

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

**PRESENT:**

Justice Qazi Faez Isa, CJ  
Justice Muhammad Ali Mazhar  
Justice Musarrat Hilali

**Civil Petition for Leave to Appeal No.1974-L of 2020**

[Against the order dated 22.09.2020 passed by the Lahore High Court, Lahore in ICA No.128925/2018]

*Province of Punjab through Secretary Population      ...Petitioners*  
*Welfare Department, Lahore, etc*

***Versus***

*Shehzad Anjum, etc.      ...Respondents*

For the Petitioners	: Barrister M. Mumtaz Ali, Addl. AG Punjab
For Respondents No.1 to 21	: Nemo.
For Respondents No.22 to 29 and 31 to 35	: Syed Rifaqat Hussain Shah, ASC/AOR
For Respondent No.30	: Mr. Junaid Jabbar Khan, ASC
Date of Hearing	: 1 February 2024

**ORDER**

**Qazi Faez Isa, CJ.** This petition for leave to appeal assails the order of a Division Bench of the Lahore High Court passed in an Intra Court Appeal No.128925/2018 (**'the ICA'**), which was filed against the order dated 4 December 2017 of a learned single Judge passed in Writ Petition No.292/2017. Learned Judges did not entertain the ICA on the ground that it was not filed by a competent person who was duly authorized. The learned Additional Advocate General, Punjab (**'AAG'**) states that the order passed in the WP had issued a direction to the Secretary Population Department, Government of Punjab, therefore, the Secretary could have filed the ICA. Reliance is also placed on the judgment in case of *Province of Punjab v Murree Brewery Company Limited* (2021 SCMR 305). He further states that the Province was represented before the Court through its law officer which confirmed that the Province had acknowledged/accepted the filing of the ICA. And assuming that the ICA was not properly filed then, the learned

AAG submits, an opportunity should have been given to attend to the discrepancy which was not provided.

2. The learned AAG states that the respondents had earlier filed WP No.13784/2010 which was allowed by a learned single Judge of the Lahore High Court, Multan Bench, and the respondents therein (the petitioners herein) were directed *vide* order dated 26 September 2013 to regularize the services of the petitioners (the respondents herein) forthwith in BPS-1 in accordance with the law. The Government of Punjab had implemented the High Court's order submits learned AAG by creating posts, amending the relevant service rules and issuing appointment orders in the year of 2016, therefore, the respondents could not have filed another writ petition in respect of the same *lis* and one which had already been decided. If the respondents were not satisfied with the order dated 26 September 2013 they should have appealed the same or if, assuming that the said order had not been entirely implemented, then they should have sought its implementation by filing a contempt application; but, neither course of action was followed, and instead a fresh writ petition was filed, which was not permissible.

3. The learned AAG further contended that after issuance of appointment orders the respondents had become employees of the Government of Punjab and thus civil servants, therefore, they could not have invoked the jurisdiction of High Court and their remedy, if any, lay before the Punjab Service Tribunal and this question as to maintainability of WP No.292/2017 was raised before the High Court but was not attended to.

4. We have heard the learned counsel for the respondents M/s. Syed Rifafqat Hussain Shah and Junaid Jabbar Khan. When WP No.13784/2010 was filed the relief that was sought in the subsequent petition (WP No.292/2017) was available to the respondents but had not been granted to them. The *Appointment Order of Male Mobilizer on Contract Basis* through which the respondents were appointed in the year 2007 and the notification dated 14 October 2009 (**'the Notification'**), which according to the learned counsel for the respondents, had created in the

respondents the right to be regularized pursuant to the Notification from the date of their appointment.

5. The respondents had sought their regularization from the date of their appointment in WP No.13784/2010, which was disposed of by the High Court through judgment dated 26 September 2013 directing that the respondents be regularized in terms of the said judgment. If the respondents were not satisfied with the said judgment they should have appealed the same or if the same was not implemented they should have sought its implementation, which could have been by invoking the contempt jurisdiction of the High Court. In any event on the same cause of action, and one which had been decided pursuant to the judgment dated 26 September 2013, another writ petition (WP No.292/2017) was not maintainable, and as no fresh cause of action had accrued to the respondents. This critical aspect of the case was overlooked by the learned single Judge who passed the order dated 4 December 2017 in WP No.292/2017.

6. Though this is not the respondents' case, if for the sake of argument it is assumed that in WP No.13784/2010 the respondents had only sought their regularization, and after they were regularized they wanted the regularization to take effect from the date of their initial appointment on contract basis, they could not seek this relief subsequently (in WP No.292/2017) because of the restriction in Order II, rule 2 of the Civil Procedure Code, 1908, which stipulates that:

**'2. Suit to include the whole claim.-** (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs - A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.'

7. As regards whether the ICA was maintainable, in our opinion it was maintainable and the principles enunciated in the cited case of *Province of Punjab v Murree Brewery Company Limited* were applicable. However, we do not consider that it would be appropriate to remand the case for decision of the ICA filed before the Lahore High Court because the second writ petition (WP No.292/2017) as noted above was not maintainable (see, *Dr. Mohammad Aslam Khaki v Khawaja Khalid Farooq Khan*, 2023 SCMR 1208).

8. Therefore, for the aforesaid reasons the judgements of the High Court in ICA No.128925/2018 and in WP No.292/2017 are set aside by converting this petition into an appeal and allowing it and by dismissing WP No. 292/2017 filed by the respondents.

Chief Justice

Judge

Islamabad  
1 February 2024  
*Syed Farhan Ali*

Judge

Approved for Reporting