

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sh. Azmat Saeed

Mr. Justice Mushir Alam

Mr. Justice Sajjad Ali Shah

**Civil Appeals Nos. 845-846 of 2010 AND
CAs Nos. 596-L to 599-L of 2013 A/W
CMAs Nos. 4548/2014 & 3891/2015.**

(On appeal against the judgment dated
26.10.2009 Passed by Federal Service Tribunal,
Islamabad in Appeal No. 751 (R) CS/2007)

Abu Bakar Farooq

(In CA 845/10)

Pakistan Railways thr. its Chairman, M/o

(In CA 846/10

Railways, Ibd.

& 597-L/13)

The Secretary M/o Railways etc.

(In CAs 596-L & 598-L a/w CMAs
4548/14, CMA 3891/15)

Salman Sadiq Sheikh & others

(In CA 599-L/13)

... Appellant(s)

/Applicant(s)

Versus

Muhammad Ali Rajpar & others

(In CA 845-486/10 &
CA 599-L/13)

Fiaz Ali Shah

(In CA 596-L & CMA 4548/14)

Anwar Saeed Dawar

(In CA 597-L/13)

Asghar Ali Bhutto

(In CA 598-L & CMA 3891/2015)

... Respondent (s)

In CA No. 845/2010

For the Appellant (s) : Mr. Abdul Rahim Bhatti, ASC
Mr. M.S Khattak, AOR

For the Respondent No. 1 : Mr. Muhammad Akram Sheikh, Sr. ASC

For the Respondent No. 2, 3 : Mr. Muhammad Abbas Mirza, ASC

In CA No. 846/2010

For the Appellant : Mr. Muhammad Abbas Mirza, ASC

For the Respondent No. 1 : In Person

In CA No. 596-L & 598-L of 2013:

For the Appellant (s) : Mr. Muhammad Abbas Mirza, ASC

For the Respondent No. 1 : N.R.

For the Applicant : Mr. Muhammad Munir Paracha, ASC
(In CMA No. 3891/2015)

In CA No. 599-L/2013

For the Appellant (s) : Mr. Muhammad Siddique Awan, ASC

For the Respondent No. 1 : In person

For the Respondent No. 2,3 : Mr. Muhammad Abbas Mirza, ASC

Date of Hearing : 31.01.2019

Judgment

Sajjad Ali Shah, J. These appeals, with the leave of this Court, have been filed against the judgment of the Federal Service Tribunal whereby the said Tribunal while allowing the appeal of the respondent Muhammad Ali Rajpar directed the appellant-Department to regularize his services from the date of his Adhoc appointment with all back benefits. It appears that on the strength of this judgment, the Tribunal granted the same benefits to three other similarly placed officers who are respondents in Civil Appeals No. 596-L to 598-L of 2013 whereas the appellant in Civil Appeals No. 845/2010 & 599-L of 2013, though were not party before the Tribunal but have been adversely affected and therefore have independently impugned the same judgment on the basis of principle laid down by this Court in the case of H. M. Saya & Co., Karachi vs. Wazir Ali Industries Ltd., Karachi and another (PLD 1969 SC 65).

2. Briefly, the Respondent No.1 on 10.11.1990, was appointed as Assistant Mechanical Engineer (AME) in Pakistan Railways on adhoc basis for a period of six months or for such extended period as may be sanctioned and/or till the nominees of Federal Public Service Commission becomes available, whichever is earlier. The appointment letter further covenanted that the Respondent would apply through proper channel to the Federal Public Service Commission for selection and appointment to the post in question on regular basis as and when the said post was advertised by the Commission. It appears that the Respondent continued his services as adhoc employee and in the meanwhile invoked the constitutional jurisdiction of Lahore High Court by filing writ petition No. 144 of 1998 seeking regularization of his service. However, the adhoc service of the respondent was

terminated on 30.06.2000 and from 01.07.2000 he was appointed on contract for a period of two years or till the joining of Federal Public Service Commission's nominee. The Respondent continued on contract till 01.07.2002 and thereafter his services were dispensed with. It appears that on 8.5.2003 Lahore High Court while deciding the said petition divided the cases of all similarly placed petitioners into two categories (i) qualified adhoc appointees (ii) adhoc appointees lacking qualification and then directed the department to refer the case of qualified adhoc appointees to the Federal Public Service Commission for considering their cases in accordance with law without any discrimination. Consequently, the Respondent on the recommendation of the Federal Public Service Commission dated 22.11.2006 was offered a temporary post of Assistant Mechanical Engineer (BS-17) in terms of his appointment letter dated 12.01.2007. The Respondent thereafter on 20.02.2007 requested the Ministry of Railways to regularize his services rendered as adhoc employee right from 10.11.1990 till date and also to treat the period between 01.07.2002 to 22.11.2006 (during which period he was unemployed) as spent on duty. The Representation was rejected by the department vide letter dated 16.05.2007 which led the Respondent to approach the Services Tribunal which after hearing the parties not only directed the Appellant Pakistan Railways to regularize the period of adhoc appointment from 10.11.1990 to 31.06.2002 but also to treat the period from 01.07.2002 to 31.07.2007 during which the Respondent remained unemployed as spent on duty and held the Respondent entitled to the payment of full back benefit for the said period. The Tribunal further directed to reckon his services for the purposes of seniority amongst his colleagues w.e.f. 11.07.1990. It appears that respondents in Civil Appeals No. 596-L to 598-L of

2013 whose cases were akin to respondent Muhammad Ali Rajpar also applied to the Tribunal for the same relief and the Tribunal allowed their appeals and granted them the same benefit as was granted to the respondent Muhammad Ali Rajpar. Whereas Civil Appeals No. 845/2010 and 599-L/2013 have been filed by the employees who were adversely affected due to reckoning of the respondents' service from the date of their adhoc appointment. This order not only led the department to impugn it before this Court vide CA No. 846/2010, 596-L, 597-L & 598-L of 2013 but also led the other employees who's seniority was adversely effected to impugn the same by filing CA No. 845/2010 and CA 599 L/2013.

3. The common question for granting leave in all these cases was to consider as to whether respondents could be granted seniority with effect from the date of their adhoc appointment.

4. Learned ASC appearing for Pakistan Railways as well as other Appellants who have been adversely affected through the impugned judgment contended that the impugned judgment of the Service Tribunal is bad as it not only directs the regularization of services rendered by Respondent as adhoc employee which is against the principles settled by this Court in number of judgments but also directs counting of the period during which the Respondent did not serve Pakistan Railways as spent on duty with all back benefits. Learned ASC referred to various clauses of Respondent's appointment letter dated 12.01.2007 which provided that his regularization will be considered as first appointment and he would rank junior most in his cadre/service and he would be considered regular employee of Pakistan Railways from 22.11.2006, the date on which Federal Public Service Commission recommended the Respondent for regular appointment. It was

further pleaded that one of the covenant also provided that the Respondent would not claim any seniority over the regular appointees of the commission who may have joined the service during the period the Respondent was on adhoc appointment. It was lastly contended that the order of the Tribunal was further bad because the private Petitioners were condemned unheard by disturbing their seniority and placing the Respondent senior to them. It was therefore, jointly submitted that the impugned order could not be sustained.

5. On the other hand Mr. Muhammad Akram Sheikh, Senior ASC appearing for the Respondent Muhammad Ali Rajpar straightaway conceded that he would not support the portion of impugned order of the tribunal whereby the Respondent was allowed the payment of full back benefits for the period w.e.f. 01.07.2002 to 31.01.2007. However, Senior ASC contended that the tribunal has corrected a wrong committed by the department by keeping the respondent as adhoc employee for a period of almost 10 years. It was further contended that adhoc employment of the Respondent could not have been unilaterally switched to as contract employee and, therefore, respondent was entitled to the benefit of the period during which he was kept out of service at least for the purposes of seniority. Learned ASC while placing reliance on the judgment of this court in the case of *Dr. Naveeda Tufail vs. Govt. of Punjab* (2003 SCMR 291) contended that adhoc employment for such a long period creates a genuine impression in the mind of an employee that he would be retained on regular basis and that the adhoc appointment for such a long period without taking steps for fulfilling vacancies through the process of selection amounts to misusing that authority for which the respondent could not be punished by depriving him from the

benefit of the services he rendered. Mr. Sheikh learned Senior ASC further while placing reliance on the judgment of this Court in the case of *Ikram Bari vs. NBP* (2005 SCMR 100) contended that retaining a person on adhoc basis for such a long time is nothing but sheer exploitation and it is the duty of the state to ensure the elimination of all forms of exploitation and on failure of the state the courts must come to the rescue of the person so exploited and in this case the Tribunal has taken care of such exploitation. Learned ASC appearing for the rest of the respondents who were given the benefit of continuation of service on the basis of impugned judgment have adopted the submission of Mr. Sheikh.

6. We have heard the learned ASC for the appellants as well as for the respondents perused the record and the case law cited at bar.

7. The position as it emerges from the record appears to be that the respondent was inducted into service as Assistant Mechanical Engineer in Pakistan Railways (BS-17) in the year 1990 as an adhoc employee for a period of six month or for such extended period as may be sanctioned, however, his status as of adhoc employees was extended from time to time till the year 2000. Thereafter his services were acquired on contract for a period of only two years and in July 2002, as evident from the respondent's representation dated 20.4.2004, his services were terminated as he twice failed to qualify or absented himself from the selection process conducted by the Federal Public Service Commission. The record further reflects that on 12.1.2007 the said respondent on the recommendation of Federal Public Service Commission was offered regular appointment to the same post. The letter of appointment/regularization of service *inter alia* contained the following conditions:-

- i) Your regularization will be considered as your first appointment. As such you will be the junior most in your cadre/service. You will be considered regular employee of Pakistan Railways w.e.f. 22-11-2006.
- ii) You will not claim any seniority over the regular appointees of the commission who may have joined the service during your period of adhoc appointment.
- iii) Your pay in BS-17 will be fixed in accordance with the extant rules and your previous service on adhoc basis in Railway will be counted for the purpose of service qualifying for pension, pay leave and other retirement benefits as admissible under the rules.
- iv) to viii) ..."

8. In this backdrop the respondent accepted his regularization/appointment and effected joining accordingly. The respondent soon after submitting his joining made representation for treating the period between 1st July 2002 to 22nd November 2006, during which he remained out of service, to be treated as on duty. It appears that the representation did not find favour with the Department and consequently the respondent approached the Service Tribunal which through impugned order not only regularized the intervening period but also granted seniority, promotion and allied benefits.

9. The law relating to the initial appointments to all Pakistan services, the service of the Federation and the post in connection with the affairs of the Federation in basic scale 16 and above, except those which under the Federal Public Service Commission (Function) Rules, 1978 do not fall within the purview of the Commission, as detailed in Rule 10 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 ("Rules of 1973") explicitly provides that such appointments could only be made on the basis of test and examination to be conducted by the Commission.

10. The adhoc appointments to the post falling within the purview of the Commission in terms of Rule 19 of the "Rules of 1973" could be made only in cases where the appointing authority has placed the requisition with the Commission for regular appointment and during the intervening period which normally is consumed by the Commission for undertaking the process of selection and recommending the names of the candidates for regular appointment, the appointing Authority as a "stop gap" arrangement considers it to be in public interest to fill the post urgently may after obtaining prior clearance of the Commission fill the vacancy on adhoc basis for a period of six months or less. Even while filling a vacancy on adhoc basis the appointing authority has to adopt the procedure as is provided in Part-III of the "Rules of 1973". Since the appointments on adhoc as provided under the law being a "stop gap" arrangements, therefore, as provided in Section 11(3) of the Civil Servants Act, 1973 stand terminated either on the expiry of the period for which such adhoc appointment was made or on the appointment of a person recommended by the Commission. It is for this reason that such adhoc appointee does not acquire a right to claim his seniority in accordance with Section 8 of the Civil Servants Act, 1973 vis-à-vis the civil servants who are appointed on regular basis on the recommendation of the Commission after going through the selection process.

11. It may be true that in some cases, like the instant one the adhoc appointment is prolonged for years altogether either for ulterior motives or by convenience in gross violation of Rule 19 of the "Rules of 1973" as well as Rule 3 of the Federal Public Service Commission (Functions) Rules, 1978, and such prolonged adhoc appointment may lure the appointee to continue with the full knowledge that this marriage of convenience would ultimately

break to his detriment for such adhoc appointment does not create any right in favour of the incumbent to compel the authority to regularize his appointment. In fact the authority has no such power to regularize the service of an adhoc appointee because the only door to enter the arena of all Pakistan services detailed in Rule 10 of "Rules of 1973" is through Public Service Commission.

12. Coming to the submissions of learned Sr. ASC for the Respondents that continuation of Respondent's service on adhoc basis for such a long time was nothing but a sheer exploitation which needs to be remedied by the Court. Mr. Sheikh backed his submissions by heavily relying and taking us through various portions of the judgment delivered by this Court in the case of *Ikram Bari vs. National Bank of Pakistan* (2005 SCMR 100). Suffice it to observe that in the said case services of daily wages employees in various categories who had served the Bank for number of years, were terminated by the National Bank of Pakistan on the ground that they were still in the category of temporary employees and it was in that context that this Court had observed that *"an employee being jobless and in fear of being shown the door had no option but to accept and continue with the appointment on whatever condition it was offered by the Bank. It was further observed that such prolonged temporary retention of the employees by the Bank was nothing but sheer exploitation and the State as required by the Constitution was bound to ensure the elimination of all forms of exploitation"*. It is also important to note that in the said case the method/procedure or the Authority of the Bank regarding appointment of the employees whose services were terminated was not in question, whereas in the instant case the very Authority of the Government to recruit a person to the service of Pakistan/Federation on regular basis in cases where the process

falls within the sole domain of the Public Service Commission, did not exist.

13. The fact of the matter remains that neither the adhoc employee has right to hold the post beyond the period for which he was appointed nor the government has a right to continue with such adhoc appointees for such a long period. This situation arises only when the government violates the provision of Rule 3 of the Federal Public Service Commission (Functions) Rules, 1978 and without placing a requisition before Commission for regular appointment fill the post on adhoc basis and then keep on extending the period of such adhoc appointment and the adhoc appointee knowing fully well that his adhoc appointment is not in accordance with the prescribed method of appointment and is only a "stop gap" arrangement, till recruitment in accordance with the prescribed method of Appointment is made, clings to such post. Such conduct of the government has always been deprecated by the Courts but such short coming/non adherence to the legal requirements by the competent authority can earn no benefit for the incumbent for the simple reason that bestowing the benefits of regular appointment upon an ad hoc employee would not only amount to regularizing unlawful appointment and providing premium to the beneficiary of such wrong but would also amount to opening another door of entry into service of Pakistan by frustrating the only prescribed mode of appointment through the Commission.

14. The view of this Court regarding the status of adhoc appointees and their claim to seniority, right from the inception has remained consistent. This Court in the case of Muhammad Afzal vs. Government of the Punjab (1982 SCMR 408), held as follows:-

“We propose taking up the question of the nature and effect of ad hoc appointment first because it is common to the first three appellants and to some of the respondents. Their appointments as Assistant Engineers were expressed to be ad hoc, temporary, not conferring any right to seniority etc. The word ‘ad hoc’ has the dictionary meaning of ‘For a particular object’. The object as appearing from the appointment of the appellants as well as that of some of the respondents was that their appointments were made and were to last only as long as regular appointments in accordance with the prescribed Rules were not made. The moment the regular appointments in accordance with the procedure prescribed were made, such appointments were to terminate. Ad hoc appointments truly so called being not in accordance with the Rules applicable to the service cannot receive either recognition or protection by reference to any of the Rules because they do not imply appointments to the service as such. Such appointments being outside the purview of the rules cannot for any purpose be treated as conferring a benefit under the Rules. It follows that if the appellants and some of the respondents were truly ad hoc appointees for a certain period they cannot on the basis of Rules claim their seniority from that date whether it was continuous or not”.

15. In the case of Naila Khalid vs Pakistan (PLD 2003 SC 420), this Court has held as under:

Undoubtedly, the petitioner was appointed as lecturer on ad hoc basis as a stopgap arrangement for tenure of six months or till the availability of a nominee by F.P.S.C. Ad hoc appointment of a person does not confer any right or interest to continuous appointment, seniority, or promotion. It is held by an incumbent till a person is regularly selected by the Public Service Commission for the post held by an ad-hoc appointee. It is well-settled that the services of such appointee can be dispensed with at any moment without assigning any reason. Section 11 of the Civil Servants Act, 1973

specifies cases in which the service of a civil servant may be terminated without notice. Precisely, it deals with the termination of service of a civil servant during the initial or extended period of probation, on the expiry of initial or extended period of employment or if the appointment is made ad hoc terminable on appointment of a person on the recommendation of the selection authority. On the appointment of such person it would appear that no right as to continuation of service vests in a person appointed on ad hoc basis. Only safeguard provided in subsection (3) of section 11 is that services of such appointee shall be liable to termination on fourteen days' notice or pay in lieu thereof.

16. Likewise in the case of Muhammad Wasay Tareen vs. Chief Justice of Balochistan (2005 SCMR 464), this Court after examining the case law in respect of adhoc appointments came to the following conclusion:-

"The words 'ad hoc appointment' as defined by clause (a) of subsection (1) of section 2 of the Balochistan Civil Servants Act No. IX of 1974, mean the appointment of a duly qualified person made otherwise than in accordance with prescribed method of recruitment, pending recruitment in accordance with such method. Such an appointment cannot be equated with regular appointment. It is meant for a particular object. The ad hoc appointment by its very definition, is of a qualified person but is not in accordance with rules prescribed for regular appointment for which the recommendation of the Public Service Commission is necessary. There is no rule which can entitle the ad hoc appointee to be confirmed in a vacancy during the subsistence of lien of another person on such vacancy. In some cases, it may continue unless regularized by the competent authority in accordance with law. In Federation of Pakistan and another v. Hashim Shah Qureshi 1987 SCMR 156, it was held that mere continuance of employment of a temporary

employee for two years or more in service did not ipso facto convert the appointment into permanent one. In the case of Mrs. Naila Khalid v. Pakistan through Secretary Defence and others PLD 2003 SC 420, it was laid down that ad hoc appointment did not confer on an appointee any right or interest to continuous appointment, seniority or promotion and that service of such an appointee could be dispensed with at any moment without assigning any reason. A somewhat similar view was taken in the cases of Mian Muhammad Afzal (supra), Ghulam Sarwar v. Province of Punjab 1982 SCMR 46 Chief Secretary, Government of the Punjab, Lahore and another v. Abdul Majeed 2001 SCMR 1971 and Muhammad Azam Khan and others v. Government of N.W.F.P. through Chief Secretary, N.W.F.P Peshawar and 4 others 1998 SCMR 204, Muhammad Azam Ali and 35 others v. Government of the Punjab through Chief Secretary and another 1985 SCMR 1408, Saifuddin v. Secretary to Government of the Punjab and others 1982 SCMR 877, Farida Khanum v. Federation of Pakistan through Secretary, Education, Islamabad C.P. No. 957 of 1999, decided by this Court on 16.6.1999 and Amjad Ali v. Board of Intermediate and Secondary Education and others 2001 SCMR 12 We may also observe that the ad hoc appointment by its very nature is different from that of appointment on probation as held in the case of Muhammad Siddique Ahmed Khan v. Pakistan Railways 1997 SCMR 1514".

17. This Court, even in the case of Naveeda Tufail vs. Government of Punjab (2003 SCMR 291), relied by Mr. Sheikh Sr. ASC after in depth examining the appointments made on adhoc basis for lengthy periods had concluded in the following terms:-

"There is no cavil to the proposition that an ad hoc employee has no right to hold the post beyond the period for which he was appointed and it is also not right for the Government to continue ad hoc

appointments for number of years without undertaking the exercise of selection on regular basis in the prescribed manner. The ad hoc appointment is appointment of a duly qualified person made otherwise in accordance with prescribed method of recruitment and is made only in exceptional circumstances. This stopgap arrangement as a temporary measure for a particular period of time does not by itself confer any right on the incumbent for regular appointment or to hold it for indefinite period but at the same time if it is found that incumbent is qualified to hold the post despite his appointment being in the nature of precarious tenure, he would carry the right to be considered for permanent appointment through the process of selection as the continuation of ad hoc appointment for considerable length of time would create an impression in the mind of the employee that he was being really considered to be retained on regular basis. The ad hoc appointment by its very nature is transitory which is made for a particular period and creates no right in favour of incumbent with lapse of time and the appointing authority may in his discretion if necessary, make ad hoc appointments but it is not open for the authority to disregard the rules relating to the filling of vacancies on regular basis in the prescribed manner. We may observe that practice of making appointments on ad hoc basis for continuous period without taking steps for fulfilling the vacancies through the process of selection in the prescribed manner amounts to misuse the authority and this Court at more than one occasions observed that the appointments on ad hoc basis should be discouraged and except in exceptional circumstances, it should not be allowed to continue beyond the period for which the appointment was initially made. The appointments in the public sector is a trust in the hands of public authorities and it is their legal and moral duty to discharge their function as trustee with complete

transparency as per requirement of law so that no person who is eligible to hold such posts, is excluded from the process of selection and is deprived of his right of appointment in service”.

18. In the circumstances, the order of the Federal Service Tribunal is found against the principles settled by this Court and could not be sustained.

19. These are the reasons for our short order of even date, reproduced herein below, whereby we had allowed these appeals:-

“For the reasons to be recorded separately, these Civil Appeals are allowed and the impugned judgments/orders of the learned Federal Service Tribunal are set aside”.

Judge

Judge

Islamabad, the
31st January, 2019
A. Rehman
Approved for Reporting.

Judge