JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.311 of 2018
Waqas Sabir and others
Versus
Federation of Pakistan through Secretary, Cabinet Division and others

Dates of Hearing: 27.10.2021 & 05.11.2021
Petitioners by: Mr. Hasan Rashid Qamar, Advocate
Respondents by: Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General
Mr. Farrukh Shahzad, learned A.A.G.
Mr. Zain Ullah, Assistant Director (Im&P)

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners seek a direction to the respondents to regularize their services with effect from the date when they were initially appointed on contract basis.

2. Learned counsel for the petitioners submitted that the petitioners were employed on contract basis in the Machine Readable Passport Project (**"MRP Project"**), which was being implemented by the Directorate General of Immigration & Passports (**"DG-I&P"**); that the duration of their contract appointment was extended from time to time; that the petitioners have been discriminated against inasmuch as the services of similarly placed employees of the DG-I&P have been regularized; that the services of contingent paid staff of DG-I&P have also been regularized; that the MRP Project was completed on 15.03.2017 and thereafter, vide letter dated 13.07.2017, 663 regular posts in the DG-I&P were created; that the MRP Project was converted from development to non-development budget; that the petitioners have been performing their services for more than five years; that upon conversion of the MRP Project to non-development budget, the petitioners developed a legitimate expectation for their services to be regularized; and that the petitioners have fulfilled all the conditions set out in the regularization policy of the Federal Government for their services to be regularized. In making his submissions, learned counsel for the petitioners placed reliance on the judgment in the case of Ikram Bari Vs. National Bank of Pakistan

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(2005 SCMR 100). Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned Deputy Attorney-General submitted that the petitioners were employed on contract basis in the MRP Project of the DG-I&P; that the posts against which the petitioners were working was converted from development to non-development budget with effect from 01.07.2017; that the period of the petitioners' employment contract was extended from time to time; that the the MRP Project was last extended up to 31.12.2020; that this Court in paragraph 123(iv) of the judgment passed in the case of Imran Ahmad Vs. Federation of Pakistan (2019 PLC (C.S.) Note 19 Islamabad) has held *inter alia* that project employees in BPS-01 to 15 working in projects which have been converted from development to non-development shall be considered for the regularization of their services by considering their qualifications, eligibility and fitness on case to case basis within a period of six months subject to the condition that their initial selection was made through a transparent manner *i.e.,* advertisement, test and interview; that a Departmental Selection Committee was constituted to consider the contractual staff working in BPS-01 to 15 for regularization; that the said Committee, after scrutinizing the record, found that 136 employees including the petitioners were appointed on short term basis without any advertisement; that vide order dated 16.09.2019 passed in criminal original No.93/W/2019, this Court has held *inter alia* that employees in the DG-I&P who had not been employed in a transparent manner *i.e.,* advertisement, test and interview have no right to be regularized under any circumstances; and that the DG-I&P shall ensure that none of its employees are discriminated against and the judgment passed by this Court in the case of Imran Ahmad Vs. Federation of Pakistan *(supra)* is enforced in letter and spirit. Learned Deputy Attorney-General prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the petitioners and the learned Deputy Attorney-General and have perused the record with their able assistance.

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5. It is an admitted position that all the petitioners were employed on contract basis in the MRP Project of the DG-I&P. The duration of the petitioners' contract was extended from time to time. The said project was converted to non-development budget with effect from 01.07.2017. Despite the said conversion, the petitioners were permitted to continue to work.

6. After the judgment in the case of Imran Ahmad Vs. Federation of Pakistan *(supra)* was passed, the petitioners were considered for the regularization of their services by the Departmental Selection Committee in light of the guidelines given by this Court in the said judgment. The guidelines with respect to the regularization of contract employees appointed in a project which had been converted from development to non-development were in the following terms:-

> ***"All project employees of BPS-1 to BPS-15 working in projects, which have been converted from development to non-development, shall be considered for the purpose of their regularization of services by their competent authorities while considering their qualification, eligibility, and fitness on case to case basis within the period of six (06) months (as one time exercise), subject to the condition that their initial selection was made through transparent manner i.e. advertisement, test and interview."***
> **(Emphasis added)**

7. The said judgment has been upheld by the Hon'ble Supreme Court vide order dated 13.03.2019 passed in C.P.No.3579/2018.

8. The Departmental Selection Committee found that the petitioners do not fulfill the condition for the regularization of their services since their initial selection had not been made as a result of a competitive process. The petitioners have not brought on record any document to show that they were initially appointed on contract basis through a transparent manner *i.e.,* advertisement, test and interview. In this view of the matter, the decision of the DG-I&P not to regularize the petitioners' services does not suffer from any illegality.

9. In the first paragraph of the writ petition, it has been pleaded that the petitioners had been appointed pursuant to an advertisement in the newspaper. At page-46 of this petition, the petitioners have annexed an advertisement dated 10.04.2007 published by the DG-I&P inviting applications for appointment to different posts in the MRP Project. In paragraph 3 of the writ petition, the dates of joining of

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each of the petitioners has been mentioned. The petitioners who were appointed on contract basis in the years 2011 to 2013 could obviously not have been appointed in the process pursuant to the advertisement issued in the year 2007.

10. Initially when the instant petition was filed, there were 44 petitioners. During the pendency of the instant petition, the services of some of the petitioners were regularized. The petitioners whose services were regularized withdrew the petition to their extent. There are now 21 petitioners remaining. None of these petitioners were appointed in the years 2007-2008. Even otherwise whether the petitioners (if at all any), who were appointed on contract basis in the year 2007, were so appointed in the process pursuant to the said advertisement is a factual dispute since the DG-I&P in its written comments has pleaded that none of the petitioners had been appointed in a transparent manner *i.e.,* advertisement, test and interview. Such a dispute cannot be resolved in the Constitutional jurisdiction of this Court.

11. Mr. Zain Ullah, Assistant Director, DG-I&P was in attendance and assured the Court that no discrimination would be made in the process of the regularization of the services of contract employees, and that the guidelines given by this Court in the case of Imran Ahmad Vs. Federation of Pakistan *(supra)* shall be strictly adhered to.

12. In view of the above, I do not find any merit in this petition which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 24/11/2021

(JUDGE)

*Qamar Khan**

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