JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A.No.167 of 2022
Rana Sohaib Shabbir and others
Versus
Federation of Pakistan and others

Date of Hearing:	19.12.2022
Appellants by:	Mr. Muhammad Yaqoob Javaid, Advocate for the appellants in I.C.A.Nos.167/2022 & 168/2022 Mr. Khalid Ismail, Advocate for the appellants in connected I.C.A.s No.159 to 162 of 2022 Mirza Waqas Qayyum, Advocate for the appellants in I.C.A.s No.215 to 218 of 2022.
Respondents by:	Malik Shaukat Nawaz, learned Assistant Attorney-General Mr. Khalid Ishaq, Law Officer, NADRA

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, we propose to decide intra Court appeals No.159/2022 to 162/2022, 167/2022, 168/2022 and 215/2022 to 218/2022, which are against the consolidated judgment dated 21.03.2022 passed by the learned Judge-in-Chambers, whereby writ petitions No.4506/2019 and 1804/2020 to 1807/2020 filed by the appellants, were dismissed. Through the said writ petitions, the appellants had sought a direction to the National Database and Registration Authority (**"NADRA"**) to regularize their services.

2. Learned counsel for the appellants submitted that the appellants had initially been appointed on short term basis for six months in the years 2012 and 2013; that the duration of the appellants' contract appointment had been extended from time to time; that the appellants had requested for the contract nature of their employment to be converted into permanent appointments; that the Board of NADRA, in its 25th meeting held on 28.02.2012, had regularized thousands of employees some of whom had completed just one year of service; that employees of NADRA similarly placed as the appellants had filed writ petition No.6439/2016 before the Hon'ble Lahore High Court for the

UNCERTIFIED COPY

regularization of their services; that the said petition was allowed vide order dated 06.12.2018 whereafter their services were regularized vide office order dated 18.03.2019 issued by NADRA; that another batch of contract employees had been regularized by NADRA through office order dated 04.07.2019; that the appellants had filed writ petition No.1822/2020 before this Court seeking the regularization of their services; that the said writ petition was disposed of vide order dated 12.09.2019 with the direction to NADRA to afford them an opportunity of personal hearing and thereafter decide their grievances; that vide office order dated 19.02.2020, NADRA rejected the appellants' representations which caused the appellants to file writ petitions before this Court; and that all the writ petitions were dismissed by the learned Judge-in-Chambers vide order dated 21.03.2022 which has been impugned in the instant appeals.

3. Learned counsel for the appellants further submitted that the appellants have been discriminated against; that the learned Judge-in-Chambers ought to have issued directions to NADRA to regularize the appellants in the same way as the services of several other similarly placed employees had been regularized; that the decision taken by NADRA on 19.02.2020 is in violation of the appellants' fundamental rights guaranteed under Article 25 of the Constitution as well as the law laid down by the Superior Courts; that the learned Judge-in-Chambers did not appreciate that initially the appellants had been appointed on contract basis through a competitive process; and that the learned Judge-in-Chambers erred by not appreciating that the terms and conditions on which the appellants had been appointed on contract basis did not prevent them from seeking the regularization of their services. Learned counsel for the appellants prayed for the appeals to be allowed and for the impugned judgment dated 21.03.2022 to be set-aside.

4. On the other hand, Law Officer, NADRA submitted that the writ petitions filed by the appellants were not maintainable inasmuch as the terms and conditions of the appellants' service in

UNCERTIFIED COPY

NADRA were not governed by any statutory service rules or regulations; that a contractual employee is not entitled to file a Constitutional petition with regard to matters pertaining the terms and conditions of his service; that a contractual employee does not have a vested right for his contract employment to be converted into a regular one; and that the appellants have not been discriminated in any manner since they had initially been appointed on short term basis. Learned counsel for NADRA prayed for the appeals to be dismissed.

5. We have heard the contentions of the learned counsel for the appellants as well as the Law Officer, NADRA and have perused the record with their able assistance.

6. Learned counsel for the appellants placed heavy reliance on the NADRA's letter dated 01.03.2012 according to which the Board of NADRA had approved the regularization of its contractual employees *"with one year service w.e.f. 29th February 2012."* NADRA asserts that the contract employees who had completed one year of service were entitled to regularization under the said decision whereas the appellants assert that even the contract employees who had not completed on year of service by 29.02.2012 but had completed one year of service after 29.02.2012 or who had been appointed after 29.02.2012 but had completed one year of service were entitled to the regularization of their services. Since the appellants had not completed one year of contractual service by 29.02.2012, this Court cannot alter or amend the decision of the Board of NADRA set out in the letter dated 01.03.2012 by issuing directions to NADRA to regularize the services of the appellants. In holding so, reliance is placed on the judgment in the case of Chairman, NADRA, Islamabad Vs. Muhammad Ali Shah (2017 SCMR 1979), wherein it was held as follows:-

> ***"The High Court could not renegotiate, alter and/or amend the terms of regularization that were offered by NADRA for the simple reason that the High Court did not have jurisdiction to do so. Therefore, till such time that the employees were regularized they would continue to be governed by the terms and conditions of the contract which they had with NADRA. The writ or***

UNCERTIFIED COPY

constitutional jurisdiction of the High Court under Article 199 of the Constitution could not be invoked by a contractual employee of a statutory organization, such as NADRA ……"

7. The appellants have not disputed the observation of the learned Judge-in-Chambers in the impugned judgment dated 21.03.2022 that most of the appellants were appointed in NADRA on contract basis after the cut-off date of 29.02.2012. Not a single appellant came up with the plea that he had completed one year of service as a contract employee in NADRA by 29.02.2012 so as to entitle him to the regularization of his services pursuant to decision taken by the Board of NADRA referred to in the letter dated 01.03.2012. In the memo of the appeals, it has been pleaded that the appellants were appointed in NADRA on short term basis in the years 2012 and 2013.

8. In support of their case, the appellants placed reliance on judgments of the Superior Courts whereby directions were issued to regularize the services of contractual employees. True, several orders have been passed by the Superior Courts in the past issuing directions for services of contract employees in Government Departments, autonomous and semi-autonomous bodies, etc, to be regularized. However, each case is to be examined on its own facts and every petitioner has to establish his entitlement under the law, if any, which vests in him to seek the regularization of his services as of right. The mere fact that in the past orders for regularization of contractual employees had been issued would not mean that this Court is to mechanically issue directions for the regularization of the services of contract employees. In this regard, the Hon'ble Supreme Court, in the case of Government of Khyber Pakhtunkhwa Vs. Saeed-ul-Hassan (2021 SCMR 1376), has held as follows:-

"19. The learned High Court in all the Appeals before us has applied the principle of similar treatment of similarly placed persons and has found the Respondents eligible for Regularization. It is settled principle of law that each case turns on its own facts and circumstances. When the record is clearly suggestive of the fact that the Respondents could not be regularized, and there were valid and sustainable reasons to do so, the principle of similar treatment of similarly placed

UNCERTIFIED COPY

employees could not blindly and indiscriminately circumvent the record to regularize those employees who are otherwise not entitled to regularization. Further, some judgments were mechanically rendered without examining the specific facts and circumstances of individual cases by relying on earlier judgments directing regularization and those too in incorrect and erroneous basis. This, by itself, furnishes justification to set aside such judgments. Even otherwise, the rule of similar treatment for similarly placed persons has wrongly and incorrectly been applied in the instant cases."

9. The question whether the appellants are entitled for their contractual services to be regularized (or in other words they are entitled for their contract appointment to be converted into a permanent one) is to be decided in accordance with the law laid down in the recent past by the Hon'ble Supreme Court. It has been enunciated in unequivocal terms that the regularization of services is not a vested right of a contractual employee and therefore such an employee cannot seek the issuance of a writ of *mandamus* directing the employer to convert the contractual nature of the employment into a regular / permanent one. In holding so, reliance is placed on the following case law:-

i) Recently, in the case of Province of Punjab Vs. Prof. Dr. Javed Iqbal (2022 SCMR 897), the Hon'ble Supreme Court has held as follows:-

"13. This Court has held in numerous pronouncements that there is no automatic right of an employee to get his/her past service rendered on contract basis counted towards regular service or regularization. An employee cannot choose the date when he/she wishes to be regularized Regularization is the prerogative of the Executive and it cannot be arbitrarily interfered with by the Court. Such interferences militates the mandate provided to the High Court under Article 199 of the Constitution and, must be exercised keeping in mind the fundamental principles of judicial review and tracheotomy of powers. Long and satisfactory contractual service does not confer any right on an employee to claim regularization at all or for the matter from an earlier date."

ii) In the case of Government of Khyber Pakhtunkhwa Workers Welfare Board Vs. Raheel Ali Gohar (2020 SCMR 2068), the Hon'ble Supreme Court held *inter alia* that it was settled law that the relationship of a contractual employee with his employer is governed by the principle of master and servant and that

UNCERTIFIED COPY

contractual employees do not have a right to approach a High Court to seek redressal of their grievances relating to regularization. In paragraph 6 of the said report, reference was made to the Hon'ble Supreme Court's judgment dated 08.01.2013 passed in civil petition No.4504/2017 and connected matters wherein it was held as follows:-

> ***"Having heard the learned counsel for the parties, we find that contractual employees have no right to be regularized until there is a law provided to that effect and we are not confronted with any such legal proposition. They are the contractual employees and they have to serve till the pleasure of their master and in case of any wrongful termination, which according to them has taken place, they cannot seek the reinstatement. At the best, they can only have the compensation for the wrongful termination by applying to the competent court of law. 12 ICA No. 290 of 2021 Resultantly, these petitions are converted into appeals and allowed, and the impugned judgment is set aside".***

iii) In the case of <u>Muhammad Qasim Vs. Federation of Pakistan (2019 PLC (CS) 1491)</u>, the Division Bench of this Court held as follows:-

> ***"7. It is our view that the dimensions and parameters of a competitive process for a permanent appointment and a contractual/ temporary appointment are altogether different. Competition for a contractual/temporary employment is not as aggressive and competitive as competition for a permanent employment. Many vying for permanent employment would not bother applying for contractual/temporary employment. This is more so when there is no representation in the advertisement inviting applications for contractual/temporary employment that the same would somehow transform into a permanent employment. If a person employed purely on temporary basis is to be given a permanent employment without any competitive process it would amount to stealing a march on hundreds of thousands of able would-be applicants who did not apply for temporary/contractual employment, but would have applied had they known that the contractual employment would, without any further competitive process, turn into permanent employment. The conversion of a person's temporary/contractual employment into permanent employment without any transparent competitive process, would be a clear violation of Articles 3 and 9 of the Constitution. Equal opportunity in public employments is a constitutional mandate. The principle of "each according to his ability to each according to his work" can only be achieved by appointing meritorious candidates in the public sector through strict competition. Such competition for a permanent employment in the public sector cannot be given a go-bye simply because a contractual employee, desirous of his employment being made regular/permanent, was given contractual employment through a competitive process. The equality clause***

UNCERTIFIED COPY

enshrined in the Constitution is to be followed scrupulously by the public sector. The youth of this Islamic Republic burning the midnight oil to secure permanent employment in the public sector through an open competitive process would be let down and demoralized if the contractual employment of persons like the appellants is converted into permanent employment without a competitive process. Such a relaxation would be a bad precedent to a large number of qualified people aspiring for permanent employment in the public sector."

10. Since we do not find any legal infirmity in the impugned judgment dated 21.03.2022 passed by the learned Judge-in-Chambers, all the appeals are dismissed with no order as to costs.

(SAMAN RAFAT IMTIAZ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 20.03.2023

(JUDGE)

(JUDGE)

Qamar Khan*

UNCERTIFIED COPY