

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Intra Court Appeal No.72508/2017

JUDGMENT

Shahzad Gohar Vs. **Government of Punjab and Aitchison College through its Board of Governor.**

Date of Decision: 26.09.2017

Appellant by: Mr. Talat Farooq Shaikh & Raja Jahanzeb, Advocates.

Respondents by: Mr. Muhammad Ashraf Khan, Advocate for Aitchison College.

JAWAD HASSAN, J:- Through the instant Intra Court Appeal, filed under Section 3 of the Law Reforms Ordinance, 1972, the Appellant has called in question the legality of impugned order dated 25th August 2017 (the “**Impugned Order**”) rendered in Writ Petition No.62835 of 2017, titled Shahzad Gohar vs. Government of Punjab and others (the “**Writ Petition**”) by the learned Single Judge, whereby the Writ Petition for regularization of the services of the Appellant at the Aitchison College, Lahore (the “**College**”) was disposed of and the Appellant was allowed fifteen (15) days to vacate his official residence in the College.

2. The main grievance of the Appellant is that the order dated 23rd August 2017 and 18th May 2017 passed by the Board of Governors of the College/Respondent No. 2 and the Principal of the College/Respondent No. 3, respectively, are illegal and consequently of no legal effect. The Appellant was intimated through the orders dated 23rd August 2017 and 18th May 2017 that his contract period has expired on 30th June 2017, and the services of the Appellant as the Mathematics Teacher at the Senior

School of the College were declined to be extended and the representation of the Appellant for regularization of his services was also declined. Feeling aggrieved thereby, the Appellant filed the Writ Petition, which was dismissed by the learned Single Judge vide the Impugned Order. Hence, the instant Intra Court Appeal.

I. Appellant's Submissions:

3. The learned counsel for the Appellant *inter alia* contended that the Impugned Order is against law and facts; that the learned Single Judge has failed to appreciate the fact that the case of the Appellant was purely a case of regularization as per the Policy of the Government of the Punjab because he has served the Aitchison College, Lahore for more than 14 years; that under the Contract Policy of 2004, the persons who have been appointed on contract basis were to be regularized, but the Appellant being also a contract employee serving more than a decade has been denied regularization; that the representation of the Appellant still has not been decided in compliance of the order of this Court; that the letter of advice to the Appellant for not renewal of his contract has been written by the Respondent No. 3 who is not competent authority to issue such orders; that for the last two months, the matter of regularization of the Appellant is still pending whereas the contract of other employees have been extended, as such a discriminatory attitude has been adopted towards the Appellant; that without adopting proper procedure, the services of the Appellant could not be terminated which is an act in sheer violation of Articles 4, 5, 8, 9,10-A, 14 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "**Constitution**"); that the decision dated 22nd August 2017 by the Sub-Committee of the Board of Governors of the College is without hearing the Appellant, as such he has been condemned

unheard; that this fact has also not been taken into consideration that the Appellant was initially appointed against a permanent post in the year 2003 and subsequently he was issued appointment letter on contract basis; that the orders dated 23rd August 2017 and 18th May 2017 are even otherwise harsh and arbitrary, and the Appellant is entitled to be reinstated in services. In support of his contentions learned counsel has placed reliance on the cases titled **Muhammad Rafi and others v. Federation of Pakistan etc. (2016 SCMR 2146)**, **Rizwan Javed and others v. Secretary Agriculture Livestock etc. (Civil Petition No. 605/2015)**.

II. Respondent's Submissions:

4. The learned counsel for the Respondents vehemently opposed the arguments advanced by the learned counsel for the Appellant and contended that admittedly the Appellant was a contractual employee and after expiry of his contract period, he is no more in services and cannot claim regularization of his services; that it is the sole prerogative of the competent authority to extend the contract period of its employee or not, as the employees are to be dealt with as per the terms and conditions of their contract employment letter and prayed for dismissal of the instant Appeal; that it is settled law that contractual obligations cannot be enforced through invoking the writ jurisdiction of this Court; there are no statutory rules of service governing the Appellant's case, as his case is to be dealt with the rule of Master and Servant; that the case of the Appellant was duly considered in compliance with the order dated 17th July 2017 passed in Writ Petition No. 35198/2017, and a Sub Committee was empowered to consider and decide such matters; accordingly, the said Committee considered the case of the Appellant and after affording him an opportunity of hearing, declined the representation on all just and legal

grounds. The learned counsel for the Respondents further submitted that the present proceedings were in fact a device to prolong the Appellant's illegal occupation of the official accommodation provided to him; that the Appellant is a mere licensee and upon expiry of his contract, he is no longer entitled to retain possession of the official accommodation.

5. We have heard the arguments of the learned counsels for both the parties and examined the record annexed with this instant Intra Court Appeal.

III. Essential Facts:

6. From the perusal of the record annexed with the instant Appeal and the Writ Petition, it transpires that the College published an advertisement in the newspaper to recruit teaching staff for the Computer Science, Geography, Physics, Chemistry, Mathematics and Biology in the Prep. School, whereby the applicants/candidates were required to submit applications before 25th September 2003. In the advertisement, those candidates who wish to teach part time or for limited period of time on contract basis were also invited to apply for their respective posts.

7. Admittedly, the Petitioner applied for the Mathematics Teacher, and subsequently, accepted the offer of the contractual employment with the College as a Mathematics Teacher in the Prep. School from 31st October 2003 to 31st January 2004. The Petitioner, therefore, was issued an employment contract letter dated 19th November 2003 (the "**Employment Contract**") on consolidated salary of Rs. 6,500 per month, and without any facilities/benefits available to the regular employees of the College. It was made clear in the Employment Contract that any extension of the Employment Contract shall be at the sole discretion of the College Management, and the Employment Contract could be terminated

with one month's prior written notice or salary in lieu thereof by the Appellant or the College. It was specifically stated that the Employment Contract does not confer any claim/right to permanent employment in the College.

8. Having admitted to all the terms and conditions mentioned in the Employment Contract, the Petitioner started his services at the College, and the Employment Contract was extended on 12 February 2004 with same terms and conditions till 31st December 2005. The Appellant continued to work in the College as the Mathematics Teacher and accordingly, the Employment Contract was renewed from time to time. The Employment Contract of the Appellant was also extended on 12nd November 2015 till 31st December 2016, and was again renewed on 24th June 2016 till 30th June 2017 on same terms and conditions. It was made clear on 24th June 2016 that if the Employment Contract is not renewed or terminated, the Appellant would be liable to vacate the college premises/accommodation.

9. On 18th May 2017, the College sent a notice to the Petitioner for non-renewal of the Employment Contract in which it was stated that the Employment Contract will not be renewed and the Appellant was requested to vacate on campus accommodation provided by the College latest by 20th July 2017. Accordingly, a Service Certificate was also issued on 23rd May 2017, whereby it was acknowledged that the Appellant has served as a Mathematics Teacher in the Prep. and Senior School of the College from 31st October 2003 to 30 June 2017.

10. The Petitioner filed a Writ Petition No. 35198/2017, titled Shahzad Gohar vs. Government of Punjab and others for regularization of his services. However, on 17 July 2017, this Court disposed of the Writ Petition and directed the Board of Governors of the College to decide the representation of the Appellant strictly in accordance with law, rules and

policy, preferably within 30 days from next meeting of the Board of Governors of the College.

11. Therefore, the Appellant filed representation on 9th August 2017 before the Board of Governors of the College against the order of not renewing the contract of the Appellant, with the request to issue direction to the College authorities to regularise the Appellant from the date of his appointment with all the benefits. Further, a legal notice dated 12th August 2017 was also sent on behalf of the Appellant to this effect.

12. However, the College sent a letter to the Petitioner dated 23rd August 2017 intimating that the Sub-Committee of the Board of Governors in its meeting held on 22nd August 2017 has considered and rejected the case of the Appellant for regularization on account that there is no ground or notification issued by the Punjab Government applicable on the College. Therefore, the Appellant was directed to vacate the accommodation latest by 26th August 2017.

13. Accordingly, the Petitioner challenged the orders dated 18th May 2017 and 23rd August 2017 in the instant Writ Petition, which was accordingly decided by the Hon'ble Single Bench of this Court on 25th August 2017, whereby the Court disposed of the Writ Petition with observation to allow the Appellant to vacate his official residence within fifteen (15) days from the order. Hence, the Appellant has filed this Intra Court Appeal to challenge and set aside the Impugned Order.

IV. Moot Points:

14. After hearing the parties at length, following moot points arising out of the instant Intra Court Appeal require determination of this Court:

A. Whether a contractual employee has a vested right for regularization/extension of the employment contract?

B. Whether contractual terms can be enforced under the Constitutional jurisdiction of the High Court?

C. Whether Writ Petition under Article 199 of the Constitution is maintainable against the Aitchison College, Lahore?

15. Admittedly, the terms and conditions of the Employment Contract of the Appellant provide that any extension of the Employment Contract shall be at the sole discretion of the management of the College, and the Employment Contract could be terminated with one month's prior written notice or salary in lieu thereof by the Appellant or the College. The terms and conditions specifically provide that the Employment Contract does not confer any claim/right to permanent employment in the College.

16. In the case titled **Mubashar Majeed v. Province of Punjab and 3 others** (2017 PLC (C.S.) Lahore 940), the Honourable Division Bench of this Court has held that the contractual employees could not claim extension of the contract as a matter of right rather it was the prerogative of the competent authority either to dispense with services of such employee or continue with the same by extending the contract. Similarly, in the case titled **Dr. Abid Ali v. Chief Secretary, Government of Punjab and 3 others** (2017 PLC (C.S.) Lahore 488), the Honourable Division Bench of this Court has held that the employee, after accepting terms and conditions of his contract employment had submitted his joining report. Service of such employee could be terminated without assigning any reason, and the employee had no right to claim extension in his contract period as a vested right. Moreover, in the case titled **Azhar Hayat v. Chairman Karachi Port Trust and others** (2017 PLC(CS) Karachi 632), it was held that Petitioner had been appointed on contract basis for a specific term which he had completed; therefore, no vested right could be

claimed by him keeping in view of the terms of his contractual engagement. (further see, *Shahid Rahim v. Board of Trustees of Karachi and others*, 2015 PLC(CS) Karachi 1235; and *Haji Zahir Ali v. Government of Pakistan and others*, 2010 PLC(CS) Quetta 293).

17. In the case of *IPC through Secretary vs. Arbab Altaf Hussain*, 2014 SCMR 1573, the Hon'ble Supreme Court has held that services of contractual employees of the board were not governed by any statutory rules and thus their constitutional petitions filed before the High Court were not competent; secondly, the employment of the said employees was contractual in nature and their services were terminated after due notice as per their contractual terms and conditions of service. Even on such account the constitutional petitions before the High Court were incompetent and had to fail. Additionally, in the case titled *Kamran Ahmad vs. WAPDA*, (2014 PLC(CS) Lahore 332), it was held that the Petitioner employee was governed under the terms and conditions of contract appointment letter, and terms and conditions of contract of his service were not enforceable through constitutional petition.

18. The Appellant was employed/recruited on contractual basis in 2003 by the College on fixed salary for specific period and terms, which were extended from time to time, and the Appellant was not appointed against any particular post made by any government official or authority under any particular statute/law. Therefore, nature of the employment of the Appellant was for a specific period on contractual terms and on such score, he has no vested right for regular appointment, because he was governed under the terms and conditions of the Employment Contract. Such terms and conditions could not be enforced under Article 199 of the Constitution.

19. Further, it was made clear in the Employment Contract that the employment of the Appellant shall stand terminated on the expiry of the contract period, unless extended, and any extension of the contract shall be

at the sole discretion of the management of the College. It was also made specifically clear that the Employment Contract does not confer on the Appellant any claim/right to permanent employment in the College. In the above situation, the Appellant has himself admitted all the terms and conditions of his Employment Contract, he cannot claim his regularization from this Court rather has rightly been considered to be out of service on the expiry of his contract employment as settled by the parties under the terms of the Employment Contract.

20. In view of the settled principle, the learned Single Judge has rightly held that the Appellant has no vested right on the basis of which he was entitled to relief in a Constitutional petition by holding that the Appellant has failed to pinpoint any statutory Rules and Regulations which have been violated by the Respondents in issuing the impugned letters of the Writ Petition for not extending his Employment Contract. Further, the learned Single Judge has also rightly observed in the Impugned Order that the contract of the Appellant was not extended on expiration, therefore, it cannot be said as a termination or removal from services, as such no question of stigma is attached thus he has not been barred from further employment. (rel. *Aitchison College, Lahore through Principal v. Muhammad Zubair and another* (PLD 2002 S.C. 326))

21. In view of above, we fully agree with the findings of the learned Single Judge and see no illegality or legal infirmity in the Impugned Order which has been passed by the learned Single Judge in consonance with the spirit of law, as such does not warrant any interference by us. Consequently, the instant Appeal is devoid of any merit and is accordingly dismissed.

(AYESHA A. MALIK)
JUDGE

(JAWAD HASSAN)
JUDGE