

ORDER SHEET
LAHORE HIGH COURT, BAHAWALPUR BENCH,
BAHAWALPUR

ICA No.21/2012/BWP

Principal Q.M.C. etc. **VERSUS** Asghar Abbas etc.

Appeal /Revision against the decree or order (as the case may be) of _____

S. No. of order or proceeding	Date of order or proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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9	15.10.2012	Mr. Muhammad Iqbal Sial, Advocate for the appellants. Ch. Muhammad Shafi Mayo, Advocate for the respondents.
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This is an Intra Court Appeal under Section 3 of the Law Reforms (Amendment) Act, 1972 against the order dated 09.02.2012 passed by the learned Single Judge of this Court in Writ Petition No.5858/2011/BWP.

2. Brief facts of the case are that respondent No.1 Asghar Abbas was appointed as Sewer Man (BS-1) on daily wages and he joined his services on 18.08.2008, whereas respondent No.2, Zafar Iqbal was appointed as Helper (BS-1) on daily wages and he joined his services on 24.09.2008. Later on, after about three years, services of both of them were terminated vide orders dated 19.09.2011. Both of them challenged the said termination order by filing the above said writ petition, which was accepted by a learned Single Judge in Chamber and the respondents were directed to considered the respondents as permanent employees and period w.e.f. termination orders till the passing of the impugned order be treated as extraordinary leave (EOL) without pay, hence this appeal.

3. Learned counsel for the appellants submits that the respondents were appointed as Sewer Man and Helper against a lump sum remuneration of Rs.4205/- out of Maintenance & Repair Grant of college/hospital by appellant No.2; that the respondents were engaged as un-scale workers on daily wages to carry out routine maintenance works on day to day basis; that the respondents were appointed purely on work -charge basis subject to availability of funds and could be terminated at any time without notice or without assigning any reason; that the respondents were terminated on 19.09.2012 on account of non-availability of funds, poor progress and completion of work for which their services were hired; that the learned Single Judge in Chamber had not adverted to the law on the subject, rules and regulations framed by the Government of Punjab regarding the appointments of daily wagers/work charge employees as the respondents were employed without any permanent vacancies without adopting the proper procedure of advertisement and allocation of funds for the said posts; that an employee working on temporary basis cannot claim status of a permanent employee only on account of having rendered services for a long period; that the learned Single Judge in Chamber had wrongly relied on the case of Executive Engineer, Central Civil Division, Pak P.W.D. Quetta vs. Abdul Aziz and others (PLD 1996 SC 610), which is

distinguishable in the sense that the said employees were covered under Para 1(b) of the Schedule of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (hereinafter to be referred as ‘the Ordinance’) and the definition of term ‘worker’ as given in Section 2(i) of the Ordinance was applicable to the circumstances of the said case whereas the instant case is covered under section 1(3)(e) of the Punjab Industrial Relations Act, 2010 (hereinafter to be referred as ‘the Act’) which clearly enunciates that term ‘workman’ is not applicable to the persons who are employed in the hospitals or medical equities. In supports of his contentions, learned counsel has relied on the cases reported as Abdul Haque vs. Manager, Indus Steel Pipe Limited, Kotri (1992 PLC 110), M.A. Rashid vs. The Province of the Punjab and 2 others (1987 MLD 153), Federation of Pakistan and another vs. Hashim Shah Qureshi (1987 SCMR 156), Mrs. Wasim Akhtar vs. WAPDA, through Chairman, WAPDA and 2 others (2006 PLC (C.S.) 191), The Secretary, Government of the Punjab, through Secretary, Health Department, Lahore and others vs. Riaz-ul-Haq (1997 SCMR 1552), Abdul Waheed and another vs. Secretary, Ministry of Culture, Sports, Tourism and Youth Affairs, Islamabad and another (2002 SCMR 769) and Muhammad Yaqoob vs. The Punjab Labour Court No.1 and 5 others (1990 SCMR 1539).

4. Conversely, learned counsel for the respondents, while arguing the matter, frankly conceded that the respondents were appointed purely on work-charge basis. However, he submits that as some posts are still lying vacant in the institution the respondents deserve to be considered against those posts. When confronted with the request of the respondents, learned counsel for the appellants states that the respondents would be considered for appointment against the said posts subject to the condition that the said posts are advertised and the respondents apply for the same in addition to fulfilling the requisite criteria.

5. We have heard the learned counsel for the parties and have gone through the documents appended with the appeal as well as the case law cited by the learned counsel for the appellants.

6. Admittedly, the respondents had been performing their duties for the last about three years as daily wagers as no permanent seat was available for their appointment and they were being paid from the funds allocated for Maintenance and Repair. Further, the services of the respondents were terminated *inter alia* on the ground of non-availability of requisite funds.

7. The word “*establishment*” has defined under section 2(ix) of the Act, 2010 in the following words:-

“establishment” means any office, firm, factory, society, undertaking, company, shop, premises or enterprise in the Punjab, which employs workmen directly or through a contractor for the purpose of carrying on any business or industry and includes all its departments and branches, whether situated in the same place or in different places having a common balance sheet and except in section 25 includes a collective bargaining unit, if any, constituted in any establishment or group of establishments.”

However, the provisions of the Act are not applicable to the persons employed in hospital and medical equities running on no profit no loss basis. The ouster clause is enshrined under section 1(3)(e) of the Act which is reproduced herein below:-

“(3) It shall apply to all persons employed in any establishment or industry, but shall not apply to any person employed--

(a)

(b)

(c)

(d)

(e) by an establishment or institution for the treatment or care of sick, infirm, destitute or mentally unfit persons excluding those run on commercial basis”.

After going through the afore-quoted provisions it has become crystal clear that provisions of the Act are not

applicable to facts and circumstances of the case under discussion.

8. It is also important to mention over here that no person working on purely temporary/work-charge basis cannot claim status of permanent employee or retention in service merely on the ground that he is serving the department for a long period. In this regard, our view is fortified by a very elucidated judgments of the Apex Court of country reported as Dr. Mubashar Ahmed vs. P.T.C.L. through Chairman, Islamabad and another (2007 PLC (C.S.) 737), wherein it has *inter alia* been held as under:-

“There is no cavil to the proposition that an employee appointed/engaged on contract/part-time basis has got no vested right to claim for being absorbed/appointed on regular/permanent basis.”

If we adjudge the case of the respondents on the touchstone of the afore-quoted portion of the judgment of the Hon’ble Supreme Court of Pakistan, the conclusion, in definite, would be that they have no vested right to be appointed on permanent basis.

9. For what has been discussed above, we are of the opinion that the learned Single Judge in Chamber, while passing the impugned order, did not consider the relevant law on the subject and the case-law relied upon in the impugned

order is quite distinguishable. Consequently, this Intra Court Appeal is **accepted** and the impugned order dated 09.02.2012 is hereby set aside with no order as to costs.

(Ch. Muhammad Younis)
Judge

(Shujaat Ali Khan)
Judge

Approved for Reporting.

Saleh

Judge