

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE UMER ATA BANDIAL, HCJ  
MR. JUSTICE SAJJAD ALI SHAH  
MR. JUSTICE MUHAMMAD ALI MAZHAR

**CIVIL PETITION No. 4282 OF 2018**

(Against the judgment dated 08.10.2018  
Islamabad High Court, Islamabad, in W.P.  
No.4184 of 2014)

Faraz Ahmed

...Petitioner

**VERSUS**

Federation of Pakistan through Secretary,  
Ministry of Communications, Government  
of Pakistan, Islamabad and others.

...Respondents

For the Petitioner: Mr.G.M.Chaudhry, ASC

For the Respondents: N.R.

Date of Hearing: 28.02.2022

**JUDGMENT**

**MUHAMMAD ALI MAZHAR, J.** This Civil Petition for leave to Appeal is directed against the judgment dated 08.10.2018, passed by learned Islamabad High Court in W.P.No.4184 of 2014, whereby the Writ Petition filed by the petitioner was dismissed.

2. The tersely enunciated facts of this Civil Petition are as under:-

The petitioner was working as Upper Division Clerk (UDC) in Vigilance Directorate, Communications Division, Ministry of Communications and Railways, Government of Pakistan, Islamabad since 19.11.2001 on contract basis however his services were dispensed with effect from 01.06.2006. The petitioner assailed the termination before the learned Federal Service Tribunal, Islamabad which was abated in view of the judgment rendered by this Court in the case of *Muhammad Mubeen us Salam v. Federation of Pakistan, etc.* [PLD 2006 SC 602]. Consequently, the petitioner with some other persons had filed a joint Grievance Petition No.318 of 2006 in the Labour Court, Islamabad which was disposed of by means of a consolidated judgment with the observation that being contractual employees, contract period has already expired and establishment/vigilance Directorate has been wound up,

therefore, regularization of the services of the petitions could not be ordered. However, the petitioners, who are found suitable keeping in view the nature of job of the newly created Cell, would be considered for their absorption subject to the Rules. Since the Petitioner was not considered for regular absorption, he filed a Writ Petition No.4184 of 2014 in the High Court for implementation of Labour Court judgment which was dismissed vide impugned judgment dated 08.10.2018.

3. The learned counsel for the petitioner argued that the rules regarding relaxation of Upper Age Limit were applicable in the case of the petitioner for his permanent absorption in the Planning, Monitoring and Evaluation Cell. It was further contended that the petitioner approached the High Court by filing a Writ Petition for the implementation of the Judgment passed by the Labour Court for reappointment of the petitioner in the Planning, Monitoring and Evaluation Cell of Ministry of Communications following the winding up of the Vigilance Directorate of the same Ministry, but the learned High Court failed to consider that, in the light of Prime Minister's Directive dated 30.05.2006, the petitioner was within the prescribed age limit as provided in Rule 3 of the Initial Appointment to Civil Posts (Relaxation of Upper Age Limit) Rules, 1993 which allows relaxation of upper age limit up to 15 years. It was further averred that, at the time of re-advertisement of vacancies on 18.02.2007, the petitioner was within the prescribed age limit, but he was not considered for permanent absorption.

4. Heard the arguments. The sequence of events unveils that the petitioner was appointed vide Appointment Letter dated 12.4.2011 in the Vigilance Directorate, Ministry of Communication and Railways (Communication Division) as Upper Division Clerk (UDC) in BPS-7. The tenure of contractual engagement was made effective from 19.11.2001 till 31.12.2002 with the rider that the contract period may be renewed. As a Policy decision, the Prime Minister of Pakistan had approved the proposal for winding up the Vigilance Directorate no later than 30.06.2006. In compliance with the directives, a Notification was issued on 30.05.2006 by the Additional Secretary, Prime Minister's Secretariat (Public) directing the Ministry of Communication to expedite the establishment of the Planning, Monitoring and Evaluation Cell pursuant to the decision of Executive Committee of the National Economic Council ("ECNEC") and directions of the Prime Minister and consider the

absorption of suitable persons from the Vigilance Directorate into the newly created Planning, Monitoring and Evaluation Cell. In the series, one more Notification was issued by the Section Officer, Ministry of Communication Government of Pakistan on 1.6.2006 for the information that the Vigilance Directorate in the Ministry of Communication had been wound up w.e.f. 30.6.2006 and vide Office Order dated 15.06.2006, the Ministry of Communication dispensed with the services of officers/officials of Vigilance Directorate with effect from 30.6.2006.

5. The learned counsel for the petitioner made much emphasis that, though the Vigilance Directorate was wound up, but as per niceties of the letter dated 30.5.2006, suitable persons performing their duties in Vigilance Directorate could have been absorbed in the newly established Planning, Monitoring and Evaluation Cell. However, the learned counsel failed to articulate whether, pursuant to the aforesaid letter, the contractual employees had any better or vested right of absorption over and above the permanent employees of the Vigilance Directorate. Neither the letter explicitly put forward whether absorptions of suitable employees implies and conveys solely the contractual employees or permanent employees, or both, nor did the learned counsel argue that the entire vigilance directorate was being run on the strength of contractual employees without the strength of any permanent employee. Indeed, the primary and foremost condition for absorption was the suitability and fitness of the employees and it was the inherent right and prerogative of employer to adjudge and examine the credentials and antecedents whether the person applying for absorption was fit to perform the duties according to the nature of job in the newly created Cell and deserved the absorption either as a contract employee or a permanent employee.

6. The learned counsel for the petitioner also referred to another Office Order dated 11.10.2011, whereby the contractual services of some employees were regularized in the Planning, Monitoring and Evaluation Cell of the Ministry of Communications pursuant to the Cabinet Sub-Committee decision conveyed on 4.10.2011. We do not think that this letter of regularization of the contractual employees, issued pursuant to the Cabinet Sub-Committee

decision conveyed in the year 2011, has any significance or renders any assistance to the case of the petitioner whose contractual services were dispensed with much earlier in the year 2006. He further referred to another letter dated 11.06.2011 issued by the Section Officer, Cabinet Secretariat Establishment Division, Government of Pakistan whereby the upper age limit was approved by the Cabinet Sub-Committee for Regularization of Contract/Daily Wages Employees up to 50 years in view of the long Contract/Daily Wages Services rendered by the incumbents on the same posts. Learned counsel for the petitioner further drew our attention to letter dated 11.10.2011, whereby some contractual employees of NHA from BPS-1 to BPS-16 following within the age bracket of 50 years age as on 30.6.2011 were regularized with immediate effect. Again, this letter pertains to year 2011 with the cut-off date of age limit for regularizing the services of contractual employees. All these developments took place in the year 2011 and had nothing to do with the period in which the petitioner was performing his contractual duties in the Vigilance Directorate which was wound up in 2006 and the contractual services of the petitioner were dispensed with.

7. After abatement of Service Appeal in view of the judgment of this Court rendered in the case of "Muhammad Mubeen-us-Salam Versus Federation of Pakistan, etc. (PLD 2006 SC 602), the petitioner approached the Labour Court and his Grievance Petition was disposed of on 20.4.2007 by the learned Labour Court with the finding that the contract period of the contractual employees had expired and the Vigilance Directorate was already wound up hence the regularization of the service of the petitioners was not possible, however, the Labour Court issued directions that, if the petitioners are suitable keeping in view the nature of job of the newly created cell, they would be considered for their absorption in the said Cell subject to the Rules. We have also scanned the memo of Writ Petition filed in the High Court by means of which the petitioner entreated that the official respondents be directed to absorb the petitioner as Upper Division Clerk in Planning, Monitoring and Evaluation Cell in the light of Prime Minister Directives dated 30.05.2006 as well as in the light of judgment in Petition No.274 of 2006 passed by the Labour Court, Islamabad.

The learned counsel averred that the petitioner had, in fact, approached the Islamabad High Court for the implementation and execution of the Labour Court Judgment by the High Court. It is quite astounding that the petitioner had filed petition for implementation of the Judgment of the Labour Court in the High Court when no such provision is available under Article 199 of the Constitution of 1973 whereby the execution or implementation of Judgment passed by the subordinate Courts may be implemented by the High Court. It was not the case within the premise or confines of Sub-Article (2) of Article 187 of the Constitution in which any decision, order or decree passed by the Supreme Court may be executed by a High Court as if it had been issued by the High Court. At this juncture we would also like to allude to the fact that the Grievance Petition in the Labour Court was filed under Section 46 of the erstwhile Industrial Ordinance 2002 which dealt with the procedure and mechanism for redressing individual grievances. Under Sub-section 6 of Section 46, the Labour Court had jurisdiction to prosecute any person against which decision or order is passed but who had not complied with the same within one month, or within the period specified in such order. So in all fairness, if the petitioner was of the view that the directions contained in the Labour Court Judgment were not complied with or directions were violated, then obviously the proper course was to approach Labour Court for recourse rather than the High Court. Alternatively, if the petitioner was aggrieved that the relief of regularization was wrongly withheld by the Labour Court, then he could have filed an appeal before the Labour Appellate Tribunal.

8. The bone of contention was whether the petitioner, being a contractual employee, had any vested right for regularization or absorption in the newly created cell, and whether a certain length of contractual services could be considered to give rise to a legitimate right to be permanently absorbed. On the contrary, in the various dictums laid down by this Court it was repeatedly held that contractual employees have no vested right to regularization, but their regularization may be considered subject to the fitness, suitability and the applicable laws, rules and regulations of the Department. In the case of Khushal Khan Khattak University through Vice-Chancellor and others. Vs. Jabran Ali Khan and

others (2021 SCMR 977), this Court held that it is settled law 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. In the case of Government of Khyber Pakhtunkhwa, Workers Welfare Board through Chairman.Vs. Raheel Ali Gohar and others (2020 SCMR 2068), this Court held that contractual employees have no automatic right to be regularized unless the same has specifically been provided for in the law. The judgment of this Court in Civil Petitions Nos. 4504 to 4576, 4588 and 4589 of 2017 dated 08.01.2013 was also quoted in which it was held that contractual employees have no right to be regularized until there is a law provided to that effect and we are not confronted with any such legal proposition. They have to serve till the pleasure of their master and, in case of any wrongful termination, they cannot seek the reinstatement. At the best, they can only have the compensation for the wrongful termination by applying to the competent court of law. Whereas in the case of Chairman NADRA, Islamabad, through Chairman, Islamabad and another. Vs. Muhammad Ali Shah and others (2017 SCMR 1979), it was held that till such time that the employees were regularized they would continue to be governed by the terms and conditions of the contract which they had with NADRA. The writ or constitutional jurisdiction of the High Court under Article 199 of the Constitution could not be invoked by a contractual employee of a statutory organization, such as NADRA (see *Pakistan Defence Officers' Housing Authority v. Jawaid Ahmed* reported as 2013 SCMR 1707, *Pakistan Telecommunication Co. Ltd. v. Iqbal Nasir* reported as PLD 2011 Supreme Court 132 and *P.T.C.L. v. Masood Ahmed Bhatti* reported as 2016 SCMR 1362). In the next case of Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others.Vs. Intizar Ali and others. (2022 SCMR 472), it was held that temporary employees have no vested right to claim reinstatement/regularization. This Court in a number of cases has held that temporary/contract/project employees have no vested right to claim regularization. The direction for regularization, absorption or permanent continuance cannot be issued unless the employee claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules and against the sanctioned vacant

posts, which admittedly is not the case before us. In the case of Vice-Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa and others Vs. Tanveer Ahmad and others (2022 PLC (C.S.) 85), it was held that a person employed on contract basis has no vested right to regularization. Similarly, in the case of Pakistan Telecommunication Company Ltd. Vs. Muhammad Samiullah (2021 SCMR 998), it was held that an ad hoc, temporary or contractual appointment does not create any vested right of regularization in favour of the appointee. In the case of Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others. Vs. Sher Aman and others (2022 SCMR 406), it was held that contract employees have no vested right to be regularized. While in the case of Deputy Director Finance and Administration FATA through Additional Chief Secretary FATA, Peshawar and others. Vs. Dr. Lal Marjan and others (2022 SCMR 566), it was held by this Court that that regularization is not a vested right but requires a statutory basis which is admittedly absent in the instant case. Where a contractual employees wishes to be regularized, he must demonstrate statutory basis for such a claim, in the absence of which, relief cannot be granted solely on the principle of "similarly placed persons".

9. The petitioner counsel failed to point out any mala fide intention or malice on the part of the department against the petitioner which deprived him of the alleged right of permanent absorption in the newly created cell but, on the face of it, the petitioner himself admitted that his case was rejected merely for the reason that at the time of consideration he was found over age but despite that he could have been considered subject to age relaxation. Neither in the High Court, any plea of relaxation in the age pursuant to any applicable Rules was taken, nor any such plea was taken in the Labour Court nor was anything placed on record to show that the petitioner ever applied for any such relaxation at the relevant time. Consequently, no such plea can be taken at this belated stage. The petitioner himself mentioned in his profile that initially he was recruited in the Pakistan Navy on 21.1.1981 and thereafter retired from service on 20.1.2000, after 19 years of service in Pakistan Navy. At the time of his appointment in the Vigilance Directorate in the year 2001, his age was 38 years so at the time of winding up,

his age was approximately 44 years. As per the eligibility criteria laid down by the Ministry, the test/interviews were conducted for various posts through an open Advertisement in the Newspapers dated 18.2.2007, but the petitioner candidature was not considered due to over age. The learned High Court has rightly observed that the petitioner never went through the procedure of employment, but only those persons who were found eligible and fit were inducted who applied in fresh procedure and fulfilled the prescribed criteria.

10. In the wake of above discussion, we do not find any infirmity or perversity in the impugned judgment. This Civil Petition is dismissed and leave is declined.

Chief Justice

Judge

Judge

Islamabad the  
28<sup>th</sup> February, 2022  
Khalid  
Approved for reporting.