

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Yahya Afridi

Civil Appeals No.864 to 872 of 2017 and
Civil Appeals No.1090 to 1116 & 1059 to 1075 of 2019 and
Civil Petitions No.324 to 334, 430 & 431 of 2019 and
Civil Petitions No.2853 of 2016 & CMA No.5767 of 2016 and
Civil Petitions No.2104 to 2109 & 2980 to 3006 of 2019 and
CMAs No.5918 to 5926 of 2016

(on appeal against the judgment of Federal Service Tribunal, Islamabad, dated 10.05.2016, 18.10.2018, 06.08.2018, 28.11.2018, 23.05.2016, 27.03.2019 & 08.05.2019 passed in Appeals No.68 to 76(R)CS of 2013 and 4322 to 4334, 4654 to 4658 & 4406 to 4414(R)CS of 2017 and 868 to 884(R)CS of 2016 and 1465 to 1467, 1469 to 1472, 1474 to 1477, 1468 & 1473 (R)CS of 2016 and 1402(R)CS/2013 and 58 to 63(R)CS of 2017 and 4040 to 4060 & 4303 to 4308(R)CS of 2017)

Divisional Superintendent, Pakistan Railways, Rawalpindi & others *(in C.A.864 to 872 of 2017 & C.P.2853/2016)*

General Manager/ Chief Executive Officer, Lahore, Pakistan Railways and another *(in C.A.1090 to 1116 of 2019)*

Managing Director Pakistan Railways, Carriage Factory, Islamabad & another *(in C.P.324 to 334, 430 & 431 of 2019)*

Chairman Pakistan Railway, Islamabad & another *(in C.P.2104 to 2109 of 2019 & C.P.2980 to 3006 of 2019)*

General Manager Personnel (CPO) Pakistan Railways, HQ, Lahore & another *(in C.A. 1059 to 1075 of 2019)*

General Manager M & S, Pakistan Railways, Islamabad & another *(in C.P.3368, 3460 & 3461 of 2018)*

...Appellants/Petitioners

Versus

Syed Usman Ali	<i>(in C.A.864/2017)</i>
Waqar Muhammad	<i>(in C.A.865/2017)</i>
Muhammad Waqas	<i>(in C.A.866/2017)</i>
Aqil Mumtaz	<i>(in C.A.867/2017)</i>
Khurram Shahzad	<i>(in C.A.868/2017)</i>
Rizwan Shah	<i>(in C.A.869/2017)</i>
Usman	<i>(in C.A.870/2017)</i>
Faisal Shahzad	<i>(in C.A.871/2017)</i>
Attique Hassan	<i>(in C.A.872/2017)</i>
Muhammad Kashif	<i>(in C.A.1090/2019)</i>
Abid Hussain	<i>(in C.A.1091/2019)</i>
Muhammad Abu Bakr	<i>(in C.A.1092/2019)</i>
Muhammad Azhar	<i>(in C.A.1093/2019)</i>

Muhammad Asif Shehzad	(in C.A.1094/2019)
Abdul Rehman	(in C.A.1095/2019)
Zafar Abbas	(in C.A.1096/2019)
Muhammad Tanveer Alam	(in C.A.1097/2019)
Saif ur Rehman	(in C.A.1098/2019)
Asif Rehman	(in C.A.1099/2019)
Ashiq Hussain	(in C.A.1100/2019)
Muhammad Akbar	(in C.A.1101/2019)
Muhammad Kashif	(in C.A.1102/2019)
Muhammad Imran	(in C.A.1103/2019)
Muhammad Shahbaz	(in C.A.1104/2019)
Muhammad Rafique	(in C.A.1105/2019)
Allah Ditta	(in C.A.1106/2019)
Muhammad Bukhsh	(in C.A.1107/2019)
Mushtaq Ahmed	(in C.A.1108/2019)
Muhammad Sharif	(in C.A.1109/2019)
Faisal Iqbal	(in C.A.1110/2019)
Muhammad Shabbir	(in C.A.1111/2019)
Asif Hussain Tariq	(in C.A.1112/2019)
Muhammad Sajjad	(in C.A.1113/2019)
Muhammad Saeed Ahmed	(in C.A.1114/2019)
Bashir Ahmed	(in C.A.1115/2019)
Muhammad Awais	(in C.A.1116/2019)
Rizwan Ahmed	(in C.P.324/2019)
Nasir Khan	(in C.P.325/2019)
Syed Nazakat Shah	(in C.P.326/2019)
Yasir Zaman	(in C.P.327/2019)
Islam Akhtar	(in C.P.328/2019)
Muhammad Irfan	(in C.P.329/2019)
Muhammad Liaqat	(in C.P.330/2019)
Sultan Mehmood	(in C.P.331/2019)
Irfan Rashid	(in C.P.332/2019)
Khan Bahadur Khan	(in C.P.333/2019)
Muhammad Azam	(in C.P.334/2019)
Irshad Qamar	(in C.P.430/2019)
Muhammad Ramzan	(in C.P.431/2019)
Muhammad Tariq	(in C.A.1059/2019)
Muhammad Tariq	(in C.A.1060/2019)
Manzoor	(in C.A.1061/2019)
Ghulam Sarwar	(in C.A.1062/2019)
Allah Dad	(in C.A.1063/2019)
Sahab Khan	(in C.A.1064/2019)
Abdul Razzaq	(in C.A.1065/2019)
Muhammad Altaf	(in C.A.1066/2019)
Muhammad Rafique	(in C.A.1067/2019)
Mian Khan	(in C.A.1068/2019)
Rehmat Din	(in C.A.1069/2019)
Fahim Sadiq	(in C.A.1070/2019)
Sabir Mehmood	(in C.A.1071/2019)
Ghulam Tanveer	(in C.A.1072/2019)
Abdul Ghafoor	(in C.A.1073/2019)
Amjad Mahmood	(in C.A.1074/2019)
Muhammad Yaqoob	(in C.A.1075/2019)

Khalid Mehmood & another	(in C.P.2853/2016)
Riaz Ahmed	(in C.P.2104/2019)
Muhammad Hafeez	(in C.P.2105/2019)
Syed Kafayat Hussain Shah	(in C.P.2106/2019)
Zakaullah Nasir	(in C.P.2107/2019)
Muhammad Shahid Hamid	(in C.P.2108/2019)
Abid Hussain	(in C.P.2109/2019)
Ashiq Hussain	(in C.P.2980/2019)
Fida Hussain	(in C.P.2981/2019)
Muhammad Yousaf	(in C.P.2982/2019)
Muhammad Razzaq	(in C.P.2983/2019)
Babar Ali	(in C.P.2984/2019)
Mazhar Abbas	(in C.P.2985/2019)
Malik Qasim Raza	(in C.P.2986/2019)
Muhammad Shaukat	(in C.P.2987/2019)
Munir Ahmed	(in C.P.2988/2019)
Muhammad Ismail	(in C.P.2989/2019)
Nasir Hussain	(in C.P.2990/2019)
Zahid Hussain	(in C.P.2991/2019)
Shaukat Hussain	(in C.P.2992/2019)
Allah Bakhsh	(in C.P.2993/2019)
Sabir Hussain	(in C.P.2994/2019)
Arshad Hussain	(in C.P.2995/2019)
Muhammad Fayyaz	(in C.P.2996/2019)
Khalid Hussain	(in C.P.2997/2019)
Muhammad Nasir	(in C.P.2998/2019)
Muhammad Asim	(in C.P.2999/2019)
Muhammad Siddique	(in C.P.3000/2019)
Muhammad Zulfiqar	(in C.P.3001/2019)
Ghulam Yasin	(in C.P.3002/2019)
Riaz Hussain	(in C.P.3003/2019)
Muhammad Yar	(in C.P.3004/2019)
Muhammad Akram	(in C.P.3005/2019)
Muhammad Ramzan	(in C.P.3006/2019)

...Respondents

For the appellants:	<p>Hafiz Hafiz ur Rehman, ASC Mr. M.A. Sheikh, AOR <i>(in C.A.864-872/2017, 1059-1075/2019 & 2853/2016)</i></p> <p>Mr. Jawad Mahmood Pasha, ASC <i>(in C.A.1090-1116, 324-334, 430-431, 2104-2109 & 2980-3006 of 2019)</i></p>
For Pakistan Railways: <i>(on Court's notice)</i>	<p>Mr. Ijaz Buriro, CEO/GM Mr. Sufian Dogar, CPO Mr. Salman Kazmi, Legal Directorate</p>
For the respondents:	<p>Mr. Zulfiqar Ahmed Bhutta, ASC Syed Rifaqat Hussain Shah, AOR <i>(in C.A.864-872/2017)</i></p>

Mr. Zulfiqar Khalid Malooka, ASC
(In C.P.2853/2016)

N.R.
(In C.A.1091-1116 & 1059 to 1075 of 2019 and
C.P.2104-2109, 325, 326 & 329-331 of 2019)

Dates of hearing: 7th & 8th October, 2019

JUDGMENT

Syed Mansoor Ali Shah, J.- Respondents who were working as daily-wagers or on Temporary Labour Appointment ("TLA") for Pakistan Railways, were regularized in terms of Regularization Policy dated 20.02.2012, with immediate effect. The claim of the respondent employees is that they ought to have been regularized from the date of their initial appointment i.e., 2006/2007.

2. The question before this Court is to identify the Regularization Policy announced and adopted by Pakistan Railways which is applicable to the case of the respondents. It is an admitted position that the respondents were appointed as daily-wagers/TLAs in the year 2006/2007. The Chief Executive Officer of Pakistan Railways alongwith Human Resource Head tendered appearance and have filed all the Regularization Policies announced or approved by Pakistan Railways. It is important to reproduce these policies in a chronological order;

i. Regularization Policy, 1985 (dated 21.04.1985)

"PAKISTAN RAILWAYS,
HEADQUARTERS OFFICE, LAHORE

No:- 831-E/132-XIV(E.Policy)

Dated:-21-4-1985

All Divisional Superintendents,

(including D.S"W" Moghalpura & Extra Divisional Offices, Pakistan Railways.

REGULARIZATION OF SERVICES OF WORKERS APPOINTED ON ADHOC BASIS/SUBSTITUTES.

It has been decided that all the (Workers) who were appointed on adhoc basis or as substitutes against permanent posts and have been working for more than One year be absorbed on regular basis.

2. The services of such staff will be regularized from the dates they were originally appointed to the posts and one day breaks, if any, made after three months services, will be recouped by grant of leave due.

3. The formalities of placing requisitions through employment Exchange, advertisement etc are dispensed with.

4. Their services may be regularized through properly Constituted Selection Committee of the appropriate level.

This issues with the approval of the competent authority.

Sd/-
for General Manager (Personnel)"

ii. Regularization Policy, 2000 (dated 08.05.2000)

“PAKISTAN RAILWAYS
HEADQUARTERS OFFICE
LAHORE

No.831-E/132-XVI(E.Policy) Dated:08.05.2000

The Additional General Managers, The Deputy General
IBU, PBU & FBU, Managers, Pakistan Railways,
Pakistan Railways, Headquarters Office,
Headquarters Office, LAHORE.
LAHORE.

All Divisional Superindents,
Including DS/W/Moghalpura,
Pakistan Railways.

REGULARIZATION OF ADHOC/TEMPORARY EMPLOYEES

Please refer to Joint Secretary/Tech:, Ministry of Railways, Islamabad's letter No.1(4)/2000(E.I) Dated 07.04.2000 addressed to all Divisional Superintendents with endorsement to the General Manager (Operations) and Director Vigilance, P.R.HQ.Office, Lahore, on the above subject. The Ministry has observed that Divisional Superintendents have

regularized the services of the TLA Staff against the instructions issued for regularization of the employees engaged after cut of date.

In this context, attention is invited to this office letters No.831-E/132-XV(E.Policy) Dated 04.08.1999 and 28.08.1999 wherein it was categorically directed that services of adhoc employees and substitutes appointed upto 26.12.1992 who meet the laid down conditions for regularization of adhoc and substitute employees only on the Pakistan Railways be regularized through duly constituted selection committees no such instructions for regularization of the services of TLA staff have been issued by this office.

The competent authority has, therefore, directed that regularization of such staff employed after cut off date may be withdrawn. Ministry has also requested the Director/Vigilance for investigation of such cases where irregularity of regularization of ineligible staff was committed by the Divisions and submit report within one month.

It is, therefore, requested to please furnish details of such irregularity, if committed, otherwise a certificate be given that no such irregularities have been made which may be furnished by 15th May, 2000 by return FAX.

Sd/-
(ANJUM TALAT)
For General Manager/Personnel"

iii. Regularization Policy, 2008 (dated 14.01.2008)

"PAKISTAN RAILWAYS
HEADQUARTERS OFFICE ICE LAHORE

From: G. M/DPC. To: The Managing Director/
Pakistan Railways
Islamabad

Quote Ref. No. 803-E/7-4-X/1 (APO_IV) Dated 14/1/2008.

Sub:- REGULARIZATION OF SERVICES OF FORMER CLASS-IV STAFF
ENGAGED ON TLA-DIRECTIVES OF HONOURABLE FEDERAL
MINISTER FOR RAILWAYS.

Ref:- Your letter No.220-E/Regularization/TLA dated 17-12-07.

The matter was examined by the competent authority and held that the target date for regularization of temporary staff is 8-9-07 as such the staff who have completed 3 years TLA Service on that date will

be considered for regularization w.e.f. 8-9-07 and not from the date of their initial appointment. Similarly the TLA former Class-IV staff selected as Trade Apprentice or appointed on regular basis will be considered regularized from their actual date of regularization instead of their initial appointment.

Sd/-
(MUHAMMAD ALAM)
for General Manager/Personnel"

iv. Regularization Policy, 2012 (dated 20.02.2012)

**"GOVERNMENT OF PAKISTAN
MINISTRY OF RAILWAYS
(RAILWAYS BOARD)**

No.14(8)/05-E-11(Vol.III)

Islamabad, 20th February, 2012

- | | |
|---|---|
| 1 General Manager/Operations, Pakistan Railways, Headquarters Office, <u>Lahore.</u> | 2 General Manager/M&S, Pakistan Railways, Headquarters Office, <u>Lahore.</u> |
| 3 General Manager/Development, Pakistan Railways, Headquarters Office, <u>Lahore.</u> | 4 The Chief Personnel Officer, Pakistan Railways, <u>Lahore.</u> |
| 5 M.D/Locomotive Factory Pakistan Railways, <u>Risalpur.</u> | 6 Managing Director/CSF, Pakistan Railways, <u>Lahore.</u> |
| 7 The Inspector General Police, Pakistan Railways, <u>Lahore.</u> | |

Subject: REGULARIZATION OF CONTRACTUAL AND DAILY WAGE WORKERS.

I am directed to refer to this Ministry's letter of even number dated 18-01-2012 on the above subject under which following eligibility criteria as per direction of the Cabinet Committee on regularization of Contractual and Daily Wage Workers has been circulated. Accordingly, employees meeting the eligibility criteria should be regularized with immediate effect as per following procedure already notified on 18-01-2012. (reproduced below)

A) "Contractual Employees:

All contractual employees who have completed at least one year of uninterrupted contractual appointment as on December 31, 2011 are to be regularized except the following:

- i. Contractual employees working against project posts;
- ii. Contractual employees working against posts that are to be filled through the Federal Public Service Commission, and
- iii. Contractual employees who do not possess the prescribed qualifications and eligibility criteria for the posts they have been appointed against.

B) Daily Wage Workers

All daily wage workers who have completed three consecutive terms of appointment of 89 days each as on December 31, 2011 are to be regularized with immediate effect except the following:

- i. Employees working against project posts
- ii. Employees, if any, working against posts that are to be filled through the Federal Public Service Commission, and
- iii. Employees who do not possess the prescribed qualifications and eligibility criteria for the posts they have been appointed against.

2. Orders of the competent authority should first be obtained for creation of posts to absorb employees to be regularized. Necessary action should please be taken immediately and a compliance report be submitted to the Ministry within 14 days positively.

3. Details of all contractual or daily wage employees not meeting the yardstick for regularization should be conveyed to this Ministry on the enclosed proforma within three week positively.

4. Case of contractual/daily wage employees working against regular posts to be filled through the Federal Public Service Commission should be dispatched to the Ministry on case-to-case bases with complete justification for regularization. It must also be ensured that no contractual or daily-wage employee who has crossed the date of superannuation is regularized.

5. The preceding instructions apply to all posts in BS-1 to BS-17 only."

2. All previous instructions/guidelines issued by this Ministry on the subject issue may be treated as superseded.

3. It is reiterated that all cases of regularization of Contractual and Daily Wage Workers may be finalized on emergent basis and a final report in the matter must be furnished to this Ministry within one week, positively.

4. This issues with the approval of competent authority.

**Sd/-
(GULZAR MUHAMMAD)
Director Establishment"**

3. Perusal of the above policies reveals that in 1985 all the workers who were appointed on adhoc basis or as substitutes against permanent posts for more than one year were absorbed on regular basis and their services were regularized from the date of their initial appointment to the posts. Thereafter, in the year 2000, it was reiterated that the applicability of Regularization Policy, 1985 was restricted to adhoc employees and substitutes appointed up to 26.12.1992. As the respondents were admittedly appointed in the years 2006/2007, Regularization Policy, 1985 was not applicable to them.

4. Thereafter, a fresh Regularization Policy was introduced in the year 2008, which was for the first time applicable

to temporary staff and required that the staff must have completed three years of service as TLA by 08.09.2007, when they were to be considered for regularization which would take effect from the date of the policy. This policy with a cut-off date of 08.09.2007 was not applicable to the respondents who were appointed in 2006/2007 and had not completed three years of service by 08.09.2007. Finally, Regularization Policy 2012, *inter alia*, provided for the regularization of daily-wage workers who had completed three consecutive terms of appointment of 89 days as on 31.12.2011 to be regularized with immediate effect. Pakistan Railways regularized the services of the daily-wagers/TLAs appointed in the years 2006/2007 under this policy with immediate effect. The said policy also provided in paragraph-2 that all previous instructions/guidelines issued by the Ministry on the subject may be treated as having been superseded.

5. The respondents were time and again asked to identify the Regularization Policy under which they seek regularization from the date of initial appointment. Their response has been largely evasive and have unconvincingly pointed towards the Regularization Policy, 1985 in support of their claim. It appears that respondents were not fully aware that the Regularization Policy of the year 1985 was modified and the said policy was restricted to the appointments of adhoc employees and substitutes appointed upto 26.12.1992, as reaffirmed in Regularization Policy, 2000 (above). It is also important to point out that the said policy did not strictly provide for regularization of daily-wagers or TLAs. Thereafter, the Regularization Policy for the year 2008 is also not

applicable to the current respondents as they were appointed in 2006/2007 and in order to avail the benefit of Regularization Policy, 2008 they had to complete three years of service by 08.09.2007 if they were to be considered for regularization under the policy. Therefore, the only policy available in the field which was applicable to the facts of the respondents was Regularization Policy, 2012 under which the respondents have already been regularized by the appellant. As the said policy is with immediate effect i.e., 20.02.2012, the respondents cannot claim the regularization from the date of initial appointment.

6. Learned counsel for the respondents tried to refer to general case law on regularization but could not cite a precedent that has discussed the above Regularization Policies announced or approved by Pakistan Railways.

7. We, therefore, find no illegality in the regularization of the respondents under Regularization Policy, 2012 from the date of regularization i.e., 20.02.2012. The impugned judgment is not sustainable and is, therefore, set aside.

8. For the above reasons, the listed appeals are allowed, whereas the listed petitions are converted into appeals and allowed accordingly.

9. In the end we wish to point out that during the course of hearing, we have noticed that Pakistan Railways could have dealt with this matter more ably and it is only after summoning the Chief Executive Officer and the Human Resource Head of Pakistan Railways that we are able to understand the scheme of the Regularization Policies. We hope that, in future, the Chief

Executive Officer will improve the quality of governance at Pakistan Railways so that such like litigation can be avoided or minimized.

Judge

Islamabad,
08th October, 2019
Not approved for reporting.
Sadaqat

Judge