JUDGEMENT SHEET
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 4082 of 2020

Muhammad Ijaz Shah and 2 others

Vs

Capital Development Authority through its Chairman, etc.

PETITIONERS BY:	Ch. Sajid Abdullah Sra, Advocate.
RESPONDENTS BY:	Mrs. Misbah Gulnar Sharif, Advocate for CDA. Mr. Muhammad Saqib Bhatti, Advocate for respondents No. 5 to 9.
DATE OF HEARING**:**	04.03.2021.

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BABAR SATTAR, J.- Through the instant writ petition, the petitioners, who are employees of Capital Development Authority ("**CDA**"), have impugned the issuance of seniority list dated 07.12.2020.

2. Learned counsel for the petitioners submitted that the petitioners were appointed as daily wagers on 13.04.2004 and thereafter their services were regularized in the year 2009 with effect from 13.04.2004. That a seniority list was issued on 15.05.2012 and a second seniority list was issued on 13.07.2020. However, despite previous seniority list, a fresh seniority list was issued which reflects that the employees appointed on 22.02.2008 were rendered senior to the petitioners who claimed seniority from the date of first appointment i.e. 13.04.2004. Learned counsel further submitted that fresh seniority list is illegal and against the Capital

Development Authority Employees (Service) Regulations, 1992 **("Regulations")** and on the basis of such seniority list written tests and interviews have been conducted by respondent No.1/CDA for promotion from BPS-8 to BPS-11. That the petitioners have previously filed writ petition No.3835/2020, which was disposed of by this Court vide order dated 16.12.2020 with the observation that the representation of the petitioners pending before respondent No.1 be adjudicated upon within a period of four weeks. Learned counsel submitted that the said representation is still pending and has not been adjudicated.

3. Learned counsel for the petitioners further stated that in the seniority list issued on 15.05.2012 the petitioners were placed at Sr. No. 3, 4 and 7 and in the seniority list issued on 13.07.2020 they were placed at Sr. No. 4, 5 and 8. That both of these seniority lists were never challenged by anyone and that the third seniority list dated 07.12.2020, impugned in this petition, placed the petitioners at Sr. No. 41, 42 and 43 rendering them junior to respondents No. 5 to 9 who were appointed on 02.02.2008, even though the petitioners were appointed on 13.04.2004. That the petitioners had filed an application with respondent No.1 on 16.11.2020 asking to be considered for promotion. This was before the issuance of third seniority list by respondent No. 1. But instead of issuing any direction to consider the petitioners for promotion, respondent No.1 issued the third seniority list forcing the petitioners to file the instant petition.

4. Learned counsel for the petitioners placed reliance on Pakistan Railways through Chairman, Islamabad v. Sajid Hussain and others (2020 SCMR 1664) to argue that the regularization of the petitioners is protected and on Mirza Khan v. Inspector General of Police Islamabad (2002 PLC (CS) 506), Ghulam Murtaza and others v. Federation of Pakistan through Secretary, Cabinet Division and others (2011 PLC (CS) 709), Amanullah Shah v. Secretary, Agriculture Department, Government of Sindh and others (2011 SCMR 1584) for the proposition that vested rights are to be protected. The learned counsel also relied on Ikram Bari and 524 others v. National Bank of Pakistan and others (2005 SCMR 100) and Khalid Mehmood v. State Life Insurance Corporation of Pakistan and others (2018 SCMR 376).

5. Learned counsel for respondent no. 1/CDA submitted that there is no illegality in the impugned seniority list and it lists employees in an order of seniority based on the date of their regular employment to their positions. She further submitted that the petitioners were regularized after the date of regularization of respondents No. 5 to 9 and if they were to be accorded seniority from the date of their appointment as daily wagers it would do serious in the interest of justice to other employees such as respondent No. 5, for example, who was first appointed on daily wage basis in 1995. She further submitted that the argument that previous two seniority lists were never challenged is misconceived as they were draft seniority lists and had been circulated by respondent No.1 for purposes of attracting objections and that it is standard practice

of CDA to circulate draft seniority list to invite objections prior to the issuance of final seniority list to ensure that final seniority list does not suffer from errors, and that objections of relevant stakeholders have been taken into account before the issuance of final seniority list. She further relied on regulation 6.03 of the Capital Development Authority Employees (Service) Regulations, 1992 ***("Regulations")*** which provides that seniority of an employee shall take effect from the date of regular appointment to the post to which he has been initially appointed.

6. Learned counsel for respondents No. 5 to 9 submitted that length of service as daily wagers could not be accounted for purposes of seniority in view of regulation 6.03 of the Regulations. He further submitted that the petitioners as daily wagers did not join service after going through a competitive and transparent process and therefore they could not be given the benefit of such service for purposes of seniority against others who are serving in the organization on a regular basis. He relied on Nadir Shah, S.D.O Minor Canal Cell, Irrigation Sub Division, Dera Murad Jamali v. Secretary, Irrigation and Power Department, Balochistan, Quetta and 7 others (2003 PLC (CS) 961), Muhammad Ali Satakzai and others v. Appointing Authority of Additional District and Session Judges and others (2011 PLC (CS) 78), Dr. Azim-ur-Rehman Khan Meo v. Province of Sindh through Chief Secretary and others (2015 SCMR 723), Tahir Humayun and others v. High Court of Balochistan through Registrar and others (PLD 2016 Quetta 56), Majid Akhtar v. Province of Sindh through Chief Secretary New Sindh

Secretariat Karachi (2019 PLC (CS) 771), Abu Bakar Farooq through Chairman and others v. Muhammad Ali Rajpar and others (2019 SCMR 830), Musheer Ahmed and other v. Province of Sindh and others (2019 PLC (CS) 1278) and Province of the Punjab through Secretary School Education and others v. Mst. Nargas Parveen and others (2020 SCMR 1519).

7. The petitioners were regularized by orders dated 29.07.2009, 29.12.2009 and 16.01.2010. The orders of regularization note that such orders are with effect from a certain date, which was the date of their appointment as daily wagers, only *"for the purposes of seniority without any financial benefit"*. The learned counsels for the respondents have asserted that use of term 'seniority' is essentially for the purposes of calculating retirement benefits etc. and not for seniority of service *inter se* employees. It is clear in view of regulation 6.03 of the Regulations that the orders issued by respondent No.1 could not grant anyone seniority in breach of the said regulation. The regularization orders of the petitioner are unhappily worded as they create unnecessary confusion due to the use of word 'seniority'. Regulation 6.03 states the following:

> *6.03. Seniority on initial appointment:- Subject to regulation 6.06, the seniority of an employee on initial appointment to a cadre or post shall take effect from the date of regular appointment to the post to which he has been initially appointed:*
>
> *Provided that:*
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> *a. Persons initially appointed through earlier open advertisement or selection rank senior to those initially*

appointed through subsequent open advertisement or selection, as the case may be;

b. If two or more persons are appointed through the same open advertisement or, if the post was not advertised, through the same selection, their inter se seniority would be determined in the order of merit assigned to them by the selection authority and if no such order was assigned, the older in age shall be senior.

8. The Regulations are binding on the authority and therefore respondent No.1 could not confer seniority on any employee in breach of the criteria for seniority unambiguously provided in the Regulations. In view of regulation 6.03, the use of term seniority in the orders regularizing the services of the petitioners could not determine *inter se* seniority between employees of CDA in breach of the clear instruction of this regulation but could at best, if at all, be employed for purposes of calculating ancillary benefits etc. to the extent that Regulations permit the same.

9. The caselaw relied on by the petitioners is also not helpful to their cause and many of the cases relied are simply not relevant to the subject-matter of the instant petition. Ikram Bari and others (2005 SCMR 100), for example, was a case for reinstatement of daily wagers who had been working for a bank for a period of ten to twenty years and the august Supreme Court held that such employees were to be absorbed by the bank on a regular basis. But such employees were not regularized from the date of their initial appointment as daily wagers. Sajid Hussain and others (2020 SCMR 1664) also relates to regularization and not *inter se* seniority between employees. Amanullah Shah (2011 SCMR 1584) actually defeats

the claim of the petitioners in the instant petition. There the august Supreme Court held that *"in our opinion, the notification referred to above cannot be given overriding effect to the statutory provisions of law, which clearly mandate that seniority to a post, service or cadre which a civil servant is promoted shall take effect from the date of regular appointment of such civil servant to the post, service or cadre."*

10. The law on whether seniority can be accorded to employees from the date of their initial appointment on an ad hoc or temporary basis is now settled. It was held by the august Supreme Court in Province of the Punjab through Secretary, School Education and others v. Mst. Nargas Parveen and others (2020 SCMR 1519) that:

> *"The respondents while accepting their regularization from the said date pray that their seniority be reckoned from the date of their ad hoc appointment. Any such claim is opposed to proviso to Rule 22(5) of the Rules, which states as follows:-*
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> > *"Provided further that ad hoc appointment shall not confer any right on the persons so appointed in the matter of regular appointment of the same post nor the service will count towards seniority in the grade." (emphasis supplied)*
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> *It has been a consistent jurisprudence of this Court that seniority in the case of ad hoc employees is to be granted from the date of their regularization. See Abu Bakar Farooq through Chairman and others v. Muhammad Ali Rajpar and others (2019 SCMR 830), Nadir Shah, S.D.O. Minor Canal Cell, Irrigation Sub-Division, Dera Murad Jamali and 2 others v. Secretary, Irrigation and Power Department, Balochistan, Quetta and 7 others (2003 PLC (C.S.) 961), Federation of Pakistan and others v. Rais Khan (1993 SCMR*

609) and Mian Muhammad Afzal and others v. Government of the Punjab and others (1982 SCMR 408).”

11. Further the rationale behind it that the benefit cannot be granted to temporary and ad hoc employees for their service prior to being appointed on a regular basis was explained in Abu Bakar Farooq through Chairman and others v. Muhammad Ali Rajpar and others (2019 SCMR 830) as follows:

> *“The fact of the matter remains that neither the ad hoc employee has right to hold the post beyond the period for which he was appointed nor the government has a right to continue with such ad hoc appointees for such a long period. This situation arises only when the government violates the provision of Rule 3 of the Federal Public Service Commission (Functions) Rules, 1978 and without placing a requisition before Commission for regular appointment fill the post on ad hoc basis and then keep on extending the period of such ad hoc appointment and the ad hoc appointee knowing fully well that his ad hoc appointment is not in accordance with the prescribed method of appointment and is only a "stop gap" arrangement, till recruitment in accordance with the prescribed method of Appointment is made, clings to such post. Such conduct of the government has always been deprecated by the Courts but such shortcoming/non-adherence to the legal requirements by the competent authority can earn no benefit for the incumbent for the simple reason that bestowing the benefits of regular appointment upon an ad hoc employee would not only amount to regularizing unlawful appointment and providing premium to the beneficiary of such wrong but would also amount to opening another door of entry into service of Pakistan by frustrating the only prescribed mode of appointment through the Commission.”*

12. The petitioners are seeking to be granted benefit of service performed during their appointment as daily wagers for purposes of *inter se* seniority against other employees of respondent No.1. This cannot be countenanced in view of the

clearly worded regulation 6.03 of the Regulations as well as case law laid out by the august Supreme Court as discussed above.

13. This petition is, therefore, dismissed with a cost of Rs.10,000/- to be paid by the petitioners to respondent No.1.

(BABAR SATTAR)
JUDGE

Announced in the open Court on 13-04-2021.

JUDGE

Saeed.