

**ORDER SHEET
HIGH COURT OF SINDH AT KARACHI**

C.P.No.D-5176/2013 & 151/2014

DATE ORDER WITH SIGNATURE OF JUDGE

**Present:
Mr.Justice Muhammad Ali Mazhar
Mr.Justice Adnan-ul-Karim Memon**

**1. Syed Muhammad Shoaib
& others**

2.Ms.Nabila Zafar..Petitioners

Versus

Federation of Pakistan & others.....Respondents

Date of hearing: 15.12.2016

Ch. Muhammad Ashraf Khan & Ch. Azhar Elahi,
Advocates for the Petitioners.

Mr. Sanaullah Noor Ghouri, Advocate for the Respondent
No.2.

Mr. Muhammad Zahid Khan, Advocate for the
Respondent No.3.

Shaikh Liaquat Hussain, Standing Counsel.

Muhammad Ali Mazhar,J. In essence, these petitions have been brought to strive for evenly treatment and benefit of judicial precedent reminiscent of Hafeeza Junejo case rendered by the learned division bench of this court on 2.12.2012 in C.P.No.D-3272/2011.

2. The brief facts of the case are that the petitioners were initially appointed by Pakistan Steel Mills and presently performing their duties as teaching and non-teaching staff in Pakistan Steel Cadet College in terms of letters of contracts issued by Hadeed Welfare Trust. Since they are performing their duties for last considerable period on

contract basis therefore they have approached this court for regularization of services with similar treatment as meted out to the petitioners in C.P.No.D-3272/2011. The respondent Nos.2 and 3 filed their comments. The respondent No.2 in their comments raised the objections that the petitioners are employees of Hadeed Welfare Trust while the Hadeed Welfare Trust has taken the plea that that Office Memorandum issued by Establishment Division for regularization of contract employees does not apply to them.

3. The learned counsel for the petitioners argued that petitioners Nos.1 to 7, 21 and 22 in C.P.No.D-5176/2013 and the petitioner in C.P.No.D-151/2014 were employed by the respondent No.2 on different dates but after the creation of respondent No.3 they were en bloc taken on roll of the respondent No.3. The remaining petitioners were engaged by the respondent No.3 on different dates. The Hadeed Welfare Trust is fully owned by respondent No.2. The respondent No.1 issued office memorandum No.10/30/2008-R.II dated 29.8.2009 whereby all employees from BS-1 to BS-15 were to be regularized in the service of the Federal Ministries/Divisions/Attached Departments, Subordinate Offices, Autonomous, Semi-Autonomous Bodies/Corporations. Since the Office Memorandum was not acted upon therefore employees including many of the petitioners filed constitution petition No.D-3272/2012 whereby the respondent No.2 was directed to regularize the services of petitioners in terms of Office Memorandum dated 29.8.2008. The judgment was assailed by the respondent No.2 in the hon'ble Supreme Court but the petition was withdrawn with the undertaking that the Pakistan Steel Mills will implement the judgment in letter and spirit. The

respondent No.2 implemented the judgment of this court in relation to the employees from BS-1 to B-15 but the petitioner's claim of regularization was rejected on the ground that they did not fall in the criteria being above the BS-15. Few Civil Misc. Applications were filed in the disposed of petition on 20.5.2013 but the learned divisional bench of this court was pleased to hold that the employees approached for the implementation in their case do not fall within the scope of office memorandum as they cannot be categorized in grade 1 to 15. The BS.16 officers approached the hon'ble Supreme Court but their case was disposed of with the observation that that the Office memorandum is related to grade 1 to grade 15, therefore, the officers above the grade 15 may avail legal remedy, if any. He further argued that the Cabinet Committee in its meeting held on 25.1.2011 decided that contract employees who have completed one year of satisfactory service be regularized; the daily wages workers employed for 89 days (one spell) and completed three spells of their services shall be regularized in conformity with the apex court and the cases of contract employees of BS-16 and above may be submitted to the committee for regularization of their services through cabinet decision instead of FPSC. Since the respondent No.2 did not implement the above decision, therefore, the respondent No.1 called the explanation of the respondent No.2 vide its letter dated 12.10.2011. The petitioners are entitled for regularization from the date of their induction with all benefits as has been done in the case of the petitioners in the CP. No.D-3272/2012. The regularization of service is not an initial recruitment but it is confirmation of an existing employment.

4. The learned counsel for the respondent No.2 argued that Pakistan Steel Mills has no statutory regulations hence petition is not maintainable. The petition is also hit by laches. The petitioners have failed to avail alternate remedy by filing appeal and or representation to the competent authority before approaching this court. The petitioner could seek the remedy before the labour court rather than filing this petition. The category of officers are excluded from the preview regarding regularization of the service of the employees in the letter dated 29.8.2008 mentioned in the Hafeeza Junejo case. All the petitioners are employees of M/s.Hadeed Welfare Trust and Pakistan Steel has been wrongly impleaded. The petitioner Nos.1 to 17 and 21 to 23 were the petitioners in C.P.No.D-3272/2011 but relief of regularization in service was declined to them being in officer category as the Office Memorandum dated dated 29.8.2008 speaks of the Cabinet Committee Decision for regularization of employees from BS-1 to BS-15 only.

5. The learned counsel for the respondent No.3 argued that the petitioners have no locus standi to file this petition. The petitioners voluntarily at their sweet will entered into Employment Contract with respondent No.3 hence petitioners cannot be allowed to approbate and reprobate. The category of the officers are excluded from the preview set out for regularization of the service of the employees as incorporated in letter dated 29.8.2008 and as mentioned in the Hafeeza Junejo case vide C.P.No.D-3272/2011. The respondent No.3 is a registered Trust and said Cabinet Committee's decision dated 25.1.2011 is not applicable. The petitioners do not fall within the eligibility criteria framed in office Memorandum dated

29.8.2008 as referred to in the Judgment passed by this court in C.P.No.D-3272/2011.

6. Heard the Arguments. Let us first shed light on Hafiza Junejo case (supra) in which the substratum and status of Hadeed Welfare Trust has been minutely discussed with regard to their administration and management through a trust. The learned author of the judgment also deliberated the Memorandum dated 22.07.2004 which was indeed the source and derivation of transfer of the Educational Institutions to Hadeed Welfare Trust. The relevant paragraphs of the judgment from 14 to 17 are reproduced as under:-

“14. It is admitted by respondent No.2 that petitioners were appointed on temporary/contract basis in respondent No.2. Therefore, their initial induction as employees of respondent No.2 is not denied. Thereafter, it is stated (as quoted above) that with effect from 31.7.2004 they were “en-block placed” to the respondent No.3. No document whatsoever for such en-block placement has been placed on record. Memorandum dated July 22, 2004 talks of placing the educational institutions. Nothing is said therein about the employees. No document whatsoever informing each employee of his placement has been placed on record. Registered Deed dated 27.2.2004 evidenced that an amount of Rs.1,000,000/- (Rupees one million) was granted to the respondent No.3 as the property of the respondent No.2. In the Office Memorandum dated July 22, 2004 it was stated that Committee has been constituted for fixation of rent for the school buildings. The point is very clear, so far the school premises, furniture and building are concerned, they are properties of respondent No.2. It was agreed that rent will be subsequently settled. Through a statement filed, learned counsel for respondent No.3 placed on record certain documents which evidences that certain amount of rent is claimed to be recoverable by respondent No.2 from respondent No.3 and some rent in respect of the school buildings was paid by the respondent No.3 to respondent No.2. No document whatsoever was placed terminating employment of petitioners has been placed on record. No document that any of the petitioners received his final settlement has been placed on record.

15. In the case of **DAWOOD COTTON MILLS LIMITED v. SINDH LABOUR APPELLATE TRIBUNAL (SBLR 2004 SINDH 614)** a learned Division Bench of this Court quoted the following observations from the judgment of the Hon'ble Supreme Court of India in **HUSSAIN BHAI CALICUT v. ALATH FACTORY (1978 L.LJ 397):-**

“5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contract is of no consequence when on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer, based on Arts. 38, 39, 42, 43 and 43A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be able by the maya of legal appearances.”

16. No document whatsoever has been placed by respondent No.2 to establish as to on what basis with what condition and with what stipulation were the employees in the schools placed at the disposal of respondent No.3. All that is stated in the comments is that employees were “en-block placed”. No document has been placed on record to establish that any employee was ever informed in writing for such placement. Some of the petitioners have been working since 1994 i.e. by 2004 they had completed almost eleven (11) years of service and thereafter all that was done to them was to place them “en-block” with the respondent No.3. No document has been produced establishing what was the relationship between respondent No.3 and respondent No.2. All this indicates that respondent No.3 has all alone been a mere subterfuge enabling respondent No.2 to shirk his responsibility towards its employees. Such kind of devices, it has been held by the Hon'ble Supreme Court in the case of **IKRAM BARI v. NATIONAL**

BANK OF PAKISTAN (2005 SCMR 100), amount to playing a fraud on statute.

- 17. Result of the above discussion is that this Const. Petition is allowed and respondent No.2 is directed to regularize the petitioners in service on terms and conditions contained in Office Memorandum dated August 29, 2008 and in accordance with the principles laid down by the Hon'ble Supreme Court in the case of EJAZ AKBER KASI vs. MINISTRY OF INFORMATION & BROADCASTING (2011 PLC (CS) 367). Let this exercise be completed within one month and the benefits be paid with arrears to the petitioners. Pending applications are disposed of."**

7. No doubt that the aforesaid judgment was germane to the employees in BS-1 to BS-15 primarily for the reasons that the judgment was grounded and centered on the Office Memorandum dated 29.8.2008 disseminated for regularization of contract employees performing their duties in the Federal Ministries, their attached Departments, subordinate offices, autonomous and semi-autonomous bodies/corporations in BS-1 to BS-15 with the cutoff date 3.6.2008. Though some of the present petitioners were also party to earlier petition filed by Hafiza Junejo but since the Office Memorandum permitted the regularization from BS-1 to BS-15, therefore, no favourable order could be achieved by them. It is also a fact that against the judgment of this court, Civil Petition No.1638/2012 was filed by Pakistan Steel Mills but on 30.10.2012, a statement was given to the apex court that the directions contained in the judgment of High Court shall be exercised accordingly in letter and spirit by the petitioner (PSM) and on this statement, the petition was dismissed as withdrawn.

8. At this moment in time, the petitioners hinge on the minutes of the meeting of Cabinet Committee dated

7.2.2011 The relevant Paragraph No.6 is reproduced as under:-

“6. After thorough discussions and deliberation, the following decision were taken:-

- i) Contract employees who have completed one year of satisfactory service be regularized.**
- ii) Daily wages workers employed for 89 days (one spell) and completed three spells of their services shall be regularized in conformity with the order of the Apex court.**
- iii) The cases of contract employees of BS-16 and above may be submitted to the Committee for regularization of their services through Cabinet decision instead of FPSC.”**

9. The aforementioned minutes lead to an unequivocal and an indisputable decision that the benefit of regularization was also extended to the employees performing duties in BS-16 and above with the criteria that their cases may be submitted to the Committee for regularization of their services through Cabinet decision instead of FPSC. A reply of Acting General Manager (A&P), Pakistan Steel Mills to the petitioner No.1 is also available at page-119, which is in fact written by him for the implementation and enforcement of the judgment passed in C.P.No.D-3272/2011 but in response, no pretext was put into words by the Pakistan Steel Mills with regard to the nonexistence or want relationship of employer and employee rather than the reply was based on the premise that the Establishment Division letter was confined to the contractual employees performing their duties in BS-1 to BS-15. It was further acknowledged that the judgment rendered by this court in **Hafeeza Junejo** case as well as CPLA No.1638/2012 have been implemented in its letter and spirit. At page page-129 (Annex-24) another letter issued by Government of Pakistan, Establishment Division on 30.5.2013 is

available which emphasizes and prominences again the minutes of meeting of Cabinet Sub-Committee on regularizations of contract, daily wages, contingent employees in the ministries, divisions, attached departments, autonomous bodies, organization etc. held on 13.3.2013. These minutes do show in paragraph-236 that the representative of the Ministry of Production/Secretary Pakistan Steel Mills informed the Cabinet Sub-Committee that there are certain contract/daily wages employees in the cadet college and other educational institutions of the Steel Mills at Karachi who have served for more than one year and whose services are required to be regularized. On this motion, the matter was discussed in paragraph No.236 and the decision is alluded to in paragraph No.237. For the ease of reference, both paragraphs are reproduced as under:-

“MINISTRY OF PRODUCTION

236. The representative of the Ministry of Production/Secretary Pakistan Steel Mills informed the Cabinet Sub-Committee that there are certain contract/daily wages employees in the Cadet College and other educational institutions of the Steel Mills at Karachi who have served for more than one year and whose services are required to be regularized.

DECISION

237. The Cabinet Sub-Committee discussed and directed that the services of all the contract/daily wages employees (teaching and non-teaching staff) of the Cadet College and other educational institutions of Pakistan Steel Mills Karachi, who have served for more than one year should be regularized subject to fulfillment of recruitment criterion and availability of posts under intimation to the Establishment Division.”

10. When we explicitly confronted the above decision to the learned counsel for the Pakistan Steel Mills as to whether Pakistan Steel Mills is operating cadet college

and other educational institutions, Mr.Sanaullah Noor Ghouri, learned counsel PSM. clearly stated that the educational institutions and Cadet College are being run under the control of Hadeed Welfare Trust and this fact has also been confirmed by the learned counsel for the Hadeed Welfare Trust that all educational institutions and Cadet College are being administrated and governed under the umbrella of Hadeed Welfare Trust. On this well-founded statement, a domineering query ascends to that if Hadeed Welfare Trust has no nexus with Pakistan Steel Mills then why the representative of the Pakistan Steel Mills was sitting in the meeting of cabinet committee as Secretary and informed that there are certain contract/daily wages employees in cadet college and other educational institutions of the Steel Mills at Karachi deserving their regularization. Mr.Sanaullah Noor Ghouri, Advocate also augmented that there is no specific scale or grade mentioned in the decision and according to learned counsel some of the employees are performing their duties in grade 17 and above. This argument is miscomprehended, the minutes of meeting or the decision taken on 13.3.2013 cannot be read in isolation and segregation. On the contrary it will be read with the minutes of meeting dated 7.2.2011 in which the regularization benefits were extended to the employees in Bs-16 and above. One more prominent attribute cannot be dispensed with that the decision dated 13.3.2013 was taken in presence of PSM representative who raised this motion so it is a virtuously beneficial decision in which probability cannot be ruled out that the decision making body strategically not mentioned any grade or pay scale. It is quite obvious from the language of the decision that it is well extended and broad spectrum decision which

neither permits nor any tendency to articulate rigid or obstinate interpretation.

11. The relationship between the Hadeed Welfare Trust and Pakistan Steel Mills does not requires any further deliberation after passing judgment by this court in **Hafeeza Junejo** case. This court has already surveyed and scanned the solemn structure and configuration of the trust and office bearers holding various posts have been discussed in detail. The letter written to the petitioner No.1 copy of which available at page-119 also amply demonstrates that in fact Pakistan Steel Mills is running the affairs of Hadeed Welfare Trust. The record further reflects that in **Hafeeza Junejo** case some interlocutory applications were moved which were disposed of by the learned Division Bench of this court vide order dated 20.5.2013 and against the order one Liaquat Ali approached to the Apex Court in Civil Petition No.1302/2013 but his counsel did not press the petition. However, the hon'ble Supreme Court again observed that the persons who are contract employees and fall within grade 1 to 15, their cases can be considered and decided within a period of 60 days and the petitioners not covered under the Office Memorandum may avail the legal remedy, if any. It was observed that the petitioners at Sl. No.1 to 16 mentioned in the earlier part of the judgment at page 27 of the paper book, their cases need not be considered as they are in officer grade. The learned counsel for the petitioners argued that now the petitioners have approached this court for regularization of service in terms of office Memorandums available at page-129 to page-133. So far as the issue of maintainability is concerned, the petitioners have not approached this court to challenge or the enforcement of

the terms and conditions of service. It also makes no difference that PSM has no statutory rules service as in the present case, the petitioners have approached this court for enforcement of cabinet decision for regularization. In this regard we feel no reluctance to hold that PSM is amenable to the writ jurisdiction of this court and this petition is maintainable.

12. To enjoy the protection of law and to be treated in accordance with law is inalienable right of every citizen. Reading of Article 4 of the Constitution of Islamic Republic of Pakistan shows that it incorporates the doctrine of equality before law or equal protection of law and no action detrimental to the life, liberty, body, reputation or property of any person can be taken except in accordance with law. Public functionaries are supposed to function in good faith honestly and within the precincts of his power so that person concerned should be treated in accordance with law. Article 3 of the Constitution makes its incumbent upon the state to ensure elimination of all forms of exploitation. Reference can be made to the judgment authored by one of us (Muhammad Ali Mazhar-J), reported in **2013 PLC (C.S) 121 (Muhammad Akram Solangi & others v. D.C.O. Khairpur & others)**. The honourable Supreme Court in the case of **Ikram Bari**, reported in **2005 SCMR 100** held that Islamic welfare state is under obligation to establish a society, which is free from exploitation wherein social and economic justice is guaranteed to its citizens.

13. At this juncture we would like to quote **2015 SCMR 1257 (Pir Imran Sajid v. Managing Director, Telephone Industries of Pakistan)**. In this case the

employees were performing their duties on contract basis and they approached time and again for regularization of their services. They also relied upon a Cabinet Committee's decision for regularization dated 21.02.2013 and filed Writ Petition in the learned Peshawar High Court for implementation and enforcement of the Cabinet Committee's decision but the petition was dismissed mainly for the reason that TIP is a private limited company with no statutory service rules and secondly the appellants were contract employees. The hon'ble Supreme Court in the aforesaid dictum held in paragraph No.5 as follows:

5. Keeping in view such status of the company, and the "Function Test" as prescribed and applied by a five member Bench of this Court in the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383), authored by one of us (Mian Saqib Nisar, J.), which test/criterion is fully meet in the present case, the status of TIP could not prevent the appellants from seeking constitutional remedy as the company clearly falls within the definition of a "person" as envisaged by Article 199 of the Constitution. The learned counsel for the respondents, in support of his second objection i.e. lack of statutory service rules, relied upon the judgment in the case of Fakhrur-Islam Qureshi (Civil Appeal No.424 of 2009), authored by one of us (Mian Saqib Nisar, J.), whereby the said appeal was dismissed on the ground that relationship between the appellant, retired employee and TIP is not governed by statutory rules. Such reliance, in our view, is wholly mis-placed for the reason, that unlike in the present case the appellants therein were seeking pensionary benefits on the basis of pensionary rules, which rules were non-statutory. Whereas in the present case, the appellants are seeking implementation of the directive of the Prime Minister of Pakistan and the decision of the cabinet sub-committee for their regularization sought to be enforced by the relevant ministry."

Whereas in paragraphs 8 and 12, the apex court held as under:

8. In addition to the benefit of the above dictum, we may observe here that TIP's non-compliance, rather defiance of the decision of the cabinet sub-

committee to regularize the services of the appellants, and not heeding to the directive of their Ministry to comply with said decision, compliance whereof is being sought by the appellants, is wholly illegal and mala fide. Even otherwise, since as noted earlier, the retention of the appellants by TIP for a period of more than 12 years and repeated renewal of their contracts of employment, clearly show that the posts/positions held by the appellants were/are of permanent nature which were essentially required by TIP for its functioning and that repeated renewal of the appellants' contracts and the increments granted to them show also, that the appellants have been discharging their duties to the satisfaction of their employer and therefore, employing/retaining the appellants on contract, instead on permanent basis was/is wholly mala fide, whimsical and unfair. Such practice/conduct has also been deprecated through judicial pronouncements. The appellants have rendered prime time of their life in serving TIP and in the process may now have become overage for any other suitable employment.

12. It is now well laid down that the object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but objective can be achieved by following the rules of justness, fairness, and openness in consonance with the command of the Constitution enshrined in different Articles including Articles 4 and 25. The obligation to act fairly on the part of the administrative authority has been evolved to ensure the rule of law and to prevent failure of the justice.

As a final point, the apex court allowed the appeals and regularized the services of the appellants from the date of decision of the Cabinet Sub-Committee for Regularization.

14. In the wake of foregoing discussion, the petitions are disposed of with the directions to the respondent No.2 to regularize the services of the petitioners in terms of Cabinet Sub-Committee decision dated 13.3.2013. The pending applications are also disposed of.

Judge

Judge