

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 3314 of 2019

Mst. Zeba Hassan & 24 others

Petitioner

Through : Mr. Tauqeer Ahmed, advocate.

Respondent No.1 : Mr. Muhammad Nishat Warsi, DAG.

Through

Respondent No.3 : Mr. Bilal Bhatti, advocate.

Through

Respondent No.4 : Syed Mohsin Imam Wasti, advocate.

Through

Respondent No.5 : Mr. Zafar Imam, advocate.

Through

Date of hearing : **15.10.2021**

Date of Order : **15.10.2021**

ORDER

ADNAN-UL-KARIM MEMON, J. Through the captioned petition, the petitioners are seeking regularization of their services against the quota reserved for deceased civil servants as provided under the Prime Minister's Assistance Package for the Families of Government Employees, on the premise that their parents/husbands were serving in the Federal Board of Revenue (FBR) on the posts of Lower Divisional Clerk (LDC) Upper Divisional Clerk (UDC) Naib Qasids, who passed away during their service *inter-alia* on the ground that under the similar circumstances the learned Division Bench of Islamabad High Court, Islamabad in Intra Court Appeal No.1087/2013 has dismissed the appeal of Federal Board of Revenue vide order dated 01.10.2020 by maintaining the order dated 20.02.2013 passed by the learned Single Judge of Islamabad High Court Islamabad; that the case of the petitioners is akin to the case decided by the learned Islamabad High Court Islamabad as discussed supra.

2. The precise case of the petitioners is that they were appointed as LDC / UDC and Naib Qasids under the (Prime Minister's Assistance Package for the Family of Government Employees who died during Service) on a contract basis, thereafter their contract period is being extended from time to time without any break along with annual increments like the permanent employees of the department till now and their grades were also upgraded from time to time. However, they have been deprived of regularization of their service and have not been promoted to higher ranks; and, even many juniors were promoted to higher ranks, which is the discriminatory attitude on the part of FBR. They prayed for allowing the instant petition.

3. Mr. Tauqeer Ahmed learned counsel for the petitioners has argued that family package was issued by the Federal Government vide office memorandum dated 11.07.2006 wherein "Prime Minister's Assistance Package for families of Government employee, who die in service" was offered for those employees, who expired during service and the petitioners were offered the posts of UDC, LDC and Naib Qasids on contract for a period of two years (2011-2014) and subsequently, the Federal Government revised the policy vide office memorandum dated 20.10.2014, whereby the word contract basis for two years was deleted and it was ordered that one son of the deceased may be appointed on regular basis without any advertisement; that the Federal Government issued Notification on 02.04.2015/03.04.2015 regarding constitution of committee for regularization of contract employees and the case of the petitioners was required to be forwarded to the committee for regularization for service but no action whatsoever has been taken by the respondents; that there are various directives of the Federal Government to regularize the service of contract employees but the respondents are turning their deaf ear and reluctant to regularize the service of the petitioners. Learned counsel further submitted that the petitioners are working in the Regional Tax Office, Karachi (FBR) for the last ten years but have not been regularized, therefore, the instant petition has been filed. In support of his contentions, he heavily relied upon the Office Memorandum No. 8/10/2013-E-2 dated 20.10.2010 and in the case of *Muhammad Saleem v. Federal Public Service Commission and other*, **2020 SCMR 221**, *Muhammad Ismail Versus*

General Manager (Operations), Pakistan Railways, Railway Headquarters, Lahore And 4 Others, 2018 PLC (C.S.) Note 62, Pir Imran Sajid and others Versus Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan, 2015 SCMR 1257, and decision dated 25.1.2019 passed by the learned Single Bench of the Islamabad High Court, Islamabad in Writ Petition No.1371/2013; and, as per the Office Memorandum dated 21.05.2018, the petitioners are also entitled to be considered for regularization of their services without discrimination. He further contended that in compliance with the order passed in Writ Petition No.516/2013 by the learned Division Bench of Islamabad High Court, Islamabad, a meeting of the Cabinet Sub Committee regarding regularization of Department / Organization was held and approved the regularization of the 406 daily wages/contingent paid / contract employees of the Federal Board of Revenue, however, the petitioners were ignored. He further contended that the number of employees of the same department who were appointed under the Prime Minister's Assistance Package, their services have already been regularized by the directive of Hon'ble Supreme Court of Pakistan; but despite the above facts, petitioners are being deprived for their basic rights, which is sheer discrimination/exploitation in service and clear violation to the Article 3, 4, 8, 9, 14, 25 and 28 of the Constitution of Pakistan, 1973. He further contended that recently the Islamabad High Court, Islamabad has dismissed the I.C.A No.1087 of 2013 filed by Chairman, Federal Board of Revenue, thus their case has become clear from all corners. He prayed for allowing the instant petition.

4. Learned DAG in principle has agreed for the disposal of this petition on the same analogy as decided by the learned Division Bench of Islamabad High Court, Islamabad in Intra Court Appeal No.1087/2013. Learned DAG also pointed out that the employees appointed on a contract basis under Prime Minister's Assistance Package for Families of Government, who died in service, were regularized by the Establishment Division; that the Government of Pakistan, Cabinet Secretariat, Establishment Division, has issued further notification dated 9.9.2016 with the amendment/ addition by revising PM's Assistance Package which reads as under:

“Employment for the post in BS-01 to BS-15 on five years contract appointment without advertisement which may further be extendable till the age of superannuation or regularization as the case may be.”

5. At the outset, learned counsel for the respondent-FBR concedes the legal position and submitted that the subject issue involved in these proceedings has already been set at rest by the learned Division Bench of the Islamabad High Court, Islamabad in Intra Court Appeal No.1087/2013, by which Appeal of the respondent-Federal Board of Revenue was dismissed by concurring with the decision of the learned Single Bench was maintained whereby the services of the colleagues of the petitioners were regularized. For sake of convenience, an excerpt of the order is reproduced as under:

“12. The facts leading to the filing of the instant intra Court appeal have been set out in sufficient detail in paragraphs 2 to 8 above and need not be recapitulated.

13. There is no denying the fact that the private respondents had been appointed on contract basis for a period of two years without any competitive process. Their appointments were pursuant to the terms of the Assistance Package. It is also an admitted position that F.B.R. had sent the private respondents' names to the Cabinet Sub Committee to consider them for the regularization of their services. After the Cabinet Sub-Committee recommended that the services of the private respondents be regularized, the private respondents filed a writ petition before this Court seeking a direction for the regularization of their services. After the said writ petition was allowed by this Court, F.B.R., vide letter dated 20.03.2013, regularized the services of the private respondents on provisional basis. The reason why the regularization was done on provisional basis was because F.B.R. wanted to assail the said order dated 20.02.2013 passed by this Court before the Hon'ble Supreme Court. Vide order dated 04.07.2013, the Hon'ble Supreme Court dismissed F.B.R.'s civil petition No.567/2013 as incompetent.

14. The matter regarding the regularization of contract employees appointed in any Ministry or Division of the Federal Government is to be dealt with in accordance with the law laid down by this Court in the case of Imran Ahmed Vs. Federation of Pakistan (supra). The said judgment does not deal with the regularization of the services of contract employees who had been appointed pursuant to the Assistance Package. Admittedly, none of the private respondents had been appointed through any competitive process prior to their appointment on contract basis or the provisional regularization of their services.

15. In Paragraph 123(viii) and (ix) of the judgment, in the case of Imran Ahmed Vs. Federation of Pakistan (supra), this Court gave the following directions:

“viii. All employees, who have been regularized by the Government of Pakistan/competent authority through Cabinet Committee, who have not been given joining due to the restriction imposed by the Government and they are only waiting for their posting orders, the concerned Ministries and Divisions are directed to issue their posting orders within a period of 90 days subject to fulfillment of other codal formalities, however, their appointments will be considered permanent from the issuance of notification/joining orders.

ix. Employees who are already working in different Ministries, Divisions and others whose their services have been regularized; they should not

be disturbed as their cases fall within the ambit of past and closed transaction subject to conditions that they were appointed in accordance with law in a transparent manner.”

16. The term “transparent manner” adopted in paragraph 123(ix) of the said judgment implies a competitive process (i.e. advertisement, test and interview). The private respondents have admittedly not been appointed through such process before their services had been provisionally regularized by F.B.R. vide letter dated 20.03.2013. However, on 09.09.2016, the Establishment Division issued an office memorandum, whereby the Assistance Package was revised. The revision was to the effect that employment against posts in BPS-01 to BPS-15 would be on contract basis for five years which would be extendable till the age of superannuation or regularization as the case may be. In view of the said office memorandum, the services of the contract employees who had been appointed pursuant to the Assistance Package could have been regularized. Since the Cabinet Sub-Committee had, indeed, recommended that the services of the private respondents be regularized, we do not find any plausible reason to interfere with the impugned order dated 20.02.2013. Consequently, the instant appeal is dismissed with no order as to costs.”

6. We have heard the learned counsel for the parties on the subject issue and have gone through the record of the case file.

7. 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 upon 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 or contract basis, the same would come to an end upon the completion of the agreed assignment or tenure. It is also 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 terms of his appointment. It is not open for this Court to allow 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 could not be said to acquire any right in this regard.

8. Here the parties have agreed for disposal of this petition as discussed supra, therefore without touching the merits of the case, since the issue involved in this petition is akin as decided by the

learned Division Bench of the Islamabad High Court, Islamabad in Intra Court Appeal No.1087/2013 vide order dated 01.10.2020, therefore, the instant petition is also disposed of in the same terms.

J U D G E

Shahzad Soomro

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