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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE FAISAL ARAB

(AFR)

CIVIL APPEAL NOs. 110-L & 111-L OF 2013
(On appeal against the orders dated 7.6.2012 passed by the Lahore High Court, Multan Bench in ICA Nos. 11 & 142 of 2011)

Government of Punjab through Secretary Communication and Works Department, Lahore and another **(In both cases)** ... Appellants

VERSUS

Munir Ahmad Tariq **(In CA 110-L/2013)**
Muhammad Iftikhar Ali etc **(In CA 111-L/2013)** ... Respondents

For the Appellants: Mr. Mudassar Khalid Abbasi, AAG **(In both cases)**

For the Respondent (1): Hafiz Tariq Naseem, ASC
Mr. Tariq Nadeem, ASC **(In both cases)**

Date of Hearing: 09.03.2016

JUDGMENT

FAISAL ARAB, J.- Through this judgment we propose to dispose of the above-titled civil appeals as in both the cases common questions of facts and law are involved.

2. On 20.06.1996 the respondents were appointed as sub-engineers on ad-hoc basis for a period of one year. Before expiry of one year period their services alongwith certain other ad-hoc employees, who were appointed as sub-engineers, highway inspectors, junior clerks, truck driver, fitter, store keeper, tube-

well operator and chowkidar were terminated through an omnibus order dated 30.09.1996. They challenged their termination and succeeded in getting injunctive order until their one year tenure as ad-hoc employees expired on 18.6.1997. The present respondents accepted this legal position and went home upon expiry of one year period.

3. After a period of 14 years of their termination from service, the respondents filed writ petitions in the Lahore High Court seeking reinstatement back in service on the basis of a decision of this Court delivered on 18.1.2010 in Civil Appeal Nos. 568/2006 and other connected appeals. In the said connected appeals, certain employees, who were appointed on work-charge basis had sought reinstatement back in service from the Labour Court on the ground that they had been working for several years in their posts therefore their services be regarded as permanent. Their plea was accepted uptill the level of this Court.

4. In the present case, the writ petitions filed by the respondents were allowed. The Single Judge of the High Court held that in terms of Superintendent Engineer's letter dated 30.4.1997, as a policy decision on the termination of ad-hoc employees was yet to be taken, therefore, they are still civil servants. Aggrieved by such decision, the appellants filed intra-court appeals which were dismissed, solely on the point of jurisdiction. The learned Division Bench of the High Court held that the respondents in their capacity as ad-hoc employees were

civil servants, therefore, in view of the bar contained in the proviso to sub-section 2 of section 3 of the Law Reforms Ordinance, 1972, the intra-court appeals filed by the appellants were not maintainable and the jurisdiction lies with the Punjab Service Tribunal. The appellant has challenged the decision rendered in the intra-court appeals in the present proceedings.

5. Learned Assistant Advocate General, Punjab, appearing on behalf of the appellants argued that admittedly the respondents were appointed for one year term on ad-hoc basis and upon completion of their term in the year 1997 their services stood automatically terminated. He submitted that after keeping quiet for 14 years, the respondents filed writ petitions in the year 2011, seeking reinstatement back in service purely on the basis of decisions rendered in some other cases by this Court in the year 2010 whereby work-charge employees were reinstated in service. He contended that the respondents cannot take benefit of a decision delivered in the case of some other persons and that too when the case of such other persons was on totally different footing.

6. Learned counsel for the respondents on the other hand argued that respondents' services were terminated through an omnibus order whereby several other employees were also terminated and once any of such persons, whose services were terminated through an omnibus order, is reinstated in service then the same benefit is to be extended to all other affected employees

in view of the judgment of this Court in the case of Hameed Akhtar Niazi Vs. Secretary Establishment Division, Government of Pakistan (1996 SCMR 1185). He next contended that against the judgments delivered in writ petitions, intra court appeals were not maintainable, therefore, the appellants ought to have challenged the judgments passed by the learned Single Judge in writ petitions before this Court and having not done so the same have attained finality and are to be given effect to.

7. We have noted that the intra-court appeals were dismissed on the point of jurisdiction and not on merits. We may point out that the benefit in *Hameed Akhtar Niazi's* case was based on altogether different reasoning. The ratio in Hameed Akhtar Niazi's case was that where a Tribunal or Court decides a point of law relating to terms and conditions of service of civil servants which governs not only those who litigated but also those who have not resorted to any legal proceedings, then irrespective of this they too become entitled to the same benefit. Hameed Akhtar Niazi's case therefore extends benefit to civil servants who were not party to the litigation and the entitlement of benefit granted to the litigating civil servants is so common that it is also extendable to those who have not litigated, therefore, they too can legitimately claim the same irrespective of the fact that they were not party to the litigation. In this case the situation is different. Here the respondents are seeking appointment which plea is decided on case to case basis. In our view even where an omnibus order is passed and a party to a case accepts a decision passed against it,

then it cannot subsequently take advantage of the fact that such decision upon challenge by some other party before higher forum stand reversed and the same relief be granted to him also. This bar is based on the principle of constructive *res judicata* and has been adequately discussed and applied by a larger bench of this Court in the case of Pir Bakhsh Vs. Chairman Allotment Committee (PLD 1987 Supreme Court 145). In this case also an omnibus order was subject matter of the dispute. In second last paragraph at page 163 of this judgment it was held as follows:-

> *".....In a controversy raising a dispute inter parties, the thing adjudged is conclusive as between the parties both on questions of fact and law, but as to what the Court decides generally is the ratio decidendi or rule of law for which it is the authority. It is this ratio decidendi which is applicable to subsequent cases presenting the same problem between third parties not involved in the original case nor will either of the original parties be bound in at subsequent dispute with a third party. It will be misnomer to say that this rule of law acts in rem, that is, as' against the whole world as conceptually the applicability of the rule of law is either founded on the doctrine of precedent as under the English law or rule of stare decisis, and none of the doctrines in its application is inflexible for what has been recalled elsewhere in the judgment. Therefore, the judgment cannot act in rem as sought to be argued.*

8. In Pir Bakhsh's case, while discussing estoppel by judgment or *res judicata* a passage from the book "Treatise on the Constitutional Limitation" authored by Cooley was also quoted. At page 167 of the said judgment, it was held as follows:-

> *"And as to the first, we understand the rule to be, that a decision once made in a case, by the highest Court empowered to pass upon it, is conclusive upon the parties to the controversy and their privies, who are not allowed afterwards to revive it in a new proceeding for the purpose of raising the same or any other questions. The matter in controversy has become res judicata, a thing definitely settled by judicial decision; and the judgment of the Court imports absolute verity. Whatever the question involved, whether the*

interpretation of a private contract, the legality of an individual act, or the validity of a legislative enactment, the rule of finality is the same, the controversy has been adjudged, and once finally passed upon is never to be renewed."

And further:

"The rule of conclusiveness to this extent is one of the most inflexible principles of the law ; in so much that even if it were subsequently held by the Courts that the decision in the particular case was erroneous, such holding would not authorize the reopening of the, old controversy in order that the final conclusion might be applied thereto."

Section 11 of the Civil Procedure Code incorporates this principle.

In Tarini Charan v. Kedar Nuth (A I R 1928 Cal. 777), the bar of res judicata is stated in these terms

"It matters nothing whether the error, if any, was an error on a point of fact or on a point of law" . . . . . .

"Courts of law are in no way authorized to alter the rights of parties. They profess, at all events, to ascertain the law, and if the binding, character of a decision upon a concrete question as to the terms of a particular holding is to fluctuate with every alteration in their current of authority, the Courts will become an instrument for the unsettlement of rights rather than for the ascertainment thereof. The principle relied upon is abhorrent to section 11, Civil Penal Code and to the general intention of the doctrine of res judicata. If authority be wanted for its rejection a very plain authority can be found in the case of Gowri Koer v. Audh Kaur (1884 10 Cal. 1087)". . . . .

"The question whether decision is correct or erroneous has no bearing upon the question whether it operates or does not operate as res judicata. The doctrine is that in certain circumstances the Court shall not try a suit or issue but shall deal with the matter on the footing that it is a matter no longer open to contest by reason of a previous decision. In these circumstances it must necessarily be wrong for a Court to try the suit or issue, come to its own conclusion thereon, consider whether the previous decision is right and give effect to it or not according as it conceives the previous decision to be right or wrong. To say, as a result of such disorderly procedure, that the previous decision was wrong and that it was wrong on a point of law, or on a pure point of law, and that therefore, it may be disregarded, is an indefensible form of reasoning. For this purpose, it is' not true that a point of law is always open to a party."

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"On the other hand it is plain from the terms of section 11 of the Code that what is made conclusive between the parties is the decision of the Court and that the reasoning of the Court is not necessarily the same thing as its decision. The object of the doctrine of res judicata is not to fasten upon parties special principles of law as applicable to them inter se, but to ascertain their rights and the facts upon which these rights directly and substantially depend, and to prevent this ascertainment from becoming nugatory by precluding the parties from reopening or recontesting that which has been finally decided."

9. In the present proceedings the intra-court appeals filed by the appellant were dismissed on the ground that as the respondents were ad-hoc employees therefore they are to be treated as civil servants and being civil servants the jurisdiction lies with the Service Tribunal. It is an admitted position that respondents were employed on ad-hoc basis for a fixed tenure which period expired in the year 1997. Upon completion of their term of service, they did not pursue their legal remedy. If we were to still treat the respondents as civil servants, as held in the impugned judgments then we are afraid we would be compelled to hold that the writ petitions filed by the respondents were not maintainable. In that eventuality we would be relegating the respondents to seek remedy from the Service Tribunal. However this is not the legal position in the present case. In our view the service of an ad-hoc employee are liable to termination either upon thirty days' notice or one month's pay in lieu thereof, as mandated by Section 10 (3) of the Punjab Civil Servants Act or upon expiry of the period for which a person was appointed on ad-hoc basis as held in the case of Dr. Naveeda Tufail Vs. Government of Punjab (2003 SCMR 291). The fact that respondents automatically ceased

to be in the employment of the appellants upon expiry of one year period in 1997, which fact is acknowledged by one of the respondents himself in paragraph No.1 of his writ petition and then did not seek any remedy under the service laws, their termination as ad-hoc employees attained finality and they cannot be regarded as civil servants. Hence the finding that respondents are still civil servants is not sustainable in law. However, as the intra-court appeals were not decided on merits of their claim that they be re-employed on regular basis, we refrain ourselves from deciding the question whether the respondents who once were ad-hoc employees are still entitled to be appointed on regular basis. In the circumstances, it would be in the interest of justice that the matter be remanded back to the learned division Bench of the High Court to decide both the appeals in accordance with law.

10. Both the connected Civil Appeals are allowed in the above terms.

Islamabad, the
9th of March, 2016
Not Approved For Reporting
Khurram