

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No. D-2378 of 2015

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Date \_\_\_\_\_ Order with signature of Judge \_\_\_\_\_

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**For Direction**

01. For orders on CMA No. 2666/18.
02. For orders on CMA No. 15971/2017. (Contempt)

**08.02.2018**

Mr. Shoukat Iqbal Advocate for the Petitioner.  
Mr. Muhammad Asghar Malik Advocate along with  
alleged contemnor namely Tariq Mehmood Cheema  
Deputy Controller Administration and Personnel-  
(Establishment).  
Mr. Shaikh Liaquat Hussain, Assistant Attorney  
General.

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1. Dismissed having become infructuous.
2. The instant petition was disposed of vide order dated

10.04.2017 with the following observations:-

“Petitioner is working as Resource Person (Naib-Qasid) against PBEs on contract basis in Pakistan Television Corporation Limited and has filed this petition for regularization of his service. It appears that at different occasions during the course of hearing of this petition. It has been informed that the matter of regularization of service of the petitioner has already been sent to the Managing Director, PTV Islamabad, but since the said post is lying vacant, no action on the said recommendation could be taken. Learned counsel for the petitioner states that he would be satisfied and would not press this petition, if directions are issued that as and when the post of Managing Director is filled by any future incumbent, he shall consider the case of the petitioner for regularization in terms of the recommendation in accordance with the law and till that time petitioner’s contract of service may not be disturbed. To this proposal, learned counsel for the PTV and learned Standing Counsel have recorded their no objection. Accordingly, in view of the above terms, this petition is disposed of along with listed applications.

On 18.05.2017 Petitioner filed an application being CMA No. 15971/17 under Article 204 of Constitution of Islamic Republic of Pakistan 1973, for initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional and deliberate act of disobeying the above mentioned Order passed by this Court.

Mr. Shoukat Iqbal, learned counsel for Petitioner has argued that despite clear directions in the above said Order the contemnors have not complied with the same and declined to regularize the service of the Petitioner. He next contended that this Court vide order dated 31.01.2017 directed the Managing Director PTVC, Islamabad to decide the matter of the Petitioner for regularization in accordance with law, specially keeping in view the decision of the Hon'ble Supreme Court of Pakistan rendered in the case of Ejaz Akbar Kasi and others Vs. Ministry of Information and Broadcasting and others (PLD 2011 SC 22) within 15 days but the contemnors did not follow the direction of this Court, compelling to dispose of the instant petition vide order dated 10.04.2017 with direction to the Managing Director PTVC to consider the case of the Petitioner for regularization in terms of recommendation in accordance with law. He next submitted that this Court vide order dated 25.01.2018 directed Managing Director PTVC to pass a speaking order within 7 days after affording an opportunity of hearing to the Petitioner while considering the decision given by the Hon'ble Supreme Court in the case of Ejaz Akber Kasi supra. Learned counsel submits that the Respondents have filed

statement dated 06.02.2018, whereby they have attached a copy of report regarding regularization of services of the Petitioner without assigning any valid reasons by not regularizing his services. He lastly prayed for taking cognizance of the matter against in action on the part alleged contemnors.

Mr. Muhammad Asghar Malik, learned counsel for the alleged contemnors has filed statement dated 06.02.2018 along with bunch of documents, including order dated 01.02.2018 passed by the Managing Director Pakistan Television Corporation Limited (PTVC) and contended that in compliance of the Order dated 25.01.2018 passed by this Court has been complied with in its letter and spirit. He next contended that the regularization of the services of the Petitioner was considered and the competent authority passed speaking order by declining the request of the Petitioner for his regularization of services in PTVC. He next submitted that the competent authority considered the judgment dated 04.11.2010 passed by the Hon'ble supreme Court of Pakistan in the case of Ejaz Akbar Kasi as discussed supra. Learned counsel has defended the action of the alleged contemnors and argued that Petitioner was engaged as resource person (Naib-Qasid) against Program to Program basis of current affairs department w.e.f. 11.05.2002. He was recommended as special case, being retired employee's son without following any procedure i.e. advertisement of the post, test and interview; that in the year 2008 the Government of Pakistan announced a policy to regularize the service of temporary employees and Petitioner's case was also considered but could not be regularized as he did not fulfill the

criteria laid down by the Government of Pakistan vide office memorandum dated 29.08.2008 and approved by the PTVC's Board of Directors and it was resolved that those who are working against tenure post, project post or daily wages or those who are being paid from contingent or defence budget are not eligible for regularization. He next added that Petitioner was following in the category of contingent / tenure post, therefore his case did not come within the ambit of office memorandum dated 29.08.2008. Learned counsel tried to convince this Court that the case of Ejaz Akbar Kasi relates to group-IV and above in the service of PTVs, thus not supporting the case of the Petitioner, therefore is distinguishable on the facts and circumstances of the present case; that service history / record of the Petitioner is not satisfactory therefore he is not entitled to be regularized. In support of his contention learned counsel relied upon the order dated 01.02.2018 passed by the Managing Director PTVC. He lastly prayed for dropping the contempt proceeding against the alleged contemnors.

The foremost question in the present proceeding is whether the alleged contemnors have decided the matter of the Petitioner for regularization of his service in accordance with law and the decision given by the Hon'ble Supreme Court of Pakistan in the case Ejaz Akbar Kasi reported in (PLD 2011 DC 22).

We have perused the Judgment of the Hon'ble Supreme Court passed in the case of Ejaz Akbar Kasi as held at paragraph 4 as under:-

“Be that as it may, we are not inclined to agree to the reasons which prevailed upon the Board in not regularizing the Group 4, 5 and 6 when at the same time the employees of other Groups as noted hereinabove were regularized beside other individual persons whose names have also been mentioned hereinbefore. This Court has laid down a criteria in respect of such employees who have somehow identical contentions in the case of Ikram Bari and others v. National Bank of Pakistan through President and another (2005 SCMR 100). Therefore, we are of the opinion that the case of the petitioners reserves to be considered by the Board of Directors for the reasons noted hereinabove as they cannot be discriminate without any cogent reason by violating the provisions of Article 25 of the Constitution and at the same time after having spent a considerable period of their lives in the Organization performing duties on contract basis. It is also the duty of the organization to protect their fundamental rights enshrined n Article 9 of the Constitution.

5. Thus for the forgoing reasons Petitions Nos. 42, 40 and 62 are accepted and the cases are sent to the PTV management for considering their cases for the purpose of regularization or otherwise in view of the observations made hereinbefore.
6. As far as petition No. 48 is concerned, this case is different from above petitions because they were regularly appointed on probation for a period of two years from 20.02.2006, where after their probation period has not been extended and the letters of permanent employment have not been issued in their favour. Learned counsel appearing for the Respondent-corporation clearly indicates that they have completed the probation period without any stain on their performance and now they are in the employment of PTV. Be that as it may if it is the stand of the Corporation, they are directed to issue the letters of permanent employees to those employees who have successfully completed their probationary period. As such this petition is disposed of accordingly.”

In the light of findings given by the Hon’ble Supreme Court of Pakistan in the case of Ejaz Akbar Kasi supra, we are not inclined to agree to the reasons given by the Managing Director PTVC in its order dated 01.02.2018, which is not in accordance with law and the Judgment passed by the Hon’ble Supreme Court as discussed supra.

We are of the considered view that Petitioner is entitled to similar treatment, which was given to his similarly placed colleagues for their regularization and absorption in PTVC.

We are of the opinion that the Respondent-PTVC cannot act whimsically while making fresh appointment against the post already held by the Petitioner, who was appointed by Respondent PTVC and nothing adverse in terms of qualification and character and/or inefficiency in the subject field was observed by the Competent Authority of the Respondent-PTVC during his entire period of service, only first time they have disclosed in the order dated 01.02.2018 regarding willful absence of the Petitioner from the duty. This factum was not disclosed before this Court when the captioned petition was disposed of by this Court, which can be termed to be afterthought.

We have noted that the Petitioner served the Respondent-PTVC for a period ranging from 11.05.2002 as per details mentioned in paragraph 1 of the order dated 01.02.2018 passed the Managing Director PTVC. The said period of service is more than sufficient to acquire expertise in respective field. Therefore, considering others while ignoring the Petitioner is unjustified and against the principles of natural justice and equity.

We have gone through the Office Memorandum dated 29.08.2008 and subsequent Office Memorandum dated 11th May, 2017 issued by Government of Pakistan, Cabinet Secretariat, Establishment Division and excerpt of the same is reproduced herein below: -

**Government of Pakistan  
Cabinet secretariat  
Establishment division**

**No.F-53/1/2008-SP**

**Islamabad the 11th May, 2017**

**OFFICE MEMORANDUM**

**Subject:- Amendment in the Recruitment Policy/Mechanism to Ensure Merit Based Recruitment in the Ministries/Divisions/Sub-ordinate Offices/Autonomous/Semi-Autonomous Bodies/ Corporations/Companies/Authorities**

The undersigned is directed to state that the Federal Cabinet in its meeting held on 12th April, 2017 has accorded approval of the subject amendment to be inserted as para 1(e) in the Recruitment Policy/Mechanism issued vide this Division's O.M. No.531/2008-SP dated 16th January, 2015 as under: -

- “(e) Appointment on Regular Basis of Contract/ Contingent/ Paid/ Daily Wages/Project Employees For the purpose of appointment on regular basis of Contract/Contingent/Paid/Daily Wages/Project employees the following criteria shall be observed: -
- (i) All Contract/Contingent/Paid/Daily Wages/ Project employees who have rendered a minimum of one year of service in continuity, as on 1.1.2017 (hereinafter referred to as eligible employees) may apply for appointment on regular basis in the manner prescribed hereinafter provided that the condition of continuity shall not be applicable in case of person(s) employed on daily wages who have completed at least 365 days service.
  - (ii) For initial appointment to posts in BS-16 and above, the employees shall apply direct to FPSC against relevant/suitable vacancies as and when arising for which they are eligible.
  - (iii) For initial appointment to posts in BS-1 to BS-15, the eligible employees may apply as per criteria given vide this Division's O.M. No.531/2008-SP dated 16.1.2015 and 3.3.2015 shall be adopted.
  - (iv) The eligible employees shall be awarded extra marks in interview at the rate of one (01) mark for each year of service rendered upto a maximum of five (05) marks, on

the recommendation of the respective selection authorities.

- (v) The period served as Contract, /Contingent/Paid/Daily Wages/Project employees shall be excluded for the purpose of determination of upper age limit in addition to relaxation of upper age limit as per existing rules.
  - (vi) Qualifications prescribed for a post shall be strictly followed in case a person does not possess the prescribed qualifications/experience for the post he/she is applying for he/she shall not be considered for the same.
  - (vii) The employees must be in good mental and bodily health and free from any physical defect likely to interfere with the discharge of his duties unless appointed against disability quota.
  - (viii) The advantage of para 1(e) is a one-time dispensation for all Contract/Contingent/Paid/Daily Wages/Project employees for their eligibility to regular appointment.
2. This Division's O.M. of even number dated 16th January, 2015 is modified to the above extent. All Ministries/Divisions are requested to take further action accordingly.

**(Attiq Hussain Khokhar)**  
**Director General**  
**Tel:051-9103482**

The above Memorandum dated 11th May, 2017 is issued in pursuance of the decision of the Cabinet Sub-Committee for regularization vide which the Federal Government has directed Ministries/Divisions/Sub-ordinate Offices/Autonomous/Semi-Autonomous Bodies/Corporations/Companies/Authorities to regularize all Contract employees who have rendered a minimum of one year of service in continuity, as on 01.01.2017.

We are of the view that the Petitioner is fully entitled to the benefit contained in the aforesaid Office Memorandum because he



is in continuous service of the Respondent-PTVC for long time and is paid salary as well.

The case of the Petitioner is fully covered by the Judgment rendered in the case of Ejaz Akbar Kasi and Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257). We are further fortified on the similar principle by the case law decided by learned five Members' Bench of the Hon'ble Apex Court in the case of Government of Khyber Pakhtunkhwa and others Vs. Adnanullah and others (2016 SCMR 1375), wherein the Hon'ble Supreme Court has held at paragraph 31 as reproduced below:-

“The record further reveals that the Respondents were appointed on contract basis and were in employment/service for several years and Projects on which they were appointed have also been taken on the regular Budget of the Government, therefore, their status as Project employees has ended once their services were transferred to the different attached Government Departments, in terms of Section 3 of the Act. The Government of KPK was also obliged to treat the Respondents at par, as it cannot adopt a policy of cherry picking to regularize the employees of certain Projects while terminating the services of other similarly placed employees.”

The explanation offered by the Respondents, prima facie, is not tenable under the law as the Petitioner was not considered for the regularization in service as directed by this Court vide order 31.01.2017, 10.04.2017 and 25.01.2018.

In view of the facts and circumstances of the case and for the reasons alluded as above, we are not satisfied with the explanation furnished by the alleged contemnors that substantial compliance of the order dated 31.01.2017, 10.04.2017 and

25.01.2018. passed by this Court has been made in its letter and spirit, therefore, at this juncture, case for initiating contempt proceedings is made out against the alleged contemnors. Thus, we are inclined to continue with the proceedings on the listed application bearing CMA No.15971/2017 and issue notice to the alleged contemnors for further proceeding under the law.

Office is directed to issue show cause notice to the alleged contemnors for the next date. To come up after 15 days.

JUDGE

Karachi  
Dated:-08.02.2018

JUDGE

**Shafi Muhammad P.A**