

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -1869 of 2021

Talat Mehmood & another

Versus

Bahria University, Karachi campus and 06 others

Date of hearing
& order : 16.03.2021

Mr. Abdul Baqi Lone, advocate for the petitioners.

ORDER

Adnan-ul-Karim Memon, J. –, Through this petition, the petitioners are seeking the declaration to the effect that the release orders dated 01.03.2021 issued by the respondent-Bahria University Karachi Campus (`BUK`) relieving them from their respective posts of “Security In charge” and “Correspondence Assistant” was/is arbitrary, illegal, and without any cogent reason. The petitioners also seek directions to the effect that they have been working against the sectioned/permanent posts, thus they are liable to continue in service.

2. Learned counsel for the petitioners was asked as to how the instant petition is maintainable as admittedly the petitioners were appointed on the contract basis vide contract agreement dated 2.1.2013 and 24.6.2013 (page 23 and 31), which was/is for a limited period and were relieved from their subject posts with effect from 1.4.2021 vide relieving orders dated 01.03.2021.

3. Mr. Abdul Baqi Lone, learned counsel for the petitioners, has argued that the petitioners are ex-serviceman personal, who after their retirement from Pakistan Navy, applied for the permanent posts of Security Incharge and Correspondence Assistant in Bahria University, Karachi (BUK). He argued that the relieving orders issued by BUK was/is in gross violation of law; that the Petitioners had illegally been relieved from the subject posts without completing their tenure of contracts as provided under the contract agreements as discussed supra ; that the Petitioners have been condemned unheard and erroneously relieved from service, with effect from 1.4.2021,

without holding proper inquiry into the guilt if any, which was/is unwarranted under the law; that the act of respondent-BUK was/is based on malafide intention and personal ego; that the Petitioners though appointed on contract basis, till the age of superannuation, are entitled to a fair opportunity to clear his position in terms of Article 4, 10- A and 25 of the Constitution of Islamic Republic of Pakistan 1973; that this Court has jurisdiction to interfere in the matters involving denial of such rights of citizens of this Country by the Government Functionaries; He emphasized that respondent-BUK issued their relieving orders as this was/is neither removal from service nor their services were discontinued by the competent authority rather they were just relieved from their respective posts with effect from 1.4.2021. It is further stated that their services are governed by the provisions of Bahria University Ordinance No. V of 2000, and rules and regulations made thereunder as such very action was taken against the petitioners were Corum-non-judice. He asserted that they were required to be dealt with under the law. The petitioner's counsel further argued that relieving orders were issued by the incompetent functionary of BUK thus the impugned orders are a nullity in the eyes of law. He asserted that the impugned release orders dated 01.03.2021 are without lawful authority and jurisdiction and against the terms and conditions of appointment letters of the petitioners as well as against Section 30 of the Bahria University Ordinance No. V of 2000; that Bahria University statutes clause No.10, 29 is not applicable in the case of petitioners; that the petitioners were directly appointed on merit; that the petitioners have the status of permanent employees, the contributory funds (CP) having been deducted from their salary till year 2018-19 and later on CP fund was malafidely stopped; that petitioners filed applications before the respondent No.2 but to no avail; that the petitioners are otherwise regular employees performing their duties on regular and permanent posts and it is the case of malafide discrimination, victimization and incorrect exercise of authority; that the act of respondents tantamount to infringement of an inalienable right as enshrined under Articles 4,9 and 25 of the Constitution; that pursuant to the employment contract and Bahria University Ordinance V of 2000 the petitioners are permanent employee and retiring age is 60 years, but the respondent with their malafide intentions release the petitioners from their permanent post after passing of seven or eight years. Learned counsel for the petitioners has relied upon the cases of Shafique Ahmed Khan and others v. NESCOM through Chairman, Islamabad, and others, PLD 2016 Supreme Court 337, International Islamic University, Islamabad and others v. Dr. Shameem Tariq and others, 2015 PLC (C.S) 1336, Ali Asghar and others v. Federation of

Pakistan and others, unreported judgment dated 22.05.2017 passed in C.P. No.D-2991 of 2013, and unreported judgment passed in W.P. No.2431/2013. He lastly prayed for allowing the instant petition.

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

5. 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 under 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 a daily wage or casual basis, the same would come to an end upon the 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 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.

6. In view of the above, the respondent-BUK 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 contract agreement dated 2.1.2013 and 24.6.2013 of the petitioners, which were admittedly a contractual appointment for a certain period. 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 petitioners 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.

7. In the present case, the petitioners have not established that they have a fundamental / acquired vested right to remain in the contractual post in BUK. The General Clauses Act, 1897, also empowers the competent authority to appoint or relieve/remove anyone appointed in the exercise of that power. 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.

8. In the present case, no material whatsoever has been placed before us by which we can conclude that the impugned letters dated 1.3.2021 have been wrongly issued by the respondent-BUK. The cases cited and relied upon by learned counsel for the petitioners are not relevant or applicable to the instant case as the facts and circumstances therein were distinguishable.

9. Reverting to the claim of the Petitioners that they have been condemned unheard by the respondent- BUK by relieving from the post without assigning a reason, the record reflects that though the Petitioners were contract employees and under the law, an opportunity of Show Cause can only be issued to the employee, who is holding a permanent post; besides, merely claiming that they were appointed on regular basis, till the age of superannuation, which factum is not born out of the record, therefore this plea is untenable under the law. The views expressed by us in the preceding paragraphs are fortified by the authoritative pronouncement of the Hon'ble Supreme Court in the case of Qazi Munir Ahmed Versus Rawalpindi Medical College and Allied Hospital through Principal and others, 2019 SCMR 648.

10. In the light 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. 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 SCMR 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 SCMR 120) v. Muzafar Khan & others V/S Government of Pakistan & others (2013 SCMR 304) vi. Abdul Wahab and others v. HBL and others (2013 SCMR 1383) vii. Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and others, 2017 SCMR 1979 viii. Qazi Munir Ahmed Versus Rawalpindi Medical College and Allied Hospital through Principal and others (2019 S C M R 648) ix. Raja Iviz Mehmood and another v. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others, 2018 SCMR 162 x. Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals, 2019 SCMR 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 SCMR 507). xiii. Miss Naureen Naz Butt vs. Pakistan International Airlines and others (2020 SCMR 1625).

11. We are constrained to observe that despite the legal position established; and, for the reason that there are a plethora of pronouncements by the Hon'ble Supreme Court on the subject as discussed above, the present petitioners filed this petition seeking a relief to which they were not entitled under the law. In other words, the petitioners wanted this Court to grant a declaration contrary to the law settled by the Hon'ble Supreme Court. Such conduct on their part is not acceptable as they have consumed and wasted valuable time of this Court which could have been utilized to decide genuine and urgent matters. Therefore, the petition is dismissed in limini with costs.

12. These are the reasons for our short order dated 16.03.2021 whereby we have dismissed the instant petition in limini.

Dated: 16.03.2021

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