

Judgment Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D – 3310 of 2018

Muhammad Asad-ul-Rehman and 13 others

Versus

Government of Pakistan & 02 others

Date of hearing : 27.04.2021

Mr. Zubair Ahmed Rajput, advocate for the petitioners.

Mr. Muhammad Nishat Warsi, DAG.

JUDGMENT

ADNAN-UL-KARIM MEMON, J. Through this petition, the petitioners are seeking following relief(s):

- a. To direct the Respondent No.2, who being Head of Department and Appointing Authority for Posts in BPS: 1-15 and also Competent to regularized of the services of employee working on contract basis under the Prime Minister's Assistance Package for the Families of Government Employees, who dies in service, to regularize the services of all petitioners, who have been serving in Federal Investigation Agency from the period of about last 7 years to 3 years.
- b. To declare that regularization of service of contract employees of deceased quota of FIA Department whose service period is within one year to 3 years is clear discrimination act of the respondents with the petitioners, who have been in service from last 7 years to 3 years which is sheer violation of legal and guaranteed constitutional rights of Islamic Republic of Pakistan, 1973, which protects the fundamental and basic rights of the petitioners being citizen of Pakistan.
- c. To declare that the case of Petitioners No.10, 11, 12 & 14 is clearly fallen within the parameters of Amended Notified Package of Office Memorandum vide M.O.No.8/10/2013-E-2 dated 20.10.2010 given effect from 15.6.2013 and they were supposed to be appointed "On Regular Basis" in compliance of said amended Notified Package of Establishment Division O.M's, and non-compliance of said Amended Notified Package is illegal, unwarranted and sheer violation of Amended Establishment Division O.M's dated 20.10.2014 given effect from 15.6.2013 and is liable to be rectified and petitioners No.10,11,12 & 14 may be treated on Regular Basis since their appointment.

- d. To declare that the case of petitioners No.10,11,12 & 14 is also covered within the parameters of Amended Notified Package of Office Memorandum vide M.O.No.8/10/2013-E-2 dated 20.10.2010 given effect from 15.6.2013 even in presence of subsequent revised office Memorandum vide M.O. No.8/10/2013-E-2 (Pt) dated 4.12.2015 given effect from 9.2.2015 in the light of relevant para-4 of the order dated 8.1.2018 passed by Honorable Supreme Court of Pakistan Civil Petitions No.1161 and 1267 of 2017 in case of Federation of Pakistan through Establishment Division Islamabad and another v. Salma Bibi and Mst. Nargis Bibi.
2. Through the captioned petition, the petitioners are seeking regularization of their services against the quota reserved for deceased civil servants as provided under the Prime Minister's Assistance Package for the Families of Government Employees, on the premise that their parents were serving in the Federal Investigation Agency (FIA) on different posts, who passed away during their service.
3. At the outset, we asked learned counsel as to how the petitioners No.2, 4, 5, 7, 8, 9, 10,11,12,13 & 14 could be regularized in FIA as Assistant Sub-Inspector (ASI) and Constable being part of the regular force/agency.
4. Mr. Zubair Ahmed Rajput, learned Counsel for petitioners, has argued that family package was issued by the Federal Government vide office memorandum dated 11.07.2006 wherein "Prime Minister's Assistance Package for families of Government employee, who die in service" was offered for those employees, who expired during service and the petitioners were offered the posts of Assistant Sub Inspector and Constable in F.I.A except petitioners No.1, 3 & 6 (UDC & LDC) on contract for a period of two years (2010-2014) and subsequently, the Federal Government revised the policy vide office memorandum dated 20.10.2014, whereby the word contract basis for two years was deleted and it was ordered that one son of the deceased may be appointed on regular basis without any advertisement; that the Federal Government issued Notification on 02.04.2015/03.04.2015 regarding constitution of committee for regularization of contract employees and the case of the petitioners was required to be forwarded to the committee for regularization for service but no action whatsoever has been taken by the respondents; that there are various directives of the Federal Government to regularize the service of contract employees but the respondents are turning their deaf ear and reluctant to regularize the service of the petitioners. Learned counsel further submitted that the petitioners are working in FIA for the last seven years but have not been regularized, therefore, the instant petition has been filed. In support of his

contentions, he heavily relied upon the Office Memorandum No.8/10/2013-E-2 dated 20.10.2010 and in the case of Muhammad Saleem v. Federal Public Service Commission and other, **2020 SCMR 221**, and decision dated 25.1.2019 passed by the learned Single Bench of the Islamabad High Court, Islamabad in Writ Petition No.1371/2013; and, as per the Office Memorandum dated 21.05.2018, the petitioners are also entitled to be considered for regularization of their services without discrimination. He prayed for allowing the instant petition.

5. Learned DAG has resisted this petition on the analogy that in the light of Prime Minister's Assistance Package dated 13.6.2006 and 4.12.2015 for families of Government employees who die in service, the son, daughter and widower of the deceased Government servant, if qualify the conditions for service, is eligible for employment in BPS-1 to BPS-15 on five years contract without advertisement. Per learned DAG, the Government of Pakistan, Cabinet Secretariat, Establishment Division, has issued further notification dated 9.9.2016 with the amendment/ addition by revising PM's Assistance Package which reads as under:

"Employment for the post in BS-01 to BS-15 on five years contract appointment without advertisement which may further be extendable till the age of superannuation or regularization as the case may be."

Learned DAG further pointed out that all such appointments are required to be made with the approval of appointing authority under the FIA (Appointment, Promotion & Transfer) Rules, 1975, as the category of officials falls with BS-1 to BS-15; and, it is for the Director-General FIA to decide about the regularization of the service of the petitioners under the recruitment rules and not otherwise. He prayed for the dismissal of this petition.

6. We have heard the learned counsel for the parties on the subject issue and have gone through the record of the case file.

7. The pivotal question involved in the present proceedings is whether the post of Assistant Sub-Inspector (BS-09) and Constable (BS-05) in F.I.A could be filled on a contract basis; and/or through regular mode of service; and, whether the services of the petitioners could be regularized in presence of recruitment rules notified in the year 1975.

8. To address the aforesaid proposition, we need to examine the entire scheme of the FIA (Appointment, Promotion & Transfer) Rules, 1975. (The FIA Rules).

9. As per the profile of the Federal Investigation Agency (FIA), it is a statutory body, established under the Act, 1974, which is a counter-intelligence and security agency under the control of the Ministry of Interior Government of Pakistan, tasked with the investigative jurisdiction, undertaking operations against terrorism, espionage, federal crimes, fascism, smuggling as well as infringement and other specific crimes, having Statutory Rules of Service, i.e. The FIA (Appointment, Promotion & Transfer) Rules, 1975.

10. Rule 2 (e) defines "Departmental Selection Committee" means a Committee constituted for the purpose of making selection for direct appointment or through transfer to posts under Federal Investigation Agency in Grade 18 and below:

Rule 3 provides that the Appointments to the posts under the Federal Investigation Agency shall be made by the following methods, namely:

- (a) by promotions of persons employed on regular basis in the Agency;
- (b) by transfer of person from other Departments of the Federal Government and the Provincial Governments, on deputation for a specified period; and
- (c) by direct appointment.

Rule provides that 50 per cent, of the posts in Grades 3 to 15 shall be filled by promotion and 50 per cent by direct appointment or transfer: Provided that if no suitable person is available in the Agency to fill a post by promotion, the post may be filled by direct appointment or transfer as may be appropriate.

Rule 10 provides that there shall be three Departmental Selection Committees each consisting of three officers for selecting persons for appointment by direct recruitment or transfer to the Grades specified against each in Schedule II.

Rule 11 provides that the authorities competent to make appointment, whether by promotion, transfer or direct recruitment to the various Grades shall be as follows: --- (i) Grades 17 and above: Prime Minister.

(ii) Grades 11 to 16: Director General.

(iii) Grades 3 to 10: Director General or Additional Director General or any Officer not below the rank of a Director of the Agency (Grade 19) to whom the powers are delegated by the Director General.

(iv) Grades 1 and 2: Deputy Director of the Agency (Grade 18 officer).

Rule 12 provides that for the purposes of promotion, and direct appointment, and transfer, the posts in the Federal Investigation Agency will be placed in the following groups, namely—

- (i) Investigation
- (ii) Accounts
- (iii) Customs
- (iv) Income tax.
- (v) Engineering.
- (vi) Legal.

These groups may, for the smooth administration of the Agency and with the prior approval of Federal Government, be added to or modified as may be considered appropriate by the Director General.

Rule 13 (1) Appointments by promotion shall ordinarily be made within the Groups mentioned in rule by promotion of officers and staff working in the next lower grade or rank on the recommendation of the appropriate Departmental Promotion Committee or the Central Selection Board, as the case may be.

(2) Only those persons who are employed on regular basis in the Agency shall be considered by the Departmental Promotion Committee for promotion.

(3) Persons appointed in the Agency by transfer can be considered for promotion only after they have been selected to serve the Agency only on regular basis.

Rule 15 Appointment by transfer on deputation for a specified period shall be made from amongst the persons holding appointments in the departments or organizations in the same grade in which the post to be filled exists or in promotion from the next lower grade, or rank provided that the person concerned possess the qualifications and experience prescribed for the direct appointment or promotion to the post concerned.

Rule 16 A person appointed under rule 15 may, with the approval of the appointing authority, be retained on regular- basis in the Agency and may, after obtaining the consent of the official concerned and with agreement of his parent department be confirmed in due course against permanent post.

Rule 17 Direct appointments to posts in Grade 16 and above shall be made on the basis of examination or test to be held by the Commission.

Rule 18 Direct appointments to posts in Grades 3 to 15 shall be made on the recommendation of the Departmental Selection Committee after the vacancies have been advertised and the candidates interviewed.

Rule 19 A candidate for direct appointment to a post must possess the educational qualifications and experience, must be within the age limits and fulfill other conditions laid down for the post in Schedule III.

11. Keeping in mind the aforesaid scheme provided by the Act & Rules, 1975, we would like to examine the scope of Rule 3, which provides that 50 per cent, of the posts in Grades 3 to 15 shall be filled by promotion and 50 per cent by direct appointment or transfer: Provided that if no suitable person is available in the Agency to fill a post by promotion, the post may be filled by direct appointment or transfer as may be appropriate.

12. We, after looking at the scheme of the Rules, 1975, are of the view that Rule 3 does not empower the Director General FIA or Selection Authority, as defined under the aforesaid Rules, to appoint any person on contract basis against the quota reserved for deceased civil servants as provided under the Prime Minister's Assistance Package for the Families of Government Employees, without his eligibility, qualifications and the conditions laid down under the Rules as discussed supra.

13. For the aforesaid reasons, we observe that the posts presently held by the petitioners in FIA on the contract basis are against the Federal Investigation Agency Act, 1974 and the FIA (Appointment, Promotion & Transfer) Rules, 1975, thus the question of regularization of the service of the petitioners on the subject posts is misconceived.

14. Adverting to the question of regularization of service of the petitioners, we may observe that the law on the regularization of service is clear in its

concept according to which regularization and permanent absorption must be granted strictly under the rules of recruitment in force. Principally, this Court while exercising powers 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 has been appointed in an open competitive process, in pursuance of regular recruitment, under the relevant rules against a sanctioned vacant post.

15. 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 upon 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 or contract basis, the same would come to an end upon the completion of the agreed assignment or tenure. It is also 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 terms 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 could not be said to acquire any right in this regard.

16. Having discussed the legal aspect of the case, we have perused the appointment orders of the petitioners, which were admittedly a contractual appointment for a certain period or an extended period on the choice of appointing authority. The case of the petitioners was/is subject to the principle of Master and Servant. It is well-established law that a contractual employee cannot claim any vested right, even for the regularization of his service. In the present case, the petitioners have not established that they have the fundamental or have acquired any vested right to remain in the contractual post or to seek an extension and/or regularization of their contractual service.

17. In view of the above discussion, the petition is not maintainable either on facts or on the 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 under 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 rights i.e. whether he is entitled to such right or not. We thus 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 petitioners have filed this petition seeking a relief of which they were not entitled to under the law.

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

1. Dr. Naveeda Tufail and 72 others versus Government of Punjab and others, 2003 S C M R 291
2. Government of Baluchistan v. Dr. Zahida Kakar and 43 others, 2005 SCMR 642.
3. Dr. Mubashir Ahmed v. PTCL through Chairman, Islamabad and another, 2007 PLC CS 737.
4. Abid Iqbal Hafiz and others v. Secretary, Public Prosecution Department, Government of the Punjab, Lahore, and others, PLD 2010 Supreme Court 841
5. Federation of Pakistan v. Muhammad Azam Chattha, 2013 SCMR 120
6. Muzafar Khan & others v. Government of Pakistan & others, 2013 SCMR 304
7. Abdul Wahab and others v. HBL and others, 2013 SCMR 1383
8. Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and others, 2017 SCMR 1979
9. Raja Iviz Mehmood and another v. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others, 2018 SCMR 162
10. Qazi Munir Ahmed v. Rawalpindi Medical College and Allied Hospital through Principal and others, 2019 SCMR 648
11. Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals, 2019 SCMR 984
12. Abu Bakkar Farooq through Chairman and others v. Muhammad Ali Rajpar, 2019 SCMR 830

13. GOVERNMENT OF KHYBER PAKHTUNKHWA, WORKERS WELFARE BOARD through Chairman v. RAHEEL ALI GOHAR and others, 2020 S C M R 2068
14. Province of Punjab through Secretary Agriculture Department, Lahore, and others v. Muhammad Arif and others, 2020 SCMR 507.
15. Miss Naureen Naz Butt v. Pakistan International Airlines and others, 2020 SCMR 1625.
16. M/S Suit Southern Gas Company Limited v. Zeeshan Usmani etc. and Saima Akhtar etc vide judgment dated 18.02.2021 passed in Civil Appeal No.936 & 937/2020.
17. Un-reported judgment dated 25.11.2020 passed in Civil Appeals No.240 & 272 of 2020 by the Hon'ble Supreme Court

19. In the light of the above discussion, it is crystal clear that FIA cannot circumvent the law to make recruitment to the post of ASI and Constable on contract basis, based on quota reserved for deceased civil servants under the Assistance Package for the Families of Government Employees. The appointment of ASI and Constable thus could only be made through the competitive process on merit, as provided under the recruitment rules and not otherwise.

20. In our view, the stance of the petitioners is based on erroneous premises which is discarded. In light of the above facts and circumstances of the case, this petition is found to be misconceived and is accordingly dismissed, along with the pending application(s), with no order as to costs.

Karachi
Dated: 30.04.2021

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