

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE SARDAR TARIQ MASOOD  
MR. JUSTICE AMIN-UD-DIN KHAN  
MR. JUSTICE MUHAMMAD ALI MAZHAR

**CIVIL PETITIONS NO.596 TO 598 OF 2021**

(Against Judgment dated 01.12.2020 passed by the  
Peshawar High Court, Mingora Bench (Dar-ul-Qaza),  
Swat in W.P.Nos.1043-M to 1045-M/2018)

National Database and Registration Authority (NADRA) through its Chairman,  
Islamabad and others

...Petitioners  
(in all cases)

Versus

Jawad Khan  
Ghulam Saddiq  
Amjad Ali

(In CP.596/2021)

(In CP.597/2021)

(In CP.598/2021)

...Respondents

For the Petitioner : Hafiz S.A. Rehman, Sr. ASC

For the Respondents : N.R.

Date of Hearing : 08.05.2023

**JUDGMENT**

**MUHAMMAD ALI MAZHAR, J:-** These Civil Petitions for leave to appeal are directed against the consolidated judgment dated 01.12.2020, passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in W.P.Nos.1043-M to 1045-M/2018 whereby the writ petitions were allowed with certain directions to the petitioner No.1, the National Database and Registration Authority ("**NADRA**").

2. The transitory ins and outs of the case are that the petitioners invited applications through advertisement for the vacant posts of Customer Service Executive ("**CSE(s)**") for the newly established Call Center at Swat with the eligibility criteria of graduation with one year experience. The respondents applied for the post and were short listed for the test and interview, however, despite qualifying the test and interview the respondents were appointed as Data Entry Operators ("**DEO(s)**") on daily wages basis for a period of one month on Job training. The offer letters were issued to the respondents for appointment as DEOs which were accepted by the respondents. As per the relevant policy, the employment status of short term employees was changed into contract basis for a period of three (03) years. To make a long story short, the respondents were aggrieved that they qualified for the post of CSE but

they were appointed as DEOs, therefore the respondents filed Writ Petitions in the High Court with this cause of distress and the learned High Court allowed the Writ Petitions with directions to NADRA to treat the present respondents/petitioners at par with the petitioner in W.P. No.549-M/2012 and to appoint them to the posts of CSE with effect from the date from which the petitioner in W.P. No.549-M/2012 was ordered to be appointed.

3. The learned counsel for the petitioners argued that the respondents are contract employees and NADRA has no statutory rules of service, hence the Writ Petitions under Article 199 of the Constitution were not maintainable. He further averred that the respondents invoked the jurisdiction of the High Court with unclean hands, therefore equity did not lie in their favour. The writ is an extraordinary and discretionary relief which could not have been extended to the respondents who are contractual employees and opted for appointment as DEOs of their own free-will and volition. The learned counsel relied on the dictums laid down by this Court 2017 SCMR 1979 and 2019 SCMR 984 in support of these arguments.

4. Heard the arguments. It is unequivocally reflected from the record that applications were invited by NADRA through newspapers for the post of CSE. The respondents participated in the recruitment process and qualified the test and interview but they were appointed as DEOs rather than CSEs which was the originally advertised post. The respondents took the plea before High Court that they had accepted the said offer on the promise made to them that they would be appointed to the advertised posts on completion of one month on-job training, however despite the successful completion of training and achieving qualifying scores, NADRA failed to appoint them on the posts applied for and continued to employ them as DEOs. In a similar situation, another employee filed a Writ Petition No. 549-M/2012 which was allowed by the High Court *vide* judgment dated 28.03.2018 and the impugned judgment is concentrated on alike equilibrium.

5. The matter under deliberation and determination signposts to the appointment process which was triggered by NADRA through advertisements in the vernacular newspapers. The foremost aspiration of inviting job applications through advertisements with required academic qualifications, skills and experience is to acquaint and allow potential candidates to apply for vacant positions and appear for test

and interview according to the recruitment policy or dossier for the advertised posts. A job advertisement is a descriptive text in order to visualize the nature of the job with certain terms and conditions, including perks and benefits, to invite applications from candidates who themselves considered eligible to apply for the advertised posts and contest in the competitive process of recruitment initiated by the hiring department or agency for the selection of best candidates in view of the nature of job and the required skills.

6. In the present case the respondents had applied for the position of CSE and qualified the test and interview but they were offered the post of DEO without any rhyme or reason, which is a violation of the terms and conditions of the recruitment process formulated for the appointment of CSEs. The respondents applied for the aforesaid posts and, after qualifying the prerequisites, they legitimately expected their appointment on the applied posts unless their credentials are rejected which is not the case here. Neither their applications were rejected after due diligence, nor the recruitment process was scrapped for any reason. The doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority. In fact, a legitimate expectation ascends in consequence of a promise, assurance, practice or policy made, adopted or announced by or on behalf of government or a public authority. When such a legitimate expectation is obliterated, it affords a *locus standi* to challenge the administrative action and even, in the absence of a substantive right, a legitimate expectation may allow an individual to seek judicial review of a wrongdoing; and in deciding whether the expectation was legitimate or not, the Court may consider that the decision of the public authority has breached a legitimate expectation and, if it is proved, then the Court may annul the decision and direct the concerned authority/person to live up to the legitimate expectation. This doctrine is basically applied as a tool to watch over the actions of administrative authorities and in essence imposes obligations on all public authorities to act fair and square in all matters encompassing legitimate expectation [Ref: Uzma Manzoor v. Vice Chancellor, Khushal Khan Khattak University (2022 SCMR 694)]. The doctrine of legitimate expectation is equated with "fairness" and "equity" which is a legitimate attribute of a public functionary. The justification for treating "legitimate expectation" and "promissory estoppel" together as grounds for judicial review is (i) that they both fall under the general

head of "fairness"; and (ii) that "legitimate expectation" is akin to an estoppel [Ref: *Judicial Review of Public Actions* by Justice (Rtd.) Fazal Karim, page 1365].

7. In the present set of circumstances the doctrine of promissory estoppel is also reminiscent and reverberating which is a well-known legal principle whereby a promise is enforceable by law, even if made without formal consideration, as when a promisor has made a promise to a promisee who then relies on that promise to his subsequent disadvantage and impairment. This tenet precludes the promisor from repudiating the promise. The essential prerequisites for lodging a right and entitlement under the doctrine of promissory estoppel are that there must be a promisor and a promisee, and the promisee suffered a loss due to renunciation of promise. In such a situation, the Courts may put into operation this doctrine for administering justice to an aggrieved person. The doctrine of promissory estoppel cannot be repressed in line with equivalent constriction as estoppel in the *stricto sensu*, rather it is an equitable course of therapy developed by the Courts for doing justice against a valid cause of action. It is not necessary in all circumstances for the attraction of this doctrine that the promisee who placed trust and dependence on the promise should sustain harm, but what actually necessary is that the promisee should have changed his position in reliance on the promise and was caused prejudice. This doctrine has been dealt with by this Court in the following dictums:

1. National Saving Central Directorate, Islamabad and another v. Muhammad Farooq Raja (PLD 2021 SC 320). The contention of the learned counsel for the respondent that the doctrine of promissory estoppel is squarely applicable has force. It is well settled that where the Government control functionaries make promise which ensues a right to anyone who believes them and acts under them, then those functionaries are precluded from acting detrimental to the rights of such person/citizen.

2. Azra Riffat Rana v. Secretary, Ministry of Housing and Works, Islamabad and others (PLD 2008 SC 476). The doctrine of promissory estoppel was discussed in detail in the case of Pakistan through Ministry of Finance Economic Affairs and another v. Fecto Belarus Tractors Limited PLD 2002 SC 208 and its applicability. It was held that the appellants having believed the representation made by the State and having further acted thereon could not have been defeated of their hopes which had crystallized into rights. It was further held that it was not open to the State according to the law laid down by the Supreme Court of India to backtrack. Needless to point out that though the doctrine of promissory estoppel does not extend to legislative and sovereign functions yet, executive orders are not excluded from its operation. Reference in this regard may be made to the cases reported as Pakistan through Secretary, Ministry of Commerce and others v. Salahud Din and others PLD 1991 SC 546, Federation of Pakistan v.

Ch. Muhammad Aslam 1986 SCMR 916, Union of India and others v. Godfrey Philips India Limited AIR 1986 SC 806, Messrs Iit Ram Shiv Kumar and others AIR 1980 SC 1285, M.P. Sugar Mills v. State of U.P. AIR 1979 SC 621, Ram Niwas Gupta and others v. State of Haryana through Secretary, Local Self-Government, Chandigarh and another AIR 1970 Punj. And. Har. 462.

3. Federation of Pakistan and others v. Ammar Textile Mills (Pvt.) Limited and others (2002 SCMR 510). This Court in the case of Pakistan through Secretary, Ministry of Commerce and 2 others v. Salahuddin and 3 others PLD 1991 SC 546 has laid down following limitations for invoking doctrine of Promissory Estoppel: (1) The doctrine of Promissory Estoppel cannot be invoked against the Legislature or the laws framed by it because the Legislature cannot make a representation. (2) Promissory Estoppel cannot be invoked for directing the doing of the thing which was against law when the representation was made or the promise held out. (3) No agency or authority can be held bound by a promise or representation not lawfully extended or given. (4) The doctrine of Promissory Estoppel will not apply where no steps have been taken consequent to the representation or inducement so as to irrevocably commit the property or the reputation of the party invoking it; and (5) The party which has indulged in fraud or collusion for obtaining some benefits under the representation cannot be rewarded by the enforcement of the promise."

8. Whereas in the foreign jurisdiction, the aforesaid doctrine has been delineated in the following manner:

**Words and Phrases (Permanent Edition), Volume 34**  
(At page 533-534)

"Promissory estoppel" differs from equitable estoppel in that it rests on a promise to do something in the future, whereas the latter rests on a statement of present fact. Waugh v. Lennard, 211 P.2d 806, 812, 69 Ariz. 214.

"Promissory estoppel" arises when an innocent promisee relies, to his disadvantage, upon promise intended or reasonably calculated to induce action by him. Miller v. Lawlor, 66 N.W.2d 267, 272, 274, 245 Iowa 1144, 48 A.L.R.2d 1058.

To bring case within doctrine of "promissory estoppel", it is essential that promissory could and would have performed the condition or would not have allowed the defense to arise, but for promisor's waiver. Panno v. Russo, 186 P.2d 452, 455, 82 Cal.App.2d 408.

The elements prerequisite to application of doctrine of "promissory estoppel" are a promise which promisor should reasonably expect to and does cause promisee to change his position in justifiable reliance thereon in such manner that injustice could be avoided only by enforcement of promise. Hill v. Corbett, 204 P.2d 845, 847, 33 Wash.2d 219.

A "promissory estoppel" is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on part of promisee and which does induce such action or forbearance and is binding if injustice can be avoided only by enforcement of promise. West v. Hunt Foods, 225 P.2d 978, 983, 101 Cal.App.2d 597.

**Wharton's Concise Law Dictionary (15<sup>th</sup> Edition)**  
(At page 834)

In order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has, acting in reliance on the promise, altered

his position and it is not necessary for him to further show that he has acted to his detriment, *Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh*, AIR 1979 SC 621: (1979) 2 SCC 409: (1979) 2 SCR 641; *Ashok Kumar Maheshwari v. State of Uttar Pradesh*, (1998) 2 SCC 502.

**Halsbury's Laws of England (Fifth Edition), Volume 47**  
(At page 355)

Promissory estoppel is an extension by equity of common law estoppel by representation. The principle of promissory estoppel is that, when one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but must accept their legal relations subject to the qualification which he himself has so introduced. This principle was developed in a line of authority from 1877 onwards but first clearly enunciated in 1944. The term 'promissory estoppel' was not, however, used in the 1944 judgment generally taken as the basis of the doctrine. Promissory estoppel may prevent a party to a contract from going back on a concession he has made to the other party and so may modify contracts in the sense of suspending or even extinguishing contractual rights but it cannot stand alone as giving a cause of action in itself and has not therefore made any general inroads into the doctrine of consideration.

9. Article 3 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**") casts an unavoidable and inescapable obligation upon the State to ensure the elimination of all forms of exploitation, and the gradual fulfilment of fundamental principles from each according to their ability, to each according to their work. Whereas under Article 38 it is provided that the State shall secure the wellbeing of the people, irrespective of sex, caste, creed, or race by raising their standard of living, by preventing concentration of wealth and the means of production and distribution in the hands of a few to the detriment of general interest, and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants. The objective of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily without rhyme or reason, and/or without *compos mentis*, rather such objective can only be met by adhering to the rules of justness, fairness and openness as enshrined under Articles 4 and 25 of the Constitution. In the case of *Ikram Bari Vs National Bank of Pakistan* (2005 SCMR 100), this Court held that an Islamic Welfare State is under an obligation to establish a society which is free from exploitation and wherein social and economic justice is guaranteed to its citizens. By Article 2-A of the Constitution, which has been made its substantive part, it is unequivocally enjoined that in the State of Pakistan the principles of equality, and social and economic justice as enunciated by Islam shall be fully observed which shall be guaranteed as fundamental rights.

10. The learned counsel for the petitioners vigorously argued that the respondents, being contractual employees, could not invoke writ jurisdiction against the petitioner No.1 which has no statutory rules of service and relied on the judgment rendered by this Court in the case of Chairman NADRA versus Muhammad Ali Shah & others (2017 SCMR 1979) wherein the Court considered Regulation 4 and 35 of the NADRA Employees (Service) Regulations, 2002 and held that contractual employees of statutory organizations could not invoke the constitutional jurisdiction of High Court and the High Court could not renegotiate, alter and amend the terms of regularization that were offered by the Authority to its contractual employees. Next, the learned counsel referred to the case of Maj. (Retd.) Syed Muhammad Tanveer Abbas versus Federation of Pakistan & another (2019 SCMR 984), in which it was held that contractual employees cannot challenge their termination through writ jurisdiction. Both the aforesaid precedents are distinguishable to the facts and circumstances of the present case. Neither the respondents were terminated employees, nor did they challenge any dismissal or termination order from service, nor did they seek any relief from the High Court for regularization of their contractual services into permanency, rather they only invoked the writ jurisdiction for the appointment as CSEs for which they applied and fulfilled the criteria and not as DEOs, for which the learned High Court not only justly entertained the petition, but also rightfully granted relief to redress the grievance of the respondents.

11. In the wake of the above discussion, we do not find any irregularity or perversity in the impugned judgment passed by the learned High Court. Consequently, these petitions are dismissed and leave to appeal is refused.

Judge

Judge

Islamabad  
08.05.2023  
Khalid  
Approved for reporting.

Judge