

Judgment Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –2576 of 2020

Javed Iqbal

Versus

Federation of Pakistan and 02 others

Constitutional Petition No. D –3167 of 2020

Syed Saad Ali and another

Versus

Federation of Pakistan and 02 others

Dates of hearing : 11.11.2020, 24.11.2020, 07.12.2020 & 16.12.2020

Date of judgment : 12.01.2021

Mr. Sandeep Mallani, advocate holding brief for Malik Naeem Iqbal, advocate for the petitioner in C.P. No.D-2576/2020.

M/S M.M. Aqil Awan and Danish Rashid Khan, advocates for the petitioners in C.P. No.D-3167/2020.

Mr. Khalid Mahmood Siddiqui, advocate for the respondents/Civil Aviation Authority.

Mr. Muhammad Nadeem Khan, Assistant Attorney General.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. Through these constitutional petitions, the petitioners are seeking the declaration that they are regular employees of the Civil Aviation Authority (“CAA”) and are entitled to serve until retirement age. Since the facts and law points are common, both the petitions are being disposed of by this common judgment.

For reference, the facts of each petition are given herein below: ---

C.P. No.D-2576/2020

2. The case of the petitioner in C.P. No. D-2576/2020 is that he is an ex-serviceman, who after his premature retirement from Pakistan Air Force, applied for the post of Airworthiness Safety Inspector Ex-Cadre ‘B’ (PG-10) in CAA and after the competitive process was recommended for the aforesaid post on contract basis for two (02) years vide appointment letter dated 25.1.2008. It is averred by the petitioner that his contract was extended by the respondent-CAA from time to time till 3rd February 2020. He protested to the limitation of the aforesaid period by moving various applications to the competent authority for redressal of his grievances, but

to no avail. It is contended that the Board of respondent No. 2 / CAA decided in its 128th meeting held on 02nd and 03rd April 2009 that in case of Airworthiness, Flight Standard and Calibration, the contract may be extendable up to superannuation with the approval of the appointing authority. It is further averred that, under the aforementioned decision, the contracts of other Airworthiness Safety inspectors were extended to the date of their retirement age. However, in his case, the contract was not extended by an office order dated 06th May 2020 without assigning valid reasons. It is urged that the Federal cabinet in its meeting held on 18.06.2019 decided to regularize contract staffs of all Ministry / Division / attached Department / Sub-ordinate offices, but the respondent-CAA failed and neglected to act upon the decision of the cabinet. He claimed that his services ought to have been regularized in terms of the decision of the cabinet as discussed supra. He, being aggrieved by and dissatisfied with inaction on the part of respondent-CAA, has filed the instant petition on 19.05.2020.

C.P. No.D-3167/2020

3. The case of the petitioners in C.P. No. D-3167 of 2020 is that they applied for the post of Assistant Director Information Technology (Database Administrator) (EG-01) and Assistant Director Information Technology (Oracle Financial Functional Consultant) (EG-01) and were recommended for appointment for the aforesaid posts on contract basis for two (02) years vide appointment orders dated 02.07.2015 and their contract was extended by the respondents from time to time till 14.7.2020 and 29.8.2019, respectively. It is urged by the petitioners that their initial appointment was a regular appointment, therefore, they ought to have been treated as regular employees. They prayed for the declaration to the effect that revised Regulation No.21(1)CAA, 2019, is ultra-vires to the fundamental rights of the petitioners and the same be struck down being unreasonable. They seek a further declaration that the Office Memorandum dated 20.05.2020 concerning the petitioners issued in pursuance of Regulation 21(1) CAA, 2019, is unlawful, illegal, and *void ab initio*. They in alternate seek direction to the respondents to regularize their services against the aforesaid posts.

4. Respondent-CAA filed comments and raised legal objections about the maintainability of the instant petitions on the analogy that their initial appointment was contractual, thus they are/were not entitled to extension in the contract for more than five years under the policy decision and to

support the plea they relied upon the Civil Aviation Regulations as amended up to date.

5. During arguments, we queried from the learned counsel for the Petitioners as to how the instant Petitions are maintainable against the aforesaid decision of respondent-CAA before this Court as admittedly the petitioners were appointed on contract and their contract stood expired by efflux of time.

6. Malik Naeem Iqbal, learned counsel for the petitioner in C.P. No. D-2576/2020, has argued that the petitioner was appointed in the year 2008 on duly sanctioned and permanent Ex-Cadre Post of Airworthiness Safety Inspector (PG-10) through a competitive process under the procedure prescribed by CAA Service Regulations, 2000; he had been carrying out duties, functions, and assignments of a permanent nature for more than eleven years and, as such he had legitimate expectations of being absorbed as a permanent employee in the CAA. He referred to Section 24-A of the General Clauses Act, 1897, and submitted that the respondent-CAA was required to exercise its discretionary powers in a fair, reasonable, and transparent manner. On the maintainability, he relied on the case of Muhammad Rafi vs. CAA and others, 2016 SCMR 314, and argued that the instant petition is maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, on the premise that the respondent-CAA is a state-owned organization, and submitted that the respondent-CAA had agreed to give the same treatment to the petitioner as was given to other employees who were permanently taken on regular service. He also referred to the case of M/S State Oil Company Limited v. Bakht Siddique and others, 2018 SCMR 1181, and argued that though the regularization of service is not a part of the terms and conditions of service, the petitioner has sufficient length of service to claim regularization of his service on the premise that he has given his prime time to the respondent-CAA. Learned counsel pointed out that on the very subject the Honorable Supreme Court has already dealt with similar matters in its various pronouncements and the case of the petitioner is akin to the one decided above. He further argued it is his fundamental right to ask for regularization of his service which right is guaranteed by Article 9 of the Constitution, which includes the right to livelihood as the same rule has been laid down by the Honorable Supreme Court in the case of Abdul Wahab and others v. HBL and other, 2013 SCMR 1383, by holding that the right to sustenance cannot cling to the fantasies of persons in authority. Learned counsel emphasized that the petitioner

provided services for a considerable period and therefore acquired the right to be continued till the age of superannuation / regularized in service. He asserted that the career of the petitioner has become paralyzed at the hands of the respondent-CAA, for the reason that he is now unable to get private service. Learned counsel referred to various documents attached to the memo of the petition and argued that he is entitled to a pension under the Civil Service Regulation (CSR) as he has served with the respondent-CAA for more than eleven (11) years. He argued that the respondent-CAA has regularized many identically placed employees and many other similarly placed employees have been continued to contract till superannuation; that the respondent-CAA failed to extend the benefit of the decision of Subcommittee of cabinet dated 07.02.2012, whereby, all ministries/divisions/autonomous bodies were directed to regularize employees working on contract basis and the respondents regularized many employees in compliance of decision of cabinet's subcommittee, yet the petitioner has been ignored without any rhyme or reason; that the act of the respondents is tantamount to an infringement of inalienable and fundamental rights as enshrined under Articles 3,4,9,18 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, and, the respondents are violating the fundamental principles of good governance, which envisages terms and conditions of employment must be certain and protected for the obvious reason that it directly affects the efficiency of the employee; and, that instead of treating the petitioner as a regular employee and/or considering the petitioner for regularization, the respondents are bent upon to treat him arbitrarily and mechanical manner and appoint a person of their choice against the post on which petitioner is entitled to regularization. He concluded his submissions by saying that this petition may be allowed as prayed and in the alternative, if the regularization is not possible the petitioner may be allowed to continue to serve the respondent-CAA as a contract employee. He also referred to his statement dated 16.06.2020 and relied upon the minutes of the 179th meeting of the CAA Board as well as amendments proposed in CAA Service Regulations-2014 (Amended Version-2019) and argued that the contract of the petitioner was not restricted to five years, but was up to the age of superannuation i.e. 60 years for the employees hired in three (03) specific traders / branches i.e. Airworthiness / Flight calibration and Flight standards, only. This aspect of the assertion has been refuted by learned counsel representing CAA by relying upon statement / additional documents dated 09.09.2020.

7. M.M. Aqil Awan, learned counsel for the petitioner C.P. No. D-3167 of 2020, has argued that the appointment of the petitioners by way of direct recruitment in Executive Grade-1 was/ is a regular appointment and the word for 'two years Contract' was/is just redundant. Learned counsel strongly objected to the decision of respondent-CAA by introducing revised Regulation No.21 (1) CAA, 2019 and argued that they were appointed against the post of Executive Grade-1 against the permanent position. He raised the question that since the initial appointment of the petitioners was made through the competitive process then how their appointment could be treated as a contract appointment. He pointed out that the advertisement published in daily Dawn does not disclose that the post so advertised against which they applied were either temporary posts or project posts, therefore, they applied against the same presumably treating the same as the permanent post. He emphasized that contract appointments cannot be made against a permanent post, therefore their decision to treat them as contract employees was/is erroneous. He further elaborated on the subject and argued that the posts are only of two kinds one is called temporary posts which is always a time-bound post and the post which is not time-bound is always treated as a permanent post and there is no concept of any contract post in service jurisprudence. He also attacked the revised Regulation No.21 (1) CAA, 2019 where under time limit has been provided for contractual appointment, and argued that the aforesaid provision will not have retrospective effect on the appointments which were made in the year 2015 as such not applicable in their case. He pointed out that respondent No.2 in the advertisement mentioned the required age limit for the candidates which was/is not the requirement of contract appointment but a regular appointment. It is averred by him that Regulation No.21 of 2019 is bad being reasonless and violative of fundamental rights as enshrined in the Constitution. It is asserted that in the year 2018, the same posts of Assistant Director IT were advertised, and they were treated as regular employees because the word contract is missing in the advertisement otherwise they were filled through the same procedure which was followed in the case of petitioners and what was/is the intelligible differentia between the advertisement of 2015 and 2018, for which the respondent-CAA has failed and neglected to explain as such the aforesaid action taken in the year 2015 would be discriminatory and would be barred by Article 25 of the Constitution. Learned counsel further pointed out that in the service regulations of CAA there is no post which can be termed as contract post as a separate cadre; and, there is no procedure whatsoever which provides

appointment by way of contract, therefore, the appointment made under the appointment orders dated 02.07.2015 was/is a regular appointment. In the alternative, he prayed for a direction to the respondents to allow the petitioners to continue their service in the line with his colleagues till the age of superannuation. In support of his contentions, he relied upon the cases of Water and Power Development Authority v. Irtiga Rasool Hashmi and another, **1987 SCMR 359**, Secretary, Ministry of Defence, Rawalpindi and others v. Muhammad Miskeen, **1999 SCMR 1296**, Rukhsar Ali and 11 others v. Government of N.W.F.P through Secretary Education, Peshawar and 3 others, **2003 PLC (C.S) 1453**, Ikram Bari and others v. National Bank of Pakistan through President and others, **2005 PLC (C.S.) 915**, Secretary to the Government of Pakistan Ministry of Finance and others v. Muhammad Hussain Shah and others, **2005 SCMR 675 R 678B**, Jawaid Ghafoor v. Pakistan Civil Aviation Authority and another, **2010 PLC (C.S) 276**, Lt. Muquddus Haider v. Federal Public Service Commission through Chairman, Islamabad, **2008 SCMR 773**, Samina Kanwal v. Director Punjab Forestry Research Institute, Faislabad, **2011 PLC (C.S) 1553**, Ayaz Ahmed Memon v. Pakistan Railways, Ministry of Railway, Islamabad through Chairman and another, **2011 PLC (C.S) 281**, Shamsul Haque Mahar and others v. Province of Sindh through Chief Secretary and others, **2013 PLC (C.S) 1046**, Muhammad Ashraf Tiwana and others v. Pakistan and others, **2013 SCMR 1159**, Pir Imran Sajid and others v. Managing Director / General Manager (Manager Finance) Telephone Industries of Pakistan and others, **2015 SCMR 1257**, and Muhammad Rafi and another v. Federation of Pakistan and others, **2016 SCMR 2146**.

8. Mr. Khalid Mahmood Siddiqui, learned counsel for CAA in both the petitions, has refuted the averments and allegations made by the petitioners by referring to various documents attached with the counter affidavit filed on behalf of CAA. He argued that the instant petitions are not maintainable against the respondent-CAA under the law as the dispute between the parties relates to contract employment; the Honorable Supreme Court in its various pronouncements settled the law that a contract employee is debarred from approaching this Court in its constitutional jurisdiction; and, the only remedy available to a contract employee is to file a Suit for damages in case of breach of contract or failure thereof. He further argued that the impugned action of the respondent-CAA is well-reasoned and based on settled principles of law. It was urged by him that the petitions are liable to be dismissed in view of the above legal position.

9. We have heard the learned counsel for the parties on the issue of regularization of contractual service of the petitioner and have gone through the relevant documents brought on record and the case-law cited at the bar.

10. The question involved in these cases relates to the regularization of service of an employee vis-à-vis service jurisprudence. The law on the subject is clear in its concept according to which regularization and permanent absorption must be granted strictly under the rules of recruitment in force. It is also well-settled law that contractual employees have no vested right to be regularized unless the same has specifically been provided under the terms and conditions of appointment / service and law.

11. We have perused the appointment orders of the petitioners, which were admittedly contractual appointments for a certain period or an extended period on the choice of appointing authority and that their contract does not contain a provision for regularization, therefore, this Court cannot issue a writ for regularization of their services on the aforesaid analogy. On the aforesaid propositions, we are fortified by the latest un-reported decision dated 16.07.2020 pronounced by the Hon'ble Supreme Court in Civil Appeal No.73 of 2020 in the case of Government of Khyber Pakhtunkhwa, Workers Welfare Board, through its Chairman versus Raheel Ali Gohar and others, and Chairman NADRA, Islamabad, and another v. Muhammad Ali Shah and others (2017 SCMR 1979).

12. In view of the above legal position of the case, principally, this Court, in exercising power under Article 199 of the Constitution, cannot issue directions for regularization, absorption, or permanent continuance of service of an employee, unless the employee claiming regularization had been appointed in an open competitive process in pursuance of regular recruitment under the relevant rules against a sanctioned vacant post. It is a well-settled principle of law that for public employment unless the appointment is in terms of the relevant rules and after a proper competition amongst qualified persons, the same would not confer any vested right on the appointee. If it is a contractual appointment, the appointment comes to an end upon expiration of the contract, and if it was an engagement or appointment on daily wages or casual basis, the same would come to an end upon the completion of the agreed assignment or tenure. It is well-settled that a temporary employee cannot claim permanent status at the end of his term as a matter of right. It is clarified that if the original appointment was not made by following the due / prescribed process of selection as envisaged by the relevant rules, a temporary / contract

employee or a casual wage worker cannot be absorbed in regular service or made permanent merely for the reason that he was allowed to continue the service beyond the term of his appointment. It is not open for this Court to allow regular recruitment in the case of a temporary / contract employee whose period of work has come to an end, or of an ad-hoc employee who by the very nature of his designation, does not acquire any right. Merely because an employee had obtained an interim order of the Court, would not entitle him to any right to be absorbed or made permanent in the service without the mandatory lawful process.

13. In view of the above, the respondent-CAA was well within its rights to dispense with the service of its employees after the expiry of their contract under the law. The General Clauses Act, 1897, also empowers the competent authority to appoint or remove anyone appointed in the exercise of that power. In fact, in view of the legal position discussed above, the services of such contractual employees stood automatically dispensed upon expiration of the contract or any extension made therein.

14. Having discussed the legal aspect of the case. The case of the petitioners falls within the principle of Master and Servant. It is well-established law that a contractual employee has no fundamental / acquired vested right to remain in the contractual post or to seek an extension and/or regularization of the contractual service. It is also a settled law that Courts ordinarily refrain from interfering in the policy-making domain of the Executives unless it is proven that it has infringed the fundamental rights of the citizens of Pakistan, which is not the case at hand.

15. In the present case, no material whatsoever has been placed before us by which we can conclude that the impugned action has been wrongly issued by the respondent-CAA. The cases cited and relied upon by learned counsel for the petitioners are not relevant or applicable to the instant case as the facts and circumstances therein are distinguishable.

16. Adverting to the grounds raised by learned counsel for the petitioners, suffice it to say they accepted their respective posts with certain terms and conditions of their service, as such they are precluded under the law to claim extension or regularization of their contractual service, the reasons discussed supra are sufficient to discard their point of view.

17. The views expressed by us in the preceding paragraphs are fortified by the following authoritative pronouncements of the Hon'ble Supreme Court:

- i. Government of Baluchistan V/S Dr. Zahida Kakar and 43 others, **2005 SCMR 642.**
- ii. Dr. Mubashir Ahmed V/S PTCL through Chairman, Islamabad, and another, **2007 PLC CS 737.**
- iii. Abid Iqbal Hafiz and others v. Secretary, Public Prosecution Department, Government of the Punjab, Lahore, and others, **PLD 2010 Supreme Court 841**
- iv. Federation of Pakistan v. Muhammad Azam Chattha, **2013 SCMR 120**
- v. Muzafar Khan & others V/S Government of Pakistan & others, **2013 SCMR 304**
- vi. Abdul Wahab and others v. HBL and others, **2013 SCMR 1383**
- vii. Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and others, **2017 SCMR 1979**
- viii. Qazi Munir Ahmed Versus Rawalpindi Medical College and Allied Hospital through Principal and others, **2019 SCMR 648**
- ix. Raja Iviz Mehmood and another v. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others, **2018 SCMR 162**
- x. Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals, **2019 SCMR 984.**
- xi. Unreported order dated 13.03.2019 passed by the Hon'ble Supreme Court in C.P. No.2792/2018 and other connected petitions
- xii. Province of Punjab through Secretary Agriculture Department, Lahore, and others Vs. Muhammad Arif and others, **2020 SCMR 507.**
- xiii. Miss Naureen Naz Butt vs Pakistan International Airlines and others, **2020 SCMR 1625.**

18. In view of the above discussion, the petitions are not maintainable either on facts or in law. However, before parting with this case, it may be observed that every person has a right to approach a Court of law for redressal of his grievance, whether such grievance is against a private party or a public functionary. Article 199 of the Constitution restricts such right only to an aggrieved person, as contemplated in the said Article, who is aggrieved by any action or order of a public functionary or department or the Provincial or Federal Government. A person coming to Court must be fully aware of his right i.e. whether he is entitled to such right or not. We are constrained to observe that despite the legal position established in view of the plethora of pronouncements by the Hon'ble Supreme Court as discussed above, the present petitioner filed this petition seeking a relief to which he was not entitled under the law. In other words, the petitioner wanted this Court to grant a declaration contrary to the law settled by the Hon'ble Supreme Court. Not only this, he obtained an ad-interim injunction order in these proceedings against the respondent-CAA. Such conduct on

his part is not acceptable as he has consumed and wasted valuable time of this Court which could have been utilized to decide genuine and urgent matters. Therefore, the petitions are liable to be dismissed with costs.

19. In the light of the above facts and circumstances of the case, the instant petitions are dismissed along with the listed application(s) with costs of Rs.25,000.00 (Rupees twenty-five thousand only) to be deposited by each petitioner with the Nazir of this Court within thirty (30) days from today which amount shall be paid forthwith by the Nazir to Edhi Foundation.

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Nadir*
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