JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No.215 of 2014
Dr. Shahzad Afzal
Versus
The Minister for Ministry of Science & Technology and others

I.C.A. No.214 of 2014
Dr. Shahzad Afzal
Versus
The Minister for Ministry of Science & Technology and others

I.C.A. No.212 of 2014
Dr. Shahzad Afzal
Versus
Pir Bakhsh Jamali and another

Date of Hearing:	05.04.2017
Appellant by:	Mr. Pervaiz Inayat Malik, learned ASC,
Respondents by:	Ch. Abdul Khaliq, learned A.A-G. Mr. Muhammad Islam Sindhu, Advocate for respondent No.4,

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MIANGUL HASSAN AURANGZEB J:- The appellant, impugns the consolidated judgment dated 10.04.2014, passed by the learned Single Judge-in-Chambers, whereby Writ Petitions No.746/2013, 937/2013, and Criminal Original Petition No.139/2013, instituted by the appellant, were dismissed. Through this judgment, we propose to decide Intra Court Appeals No.215/2014, 214/2014 and 212/2014, as they involve common questions of law and fact.

2. The facts essential for the disposal of these appeals are that on 14.02.2004, the appellant was appointed as Director (Medical Laboratories) (BPS-19) in a development project of Pakistan National Accreditation Council on contract basis for a period of one year. On 18.05.2006, the appellant was appointed as the Chief Executive of Pakistan Certification Body, Pakistan Standards and Quality Control Authority ("PS&QCA"). Subsequently, the said post was re-designated as Director, Pakistan Certification Body of PS&QCA. On 12.07.2007, the appellant was appointed on a regular post in BPS-19 in PS&QCA. On 07.09.2007, the appellant was transferred and posted as

Director, International Affairs and Training (BPS-19) at the Standards Development Centre, PS&QCA, Karachi.

3. While in service of PS&QCA as a BPS-19 employee, the appellant, in response to an advertisement dated 20.10.2010, applied for the post of Deputy Director General (Standards Development) (BPS-20). As a result of a competitive process, the appellant, on 15.02.2011, was offered to be appointed as Deputy Director General (Standards Development) (BPS-20) on contract basis for a period of two years. After the appellant accepted this offer, he was appointed on 23.02.2011 against the said post on contract basis. The terms and conditions of the appellant's contractual appointment, explicitly provided that the appellant will not have any seniority and will not be placed on the regular list of PS&QCA employees. It was also provided that the appellant's services after the probationary period of three months could be terminated on fifteen days notice, and that the appellant's lien on his substantive post in PS&QCA will be according to the rules and policies of PS&QCA.

4. Vide letter dated 01.02.2012, the Ministry of Science and Technology, Government of Pakistan, informed the Director General, PS&QCA that the Federal Government had fixed 31.08.2011 as the cut off date to regularize employees who were on daily wages/contract on non-development side. To be eligible for regularization, the contract employees were required to have completed satisfactory service of one year or more by 31.08.2011. The organizations under the administrative control of the Ministry of Science and Technology, including PS&QCA, were asked to submit a certificate providing that up to 31.08.2011, there was no daily wager/contract employee left on the non-development side whose services were to be regularized in the light of the government policy. On 08.02.2012, the cut off date was extended from 31.08.2011 to 28.02.2012.

5. On 07.03.2012, a meeting of the Board of Directors of PS&QCA took place. The appellant also attended this meeting. In this meeting, the appellant requested the Chairman of the Board of PS&QCA to regularize his services. The Chairman directed the Director General, PS&QCA to examine the factual position on

merits and submit his recommendation. All this is reflected in the minutes of the said meeting. On 18.06.2012, the Director General, submitted a note to the Chairman stating that the appellant had been appointed against a permanent post in PS&QCA, and that his services would be beneficial and productive for PS&QCA. In this note, it was not mentioned that the appellant had been appointed on contract basis. Again vide letter dated 17.01.2013, the Director General, PS&QCA requested the Secretary, Ministry of Science and Technology, to regularize the appellant's services as Deputy Director General, PS&QCA.

6. The appellant brought on record letter dated 04.07.2012 issued by the Establishment Division (Cabinet Secretariat) according to which the Cabinet Sub-Committee on the regularization of contract/daily wages employees in Ministries/Divisions/Departments etc, in its meeting held on 31.05.2012, decided that the services of any of the contractual/daily wages employees in the Ministries/Divisions/ Attached Departments / Autonomous bodies/Organizations, etc. who had completed more than one year of service of his/her employment will not be terminated/discharged without bringing his/her case before the Cabinet Sub-Committee, and the contractual services of such contract/daily wages employees should be extended till the final decision by the Cabinet Sub-Committee. This letter was apparently sent to all Ministries and Divisions.

7. The Ministry of Science and Technology presented the case of regularization of contract/contingent paid employees of the said Ministry and its attached departments to the Cabinet Sub-Committee for regularization. The list of such employees included nine contractual employees (including the appellant) in PS&QCA. The Cabinet Sub-Committee in its meeting held on 31.05.2012 decided to regularize the services of several contractual employees including that of the appellant. Vide notification dated 02.04.2013 issued by the PS&QCA, the services of eleven contract/daily wages employees were regularized pursuant to the said decision of the Cabinet Sub-

Committee. The appellant's name did not find mention in the said notification.

8. Aggrieved by inaction on the part of the respondents to issue a notification regarding the regularization of his services, the appellant instituted Writ Petition No.746/2013 before this Court praying for a direction to the Ministry of Science and Technology to issue a notification regarding the regularization his services in BPS-20. As an interim relief, this Court vide order dated 26.02.2013, ordered that no adverse order shall be passed against the appellant. The position taken by the respondents in their written comments was that the appellant's services had earlier been regularized when he was serving against a post in BPS-19; that on 15.02.2011, the appellant was appointed as Deputy Director General (BPS-20) on contract basis for a period of two years; that the appellant had a lien regarding his previous post in BPS-19; and that since the appellant had a lien regarding a regular post in BPS-19, he could not be given a further regular/permanent appointment in BPS-20. It was also pleaded that the appellant had exerted political influence in regularizing his contractual services.

9. Since the appellant's contract period stood completed on 23.02.2013, PS&QCA vide office order dated 25.02.2013, called upon the appellant to report to the Secretary, PS&QCA for further posting. Aggrieved by the said office order dated 25.02.2013, the appellant instituted Writ Petition No.937/2013 before this Court. This Court, vide interim order dated 07.03.2013, suspended the operation of the letter dated 25.02.2013.

10. Vide notification dated 21.12.2012, the appellant had been transferred and posted as Deputy Director General (TS) at Lahore. This transfer order was cancelled on 21.03.2013. Aggrieved by the cancellation of the transfer order, the appellant on 25.03.2013 filed a petition for contempt of court (i.e. Crl. Org. No.139/2013) against the Secretary and Director General of PS&QCA. The appellant also prayed for the suspension of the said order dated 21.03.2013.

11. Vide consolidated judgment dated 10.04.2014, the learned Single Judge in-Chambers dismissed Writ Petitions No.746/2013, 937/2013 as well as Crl. Org. No.139/2013, filed by the appellant. The reason which prevailed with the learned Single Judge in dismissing the said petitions was that the appellant, prior to his contractual appointment as Deputy Director General, PS&QCA, was already a regular employee of PS&QCA; and that the appellant's contractual employment for two years had already expired. The appellant has impugned the said judgment dated 10.04.2014 in these appeals.

12. Mr.Pervaiz Inayat Malik, ASC, learned counsel for the appellant after narrating the sequence of events leading to the institution of writ petition Nos.746/2013, 937/2013, and Crl. Org. No.139/2013, submitted that after the Cabinet Sub-Committee, in its meeting dated 31.05.2012, had decided to regularize the appellant's contractual services in BPS-20, the respondents could not withhold the issuance of a notification *qua* the regularization of the appellant's services; that PS&QCA, through the Ministry of Science and Technology, had sent up the appellant's name to the Cabinet Sub-Committee for regularization; that the Director General, PS&QCA had already recommended that the appellant's services in BPS-20 should be regularized; that the respondents had meted out discriminatory treatment to the appellant by omitting to mention the appellant's name in the notification containing the names of all those contractual employees/daily wagers whose services had been regularized by the Cabinet Sub-Committee; that even though the appellant may have had a lien regarding his permanent post in BPS-19, this fact could not prevent his services in BPS-20 from being regularized; and that the respondents are estopped by their own conduct by not regularizing the appellant's services in BPS-20.

13. On the other hand, Chaudhry Abdul Khaliq, the learned Assistant Attorney-General ("A.A-G.") submitted that the Cabinet Sub-Committee had recommended the appellant's services in BPS-20 to be regularized subject to the availability of posts on non development budget and fulfillment of recruitment criterion;

that the said decision of the Cabinet Sub-Committee was void and *coram-non-judice* inasmuch as the regularization policy dated 29.08.2008, duly approved by the Federal Government/Federal Cabinet, was only with respect to employees working on contract basis against posts in BPS-01 to BPS-15 in the Federal Ministries/ Divisions/ Attached Departments/ Subordinate Offices/ Autonomous/ Semi-Autonomous Bodies/ Corporations; that since the appellant was seeking the regularization of his services in BPS-20, the matter was not within the jurisdictional domain of the Cabinet Sub-Committee; that no vested right was created in favour of an employee whose services were regularized by the Cabinet Sub Committee by transgressing the parameters set out in the regularization policy dated 29.08.2008; and that under the said regularization policy employees working on contract basis against posts in BPS-16 and above could not be regularized by the Cabinet Sub-Committee; and that the Ministry of Science and Technology, vide its letter dated 25.02.2013 has requested the Establishment Division to withdraw the approval of the appellant's regularization.

14. Furthermore, it was submitted that the said regularization policy was approved by the Federal Cabinet on 04.06.2008, and was circulated by the Establishment Division (Cabinet Secretariat) vide office memorandum dated 29.08.2008; that at no material stage, was any amendment made to the said regularization policy by the Federal Government/ Federal Cabinet; that the Cabinet Sub-Committee could not, without the approval of the Federal Cabinet, amend the said regularization policy; that any amendment in the said regularization policy not made or approved by the Federal Cabinet was void and of no legal consequence. The learned A.A-G. stressed that he was making the said submissions with full responsibility and on specific instructions from the Federal Government/Establishment Division (Cabinet Division). He further submitted that since the appellant had a permanent lien regarding a post in BPS-19 in PS&QCA, he could not be

regularized in BPS-20. It was prayed that the intra court appeals be dismissed.

15. We have heard the contentions of the learned counsel for the appellant as well as the learned Deputy Attorney-General. The facts leading to the filing of these intra court appeals have been set out in sufficient detail in paragraphs 2 to 11 above, and need not be recapitulated.

16. It is an admitted position that during 2010, while the appellant was serving as a Director (BPS-19) in PS&QCA, he applied to be appointed as Deputy Director General (Standards Development) (BPS-20) at PS&QCA on contract basis for a period of two years. The appellant was appointed against the said post on 23.02.2011. It is also not disputed that PS&QCA, through the Ministry of Science and Technology, sent up the appellant's name for regularization to the Cabinet Sub-Committee.

17. As per the minutes of the meeting of the Cabinet Sub-Committee on regularization issued by the Establishment Division (Cabinet Secretariat) on 22.10.2012, the Cabinet Sub-Committee, in its meeting dated 31.05.2012, approved the regularization of several employees, including the appellant. This approval was subject to the availability of posts on non development budget and fulfillment of recruitment criterion. The regularization of the appellant's services in BPS-20 were approved by the Cabinet Sub-Committee within appellant's two-year contract period. Therefore, we cannot bring ourselves to agree with the learned Single Judge that the appellant's contract period had already expired. The appellant's contract period may have expired when his writ petition was decided, but not when the Cabinet Sub-Committee approved the regularization of his services in BPS-20. The appellant's two-year contractual appointment in BPS-20 was to come to an end on 23.02.2013, whereas the Cabinet Sub-Committee approved the regularization of his services in its meeting held on 31.05.2012.

18. The argument advanced by the learned Deputy Attorney General that since the appellant had a permanent lien regarding a post in BPS-19 in PS&QCA, he could not be regularized in BPS-

20, is not tenable and is hit by the doctrine of estoppel. The learned counsel for respondent No.4 did not deny that PS&QCA, through the Ministry of Science and Technology, had forwarded the appellant's name for regularization in BPS-20. This implies that PS&QSA and the Ministry of Science and Technology were well aware that the appellant's lien regarding his regular post in BPS-19 in PS&QSA, was not an impediment for him to be considered for regularization in BPS-20. Furthermore, the Director General of PS&QSA, vide letter dated 17.01.2013, had already recommended the appellant's regularization in BPS-20.

19. Reliance placed by the learned Single Judge on the judgment in the case of Syed Mubassir Raza Jafari Vs. Employees Old Age Institution (2014 SCMR 949), is also misplaced. In the said judgment it has *inter-alia* been held that the regularization policy cannot be construed or implemented in a manner which may extend legitimacy to illegally appointed employees. In the present case, it is not the respondents' case that the appellant's contractual appointment in the year 2011 was in any manner illegal. Therefore, the learned Single Judge erred by dismissing the appellant's writ petition on the basis of the said judgment.

20. Now, despite the decision of the Cabinet Sub-Committee to regularize the appellant's services in BPS-20, the Ministry of Science and Technology, did not issue a notification regularizing the appellant's services. This caused the appellant to invoke the constitutional jurisdiction of this Court.

21. In our view, this is not a simple case of the Ministry of Science and Technology or PS&QCA not issuing a notification *qua* regularization of the appellant in pursuance of the Cabinet Sub-Committee's decision dated 31.05.2012. The vital question that needs to be answered in these appeals is whether the Cabinet Sub-Committee had a power or authority to regularize the contractual services of any employee in BPS-16 and above, in view of the fact that the regularization policy dated 29.08.2008 had not been amended at any material stage by the Federal Cabinet so as to authorize the Cabinet Sub-Committee to regularize the services of employees in BPS-16 and above.

22. The Federal Cabinet in its meeting dated 04.06.2008 took the following decision:-

> ***"The Cabinet decided, in principle, to regularize all contract employees in BS 1 to 15 and equivalent. A Committee comprising Ministers for Labour & Manpower, Finance, Law & Justice and Deputy Chairman Planning Commission would work out the modalities of regularization of these employees. The Committee would also review the contracts of persons appointed in higher positions in Government/public sector entities and finalize its recommendations within a week."***

23. In pursuance of the said decision of the Federal Cabinet, the Establishment Division (Cabinet Secretariat) issued the following Office Memorandum dated 29.08.2008:-

Immediate

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION
****

No.10/30/2008-R-II **Islamabad, the 29th August, 2008**

OFFICE MEMORANDUM

Subject: REGULARIZATION OF BS-1 TO BS-15 CONTRACT EMPLOYEES – CABINET DECISION CASE NO.76/10/2008, DATED 4-6-2008

The undersigned is directed to state that the Federal Cabinet has decided that all those employees who were working on contract basis against posts in BS-1 to BS-15 in the Federal Ministries / Divisions / Attached Department / Subordinate Offices / Autonomous / Semi-Autonomous Bodies / Corporations and were appointed up to 03.06.2008 may be regularized. The decision of the Cabinet will also apply to the contract employees working in FATA.

2. The eligibility criteria for regularization of the contract employees may be as under:-

Eligibility Criteria:

a) All those employees who are working on contract basis against posts in BPS-1 to 15 in Federal Ministries/Divisions/attached Departments/ Subordinate Offices/Autonomous/Semi-Autonomous Bodies / Corporations and were appointed prior to the decision of Cabinet, dated 4-6-2008 (viz upto 3-6-2008) may be regularized.

b) 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.

Date of Regularization:

Date of regularization for all contract employees, after completion of all formalities, will be 01 July, 2008.

Seniority:

Those who are regularized will reckon their seniority from the date of their regularization i.e. 01 July, 2008. As far their inter-se seniority, it will be determined with reference

to their age, as laid down in the existing instructions of the Government contained in the Seniority Rules.

Age Relaxation:

While regularizing the contract employees, age relaxation will be given to them by the Competent Authority as per existing rules.

Provincial Quotas:

During the process of regularization, the Provincial Quota may be adhered to as far as possible. In case the Provincial Quota exceeds as a result of regularization of contract employees, the excess in the Provincial Quota will be adjusted gradually in subsequent recruitment.

Qualification:

Qualification prescribed for a post will be strictly followed. In case a person is not eligible for the post he is holding on contract basis due to lack of qualification, he will be regularized against a lower post for which he possesses the required qualification.

3. Ministries/Divisions are requested to take immediate action towards regularization of the contract appointments in-respect of contract employees working in the Ministries/Divisions/ Subordinate Offices/ Attached Departments/Autonomous/Semi-Autonomous Bodies/ Corporations under their Administrative control for compliance of the above Cabinet decision.

-Sd-
(Muhammad Aftab Mahmud)
Joint Secretary
Ph:9206840

Secretary/Additional Secretary In-charge,
Ministries/Divisions,
Islamabad/Rawalpindi.

24. The argument of the learned Deputy Attorney-General that since the Federal Cabinet has not, at any stage, decided to regularize contract employees in BPS-16 and above, the Cabinet Sub-Committee could not regularize contract employees in BPS-16 and above, appeals to us. He also submitted that an amendment in the said decision dated 04.06.2008 could only be made by the Federal Cabinet and none other. The learned counsel for the appellant was not able to convince us on whether the initial regularization policy dated 29.08.2008 had been amended by the Federal Cabinet so as to authorize the Cabinet Sub-Committee to regularize the services of employees in BPS-16 and above. On this score alone, we could have dismissed the appeals, but since an important jurisdictional argument going to the root of the case has been raised by the learned A.A-G. which can jeopardize the regularization of scores of contract

employees in BPS-16 and above, we feel that these matters should be remanded to the learned Single Judge for considering the said point. We could also have decided such a point/objection at the appellate stage, but such a course would have deprived either party of its valuable rights of appeal. Perusal of the minutes of the Cabinet Sub-Committee's meeting dated 31.05.2012 shows that the services of several employees in BPS-16 and above were approved for regularization. Such employees were not parties in the writ petitions. Such employees would stand to be condemned unheard if we were to dismiss these appeals on the ground that the Cabinet Sub-Committee was bereft of the jurisdiction to regularize contract employees in BPS-16 and above.

25. We appreciate that the stance of the respondents in the proceedings before the learned Single Judge was not that the Cabinet Sub-Committee did not have the authority to regularize contract employees in BPS-16 and above. But we felt that the respondent's ground of challenge to the decision of the Cabinet Sub-Committee to regularize contract employees in BPS-16 and above went to the root of the case, and being a jurisdictional point we considered it just and proper to allow it to be raised.

26. Learned counsel for the appellant drew the attention of the Court to the judgment dated 09.04.2015, passed by the learned Division Bench of this Court in Intra Court Appeal No.325/2014 etc. wherein all government and semi government departments, government agencies and statutory corporations were directed to approach the Committee for regularization of employees who fulfill the criteria laid down in the office memorandum dated 29.08.2008 for examination of each case for regularization on merits after giving an opportunity of hearing to the parties. It was also noted that vide notification dated 02.04.2015 issued by the Cabinet Division (Government of Pakistan) a committee had been constituted to examine the cases of regularization of contracts/contingents/daily wages employees which were under adjudication in various judicial *fora* and have been referred to the Federal Government for consideration as per the guidelines issued in the office memorandum dated 29.08.2008. The

appellant's case cannot be referred to the said committee since its terms of reference do not include the consideration of regularization of employees in BPS-16 and above. This is because under the office memorandum dated 29.08.2008, the eligibility criteria for regularization of contractual employees was that they should have been working on a contract basis against posts in BPS-01 to 15.

27. In view of the above, Intra Court Appeals No.215 and 214 of 2014, are allowed, and the matter is remanded to the learned Single Judge-in-Chambers to determine whether it was within the jurisdictional domain of the Cabinet Sub-Committee to approve the regularization of employees in BPS-16 and above, and whether the policy on regularization (i.e. office memorandum dated 29.08.2008), issued pursuant to the decision of the Federal Cabinet dated 04.06.2008 had at any material stage been amended by the Federal Cabinet so as to authorize the Cabinet Sub-Committee to consider the regularization of employees working on contract basis against posts in BPS-16 and above.

28. As regards Intra Court Appeal No.212/2014 (arising from the impugned judgment dated 10.04.2014 passed in Crl. Org. Petition No.139/2013), the learned counsel for the appellant could not convince us as to how the respondents in the said appeal had committed contempt of Court. The cancellation of the appellant's transfer orders had not, in any manner, violated any order passed by this Court. Therefore, the said appeal is dismissed.

(AAMER FAROOQ) JUDGE

(MIANGUL HASSAN AURANGZEB) JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE) **(JUDGE)**

Sultan*

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