

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik and Syed Mansoor Ali Shah, JJ**PROVINCE OF THE PUNJAB through Secretary School Education, Government of the Punjab, Lahore and others---Petitioners****Versus****Mst. NARGAS PARVEEN and others---Respondents**

Civil Petitions Nos. 194-L, 229-L to 233-L, 243-L to 247-L, 271-L to 275-L, 283-L to 285-L, 322-L, 323-L, 330-L to 332-L, 348-L, 349-L, 370-L, 378-L, 381-L, 397-L to 404-L, 422-L to 433-L, 443-L, 444-L, 452-L to 455-L and 478-L to 480-L of 2020, decided on 24th July, 2020.

(On appeals from the order of Punjab Service Tribunal dated 09.10.2019 passed in Appeals Nos. 565, 865 to 902 of 2015)

Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974---

---R. 22(5), proviso---Punjab Civil Servants Act (III of 1974), S. 2(1)(a)---Ad hoc employees regularized in service---Seniority---Seniority in the case of ad-hoc employees was to be granted from the date of their regularization and not from the date of their ad-hoc appointment.

In the present case the respondents were appointed in the year 1995 on ad-hoc basis and their services were terminated after one year in accordance with Rule 22(2) of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974. However, the respondents and others challenged their termination and were successful in obtaining injunctive orders in their favour and since then the matter of regularization remained pending before the courts or the administrative authorities. Finally in the year 2009, the Government was directed by the court that the case of the ad-hoc employees be considered in light of a certain Supreme Court precedent. As a result vide order dated 15.06.2012 passed by the department the services of the respondents were regularized from the date of issuance of the order. The respondents while accepting their regularization from the said date contended that their seniority be reckoned from the date of their ad-hoc appointments. Any such claim of the respondents was opposed to proviso to Rule 22(5) of the Civil Servants (Appointment and Conditions of Service) Rules, 1974. Seniority in the case of ad-hoc employees was to be granted from the date of their regularization.

Abu Bakar Farooq through Chairman and others v. Muhammad Ali Rajpar and others 2019 SCMR 830; Nadir Shah, S.D.O. Minor Canal Cell, Irrigation Sub-Division, Dera Murad Jamali and 2 others v. Secretary, Irrigation and Power Department, Balochistan, Quetta and 7 others 2003 PLC (C.S.) 961; Federation of Pakistan and others v. Rais Khan 1993 SCMR 609 and Mian Muhammad Afzal and others v. Government of the Punjab and others 1982 SCMR 408 ref.

In light of provision of proviso to Rule 22(5) of the Civil Servants (Appointment and Conditions of Service) Rules, 1974, especially when the department was not at fault and did not extend any expectations to the ad-hoc employees in such regard, the regularization of ad-hoc employee shall be reckoned from the order of regularization and seniority was also to be reckoned from the date of regularization and not from the date of their ad-hoc appointment.

Petitions for leave to appeal were converted into appeals and allowed.

Rana Shamshad Khan, Additional A.G., Asif Afzal Bhatti, Additional A.G. along with Ali Ahmad Sial, CEO, Faisalabad, Aftab Ahmed, CEO, T.T. Singh, M. Ramzan, Litigation Officer, Saeed Shahid, Litigation Officer, Ahmed Naseem, Litigation Officer and Ammad ud Din, Litigation Officer for Petitioners (in all Petitions).

Sharjeel Adnan Sheikh, Advocate Supreme Court for Respondents (in all Petitions except C.Ps. Nos. 233-L, 397-L, 443-L and 444-L of 2020).

Nemo for Respondents (in C.Ps. Nos. 233-L, 397-L and 444-L of 2020).

Mahmood Ahmed Qazi, Advocate Supreme Court for Respondents (in C.P. No. 443-L of 2020).

Date of hearing: 21st July, 2020.

ORDER

SYED MANSOOR ALI SHAH, J.---Brief facts are that the respondents were appointed as Secondary School Teachers ("SST") by the Director of Secondary Education, Faisalabad Division, Faisalabad in the year 1995 on ad hoc basis, thereafter, their services were terminated in the year 1996; aggrieved of the same they approached Lahore High Court by invoking its constitutional jurisdiction and obtained an interim relief to continue as SSTs vide order dated 22.05.1996. Thereafter, in the year 2001, High Court observed that the matter of termination could not be looked into, in view of the bar contained in Article 212 of the Constitution, however, in the interest of justice and fair play dispatched the matter to the Secretary concerned to look into the matter and pass appropriate orders. The issue of regularization of ad hoc SSTs kept tossing around between the Courts and the administration as similarly placed employees had also agitated this matter. Thereafter in the year 2009 vide order dated 25.03.2009 passed in C.Ps. Nos.1086-L to 1571-L, 1973-L of 2008, the Government was directed that the case of the Ad hoc employees be considered in the light of case reported as Dr. Naveeda Tufail and 72 others v. Government of Punjab and others (2003 SCMR 291). As a result the, services of the respondents were regularized vide order date 15.06.2012 from the date of issuance of the order. Aggrieved of the said order, respondents claiming their regularization from the date of their ad hoc appointment, challenged the said order before the Service Tribunal, which were disposed of vide judgment dated 18.12.2013 with the direction to the Chief Secretary, Punjab to decide all the pending appeals of the respondents expeditiously. Thereafter the departmental appeals were rejected vide order dated 30.12.2014. Against the same, the respondents once again approached the Punjab Service Tribunal, which vide impugned order dated 09.10.2019 allowed the appeals and granted regularization of their services from the date of the initial appointment. This has been impugned before us.

3. We have heard the learned counsel for the parties and have examined the record as well as the law on the subject.

4. At the very outset it is pointed out by the respondents that their grievance before this Court is somewhat different, they accept their regularization from the date of order of regularization i.e., in the year 2011, however, they seek seniority from the date of; their ad hoc appointment. Ad hoc appointment has been defined in section 2(1)(a) of the Punjab Civil Servants Act, 1974 in the following manner:-

"2. Definitions. (1) In this Act, unless there is anything repugnant in the subject or context:-

(a) "ad hoc appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending recruitment in accordance with such method;"

Rules 22(2) of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 provides that a post to be filled on ad hoc basis, shall be for a period not exceeding one year. In the present case the respondents were appointed in the year 1995 and their services were terminated in the light of the above Rule, however, the respondents and others challenged their termination and were successful in obtaining injunctive orders in their favour and since then the matter of regularization remained pending before the courts or the administrative authorities. Finally in the year 2009 vide order dated 25.03.2009 passed in C.Ps. Nos. 1086-L to 1571-L, 1973-L of 2008, the Government was directed that the case of the Ad hoc employees be considered in the light of Dr. Naveeda Tufail and 72 others v. Government of Punjab and other (2003 SCMR 291). As a result vide order dated 15.06.2012 passed by the department the services of the respondents were regularized from the date of issuance of the order. The respondents while accepting their regularization from the said date pray that their seniority be reckoned from the date of their ad hoc appointment. Any such claim is opposed to proviso to Rule 22(5) of the Rules, which states as follows:-

"Provided further that ad hoc appointment shall not confer any right on the persons so appointed in the matter of regular appointment of the same post nor the service will count towards seniority in the grade." (emphasis supplied)

It has been a consistent jurisprudence of this Court that seniority in the case of ad hoc employees is to be granted from the date of their regularization. See *Abu Bakar Farooq through Chairman and others v. Muhammad Ali Rajpar and others* (2019 SCMR 830), *Nadir Shah, S.D.O. Minor Canal Cell, Irrigation Sub-Division, Dera Murad Jamali and 2 others v. Secretary, Irrigation and Power Department, Balochistan, Quetta and 7 others* (2003 PLC (C.S.) 961), *Federation of Pakistan and others v. Rais Khan* (1993 SCMR 609) and *Mian Muhammad Afzal and others v. Government of the Punjab and others* (1982 SCMR 408).

4. In the light of the law settled by this Court and clear provision of proviso to Rule 22(5) of the Rules, especially when the department was not at fault and did not extend any expectations to the Ad hoc employees in this regard, we are of the view that the regularization of ad hoc employee shall be reckoned from the order of regularization and seniority is also to be reckoned from the date of regularization and not from the date of their ad hoc appointment. The impugned order of the Punjab Service Tribunal is, therefore, set aside. These petitions are converted into appeal and allowed in the above terms.

5. It is pointed out that some of the petitions are barred by time, however, their period of limitation has been condoned.

MWA/P-4/SC Petitions allowed.