JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 468 of 2022

Yasmeen Akhtar

Versus

Federation of Pakistan, etc.

Date of Hearing	:	25.05.2022.
Petitioner by	:	Muhammad Umair Blaoch, Advocate
Respondents by	:	Syed Nazar Hussain Shah, AAG Dr. Agha Haider, DD (Legal), FDE. Muhammad Rehan, DD (Legal) FDE.

ARBAB MUHAMMAD TAHIR, J. Through the instant writ petition, the petitioner impugns letter dated 16.09.2021 issued by the respondent No.2 (Federal Directorate of Education-FDE), whereby her request for condonation of interruption and deficiencies in qualifying service for pension/gratuity was turned down. In addition, she also prays for counting of his previous contractual service (from 12.09.2009 to 05.06.2012) for the purpose of qualifying service for pension and gratuity.

2. Tersely, relevant facts are that the petitioner was initially appointed on contract basis as Matric Trained Teacher (BS-9) against widow quota under the Federal Directorate of Education in F.G Schools (Female), vide order dated 09.09.2009. Consequently, her services were regularized vide Office Order dated 06.06.2012 and on attaining the age of superannuation, stood retired on 07.06.2021, however, the period of her contract service i.e. from 09.09.2009 to 06.06.2012 has not been considered/counted for the purpose of qualifying service for pension and gratuity. The petitioner also preferred several representations including the one rejected vide impugned order dated 16.09.2021, hence instant writ petition.

3. The learned counsel for the petitioner while reiterating the grounds mentioned in the memo of the petition urged that after regularization of services vide order dated 06-06-2012, there is absolutely no break in the service of the petitioner from 09.09.2009 to 06.06.2012, therefore, for all intents and purposes, she due to having qualifying length of service is eligible for pension and gratuity and cannot be deprived her legitimate and vested right. Learned counsel relied upon case law reported as **2019 PLC (CS) 103, 1998 SCMR 969, 1997 SCMR 1477, 1995 SCMR 888, 2002 SCMR 1034", 1994 CMR 2232, 1998 PLC (CS) 221, 1991 PLC (CS) 492, 1991 PLC (CS) 299 and PLD 1974 SC 151.**

4. Learned AAG assisted by Deputy Director (FDE) besides objecting upon the maintainability of the instant writ petition, on facts asserted that the regular service of the petitioner is nine years and one day which is less than required length of qualifying service i.e. 10 years and that her service rendered on contract basis cannot be counted towards pension. Reliance is placed upon case law reported as **PLD 2016 SC 534 and 2021 SCMR 1546.**

5. Heard.

6. The admitted facts of the case are that initially the petitioner was appointed on contract basis vide appointment letter dated 09.09.2009. The petitioner by accepting terms and conditions of said contract appointment started the job with the respondent. As per clause 10 of the said appointment letter, it has been specifically mentioned that ***"service rendered under this contract shall not qualify for pension or gratuity and pension in respect of previous service if any shall continue to be drawn in addition to pay."***

7. The petitioner, after accepting the terms and conditions joined the service and never agitated her grievance before the competent authority in respect of clause 10-ibid.

8. Furthermore, Office Order dated 06.06.2012 whereby services of the petitioner and others were regularized clearly states that the regularization shall be with effect from 06.06.2012. Record is also silent

as to whether petitioner ever questioned the said date after her regularization.

9. The Finance Division in its OM dated 31.05.2013 and OM dated 07.04.2015 clearly states under ***clause 1 (v) that the service rendered on contract basis shall not qualify for pension/gratuity*.**

10. The Hon'ble Apex Court in the case of ***M/o Finance through Secretary etc v. Syed Afroz Akhtar Rizvi & Others (2021 SCMR 1546)*** has held that " *as such, the view consistently taken by this Court in a situation where the services of a contractual employee are converted into regular employment is that although the period spent in contractual employment subject to a minimum of five years can be included in calculating pensionary benefits* ***but only and only in a situation where the employee is otherwise entitled/eligible to receive pension*** *subject to having rendered qualifying service with 10 years in permanent employment.* ***Unless, he meets the criteria of having served for the duration of the qualifying period, the period spent in contractual employment cannot be added to make up any deficiency in qualifying service for the purpose of eligibility to receive pension*.**" Reliance is also placed upon ***Mir Ahmed Khan v. Secretary to Government & others*** **(1997 SCMR 1470)**.

Emphasis added

11. In view of above, the period spent in contractual employment cannot be added to make up any deficiency in qualifying service for the purpose of eligibility to receive pension. Consequently, instant writ petition fails and accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____06.2022.

JUDGE

ISLAMABAD | 07.06.2022
APPROVED FOR REPORTING

//*Kamran*//