

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No. D – 2666 of 2020

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Saeed Habib

V/S

National Bank of Pakistan

Dates of hearing : 06.11.2020, 30.11.2020

Date of Judgment : 16.12.2020.

Syed Muhammad Yahya and Ms. Rukhsana Yahya, advocates for the petitioner.

Mr. Faisal Mehmood Ghani, advocate for the respondent.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. – Through the instant petition, the petitioner has sought the following relief(s) :

- i. A declaration deeming the decision of the Respondent's Board of Directors arrived at in their 227th Meeting ; to the extent of qualifying pension ; as unconstitutional, illegal and unlawful ;*
- ii. (Consequently) A declaration that the Petitioner is entitled to regularization in service from the date of his initial appointment ;*
 - ii-a. A declaration that Letter dated 26.06.2020 is illegal and unlawful ;*
- iii. (Resultantly) A declaration that the Petitioner is entitled to all benefits of service, including retirement / post-retirement benefits (including accumulated or monthly pensionary payments)*
- iv. A Writ of Mandamus directing the Respondent (an/or persons acting under it, through it and / or on its behalf) to cause formal regularization in favor of the Petitioner from the date of his initial appointment in service ; and*
- v. A Writ of Mandamus directing the Respondent (an/or persons acting under it, through it and / or on its behalf) to induct the Petitioner as a member of its provident and pension funds upon attaining superannuation and to disburse benefits accordingly.*

2. Precisely, the facts of the case are that the petitioner was appointed as Senior Vice President in National Bank of Pakistan ('NBP') on contract basis for three (03) years vide office order dated 31.03.2011, and the respondent-bank extended his contractual service which stood expired on 30.06.2020. The petitioner has alleged that although the respondent-bank had renewed his contract for another period of three (03) years, he was/is nevertheless entitled

to be regularized as per the policy of the respondent-bank, and consequently he is likewise entitled to all the post-retirement benefits as a regular employee under the said policy.

3. Upon query by this Court as to how the instant petition is maintainable as admittedly the petitioner was appointed on contract, Syed Muhammad Yahya, learned counsel for the petitioner, has argued that the petitioner was appointed in the year 2011 on duly sanctioned and permanent post of Senior Vice President (SVP) through a competitive process ; he was promoted to the next rank i.e. Executive Vice-President (EVP) with effect from 01.12.2017 against the regularly sanctioned position ; he had been carrying out duties, functions, and assignments of a permanent nature for more than nine (09) years ; and, as such he had legitimate expectations of being absorbed as a permanent employee in the bank. In support of his contention, he relied upon the Human Resource Policy (HRP) of the respondent-bank and argued that the case of the petitioner for renewal was duly recommended by the Group Chief / Senior Executive Vice President vide proposal for renewal of contract initiated on 10.03.2020. He pointed out that the petitioner had obtained exceptional grades 'A' since 2012 and that the last grade in the year 2019 was recommended 'Very Good' by his superior. However, no decision was communicated to the petitioner until May 2012 concerning the renewal of his contractual period and, as a result, he was forced to seek the indulgence of this Court through the instant petition. He also submitted that pending his request, his services were dispensed with vide letter dated 26.06.2020, which was/is contrary to the principles of natural justice and in total disregard of the order dated 29.05.2020 passed by this Court. He referred to Section 24-A of the General Clauses Act, 1897, and submitted that the respondent-bank was required to exercise its discretionary powers in a fair, reasonable, and transparent manner, but they dispensed with his services with one stroke of the pen. He further relied upon the Resolution of the Board of Directors passed in the 277th and 283rd meetings held on 31.11.2017 and 28.04.2018, respectively, and argued that the petitioner was/is entitled to regularization of his service under the Staff Service Rules, 1973, (Rules) and HR Policy Manual and the Board's Approved Policy for Regularization of service of employees of Bank. To support his claim, he relied on the case of Muhammad Tariq Badar vs. NBP, **2013 SCMR 314**, and argued that the 1973 Rules are statutory, so the instant petition is maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, on the premise that the respondent-bank is a state-owned bank. He further relied upon

the case of Iqram Bari v. National Bank of Pakistan and others, **2005 PLC (C.S) 915**, and submitted that the respondent-bank had agreed to give the same treatment to the petitioner as was given to other employees who were permanently taken on regular service. He also referred to the case of M/S State Oil Company Limited v. Bakht Siddique and others, **2018 SCLR 1181**, and argued that though the regularization of service is not a part of the terms and conditions of service, the petitioner has sufficient length of service to claim regularization of his service on the premise that he has given his prime time to the respondent-bank. Learned counsel pointed out that on the very subject the Honorable Supreme Court has already dealt with the matter in the case of Abdul Ghafoor v. The Chairman of the National Bank of Pakistan, **2018 SCLR 157**, and argued that the case of the petitioner is similar to the one decided above.

4. He further argued it is his fundamental right to ask for regularization of his service which right is guaranteed by Article 9 of the Constitution, which includes the right to livelihood as the same rule has been laid down by the Honorable Supreme Court in the case of Abdul Wahab and others v. HBL and other, **2013 SCLR 1383**, by holding that the right to sustenance cannot cling to the fantasies of persons in authority. Learned counsel emphasized that termination of the contract of the petitioner issued by the respondent-bank during the pendency of this petition without hearing him is devoid of sound reasoning and is also a violation of Section 24-A of the General Clauses Act, 1897, and Articles 4, 5, 8, 9, 10-A, 14, and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 ; and, the service of the petitioner could not have been dispensed with, which was/is of permanent nature. He submits that the petitioner provided services for a considerable period and therefore acquired the right to be reinstated / continued / regularized in service. He asserted that the career of the petitioner has become paralyzed at the hands of the respondent-bank, for the reason that he is now unable to get private / Government service, therefore, the impugned letter dated 26.06.2020 issued by the respondent-bank is liable to be set-aside. Learned counsel referred to various documents attached to the memo of the petition and argued that he is entitled to pension under the Civil Service Regulation (CSR) as he has served with the respondent-bank for more than five (05) years. He also referred to Section 62 of the Contract Act and argued that the original contract of service stood novated as the petitioner was extended the facility of house building loan which impliedly shows that he was on regular service.

He heavily relied upon the case of Pakistan Railways through Chairman Islamabad and another v. Sajid Hussain and others, **2020 SCMR 1664**, and argued that the regularization policy of the respondent-bank was introduced and the same applies to the case of petitioner thus he is entitled to the benefit of said policy. He concluded his submissions by saying that this petition may be allowed as prayed and in the alternative, if the regularization is not possible the petitioner may be allowed to continue to serve the respondent-bank as a contract employee.

5. On the other hand, Mr. Faisal Mehmood Ghani, learned counsel for the respondent-bank has refuted the averments and allegations made by the petitioner and supported the impugned letter dated 26.06.2020. He argued that the instant petition is not maintainable against the respondent-bank under the law as the dispute between the parties relates to contract employment ; the Honorable Supreme Court in its various pronouncements settled the law that a contract employee is debarred from approaching this Court in its constitutional jurisdiction ; and, the only remedy available to a contract employee is to file a Suit for damages in case of breach of contract or failure thereof. He further argued that the impugned action of the respondent-bank is well-reasoned and based on settled principles of law. It was urged by him that the petition is liable to be dismissed in view of the above legal position. In support of his above contentions, he relied upon the cases of Dr. Mubashar Ahmed v. P.T.C.L. through Chairman, Islamabad and another, **2007 PLC (C.S.) 737**, Dr. Inshaque Muhammad Shah v. President, National Bank of Pakistan and 2 others, **2010 PLC (C.S.) 748**, Muhammad Mateen Khan v. Federation of Pakistan through Secretary, Ministry of Interior Islamabad and 3 others, **2020 PLC (C.S) 1**, and unreported judgment dated 30.10.2019 passed by learned Islamabad High Court.

6. We have heard learned counsel for the parties on the point of maintainability of this petition, and have also perused the material available on record and the case-law cited at the bar.

7. Firstly, we would address the question of maintainability of the instant Petition under Article 199 of the Constitution.

8. To begin with the question of regularization of service of an employee vis-à-vis service jurisprudence, it has to be kept in mind as to what is the concept of regularization of service. In other words, what are the necessary

elements that must exist to allow a person to seek regularization of a job under the law ? 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.

9. Principally, this Court, in exercising power 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 had been appointed in an open competitive process in pursuance of regular recruitment in accordance with the relevant rules against a sanctioned vacant post. 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 on 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 basis, the same would come to an end upon completion of the agreed assignment or tenure. It is 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 term of his appointment. It is not open for this Court to allow a 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, does not acquire any right. Merely because an employee had obtained an interim order of the Court, would not entitle him to any right to be absorbed or made permanent in the service without the mandatory lawful process.

10. Under Section 11(4)(10) of Banks (Nationalization) Act, 1974, all selections, promotions, and transfers of employees of banks (except that of the President) and decisions as to their remuneration and benefits have to be made by the President of the respondent-bank under the evaluation criteria and personnel policies determined by the Board. The respondent-bank has framed the policy for recruitment of employees of the Bank from clerical to OG-III and above up to EVP with certain criteria, therefore, for better understanding to determine this question, we have to shed light upon Section 11(4)(10) of the Act of 1974 :

“(4) The general direction and superintendence of the affairs and business of a bank, and overall policy-making in respect of its operations, shall vest in its Board.

(5) The Board shall determine---

(i) the credit of the banks;

(ii) evaluation criteria for the performance of the employees of the bank other than the President;

(iii) personnel policies of the bank, including, appointment, and removal of officers and employees;

(iv) guidelines for entering into any compromise with borrowers and other customers of the bank; and

(v) any other policy matter.

(10) All selections, promotions and transfer of employee of banks except the President and decisions as to their remuneration and benefits shall be made by the President in accordance with the evaluation criteria and personnel determined by the Board.”

11. In view of the above, the respondent-bank was well within its rights to dispense with the service of its employees under the law. Having discussed the legal aspect of the case, we have perused the appointment order dated 31.03.2011 of the petitioner, which was admittedly a contractual appointment for three years. The record indicates that the petitioner's service was on contract for a certain period or an extended period on the choice of appointing authority. The case of the petitioner was/is subject to the principle of Master and Servant. It is well-established law that a contractual employee cannot claim vested right, even for the regularization of his service.

12. In the present case, the petitioner has not established that he has a fundamental / acquired vested right to remain in the contractual post of Executive Vice-President of the bank or to seek extension and/or regularization of the contractual service that admittedly expired on 30.06.2020. The General Clauses Act, 1897, also empowers the competent authority to appoint or remove anyone appointed in exercise of that power as discussed in the preceding paragraph. It is also a settled law that Courts ordinarily refrain from interfering in the policy-making domain of the Executives unless it is proven that it has infringed the fundamental rights of the citizens of Pakistan, which is not the case at hand.

13. In the present case, no material whatsoever has been placed before us by which we can conclude that the impugned letter dated 30.06.2020 has been wrongly issued by the respondent-bank. Thus, the statement of the petitioner that he was not heard before issuance of impugned letter 30.06.2020 is not tenable in the eyes of the law for the reason that the respondent-bank allowed

the petitioner to continue his contractual service, which period expired on 30.06.2020 by efflux of time. The cases cited and relied upon by learned counsel for the petitioner are not relevant or applicable to the instant case as the facts and circumstances therein were clearly distinguishable.

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

- i. Government of Baluchistan V/S Dr. Zahida Kakar and 43 others **(2005 SCLR 642)**
- ii. Dr. Mubashir Ahmed V/S PTCL through Chairman, Islamabad and another **(2007 PLC CS 737)**.
- iii. Abid Iqbal Hafiz and others v. Secretary, Public Prosecution Department, Government of the Punjab, Lahore, and others, **PLD 2010 Supreme Court 841**
- iv. Federation of Pakistan v. Muhammad Azam Chattha **(2013 SCLR 120)**
- v. Muzafar Khan & others V/S Government of Pakistan & others **(2013 SCLR 304)**
- vi. Abdul Wahab and others v. HBL and others **(2013 SCLR 1383)**
- vii. Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and others, **2017 SCLR 1979**
- viii. Qazi Munir Ahmed Versus Rawalpindi Medical College and Allied Hospital through Principal and others **(2019 SCLR 648)**
- ix. Raja Iviz Mehmood and another v. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others, **2018 SCLR 162**
- x. Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals, **2019 SCLR 984**.
- xi. Unreported order dated 13.03.2019 passed by the Hon'ble Supreme Court in C.P. No.2792/2018 and other connected petitions
- xii. Province of Punjab through Secretary Agriculture Department, Lahore, and others Vs. Muhammad Arif and others **(2020 SCLR 507)**.
- xiii. Miss Naureen Naz Butt vs Pakistan International Airlines and others **(2020 SCLR 1625)**.

14. In view of the above discussion, the petition is not maintainable either on facts or in 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 in 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 right i.e. whether he is entitled to such right or not. We are constrained to observe that despite the legal position established in view of plethora of pronouncements by the Hon'ble Supreme Court as discussed above, the present petitioner filed this petition seeking a relief to which he was not entitled under the law. In other words, the petitioner wanted this Court to grant a declaration contrary to the law settled by the Hon'ble Supreme Court. Not only this, he obtained an ad-interim injunction order in these proceedings against the respondent-bank. Such conduct on his part is not acceptable as he has consumed and wasted valuable time of this Court which could have been utilized to decide genuine and urgent matters. Therefore, the petition is liable to be dismissed with costs.

15. In the light of the above facts and circumstances of the case, the instant petition is dismissed along with listed application(s) with costs of Rs.25,000.00 (Rupees twenty five thousand only) to be deposited by the petitioner with the Nazir of this Court within thirty (30) day from today which amount shall be paid forthwith by the Nazir to Edhi Foundation.

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