

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Muhammad Junaid Ghaffar, J.**  
**Agha Faisal, J.**

*CP D 5333 of 2018*

*Muhammad Umair & Others*  
vs.  
*Federation of Pakistan & Others*

*(And connected matters, particularized in the Schedule<sup>1</sup> hereto.)*

For the Petitioners : Mr. Syed Shoa-un-Nabi, Advocate

For the Respondents : Mr. Faisal Mehmood Ghani, Advocate  
Mr. Sohail Ahmed, Advocate  
Mr. Chaudhry Azhar Illahi, Advocate  
Mr. Aamir Lateef, Advocate  
Mr. Gul Hassan, Advocate  
Mr. Mustafa Safvi, Advocate  
Mr. Khalid Mehmood Siddiqui, Advocate

Mr. Syed Yasir Ahmed Shah  
Assistant Attorney General

Date/s of hearing : 22.09.2022

Date of announcement : 22.09.2022

## ORDER

**Agha Faisal, J.** The pivotal issue common to all these petitions is whether writ jurisdiction was the proper forum to seek regularization in an admittedly listed public limited company by persons alleged to be employees of the said company's franchisees, vendors, service providers and third party contractors.

2. Per learned counsel, the petitioners were / are employees *inter alia* of the company's franchisees, vendors, service providers and third party contractors and are entitled to regularization primarily on account of efflux of time. It was insisted that any contractual employee, even if not directly engaged, was entitled to regularization if more than one year had passed. It was also averred that even though the respondent company was devoid of any statutory rules, however, this Court ought to assume / exercise jurisdiction since the Government owned some of the shareholding therein.

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<sup>1</sup> The Schedule hereto shall be read as an integral constituent hereof.

3. The respective respondents' learned counsel submitted at the very onset that the admitted lack of statutory rules precluded the respondent from being subjected to writ jurisdiction in employment matters. It was submitted that even when subjected to the anvil of the *functions test*, contrived by the Supreme Court, the respondent company did not qualify.

The counsel for the third party respondents denied that all the petitioners were employees thereof; however, submitted that all their employees have nexus solely therewith and all their respective EOBI / SESSI contributions etc. are also made by the said respondents. It was unequivocally stated that none of their employees were entitled to seek regularization in the respondent company. Mr. Faisal Mahmood Ghani complimented that the respondent listed company ought not to be compelled to regularize petitioners, particulars of employment whereof even with the third parties are *prima facie* suspect.

4. Heard and perused.

5. It is a general principle of law that in the absence of statutory rules of service a writ petition, in service matters, ought not to be entertained<sup>2</sup>. In so far as the issue of functions of the state is concerned, the same was explained by the Supreme Court in the *PIAC case*<sup>3</sup> and reiterated recently in the *Pakistan Olympics Association case*<sup>4</sup>. While eschewing a voluminous repetition<sup>5</sup> of the law illumined, it would suffice to observe that no case has been set forth before us to suggest that the respondent company was performing functions connected with the affairs of the state involving exercise of sovereign power<sup>6</sup>.

6. Serious questions of fact have been raised with respect to the status of the petitioners and it was argued that a significant number of them had not been substantiated to even be employees of the relevant third party respondents. The Supreme Court was seized of a similar matter, pertaining to regularization of alleged third party employees, in *Sohaib Iftikhar*<sup>7</sup>, wherein it was held that such disputed questions of fact going to the root of the matter were not open to determination by the High Court in writ jurisdiction.

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<sup>2</sup> 2021 SCMR 609; 2019 SCMR 278; PLD 2010 Supreme Court 676.

<sup>3</sup> PLD 2010 Supreme Court 676.

<sup>4</sup> 2019 SCMR 221.

<sup>5</sup> Per *Mansoor Ali Shah J.* in the yet unreported judgment dated 18.08.2020 in *Farooq Hussain vs. Shaikh Aftab Ahmed (CRP 104-L of 2019 & connected matters)*.

<sup>6</sup> PLD 1975 Supreme Court 244; 2000 SCMR 928; PLD 2002 Supreme Court 326; PLD 2005 Supreme Court 806.

<sup>7</sup> Per *Umar Atta Bandial J* in *NBP vs. Sohaib Iftikhar (Civil Petition 425-L of 2014)*; Unreported order dated 20.06.2018.

7. The law with respect to regularization is well settled. The august Supreme Court has maintained that no claim for regularization was merited on mere efflux of time<sup>8</sup>. The primary argument of the petitioners, claiming regularization by purported efflux of time, is conclusively dispelled by this edict.

It has also been held that there was no vested right to seek regularization in absence of any pertinent law, rules or policy<sup>9</sup>. The Courts have deprecated the tendency of temporary employees to invoke the writ jurisdiction seeking regularization<sup>10</sup> as it has been illumined that their relationship is governed by the principles of master and servant<sup>11</sup>. The Supreme Court in *Sher Aman*<sup>12</sup> has catalogued the contemporary law pertaining to regularization and maintained that regularization requires the backing of law, rules or policy and in the absence thereof no claim in such regard ought to be entertained. It may be pertinent to observe that the petitioners' counsel made no endeavor to identify any statute, rule etc. in pursuance whereof the claim for regularization could be considered.

8. The petitioners' counsel had sought to rely on a leave refusal order in *Bakht Siddique*<sup>13</sup> to compel this Court to assume / exercise jurisdiction. On the other hand the respondents' counsel had cited a judgment of a five member bench of the august Court in *Farid Ahmed*<sup>14</sup>, wherein the mutually exclusive distinction between the very respondent company's employees and those of third parties was conclusively upheld. Similar matters came up before this bench last month in *Muhammad Arif*<sup>15</sup>, wherein in view of the binding precedent of recent edicts of the august Court in *Saeed Khoso*<sup>16</sup>, *PEPCO*<sup>17</sup> and *Zeeshan Usmani*<sup>18</sup>, it was maintained that a writ seeking regularization of service could not be maintained *inter alia* in respect of a company devoid of statutory rules.

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<sup>8</sup> Per *Ijaz ul Ahsan J* in *Owais Shams Durrani vs. Vice Chancellor Bacha Khan University* reported as 2020 SCMR 2041

<sup>9</sup> Per *Ijaz ul Ahsan J* in *Khushal Khan Khattak University & Others vs. Jabran Ali Khan & Others* reported as 2021 SCMR 977

<sup>10</sup> Per *Nadeem Akhtar J* in *Anjum Badar vs. Province of Sindh & Others* reported as PLD 2021 Sindh 328.

<sup>11</sup> Per *Ijaz ul Ahsan J* in *Govt of KPK Welfare Board vs. Raheel Ali Gohar & Others* reported as 2020 SCMR 2068

<sup>12</sup> Per *Muhammad Ali Mazhar J* in *Govt of KP vs. Sher Aman & Others* reported as 2022 SCMR 406.

<sup>13</sup> *State Oil Company Limited vs. Bakht Siddique & Others* reported as 2018 SCMR 1181.

<sup>14</sup> Per *Aslam Riaz Hussain J* in *Farid Ahmed vs. Pakistan Burmah Shell Limited & Others* reported as 1987 SCMR 1463.

<sup>15</sup> Per *Muhammad Junaid Ghaffar J* in *Muhammad Arif vs. Federation of Pakistan (CP D 875 of 2020) and connected petitions*; yet unreported order dated 26.08.2022.

<sup>16</sup> Per *Ijaz ul Ahsan J* in *Southern Gas Company Limited vs. Saeed Ahmed Khoso* reported as 2022 SCMR 1256.

<sup>17</sup> Per *Ijaz ul Ahsan J* in *Pakistan Electric Power Company vs. Syed Salahuddin* reported as 2022 SCMR 991.

<sup>18</sup> Per *Sayed Mazaher Ali Akbar Naqvi J* in *Sui Southern Gas Company Limited vs. Zeeshan Usmani* reported as 2021 SCMR 609.

9. It is apparent that the employment of all the petitioners even with the third party respondents is suspect. A detailed investigation in the factual realm pertaining to the claimed antecedents of each petitioner cannot be conducted in writ jurisdiction<sup>19</sup>. It is an admitted position that the respondent company is devoid of statutory rules. It was never the petitioners' case that the respondent company was performing functions connected with the affairs of the state involving exercise of sovereign power. Even otherwise, there is no generic entitlement for regularization<sup>20</sup> and the petitioners' counsel did not even endeavor to identify any specific law, rule or policy conferring any entitlement upon the petitioners to be considered for regularization<sup>21</sup>. Therefore, we are constrained to hold that the petitioners have failed to set forth any case for exercise of the discretionary<sup>22</sup> writ jurisdiction of this Court.

10. In view hereof, we find these petitions to be misconceived, hence, the same were dismissed, along with pending application/s, vide our short order announced in open Court earlier today. These are the reasons for the short order.

JUDGE

JUDGE

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<sup>19</sup> 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.

<sup>20</sup> Per Ijaz ul Ahsan J in *Govt of KPK vs. Jawad Ali & Others* reported as 2021 SCMR 185; Per Mansoor Ali Shah J in *Province of Punjab vs. Dr. Javed Iqbal* reported as 2021 SCMR 767; Per Ijaz ul Ahsan J in *Owais Shams Durrani vs. Vice Chancellor Bacha Khan University* reported as 2020 SCMR 2041; Per Miangul Hassan Aurangzeb J in *First Womens Bank vs. Muhammad Tayyab* reported as 2020 PLC (C.S.) 86.

<sup>21</sup> Per Ijaz ul Ahsan J in *Govt of KPK Welfare Board vs. Raheel Ali Gohar & Others* reported as 2020 SCMR 2068;

<sup>22</sup> Per Ijaz Ul Ahsan J. in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.

*Schedule*

CP D 3976 of 2018: Syed Atif Ali & Others vs. Federation of Pakistan & Others	CP D 4622 of 2018: Khawaja Waqar Sadiq & Others vs. Fed. of Pakistan & Others
CP D 5437 of 2018: Muhammad Adil & Others vs. Federation of Pakistan & Others	CP D 5556 of 2018: Talha Ibrahim & Others vs. Fed. of Pakistan & Others
CP D 5644 of 2018: Muhammad Sohail & Others vs. Federation of Pakistan & Others	CP D 5695 of 2018: Muhammad Javed & Others vs. Fed. of Pakistan & Others
CP D 5907 of 2018: Fazal ur Rehman vs. Federation of Pakistan & Others	CP D 6043 of 2018: Kashif Riaz & Others vs. Federation of Pakistan & Others
CP D 6487 of 2018: Talal Jaseem vs. Federation of Pakistan & Others	CP D 7022 of 2018: Babar Hussain & Others vs. Fed. of Pakistan & Others
CP D 7426 of 2018: Ahmed Khan & Others vs. Federation of Pakistan & Others	CP D 8332 of 2018: Ejaz Raheem & Others vs. Fed. of Pakistan & Others
CP D 1167 of 2019: Farooq Ahmed Unar & Others vs. Federation of Pakistan & Others	CP D 83 of 2019: Syed Bilal Shah & Others vs. Fed. of Pakistan & Others
CP D 8320 of 2019: Syed Asad Ali vs. Federation of Pakistan & Others	CP D 1329 of 2020: Muhammad Ali & Others vs. Fed. of Pakistan & Others
CP D 720 of 2020: Ali Khan & Others vs. Federation of Pakistan & Others	