been left high and dry, had raised the question of regularization of their services in the light of several precedents and directive dated 1.6.1992 of then Prime Minister that all *ad hoc* lecturers employed in the Federal Government and Garrison Education Institutions who have completed two years of service are to be treated as confirmed and not to be removed from service.

6. Syed Najamul Hassan Kazmi, ASC, learned counsel for the petitioners in C.Ps. Nos. 1346 to 1372-L/2001, adopted the arguments addressed by Mr. A.K. Dogar and Mr. S.M. Zafar and also expressed his anxiety about the remarks with regard to performance of the petitioners before the Public Service Commission, recorded by one of the learned members of the Full Bench, which according to him had virtually decided an important issue involved in the case and also put the petitioners under the vestige of a stigma.

7. Mr. Tariq Mehmood Khokhar, learned Additional Advocate General Punjab supported the impugned judgment by reiterating the reasons recorded therein. The main thrust of his contentions was that jurisdiction of the High Court was ousted as the petitioners were civil servants and the questions for determination pertained to terms and conditions of their service. It was also contended that the petitioners had failed to clear tests and interviews conducted by the Punjab Public Service Commission in spite of availing a number of chances and in the face of the terms and conditions of their service they had no right to claim that they had become permanent by efflux of time. Reliance was placed on *Shaheen Akhtar Vs. Government of Punjab and others* (1998 PLC (C.S) 70, *Ghulam Sarwar Vs. Province of Punjab* (1982 SCMR 46), *LA Sharwani and others Vs. Government of Pakistan through Secretary, Finance Division, Islamabad and others* (1991 SCMR 1041) and *Muhammad Afzal Sohail and 11 others vs. Government of Punjab and others* (1983 SCMR 859).

8. We do not feel persuaded to agree with the contentions raised by the learned counsel for the petitioners and find substance in the submissions made by the learned Additional Advocates General that the matter falls within the exclusive jurisdiction of the Service Tribunal and the impugned judgment is unexceptionable. The reasons are not far to seek. Jurisdiction of Courts other than the Service Tribunal is expressly barred under Article 212 of the Constitution and the Service Laws in respect of matters relating to the terms and conditions of persons who are or have been civil servants. The petitioners were appointed as lecturers on *ad hoc* basis, therefore, the first point for determination is whether they are civil servants or not.

9. As defined by Article 260 of the Constitution the expression "Service of Pakistan" means any service, post or office in connection with the affairs of the Federation or of a Province and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of *Majlis-e-Shoora* (Parliament) or of a Provincial Assembly. According to clause (a) of sub-section (1) of Section 2 of the Punjab Civil Servants Act, 1974 the expression "*ad hoc* appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment pending recruitment in accordance with such method. *Ad hoc* appointments belong to the family of "officiating", "temporary" and "until further orders" appointments as held in *Federation of Pakistan Vs. Rais Khan* (1993 SCMR 609). The expression "Civil Servant" has been defined in clause (b) of sub-section (1) of Section 2 of the Punjab Civil Servants Act, 1974 as well as clause (b) of Section 2 of the Punjab Service Tribunals Act, 1974. The definition contained in the Punjab Civil Servants Act, 1974 reads as under: "civil servant" means a person who is a member of a civil service of the Province, but does not include-

- (i) a person who is on deputation to the province from the federation or any other Province or authority;
- (ii) a person who is employed on contract, or on work charge basis, or who is paid from contingencies; of
- (iii) a person who is a worker or 'workman' as defined in the Factories Act, 1934 (XXV of 1934) or the Workmen's Compensation Act, 1923 (VIII of 1923)"

The definition given in the Punjab (Service) Tribunals Act, 1974 is worded thus:-

"civil servant" means a person who is or who has been members of a civil service-of the Province or who holds or has held a civil post in connection within the affairs of the Province but does not include-

- (i) a person who is on deputation to the Province from the Federation or any other Province or authority;
- (ii) a person who is or has been employed on contract, or work-charge basis, or who is or has been paid from contingencies; or
- (iii) a person who is or has been a 'Sworker' or 'Sworkman' as defined in the Factories Act, 1934 (XXV of 1934) or the Workmen's Compensation Act, 1923 (VIII of 1923)"

10. As would appear from the definition of "Civil Servant" contained in the Punjab Civil Servants Act, 1974 as also the Punjab Service Tribunals Act, 1974 a person who holds a civil post in connection with the affairs of the Province and is not included in the persons categorized under

- (2) the appointment is made of a person duly qualified in accordance with the provisions of the rules and orders applicable to the post;
- (3) the selection is made on the basis of merit determined by objective criteria;
- (4) the appointment order certifies that a requisition has been sent to the selection authority; and

(5) the appointment is made subject to revocation at any time by the competent authority; Provided further that: *ad hoc* appointment shall not confer any right on the persons so appointed in the matter of regular appointment to the same post nor the service will count towards seniority in the grade.

(3) Governor may for special reasons, relax any of these conditions in any individual case".

12. The existence of the terms and conditions of service of the petitioners has not been disputed and rightly so because the same are incorporated in the letters whereby appointment on *ad hoc* basis was offered to the petitioners and are worded thus;

"Subject-OFFICER OF APPOINTMENT FOR THE POST OF LECTURER ON ADHOC BASIS.

Consequent upon your selection by the Interview Board/Committee and final approval by the Government of the Punjab, Education Department, Lahore *vide* Letter No. PA-DS (E)1-1-96, dated 4.2.1996, you are hereby offered & post of Lecturer on *ad hoc* basis in BPS-17 (Rs. 3380-290-7360) Collegiate Branch (Men and Women Section) on the terms and conditions indicated below:-

- (i) In a purely, temporary capacity for a period not exceeding one year and shall automatically be terminated on the expiry of the said period of one year unless extended by prior order/on the arrival of selectee of the Punjab Public Service Commission whichever is earlier or upto the date on which permanent incumbent of the post resume duty.
- (ii) Notwithstanding the condition (i) above the appointment is subject to the revocation at the discretion of the Government.
- (iii) Liable to termination at any time, even within the period specified in (i) without assigning any reason from either side.
- (iv) You will have to compete before the Public Service commission with other candidates in accordance with the rules, as and when the post is advertised by the Commission, if you do not compete before the Commission, no extension would be granted in *ad hoc* appointment.
- (v) The *ad hoc* appointment will not confer any right of regular appointment to the same post nor the service will be counted towards seniority.
- (vi) You have to join at your own expense.
- (vii) Subject to the production of Medical Certificate of fitness from the Standing Medical Board concerned before joining.
- (viii) You will be governed by such rules and orders relating to leave travelling allowances, Medical Attendance, pay etc. as may be issued by Government for the category of Government Servants to which you will belong.
- (ix) Subject to the production of sanction for the relaxation of upper-age limit by the Competent Authority before the joining of duty in case of being overage.
- (x) Subject to the verification of your Character/antecedents by the D.I.G. Police, Special Branch, Lahore and Superintendents of Police concerned,
- (xi) You will not agitate or approach the higher authorities for regularization of your *ad hoc* appointment.
- (xii) You will not make any request directly or indirectly for your transfer from your place of posting for a period of at least one year.
- (xiii) Subject to production/verification of original academic credentials by the concerned authorities.

In case you are willing to accept the offer on the above terms and conditions you should report yourself for duty within 10 days of the issued of this appointment letter to the Principal, Govt Degree/Inter College _____ failing which the offer shall be deemed as cancelled without any further notice."

13. The learned counsel for the petitioners have made an attempt to enlarge the scope of the dispute and bypass the Service Tribunal by challenging *vires* of Section 4 of the Punjab Service Tribunals Act, 1974, introducing fundamental rights and elements of discrimination, regularization and fitness for promotion etc but the dispute essentially relates to the terms and conditions of service of the petitioners. In all cases relating to terms and conditions of service remedy, available to an aggrieved civil servant is by filing an appeal before the Service Tribunal and not by invoking writ jurisdiction of the High Court. The petitioners were civil servants at the time of termination of their service and their grievance is traceable to the terms and conditions of their service, therefore, they are obliged to seek redressal of their grievance from the Service Tribunal.

14. We have not been able to lay our hands on a direct authority of this Court on the point that an *ad hoc* employee is a civil servant. However, there are some authorities which support the view in this manner that judgments rendered by the Service Tribunal in the cases of *ad hoc* employees were not interfered with by this Court on the ground of lack of jurisdiction. First of all we will refer to the authority reported as *Muhammad Shahbaz Cheema Vs. Province of Punjab etc* (1981 SCMR 469). In that case the petitioner was appointed on *ad hoc* basis as Sub-Engineer in the Punjab Irrigation Department. His services were terminated and he had invoked the

writ jurisdiction of the Lahore High Court to challenge the order of termination of his service. The writ petition was dismissed on the ground that he should have filed an appeal before the Service Tribunal. He accordingly filed an appeal before the Service Tribunal which was dismissed on merits. The petition for leave to appeal filed by him was dismissed by this Court along with the connected petition filed by another *ad hoc* employee Amir Ahmed. Another authority is reported as *Wapda and two others Vs. Muhammad Hussain Gul* (1993 SCMR 2337). In that case the respondent was an *ad hoc* employee of WAPDA and the appeal filed by him against his termination from Service was accepted by the Service Tribunal and he was directed to be re-instated in service. Petitioner for leave to appeal filed by WAPDA was dismissed by this Court and leave refused. There is yet another authority, which has been referred to in the impugned judgment also, reported as *Federation of Pakistan and others Vs. Rais Khan* (1993 SCMR 609). In that case the respondent was appointed as Assistant Executive Engineer in Pak. P.W.D. on *ad hoc* basis for a period not exceeding 6 months subject to replacement by the Federal Public Service Commission. A seniority list was circulated by the Department in which he was shown junior to some officers. Subsequently he was appointed as Assistant Executive Engineer on current charge basis. He took the matter of seniority before the Service Tribunal in appeal. His appeal was partly allowed and the appeal filed by the Federation of Pakistan was dismissed by this Court with the observations, *inter alia*, that it had not been denied that the Federal service tribunal was competent to pass the order. Reference may also be made to another noteworthy authority reported as *Muhammad Azam Ali and 35 others Vs. Government of the Punjab through Chief Secretary and another* (1985 SCMR 1408). In that case services of 35 *ad hoc* Civil Judges were terminated and the appeal filed by them was dismissed by the Punjab Service Tribunal. The petition for leave to appeal preferred by them was dismissed by this Court on merits and leave refused.

15. Now a few words about those contentions which appear to have been raised by the learned counsel for the petitioners with a view to enlarge the scope of the dispute and bypass the Service Tribunal. The contentions are to the effect that the dispute relates to determination of fitness of the petitioners to hold the posts of Lecturers, Section 4 of the Punjab Service Tribunals Act is *ultra vires* the provisions of Article 212 of the Constitution, the petitioners were entitled to be regularized but were not dealt with in accordance with law and treated in a discriminatory manner, the order of termination of their services offends the principle of natural justice and is tainted with *mala fide*.

16. We are afraid the petitions are not directed against an order or decision of a departmental authority determining the fitness or otherwise of the petitioners to be appointed to or hold a particular post and the remaining contentions cannot take away jurisdiction of the Service Tribunal inasmuch as it is by now firmly settled that all these questions can be determined and adjudicated upon by the Service Tribunal.

17. It was held in *LA Sharwani Vs. Government of Pakistan* (1991 SCMR 1041) that a civil servant cannot by-pass service Tribunal by adding a ground of violation of the fundamental rights. Service Tribunal will have jurisdiction in a case which is founded on the terms and conditions of the service even if it involves the question of violation of fundamental rights. It was also held that if a civil servant is aggrieved by an order passed by a departmental authority in respect of terms and conditions of service his remedy is by way of an appeal before the Service Tribunal even where the case involves *vires* of a particular Service Rule or a Notification. In *Syed Mazhar Hussain Bukhari Vs. Secretary Government of Punjab Laced Government and Rural Development Lahore* (1998 SGMR 1948) it was held that even the orders challenged on the ground of *mala fide* are appealable before the Service Tribunal and Article 212 of the Constitution is a bar against filing of a Constitutional petition before the High Court.

18. Before parting with the petitions We would like to allay the anxiety demonstrated by Mr. Najamul Hassan Kazmi Advocate over certain remarks by making the observation that, if approached, the Service Tribunal will determine the questions raised by the parties with an open mind and uninfluenced by any observation made in the impugned judgment on the merits of the case. For the reasons stated above, all the petitions are dismissed and leave declined.

(A.A)

Petition dismissed.