JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

JUDICIAL DEPARTMENT

W.P. No. 3636 of 2017

Ali Raza & others

Versus

The Secretary, National Food Security & Research, etc.

Petitioner by	:	Hafiz Noor Muhammad, Advocate.
Respondents by	:	Syed Nazar Hussain Shah, AAG Zafar Iqbal Tanvir SSO(NVL) Islamabad.
Date of hearing	:	17.02.2022

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ARBAB MUHAMMAD TAHIR, J: Through the instant writ petition, petitioners have prayed for a direction to the respondents to regularize their services.

2. The case of the petitioners is that they were appointed as Laboratory Attendant BS-1 in the Ministry of National Food Security and Research/respondent No.1 (**'respondent-department'**) for a project "Special Program for Strengthening SPS Facility and Quality Inspection Services in compliance with WTO-Establishment of an Integrated National Animal and Plant Health Inspection Services (**'the project'**)". After fulfilling all codal formalities vide office orders dated 11.05.2009 and 20.05.2013 respectively. They served the respondent-department for 3 to 7 years while their services were to be regularized pursuant to the Regularization Policy 2008 but the respondents have not considered their cases instead bent upon to accommodate their blue-eyed persons against the post from other provinces like KPK, Punjab and AJK, for which process of fresh recruitment has been started which necessitated instant writ petition.

3. The Establishment Division and the respondent-department filed separate written comments. The former has taken the stance that no information has been provided by the respondent-department to the Committee, constituted to

consider the cases for regularization of contract/daily wages employees and that the mandate of the Committee is restricted to consider the cases of employees of BPS-1 to BPS-15.

4. Learned counsel for the petitioners has placed reliance upon case laws reported as 2020 SCMR 1664, 2019 SCMR 233, 2018 SCMR 1405, 2018 SCMR 118, 2016 SCMR 1375, 2015 SCMR 1257 and 2012 PLC(CS) 1220.

5. On the other hand, learned A.A.G. reiterated the stance of the respondent-department by referring judgment of the Hon'ble apex Court in C.P. No.794 of 2016, C.P. No.1453 of 2014.

6. The respondent-department in its written comments refuted the claim of the petitioners, *inter alia*, on the grounds that their appointments were specific for a project; that they were contract employees; that they did not fall within the ambit of policy of regularize policy; that the process of appointments is being made in accordance with rules wherein petitioners also participated and that services of not a single employee of the project were regularized.

7. Heard, record perused.

8. The petitioners claim regularization of their services being falling within the category of employees whose services were regularized in terms of Regularization Policy 2008; that they were treated with discrimination and that after rendering services for long period, though on contract basis cannot be thrown out of service.

9. In order to appreciate the first contention, the Regularization Policy 2008 contained in Establishment Division O.M. dated 29.08.2008 have been gone through. The eligibility criteria for regularization of contract employees is envisaged in its paragraph-2. It is specifically mentioned in paragraph-2(b) that *"those who are working against tenure posts, project posts, or daily wages; or those who are being paid from contingent or defence budget are not eligible for regularization."* The case of the petitioners is akin to the one contained in paragraph 2(b) as being contract employees working against project posts, thus did not fall within the ambit of regularization policy 2008, as claimed.

10. It is also necessary to mention that the notification dated 02.04.2015 qua constitution of Committee on regularization pursuant to directions of this Court in W.P. No. 965 and 1703 of 2013 also bears Terms of Reference-TORs. Clause-iv of the said TORs states that "*the Committee shall identify all such cases in which the employees are eligible under the policy guidelines vide O.M. dated 29.08.2008 and shall refer them to the respective employers for appropriate action.*" The mandate of the Committee was to consider the cases in terms of policy of 2008 while as mentioned above, the case of the petitioners did not fall within the policy of 2008 due to status of having contract employee of a project.

11. Another important aspect of the matter is that the Establishment Division vide O.M. dated 11.05.2017 promulgated amendments in Recruitment Policy. It is stipulated therein that all contract/contingent paid/daily-wages/project employees having minimum one year service will be eligible for appointment on regular basis and they shall be awarded extra marks in interview at the rate of 1 mark for each year of service upto a maximum of 5 marks and that the period served shall be excluded for the purpose of determination of upper age limit in addition to relaxation of upper age limit as per existing rules.

12. It is a matter of record that the petitioner participated in the process of recruitment initiated by the respondent-department in the light of amended recruitment Policy, petitioners duly participated in the said process, they were extended the benefit of extra marks and relaxation in upper age limit, they were called for interview vide letter of even date i.e. 03.07.2017 and their participation is also visible from the attendance sheet dated 11.07.2017. It can therefore, not be said that the process of recruitment initiated by the respondent-department had been in derogation of the policy as asserted by the petitioners as they have not highlighted any instance of discrimination. The participation of the petitioners in the recruitment process, being questioned through the instant writ petition, explicitly reflects their acquiescence, therefore, they cannot question the same through the instant writ petition under the principle of estoppels.

13. The judgment of the Hon'ble apex Court dated 21.01.2015 passed in C.P. No.1453 of 2014 pertains to a case wherein the respondent-department assailed judgment dated 26.02.2014 passed by the Hon'ble Sindh High Court. The petitioners before the Hon'ble Sindh High Court sought regularization of their contract employment working on different posts in the project under the respondent-department. The Hon'ble Sindh High Court disposed of the constitutional petitions with direction to the concerned authority *"to expedite the process for issuance of the notification within reasonable period of time for regularization of services of employees mentioned in the list of province of Sindh. Unpaid salary if any, will also be paid to them."*

14. The Hon'ble apex Court in paragraph 6 of the judgment has graciously held that:-

> *"Admittedly, the Respondents were appointed on contract basis in a Project for a period of two years, which contract was extendable till the completion of project life, therefore, they could not seek regularization of their services in the Project once the project is completed. It is stipulated in their letters of appointment that their contract shall be liable to termination on 30 days notice without assigning any reason. Therefore, the learned High Court was not justified in directing the Petitioners for regularization of their services. So far as the concession given by the learned Standing Counsel before the learned High Court is concerned, the learned Deputy Attorney General for Pakistan has appeared on the last date of hearing and stated that the said concession was unauthorized. In these circumstances, we are inclined to set aside the impugned judgment which was passed on the basis of an unauthorized consent of the learned Standing Counsel and the fact that the Respondents were contract employees in a Project and their services could not be regularized on completion of the project life."*

15. The case of the petitioners before this Court is identical as they were appointed on contract basis in a project while their appointment letters also contains a class qua termination of appointment on 30 days' notice without assigning any reasons.

16. So far as conversion of the Project posts to non-development side is concerned, the letter of the respondent-department dated 30.06.2016 is available on file whereby it reveals that 3 posts of Lab Attendant BS-1 converted to non-

development side, against which process of recruitment was made in terms of Amended Recruitment Policy while the requirement of quota contained in Esta Code Volume-I was observed by the respondent-department. It can therefore, not be said that any particular employee of the Project was accommodated by excluding the petitioners as the appointments were made in due course wherein the petitioners also participated.

17. Having examined the case from every angle, no case of exercise of jurisdiction in terms of Article 199 of the Constitution, as prayed for, is made out. Consequently, instant petition fails and is accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

*A.R. Ansari**

Announced in open court on **08.03.2022.**

JUDGE.