

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Gulzar Ahmed
Mr. Justice Qazi Faez Isa

**Civil Petitions No. 2537 to 2549/2016 and
2644-L/2016**

(On appeal against the judgment dated 09.05.2016
passed by the Punjab Service Tribunal, Lahore,
in Appeals No. 1575, 1577 to 1585, 1420, 1421,
1422 & 3594/2010)

Ikhlaq Ahmed	(in CP. 2537/2016)	
Muhammad Arif	(in CP. 2538/2016)	
Muhammad Ashraf	(in CP. 2539/2016)	
Syed Nadeem Ahmed	(in CP. 2540/2016)	
Mubarak Ali	(in CP. 2541/2016)	
Irfan Ahmed Qureshi	(in CP. 2542/2016)	
Munir Ullah	(in CP. 2543/2016)	
Nadim Iqbal Haider	(in CP. 2544/2016)	
Roshan Hussain Shah	(in CP. 2545/2016)	
Muhammad Rafiq Qureshi	(in CP. 2546/2016)	
Syed Danish Ali	(in CP. 2547/2016)	
Sherbaz Sarwar	(in CP. 2548/2016)	
Mirza Naseer Ahmad	(in CP. 2549/2016)	
Syed Qamar Abbas Shah	(in CP. 2644-L/2016)	Petitioner(s)

Versus

Chief Secretary, Punjab, Lahore, etc.	(in all)	Respondent(s)
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For the Petitioner(s) (in CPs. 2537-2549/2016):	Mr. Muhammad Tariq Javed, ASC Mr. Imtiaz A. Shaukat, AOR (absent)
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(in CP. 2644-L/2016):	Mr. Muhammad Lehrasib Khan, ASC Ch. M. Anwar Khan, AOR (absent)
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For the Respondent(s):	Barrister Qasim Ali Chohan, Additional Advocate General, Punjab Mr. Zeeshan Ranjha, S.O., S & GAD, Punjab
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Date of Hearing:	April 16, 2018
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JUDGMENT

Qazi Faez Isa, J. These petitions for leave to appeal are filed against the judgment of the Punjab Service Tribunal ("**Tribunal**") which dismissed the appeals filed by the petitioners challenging

their termination order dated October 14, 2008. The petitioners did not file a departmental appeal against their termination, but instead filed a writ petition before the Lahore High Court which was dismissed on April 26, 2010 as it was not maintainable under Article 212(2) of the Constitution of Islamic Republic of Pakistan. However, when the said writ petition was pending in the High Court the petitioners submitted a representation on March 14, 2009 seeking their reinstatement, but this representation was dismissed on the ground that it was barred by time. The Tribunal observed that even if the representation is treated as an appeal under section 21 of the Punjab Civil Servants Act, 1974 (**“the Act”**) then too it was time barred and that the appeal before the Tribunal was also time barred as per section 4 of the Act.

2. The petitioners’ learned counsel state that the petitioners could not be non-suited merely because they chose a wrong forum to challenge their termination and that the petitioners were awaiting the result of their departmental appeal before approaching the Tribunal. They submit that the Tribunal did not consider the petitioners case on merits and non-suited them on technicalities. They next urge that the petitioners’ services were terminated, purportedly under section 10 of the Act, without assigning any reason.

3. The petitioners were appointed on October 3, 2006 against “newly created” posts in the Chief Minister’s Secretariat, Lahore on “contract” for a period of three years. However, vide order dated November 16, 2007 they were *“regularized with immediate effect, in relaxation of the provisions of the Contract Appointment Policy and*

the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, as a special one-time dispensation and these cases shall not be quoted as precedents”.

4. We had issued notice to the respondents. Subsequently, we had put the parties on notice with regard to certain queries recorded in order dated January 10, 2018, which is reproduced hereunder:

“Both the learned ASC for the petitioners so also learned Additional Advocate General, Punjab seek time to address the Court *inter alia* on the following two questions:

- i. Whether Punjab Civil Servants Act, 1974 or the rules made there-under makes provision for changing the nature of employment from contract employment to that of a regular employment giving it a character of initial appointment in terms of Section 4 of the Punjab Civil Servants Act, 1974 without fulfilling legal requirements of making initial appointments?
- ii. What are the ingredients and requirements of relaxation of rules and whether such ingredients and rules for relaxation have been complied with in the case in hand?

2. The learned Additional Advocate General, Punjab will place before the Court all documents and orders relating to regularization and relaxation of rules within a period of two weeks. Adjourned to be fixed after two weeks.”

5. The official documents were filed (through C.M.A. No. 753/2018) and the learned Additional Advocate General, Punjab (“**AAG**”) refers to these documents and states that the petitioners were contract employees and later their services were regularized and they were inducted into regular government service, however,

as their probation period had not expired there was no need to serve any notice on them and they were terminated as can be done under section 10 of the Act. He however states that the regularization of the petitioners was not in accordance with the law. The candour of the learned AAG, which accords with the law, is commended.

6. The learned counsel representing the petitioners could not show that the impugned judgment of the Tribunal did not accord with the law. They however submit that the petitioners have been non-suited on a technicality and made submissions on the merits of the case. We asked them to address the aforesaid queries and whether the petitioners' appointments were in accordance with law. The learned counsel refer to rule 23 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 ("**the Rules**") which permits relaxation of the Rules and state that the regularization of the petitioners was pursuant to the exercise of such powers. Rule 23 of the Rules is reproduced hereunder:

“23. The Chief Minister may, for special reasons to be recorded in writing, relax any one of the rules in any individual case of hardship, to the extent prescribed by him.”

7. The Tribunal had observed that the petitioners did not file departmental appeal within the time mentioned in section 21 of the Act, even if the representations filed by them are treated as appeals, and further held that the appeal before the Tribunal was also time-barred in view of proviso to section 4(i) of the Punjab Service Tribunals Act, 1974. The findings of the Tribunal with regard to the belated filings are correct. The Tribunal had

dismissed the petitioners' appeals on the ground of limitation and the reasons given by the Tribunal for doing so are correct. However, as we had formulated the aforesaid questions and heard the learned counsel on the merits of the case we shall attend to the merits and also dilate on the rule 23 of the Rules on which they rely.

8. The documents on record reveal that a large number of persons were appointed on contract in the Chief Minister's Secretariat when Mr. Pervez Ilahi was the Chief Minister of the Punjab. The petitioners were appointed pursuant to 'order' dated October 3, 2006 which states, that the petitioners are appointed "*on contract basis for a period of three years*". However, only after a year another 'order' dated November 16, 2007 was issued by which the petitioners were "*regularized with immediate effect, in relaxation of the provisions of the Contract Appointment Policy and the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 as a special one-time dispensation and these cases shall not be quoted as precedents.*" It transpires that the Rules were relaxed and the petitioners were regularized pursuant to note dated June 22, 2007 titled "Request for Appointment on Regular Basis" of Mr. G. M. Sikander, the Principal Secretary to Chief Minister, which is reproduced hereunder:

"2. ...it would be in the public interest if the services of these employees are regularized so that this Secretariat may retain these officials in future as well because otherwise they can get better salaries/perks in the private sector after rendering considerable services in the Chief Minister's Secretariat.

3. Therefore, on presentation of the case, the Chief Minister has desired that enclosed request of the officials of this Secretariat may be considered sympathetically and summary thereof may be forwarded to this Secretariat within 15 days positively through Regulations Wing of S&GAD.

4. Further necessary action may kindly be taken accordingly under intimation to this Secretariat.”

The Chief Minister then approved what he himself had desired, which was the appointment and regularization of the petitioners, as can be gathered from note dated November 13, 2007 of the same Principal Secretary, which is reproduced hereunder:

“Subject: CHANGE OF MODE OF APPOINTMENT OF THE HOUSEHOLD STAFF IN THE CHIEF MINISTER’S SECRETARIAT

34. Chief Minister has seen and approved regularization of the services of household staff working against 124 posts in BS-1 to BS-15 in the Chief Minister’s Secretariat falling in different categories on contract basis as reflected in paras 2 and 3 ante with immediate effect in relaxation of the provisions of the Contract Appointment Policy and the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 as a special one-time dispensation keeping in view both the compassionate circumstances of the case and the experience accumulated by them during the period of their contractual appointment.

35. Chief Minister has further approved regularization of the services of Mirza Naseer Ahmad s/o Muhammad Sharif and Sher Baz Sarwar s/o Ghulam Sarwar, Assistant Protocol Officers (BS-16) in relaxation of policy/rules on similar grounds. Chief Minister has observed that these cases shall not be quoted as precedents.”

9. The petitioners were appointed on contract for a period of three years but shortly after a year they were “regularized” in purported relaxation of the Contract Appointment Policy and the Rules. Rule 23 permits “relaxation of the rules”. Rule 23 was inserted into the Rules on December 24, 1985, at a time when a serving General was ruling the Federation as the Chief Martial Law Administrator and another General was in charge of the Punjab as its Martial Law Administrator. Dictatorship undermined the civil service structure by enabling the “relaxation of rules”, a euphemism for contravening the Rules. The very purpose of having rules is defeated if these can be circumvented. However, in the present case even the provisions of rule 23 were not complied with.

10. Rule 23 states that “*any of the rules*” in “*any individual case of hardship*” and “*for special reasons to be recorded in writing*” and “*to the extent prescribed*” by the Chief Minister may be relaxed. However, not a single one of these stipulated preconditions were even mentioned, let alone fulfilled, and were flouted. The novel reason given by the said Principal Secretary to the Chief Minister on June 22, 2007 for relaxing the Contract Appointment Policy and the Rules was to prevent the petitioners from getting better salaries and perks in the private sector and therefore it was deemed to be in the “public interest” to get them regularized. The same Principal Secretary however on November 13, 2007 contradicted himself and mentioned “*compassionate circumstances of the case and the experience accumulated by them [petitioners] during the period of their contractual appointment*” as reasons for relaxing the rules and recommending the petitioners’ regularization. Regularization is another euphemism for induction into regular civil service. An

incongruous omnibus order which both relaxed the Rules and regularized the petitioners was passed. It did not mention the individual hardship of any petitioner, it was not passed by the Chief Minister, “special reasons” were not recorded in writing by the Chief Minister necessitating relaxing the Rules and the particular rule, that is “any one of the rules” was not mentioned. A completely illegal exercise was carried out in purported exercise of rule 23 of the Rules. Mr. G. M. Sikander, the Principal Secretary to the Chief Minister, implemented the wish of the Chief Minister and did so by resorting to absurd reasons without compunction, and he apparently did so in his enthusiasm to appease and serve the person of the Chief Minister, and not the Province and its people.

11. Whilst considering the questions formulated by us we observed that the Rules were made “*in exercise of the powers conferred by section 23*” of the Act however section 23(1) of the Act restricts the making of such rules “*for carrying out the purpose of this Act.*” The Act mentions the appointment, probation and confirmation of civil servants (sections 4, 5 and 6 respectively) but it does not stipulate, nor envisages, the contravention or abandonment of these provisions. Subordinate legislation can not contravene the law, however, the manner in which rule 23 of the Rules was applied to induct the petitioners as regular civil servants did just that. The conduct demonstrated by a bureaucrat in recommending illegal appointments is inexcusable. A summary should not be moved in disregard of the law and if it is being submitted at the behest of the Chief Minister, the concerned secretary or secretaries should note this and point out that it contravened the law. Bureaucrats must remember that they are

servants of the State and the people and that their abject subservience, in this case to the person of Mr. Pervez Ilahi who was the Chief Minister, destroys the confidence of the people in the bureaucracy.

12. We have attended to the second question which was framed by us in our order dated January 10, 2018 and curiously attended to some of the ingredients contained in the first question but avoided a categorical pronouncement thereon because these petitions fail both on the grounds noted by the Tribunal as well as on merit, since the terms of rule 23, on which the entire structure was raised, had not been complied with. Consequently, leave to appeal is declined and these petitions are dismissed.

Judge

Judge

Bench-IV
ISLAMABAD
April 23, 2018
(Farrukh)

Approved for Reporting