JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO.3748 OF 2023

MEER HASSAN KHAN & ANOTHER

VS

MINISTRY OF SCIENCE & TECHNOLOGY THROUGH ITS SECRETARY, GOVT OF PAKISTAN & ANOTHER

Petitioners by	**:**	**Mr. Muhammad Aftab Alam Rana, Advocate.**
Respondents by	**:**	**Rai Azhar Iqbal Kharal, Advocate for the Respondent No. 2.** **Raja Zamir ud Din Ahmed, AAG.** **Mr. M. Akmal, Admin Officer (Legal), Ministry of Science & Technology.**
Date of hearing	**:**	**15.04.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"**), the Petitioners have challenged the Order dated 08.11.2023 (**"Impugned Order"**) passed by Respondent No.1.

2. The brief facts of the case, as stated in the Memo of Petition, are that the Petitioners were appointed as Assistant Director (Accounts/BS-17) and as Accounts Officer (BS-17) in the year 2011 on a temporary basis. Later on, they were regularized on 30.07.2012 by the competent authority on the recommendation of the Cabinet Sub-Committee against their substantive posts. The Respondents issued a seniority list wherein the Petitioners were assigned their due seniority. The Petitioners worked from July 2012 to November 2023 without any break. A writ petition No. 3408/2017 was filed by one of their colleagues against the Petitioners, which was disposed of vide order dated 12.03.2018 with the direction to the Respondents to decide the representation of the said Petitioner after hearing all the parties. Through order dated 15.08.2018 passed by Respondent No.1, the appointment/seniority of the Petitioners was kept intact. The said colleague again filed writ petition No.3428/2018 before this Court, which was allowed vide order dated 05.07.2023. In para-16 of the said judgment, this Court, while allowing the

writ petition, set aside the order dated 15.08.2018 only to the extent of reverting the said Petitioner to BS-16 and remanded the matter to the Respondents for a decision afresh. No other direction of any kind was issued. In the garb of implementation of the order dated 05.07.2023 passed by this Court in writ petition No.3428/2018, the Respondents, vide the Impugned Order, terminated the services of the Petitioners by declaring the same *void ab initio*, disregarding the fact that this Court had not directed the Respondents to recall the orders of appointment of the Petitioners. The Petitioners filed a representation against the Impugned Order, but no heed has been paid to date. Hence, the instant Writ Petition.

3. The learned counsel for the Petitioners submitted that the Petitioners were lawfully appointed by the competent authority after due process, later regularized against permanent posts, assigned seniority, and received excellent performance evaluations. No irregularity was ever found in their appointments, creating vested rights that cannot now be taken away, citing the principle of *locus poenitentiae* and several precedents, including 2008 SCMR 598 and 2011 SCMR 1220. It was further argued that any lapse by the appointing authority cannot prejudice the Petitioners, and their long-standing, uninterrupted service without objection renders their appointments past and closed transactions. The impugned action violates Articles 3, 4, and 9 of the Constitution, which protect due process, natural justice, and the right to livelihood. The action also reflects arbitrary and mala fide exercise of power, lacking inquiry, show-cause, or adherence to Article 10A. Reliance was placed on numerous judgments supporting the need for fairness, reasoned decision-making, and good governance. The Respondents failed to address departmental appeals, violating Section 24-A of the General Clauses Act and Article 189 of the Constitution. Lastly, learned counsel prayed that an appropriate writ may kindly be issued in favor of the Petitioners, the Impugned Order may kindly be set aside, and the Petitioners may graciously be reinstated in service with all consequential benefits.

4. On behalf of the Respondents, it is argued that the Petitioners were appointed on a contingent basis in the years 2011–2012. Petitioner No.2 was appointed as Accounts Officer on 09.12.2011, whereas Petitioner No.1 was appointed as Assistant Director (Finance and Accounts) on 01.02.2012. The Petitioners were employed on contingent basis by the Pakistan Standards and Quality Control Authority (PSQCA), in violation of the instructions for hiring contingent-paid staff**.** Serial No.20 of GFR

Volume-II provides that servants paid from contingencies must be in Class-IV only. As per the classification given in ESTACODE 2021 at Page 307, Class-IV is equivalent to BPS-1 and BPS-2. Therefore, their appointment in BS-17 was contrary to rules/regulations. The date of appointment of Petitioners No.1 & 2 on a contingent basis was 30.01.2012 and 09.12.2011 respectively, whereas Cabinet Division's letter No.3/5/2011-Admn-I dated 27.07.2012 reflects their contingent appointments as 20.09.2011 and 09.09.2011 respectively. The regularization of the Petitioners was thus based on misrepresentation of facts, as they had not completed three spells of 89 days before regularization. In compliance with this Court's order dated 16.03.2018 in writ petition No.3408/2017 filed by Mr. Shehzad A. Siddiqui, both parties were heard and the Secretary, Ministry of Science & Technology, through a speaking order dated 15.08.2018, reverted Mr. Shehzad A. Siddiqui to BS-16 as his upgradation was based on a Finance Division O.M dated 03.04.2010, applicable only to the Controller General of Accounts and not to PSQCA. Aggrieved by that order, Mr. Siddiqui filed writ petition No.3428/2018, which was allowed by this Court on 05.07.2023, remanding the matter to the Secretary for a fresh decision after affording hearing and considering the relevant documents. In compliance, the Secretary, Ministry of Science & Technology, heard all three individuals on 08.11.2023, and declared the upgradation of Mr. Siddiqui as well as the regularization of the Petitioners *void ab initio* on the ground of misrepresentation regarding completion of three spells of 89 days. It is prayed that the instant petition may graciously be dismissed being not maintainable and devoid of merit.

5. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

6. The Petitioners have impugned the order of the Secretary dated 08.11.2023, vide which the notifications for their regularizations dated 30.07.2012 were declared *void ab initio*, on the basis of misrepresentation regarding completion of three spells of 89 days. The Petitioner, Mir Hassan Khan, was appointed on contingent basis as Assistant Director (Finance & Accounts) on 01.02.2012, and the Petitioner, Shahzad Jan Kamboti, was appointed as Accounts Officer on 09.12.2011. Their services were regularized on 30.07.2012 upon the recommendation of the Cabinet Sub-Committee of Regularization in its meeting held on 27.07.2012. Their seniority was fixed accordingly and placed at Serial Nos.1 and 2 in the seniority list dated 08.04.2015.

7. The background is that Shahzad A. Siddiqui filed writ petition No.3408/2017 seeking a writ of *quo warranto* in respect of the appointments of the Petitioners. This Court directed the Ministry of Science & Technology/Respondent No. 1 to decide the pending representation after hearing him. The Secretary decided the matter on 15.08.2018 without disturbing the Petitioners' appointments, holding that only the Cabinet Sub-Committee or higher forum could undo their regularization. However, Mr. Siddiqui was ordered to be reverted to BS-16. He challenged the said order in writ petition No.3428/2018, and this Court set aside the Order dated 15.08.2018 only to the extent of his reversion and remanded the matter for a fresh decision.

8. In compliance, the Secretary, Ministry of Science and Technology issued the Impugned Order, after hearing all parties. The Secretary declared the regularizations of the Petitioners *void ab initio* for failing to complete three spells of 89 days, and also declared Mr. Siddiqui's upgradation as unsustainable due to lack of approval from the Finance Division.

9. The Petitioners were regularized by Cabinet Sub-Committee in the year 2012 and later on in a reported judgment of the Honorable Supreme Court of Pakistan cited in **(2025 SCMR 104)** titled "*Mohsin Raza Gondal and others Vs. Sardar Mahmood and others*", it is held that the Cabinet Sub-Committee of Regularization has no authority to regularize a contract employee. The relevant portion of the judgment is reproduced hereunder: -

> ***"(b) Constitution of Pakistan---***
>
> *----Arts. 90, 91 & 99---Executive authority of the Federation, exercise of---Scope---Article 90 of the Constitution provides that the executive authority of the Federation shall be exercised in the name of the President by the Federal Government, which includes the Prime Minister and Federal Ministers but the said authority has to be exercised subject to the Constitution---It means that whenever the authority is exercised, it has to be within the limits prescribed by the Constitution---Neither the Prime Minister nor the members of the Federal Cabinet are permitted to perform their functions beyond the legal provisions i.e. the Constitution, statutory law, and the rules.*
>
> ***(c) Civil service---***
>
> *----Contract employees---Regularization of posts in BS-16 and above---Cabinet Sub-Committee, powers of---Scope---Rules of Business, 1973, were duly framed to conduct the business of the Federal Government---Under these rules, although there is a concept of Cabinet Sub-Committees on different subjects, there is no provision for the intervention of a Cabinet Sub-*

Committee in governing the terms and conditions of service of employees--- However, the Cabinet Sub-Committee can recommend reforms in the service structure, which can be approved by the Cabinet in accordance with the law and the Constitution---As, the Cabinet Sub-Committee lacks the authority to recommend the regularization of posts in BS-16 and above, therefore, any recommendation by the Cabinet Sub-Committee to regularize appointments in BS-16 and above is void ab initio and without any lawful authority.

(d) Void order---

----Any action that is void ab initio and without lawful authority cannot be protected under the doctrine of a 'past and closed transaction'.

(e) Civil service---

----Contract employees---Regularization in service---Factors to be considered by an employer/institution opting for regularization of its contract employees---Any institution opting for regularization of its employees must be either mandated by law or must carry out regularization through a well-thought-out policy of the institution concerned laying down the criteria and the process for regularization; performance evaluation of the contractual employee must be assessed to determine if the employee meets the standards required for a regular position; there must be availability of positions that match the skills and experience of the contractual employee; the budgetary considerations and financial implication of a regular employee must be weighed and considered---There must be a fair assessment of the employee's qualifications, performance and merit, so as to ensure only competent and committed employees are granted permanent employment status.

Federation of Pakistan through Secretary, Ministry of Law and Justice Islamabad and another v. Fazal-e-Subhan and others PLD 2024 SC 515; Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others v. Sher Aman and others 2022 SCMR 406 and Messrs State Oil Company Limited v. Bakht Siddique and others 2018 SCMR 1181 ref.

(f) Employment---

----Appointments and promotions in public sector organizations--- Transparency, merit and open competition, significance of---Appointments in the public sector based on corruption, nepotism, favoritism, lack of due process, and misuse of authority have long been a significant issue in our society---These practices undermine the principles of fairness and equality, eroding public trust in governmental institutions---When positions are filled not on merit but through personal connections or corrupt practices, it not only deprives deserving candidates of opportunities but also weakens the overall efficiency and integrity of the public sector---Upholding the values of transparency, merit, and open competition in public sector employment is essential for fostering a system where the most qualified individuals serve, ensuring that public resources are utilized effectively and justly for the benefit of all---Without adherence to these principles, the public sector risks becoming a tool for the powerful rather than a service for the people, perpetuating cycles of inequality and inefficiency---Therefore, it is imperative that the recruitment and promotion processes in the public sector

be conducted with the highest standards of fairness and accountability, free from any undue influence or bias."

Article 90 of the Constitution provides that the executive authority of the Federation shall be exercised in the name of the President by the Federal Government, which includes the Prime Minister and Federal Ministers but the said authority has to be exercised subject to the Constitution. It means that whenever the authority is exercised, it has to be within the limits prescribed by the Constitution. Article 90 of the Constitution is reproduced here under: -

"90. The Federal Government.---(1) Subject to the Constitution, the executive authority of the Federation shall be exercised in the mate of the President by the Federal Government, consisting of the Prime Minister and the Federal Ministers, which shall act through the Prime Minister, who shall be the Chief Executive of the Federation.

(2) In the performance of his functions under the Constitution, the Prime Minister may act either directly or through the Federal Ministers."

The Cabinet is a component of the Federal Ministers and Advisers who are appointed under Article 91 of the Constitution which reads as under: -

> *"91. The Cabinet.---(1) There shall be a Cabinet of Ministers, with the Prime Minister at its head, to aid and advise the President in the exercise of his functions."*
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> *Under Article 99(2) of the Constitution, the Federal Government is obliged to specify the manner by rules in which orders and other instruments are to be made and executed which is reproduced as under:-*
>
> *'99. Conduct of business of Federal Government.---*
>
> *(1) ....*
>
> *(2) The (Federal Government) shall by rules specify the manner in which orders and other instruments made and executed (in the name of the President) shall be authenticated, and the validity of any order or instrument so authenticated, and the validity of any order or instrument so authenticated shall not be questioned in any court on the ground that it was not made or executed by the President.'*
>
> *It is abundantly clear from the above constitutional provisions that neither the Prime Minister nor the members of the Federal Cabinet are permitted to perform their functions beyond the legal provisions i.e. the Constitution, statutory law, and the rules. Needless to mention, nobody is above the law. That is why the Rules of Business, 1973, were duly framed to conduct the business of the Federal Government. Under these rules, although there is a concept of Cabinet Sub-Committees on different subjects, there is no provision for the intervention of a Cabinet Sub-Committee in governing the terms and conditions of service of employees. However, the Cabinet Sub-Committee can recommend reforms in the service structure,*

which can be approved by the Cabinet in accordance with the law and the Constitution. As, the Cabinet Sub-Committee lacks the authority to recommend the regularization of posts in BS-16 and above, therefore, any recommendation by the Cabinet Sub-Committee to regularize appointments in BS-16 and above is void ab initio and without any lawful authority. We believe it is our duty to protect rights and interests established under the law and to prevent the enjoyment of rights created under an invalid law or through the misuse of legal authority. Reference may be made to the case of Shahid Pervaiz v. Ejaz Ahmad and others (2017 SCMR 206). In this backdrop, any action that is void ab initio and without lawful authority cannot be protected under the doctrine of a 'past and closed transaction,' as vehemently argued by the petitioners. The High Court, in recognizing this legal principle, correctly declared that the appointments of the petitioners were not made in accordance with the law and referred their cases to the FPSC."

10. In light of the authoritative pronouncement of the Hon'ble Supreme Court, the Cabinet Sub-Committee lacked jurisdiction to regularize the Petitioners, who were appointed on a contingent basis. Therefore, the instant Writ Petition, being misconceived and devoid of merit is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of May 2025.

JUDGE

Sajid/--