ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.488 of 2018
Dr. Firdous Zahra Bashir
Versus
The Federal Government of Pakistan through Secretary Capital Administration & Development Division and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	12.02.2020	**Mr. Saeed Khursheed Ahmed, Advocate for the petitioner.** **Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General.** **Mr. Masood-ul-Hameed Malik, Deputy Director (Law), Ministry of Federal Education and Professional Training.** **Mr. S.M. Rehan Naqvi, Assistant Director (Law), Federal Directorate of Education.** **Through the instant writ petition, the petitioner, Dr. Firdous Zahra Bashir, seeks a declaration to the effect that her service since 1987 till date is regular and continuous, and the break in her service between 02.01.2009 and 31.08.2010 to be treated as extraordinary leave with or without pay. The petitioner also seeks a direction to the respondents to consider her for promotion from BPS-19 to BPS-20.** **2. Learned counsel for the petitioner submitted that in the year 1987, the petitioner was appointed as a Lecturer (BPS-17) in the erstwhile Ministry of Education; that on 14.04.2006, the petitioner submitted her resignation from the position of Lecturer in Chemistry with effect from 02.01.2006; that she had submitted her resignation so that she could be appointed as a Consultant (Science) in MP-II scale; that on 08.05.2006, the petitioner's resignation was accepted; that vide notification dated 30.12.2005, the petitioner was appointed as Consultant (Science) in MP-II scale on contract basis in the erstwhile Ministry of Education; that**

vide letter dated 15.01.2009, the petitioner was informed that her contract period could not be extended beyond 01.01.2009; that the petitioner was not in service between 01.01.2009 and 16.08.2010 when she was appointed as Associate Professor (BPS-19) in the Islamabad Model College under the Federal Directorate of Education ("F.D.E."); and that in the interests of justice, the petitioner's service ever since 1987 ought to be treated as regular and continuous service without any break. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In support of his submissions, learned counsel for the petitioner placed reliance on the judgments reported as *2012 PLC (C.S.) 1220, 2011 SCMR 265* and *1993 SCMR 609*.

3. On the other hand, learned Assistant Attorney-General submitted that there was a gap period of one year and eight months between the time when her contractual service as Consultant (Science) expired and when she was appointed as Associate Professor (BPS-19) through the Federal Public Service Commission ("F.P.S.C."); that there is no law or service rule which entitles the petitioner for her contractual service to be treated as regular service so that the same is counted for the determination of her seniority; that since she had voluntarily resigned as Lecturer (BPS-17) to get a more lucrative employment as Consultant (Science), her regular service as a Lecturer (BPS-17) would be considered to have come to an end upon the acceptance of her resignation; that the petitioner is presently at serial No.11 on the seniority list, and would be considered for promotion on her turn; that on 02.01.2006, the petitioner had

applied to the Federal College of Education to be relieved from her duties *"without a right of reversion or lien"*; and that the petitioner is not entitled to be considered for promotion prior to the employees who are senior to her in the seniority list. Learned Assistant Attorney-General prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the petitioner as well as the learned Assistant Attorney-General and have perused the record with their able assistance.

5. It is an admitted position that on 24.12.1987, the petitioner was appointed as a Lecturer (BPS-17). On 14.04.2006, she submitted her resignation so as to enable her to be appointed as a Consultant (Science) in MP-II scale on contract basis for a period of two years. She had also applied to be relieved from her duties without a right of reversion or lien. Vide notification dated 30.12.2005 issued by the erstwhile Ministry of Education, the petitioner had been appointed as a Consultant (Science) in MP-II scale on contract for a period of two years. The duration of her contract was extended up to 01.01.2009. The period of her contractual employment was not extended beyond 01.01.2009. Subsequently, on 01.09.2010, the petitioner was appointed as Associate Professor (BPS-19) through the F.P.S.C. The petitioner is desirous for promotion from BPS-19 to BPS-20, for which the required length of service is five years. The petitioner wants her service ever since 1987 to be treated as regular and continuous service so as to place her at a higher position on the seniority list. Presently, the petitioner is at serial No.11 in the seniority list of Associate Professors (BPS-19) in the F.D.E.

6. Learned counsel for the petitioner could not come up with any law on the basis of which this Court could give a declaration to the effect that the period of one year and eight months during which the petitioner had remained unemployed to be treated as regular and continuous service. Additionally, there is also no law to the effect that her appointment as a Consultant (Science) in MP-II scale on contract basis between 02.01.2006 to 01.01.2009 to be treated as regular service.

7. The case law relied upon by the learned counsel for the petitioner is not relevant inasmuch as in none of the cited cases was a period when an employee was out of service due to the expiry of an employment contract to be treated as regular service. It may also be borne in mind that the petitioner's case is not that she was appointed on ad-hoc or contract basis and subsequently, such employment was made regular. Her case is that her contractual employment as a Consultant (Science) in MP-II scale had come to an end, and one year and eight months of being out of service, she was given a different appointment as Associate Professor (BPS-19) through the F.P.S.C. It is my view that her earlier contractual employment as Consultant (Science) in MP-II scale cannot be treated as continuous and regular employment as Associate Professor (BPS-19).

8. As regards, the petitioner's consideration for promotion to BPS-20, she is required to have five years of service in BPS-19 or twelve years of service in BPS-17 and above. Since the petitioner had voluntarily resigned from her service as Lecturer (BPS-17) in order to get a better employment on contract basis, the period during which she served as a Lecturer (BPS-17) cannot

be counted while determining whether she has twelve years of service in BPS-17 and above. This is because there was a clear break in her employment brought about by the acceptance of her resignation.

9. The petitioner's name is at serial No.11 in the seniority list of Associate Professors (BPS-19). She is expected to be considered for promotion when her turn comes.

10. 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

*Ahtesham**

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