

Judgment Sheet
**IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR**
Judicial Department

W. P. No. 2962 / 2021 / BWP

Mst. Khalida Parveen and 19 others

Versus

Government of Punjab and five others

JUDGMENT

Date of Hearing:	06.10.2021
Petitioner(s) By:	Mr. Muhammad Hafeez Khan Mastoi, Advocate Mrs. Samina Qureshi, Advocate Mr. Shakeel Ahmad Malik, Advocate Mr. Sohaib Abdullah Akhtar, Advocate Mr. Muhammad Imran Pasha, Advocate
Respondent(s) By:	Mr. Haseeb Ahsan Javed, Legal Advisor for IRMNCH Ch. Shahid Mehmood, A.A.G. alongwith Dr. Aneela, DHO (HRM / MIS) and Amir Mahmood, Law Officer office of CEO (DHA), Bahawalpur

ABID HUSSAIN CHATTHA, J: This Judgment shall decide the titled as well as eight (08) connected constitutional Petitions listed in **Annexure-A** which shall constitute an integral part of this Judgment since identical questions of law and facts are involved.

2. The precise facts leading to the institution of the titled as well as connected Petitions are that Respondent No. 1, Program Director of the Integrated Reproductive Maternal Newborn and Child Health & Nutrition Program, Punjab, Lahore

(the “**Program**”) advertised posts of ‘Ayas’ to be recruited in different Basic Health Units in various districts of the Province of Punjab. The Petitioners applied for recruitment against the said advertised post of ‘Ayas’ and after due process were appointed, as such, by the Chief Executive Officer, District Health Authority (Respondent No. 2 in this Petition) on contract basis on 24.01.2018. The Petitioners joined duties and started to perform their functions under their respective appointment letters. Respondent No. 1, the Program Director of the Program vide order dated 13.03.2018 directed Respondent No. 2 to withdraw the offer of appointment letters issued to the Petitioners and in response to the said direction, Respondent No. 2 withdrew the said appointment letters vide Order dated 20.03.2018 without conducting any regular inquiry or hearing the Petitioners. The said Order was challenged by the Petitioners and others by filing Writ Petition No. 2979 / 2018 / BWP before this Court seeking to set aside the withdrawal of appointment letters and regularization of their service. The Order dated 20.03.2018 regarding withdrawal of appointment letters was suspended as an interim measure and the said Petition was disposed of on 02.02.2021 with a direction to the Petitioners to file applications for regularization of their services before Respondent No. 1 for decision in accordance with law within 30 days. The Respondents were also directed not to disturb the Petitioners, if they were in service and also release their payable salaries. Thereafter, the Petitioners moved their applications before Respondent No. 1 for regularization or extension of their contract services. Consequently, order dated 24.03.2021 was passed by Respondent No. 1 through which the request of the Petitioners was declined. Pursuant to the said Order, the Petitioners were relieved from their posts vide Order dated 30.03.2021 passed by Respondent No. 2.

3. Learned counsels representing the Petitioners submitted that Respondents No. 1 & 2 were not competent to issue the impugned letter dated 13.03.2018 and Order dated 20.03.2018, respectively, regarding withdrawal of initial offer of appointment letters issued in favour of the Petitioners as the Petitioners were selected after following the due process of law in response to an advertisement published in this behalf. The Petitioners have not relinquished their charge till today and are continuously working against the said posts. The impugned action of withdrawing the appointment letters offended the basic and fundamental rights of the Petitioners conferred under Articles 9, 18 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 (the “**Constitution**”). No specific and plausible reason had been assigned with respect to withdrawal of the appointment letters of the Petitioners. The adverse action was taken by Respondent No. 1 in order to accommodate blue eyed persons by depriving the Petitioners from their respective appointments. The posts of ‘Ayas’ are of permanent nature and character. The Program in essence is funded by the Government of the Punjab and is not a time bound Program. The seats against which the Petitioners were appointed are still vacant. The Petitioners are also entitled for regularization of their services in terms of the provisions of the Punjab Regularization of Service Act, 2018 (Act XV of 2018) (the “**Act**”). To support the aforesaid contentions, reliance was placed upon cases titled, “Secretary to Government of N.W.F.P. Zakat/Social Welfare Department, Peshawar and another v. Sadullah Khan” (1996 SCMR 413); “Province of Punjab through Secretary, Agriculture, Government of Punjab and others v. Zulfiqar Ali” (2006 SCMR 678); “Executive District Officer (Edu.), Rawalpindi and others v. Mst. Rizwana Kausar and 4 others” (2011 PLC (C.S.) 1296); and “Sughran Begum v. Metropolitan Corporation of Lahore and others” (1996 CLC 472).

4. Learned counsel for the Respondents submitted that the Program is a part of the development component of the Annual Development Program of the Government of Punjab. The Petitioners were working on contract basis against the posts of 'Ayas' in the Program and were relieved in pursuance of Order No. 1941-49/IRMNCH-Lhr dated 24.03.2021 issued by Respondent No. 1 followed by letter No. 189-239/CEO (DHA) dated 30.03.2021 issued by Respondent No. 2. As such, the Petitioners are no more in service since 30.03.2021. The Petitioners as contractual employees could not have invoked the remedy by way of filing of this constitutional Petition under Article 199 of the Constitution. It was further asserted that without prejudice to the fact that the Petitioners stood relieved from their posts the Program was time bound and was being funded from the development side of the budget and the employees were appointed on purely contractual basis, hence, the Petitioners were not entitled for regularization until the Program was moved from the development to non-development side of the budget. The appointment letters of the Petitioners specifically stated that they could not claim regularization as a matter of right. The Petitioners also did not fall within the scope of the Act since project employees are specifically excluded with respect to regularization under Section 2(c) of the Act. It was further contended that the initial appointments of the Petitioners were made by Respondent No. 2 in abuse of his lawful authority and in violation of the policy directive issued by the Program Director of the Program. The entire selection process was also in violation of the criteria laid down in the advertisement and the Program policy, therefore, the initial appointments of the Petitioners were illegal, unlawful and void. In this context, Respondent No. 1 directed Respondent No. 2 to withdraw the appointment letters of the Petitioners. The representations of the Petitioners regarding their regularization were declined vide

order dated 24.03.2021 and they were relieved from the contractual services with effect from 30.03.2021. Although their initial appointments were void, yet they were allowed to join their services in compliance of the injunctive Order passed by this Court. The Petitioners have been paid till 30.03.2021 i.e. the date they remained on duty and no arrears with respect to their salaries are pending. The Petitioners who absconded from duty or left their jobs before 30.03.2021 were paid till the date they remained employed and performed their duties before the cut off date i.e. 30.03.2021. The assertion by learned counsel for the Petitioners that the Petitioners are still in service is a blatant concealment of fact from this Court. Accordingly, it was prayed that the titled and connected Petitions be dismissed.

5. Arguments heard. Record perused.

6. The perusal of record shows that the posts of 'Ayas' were advertised and the Petitioners were appointed on contract basis on 24.01.2018 for a period of one year in different districts by the concerned Chief Executive Officers, District Health Authority. The Process of recruitment was scraped by Respondent No. 1 who issued directions to the Chief Executive Officer, District Health Authority (Respondent No. 2) to withdraw the appointment letters of 'Ayas' vide letter dated 13.03.2018 referred above as Respondent No. 2 was not the competent authority to issue the said appointment letters. Accordingly, the appointment letters were withdrawn by Respondent No. 2 vide Order dated 20.03.2018. This Court suspended the said withdrawal order vide Order dated 28.03.2018 passed in W. P. No. 2979 / 2018. As such, the Petitioners remained employed at their respective places of postings against payment of salaries. Eventually, the said Petition was disposed of with a direction to the Petitioners to file applications before Respondent No. 1 for regularization of their

contractual services which were declined on 24.03.2021 by Respondent No. 1. Consequently, the Petitioners were relieved from their respective posts vide orders dated 24.03.2021 and 30.03.2021 referred supra. The Appointment letters were issued on 24.01.2018 on contract basis for a period of one year. Clause-5 of the said appointment letters clearly stipulated that the appointments were purely temporary on contract basis extendable on satisfactory performance and in the best public interest. Clause 12 thereof, provided that the contract appointments would neither confer any right of regular appointment to the same post nor the service shall be counted towards seniority. It is, therefore, clear that the Petitioners remained employed much beyond their period of contract of one year on the basis of an interim relief granted by this Court and were eventually relieved from their contractual appointments which was not extended as per the specific terms and conditions of the contract which they accepted at the time of joining their posts. The Petitioners have been paid salaries till the date of relieving or performance of duty. The Program was time bound. The documents placed on record indicate that the Petitioners were appointed in the second phase of the Program which was being funded by the Government in collaboration with the Program partners from the development side of the budget under support from several international agencies.

7. Any project which is temporary in nature and character, not part of non-development budget, dependent on discretionary Government allocation and foreign funding, aimed to achieve specific objectives and liable to termination abruptly upon lack of funding or fulfillment of objectives is a time-bound project. Specific time period may not be prescribed before hand and time of its termination is placed on the discretion of the executive depending upon hosts of factors including the ones

listed above. An essential test is lack of permanence being not part of regular non-development budget. As such, the posts so created are not required to be sanctioned against regular budgetary allocation by the Finance Department.

8. In case titled, "Qazi Munir Ahmed v. Rawalpindi Medical College and Allied Hospital through Principal and others" (2019 SCMR 648) it was unequivocally held by the Honourable Supreme Court of Pakistan that the constitutional Petition filed by a contract employee was not maintainable even when the contract was terminated before the term of contract. The only remedy available to a contractual employee is to seek damages for wrongful termination or for any alleged breach of the contract or failure to extend the contract. Further, in case titled, "Province of Punjab through Secretary Agriculture Department, Lahore and others v. Muhammad Arif and others" (2020 SCMR 507) it has been specifically held that in any time bound project, the contract employee has no right of regularization in service. Further, under Section 2 (c) of the Act, the contract employees employed in a project, such as the Program, were specifically excluded from the benefit of regularization. The issue was settled with respect to a project similar to that of the Program, launched by the Government under the public sector development program called "National Program for Improvement of Watercourses in Pakistan". In the said project, employees were appointed on contract basis initially for a period of four years which was extended from time to time but stood terminated on the closure of the project. The said pronouncement of the Honourable Supreme Court of Pakistan is squarely applicable to the facts and circumstances of this case. Furthermore, in case titled, "Miss Naureen Naz Butt v. Pakistan International Airlines through Chairman, PIA and others" (2020 SCMR 1625) it was explicitly and clearly held that a contract

employee has no vested right to remain in service after expiry of the contract period and that where the period of contract employment expires by efflux of time, there remains no vested right to remain in employment of the employer and the Courts could not force the employer to reinstate or extend the contract of such employee. The relationship of master and servant is attracted and applicable with respect to the contract employees and, therefore, a constitutional Petition is not maintainable. In this case, the employee had specifically asserted that on account of 10 years of service, his case for being a permanent employee had matured and the employment could not have been terminated. In this behalf, the Apex Court observed that the employee who was appointed on contract basis for one year which was extended till the expiry of last contract on a particular date had no vested right against termination upon expiry of the contract. It was further held that where the terms and conditions of service are not governed by any statutory rules of service, normally a constitutional Petition is not maintainable and the doctrine of master and servant is fully attracted.

9. Conversely, the case of Secretary to Government of N.W.F.P. Zakat/Social Welfare Department, Peshawar and another (supra) relied upon by learned counsels for the Petitioners pertains to an irregular appointment of a civil servant. The case of Province of Punjab through Secretary, Agriculture, Government of Punjab and others (supra) is regarding irregular employment of a regular employee who was proceeded against under the Punjab Civil Servants (Efficiency & Discipline) Rules, 1975 after 10 years of his initial appointment. The case of Executive District Officer (Edu.), Rawalpindi and others (supra) is also on similar lines under the Punjab Civil Servants (Efficiency & Discipline) Rules, 1975. Further, the Sughran Begum case (supra) holds that an employee is entitled to salary

for services rendered. The Petitioners in the instant and connected Petitions have been remunerated against services rendered. Hence, the case law relied upon by learned counsels for the Petitioners is distinguishable and is not attracted to the facts and circumstances of this case.

10. In view of the above discussion, it is manifestly evident that the Petitioners were appointed on contract basis under specific terms and conditions which were duly accepted by them. Their contract was not extended and they were accordingly relieved after expiry of the term of contract. Rather, under the protection of interim relief granted by this Court, the Petitioners served more than the initial term of their respective contracts and have also been paid salaries for the period they have rendered their services. The question as to whether their initial appointment was void on account of lack of competency or authorization of Respondent No. 2 has become redundant and academic since the Petitioners have completed their term of contract. Accordingly, the titled as well as connected Petitions are **dismissed** being not maintainable.

(ABID HUSSAIN CHATTHA)
JUDGE

Approved for reporting.

JUDGE

Annexure-A

Sr. No.	Writ Petition #	Title	District	Date of impugned Order of Respondent No. 1
1.	5636 / 2021 / BWP	Sidra Noor Versus Government of Punjab & three others	Lodhran	03.05.2021
2.	3344 / 2021 / BWP	Mst. Sumera Bilal & 12 others Versus Province of Punjab & four others	Lodhran	24.03.2021
3.	3084 / 2021 / BWP	Samra Parveen Versus Government of Punjab & five others	Bahawalpur	24.03.2021
4.	3202 / 2021 / BWP	Iqra Murtaza & eight others Versus Government of Punjab & four others	Bahawalpur	24.03.2021
5.	3545 / 2021 / BWP	Mst. Shakeela Hussain & three others Versus Government of the Punjab & six others	Bahawalpur	24.03.2021
6.	3244 / 2021 / BWP	Mst. Sana Zulfiqar & two others Versus Province of Punjab & five others	Bahawalpur	24.03.2021
7.	2944 / 2021 / BWP	Sumaira Tariq & another Versus Province of Punjab and four others	Bahawalpur	24.03.2021
8.	5643 / 2021 / BWP	Mst. Nadia & another Versus Province of Punjab & five others	Bahawalpur	24.03.2021

JUDGE

Waqar