

**Judgment Sheet
IN THE LAHORE HIGH COURT
JUDICIAL DEPARTMENT**

Writ Petition No. 836 of 2015

Waqas Ali etc.	Vs.	Govt. of the Punjab etc.
-----------------------	------------	---------------------------------

JUDGMENT

Date of hearing:	21.9.2016
Petitioner by:	Mr. Muhammad Umer Riaz, Advocate
Respondent by:	Malik Abdul Aziz Awan, Addl.A.G. along with Mr. Irshad Ali, Litigation Officer, Agriculture Marketing.

Muhammad Farrukh Irfan Khan, J.- Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioners have called in question the order dated 8.12.2014 of the Secretary (Regulations), Services & General Administration Department (O&M Wing), Government of the Punjab, whereby their service appeals seeking regularization of their services have been rejected.

2. Brief facts of the case are that in response to an advertisement published in Daily Jang dated 15.3.2007 the petitioners applied for their appointments against different posts like “Computer Operator”, “Driver”, “Naib Qasid”, “Hostel Attendant”, “Chowkidar” and “Sweeper” in the project, namely, Punjab Institute of Agriculture Marketing (hereinafter referred as “**PIAM**”) on contract basis. They were appointed against the said posts after having been interviewed and recommended by the Special Selection Committee, vide appointment letters No.SO(E) 2-17/2007, dated

18.5.2007, and letter No. SO (E)2-17/2005, dated 4.12.2007. According to the terms and conditions of the offer letter, the petitioners were appointed on contract for a period of three years or till the completion of the Project whichever was earlier. It is alleged that the Project when completed its gestation period on 30.6.2008 a meeting of the Evaluation Committee was held on 29.4.2009 so as to determine future of the Project. The Evaluation Committee approved transfer of the Project from time bound project to permanent and also recommended 25 posts for transfer to non-development side through SNE. The Market Committee Provincial Fund Board provided the bridge financing of Rs.5.44 million for operational expenses i.e. salaries of the staff and other establishment. The Finance Department, Government of the Punjab, on recommendations of the Agriculture Department also accorded sanction and released Rs.11.858 million in anticipation of the provisions of funds through supplementary grant for the year 2009-10 on 25.9.2009 and allowed transfer of 25 posts from development to non-development budget for establishment of the Project. The petitioners' contract period was extended for further 3 years under para XIV(IV) of the Contract Policy, 2004. Later on respondent No.1 issued notification dated 14.10.2009 whereby the Chief Minister, Government of the Punjab was pleased to order regularization of services of the employees recruited on contract basis in B.S.1 to 15 in relaxation of the relevant services rules, under the Contract Appointment Policy, 2004. The petitioners made repeated applications for regularization of their services in view of notification dated 14.10.2009 but their requests were not acceded to. However, the Director, moved summary to higher authorities for regularization of services of the petitioners which was examined by respondent No.2, who vide note No.10, dated 6.7.2012 proposed that the posts in B.S.1 to 15 sanctioned by the

Finance Department on non-development side may be advertised by the Administrative Department and filled after framing of service rules and the existing project employees may also compete along with others. Respondent No.1 approved the proposal of respondent No.2. Consequently, respondent No.3 extended the contract of the petitioners for further six months w.e.f. 1.7.2012 to 31.12.2012. Feeling aggrieved, the petitioners filed W.P.No.26566/12 in which this Court, vide order dated 1.1.2013 granted interim relief in the following terms:

“Subject to notice, the contract of the petitioner shall not be terminated till next date of hearing.”

The aforesaid writ petition was, however, dismissed through consolidated judgment dated 3.6.2013. The petitioners challenged the order of the learned Single Judge in Chamber by filing ICA No.640/13 in which interim relief was granted on 18.6.2014 in the following terms:

“Notice. Meanwhile, if the contract is still in existence, the service of the appellants will not be terminated.”

The ICA was disposed of by a Division Bench of this Court on 2.10.2014 with the following observations:

“Be that as it may, let matter of regularization of the appellant in the light of above notification and the aforementioned judgment of the August Supreme Court of Pakistan be placed before the concerned authority i.e. respondent No.1 who will decide the matter of regularization of services of the appellant after granting a hearing to the appellant by passing a speaking order strictly in accordance with law.

In order to streamline the process, let the appellant appear before Respondent No.1 at 11.00 on 2.10.2014 who will decide the matter within one month thereof.

In this view of the matter, impugned judgment dated 3.6.2013 of the learned Single Judge stands modified accordingly.

It is, however, clarified that in case services of the appellant is terminated after passing of this order, the said termination shall not stand in the way in deciding the case for regularization of the services of the appellant.”

In compliance with the order of this Court dated 2.10.2014 respondent No.2 passed the impugned order dated 8.12.2014 whereby after affording hearing to the petitioners their request for regularization of their services has been declined. Hence, the instant writ petition.

3. Learned counsel for the petitioners contends that while passing the impugned order the respondent has totally ignored the direction issued by the learned Division Bench of this Court and has not taken into consideration the dictum laid down by the August Supreme Court of Pakistan in C.As. No.275 and 276 of 2014; that case of the present petitioners is identical to the case of the petitioners in the aforesaid C.As. which have been decided by the August Supreme Court of Pakistan, holding the petitioners therein entitled to regularization in service; that it has been settled by the August Supreme Court of Pakistan that once the project has been transferred from development to non-development then for all intents and purposes it has to be considered as permanent department of the government and the employees having been appointed through due process of recruitment entitled to be regularized in service; that in the present case the Project PIAM was converted from development to non-development by the Evaluation Committee of Planning & Development Department well before the issuance of notification dated 29.4.2009, therefore, the petitioners were entitled to avail the benefit of the said notification; that the petitioners were appointed through transparent and fair process of recruitment; that they were fully qualified and eligible for appointment against the posts applied for and there was no question of their induction from back door at all as they secured appointment after competing others on merit; that initial contract period of the petitioners was extended as their performance was found upto

the mark; that as the project had converted from development to non-development much prior to issuance of notification dated 14.10.2009, therefore, a right had accrued to the petitioners to seek their regularization in service; that the petitioners have been treated discriminately as certain other similarly placed employees have been extended the benefit of regularization but the petitioners have been refused such relief; that as the posts of the petitioners have become permanent since 29.4.2009, therefore, as having served for more than three (3) years against permanent posts, they have become entitled for regularization of service; that contract employee could be reinstated in service in appropriate case if such employment becomes permanent by efflux of time; and that the impugned order being contrary to the settled principles of law is liable to be set aside. In support of his arguments learned counsel has placed reliance on the cases of Ejaz Akbar Kasi and others v. Ministry of Information and Broadcasting and others (PLD 2011 SC 22), Pakistan Telecommunication Company Ltd. through General Manager and another v. Muhammad Zahid and 29 others (2010 SCMR 253), Muhammad Tanveer v. Government of Pakistan and others (2012 PLC (C.S.) 807), Muhammd Farooq v. Engineer-in-Chief ENC Branch, (GHQ), Rawalpindi and another (2012 PLC (C.S.) 1335), Muhammad Yasir Anwar v. Vice-Chancellor, Bahauddin Zakariya University and 3 others (2014 PLC (C.S.) 459), Province of Punjab and others v. Aftab Ahmad and others (2012 PLC (C.S.) 1402), and Dr. Anwar Ali Sahto and others v. Federation of Pakistan and others (PLD 2002 SC 101).

4. Conversely, learned Law Officer submits that the petitioners did not fall within the category of contract employees, who were held entitled to

regularization as per notification dated 14.10.2009 as the contract employees working against posts in various projects/programmes/PMUs/PMOs/and other time bound (one time) development activities were excluded from the benefit of the said notification and Circulars dated 10.11.2010, 1.3.2013 and 2.13.2013; that contract period of the petitioners has expired on 31.12.2012 and as such they are no more employees of the Project/PIAM and their claim for regularization lacks legal backing; that the petitioners may compete with other persons at the time of fresh recruitment in accordance with the Rules; and that the impugned order has been passed in accordance with law and thus does not call for interference by this Court in exercise of its powers under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

5. Arguments heard. Record perused.

6. It is undisputed fact that at the time of recruitment on contract basis the petitioners fulfilled the prescribed criteria for appointment. The posts were duly advertised in the newspaper. The petitioners applied for appointment and competed along with other candidates. Special Recruitment Committee constituted for recruitment interviewed them and on recommendations of the said Committee they were issued appointment letters. The only controversy between the parties is with regard to application of notification dated 14.10.2009 whereby employees in B.S. 1 to 15 recruited on contract basis under the provisions of the Contract Appointment Policy, 2004 have been given right of regularization in service. Stance of the respondent-department is that the petitioners being employees of a Project have not been extended the benefit of regularization in the notification dated 14.10.2009. On the contrary, claim of the petitioners is that as the Project has been converted from development to non-

development side, therefore, the same having become a permanent department of the government of the Punjab, they are entitled to be granted benefit of the said notification. Version of the petitioners is fully supported by the minutes of the Evaluation Committee, held on 29.4.2009 in which two decisions were made (a) 25 posts were recommended for transfer to non development side through SNE (b) the administrative department should initiate separate case to Finance Department through P&D department for approval of same pay package as being offered by other training institutes of the Punjab Government. The Governor of the Punjab vide Order No.SO(E)2-17/2007, also accorded sanction and released an amount of Rs.12.669 million for the scheme “Establishment of Punjab Institute of Agriculture Marketing” through SNE grant during the year 2010-2011. In these circumstances, not only status of the department but also its employees was converted from temporary to permanent. Therefore, the petitioners were entitled to be regularized in service by giving the benefit of notification dated 14.10.2009. It is also borne out from the record that the Evaluation Committee approved transfer of the Project from time bound project to permanent and also approved transfer of 25 posts from development to non-development side prior to the issuance of notification dated 14.10.2009. In this view of the matter, it can safely be inferred that the notification dated 14.10.2009 was fully applicable to the case of the petitioners. The respondent has misconstrued the notification and findings recorded in the impugned order are not based on application of judicial mind.

7. Besides the above said factual and legal position, this Court has also noticed that while passing the impugned order the respondent has not complied with the directions issued by the learned Division Bench of this

Court in the ICA mentioned supra in letter and spirit. In the order dated 2.10.2014 the learned Division Bench had specifically directed for decision of matter of regularization of the appellant/petitioner in the light of the aforesaid notification and judgment of the August Supreme Court of Pakistan passed in C.As.No.275 & 276 of 2014. For better appreciation of the issue in hand and the principle laid down by the August Supreme Court of Pakistan in the aforesaid C.As. findings of the apex Court are reproduced below:

“3. We have heard the learned counsel for the parties at length. It is an undisputed fact that the respondents were appointed in various grades in the Environmental Protection Agency, Punjab. Their induction has taken place after the posts were advertised and going through the process of Punjab Public Service Commission (Commission) and the Departmental Selection Committee (Committee) constituted by the Government and they were appointed on the recommendations of Commission and the Committee. It is also apparent from the record that though the project was on development side for a specified period but ultimately through minutes of meeting dated 9.7.2011 under the Chairmanship of Director General (M&E), Planning & Development Department, Government itself has decided that the project be transferred to a non-development side with allied assets and staff after satisfaction of the Evaluation Committee. The meeting of 37th Evaluation Committee was held on 8.8.2012 under the Chairmanship of Director General (M&E) Planning & Development Department, Lahore, the decision was taken that the scheme may be transferred to non-development side along with 84 project posts etc. Further in the same meeting various officials, who were present recommended that the staff already recruited be retained and gave example of MTMIS, JIANGSU Project of Information, Culture and Youth Affairs Department and the project of HUD and PHE Departments.

4. Considering the case on the above referred documents of the Government itself, it becomes apparent that the development project was transferred to a non-development side and made it a permanent department of the Government with allocation of its own budget etc. So far the employees are concerned, they having been appointed through a regular appointing process, other than entering through back door or on the recommendations of some political entities, apparently are justified in demanding that when the project itself has been transferred to a non-development side as a permanent department of the Government, the nature of the project itself became permanent by the act of Government, therefore, the services of respondents cannot be terminated rather they are entitled to be considered for permanent employment in the non-development department.

5. After considering arguments advanced by the learned counsel for the parties and having perused the record, we have come to the conclusion that the employees of the project (which project has now become a permanent non-development department of the Government) cannot just be thrown out of their employment for the simple reason that the position on which they were working which are said to be the laboratories are still existing and have become permanent laboratories of the Government and the employees who were employed in the project are still required to work in the said laboratories. In this situation the appropriate manner in which the grievance of respondents can well be redressed is that the Government should consider the cases of the respondents for their regularization in service on merits.”
8. Perusal of the aforequoted judgment of the Apex Court reveals that in a case involving similar facts and circumstances the August Supreme Court of Pakistan had directed regularization of services of the employees of a Project which was transferred from development side to non-development side. The case of the present petitioners in all respect was similar to that of the case decided by the August Supreme Court of Pakistan. A bare reading of the impugned order shows that the respondent has not taken into consideration the aforesaid judgment of the Apex Court while refusing regularization of services of the petitioners.
9. There is no weight in the argument of the learned Law Officer that as the contract of the petitioners was not extended beyond 31.12.2012, therefore, they were no more employees of the respondent-department. This stance is contrary to record. This Court through order dated 1.1.2013, passed in W.P.26566/12 had restrained the respondent from terminating services of the petitioners till next date of hearing. Thereafter though the said writ petition was dismissed on 3.6.2013 but again a learned Division Bench of this Court, vide order dated 18.6.2014 had restrained the respondent-department from terminating services of the petitioners. The petitioners have produced on record the Pay slips for the month of September, 2014, which is a sufficient proof of the fact that the petitioners remained in service of the

respondent till September, 2014. However, in view of order dated 2.10.2014 passed by the learned Division Bench in ICA expiry of the contract period of termination of the petitioners was not a hurdle for regularization of their services. It is sorry state of affairs that respondent No.2/Secretary, S&GAD (Regulation Wing) while passing the impugned order has not taken care of the direction issued by this Court in ICA No.640/13 and kept himself away from the judgment of the August Supreme Court of Pakistan passed in an identical matter. This conduct of the respondent leads to an irresistible conclusion that the impugned order is tainted with mala fide. Admittedly, the petitioners were recruited after adopting due process and their performance was found upto the mark during their contract period of about seven years. In presence of persons, who were recruited on merit after going through transparent and fair process of recruitment and now they have seven years experience of working against the posts to which they were recruited, resorting to fresh recruitment process, will be against the norms of justice.

10. For what has been discussed above, I am of the considered view that the impugned order fails to advance any valid and lawful reason or ground for refusing regularization of the petitioners' services. Resultantly, the instant writ petition is allowed and the impugned order is set-aside. The respondents are directed to process the cases of the petitioners for regularization of their services within a period of one month from the date of receipt of this order. Compliance report will be submitted by the respondents through Deputy Registrar (Judl.) of this Court.

(MUHAMMAD FARRUKH IRFAN KHAN)
JUDGE

APPROVED FOR REPORTING:

