

**IN THE HIGH COURT OF SINDH AT KARACHI**  
**SUIT No. 379 / 2019**

**Plaintiff:** **Muhammad Ayub Khan Sanjrani through  
Mr. Malik Naeem Iqbal Advocate.**

**Defendants:** **Sindh Health Care Commission & others  
No. 2 to 4. Through Mr. Muhammad Mansoor Mir  
Advocate.**

**SUIT No. 380 / 2019**

**Plaintiff:** **Muhammad Suleman Otho through  
Mr. Malik Naeem Iqbal Advocate.**

**Defendants:** **Sindh Health Care Commission & others  
No. 2 to 4. Through Mr. Muhammad Mansoor Mir  
Advocate.**

**SUIT No. 381 / 2019**

**Plaintiff:** **Saleem Ahmed through Mr. Malik Naeem  
Iqbal Advocate.**

**Defendants:** **Sindh Health Care Commission & others  
No. 2 to 4. Through Mr. Muhammad Mansoor Mir  
Advocate.**

For hearing of CMA No. 3156/2019 in Suit No.379 / 2019

For hearing of CMA No. 3159/2019 in Suit No.380 / 2019

For hearing of CMA No. 3162/2019 in Suit No.381 / 2019

**Date of hearing:** **02.04.2019, 08.05.2019.**

**Date of order:** **17.06.2019.**

**O R D E R**

**Muhammad Junaid Ghaffar, J.** All these three Suits involve a common grievance of the Plaintiffs and therefore, the listed applications are being decided through this common order. The Plaintiffs have impugned Office Order dated 13.2.2019 and Letter dated 14.2.2019 and seek suspension of the same through listed applications with a further order restraining the Defendants from making any appointment on the posts held by the Plaintiffs. Through these impugned Order(s) and Letter(s) the Defendants have decided not to renew the Contract(s) of the Plaintiffs.

2. Learned Counsel for the Plaintiffs submits that pursuant to offer letter(s) dated 16.6.2017, Plaintiffs were appointed as Directors in Sindh Health Care Commission ("**Commission**") on contract basis for three years renewable on yearly basis; that in terms of Rule 8(1) of the terms and conditions of Service of the Commission a person on probation upon satisfactory completion is eligible for continuation on such post subject to performance till the end of the contract period; that it is not in dispute that all Plaintiffs have completed their probation period of six months successfully; that earlier the Plaintiffs, without fulfillment of any codal formalities, were terminated vide order dated 22.11.2018 and being dissatisfied, the Plaintiffs filed Civil Suits before this Court, and vide order dated 28.11.2018 the impugned orders were suspended, whereas, the Commission thereafter, withdrew the termination order(s) dated 22.11.2018 and consequently, the Plaintiffs withdrew their Suits as they had served their purpose; that subsequently, Show Cause Notices were issued on 4.1.2019 despite withdrawal of earlier termination orders; however, without following the proper procedure once again the Plaintiffs have been denied extension of contracts and have rather been terminated; that the Board of the Commission has issued the terms and conditions of Service and Clause 10 thereof deals with termination from service, whereas, vide Clause 12, it has been provided that employees of Commission shall be liable to prescribed disciplinary action and penalties under the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 ("**E&D Rules**") and therefore, without conducting an inquiry and the procedure required to be followed in terms of the E&D Rules, the Plaintiffs could not be terminated nor can be denied extension in contracts, as such orders are a stigma on the carrier of the Plaintiffs; that once by implication E&D Rules have been made applicable upon the employees of the Commission, then the entire procedure provided under such rules read with Sindh Civil Servants Act, 1973 ("**1973 Act**") are to be followed which admittedly has not been done.; that once a Show Cause Notice with certain allegations has been issued, the same must go through the procedure of inquiry with a right to call for documents and examination of witness by the employee, therefore, the impugned orders / action is without lawful authority and jurisdiction; that this would apply notwithstanding the fact that Plaintiffs are contract employees as the

E&D Rules have been adopted by the Commission by implication and therefore, no exception can be drawn; that the contract period is three years which must be allowed to be completed as the extension clause is a formal clause and once probation has been completed, the contract period cannot be curtailed; that during such period if an employee is to be removed or terminated, the procedure as provided in the E&D Rules has to be followed; that once allegations are levelled the same are to be proved through inquiry and therefore, the entire exercise carried out by the Commission is based on malafides, discriminatory in nature and is also without lawful authority and jurisdiction. In support he has relied upon ***Muhammad Ashraf Tiwana and others V. Pakistan and others (2013 S C M R 1159), The Secretary, Government of the Punjab and others V. Riaz ul Haq (1997 S C M R 1552), Zahoor Ahmed V. WAPDA and others (2001 S C M R 1566), A. B. M. Habibar Rehman V. The Director of Technical Education, East Pakistan, DACCA and others (P L DD 1969 Dacca 948), The Secretary Government of the Punjab through Secretary, Health Department, Lahore and others V. Riazul Haq (1997 P L C (C.S.) 873), Muhammad Riaz V. Medical Superintendent, Service Hospital, Lahore and 2 others (2016 P L C (C.S.) 296, Samina Kanwal V. Director Punjab Forestry Research Institute, Faisalabad (2011 P L C (C.S.) 1553), Muhammad Amjad V. The Chief Engineer, WAPDA and another (1998 PSC 337), Farhan Mehmood V. Secretary, Government of the Punjab Health Department and 3 others (2018 P L C (C.S) Note 70 and Pakistan Defence Offices Housing Authority V. Mrs. Itrat Sajjad Khan and others (2017 S C M R 2010).***

3. On the other hand, learned Counsel for the Commission has contended that proper procedure has been followed, whereas, the contract provides termination without any further proceedings with salary of one month which has been duly followed and being paid, hence, no case is made out; that the terms of appointment are to be followed which provides renewal of contract and therefore, no vested right could be claimed; that the argument that E&D Rules would apply is baseless as the Plaintiffs are contract employees, whereas, the rules of employment of the Commission are neither notified nor statutory in nature, but have been circulated only as minutes of meeting of the

Board; hence, no right accrues to the Plaintiffs; that even otherwise, in terms of Section 2(b)(ii) of the 1973 Act, a contractual employee is otherwise excluded from the purview of the Act itself; hence, no occasion arises for applicability of the E&D Rules and the inquiry procedure provided therein; that Plaintiffs are not Civil Servants in any capacity; that without prejudice even in terms of Rule 5 of the E&D Rules inquiry can be dispensed with, whereas, proper and reasoned order has been passed for refusing renewal of the contract(s), whereas, no penalty has been imposed; hence, no grievance can be made out; that even otherwise, the Suit is barred in terms of Specific Relief Act as a Contract of Service cannot be specially enforced; that the prayer of reinstatement even otherwise, is barred and no injunction can be granted for such purposes, whereas, damages have already been claimed and the same is an adequate compensation; that neither a prima facie case is made out nor balance of convenience lies in their favour, whereas, for irreparable loss they have already claimed damages; that the posts have already been filled by new appointments. In support he has relied upon ***Syed Liaquat Ali V. Vice Chancellor, University of Engineering & Technology, Peshawar and others (2019 P L C (C.S.) 74), Holgar Hahn V. Comset Services Limited and another (2007 M L D 863) and Shahid Masood V. Karachi Electric Supply Corporation Ltd. (1997 C L C 1936).***

4. I have heard both the learned Counsel and perused the record. Facts have been briefly stated hereinabove and it is not in dispute that Plaintiffs were appointed in the Commission on the basis of a contract for a period of three years through offer of appointment dated 16.6.2017 in Suit No.379/2019 (issue is identical in all cases). The said offer letter states that the appointment is purely on *Contract basis for a period of three years*, which is renewable on *yearly basis* from the date of joining with a fixed salary of Rs. 400,000/- per month, whereas, the employment is to be governed by the provisions of Sindh Health Care Commission Act, 2013 and the rules and regulations made thereunder. It further provides that all terms and conditions of service in the Commission and the prescribed Efficiency and Discipline Rules as duly notified and amended from time to time by the competent authority shall apply. For the purposes of Terms and Conditions of Service, in the 18<sup>th</sup> Meeting held on 22.11.2018 through Agenda item No.2, the same were approved

by the Board of the Commission, wherein, clause 12 provides that for Efficiency and Discipline the employee shall be liable to prescribed disciplinary action and penalties under the E&D Rules. Insofar as the contract is concerned, Clause 13 deals with termination in the following terms:-

“13. That your contract is liable to be terminated without notice during probation or at any time on administrative grounds and after probation with one month notice or on payment of one month salary in lieu thereof on account of poor performance / undesirable conduct / breach of any terms & conditions as mentioned above.

5. The aforesaid clause provides that the contract is liable to be terminated without notice during probation, or at any time on administrative grounds and after probation, with one month notice or on payment of one month salary in lieu thereof on account of poor performance / undesirable conduct / breach of any terms & conditions as mentioned above. It appears that in the earlier round some adverse orders were passed against the Plaintiffs on 22.11.2018 and when they approached this Court, such orders were suspended through ad-interim orders and subsequently, the Commission withdrew such orders and thereafter, issued Show Cause Notices and has passed the orders impugned in these Suits. In the Show Cause Notices which have been issued there are various allegations against the Plaintiffs in respect of unsatisfactory performance, insubordination and misconduct, fraudulent practices and so on and so forth. However, for the present purposes, the merits and demerits of such Show Cause Notices is not an issue before the Court. The only issue which has been raised on behalf of the Plaintiffs is to the effect that after issuance of a Show Cause Notice a proper procedure of inquiry as provided in the E&D Rules had to be followed, whereas, the Plaintiffs were supposed to be confronted with the entire material including the right to cross-examine the witnesses in respect of the allegations mentioned in the Show Cause Notices. It is their case that since this has not been followed, therefore, the entire exercise carried out by the Commission including refusal to renew the contracts is illegal and non-transparent, hence liable to be set-aside. However, notwithstanding this fact, and even assuming that E&D Rules would apply on the Plaintiffs, one thing has to be kept in mind that if any such rules are applicable, they could only be done in respect of *permanent employees* or on *employees on deputation* as provided in

recruitment clause 4 of Chapter-II of the Terms and Conditions of Service and not on an employee who has been appointed under the category of initial appointment on contract basis. This distinction in respect of category of employee is of paramount importance and cannot be lost sight of. The purpose of appointment on a contract is always distinct and independent as against an employment on permanent basis. In fact the procedure of such employment with the Government (like the Commission) in this case is also entirely different. For a permanent employment in any Government organization and for the applicability of the services rules (E&D Rules) as contended on behalf of the Plaintiffs, the same must be done through Public Service Commission, whereas, an employment of contract could be made by any other competent authority which is permitted to do so under its own independent rules and regulations, like in this case the Commission. Seeking parity with a Civil Servant and claiming applicability of the E&D Rules in respect of inquiry and termination, the Plaintiffs have to first establish that they have gone through the same procedure of employment as is applicable to the appointment of a Civil Servant. Once an employee accepts his employment on contract basis; then the terms and conditions of his employment are to be governed on the basis of the contract itself and not otherwise. In such an employment, the principle of Master and Servant, or for that matter an employer and employee has to be applied. Such employment cannot be stretched and continued beyond the very mandate of the contract between the employee and the employer. Moreover, in these cases even the contract was for a maximum period of three years; but was subject to renewal on yearly basis; therefore, the contract period in effect is of one year each and is an independent contract for each year. If it is not renewed, it has lapsed, and an employee cannot claim any vested right for seeking renewal of the same through a Court of law. It is, in the given facts immaterial that the contract was not renewed after issuance of Show Cause Notice and levelling allegations and without following the inquiry procedure as it would not be of any material consequences in such contracts. For the sake of arguments, even if it is assumed that no proper procedure of inquiry has been followed as alleged, the Plaintiffs at the most could have been given a month's salary even during subsistence and validity of their contracts and asked to be relieved. In fact they have been offered such salary of one month as well. Whereas,

insofar as Plaintiffs are concerned, their contracts of one year had expired and were required to be renewed and during such period all this has happened. In my view, in that situation no procedure of inquiry as contended was required to be followed as it has no material effect on the outcome of the proceedings. The substratum of contract and its renewal as well as termination will have a binding effect and could not be modified under the garb of applicability of the E&D Rules by implication.

6. Though not of much relevance in the facts and circumstances of this case, but it may be noted that in terms of s.2 (b) (ii), of the 1973, Act, an employee appointed on contract basis is not a "Civil Servant" per-se, and therefore, the E&D Rules, are not applicable on such an employee in terms of Rule 1(2) thereof, which provides that these rules will only apply on Civil Servants. Therefore, if the very rules framed under the 1973, Act, are not applicable on Contract employees as they are not Civil Servants, then how could the Plaintiffs argument for applicability of such rules, be considered which have otherwise been made applicable by implication in the terms and conditions of service of employees of the Commission.

7. In the case of **Syed Liaquat Shah** (supra) in somewhat similar circumstances, the Hon'ble Supreme Court has dealt with a matter of contractual employee relieved from service and the continuation of inquiry proceedings thereafter. The employee in that case was appointed on contract basis as a Project Director for a period of six months which was later on extended and during subsistence of his contract, he was relieved pursuant to action by the Chief Minister's Complaint and Redressal Cell, and to conduct probe into the allegations levelled against the employee in the performance of his duties as Project Director and for that proposes an Inquiry Committee was constituted. After the employee was relieved, he filed petition before the Peshawar High Court on the ground that the Inquiry Committee was constituted illegally which was dismissed; however, in order to ensure that no stigma is attached to his performance as Project Director, the Court directed that proper opportunity of hearing should be given to the Petitioner enabling him to defend in the pending inquiry proceedings. Thereafter, the employee came before the Hon'ble Supreme Court and

his argument before the Hon'ble Supreme Court was that the tenure of his job / contract was legally protected and he was relieved from the job; but still the inquiry was being conducted. The relevant findings of the Hon'ble Supreme Court are as under:-

“4. We are of the view that relieving a contractual employee simplicitor does not mean that any wrongdoing committed by him during his contractual period cannot be inquired into. If found involved in any wrongdoing, he can still face civil liability or criminal action or both, notwithstanding the fact that he has been relieved from his contractual post. *Only where the tenure of service of an employee is protected under a law, it cannot be curtailed without first initiating and completing disciplinary proceedings against him. However, where wrongdoing of a contractual employee comes to light, who is governed by the principle of “Master and servant”, he can be relieved of his service first and inquiry into his wrongdoings can commence thereafter.* Termination of contractual employment simplicitor is no defence either against taking a criminal or civil action that might be warranted on account of any wrongdoing committed during the contractual period.”

8. The above findings of the Hon'ble Supreme Court squarely applies to the present facts of the case and leaves nothing more for this Court to decide any further, inasmuch as it has been observed by the Hon'ble Supreme Court that it is only where the tenure of service of an employee is protected under a law, it cannot be curtailed without first initiating and completing disciplinary proceedings; however, where a wrongdoing of a contractual employee comes to light, who is governed by the principle of “Master and servant”, he can be relieved of his service first and inquiry into his wrongdoings can commence thereafter. Therefore, even if the argument of the Plaintiffs is sustained, (for conducting an inquiry), it cannot be made basis of their reinstatement or for that matter renewal of their contracts, on the ground that the procedure as provided in the E&D Rules has not been followed. Hence, in view of such position, even if the Plaintiffs in this case have not been given an opportunity of going through an inquiry before refusing extension in their contracts, they cannot claim any vested right. In fact in the case before the Hon'ble Supreme Court, the employee was relieved during subsistence of his contract; but his contention was repelled. The case of the present Plaintiffs is in fact on a lower pedestal as against the case before the Hon'ble Supreme Court, as the contracts of the Plaintiff have already expired and all impugned actions were taken at the time of renewal of their contracts.



9. In the case reported as ***Ameer Solangi v WAPDA*** (2016 SCMR 46), the Hon'ble Supreme Court has been pleased to observe that an appointment on contract is to be governed by the very terms and conditions of the same and it is a separate and distinct category of employment and has to be governed under the said contract and not otherwise. Similarly in the case reported as ***Federation of Pakistan v Muhammad Azam Chattha*** (2013 SCMR 120), it has been held by the Hon'ble Supreme Court that 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 cardinal principle of law that a contract employee instead of pressing for his reinstatement to serve for the leftover period can at best claim damages to the extent of unexpired period of his service*". Learned Lahore High Court in the case reported as ***Mubashar Majeed v Province of Punjab*** [2017 PLC (C.S.) 940], has been pleased to hold that the "*appellant cannot claim extension of the contract as a matter of right, rather it is the prerogative of the competent authority either to dispense with services of the appellant or to continue with the same by extending the contract*". Similar view has been expressed again by the learned Lahore High Court in the case reported as ***Dr. Abid Ali v Chief Secretary, Government of Punjab*** [2017 PLC (C.S.) 488].

10. As to the case law relied upon by the learned Counsel for the Plaintiffs it may be observed that the same are not relevant for the present purposes being distinguishable on facts inasmuch as in this matter, it is not a case of any termination as pleaded, whereas, majority of the cases relied upon are in respect of Civil Servants and not of contract employees; hence cannot be of any assistance to the Plaintiffs case. The present case is only in respect of refusal to renew or extend the contract after its expiry, and therefore, it has to be examined in this context and not otherwise. If this had been a case for termination, then it may had any relevance and the need for a proper inquiry procedure; but since it is not, therefore, all cases relied upon are not applicable to the case in hand.

11. In view of hereinabove facts and circumstances of the case it appears that the plaintiff(s) have failed to make out a prima facie case, whereas, neither balance of convenience lies in their favor nor there is any question of an irreparable loss, as money compensation is adequate

remedy. Moreover, as stated and discussed hereinabove, the facts of the case do not warrant any orders of mandatory nature to renew the contracts of the Plaintiff by way of an injunction and it is only the remedy of damages and compensation, if any, which could be claimed by the Plaintiff(s) at the trial; hence, the injunction applications are liable to be dismissed and it is so ordered.

12. All listed applications in the Suits are hereby dismissed.

Dated: 17.06.2019

**J U D G E**

ARSHAD/