

PLJ 2017 Quetta 76(DB)

Present: NAEEM AKHTAR APGHAN &
MUHAMMAD KAMRAN KHAN MULAKHAIL, JJ.

KHADIM HUSSAIN--Petitioner

versus

**GOVT. OF BALOCHISTAN, EDUCATION DEPARTMENT
(COLLEGES SECTION) CIVIL SECRETARIAT through Secretary
Higher Education, Quetta and another--Respondents**

C.P. No. 496/2011, decided on 21.4.2016.

Contract Employee--

----Constitution of Pakistan, 1973, Art. 199--Extension and regularization--Validity--A contract employee has no vested right to claim for extension or regularization of his services. [P. 87] A

2014 SCMR 812, 2013 SCMR 120, 2013 SCMR 304, *ref.*

Mr. Tahir Ali Baloch, Advocate for Petitioner.

Mr. Naseer Ahmed Bangulzai, Addl.A.G for Respondents.

Date of hearing: 14.3.2016.

JUDGMENT

Muhammad Kamran Khan Mulakhail, J.--Through this petition following relief has been sought:

"In view of above, it is, therefore, respectfully prayed that this Hon'ble Court may take notice of the above facts and after issuing notices to the other side the action of the respondents be declared illegal and they be directed to post the petitioner anywhere, where they want beside releasing his salary w.e.f. January, 2009, with any other relief and cost of the proceeding, in the interest of justice."

2. Learned counsel for the petitioner contended that the petitioner was initially appointed as Principal (B-20) in Balochistan Residential College Turbat (Respondent No. 2) ("BRCT") for a period of two years *vide* Notification No. SO (Academic) 7-12/2007-F/9459-68 dated 4th April 2007; that subsequently the meeting of Board of Governors of BRCT was convened on 2.5.2008, whereas the regularization of petitioner's services was listed as Item No. 5 which was unanimously agreed and approved by the Board of Governors and the services of the petitioner was regularized in B-20, subject to meeting all the required legal formalities; that one of the provincial ministers directed the petitioner to reconstitute the finance and parents committees of BRCT and forced him to make postings and transfer orders as well as fresh appointments on his behest but upon petitioner's refusal to comply with the said directions, he was transferred from BRCT and was directed to report to the Secretary Education Department Government of Balochistan; that meanwhile a summary was also forwarded for further posting of the petitioner and regularization of his service but the same was kept in abeyance and since then the petitioner has been running from pillar to post of the concerned department but all in vain; that the petitioner has neither

been posted anywhere else nor his services have been regularized as approved by the Board of Governors rather his salary has also not been released. Learned counsel for the petitioner finally prayed that the official respondents may be directed to regularize the services of the petitioner, for his posting at any suitable place according to his job description and to release his salary w.e.f. January 2009.

3. The respondents entered appearance and submitted para wise comments along with relevant record. Learned AAG contended on behalf of the Respondent No. 1 that in the meeting of the Board of Governors the regularization of petitioner's services was approved subject to fulfillment of requisite criteria. While referring certain other documents the learned AAG further asserted that according to the decision of the Board of Governors' meeting the notification could not be issued in light of complaints received by the department against the petitioner, therefore, his term of contract was neither extended nor the petitioner's services were regularized and he was removed from service on 3rd January 2009 i.e. two months prior to expiry of term of his contract; that in the presence of complaints filed against the petitioner a single member inquiry committee was constituted headed by Lieutenant Retired Syed Iftikhar Ahmed, Ex-Principal Cadet College Mastung, who visited the BRCT and submitted his inquiry report on 30.03.2009 in which the following findings and recommendations were made:

"Subject: FACTS FINDING VISIT TO BRC TURBAT

1. In pursuance of the Order No. SO(Acad)7-18/2008/Edu:4692-98 dated 6th March 2009 Principal Cadet College Mastung visited BRC Turbat for 3 days from 25 to 27th March 2009.

2. The Principal met cross section of people at Turbat including the staff members, Parents, Commissioner Makran Division, District Police Officer Turbat and Contactors/Shopkeeper who have been supplying various items to BRC Turbat, Mr. Khadim Hussain Khoso the Ex Principal and the Ex Accountant Mr. Rehmatullah were also contacted on telephone to know their version and point of view.

3. The findings are as under:--

- (a) Mr. Khadim Hussain Khoso and the Accountant Mr. Rehmatullah left the BRC Turbat on 5th Jan 2009 without handing over their respective charge.

- (b) The College is presently closed on account of holidays till 5th April 2009.
- (c) The College has to pay the outstanding dues to contractor and shopkeepers approx worth Rs. 2.0 million. Presently no one is ready to provide any further supply of items unless the earlier dues are paid to them. Cheques already issued were also stopped payment due to non availability of funds. The contractor/shopkeepers are highly upset due to their held up and unpaid amounts since long.
- (d) The College has further spent about 1.5 million which is also outstanding.
- (e) Total liabilities as of date are approximately 3.5 million.
- (f) There has been lack of Communication between Principal, Students/Parents and Staff. The Principal remained aloof and gap was widened immensely which resulted in the complete breakdown.
- (g) Parent teacher meeting were not organized. Annual Parents Day was not held.
- (h) The Principal blames everybody including students, parents, teaching staff, non teaching staff and District Administration, MNA's, MPA's except himself Mr. Khadim Hussain Khoso (Principal) is of the view that, everybody is wrong and only he is right.
- (j) The staff both teaching and non teaching is highly unsatisfied and demoralized. There has been complete lack of trust between the staff and Principal.
- (k) Principal instead of being a role model, team captain and a father figure, has been highly untactful, rigid, arrogant and unreasonable in his dealings which resulted in bad taste and lack of trust.
- (l) The Principal (Mr. Khadim Hussain Khoso) also blew up a minor incident between Pashton Students and Baloch Students out of proportion to hide his own weaknesses. Which was also highly detrimental to the smooth functioning of the College.
- (m) He supported out rightly the Accountant Mr. Rehmatullah which gave impressions to others that he is playing in the hands of the Accountant or he is a share holder in his wrong doings.

- (n) All facilities were admissible to himself and the Accountant whereas all other staff members were denied the same. The Accountant and his family misused the College facilities and transport, whereas the Principal used to take the College Pajero to Karachi and to his home town Nowshera Feroz during every leave which came to about 10 times during his stay of 18 months. The expenditure was met from students funds, as normal budgetary grant does not cater for this expenditure. Reportedly the vehicle met an accident at Karachi/Nowshera Feroz which was not reported and quietly the damage was repaired and paid out of students fund.
- (o) He also cashed the securities of one million to meet the growing expenditure proper account not available as he has not handed over the charge.
- (p) Procedure and Sops (Standing Operating Procedure) are-nonexistent and what ever is available are not being followed.
- (q) The trouble stated in Nov 2008 mainly because of a unilateral decision taken by the Principal (Mr. Khadim Hussain Khoso) to charge the student the exam centre fee, which was never charged earlier from the students whereas the same was paid from College resources.
- (r) The students and parents also have the following grievances:--
 - a. Funds not correctly spent and misappropriated.
 - b. Basis facilities like coolers etc not provided in hostels.
 - c. Bad quality of food and unbalanced/very weak menu.
 - d. The Principal Mr. Khadim Hussain Khoso and Accountant (Mr. Rehmatullah) were in league with each other and worked against the interest of College.
 - e. Welfare of students and staff was completely ignored.
 - s. To hide their mistakes and mishandling both the Principal and the Accountant raised the alarm of

threat calls and a pretext to leave the BRC Turbat suddenly without handing/taking over, while taking numbers of items along with them as their private property.

- t. No stock taking has taken place for last many years.
- u. Briefly Mr. Khadim Hussain Khoso Principal is mainly responsible for the present state of affairs of BRC Turbat.

4. Recommendations Following is strongly recommended: -

- (a) Shortage in Staff to be completed specially the critical deficiency of Principal, Accountant and Office Superintendent to be completed on priority. Prof Riaz Baloch has a good reputation if he is appointed he is likely to run the College Smoothly as he is acceptable to all.
- (b) Handing/Taking over to take place between the new Principal and old Principal (Mr. Khadim Hussain Khoso).
- (c) To settle the issue once for all, stock taking to be done by a Board of Officer of the College, and Handing/Taking over to take place on the basis of stock taking Board.
- (d) The Principal (Mr. Khadim Hussain Khoso) and the Accountant (Mr. Rehmatullah) must return to Turbat for handing over the charge properly and they must be held fully responsible for their actions. The Civil Administration is very responsive and cooperative to the needs of the BRC Turbat. The Commissioner Makran Division Mr. Ejaz Ahmed Buzdar and DPO Mr. Ayaz Baloch have promised proper security. They are also of the opinion that security aspect was blown out of proportion by the Principal.
- (e) Rs. 5.0 millions may be provided as Grant-in-Aid to bail out the College from its present precarious financial position and turn it effectively till 30th June 2009, i.e. without this assistance College is not in a position to re-open.
- (f) The existing rate of messing approved in 2006 is Rs. 51 - per student per day to be increased to Rs. 87 - per student per day. The holidays which are more than 4

months in a year provide an extra cushion for expenditure on messing.

- (g) The fee structure is also to be suitable adjusted in consultation with parents any shortfall to be met out of Grant-in-Aid.
 - (h) Holidays of the College to be extended by one week till 12th April 2009 so as to provide time to College, administration to restart the College in a better manner.
5. Submitted for info and necessary action please."

Learned AAG vehemently opposed the petition and stated that the petitioner was a contract employee and after the expiry of his contract the petitioner has no vested right to seek extension of the contract or regularization of his services.

4. Learned counsel for the petitioner in exercise of his right of reply contended that the then Provincial Minister for Education being unsatisfied by the findings of the inquiry committed in the year 2001 issued directions for re-initiation of the inquiry, which is still awaited and no fresh inquiry report has so far been submitted. He propounded that in view of new inquiry order by the then Provincial Minister for Education the findings of the previous inquiry are no more in filed; that the contract of the petitioner was for a period of two years, which was to be completed on 4th of April 2009 but the petitioner was removed from office on 3rd of January 2009, whereafter his salary was also not paid.

5. Heard. Record perused.

6. In the order dated 03.10.2013 following observations were made:

"Pursuant of the last order, the Secretary Colleges, Higher and Technical Education, Government of Balochistan, appeared and explained the situation that the petitioner was appointed on 04.04.2007 on contract basis for a period of two years. Thereafter, in the meeting of the Board of Governors dated 20.05.2008, the following order was passed:

"The Board unanimously agreed and approved the regularization of services of Prof. Khadim Hussain Khosa Principal BRC Turbat in B-20, after meeting the required legal formalities."

The Secretary was asked as to whether there is any provision of law for the regularization of services of the petitioner

without advertising the posts and inviting applications from public at large. To which, the Secretary replied in negative. Besides, the Secretary stated that in the decision of the Board, it has specifically been mentioned that after fulfillment of the requirements/formalities, the services of the petitioner will be regularized. According to him, since the petitioner did not qualify for the post, therefore, did not meet with the requirements, as such, his notification of regularization has not been issued. The Secretary places on record a report in this behalf along with the Balochistan Residential Colleges (B-16 and above) Services Regulation, 2007, copy whereof has been provided to the learned counsel for the petitioner, who seeks time to go through the same. The Secretary need not to appear unless or otherwise directed so."

7. During pendency of the petitioner the petitioner kept persisting for release of his salary. Learned AG was directed to submit the relevant documents with regard to payment of last salary to the petitioner. Subsequently on 19.11.2014, 10.12.2014 and 02.04.2015 the office of the learned Advocate General sought adjournment to do the needful, however on 06.04.2015 the learned AAG informed the Court that though according to the terms of contract the petitioner's salary for the period starting from January 2009 till 4th April 2009 is required to be paid to the petitioner by the department but since the petitioner did not submit his salary bills, therefore, the payment was not made. The learned AAG made a statement at the bar that whenever the petitioner submits the requisite bills for the above mentioned period his salary will be paid without any delay.

Thereafter on consecutive dates of hearing the petitioner either sought adjournment for submission of the salary bills or there was no representation on his behalf. The record reveals that till final hearing of the instant petition the petitioner has not been able to submit the aforesaid bills.

8. It has been observed that due to very serious nature of allegations against the petitioner by one Rehmatullah the Accountant of BRCT the term of contract of the petitioner was neither extended nor his services were regularized, while the said Rehmatullah was transferred from BRCT with direction to report to the Secretary Education Department. The record further shows that Rehmatullah then approached the Balochistan Service Tribunal, whereby the tribunal issued directions to the respondent for release of his salary, but the petitioner has failed to submit his salary bills before the competent authority, therefore, his salary was not released, however in view of the statement made by the learned AAG recorded in the order

dated 06.04.2015 he can receive his salary provided he submits the bills in this behalf.

9. Now adverting to the main contention of the petitioner as to whether the contract employee can ask and insist for extension and regularization of his services. This Court while dealing with an identical proposition in the case of *Abdul Sattar Durani v. The Province of Balochistan through Chief Secretary* (2015 PLC (C.S) 489) made the following observations:

8. The issue of regularization of Contract/Adhoc employee has been coming before this Court on multiple occasions, as well as, before the Hon'ble Apex Court of the country and there are plethora of judgments on the subject, a few of which will be referred to herein below. In the case of *Government of Balochistan v. Dr. Zahida Kakar* (2005 SCMR 642) the Hon'ble Supreme Court of Pakistan observed as under:

"It is an admitted fact that the service of the respondents was on purely temporary basis and specifically on contract. Such appointment terminates on expiry of contract period or any extended period on choice of the employer or the appointment authority. *Prima-facie* it does not create any vested right"

In another reported judgment in the case of *Muhammad Wasay Tareen v. The Chief Justice of Balochistan through Registrar of Balochistan High Court* (2005 SCMR 464) dictum was laid down in Para 7, which runs as under:

"In *Federation of Pakistan and another v. Hashim Shah Qureshi* 1987 SCMR 156 it was held that mere continuance of employment of temporary employee for two years or more in service did not ipso facto convert the appointment into permanent one. In the case of *Naila Khalid v. Pakistan through Secretary Defence and others* PLD 2003 SC 420, it was laid down that ad hoc appointment did not confer on a appointee any right or interest to continuous appointment, seniority or promotion and that service of such an appointee could be dispensed at any moment without assigning any reason"

In *Abdul Waheed and another v. Secretary, Ministry of Culture, Sports, Tourism and Youth Affairs, Islamabad and another* (2002 SCMR 769) dictum was laid down as under:

"We have considered the contentions raised by the learned counsel and found same are without substance.

We may observe that despite being no specific bar for exercise of powers of competent authority by an officiating director, still he would not be supposed to exercise such powers of appointment/promotion of the employees without the proper sanction and allocation of budget besides observing the prescribed procedure including advertisement of the post in the newspaper. The appointment made by the officiating director without following the prescribed procedure would not be legal and consequently the petitioner would neither have any right to hold any such post nor were entitled to the salaries and other benefits attached with the said post."

In another case titled as *Dr. Mubashir Ahmed v. PTCL through Chairman Islamabad and another* (2007 PLC (C.S) 737) the Hon'ble Supreme Court of Pakistan observed as follows:

"The order dated 15.09.1996, 28.04.1997 and 04.02.2000 show that the petitioner was appointed on contract/part time basis. There is no cavil to the proposition that an employee appointed/engaged on contract/part time basis has got no vested right to claim for being absorbed/appointed on regular/permanent basis"

The issue relating to recruitment through the Commission came up before this Court in respect of regularization of the services of Additional Sessions Judges made on contract basis in *Muhammad Ali Satakhai and others v. Appointing authority of Additional District and Session Judges and others* (2011 PLC (C.S) 78) authored by my learned brother Justice Jamal Khan Mandokhail. Whereby, the appointment of judicial officers through public service commission was sought to be declared as *ultra vires* to the provision of Article 175 of the Constitution and the same was accepted but the second part of their prayer pertaining to regularization of their ad-hoc appointment made on contract basis, was turned down with the following observation:

"Furthermore, ad hoc appointment did not confer on the petitioners any right or interest to continuous appointments, seniority or promotion under the law therefore, status of the petitioners could not be changed unless regularized by adopting the procedure/method, as such, request so made has no legal footing and same is declined. Reliance is also placed on the

following judgments. 1987 SCMR 167, PLD 2003 SC 420, 2003 SCMR 1269 and 2005 PLC (C.S) 1085."

The referred to judgment was assailed before the Hon'ble Supreme Court of Pakistan in *Muhammad Ali Satakhzai and others v. Appointing authority of Additional District and Sessions Judges and others* case reported in (2012 PLC (C.S) 1216), and while refusing the leave to appeal it was held as under:

"3. The learned Senior Advocate Supreme Court for the petitioners could not show how the conclusions reached by the High Court regarding the initial appointment of the petitioners being without complying with the procedure prescribed for the purpose, were open to any exception on the legal or even on the factual plane. He could also not show how any right had got vested in the petitioners which could entitled them to the regularization of their services in violation of the conditions on which their appointments had been made and subject to which conditions the petitioners had accepted the said appointments.

4. In this view of the matter, since one of the aforementioned conditions was that the appointment in question of the petitioners would not confer upon them any right for permanent absorption as Additional District and Sessions Judges, therefore, we find that the impugned judgment, to the said extent did not admit of any interference."

The principles laid down in referred to judgment was reaffirmed by the Hon'ble Supreme Court in its recent judgments and the issue of regularization of services of contractual employees was attended on basis of same principles, and it would be advantageous for learning of all concerned to mention the relevant citations as under:

Pakistan Telecommunication Company Ltd through Chairman v. Iqbal Nasir and others (2011 PLC (C.S) 623).

Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs v. Muhammad Azam Chattha (2013 SCMR 120).

Suo Moto case No. 15 of 2010 Human Rights Cases (H.R.C) No. 44517-K of 2010, HRC No. 13938-P of 2010, HRC No. 22070-P of 2011 and in Constitutional Petition No. 74 of 2011 *Muzaffar*

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Khan and others v. Government of Pakistan reported as (2013 SCMR 304).

Messrs Oil and Gas Development Company Ltd. Islamabad through Chief Executive v. Muhammad Azhar Chughtai (2014 SCMR 812).

In view of above discussion we have come to irresistible conclusion that a contract employee has no vested right to claim for extension or regularization of his services, therefore, this petition is dismissed being devoid of merits.

(W.I.B)

Petition dismissed.