

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Yahya Afridi, JJ

DIVISIONAL SUPERINTENDENT PAKISTAN RAILWAYS, RAWALPINDI and others---

Appellants/Petitioners

Versus

Syed USMAN ALI and others---Respondents

Civil Appeals Nos. 864 to 872 of 2017 and Civil Appeals Nos. 1090 to 1116 and 1059 to 1075 of 2019 and Civil Petitions Nos. 324 to 334, 430 and 431 of 2019, 2853 of 2016 and C.M.A. No. 5767 of 2016 and Civil Petitions Nos. 2104 to 2109 and 2980 to 3006 of 2019 and C.M.As. Nos. 5918 to 5926 of 2016, decided on 8th October, 2019.

(On appeal against the judgment of Federal Service Tribunal, Islamabad, dated 10.05.2016, 18.10.2018, 06.08.2018, 28.11.2018, 23.05.2016, 27.03.2019 and 08.05.2019 passed in Appeals Nos. 68 to 76(R)CS of 2013 and 4322 to 4334, 4654 to 4658 and 4406 to 4414(R)CS of 2017 and 868 to 884(R)CS of 2016 and 1465 to 1467, 1469 to 1472, 1474 to 1477, 1468 and 1473(R)CS of 2016 and 1402(R)CS/2013 and 58 to 63(R)CS of 2017 and 4040 to 4060 and 4303 to 4308(R)CS of 2017)

Civil service---

---Temporary Labour Appointments/daily wagers in Pakistan Railways---Regularization in service--- Whether date of regularization would operate from the date of initial appointment---Held, that respondents-employees were appointed as daily wagers/Temporary Labour Appointments (TLAs) in the year 2006/2007---Subsequently their services were regularized with immediate effect under the Regularization Policy, 2012---As the said Policy of 2012 was with immediate effect i.e. 20-02-2012, the respondents could not claim the regularization from the date of their initial appointment--- Furthermore previous Regularization Policies of 1985 and 2000 were not applicable to the respondents--No illegality was found in the regularization of the respondents under Regularization Policy, 2012 from the date of regularization i.e., 20-02-2012---Appeals were allowed and impugned judgment of Service Tribunal was set aside.

Hafiz Hafiz ur Rehman, Advocate Supreme Court and M.A. Sheikh, Advocate-on-Record for Appellants (in C.As. Nos.864-872/2017, 1059-1075/2019 and 2853/2016).

Jawad Mahmood Pasha, Advocate Supreme Court for Appellants (in C.As. Nos. 1090-1116, 324-334, 430-431, 2104-2109 and 2980-3006 of 2019).

Ijaz Buriro, CEO/GM, Sufian Dogar, CPO and Salman Kazmi, Legal Directorate for Pakistan Railways (on Court's Notice).

Zulfiqar Ahmed Bhutta, Advocate Supreme Court and Syed Rifaqat Hussain Shah, Advocate-on-Record for Respondents (in C.As. Nos.864-872 of 2017).

Zulfiqar Khalid Malooka, Advocate Supreme Court for Respondents (in C.A. 2853 of 2016).

Nemo for Respondents (in C.As. Nos. 1091-1116, 1059 to 1075 of 2019 and C.Ps. Nos. 2104-2109, 325, 326, 329-331 of 2019).

Dates of hearing: 7th and 8th October, 2019.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---Respondents who were working as daily-wagers or on Temporary Labour Appointment ("TLA") for Pakistan Railways, were regularized in terms of Regularization Policy dated 20.02.2012, with immediate effect. The claim of the respondent employees is that they ought to have been regularized from the date of their initial appointment i.e., 2006/2007.

2. The question before this Court is to identify the Regularization Policy announced and adopted by Pakistan Railways which is applicable to the case of the respondents. It is an admitted position that the

respondents were appointed as daily wagers/TLAs in the year 2006/2007. The Chief Executive Officer of Pakistan Railways along with Human Resource Head tendered appearance and have filed all the Regularization Policies announced or approved by Pakistan Railways. It is important to reproduce these policies in a chronological order;

i. Regularization Policy, 1985 (dated 21.04.1985)

"PAKISTAN RAILWAYS,
HEADQUARTERS OFFICE, LAHORE No:-
831-E/ 132-XIV(E.Policy) Dated: -21-4- 1985
All Divisional Superintendents, (including
D.S"W" Moghalpura and Extra Divisional
Offices, Pakistan Railways.
REGULARIZATION OF SERVICES OF
WORKERS APPOINTED ON AD HOC
BASIS/ SUBSTITUTES. It has been decided
that all the (Workers) who were appointed on
adhoc basis or as substitutes against permanent
posts and have been working for more than
One year be absorbed on regular basis. 2. The
services of such staff will be regularized from
the dates they were originally appointed to the
posts and one day breaks, if any, made after
three months services, will be recouped by
grant of leave due. 3. The formalities of
placing requisitions through employment
Exchange, advertisement etc are dispensed
with. 4. Their services may be regularized
through properly Constituted Selection
Committee of the appropriate level. This
issues with the approval of the competent
authority. Sd/- for General Manager
(Personnel)"

ii. Regularization Policy, 2000 (dated 08.05.2000)

"PAKISTAN RAILWAYS HEADQUARTERS
OFFICE LAHORE No.831-E/ 132-
XVI(E.Policy) Dated 08.05.2000 The
Additional General Managers, IBU, PBU &
FBU, Pakistan Railways, Headquarters Office,
LAHORE. The Deputy General Managers,
Pakistan Railways, Headquarters Office,
LAHORE. All Divisional Superintendents,
Including DS /W/ Moghalpura, Pakistan
Railways. REGULARIZATION OF AD HOC
/ TEMPORARY EMPLOYEES Please refer to
Joint Secretary/Tech:, Ministry of Railways,
Islamabad's letter No.1(4)/2000(E.I) Dated
07.04.2000 addressed to all Divisional
Superintendents with endorsement to the

General Manager (Operations) and Director Vigilance, P.R. HQ. Office, Lahore, on the above subject. The Ministry has observed that Divisional Superintendents have regularized the services of the TLA Staff against the instructions issued for regularization of the employees engaged after cut of date. In this context, attention is invited to this office letters No.831- E/ 132-XV(E.Policy) Dated 04.08.1999 and 28.08.1999 wherein it was categorically directed that services of ad hoc employees and substitutes appointed upto 26.12.1992 who meet the laid down conditions for regularization of ad hoc and substitute employees only on the Pakistan Railways be regularized through duly constituted selection committees no such instructions for regularization of the services of TLA staff have been issued by this office. The competent authority has, therefore, directed that regularization of such staff employed after cut off date may . be withdrawn. Ministry has also requested the Director/Vigilance for investigation of such cases where irregularity of regularization of ineligible staff was committed by the Divisions and submit report within one month. It is, therefore, requested to please furnish details of such irregularity, if committed, otherwise a certificate be given that no such irregularities have been made which may be furnished by 15th May, 2000 by return FAX. . Sd/- (ANJUM TALAT) For General Manager/Personnel"

iii. Regularization Policy, 2008 (dated 14.01.2008)

"PAKISTAN RAILWAYS HEADQUARTERS
OFFICE ICE LAHORE From: G. M/DPC. To:
The Managing Director/ Pakistan Railways
Islamabad Quote Ref. No. 803-E/7-4-X/ 1
(APOIV) Dated 11/1/2008. Sub:-
REGULARIZATION OF SERVICES OF
FORMER CLASS-IV STAFF ENGAGED ON
TLA-DIRECTIVES OF HONOURABLE
FEDERAL MINISTER FOR RAILWAYS.
Ref:- Your letter No.220-
E/Regularization/TLA dated 17-12-07. The
matter was examined by the competent
authority and held that the target date for

regularization of temporary staff is 8-9-07 as such the staff who have completed 3 years TLA Service on that date will be considered for regularization w.e.f. 8-9-07 and not from the date of their initial appointment. Similarly the TLA former Class-IV staff selected as Trade Apprentice or appointed on regular basis will be considered regularized from their actual date of regularization instead of their initial appointment. Sd/- (MUHAMMAD ALAM) for General Manager/ Personnel

iv. Regularization Policy, 2012 (dated 20.02.2012)

"GOVERNMENT OF PAKISTAN
MINISTRY OF RAILWAYS (RAILWAYS BOARD) No.14(8)/ 05-E-11(Vol.III)
Islamabad, 20th February, 2012 1 General Manager/Operations, Pakistan Railways, Headquarters Office, Lahore. 2. General Manager/M&S, Pakistan Railways, Headquarters Office, Lahore. 3 General Manager/Development, Pakistan Railways, Headquarters Office, Lahore. 4. The Chief Personnel Officer, Pakistan Railways, Lahore. 5 M.D/Locomotive Factory Pakistan Railways, Risalpur. 6. Managing Director/ CSF, Pakistan Railways, Lahore. 7. The Inspector General Police, Pakistan Railways, Lahore. Subject: REGULARIZATION OF CONTRACTUAL AND DAILY WAGE WORKERS. I am directed to refer to this Ministry's letter of even number dated 18-01-2012 on the above subject under which following eligibility criteria as per direction of the Cabinet Committee on regularization of Contractual and Daily Wage Workers has been circulated. Accordingly, employees meeting the eligibility criteria should be regularized with immediate effect as per following procedure already notified on 18-01 2012. (reproduced below) 4) "Contractual Employees: All contractual employees who have completed at least one year of uninterrupted contractual appointment as on December 31, 2011 are to be regularized except the following: i. Contractual employees working against project posts; ii. Contractual employees working against posts that are to be

filled through the Federal Public Service Commission, and iii. Contractual employees who do not possess the prescribed qualifications and eligibility criteria for the posts they have been appointed against. B) Daily Wage Workers All daily wage workers who have completed three consecutive terms of appointment of 89 days each as on December 31, 2011 are to be regularized with immediate effect except the following: i. Employees working against project posts ii. Employees, if any, working against posts that are to be filled through the Federal Public Service Commission, and iii. Employees who do not possess the prescribed qualifications and eligibility criteria for the posts they have been appointed against. 2. Orders of the competent authority should first be obtained for creation of posts to absorb employees to be regularized. Necessary action should please be taken immediately and a compliance report be submitted to the Ministry within 14 days positively. 3. Details of all contractual or daily wage employees not meeting the yardstick for regularization should be conveyed to this Ministry on the enclosed proforma within three week positively. 4. Case of contractual/daily wage employees working against regular posts to be filled through the Federal Public Service Commission should be dispatched to the Ministry on case-to-case bases with complete justification for regularization. It must also be ensured that no contractual or daily-wage employee who has crossed the date of superannuation is regularized. 5. The preceding instructions apply to all posts in BS-1 to BS-17 only." 2, All previous instructions/guidelines issued by this Ministry on the subject issue may be treated as superseded. 3. It is reiterated that all cases of regularization of Contractual and Daily Wage Workers may be finalized on emergent basis and a final report in the matter must be furnished to this Ministry within one week, positively. 4. This issues with the approval of competent authority. Sd/-

(GULZAR MUHAMMAD) Director
Establishment"

3. Perusal of the above policies reveals that in 1985 all the workers who were appointed on ad hoc basis or as substitutes against permanent posts for more than one year were absorbed on regular basis and their services were regularized from the date of their initial appointment to the posts. Thereafter, in the year 2000, it was reiterated that the applicability of Regularization Policy, 1985 was restricted to ad hoc employees and substitutes appointed up to 26.12.1992. As the respondents were admittedly appointed in the years 2006/2007, Regularization Policy, 1985 was not applicable to them.

4. Thereafter, a fresh Regularization Policy was introduced in the year 2008, which was for the first time applicable to temporary staff and required that the staff must have completed three years of service as TLA by 08.09.2007, when they were to be considered for regularization which would take effect from the date of the policy. This policy with a cut-off date of 08.09.2007 was not applicable to the respondents who were appointed in 2006/2007 and had not completed three years of service by 08.09.2007. Finally, Regularization Policy 2012, inter alia, provided for the regularization of daily-wage workers who had completed three consecutive terms of appointment of 89 days as on 31.12.2011 to be regularized with immediate effect. Pakistan Railways regularized the services of the daily-wagers/TLAs appointed in the years 2006/2007 under this policy with immediate effect. The said policy also provided in paragraph-2 that all previous instructions/ guidelines issued by the Ministry on the subject may be treated as having been superseded.

5. The respondents were time and again asked to identify the Regularization Policy under which they seek regularization from the date of initial appointment. Their response has been largely evasive and have unconvincingly pointed towards the Regularization Policy, 1985 in support of their claim. It appears that respondents were not fully aware that the Regularization Policy of the year 1985 was modified and the said policy was restricted to the appointments of adhoc employees and substitutes appointed upto 26.12.1992, as reaffirmed in Regularization Policy, 2000 (above). It is also important to point out that the said policy did not strictly provide for regularization of daily-wagers or TLAs. Thereafter, the Regularization Policy for the year 2008 is also not applicable to the current respondents as they were appointed in 2006/ 2007 and in order to avail the benefit of Regularization Policy, 2008 they had to complete three years of service by 08.09.2007 if they were to be considered for regularization under the policy. Therefore, the only policy available in the field which was applicable to the facts of the respondents was Regularization Policy, 2012 under which the respondents have already been regularized by the appellant. As the said policy is with immediate effect i.e., 20.02.2012, -the respondents cannot claim the regularization from the date of initial appointment.

6. Learned counsel for the respondents tried to refer to general case law on regularization but could not cite a precedent that has discussed the above Regularization Policies announced or approved by Pakistan Railways.

7. We, therefore, find no illegality in the regularization of the respondents under Regularization Policy, 2012 from the date of regularization i.e., 20.02.2012. The impugned judgment is not sustainable and is, therefore, set aside.

8. For the above reasons, the listed appeals are allowed, whereas the listed petitions are converted into appeals and allowed accordingly.

9. In the end we wish to point out that during the course of hearing, we have noticed that Pakistan Railways could have dealt with this matter more ably and it is only after summoning the Chief Executive Officer and the Human Resource Head of Pakistan Railways that we are able to understand the scheme of the Regularization Policies. We hope that, in future, the Chief Executive Officer will improve the quality of governance at Pakistan Railways so that such like litigation can be avoided or minimized.

MWA/D-8/SC Appeals allowed.