

**IN THE SUPREME COURT OF PAKISTAN**  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE GULZAR AHMED, CJ  
MR. JUSTICE IJAZ UL AHSAN  
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**Civil Appeal No.1496 of 2019**

*Against judgment dated 05.10.2018 of Federal  
Service Tribunal, Islamabad, passed in Appeal  
No.256(R)CS of 2016.*

M/o Finance through Secretary, etc

**Appellant(s)**

**Versus**

Syed Afroz Akhtar Rizvi & others

**Respondent(s)**

For the Appellant(s):

Mr. Sohail Mehmood, Addl.AGP  
Khan Hafeez, JS, Fin. Div  
Abdul Ghaffar, SO, Fin. Div  
Sajid Javed, Legal Assistant, Fin. Div

For the Respondent(s):

Mr. M. Ramzan Khan, ASC  
Syed B. H. Shah, AOR a/w  
Respondent No.1 in person.

Date of Hearing:

12.07.2021

**ORDER**

**IJAZ UL AHSAN, J.-**

The appellant is aggrieved of a judgment of the Federal Service Tribunal, Islamabad (*"the Tribunal"*) dated 05.10.2018. Through the impugned judgment, while accepting a Service Appeal bearing No.256(R) CS of 2016 filed by Respondent No.1 (*Syed Afroz Akhtar Rizvi*) the Tribunal directed that his last drawn pay as contract employee would stand protected on his regularization/appointment on regular basis and the Appellant should provide

consequential/retirement benefits to him within a period of three months.

2. Briefly stated the facts necessary for decision of this Appeal are that Respondent No.1 was appointed as Data Entry Operator (BS-12) in National Educational Information Management System ("NEIMS") on 11.04.1992 on contractual basis. Subsequently, the employees of NEIMS were transferred to the Academy of Educational Planning & Management ("AEPM") and were regularized with effect from 01.07.2008. After regularization, the Respondent rendered services in AEPM and retired 8 years later. He submitted an application requesting that he may be regularized with effect from his initial appointment and his services from 11.04.1992 to 30.06.2008 be counted towards determination/fixation of his pensionary benefits. Such application was rejected by the Appellant. This prompted the Respondent to file an appeal which was allowed vide judgment dated 01.02.2017. The said judgment was challenged before this Court through CPLA No.1255 of 2017 which was converted into an appeal and allowed vide order dated 22.03.2018. The matter was remanded to the Tribunal for decision afresh. In post remand proceedings, the appeal of the Respondent was again allowed, vide impugned judgment dated 05.10.2018.

3. Leave to appeal was granted by this Court on 29.08.2018 *inter alia* in the following terms:-

*"Submits that the impugned judgment of the learned tribunal dated 05.10.2018 fails to apply the principle laid down in Chairman, Pakistan Railway, Government of Pakistan v. Shah Jahan Shah (PLD 2016 SC 534) and reproduced in the impugned judgment. The period of temporary service exceeding 5 years can be added towards the government service pension if he is otherwise entitled to pension. This principle contained in article 371-A of the Civil Service Regulations (CSR) has been affirmed in the aforementioned judgment. On the other hand, the respondent fails to satisfy the condition of article 371-A of CSR and is therefore not entitled to receive pension. Yet the Tribunal has awarded him that relief.:*

4. The learned Additional Attorney General for Pakistan appearing for the Appellant submits that the Respondent was appointed purely on temporary basis in NEIMS, his services were regularized on 18.08.2008 in AEPM which in essence was a fresh appointment. His application for grant of pensionary benefits was disallowed on the ground that he did not meet the criteria of qualifying service of 10 years. He maintains that the period from 1992 to 2008 cannot be counted for the purpose of determining qualifying service in view of the fact that qualifying service has to be performed in a Government Department and at least for a period of ten years. He further maintains that the Tribunal has misinterpreted and misapplied the provisions of CSR

352, 361 and 365 and has come to the conclusions which are patently erroneous. He relies on a judgment of this Court reported as Chairman, Pakistan Railway, Government of Pakistan v. Shah Jahan Shah (PLD 2016 SC 534) and submits that the Tribunal has totally misinterpreted the same. He further maintains that the Finance Division has issued policy guidelines vide Office Memorandum No.4(2)R-2/2014-237 dated 07.04.2015 for protection of pay of gazetted contract employees on their regularization/ employment on regular basis. As per para 1(v) of the said OM, the services rendered on contract basis do not qualify for pension/gratuity. He further submits that benefit of pay protection is admissible to the Respondent but pensionary benefits are not admissible for the contract period. However, pensionary benefits for regular service from the date of regularization are admissible to regular employees under the Rules.

5. The learned ASC for Respondent No.1 has defended the impugned judgment of the Tribunal. He maintains that admittedly the Respondent has rendered uninterrupted and continuous contractual service in NEIMS from 1992 to 2008. That being so, the said period which comes to around 15 years is liable to be counted towards his pensionary benefits and denial by the

Department to grant him the benefit of pension was patently illegal as had correctly been held so by the Tribunal. He further submits that the correct interpretation of CSR 352, 361 and 365 is that if a contractual employee who is subsequently regularized has rendered, in aggregate, service in excess of the qualifying service as defined in the Civil Service Rules, such employee is entitled to pensionary benefits. He also relies on the judgment of this Court in the case of Shah Jahan Shah (*supra*).

6. We have heard the learned Additional Attorney General Pakistan as well as learned ASC for Respondent No.1 and have examined the relevant provisions of Civil Service Regulations as interpreted by this Court from time to time. An analysis of the said provisions and judgments of this Court more specifically a relatively recent judgment of this Court in Shah Jahan Shah's case shows that the following general principles apply to employees who have worked against contractual posts which were subsequently converted into regular posts for the purpose of grant and calculation of pension:

- I. an employee who was employed on contractual basis and is subsequently regularized may be entitled to pensionary benefits provided;

- i) he is eligible for pension having served for the qualifying period (10 years) as a regular employee.
- ii) for the purpose of calculating pensionary benefits his service as a contractual employee can be factored in to provide him any financial benefit that may be due to him.
- iii) the period spent in employment as a contractual employee and as a regular employee cannot be aggregated in order to determine his eligibility for entitlement to pension.
- iv) eligibility to receive pension is directly related to rendering qualifying service as a regular employee. Unless an employee has performed services in a regular appointment for the duration of the qualifying period (10 years), he is not entitled to receive pension.

7. In case, an employee has served a Government Department for the duration of the period qualifying him to receive pension, the period spent as a contractual employee may be added to his regular qualifying service only and only for the purpose of calculating his pension and for no other purpose. The provisions of Article 371-A

of CSR start with a non obstante clause which means that the said Article does not relate to the question entitlement or eligibility to receive pension. It is clearly and obviously restricted to counting the period of a minimum of five years which has been rendered by a temporary contractual employee to be taken into account with the object of calculating the quantum of his pension and not more. The non obstante clause in Article 371-A of CSR does not allow those who do not fulfil the requisite conditions for qualifying for pension to bypass such conditions and add up regular and contractual periods of employment for the purpose of meeting the eligibility criterion of ten years of service. Such an interpretation would create absurd situations and would render other provisions and Articles of CSR redundant, unnecessary and surplus. We are therefore in no manner of doubt that Article 371 of CSR does not allow Government Servants rendering temporary service in a temporary establishment for more than 5 years to be entitled for grant of pension rather such period can be counted towards calculation of pension only if otherwise entitled to pension by meeting the criteria of qualifying service.

8. It is not disputed that the Respondent rendered continuous service from 1992 to 2008 as Data

Entry Operator in NIEMS. It is also not disputed that he was regularized in 2008 and retired in 2016 before meeting the criteria of qualifying service. That being so, the benefit of Article 371-A of CSR was not available to him as he did not qualify for the pensionary benefits which qualification is a necessary pre-requisite for grant of pension.

9. It may also be pointed out that the earlier view taken by a three member Bench of this Court in the case of Mir Ahmad Khan v. Secretary to Government & others (1997 SCMR 1477) was declared per incuriam in a five member judgment of this Court rendered in Shah Jahan Shah's case *ibid*. As such, the view consistently taken by this Court in a situation where the services of a contractual employee are converted into regular employment is that although the period spent in contractual employment subject to a minimum of five years can be included in calculating pensionary benefits but only and only in a situation where the employee is otherwise entitled/eligible to receive pension subject to having rendered qualifying service (10 years) in permanent employment. Unless he meets the criteria of having served for the duration of the qualifying period, the period spent in contractual employment cannot be added to make up for any deficiency in qualifying service



for the purpose of eligibility to receive pension. The Tribunal has clearly and obviously taken an incorrect and erroneous view of the law and has been unable to appreciate the essence and tenor of Shah Jahan Shah's case *ibid* which is an authoritative declaration of law on the subject by this Court. Reference of the Tribunal to selective portions of the aforementioned judgments are found to be out of context leading to incorrect and erroneous interpretation of the relevant principles of law. We therefore find that the impugned judgment of the Tribunal dated 05.10.2018 is unsustainable. It is accordingly set aside. Consequently, the listed appeal is allowed and the Service Appeal bearing No.265(R) of CS 2016 filed by Respondent No.1 (*Syed Afroz Akhtar Rizvi*) before the Tribunal is dismissed.

**Chief Justice**

**Judge**

**Judge**

**ISLAMABAD, THE**

12<sup>th</sup> of July, 2021

ZR/ \*

Not Approved For Reporting