

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice Yahya Afridi
Justice Syed Hasan Azhar Rizvi
Justice Irfan Saadat Khan

Civil Petitions No.949, 1025, 1028, 1132 to 1134 of 2023

[Against the judgment dated 31.01.2023, passed by the Islamabad High Court, Islamabad
in ICA No.514 of 2015, Writ Petition No.2042 of 2020]

<i>Mohsin Raza Gondal and another.</i>	<i>(in CP No.949)</i>
<i>Syed Ijlal Haider Shah and others.</i>	<i>(in CP No.1025)</i>
<i>Omer Saleem Cheema and another.</i>	<i>(in CP No.1028)</i>
<i>Kamran Nawaz and others.</i>	<i>(in CP No.1132)</i>
<i>Furqan Ali Qureshi and another.</i>	<i>(in CP No.1133)</i>
<i>Muhammad Israr and others.</i>	<i>(in CP No.1134)</i>
	<i>...Petitioner(s)</i>

Versus

<i>Sardar Mahmood and others.</i>	<i>(in CP No.949)</i>
<i>Ahmer Waheed Sadiq and others.</i>	<i>(in CPs No.1025,</i> <i>1132, 1133-1134)</i>
<i>Federation of Pakistan through Secretary</i>	<i>(in CP No.1028)</i>
<i>Establishment Division, Islamabad and others.</i>	
	<i>...Respondent(s)</i>

For the Petitioner(s) (in CP No.949, 1028)	:	Hafiz S.A.Rehman, Sr.ASC assisted by Mrs. Shireen Imran, ASC
For the Petitioner(s) (in CP No.1025)	:	Mr. Tariq Mahmood, Sr.ASC Syed Rifaqat Hussain Shah, AOR
For the Petitioner(s) (in CP No.1032)	:	Mr. Abdul Rahim Bhatti, ASC Syed Rifaqat Hussain Shah, AOR
For the Petitioner(s) (in CP No.1033)	:	Mr. Muhammad Ramzan Khan, ASC
For the Petitioner(s) (in CP No.1034)	:	Dr.G.M.Chaudhry, ASC Ch. Akhtar Ali, AOR
For Respondents No.2-3 (in CP No.949)	:	Mr. S.A. Mahmood Khan Sadozai, ASC
For the Respondent(s) (in CPs No.1025, 1134)	:	Mr. Zubair Hussain Jarraal, ASC
For Respondent(s) (in other cases)	:	Nemo.
For Federation	:	Mr. Hassan Nawaz Makhdoom, Additional Attorney General Hammad Nazar, Deputy Secretary, Ministry of Overseas Pakistani & HRD Muhammad Abdullah, A.D. Legal FPSC
Date of Hearing	:	08.07.2024

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through the above petitions, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (**'the Constitution'**), the petitioners have impugned the judgment dated 31.01.2023 (**'impugned judgment'**) of the Islamabad High Court, Islamabad (**'High Court'**). In this judgment, an Intra-Court Appeal No. 514 of 2015 (**'I.C.A.'**) filed by three respondents (see table annexed as **'A'**) and a writ petition No. 2042 of 2020 filed under Article 199 of the Constitution by the other sixteen respondents (see table annexed as **'B'**) against the present petitioners were jointly allowed, and the appointments of the petitioners were found to have been made in violation of the law. Consequently, their cases were referred to the Federal Public Service Commission (**'FPSC'**) to determine their fitness and eligibility for the said posts under the relevant law.

2. The background of the present controversy is that the respondents Safdar Mahmood, Gul Akbar and Kamran Munir Bhatti, Deputy Directors, Protectorate of Emigrants, Islamabad filed a writ petition No.3132 of 2013 under Article 199 of the Constitution before the High Court to challenge a notification dated 17.10.2012 (**'impugned notification'**) whereby the services of three petitioners namely Mohsin Raza Gondal, Ahmad Faisal Hassan Khan and Omer Saleem Cheema, who were initially appointed on contract basis, were regularized as Deputy Directors (BS-18) in the Bureau of Emigration & Overseas Employment (**'BE&OE'**); however, the said petition was dismissed vide order dated 10.11.2015.

Being dissatisfied, the respondent filed an I.C.A. before the High Court. During the pendency thereof, sixteen other respondents filed a separate writ petition No. 2042 of 2020, under Article 199 of the Constitution before the High Court to challenge the regularization of the services of all the petitioners in different basic pay scales (BS-16 to BS-18), including the above-named petitioners, in the BE&OE. Since these matters were identical and involved a common question of law, the High Court took up both the appeal and the petition jointly and, through the impugned judgment, allowed them; however, the same was dismissed as

being infructuous to the extent of the respondent Ahmad Hassan Khan as he had been dismissed from service on the ground of absence from duty. The cases of all the petitioners were referred to the FPSC with a direction to determine their fitness and eligibility under the law. The relevant portion of the impugned judgment, essential for the determination of the present controversy, is reproduced below for ease of reference:

"17. In the above mentioned position, when initially respondent Nos. 6 to 8 of ICA No.514/2015 [Mohsin Raza Gondal, Ahmad Faisal Hassan Khan and Omer Saleem Cheema] were not appointed in accordance with the law, especially when their original notification of Cabinet Sub Committee is not available on record and order has prima-facie been declared as a forged document by the Establishment Division in their comments in which it has been mentioned that Mrs. Nazish Abbasi has issued the said letter at her own. Such aspect creates a difficult situation for all the respondents including the Establishment Division, Government of Pakistan whose working has been exposed in the process of regularization of service, therefore, in such scenario, the judgment rendered by learned Single Judge in Chambers in W.P. No.3132/2013 is considered to be without any legal basis, especially when law discussed above has not been correctly applied, hence, judgment dated 10.11.2015 passed in writ petition No.3132 of 2013 is hereby set-aside, resultantly, Intra Court Appeal No.514 of 2015 and Writ Petition No.2042 of 2020 are allowed with the direction to the Ministry of Overseas Pakistan to transmit cases of respondents appointed in BPS-16 & BPS-17 to the FPSC for determination of their eligibility, qualification, age, etc. in accordance with law, subject to test, interview under the rules and after determination of their fitness, if they declared successful, recommendation be given to effect retrospectively in order to save their perks and privileges under the law. Moreover, the officials appointed in BPS-18 i.e. respondents Nos. 6 & 8 in ICA No.514/2015 and respondents Nos.6 & 7 in Writ Petition No.2042 of 2020, have different issue, since their appointments made in violation of recruitment rules when the post of BPS-18 could only be filled by way of promotion, therefore, at this stage, if the FPSC confers their fitness, the relevant Ministry shall create post for these incumbents for the said position as an exception for one-time dispensation..."

3. The present petitioners are not satisfied with the decision by the High Court in the impugned judgment and have, therefore, challenged it by filing the above petitions before this Court. However, the Government of Pakistan, the relevant Ministry, and the private respondents did not further challenge the impugned judgment, indicating their satisfaction with it.

4. The cases of the petitioners are somewhat similar in all the petitions. For clarity, their positions are summarized separately and precisely as follows:

Civil Petition No.949 & 1028 of 2023

In these petitions, the petitioners asserted that, upon the creation of eighty-seven (87) temporary posts, including five (5) posts of Deputy Directors, for restructuring the BE&OE by the President of Pakistan, an advertisement was published in the newspaper with the approval of the Secretary, Labour & Manpower, on 09.09.2010, inviting applications for these posts. A Departmental Selection Committee was constituted in accordance with the law, and the recruitment rules were revised after approval from the FPSC. Following interviews and the approval of the recommendations of the Departmental Selection Committee by the Competent Authority, the petitioners were appointed as Deputy Directors (BS-18) on a contract basis for one year, as per the letter dated 09.04.2011. Subsequently, their cases were sent to the Cabinet Sub-Committee for regularization of their services. The process of their regularization was completed by the said Committee, and the Establishment Division conveyed the decision vide Office Memorandum dated 19.03.2012. Thus, the petitioners were regularized in BS-18 against the direct quota for initial recruitment by the Cabinet Sub-Committee, by virtue of the impugned notification issued by the Ministry of Human Resource Development, Government of Pakistan. The appointments of the petitioners were made in accordance with the law, but the High Court overlooked above legal position and wrongly passed the impugned judgment, which is liable to be set aside. Hence, these petitions.

Civil Petition No.1025 of 2023

In this petition, the petitioners asserted that eighty-seven (87) temporary positions, including those of Inspectors (BS-16), were sanctioned for the restructuring of the BE&OE. This was followed by an advertisement dated 01.10.2010 and a corrigendum published on 05.10.2010, inviting applications. As a result of the interview conducted by the Departmental Selection Committee on 03.12.2010, the petitioners were offered appointments as Inspectors on a one-year contract or until selection by the FPSC. Later, their cases were referred to the Cabinet Sub-Committee for regularization. The matter was taken up by the said Committee on 31.05.2012 and approval for regularization was granted and communicated vide letters dated 18.07.2012 and 31.07.2012. Consequently, their services were regularized with immediate effect through a notification dated 05.10.2012 and a corrigendum dated 09.10.2012. Thereafter, a meeting of the Departmental Promotion Committee was held on 21.03.2018 to consider the promotion of Inspector (BS-16) to the post of Assistant Director (BS-17) against the posts reserved for the promotion quota. So, eight (8) individuals, including the petitioners, were found fit for promotion and a corresponding notification was issued on 30.03.2018. Meanwhile, the present respondents were appointed to BS-17 on the recommendation of the FPSC but after the petitioners' promotions, and were shown as junior to the petitioners in the seniority list issued on 05.09.2019. At the time the petitioners' services were regularized, the respondents were not in service; therefore, they could not challenge their regularization on any grounds of irregularity or illegality allegedly committed by the concerned authorities. The matter of regularization of the petitioners in BS-16 was a past and closed transaction and could not be challenged by outsiders who were inducted into service as direct recruits thereafter. The High Court failed to consider this important aspect of the matter and passed the impugned judgment in sheer violation of the law, which is therefore liable to be set aside. Hence, this petition.

Civil Petition No.1132 of 2023

In this petition, the petitioners assert that the Government of Pakistan created eighty-seven (87) temporary posts of various cadres, including four (4) posts of the Assistant Directors (BS-17) under the provincial quota, for the restructuring of the BE&OE. These posts were advertised in the Daily *Nawai-e-Waqt* and other newspapers on 30.09.2010. Following interviews conducted by the Departmental Selection Committee-1, the petitioners were offered appointments as Assistant Directors (BS-17) in the BE&OE on a one-year contract, which was subsequently extended from time to time. Later, upon the approval of the Cabinet Sub-Committee on Regularization, the Ministry of Human Resource Development regularized the services of the petitioners as Assistant Directors (BS-17) through a notification dated 17.10.2012, followed by another notification dated 02.11.2012, issued by the BE&OE. The petitioners further assert that the present respondents, who were directly recruited in BS-17 long after their regularization, could not challenge their regularization process. The High Court failed to take judicial notice of the relevant case law and the points raised before it, thereby violating the provisions of a fair trial under Article 10-A, read with Article 4 of the Constitution. Hence, this petition.

Civil Petition No.1133 of 2023

In this petition, the petitioners asserted that they both are presently serving as System Analysts (BS-18) and Deputy Director I.T. (BS-18) and both of them were regularized in 2012 after following a proper procedure of law through Khursheed Shah Committee and they are working without any lapse at their part and are performing their technical jobs with due diligence and having an unblemished record of more than eleven years. Both the above posts were published/advertised in the Daily *Nawai-e-Waqt* and others on 30.09.2010 and they applied for the said post after having fulfilled the requisite eligibility criteria. Following interviews conducted by the Departmental Selection Committee-1, the petitioners were appointed as System Analysts (BS-18) and Deputy Director I.T. (BS-18) in the BE&OE on a one-year contract, which was subsequently extended from time to time. Later, upon the

approval of the Cabinet Sub-Committee on Regularization, the Ministry of Human Resource Development regularized their service through a notification dated 17.10.2012, followed by another notification dated 02.11.2012, issued by the BE&OE. The High Court failed to consider the above important aspect of the matter and passed the impugned judgment in sheer violation of the law, which is therefore liable to be set aside. Hence, this petition.

Civil Petition No.1134 of 2023

The version of the petitioners in this petition is that during the restructuring of the BE&OE, and based on the recommendations of the Management Services (MS) Wing of the Establishment Division, several posts in different cadres were created in 2010, as per a sanction letter dated 20.07.2010. These newly created posts were advertised for appointment on a contract basis in various newspapers. The petitioners applied in response to the advertisement and they, after the recruitment and selection process, were appointed on a contract basis. The Cabinet Sub-Committee on Regularization of Contract Employees considered the cases of the petitioners and approved their regularization in its meeting held on 31.05.2012, as reflected in the minutes of the meeting dated 18.07.2012 followed by a notification issued on 05.10.2012. Subsequently, they were promoted to the position of Assistant Director through notifications dated 30.03.2018 and 08.01.2019 and they continue to serve in this capacity.

On the other hand, the respondents were appointed on 24.08.2016 and 21.12.2018 by the BE&OE, approximately 5 to 7 years after the petitioners. After their appointment, a dispute regarding *inter-se seniority* arose, leading the respondents to file a petition against the petitioners. The petitioners further assert that the respondents, who were directly recruited into BS-17 long after their regularization, could not challenge their regularization in BS-17. The High Court failed to take judicial notice of the relevant case law and the points raised before it, thereby violating the provisions of a fair trial under Article 10-A, read with Article 4 of the Constitution. Hence, this petition.

5. The respondent No.6 (Secretary, Ministry of Overseas Pakistanis & Human Resources Development) and the respondent No.8 (The Prime Minister Secretariat, through Principal Secretary, Islamabad) in CPLA 949 of 2023 supported the impugned judgment by filing a concise statement as C.M.A. No. 2492 of 2024 and prayed for the dismissal of the petitions. They further apprised this Court that the concerned Ministry, in compliance of the impugned judgment, has already forwarded the cases of the petitioners to the FPSC vide a letter dated 31.05.2023. At the same time, these respondents also supported the stance of the petitioners that, following the creation of eighty-seven (87) temporary posts by the President of Pakistan for restructuring the BE&OE, an advertisement was published in the *Daily Nawai-e-Waqt* and other newspapers on 30.09.2010 and 01.10.2010, inviting applications for these positions. A Departmental Selection Committee was constituted in accordance with the law, and the recruitment rules were revised after approval from the FPSC. Following interviews and the approval of the Departmental Selection Committee's recommendations by the Competent Authority, the petitioners were appointed on a contract basis for one year. Further, in order to justify the regularization of the petitioners, they (respondent No.6 & 8) avowed that at the time of the petitioners' regularization, the private respondents were not eligible for promotion to BS-18 in terms of length of service. Similarly, the respondent No.7 (Federal Public Service Commission) also supported the impugned judgment by filing a concise statement as C.M.A. No. 7637 of 2023 and prayed for the dismissal of the petitions.

6. Conversely, the private respondents took the version that according to S.R.O. No. 290(I)/88 dated 20.04.1988, issued by the Ministry of Labour, Manpower & Overseas Pakistanis, it is abundantly clear that the posts of higher ranks, i.e. Director General, Director, and Deputy Director, are to be filled through promotion. In contrast, the posts of Assistant Directors and below are to be filled through initial recruitment and promotion. Similarly, under the Federal Service Commission Ordinance, 1977 ('FSCO'), all the Ministries/Divisions and their attached departments are required to submit cases of all contract

appointments/re-employments beyond two years against civil posts in BS-16 to BS-20. Moreover, appointments on a contract basis and subsequent regularization are contrary to the Civil Servants (Appointment, Transfer & Promotion) Rules, 1973, under which appointments in BS-16 and above are the sole prerogative of the FPSC. The posts excluded from the purview of the FPSC are listed in the schedule annexed to the Federal Public Service Commission (Functions) Rules, 1978. However, in blatant disregard of the aforementioned laws, the petitioners were regularized in BS-16 to BS-18. The petitioners are the product of the Cabinet Sub-Committee, whose formation is patently illegal. The appointments of the petitioners represent the worst examples of political affiliation, nepotism, favoritism, and undue influence. The actions and orders of the official respondents are illegal and unlawful, lacking any legal sanctity; therefore, the appointments of the petitioners should be set aside accordingly.

7. We have heard the arguments on behalf of the parties and perused the relevant record. It has been found from the record that the petitioners in Civil Petition No. 949 & 1028 of 2023 were initially appointed on a contract basis as Deputy Director (BS-18); however, their services were regularized in view of impugned notification issued by the Ministry of Human Resource Development, Government of Pakistan. The said notification has been issued consequent upon the approval of the Sub-Committee of the Cabinet on Regularization of Contract Employees of the Federal Government Department/Organizations and the approval of the Cabinet Sub-Committee was conveyed vide Establishment Division's Office Memorandum No.3/5/2011-Admn.I dated 19.03.2012. This office memorandum dated 19.03.2012 circulated the minutes of the meeting of the Cabinet Sub-Committee dated 15.12.2011 regarding the regularization of the contract employees. In that meeting, the Cabinet Sub-Committee discussed and approved the regularization of the twenty-five (25) contract employees of the BE&OE. Later on, the Ministry of Human Resource Development issued Notification No.3-16/2011-Emig-I dated 04.05.2012 regarding the regularization of those twenty-five (25) employees of the BE&OE and the same was circulated by the BE&OE vide Notification No.BE(Admn-Estt)1(49)/2007 dated

18.05.2012. However, the names of the petitioners (Mohsin Raza Gondal and Omer Saleem Cheema) were not mentioned in the list of those twenty-five (25) employees who were recommended for regularization by the Cabinet Sub-Committee. Later on, the Cabinet Sub-Committee in its meeting held on 31.05.2012 recommended all the petitioners including the petitioners in CPLA No.949 & 1028 for regularization of their services (pages 92-93 of CPLA 949 of 2023).

8. It is worth mentioning here that the Federal Government, through Office Memorandum No. 10/30/2008-R-II dated 29.08.2008, provided policy guidelines for the regularization of all employees working on a contract basis against posts in BS-1 to BS-15 in Federal Ministries, Divisions, Attached Departments, Subordinate Offices, Autonomous Bodies, Semi-Autonomous Bodies, and Corporations. Surprisingly, the Cabinet Sub-Committee in its meeting dated 25.01.2011 on its own decided that the cases of contract employees of BS-16 and above may be submitted to the committee for regularization of their services through Cabinet decision instead of FPSC. Whereas, the respondent No. 5 (Secretary, Cabinet Division), in a concise statement filed as C.M.A. No. 7410 of 2024, submitted that after the issuance of the above policy guidelines, no amendment to the policy was sought from the Cabinet, and the above policy remained in effect at the time of the petitioners' regularization. The decision of the Cabinet Sub-Committee in its meeting on 25.01.2011, that cases of BS-16 and above should be submitted to it, appears to violate the policy guidelines for regularization issued by the Federal Government. As, the Cabinet Sub-Committee recommended the regularization of the petitioners in BS-16 to BS-18, the primary question that needs to be addressed is that under which authority of law, the Cabinet Sub-Committee was justified to pass such recommendations especially when the Federal Government took the stance that the Cabinet Sub-Committee was mandated to consider the regularization of the service of the contract employees in BS-1 to BS-15 only.

9. There is no doubt that the regularization of a contractual employee constitutes a fresh appointment into the stream of regular appointments in civil services as observed by this

Court in the case of the Province of Punjab through Secretary Livestock and Dairy Development Department, Government of the Punjab, Lahore and others v. Dr. Javed Iqbal and others (2021 SCMR 767).

The differences between a contractual employee and a regular employee are material for both the employee and the employer and, *inter alia*, include **(i)** Duration of employment; a contractual employee is usually employed for a specific period or task, with a set end date. **(ii)** Benefits; contractual employees generally do not receive the same benefits or statutory protection as a regular employee. **(iii)** Scope of work; the contractual employee is engaged for a specific project or task. **(iv)** Flexibility; contractual employee often has more flexibility in terms of work hours and location. **(v)** Cost Considerations: a contractual employee can be less costly in the short term as it doesn't require benefits and other long-term financial commitments; and **(vi)** Risk Management; hiring regular employees is often a long-term commitment, so organizations opt for contractual workers to manage risks associated with fluctuating market demands.

10. So far as the law regulating the civil services is concerned, the Civil Servant Act, 1973 ('**SCA**') regulates the appointment of a person to the service of Pakistan and their terms and conditions. Whereas the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 ('**APT Rules**') framed under section 25 of the SCA regulate their method of appointment and promotion, etc. Its Rule 10 explicitly provides that initial appointment in BS-16 and above or equivalent, except those which under the Federal Public Service Commission (Function) Rules, 1978 do not fall within the purview of the FPSC, shall be made on the basis of tests and examinations to be conducted by the FPSC. Rule 11 provides that initial appointment to a post in basic pay scales 1 to 15 and equivalent, other than those mentioned in Rule 10 shall be made on the recommendation of the Departmental Selection Committee after the vacancies have been advertised in newspapers. Rule 12 mandates that the candidates for initial appointment to a post must possess the prescribed educational qualifications and experience and that he or she must be within

the age limit, except if otherwise provided in the rules framed for the purposes of relaxation thereof.

11. It is noted with great importance that the sub-rule (2) of rule 3 of the APT Rules provides that the method of appointment and the qualifications and other conditions applicable to a post shall be as laid down by the Ministry or Division concerned in consultation with the Establishment Division. This rule empowers a Ministry or Division to formulate or establish its own method of appointment and qualifications for posts within that Ministry or Division; however, such method must align with the Constitutional mandate and the general law on the subject. Thus, the Ministry of Labour, Manpower & Overseas Pakistanis, in the exercise of the powers conferred under the above rules, issued an S.R.O. No. 290(I)/88 dated 20.04.1988 and provided a complete method of appointment and promotions of their employees. It provides that the posts of higher ranks, i.e. Director General (BS-20), Director (BS-19), and Deputy Director (BS-18) are to be filled through promotion. In contrast, the posts of Assistant Directors (BS-17) and below are to be filled through initial recruitment and promotion. Clause 2(2) of the S.R.O. provides that if no person is found suitable for promotion to the post(s) reserved for promotion, such post(s) shall be filled by initial appointment, and if that fails, by transfer. The S.R.O. does not provide for filling these posts through regularization. This is because the Ministry was fully aware of the aforementioned service law, which clearly states that posts in BS-16 and above must be filled through test and examination by the FPSC. In the given circumstances, the Ministry's position that the petitioners were regularized because there was no suitable employee for promotion to posts in BS-16 and above carries no legal weight and cannot justify an illegal against the law. However, in such a situation, an eligible person could have been appointed through initial recruitment on the recommendation of the FPSC.

12. Article 242 of the Constitution provides the mechanism for the appointment of a Civil Servant through the Public Service Commission. This Article is a safety valve that ensures the transparent process of induction in the Civil Service. It provides appointment by the Public Service Commission with the

sole object that meritorious candidates join the Civil Service. Similarly, rule 10 of APT Rules explicitly provides that initial appointment in BS-16 and above or equivalent, except those which under the Federal Public Service Commission (Function) Rules, 1978 do not fall within the purview of the FPSC, shall be made on the basis of tests and examinations to be conducted by the FPSC. Undoubtedly, the posts on which the petitioners were regularized are not excluded from the purview of the FPSC, as outlined in the schedule annexed to the Federal Public Service Commission (Functions) Rules, 1978. In view of this legal position, the Ministry was required to request the FPSC to conduct tests and examinations for the recruitment of persons to the posts in BS-16 and above, instead of proceeding with the regularization of the petitioners.

13. Article 90 of the Constitution provides that the executive authority of the Federation shall be exercised in the name of the President by the Federal Government, which includes the Prime Minister and Federal Ministers but the said authority has to be exercised subject to the Constitution. It means that whenever the authority is exercised, it has to be within the limits prescribed by the Constitution. Article 90 of the Constitution is reproduced here under: -

“90. The Federal Government.--- (1) Subject to the Constitution, the executive authority of the Federation shall be exercised in the name of the President by the Federal Government, consisting of the Prime Minister and the Federal Ministers, which shall act through the Prime Minister, who shall be the Chief Executive of the Federation.

(2) In the performance of his functions under the Constitution, the Prime Minister may act either directly or through the Federal Ministers.”

The Cabinet is a component of the Federal Ministers and Advisers who are appointed under Article 91 of the Constitution which reads as under: -

“91. The Cabinet.--- (1) There shall be a Cabinet of Ministers, with the Prime Minister at its head, to aid

and advise the President in the exercise of his functions."

Under Article 99(2) of the Constitution, the Federal Government is obliged to specify the manner by rules in which orders and other instruments are to be made and executed which is reproduced as under:-

'99. Conduct of business of Federal Government. -

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(1)

(2) The (Federal Government) shall by rules specify the manner in which orders and other instruments made and executed (in the name of the President) shall be authenticated, and the validity of any order or instrument so authenticated, and the validity of any order or instrument so authenticated shall not be questioned in any court on the ground that it was not made or executed by the President.'

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. As, the Cabinet Sub-Committee lacks the authority to recommend the regularization of posts in BS-16 and above, therefore, any recommendation by the Cabinet Sub-Committee to regularize appointments in BS-16 and above is *void ab initio* and without any lawful authority. We believe it is our duty to protect rights and interests established under the law and to prevent the enjoyment of rights created under an invalid law or through the misuse of legal authority. Reference may be made to the case of Shahid

Pervaiz v. Ejaz Ahmad and others (2017 SCMR 206). In this backdrop, any action that is *void ab initio* and without lawful authority cannot be protected under the doctrine of a '*past and closed transaction*,' as vehemently argued by the petitioners. The High Court, in recognizing this legal principle, correctly declared that the appointments of the petitioners were not made in accordance with the law and referred their cases to the FPSC.

14. Even otherwise, any institution opting for regularization of its employees must be either mandated by law or must carry out regularization through a well-thought-out policy of the institution concerned laying down the criteria and the process for regularization; performance evaluation of the contractual employee must be assessed to determine if the employee meets the standards required for a regular position; 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. Reference in this regard may be made to the cases of Federation of Pakistan through Secretary, Ministry of Law and Justice Islamabad and another v. Fazal-e-Subhan and others (PLD 2024 SC 515); Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others v. Sher Aman and others (2022 SCMR 406); and Messrs State Oil Company Limited v. Bakht Siddique and others (2018 SCMR 1181). In the instant case, the regularization process of the petitioners lacks the backing of law, rules, or policy. In the absence of any of the same, an employee cannot claim regularization.

15. We are constrained to observe here that appointments in the public sector based on corruption, nepotism, favoritism, lack of due process, and misuse of authority have long been a significant issue in our society. These practices undermine the principles of fairness and equality, eroding public trust in governmental institutions. When positions are filled not on merit but through personal connections or corrupt practices, it not only deprives deserving candidates of opportunities but also weakens the overall efficiency and integrity of the public sector. This Court

has repeatedly stressed the need for transparency, merit, and open competition in public sector employment. Upholding these values is essential for fostering a system where the most qualified individuals serve, ensuring that public resources are utilized effectively and justly for the benefit of all.

Without adherence to these principles, the public sector risks becoming a tool for the powerful rather than a service for the people, perpetuating cycles of inequality and inefficiency. Therefore, it is imperative that the recruitment and promotion processes in the public sector be conducted with the highest standards of fairness and accountability, free from any undue influence or bias.

16. Foregoing in view, it is concluded that the High Court correctly understood the controversy at hand and made a well-founded decision based on the relevant laws on the issue. In its thorough analysis of the relevant law and available facts, the High Court has arrived at a sound and reasoned conclusion that is both legally sound and just. We have noted that the High Court has already extended extraordinary relief by referring the cases of the petitioners to the FPSC with a direction to determine their fitness and eligibility under the law. Substantial justice has been done in this case; therefore, no need for further interference or reconsideration by this Court.

17. For the reasons above, the leave is refused and the petitions are dismissed. No order as to costs.

Judge

Judge

Judge

Announced in open Court
on 13th September, 2024 at Islamabad

APPROVED FOR REPORTING

*Ghulam Raza/**

Table ‘A’

Intra Court Appeal No.514 of 2015

Sr. No.	Appellant(s)		Respondent(s)
1.	Safdar Mahmood, Deputy Director, Protectorate of Emigrants, Islamabad.	1.	Federation of Pakistan, through Secretary Establishment Division, Islamabad.
2.	Gul Akbar, Deputy Director, Protectorate of Emigrants, Islamabad.	2.	The Secretary Cabinet Division, Islamabad.
3.	Kamran Munir Bhatti, Deputy Director, Protectorate of Emigrants, Islamabad.	3.	The Secretary, Ministry of Overseas Pakistanis & Human Resource Development, Islamabad.
		4.	The Federal Public Service Commission, Islamabad.
		5.	The Prime Minister Secretariat, through Principal Secretary, Islamabad.
		6.	Mohsin Raza Gondal, Deputy Director Law, Emigration Tower, Islamabad.
		7.	Ahmed Faisal Hassan Khan, Deputy Director Budget & Accounts, Protectorate of Emigrants, Islamabad.
		8.	Omer Saleem Cheema, Deputy Director Research, Emigration Tower, Islamabad.

Table ‘B’

Writ Petition No.2024 of 2020

Sr. No.	Petitioner (s)		Respondent(s)	
1.	Ahmer Waheed Sadiq, Assistant Director (BS-17)	1.	Federation of Pakistan, through Secretary Establishment Division, Islamabad.	
2.	Ayesha Nawaz, Assistant Director (BS-17)	2.	The Secretary, Ministry of Overseas Pakistanis & Human Resource Development, Islamabad.	
3.	Muhammad Ali Raza, Assistant Director (BS-17).	3.	Director General Bureau of Emigration & Overseas Employment, Emigration Tower, Islamabad.	
4.	Aamir Khan, Assistant Director (BS-17).	4.	Mohsin Raza Gondal, Deputy Director Law (BS-18), Emigration Tower, Islamabad.	Petitioners in CPLA No.949 & 1028 of 2023
5.	Muhammad Amin, Assistant Director (BS-17).	5.	Omer Saleem Cheema, Deputy Director Research (BS-18), Emigration Tower, Islamabad.	
6.	Sehrish Fasih Kiani, Assistant Director (BS-17).	6.	Furqan Ali Qureshi, System Analyst (BS-18).	Petitioners in CPLA No.1133 of 2023
7.	Amina Amin, Assistant Director (BS-17).	7.	Shahid Hussain, Deputy Director (BS-18).	
8.	Muhammad Hanan Raza, Assistant Director (BS-17).	8.	Kamran Nawaz, Assistant Director (BS-17).	Petitioners in CPLA No.1132 of 2023
9.	Muhammad Ahmed, Assistant Director (BS-17).	9.	Zulfiqar Ali Sheikh, Assistant Director (BS-17).	
10.	Muhammad Ali Haider, Assistant Director (BS-17).	10.	Malik Zaheer ud Din, Assistant Director (BS-17).	
11.	Maria Ishaq, Assistant Director (BS-17).	11.	Sania Khawaja Khel, Assistant Director (BS-17).	
12.	Syed Safdar Ali Shah, Assistant Director (BS-17).	12.	Saddarudin Sheikh, Assistant Director (BS-17).	Petitioners in CPLA No.1134 of 2023
13.	Mazhar Ali Qamar, Orientation & Briefing Officer (BS-16).	13.	Muhammad Ali Solangi, Assistant Director (BS-17).	
14.	Mudassar Ali, Orientation & Briefing Officer (BS-16).	14.		
15.	Atiq ur Rehman, Orientation & Briefing Officer (BS-16).	15.	Muhammad Usman, Assistant Director (BS-17).	
16.	Muhammad Ikram, Inspector.	16.	Sheyeq Islam, Assistant Director (BS-17).	
		17.		
		18.		
		19.	Azad Ali Korai, Assistant Director (BS-17).	
		20.	Muhammad Israr, Assistant Director (BS-17).	
		21.		
		22.	Muzamil Hussain Bhutto, Inspector (BS-16).	

		23.	Yashir Ashfaq, Inspector (BS-16).	
		24.	Munawar Ali, Inspector (BS-16).	
		25.	Adeeba Saleem, Inspector (BS-16).	
		26.	Raja Avinash, Inspector (BS-16).	
		27.	Maharang Iqbal, Orientation & Briefing Officer (BS-16).	
		28.	Zanobia Saleem, Orientation & Briefing Officer (BS-16).	
		14.	Syed Ijlal Haider Shah, Assistant Director (BS-17).	Petitioners in CPLA No.1025 of 2023
		17.	Ashfaq ur Rehman, Assistant Director (BS-17).	
		18.	Syed Arbab Shah, Assistant Director (BS-17).	
		21.	Waseem Jamal Assistant Director (BS-17).	