IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mrs. Justice Ayesha A. Malik
Mr. Justice Irfan Saadat Khan
Mr. Justice Shahid Bilal Hassan

CIVIL PETITION NO.1114-L OF 2022
[Against order dated 02.02.2022 passed by the Lahore High Court, Lahore in Review Application No.20 of 2021]

Government of the Punjab through Chief Secretary, Punjab, Lahore and another ...Petitioner(s)

Versus

Zaka Ullah and others ...Respondent(s)

For the Petitioner(s):	Mr. Khalid Ishaq, Advocate General, Punjab.
For Respondents No. 1 to 3 and 5	Ch. Pervaiz Akhtar Gujjar, ASC.
Date of Hearing:	28.11.2024

JUDGMENT

Ayesha A. Malik, J.- This Civil Petition is directed against order dated 02.02.2022 passed by the Lahore High Court, Lahore (**High Court**) whereby the application for review of its order dated 05.10.2021, filed by the Petitioners, was dismissed.

2. The issue before the Court is the regularization of 236 posts held by the Respondents, who claim that their posts have been regularized since 2019 but the Petitioners have not actualized the regularization on the pretext that they lack funds for this purpose. Hence, they approached the High Court on the issue. In its original order dated 05.10.2021, the High Court disposed of the writ petition by issuing directions to the Chief Secretary, Punjab to adopt special measures for release of funds through the supplementary grant by the next financial year positively so as to regularize the services of the Respondents. The Petitioners filed a review application which was dismissed on the ground that there was nothing wrong with the original order.

3. By way of background, the facts are that the Respondents were appointed on contract in the Zakat and Ushr Department (**Department**) as Divisional Audit Officer, D.G. Khan, Audit Officer, District Zakat Committee, Muzaffargarh, Divisional Auditor, D.G. Khan, Auditor, District Zakat Committee, Lodhran and Audit Assistant, Vehari, respectively. They are paid from the zakat fund disbursed from the Central Zakat Fund under Section 8(c)(iii) of the Ordinance.[1] They sought regularization of their services which was initially considered by a cabinet committee constituted by the Chief Minister, Punjab on 16.07.2015, which subsequently constituted a sub-committee on 21.03.2018, where the issue of regularization was deferred for the next meeting. However, in terms of the minutes of the meeting, the issue was discussed, wherein the moot question was that this staff did not work against sanctioned posts as they work under the Provincial Zakat Council. The finance department did not support the proposed regularization in this meeting. The matter was taken up again in 2018 when the Chief Minister, Punjab constituted a cabinet committee which again constituted a sub-committee on 16.04.2018 to resolve the issue. In its meetings dated 16.04.2018 and 08.05.2018, the cabinet committee recommended the regularization of the services of 236 zakat paid audit staff and further to bring the services of 1943 zakat paid field clerks within the purview of Contract Appointment Policy, 2004. The matter was placed before the Chief Minister, Punjab for necessary approval which was duly granted on 27.06.2019. Thereafter, a request was made to the finance department for creation of 236 posts through Schedule of New Expenditure (SNE) with the provisioning of the requisite budget. The finance department on 13.09.2019 advised the Department to place the case before the cabinet's standing committee on finance and development for provision of supplementary grant for the said posts. The Department on the advice of finance department sent the case back for approval by the cabinet's standing committee on finance and development, which committee deferred the case in its 26th meeting held on 30.01.2020. The Department initiated a fresh summary for the Chief Minister, Punjab for a fresh approval of the case before the standing committee

[1] The Zakat and Usher Ordinance, 1980.

of cabinet on finance and development for provision of supplementary grant to be incurred against 236 posts of zakat paid audit staff for the financial year 2020-2021. Subsequently, the standing committee of the cabinet on finance and development in its meeting dated 10.12.2021 with the finance department concluded that the posts must be sanctioned with the approval of finance department first and then there should be service rules for the posts before approving the regularization.

4. The Respondents, in the meantime, filed Writ Petition No.6080 of 2020 before the High Court on 29.05.2020 seeking a direction to the Secretary, Finance Department, Punjab, Lahore to take up their matter in terms of the decision taken on 07.10.2019 by the cabinet committee. The writ petition was ultimately decided by the original order dated 05.10.2021 and the impugned order.

5. The case of the Petitioners, as argued by the Advocate General, Punjab is that the Respondents sought regularization of services of the employees of the Department and despite the fact that this matter had been pending for some time before various committees, the services of the Respondents have not been regularized. There is no approval from the cabinet or the finance department. The Advocate General, Punjab referring to the *suo motu*[2] case argued that this Court has concluded that the Department posed a unique situation so far as its employees are concerned as they did not work the entire year and, therefore, the Court did not direct for regularization of its employees and instead the Court left it to the Provinces to determine whether they required regularization of the services of the employees of the Department. The main contention of the Advocate General, Punjab is that the High Court has relied upon an alleged admission by the Petitioners with respect to regularization in their para-wise comments which admission was never made and in fact the entire record has been misconstrued. He further argued that the High Court even otherwise could not have given directions to the government to finance the regularization of the posts of the Respondents through the supplementary grant.

---

[2] SMC No.15 of 2010, decided 21.11.2012.

6. We have heard the Advocate General, Punjab and the counsel for the Respondents and have examined the record. The basic document, relied upon by the Respondents as well as by the High Court in the impugned order and the order of 05.10.2021, are the para-wise comments filed by both Deputy Administrators Zakat (M&E), Multan and D.G. Khan. In terms of the para-wise comments, it is argued that there is an admission by the Petitioners with respect to the approval for regularization. We note that in the paras relied upon (13, 14 and 18) the admission is with respect to the facts contained therein. Importantly, there is no admission with respect to the approval for regularization. Even otherwise, any such admission cannot be contrary to the law and requirement of law. The entire case of the Respondents is built on the recommendations made by the cabinet sub-committee for regularizing the relevant posts dated 16.04.2018 and 08.05.2018. The record shows that this matter has been under consideration since 2015 and has been debated back and forth between the cabinet sub-committee, the finance department and the cabinet's standing committee on finance and development. The main issue that arose time and again was the fact that the given posts are not sanctioned posts and that there is no budget sanctioning these posts for the purposes of regularization. The other concern that emanates from the record is the fact that there is no law under which these posts can be regularized as they are neither covered under the Punjab Regularization of Service Act, 2018 nor the Punjab Regularization of Service (Amendment) Act, 2019.

7. While multiple meetings were convened on this issue and a recommendation was made for regularization of 236 posts of zakat paid audit staff, the fact of the matter is that there is no approval from the cabinet on the regularization of the posts in dispute, meaning that there is no approval by the competent authority with respect to regularization. In this regard, the approval of the cabinet is mandatory for regularizing the services of the Respondents. The Constitution[3] under Article 130(6) states that the Cabinet shall be collectively responsible to the Provincial Assembly meaning that the Cabinet is

[3] The Constitution of the Islamic Republic of Pakistan, 1973.

authorized to take decisions collectively as per the constitutional mandate. It is now settled law that powers conferred upon the government must be exercised collectively through the Cabinet's decisions and cannot be exercised otherwise. In the *Mustafa Impex* case[4], this Court unequivocally held, as under:

> "(i) The Rules of Business, 1973 are binding on the Government and a failure to follow them would lead to an order lacking any legal validity.
>
> (ii) The Federal Government is the collective entity described as the Cabinet constituting the Prime Minister and Federal Ministers.
>
> (iii) Neither a Secretary, nor a Minister and nor the Prime Minister are the Federal Government and the exercise, or purported exercise, of a statutory power exercisable by the Federal Government by any of them, especially, in relation to fiscal matters, is constitutionally invalid and a nullity in the eyes of the law. Similarly budgetary expenditure, or discretionary governmental expenditure can only be authorized by the Federal Government i.e. the Cabinet, and not the Prime Minister on his own."

The Mustafa Impex case further clarified that:

> "81. [...] It should be noted that it is not the Prime Minister by himself who is responsible to Parliament. It is the body known as the Cabinet, which is *collectively* responsible. [...] The underlying substratum of any representative form of government is to link acceptance of responsibility with the exercise of power. This principle applies across the board. It applies with special force in relation to fiscal or budgetary matters. He cannot make fiscal changes on his own and nor can he engage in discretionary spending by himself. Furthermore, the Prime Minister is not constitutionally mandated to authorize expenditure on his own. In all cases the prior decision of the Cabinet is required since it is unambiguously that body alone which is the Federal Government. All discretionary spending without the prior approval of the Cabinet is contrary to law."

This principle equally applies, by necessary implication, to provincial governments[5]. Furthermore, the Punjab Government Rules of Business, 2011 (**2011 Rules**), which delineate the manner in which the Provincial Government's decisions must be executed, clearly state that the cabinet's approval is mandatory. Rule 25 of the 2011 Rules provides that decisions taken by a committee of the cabinet, including

---

[4] Mustafa Impex case[4] v. Government of Pakistan (PLD 2016 SC 808).
[5] Government Of Balochistan v. Attock Cement Pakistan Limited (2024 SCMR 876).

sub-committees, are provisional until ratified by the full cabinet, unless explicitly delegated otherwise. Rule 25 *ibid* is reproduced below:

> "(1) The cases referred to the Cabinet shall be disposed of-
>
> (a) by discussion at a meeting of the Cabinet;
> (b) by circulation amongst Ministers; and
> (c) by discussion at the meeting of a Committee of the Cabinet.
>
> (2) Unless the Cabinet authorizes otherwise, the decisions of a Committee of the Cabinet shall be ratified by the Cabinet."

8. In the present case, the cabinet did not approve the recommendations of the sub-committee regarding the regularization of 236 zakat paid audit staff. Consequently, the reliance on these recommendations as final is without the endorsement of the cabinet, hence, the recommendations themselves lack the legal authority to effectuate regularization. This position is not only grounded in constitutional mandates but has also been reaffirmed in recent jurisprudence. In a similar context, this Court in the case of *Mohsin Raza Gondal*[6] elaborated on the limitations of cabinet sub-committees, as under:

> "It is abundantly clear from the above constitutional provisions that neither the Prime Minister nor the members of the Federal Cabinet are permitted to perform their functions beyond the legal provisions i.e. the Constitution, statutory law, and the rules. Needless to mention, nobody is above the law. That is why the Rules of Business, 1973, were duly framed to conduct the business of the Federal Government. **Under these rules, although there is a concept of Cabinet Sub-Committees on different subjects, there is no provision for the intervention of a Cabinet Sub-Committee in governing the terms and conditions of service of employees. However, the Cabinet Sub-Committee can recommend reforms in the service structure, which can be approved by the Cabinet in accordance with the law and the Constitution.** […]**"**
>
> (Emphasis supplied)

While the extract pertains to the Federal Government and the Rules of Business, 1973, the same reasoning applies to the Provincial Government and the 2011 Rules as the provisions at both levels are substantively similar and, therefore, the limitations on the authority of a cabinet sub-committee hold true at the provincial level as well. The cabinet sub-committee can at best suggest recommendations, but it cannot be considered as the final decision nor is it the competent authority for deciding a matter.

---

[6] Mohsin Raza Gondal v. Safdar Mahmood, CPs No.949 of 2023, etc. decided on 13.9.2024 (2024 SCP 308).

9. Another critical deficiency in the present case is the failure to obtain the consent of the finance department for creating new posts and authorizing the regularization of services. This omission violates the requirements stipulated in the 2011 Rules. Rule 15(1) thereof states as under:

> "(1) When the subject of a case concerns more than one Department:
> (a) [.....]
> (b) no orders shall issue and no case shall be submitted to the Chief Minister or the Cabinet, until it has been considered by all the concerned Departments."

Rule 19 of the 2011 Rules outlines specific requirements for finance department consultation. It provides as under:

> "19(1). No department shall, without previous consultation with Finance Department, authorize any orders [...] which directly or indirectly affect the finances of the Province, or which, in particular, involve:
>
> (a) [.....]
> (b) [.....]
>
> (c) **a change in the number or nomenclature or basic scale of a post or in the terms and conditions of service of the Government servants or their statutory rights and privileges which have financial implications**."
>
> (Emphasis supplied)

Rule 19(3) of the 2011 Rules explicitly states as under:

> "19(3). No proposal, which requires previous consultation with Finance Department under the rules but in which that Department has not concurred, shall be proceeded with unless a decision to that effect has been taken by the Cabinet. Formal orders shall, nevertheless, issue only after Finance Department has exercised scrutiny over the details of the proposal."

In the present case, the creation of new posts and the change in employment status of the zakat paid audit staff are decisions that fall squarely within the purview of Rule 19 of the 2011 Rules. The absence of the finance department's approval for such decisions also clarifies the fact that there is no approval by the Petitioners. Hence, the argument that the posts were approved for regularization but not acted upon is without basis.

10. Coming to the impugned order, we note that it is against the settled law stated in numerous decisions by this Court. On the subject of regularization, this Court has held repeatedly in numerous judgments that employees cannot claim regularization as a matter of

right[7]. This principle is grounded in the understanding that regularization requires a statutory or legal backing, and in the absence of such a framework, courts cannot impose any obligation on the government. Similarly, mere passage of time or length of service does not give rise to a vested right to regularization. In the case of *Tanveer Ahmad*[8] this Court observed that a person employed on contract basis has no vested right to regularization and by mere efflux of time, an employee cannot claim regularization and knock on the door of the High Court for the same. In a similar matter decided by this Court in the case of *Jabran Ali Khan*[9] it was held that there is no vested right to seek regularization for employees hired on contractual basis unless there was legal and statutory basis for the same.

11. The process of regularization is also contingent upon the fulfillment of certain prerequisites, including the availability of sanctioned posts, the fulfillment of qualifications and conditions prescribed under the relevant rules, and the approval of the competent authority. The financial implications must be considered and approved as no post can be regularized or made permanent without proper budgetary allocation, as it involves expenditure from the public exchequer. This Court most recently reiterated these principles in the case of *Muhammad Shafiq*[10], wherein it was emphasized as under:

> "5. [...] There must be availability of positions that match the skills and experience of the contractual employee; the budgetary considerations and financial implication of a regular employee be weighed and considered. There must be a fair assessment of the employee's qualifications, performance and merit, so as to ensure only competent and committed employees be granted permanent employment status. [...] It requires fresh assessment of the candidature of the contractual employee by the competent authority before he is made a regular employee as any such act carries long term financial implications on the institution concerned. [...] Regularization therefore has a close nexus with institutional policy and autonomy."

As underscored above, this Court has consistently maintained that regularization is not merely a procedural formality but a prerogative of

---

[7] Faraz Ahmed v. Federation of Pakistan (2022 PLC 198), Pakistan Telecommunication Company Ltd. v. Muhammad Samiullah (2021 SCMR 998), Messrs Sui Northern Gas Company Ltd. v. Zeeshan Usmani (2021 SCMR 609), Khushal Khan Khattak University v. Jabran Ali Khan (2021 SCMR 977), Government of Khyber Pakhtunkhwa v. Saeed-ul-Hassan (2021 SCMR 1376), Muzaffar Khan v. Government of Pakistan (2013 SCMR 304), Government of Balochistan, Department of Health v. Dr. Zahid Kakar (2005 SCMR 642).

[8] Vice-Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa v. Tanveer Ahmad (2022 PLC (C.S.) 85).

[9] Khushal Khan Khattak University through Vice-Chancellor and others v. Jabran Ali Khan and others (2021 SCMR 977).

[10] Vice-Chancellor Agriculture University, Peshawar v. Muhammad Shafiq (2024 PLC (C.S.) 323).

the executive, reflecting its autonomy in determining institutional priorities and resource allocation. Regularization is thus fundamentally a policy matter which falls squarely within the domain of the Executive. Courts cannot usurp this role. Judicial interference in these matters risks creating long-term disruptions in governance and resource allocation. The trichotomy of powers must be respected as a foundational principle of the Constitution, and the High Court, while exercising its constitutional jurisdiction, cannot encroach upon the exclusive domain of the executives by arrogating to itself the role of the appointing authority. This principle was rearticulated most recently by this Court in the case of *Muhammad Shafiq* supra, as under:

> "7. [...] The process of regularization is a policy matter and the prerogative of the Executive which cannot be ordinarily interfered with by the Courts, especially in the absence of any such policy. It does not befit the courts to design or formulate policy for any institution; they can, however, judicially review a policy if it is in violation of the fundamental rights guaranteed under the Constitution. The wisdom behind non-interference of courts in policy matters is based on the concept of institutional autonomy [...]"

Similarly, in the case of *Sher Aman*[11], where the respondents were similarly appointed on temporary posts, this Court reiterated the limits of judicial jurisdiction in employment matters and it was held as under:

> "15. [...] The High Court in its Constitutional Jurisdiction cannot alter the scope of the terms that have been agreed upon by the parties and put an additional burden upon the employer. At best, a contract employee can approach the appropriate forum for recovery of damages against an employer for breach of contract, if a case is made out against the employer. The High Court cannot in exercise of constitutional jurisdiction assume the role of the appointing authority and direct employers to amend or alter terms and conditions in favour of employees which have been agreed upon by the said employee."

12. In view of the aforesaid, we are of the opinion that the High Court totally exceeded its jurisdiction by misconstruing the para-wise comments and ignoring the record. Primarily, it was essential for the High Court to establish that regularization of the posts of zakat paid audit staff numbering 236 was approved by the cabinet and that the

[11] Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar v. Sher Aman (2022 SCMR 406).

finance department had sanctioned the required budget. Secondly, the High Court should have considered the numerous judgments of this Court which set out the principles to be considered in cases pertaining to regularization and cannot in a slipshod manner direct the Chief Secretary, Punjab to regularize the Respondents and create provisioning from the supplementary grant. Issuing of such a direction clearly does not fall within the jurisdiction of the High Court. In this case, there is no approval by the cabinet and no approval by the finance department because the letter dated 28.05.2018 was in the context of cabinet committee's recommendation dated 06.11.2018. As per the record, the matter of regularization was never placed before the cabinet, hence, any recommendations as such create no right in favour of the Respondents. Had the record been examined and duly considered, this fact would have guided the order of the High Court.

13. In view of the above, this Civil Petition is converted into appeal and allowed and the impugned order is set aside.

JUDGE

JUDGE

'Approved for Reporting' **JUDGE**
*Azmat/**

Announced on 20.12.2024 at Lahore.

JUDGE