

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ
PROVINCE OF PUNJAB through Secretary Livestock and Dairy Development Department,
Government of the Punjab, Lahore and others---Petitioners

Versus

Dr. JAVED IQBAL and others---Respondents

C.P. 2210-L/2020 to C.P. 2239-L/2020 and C.M.A. 489-L/2021, decided on 25th March, 2021.

(Against the consolidated order of Punjab Service Tribunal Dated 14.10.2020, passed in Appeals Nos.1347 of 2020, etc.)

Punjab Regularization of Service Act (XV of 2018)---

---S. 3(1)---Contract employee---Regularization in service---Date of regularization of contract employees was the date of their regularization under the relevant Regularization Policy.

Contractual employee was appointed under a scheme, which was totally different from that of regular appointment and a contractual appointee did not enjoy the right to be appointed on regular basis or to be readily shifted into the regime of regular appointment. It did not matter if the appointment on contract was through the same process of public advertisement and scrutiny through (Provincial) Public Service Commission, it was still a contractual appointment for a limited period of time and was different from a regular appointment by virtue of which a person attained the status of a civil servant.

In the present case, the Regularization Policy ["Appointment of Contractees in BS-16 and above on Regular Basis dated 10.11.2010"] provided for a special procedure whereby the cases of the contractual employees were considered for regularization on a case-to-case basis, keeping in view their performance and other qualifications. Regularization of a contract employee was, therefore, a fresh appointment into the stream of regular appointment. A contractual employee for the first time became a civil servant. Regularization Policy in question clearly provided that contractual employees enjoyed no vested right to regularization much less to be regularized from any particular date. The benefit of regularization extended to them under the Regularization Policy was prospective in nature and there was no legal justification to give it a retrospective application.

Consistent governmental policies on regularization had finally manifested themselves in the Punjab Regularization of Service Act, 2018 ("Act") which specifically provided for regularization from immediate effect. Therefore, there had been a consistent design behind the scheme of regularization and it has always been conceived from the date of regularization.

Judgment of a five member Bench of this Court dated 29.1.2018, passed in Civil Review Petition No.471/2015 ref.

Rana Shamshad Khan, Additional A.G., Ms. Irum Bukhari, Additional Chief Secretary, Ahmed Ali Kamboh, Secretary Regulations, Ms. Khadija Tul Kubra, Addl. Secy. Reg., Hafiz Arshad Mahmood, Law Officer and Anwaar Hussain, Advocate Supreme Court (C.M.A. 489-L/2021) for Petitioners (in all cases).

Mahmood Ahmed Qazi, Advocate Supreme Court for Respondents (in all cases).

Date of hearing: 25th March, 2021.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---The question before us is whether the date of regularization of contract employees is the date of their initial appointment on contract basis or the date of their regularization under the Regularization Policy dated 10.11.2010 ?

2. The background to the above question is that the respondents were appointed on contract basis as Veterinary Officers in Grade-17 in Livestock and Dairy Development Department, Government of the Punjab during the years 2004 to 2009. Their services were subsequently regularized by the

Government with immediate effect, vide order dated 15.2.2011. The grievance of the respondents was that they ought to have been regularized from the date of their initial appointment on contractual basis rather than on 15.2.2011 i.e., the date of regularization of their service. Their representation and departmental appeal were turned down on 21.07.2018 and 29.01.2020. However, on approaching the Punjab Service Tribunal ("Tribunal"), the appeals of the respondents were allowed vide impugned order dated 14.10.2020, allowing regularization of the services with effect from the date of their initial appointment on contract basis. The said order has been impugned before us by the Provincial Government.

3. Learned counsel submits that the respondents are not entitled to regularization from the date of their initial appointment for the reason that they have no vested right to regular appointment. There is no clause in their Letters of Appointment or the Contract Employment Policy dated 29.12.2004 ("Contract Policy") that confers such a right. The Policy regarding Appointment of Contractees in BS-16 and above on Regular Basis dated 10.11.2010 ("Regularization Policy") allows for regularization but does not permit its retrospective application. He submits that there is no legal justification whatsoever for giving effect to their regularization retrospectively and has placed reliance upon the judgment of a five member Bench of this Court dated 29.1.2018, passed in Civil Review Petition No.471/2015 and unreported judgments dated 13.03.2010 passed in C.Ps. Nos. 318-L to 330-L of 2018 and dated 21.07.2020 passed in C.Ps. Nos. 194-L/2020, etc.

4. Learned counsel for the respondents, on the other hand, referred to the Contract Policy and submitted that there are two streams of appointment in the Provincial Government; one is that of regular appointment and the other of contractual appointment. He submits that the mode and the manner of appointment in both the schemes is the same, therefore, at any stage if the Government decides to regularize the services of contractual employees, they are to be regularized from the date of their initial appointment, as there is no material difference between the two sets of appointments as far as the qualification and process of appointment is concerned.

5. In order to appreciate the contentions of the parties it is important to understand the scheme of contractual and regular appointment under the Provincial Government. The Contract Appointment Policy was conceived after the Government realized that regular mode of appointment is not suitable for most of the Government sector assignments due to administrative and financial factors¹. The rationale behind the contractual mode of appointment is based on financial and economic reasons, as well as, administrative reasons. According to the Policy², the financial constraints of salary and pension under regular appointment had become unsustainable. Besides several administrative reasons associated with the regular employees also tilted the scales in favour of the contractual mode of appointment: large scale absenteeism of regular employees; poor performance leading to poor service delivery; cumbersome accountability mechanism systems; huge administrative costs of transfer and promotions, etc; no concept of performance based indicators; contract mode being more flexible to tap in the best human resource available in the market; latest management practices in the developed world also recommended contract mode of appointment. These reasons led to development of two separate schemes of appointment. Persons appointed on contract basis are not civil servants, therefore, their service matters are not governed by the rules framed under Civil Servants Act, 1974. Their appointment is strictly regulated by the terms and conditions of the contract³. Their period of contract is between 3 to 5 years⁴ and extension is generally granted for a period of 3 to 5 years and not for an indefinite period.⁵ On expiry of contract appointment, if no extension is granted, it is ensured that the contract employee is not allowed to continue in service⁶. Contract appointment is liable to be terminated on one month's notice or on one month's pay, in lieu thereof, on either side without assigning any reason⁷. The contract provides that the contract appointment shall not confer any right of regular appointment nor shall such appointment be regularized under any circumstances⁸. A contract employee shall, under no circumstances, claim conversion of his contract appointment into regular appointment⁹.

6. On the other hand, employees appointed on regular basis are governed by the rules framed under the Punjab Civil Servants Act, 1974 such as the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, Service Rules of the post, Leave Rules, Pension Rules, etc.¹⁰ The above shows that a contractual employee is appointed under a scheme, which is totally different from that of regular appointment and a contractual appointee does not enjoy the right to be appointed on regular basis or to be readily shifted into the regime of regular appointment. It does not matter if the appointment on contract is through the same process of public advertisement and scrutiny through Punjab Public Service Commission, it is still a contractual appointment for a limited period of time and is different from a regular appointment by virtue of which a person attains the status of a civil servant. This distinction between the two streams of services is important to address the question posed at the beginning of this judgment.

7. The scheme of regularization is unnecessary for a civil servant (a regular employee) and has been introduced only to induct the contractual employees into regular service. The Regularization Policy provides for a special procedure whereby the cases of the contractual employees are considered for regularization on a case-to-case basis, keeping in view their performance and other qualifications. Regularization of a contract employee is, therefore, a fresh appointment into the stream of regular appointment. A contractual employee for the first time becomes a civil servant. It is underlined that contractual employees enjoy no vested right to regularization (see Contract Appointment Policy) much less to be regularized from any particular date. The benefit of regularization extended to them under the Regularization Policy is prospective in nature and there is no legal justification to give it a retrospective application. Any such step would totally negate the purpose and significance of Contract Appointment Policy and leave no distinction between a contractual and a regular employee. This has been the tenor of the jurisprudence evolved by this court and reference can be made to judgment of a five member Bench of this Court dated 29.1.2018, passed in Civil Review Petition No.471/2015 and unreported judgments dated 13.03.2010 passed in C.Ps. Nos. 318-L to 330-L of 2018 and dated 21.07.2020 passed in C.Ps. Nos. 194-L/2020, etc. It is also important to underline that the consistent governmental policies on regularization have finally manifested themselves in the Punjab Regularization of Service Act, 2018 ("Act") which specifically provides for regularization from immediate effect. Therefore, there has been a consistent design behind the scheme of regularization and it has always been conceived from the date of regularization. We see no reason to upset this uniform governmental policy which has now received legislative support under the Act.

8. For the above reasons, we convert these petitions into appeals and allow the same; the impugned consolidated order of the Tribunal is set aside, and the respondents shall stand regularized w.e.f. 15.2.2011 i.e, the date of regularization.

C.M.A. 489-L/2021

9. As we have allowed the titled civil petitions, therefore, this CMA has lost its significance and become infructuous, hence disposed of accordingly.

MWA/P-6/SC Order accordingly.