JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO.2375 OF 2020

Shabbir Ahmed etc.
Versus
The Auditor General of Pakistan & 3 others
=====

Date of hearing : 03.02.2021
Petitioners by : Mr. Taimoor Aslam Khan, Advocate.
Respondents by : Ch. Muhammad Tahir Mahmood, learned AAG with Moin-ud-Din Khan, Audit Officer.
=====

FIAZ AHMAD ANJUM JANDRAN, J: Through instant writ petition, petitioners impugn Advertisement dated 09.08.2020 whereby respondent No. 1 *(Office of the Auditor General of Pakistan '**AGP**')* advertised various posts including *Naib Qasid* and *Staff Car Driver* for direct recruitment. Petitioners also seek regularization of their services against the advertised posts.

2. Essential and relevant facts for adjudication of instant writ petition are that the petitioners are serving as Naib Qasids and Drivers in *AGP* on daily wages/contingent paid basis. Petitioners were appointed in the year 2011, 2014, 2015, 2016 and 2019. They came up with the stance that as their appointments were made against regular posts and are working since long, therefore, under the policy in vogue, their services are required to be regularized but the respondent-department in derogation to the policy is bent upon to make direct appointments through the impugned advertisement.

3. Learned counsel for the petitioners argued that the period of service of the petitioners has been extended from time

to time beyond 89 days; that they are serving against regular posts since long and cannot be ignored particularly when they are otherwise eligible and ought to have been regularized pursuant to the dictums of the superior courts. Learned counsel placed reliance upon case laws reported as **2005 SCMR 100, PLD 2011 SC 22, 2015 SCMR 1257, 2018 SCMR 325,** and **2020 PLC (C.S.) 581.**

4. On the other hand, learned A.A.G contends that as per policy, induction of contingent paid staff against permanent posts is to be regulated in terms of the instructions issued by the Establishment Division; that the petitioners by following the same course have already participated in the appointment process initiated through the impugned advertisement, certain benefits and relaxations have already been extended to them and that they do not qualify to be appointed on regular basis, therefore, petition is liable to be dismissed.

5. Heard the learned counsel for the petitioners as well as learned A.A.G and examined the record with their able assistance.

6. It is an admitted position that petitioners were appointed on daily wages/contingent basis against fixed stipend without following due procedure i.e. test/interview. Such type of appointments are meant to cater for exigencies as a stopgap arrangement and in absence of any law or statutory provision on the subject, relief sought for cannot be pressed as a matter of right.

7. On the subject, policy in vogue has since been promulgated by the Establishment Division through *Office Memorandum dated 11.05.2017* which states that *the Federal Cabinet in its meeting held on 12.04.2017, has accorded*

approval of the recruitment policy/mechanism issued vide O.M. dated 16.01.2015, which provides that for the purpose of appointment on regular basis of contract/contingent paid/daily wages/project employees, who have served for a minimum one year period may apply for appointment on regular basis, for which, they shall be awarded extra marks in interview at the rate of one (01) mark for each year of service rendered up to a maximum of five (05) marks.

8. Moreover, in order to circumvent overage, period already served shall be excluded for the purposes of determination of upper age limit. This is in addition to the relaxation in upper age limit awarded by the Government.

9. Admittedly, petitioners by following the same course have applied for the posts and have not only been extended the concession of marks and overage but have also been interviewed, which explicitly reflects their acquiescence, therefore, cannot be allowed to question the same under the principle of *estoppel*.

10. The question that when someone is appointed due to emergent basis to meet urgency for short span of time, undoubtedly extended from time to time but never made permanent could substitute an appointment in fair competitive process, could not be answered in a way that same is substituted for regular appointment, some has to choose the way/path of regular appointment.

11. The latest pronouncement on the subject was rendered by the Hon'ble Single Bench of this Court vide judgment dated 01.11.2017 passed in W.P. No. 2117 of 2016 in case titled **"Mst. Shugufta Hashmat etc. v. Federation of**

Pakistan through Secretary Cabinet Division etc." (2018 PLC (CS) 619) wherein it is held that:-

> *"(ii) The appointments of petitioner, which were made without advertising the posts and observing the principles of competitive transparency, are illegal, void and tantamount to misconduct on the part of the appointing authority."*

12. The dictum supra was upheld by the Hon'ble Division Bench in the case of "***Imran Ahmad and others v. Federation of Pakistan and others"*** (2019 PLC (CS) Note 19) and by the Hon'ble Apex Court as well. It has graciously been held that *every post shall be advertised in the newspaper, and the appointments against the posts of BS-1 to 15 shall also be made through a transparent manner of the eligible candidates*.

13. The *ratio decidendi*, in the view of the Court, guides to hold that only services of those employees, either contract, daily wages or contingent paid, are to be regularized whose appointments were made in due course, through transparent manner i.e. after undergoing test/interview pursuant to open competition through advertisement. The case of none of the petitioners falls under the said category.

14. Summing up the above narrations/findings, it is held that the petitioners were appointed on contingent basis as stopgap arrangement without due process of recruitment, temporary duty, although for considerable period but could not substitute the regular appointment, no fair competitive/ transparent exercise was carried out regarding their appointment, respondents have already taken care of their period of service by extending marks to them in this regard, they have also been allowed relaxation in age limit adding to that

period the relaxation granted by the government and by taking guidance from the latest law in the field reported as **"Mst. *Shugufta Hashmat etc. v. Federation of Pakistan through Secretary Cabinet Division etc."* (**2018 PLC (CS) 619**)** and ***Imran Ahmad and others v. Federation of Pakistan and others*** (2019 PLC (CS) Note 19), petitioners cannot be allowed to agitate against the process of fresh recruitment initiated through the impugned advertisement.

15. The case law relied upon by learned counsel for the petitioners does not extent any help to the petitioners due to having distinct facts and circumstances.

16. For reasons above, proper course for the petitioners is to participate in the competition initiated through the impugned advertisement for which they have already participated. No further proceedings in instant writ petition are, therefore, called for. **Disposed of**.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

A.R.Ansari

Announced in open court on **25. 02.2021**.

JUDGE