

## ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Constitutional Petition No.D-05 of 2013

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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**Present:**

Mr. Justice Muhammad Junaid Ghaffar,  
Mr. Justice Muhammad Saleem Jessar,

1. For hearing of M. A. No.4516/2013.
2. For hearing of M. A. No.4423/2013.
3. For hearing of main case.

**Petitioner :** Ahmed Murtaza Memon, through Mr. Ghulam Dastagir A. Shahani, Advocate.

**Respondents :** Federation of Pakistan & others.

Mr. Asif Hussain Chandio, advocate for respondents  
No.2 to 7.

Mr. Nisar Ahmed G. Abro, Deputy Attorney General.

Date of hearing : 20.09.2017.

Date of Order : 28.09.2017.

**ORDER.**

**Muhammad Junaid Ghaffar, J.-** Through this petition, the petitioner has sought regularization of his service with effect from his initial appointment and further it has been prayed to declare that the order of termination of his service is illegal, unlawful, based on malafide and without any justification.

2. Learned Counsel for the petitioner has contended that pursuant to an advertisement dated 03.01.2009 published in daily "Jang" Karachi, the petitioner applied for the post of Assistant Manager, Labour and Law and through appointment order dated 22.01.2011 the petitioner was appointed on such post on contract

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basis for a period of one year. He has further contended that subsequently the petitioner assumed his duties and through office order dated 12.01.2012 he was given an extension for a further period of six months upto 23.07.2012 and once again through office order dated 31.05.2012 another extension of six months was granted upto 23.01.2013. Per learned Counsel, since the respondents were acting with malafides and were discriminating the petitioner, therefore, this Court was approached by filing instant petition on 02.01.2013 seeking regularization of the contractual employment. He has further contended that after filing of this petition and during its pendency, the respondents issued an office order dated 20.07.2013, whereby, on the basis of recommendation of some Enquiry Committee his services were terminated immediately with further directions to payback the salary and allowances and other benefits from the date of appointment till issuance of the said order. According to the learned Counsel, this necessitated filing of an application under Order VI, Rule 17, CPC for amendment in the petition and prayer clause, whereby, the order of termination was challenged and the said application was allowed through order dated 07.04.2016. He has further submitted that one Nasrullah Solangi, who was also one of the applicants and was not appointed, filed a petition bearing No.D-2008/2011, wherein the respondents filed their comments and fully supported the petitioner's case, therefore, the non-regularization of the petitioner and subsequent termination is, on the face of it, based on malafides. He has further contended that petitioner has been discriminated, whereas other employees, whose term was also extended from time to time along with the petitioner have been regularized permanently and he has referred to one office order dated 27.08.2012. Per learned Counsel, the order of termination has been passed without issuance of any show cause notice or hearing opportunity, whereas the enquiry

committee was constituted on its own by the respondents and the said enquiry committee also never called or confronted the petitioner. He has further submitted that the petitioner was appointed after due process and on merit, therefore, any enquiry conducted behind closed doors cannot be made basis for the alleged termination of the petitioner. In support of his contention, he has relied upon the cases reported as *Province of Sindh v. Zulfiqar Ali* (2006 SCMR 678), *Abdul Salim v. Government of N.-W.F.P.* (2008 SCMR 871), *Asif Nadeem v. Executive District Officer, Education & 2 others* (2008 PLC (C.S.) 715), *Fuad Asadullah Khan v. Federation of Pakistan* (2009 SCMR 412), *Muhammad Ather v. Ministry of Defence* (2012 PLC (C.S.) 1223), order dated 13.11.2013 passed in C. P. D-87/2011 by this Bench in the case of *Syed Azhar Ali Shah v. Zonal Manager, Utility Stores Corporation & others* and another order dated 03.05.2012 passed in C. P. No.D-2268/2011 in the case of *Babar Akhtar v. Jamshoro Power Company Limited & others* duly approved by the Hon'ble Supreme Court through order dated 15.07.2013 in Civil Appeal No.74-K of 2012.

3. On the other hand, learned Counsel for respondents No.2 to 7 has contended that the appointment of petitioner was illegal from day one and an enquiry was conducted in respect of the irregularity in his appointment and the Inquiry Committee through report dated 04.03.2013 has come to the conclusion that the petitioner never qualified and met the criteria as prescribed in the advertisement and his appointment was at the behest and influence of a former Chief Executive Officer of the company, who happened to be the father of the petitioner. He has further contended that the petitioner has though amended the petition but the members of the enquiry committee were never arrayed as respondents, hence no relief can be granted to the petitioner. In support of his contention, he has relied upon the cases reported as *Aziz-ur-Rehman v. President Zarai Taraqiati Bank Ltd.*

(2008 S.L.J 1683) and *Syed Mushtaq Hussain Bukhari v. PEPCO* (PLJ 2013 Lahore 424).

4. We have heard both the learned Counsel and perused the record.

5. The petitioner appears to have been appointed on the basis of appointment letter/contract dated 22.01.2011, wherein the relevant terms and conditions read as under:

- i. a. ....  
b. ....
- ii. *Period of contract shall be **One year** from the date of assumption of charge.*
- iii. *You will remain on probation, initially for a period of three months, extendable for further three months by the competent authority if required. During this period your services can be terminated without assigning any reason.*
- iv. ....
- v. ....
- vi. ....
- vii. ....
- viii. ....
- ix. ....
- x. ....
- xi. ....
- xii. ....
- xiii. ....
- xiv. a. *The appointment on contract shall be liable to termination on one-months' notice or payment of one-month's pay in lieu thereof by either side without assigning any reason. However, your services can be terminated without any notice if you are found guilty of dishonesty, misconduct, negligence, in-discipline or breach of trust.*  
b. ...."

6. Perusal of the aforesaid relevant clauses of the appointment contract very clearly reflect that the contract was only for a period of one year, whereas the petitioner remained on probation initially for three months and thereafter completed the entire period of contract, which is not in dispute. It further appears that through office order dated 12.01.2012 contract of various employees was extended and petitioner's name appears at Sr. No.28 of the said office order,



which extends the contract of the petitioner upto 23.07.2012 and before such expiry of the extended period another office order dated 31.05.2012 was issued, through which the period of contract was further extended upto 23.01.2013. This petition was filed on 02.01.2013, wherein the precise grievance of the petitioner was to the extent of non-regularization of his service contract, as according to the petitioner, some other employees appointed on contract basis were regularized. During pendency of this petition the termination order dated 20.07.2013 was passed, which reads as under:-

"Office of the  
Chief Executive Officer  
(GENCO-II) TPS GUDDU

No.CEO/CPGCL/M&S Enq/17087-95, Dated: 20/07/2013

OFFICE ORDER

*In compliance of approval accorded by Managing Director PEPCO of the recommendations of the inquiry committee, conveyed to this office by Deputy Director Confidential M&S Division Lahore in his letter no. \_\_\_DC.05008/1762/11/829 dated 17/03/2013, contract service of Mr. Ahmad Murtaza Memon, Assistant Manager (LL) of this company, appointed vide office order no. CPGCL / HRAD/ Gen/ 3677-80 dated 22-07-2011, is hereby terminated immediately, his appointment, as proved by the committee, being illegal ab initio as he did not possess five year experience as required on the last date of submission of application i.e., 15-03-2009.*

*In addition Mr. Ahmad Murtaza Memon is informed that as recommended by inquiry committee and approved by MD PEPCO, he (Mr. Ahmad Murtaza) shall also pay to Central Power Generation Company Limited Guddu all the pay & allowances and other benefits he received from the company since his date of appointment i.e. 24-01-2011 till issuance of this order. For this purpose, he will be intimated soon of the details of the consolidated recoverable amount etc duly approved by the competent authority.*

Sd/-  
(Muhammad Aslam)  
Chief Executive Officer"

7. Perusal of the aforesaid order reflects that on the recommendation of the Managing Director, PEPCO, enquiry was conducted and the appointment of petitioner was terminated by holding his appointment as illegal *ab initio* on the ground that he did not possess five years' experience as required on the last date of

submission of application i.e. 15.3.2009. In this very order, it was also recommended that he shall payback the salary and allowances as well as benefits he received from the company since his appointment. In nutshell, there are two issues which are to be dealt with and adjudicated upon by this Court. The first is whether the petitioner is entitled for regularization of his contract employment; and the second is, that whether the termination order is lawful and the petitioner could be asked to pay back the benefits and salaries from the date of his appointment.

8. Insofar as the first issue is concerned, by now it is a settled proposition that a contract employee has no vested rights. It is very clear in the contract appointment that it was valid for a period of one year and the same was duly accepted by the petitioner. On the date of his appointment he was in knowledge that the contract would end after one year. There is nothing in the contract or for that matter the learned Counsel has not been able to refer to any of the conditions within the contract to suggest that his contract employment was to be regularized at a later stage. Though he has referred to some employment rules, which in our view are not relevant and applicable to the petitioner, as he was not on probation, and his probation was only for three months, which he had successfully completed. Moreover, he was given two extensions of six months each, but even that does not create any vested rights in favour of the petitioner to seek any such regularization. In fact, after 23.01.2013 when his contract expired, he was no more in service. We are surprised and failed to understand as to why a termination order was passed against the petitioner on 23.07.2013 when he was no more in employment and merely the petition was pending. There was no question of any termination order and even if the enquiry was conducted and completed, there was no need for passing of any termination order, as simplicitor the contract

stead expired and no further action was to be initiated. The question of entitlement for regularization under a contract employment is now settled in various cases by the Hon'ble Supreme Court as well as this Court. In the case reported as **Federation of Pakistan v. Muhammad Azam Chattha (2013 SCMR 120)** it has been observed by the Hon'ble Supreme Court that for a contract employee, who has been dismissed from employment even before expiry of his contract, the only remedy is to claim damages to the extent of unexpired period of his contract but not reinstatement. The relevant observation of the Hon'ble Supreme Court is as under:-

*"The question is that a person whose fate has been so determined, although he was a contract employee, had no legal entitlement to continue in contract employment because subject to holding him entitled to draw salary in lieu of the notice period, he could not have agitated the matter in any manner. In addition to it, it is a cardinal principle of law that a contract employee instead of pressing for his reinstatement to service for the leftover period can at best claim damages to the extent of unexpired period of his service."*

9. Similarly in the case reported as **S.M.C. No.15 of 2010 regarding Regularization of the Contract Employees of Zakat Department: In re (2013 SCMR 304)** it has been held by the Hon'ble Supreme Court that a contract employee does not have a vested right for any regular appointment. The relevant observation is as under:-

*"15. We examined the various orders of appointments of the petitioners placed on record and noted that the petitioners were employed/recruited on contractual basis for specific periods by the Chairman of the District Zakat Committees. Their services were to be regulated by the terms and conditions of the agreement approved by the Provincial Zakat Council of the Provinces. It is not disputed that the petitioners were contractual employees recruited on a fixed salary for specified terms which in most cases were extended from time to time. The nature of their job has been highlighted in the comments filed by the Government of Punjab (C.M.A. No.2689 of 2010). Soon after promulgation of the 1980 Ordinance, the Provincial Zakat Councils of the Provinces decided to engage imam of mosques, school teachers, postmasters and other part time retired persons for preparation of the records and accounts of the Local Zakat Committees. Their remuneration at that time was fixed at Rs 50 per month. In the year 1993, the Provincial Zakat Council*



decided to engage part time workers for the maintenance of record at the fixed remuneration of Rs.200 per month. The Central Zakat Council on 13-10-1994 set up a scheme for Zakat Clerks, which, besides other conditions, decided that the appointments will be contractual; that they be paid fixed salaries and shall be appointed by the Chairman District Zakat Committee subject to endorsement of the Central Zakat Committee. It was on such terms that the petitioners were employed by their respective District Zakat Committees. This background demonstrates the nature of their employment being for specific purpose. Be that as it may, the fact remains that the petitioners are contractual employees and on that score according to the consistent view of this Court do not have vested right for regular appointment. See **Government of Balochistan v. Zahida Khokhar** (2005 SCMR 642)."

10. In the case reported as ***Trustees of the Port of Karachi v. Saqib Samdani*** (**2012 SCMR 64**) the Hon'ble Supreme Court has been pleased to observe as under:-

"Evidently the above letter reflects that the respondent was in employment on contract basis, hence no vested right was created in his favour for reinstatement in service. It was not the case where the respondent was appointed as a regular employee against any particular quota to give him a valid cause of action. Equally, the impugned judgment is also silent that termination of service of the respondent violated any of his rights; therefore, in our view his reinstatement under the impugned judgment does not appear to have been validly ordered. The case law cited supra is not helpful to the respondent being in different facts and circumstances. Thus having considered the foregoing, we are of the view that the impugned judgment is not sustainable in the eyes of law, accordingly we set aside the same. This petition is converted into appeal and allowed in the above terms. No order as to costs."

11. Similar view has been expressed by the Supreme Court of Azad Jammu and Kashmir in the case reported as ***Azad Jammu and Kashmir Government v. Muhammad Amin*** (**2017 PLC (C.S.) 945**) and by our Supreme Court in the case reported as ***Government of Khyber Pakhtunkhwa v. Ihsan Ullah*** (**2017 SCMR 1201**) and in the case reported as ***Syed Shahid Ali Jaffri v. Chancellor Liaquat University of Medical and Health Sciences*** **2017 PLC (C.S.) Note 38**. Therefore,



there appears to be no ground for entertaining the prayer of the petitioner regarding regularization of his contract employment, which already stood expired on completion of his contractual and extended period on 23.01.2013.

12. Coming to the second aspect regarding his termination, we have already briefly discussed hereinabove that there was no occasion for the respondents to pass any termination order. It further appears that the same has been passed just to pressurize the petitioner to payback the salary and benefits so earned by him. At the very outset, we have confronted the learned Counsel for the respondents as to under what provision of law or any precedent of the Courts can the respondents pass an order for paying back the salary and benefits so earned by an employee when he has admittedly regularly worked for the company, the learned Counsel could not give any satisfactory response. It is an admitted position that the petitioner was employed on contract basis and had worked during subsistence of his contract and the extended period, whereas during this entire period his appointment was never challenged or found irregular. If that had been the case, then after expiry of his contract, two extensions would not have been granted. We have failed to understand as to why any need arose for passing such an order of termination as well as the recovery of salary and benefits and that too without affording any opportunity of hearing and/or to defend his position. We are not in agreement with passing of such an order for the simple reason that no termination order was necessary, whereas there appears to be no justification and/or lawful reason to demand back from the petitioner the salary and benefits already earned by him.

13. In view of hereinabove facts and circumstances of this case, the petition to the extent of regularization of the contractual

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employment has no merits and is accordingly dismissed along with listed applications; however, it is allowed to the extent of repayment of salary and benefits demanded from the petitioner pursuant to termination order dated 23.07.2013, which stands set aside to that extent only.

14. Petition stands partly allowed in the above terms.

Dated: 28.9.2017

Qazi Tahir PA\*