IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

AFR

Civil Appeal No.1546 of 2019
AND
Civil Petitions Nos.2503 to 2519 & 2660 of 2019

Against judgments dated 15.02.2018 & 23.04.2019 of Federal Service Tribunal, Islamabad, passed in Appeals No.3622(R)CS of 2017 and 3192(R)CS of 20212, etc.

Secretary, M/o Finance, Islamabad, etc — ***Appellants*** *(in CA# 1546/19)*

DG, FDE, Government of Pakistan, etc — ***Petitioners*** *(in CPs# 2503-2519 & 2660/19)*

Versus

Tayyaba Halim Subhani	*C.A 1546/2019*
Irfan Mehmood & Another	*C.P 2503/2019*
Tahir Ullah & another	*C.P 2504/2019*
Javed Iqbal & Another	*C.P 2505/2019*
Syed Sajjad Ali Shah & Another	*C.P 2506/2019*
Hafiz Atta Ur Rehman & Another	*C.P 2507/2019*
Mrs. Khalida Nasim & Another	*C.P 2508/2019*
Rubina Kausar & Another	*C.P 2509/2019*
Adeela Tabasum & Another	*C.P 2510/2019*
Mrs. Sobia Imam & Another	*C.P 2511/2019*
Mrs. Najma & Another	*C.P 2512/2019*
Mrs. Attia Kaleem Anwar & Another	*C.P 2513/2019*
Mrs. Farah Saeed & Another	*C.P 2514/2019*
Mrs. Lubna Chaudhry & Another	*C.P 2515/2019*
Mrs. Tahira Akbar & Another	*C.P 2516/2019*
Mrs. Salama Khatoon & Another	*C.P 2517/2019*
Saeed ur Rehman & Another	*C.P 2518/2019*
Syed Tajammal Hussain Bokhari Shah & Others	*C.P 2519/2019*
Tayyaba Halim Subhani & another	*C.P 2660/2019*

...Respondents

For the Appellant /Petitioners: Mr. Sajid Ilyas Bhatti, Addl.AGP
M. Rehan, AD Legal
M. Ahmed, AD Legal

For the Respondent(s): Respondent-in-Person in CA 1546/2019

Hafiz S.A. Rehman, Sr. ASC for Respondent No. 1 and
Mr. M. Sharif Janjua, AOR in all CPs

Date of Hearing: 27.01.2021

JUDGMENT

IJAZ UL AHSAN, J.- Through this single judgment, we intend to decide Civil Appeal No. 1546 of 2019 (hereinafter referred to as "**CA**") and Civil Petitions No. 2503 to 2519 and 2660 of 2019 (hereinafter referred to as "**CP**") as they involve common questions of law.

2. Through the instant Appeals/Petitions, the Appellants/Petitioners have challenged the Judgment of the Federal Service Tribunal, Islamabad (hereinafter referred to as **"Tribunal"**) dated 15.02.2018 passed in Service Appeal No. 3622(R)CS/2017 and judgment dated 23.04.2019 passed in Service Appeals No 3192(R)CS to 3196(R)CS of 2012, 3230(R)CS to 3238(R)CS of 2012, 90(R)CS/2013, 91(R)CS/2013, 679(R)CS/2016, and 3622(R)CS/2017 (hereinafter referred to as "**Impugned Judgments**"). The Tribunal through the Impugned Judgments accepted the Service Appeals filed by the Respondents and ordered the Appellants/Petitioners to provide pay protection to the Respondents by counting the service they had rendered on daily wage basis for pensionary benefits and pay.

3. The necessary facts giving rise to this *lis* are that the Respondents were appointed as teachers/lecturers

against their respective posts. The Respondent in the CA retired upon reaching the age of superannuation w.e.f. 02.06.2017. Before her retirement, she had made a departmental representation through which she had requested her department to count the period for which she had worked on daily wage basis towards the calculation of her pensionary benefits. The Respondents in the CPs were recommended to be regularized by the Federal Public Service Commission w.e.f. 17.08.2010. They made representations to the effect that their previous service rendered on daily wage basis be counted towards their pay and pension benefits but to no avail. Aggrieved of the treatment meted out to the Respondents by the Appellants/Petitioners, they approached the Service Tribunal, which allowed their Service Appeals through the impugned judgments. The Appellants/Petitioners challenged the impugned judgments before this Court.

4. Leave to Appeal was granted by this Court in the CA vide order dated 17.09.2019 which is reproduced below for ease of reference:

> *"Learned Additional Attorney General relies upon a judgment passed by a 5 member bench of this Court in the case of Chairman, Pakistan Railway, Government of Pakistan, Islamabad and others v. Shah Jehan Shah (PLD 2016 SC 534) to contend that the very issue dealt with by the Tribunal in the impugned judgment has been dealt with by this Court in the reported judgment where the payment of pensionary benefits are admissible to contract employees only after their qualifying regularized service and thus unless such qualifying regular service is rendered, the pensionary benefits could not be granted to the employees.*
>
> *2. Leave to appeal is granted to consider inter alia the above submissions made by the learned Additional Attorney General..."*

5. The learned Additional Attorney General contends that the service rendered on daily wage basis cannot be counted as qualifying service for pension under the relevant rules. As per Article 352 of the CSR, the Respondents cannot claim pay protection or that their daily-wage-service be counted towards pension because the said rule specifically bars the Respondents from making such claim insofar as the Respondents do not fulfil the three conditions mentioned therein i.e. that the service must be under the government, must be substantive and permanent, and, that the service must be paid for by the government. Further, allowing the Respondent's daily wage period to be counted towards pay protection and pensionary benefits would open floodgates of never-ending litigation. Lastly, the Respondents were not working continuously, and, even otherwise, this being a policy matter cannot be interfered with by Courts.

6. The Learned Senior ASC appearing on behalf of the Respondents contends that the act of the Appellants/Petitioners of not giving pay protection to the Respondents and not allowing their service rendered on daily wage to be counted towards their pensionary benefits is discriminatory and exploitative. He adds that an identical order was passed by the Ministry of Education dated 25.01.2006 whereby benefits were allowed to lecturers, therefore, not granting the same to the Respondents who are teachers, represents a policy of discrimination and pick and choose. Further, the Respondents have been performing their duties to the satisfaction of the Government and, by not

allowing them pay protection and by not counting their service rendered on daily wage basis for pensionary benefits is unjust and unfair.

7. We have heard the learned AAG and the learned Senior ASC appearing on behalf of the parties. The issues which fall for consideration of this Court are:-

i. Could the service rendered by the Respondents on daily wages basis be counted towards their pension?

ii. Were the Respondents employed as a stop-gap arrangement?

iii. Could the Respondents be employed on daily wage basis considering the nature of their work?

COULD THE SERVICE RENDERED BY THE RESPONDENTS ON DAILY WAGES BASIS BE COUNTED TOWARDS THEIR PENSION?

8. The learned counsel for the Respondents has relied upon CSR 361 and has argued that, in view of the said Rule, the Respondents were entitled to pension and pay protection. For ease of reference, CSR 361 is reproduced as under:-

> *"361:- Except as otherwise provided in these Regulations, the service of an officer] does not qualify for pension unless it conforms to the following three conditions: — First.—the service must be under Government. Second.— the employment must be substantive and permanent. Third.—the service must be paid for by Government".*

9. We have examined the Education Code 2006 issued by the Federal Directorate of Education. The learned Tribunal has held that the Respondents were being paid out of funds that were approved by the Government. In this

respect, Paragraph 30 of the said Code is relevant which provides that the following: -

> *"Heads of educational institutions shall be empowered to incur expenditure out of Students' Fund as per the upper limit of expenditure prescribed through a notification by the Department Head on the following items:*
>
> *(v) Payment to daily wage employees (teaching & non-teaching)"*

Paragraph 17 of the said Code provides that the Federal Directorate of Education would manage the Federal Government Educational Institution (Schools & Colleges), Islamabad Model Institutions, and Hostels. The learned AAG has not disputed the fact that the Respondents were working in institutions that were admittedly being managed by the Federal Directorate of Education. The Federal Directorate of Education has itself issued a Code which such schools are required to follow to regulate their affairs. The services of the Respondents were utilized by the Appellants/Government to their satisfaction until the time the Respondents asked for pay protection and pension. As such, the learned Tribunal has correctly held that the Government cannot disassociate itself from the entire process and hold that the Respondents were not working under its supervision. It is the Federal Directorate of Education that has issued the said Code, and Paragraph 30 *supra* provides that the Federal Directorate of Education has empowered heads of institutions to manage pays and salaries of daily wage staff. It has not been argued before us that the said heads of institutions could not be delegated this task. The Government is fully empowered to

delegate some of its tasks for administrative convenience and efficient working as has been done in this case.

10. We have gone through the letter dated 26.08.04 issued by the FDE (Model Colleges Wing). The said letter provides an elaborate mechanism *viz* selection of teachers on daily wage basis. They are to appear in a test of 50 marks followed by an interview. Following this, their result is approved by a Committee and sent to the Director Colleges, Federal Directorate of Education who in turn seeks confirmation from the Director-General, Federal Directorate of Education. The said letter establishes that the Respondents were not arbitrarily appointed as a stop-gap arrangement. Their services were utilized by the Appellants/Petitioners for years on end till they reached the age of superannuation, their services were substantive and permanent which were paid for on behalf of and with the consent or approval of the Government.

11. We find that although the employment of the Respondents was not permanent within the meaning of CSR 361, the establishment under which they were working was permanent and the fact that they rendered services for years shows that they were not employed on temporary basis as a stop-gap arrangement for short periods of time. Further, that the Federal Public Service Commission by recommending the Respondents for retention into service has confirmed their ability and qualification to hold these posts. It is an admitted fact that the Respondents have been working continuously for more than 5 years. We have gone through the memorandum

dated 25.01.2006 whereby it was stated by the Federal Directorate of Education that service rendered on an Ad Hoc basis could be counted towards pay and pensionary benefits. If the Appellants/Petitioners have allowed the services of Ad Hoc teachers/lecturers to be counted for pay protection and pension, it is hard to understand why the same was cannot be done in the case of the Respondents. The principle of similarly placed persons dictates that the Respondents also deserve to be treated in the same manner as others who were granted the benefits of pay protection and pension from the date of their initial appointment on daily wages basis. The Respondents have been discriminated against which is in violation of their fundamental rights guaranteed to them by the Constitution of the Islamic Republic of Pakistan, 1973.

12. The learned Senior ASC for the Respondents has placed reliance on the case titled ***Ikram Bari and 524 others vs National Bank of Pakistan (2005 SCMR 100)*** in support of the submission that the service rendered on daily wages basis can be counted for pension and pay. The relevant portion of the judgment *ibid* is reproduced as under for ease of reference: -

> *"An Islamic Welfare State is under an obligation to establish a society which is free from exploitation wherein social and economic 'justice is guaranteed to its citizens. The temporary Godown staff and the daily wages employees were continued in service of the Bank on payment of meagre emoluments fixed by the Bank. In most of the cases of these employees, there were artificial breaks in their service so as to circumvent the provisions of the Labour Laws and the Rules of the Bank and to deny them the salaries and other service benefits of regular employees. In some cases, the Bank did not issue formal letters of appointment or termination to the employees so as to preclude them to 'have access to*

justice. There was no equilibrium of bargaining strength between the employer and the employees. The manner in which they had been dealt with by the Bank was a fraud on the Statute. A policy of pick and choose was adopted by the Bank in the matter of absorption/ regularization of the employees. By Article 2-A of the Constitution, which has been made its substantive part, it is unequivocally enjoined 'that in the State of Pakistan principle of equality, social and economic justice as enunciated by Islam shall be fully observed which shall be guaranteed as fundamental right. The principle of policy contained in Article 38 of the Constitution also provide, inter alia, that the State shall secure the well being of the people by raising their standards of living and by ensuring equitable adjustment of rights between employers and 'employees and provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood and reduce 'disparity in income and earnings of individuals. Similarly, Article 3 of the Constitution makes it obligatory upon the State to ensure the elimination of all forms of exploitation and the gradual fulfilment of the, fundamental principle, from each according to his ability, to each according to his work. It is difficult to countenance the approach of the Bank that the temporary Godown staff and the daily wages employees should be continued to be governed on disgraceful terms and conditions of service for an indefinite period. In view of section 24-A of the General Clauses Act 1897, the National Bank was required to act reasonably, fairly and justly. An employee being jobless and in fear of being shown the door had no option but to accept and continue with the appointment on whatever conditions it was offered by the Bank".

In addition to the aforenoted excerpt, a direction was passed in the judgment of ***Ikram Bari*** *ibid* to the effect that the previous service rendered by the Petitioners in the said case shall be counted towards retirement/pensionary benefits. It was held as follows:-

"The Civil Petitions...filed by employees seeking financial back-benefits and waiver of conditions of ,regularization/reinstatement are disposed of with the direction to the National Bank to regularize/absorb them in service with effect from 15-9-2003, subject to the conditions as laid down in para. 10 of the impugned judgment. The National Bank is directed to issue them appointment letters within one month. Moreover, the previous service rendered by them with the Bank shall be counted towards retirement/pensionary benefits".(Underlining is ours)

In view of the above position, the argument of the learned AAG that the service period of the Respondents rendered on daily wages could not be counted towards their pension is misconceived. The said period could and should be counted towards pension especially when the Respondents had been working continuously for different periods for the last many years.

WERE THE RESPONDENTS EMPLOYED ON A STOP-GAP ARRANGEMENT?

13. The learned DAG has argued that the contracts of the Respondents were not renewed/extended, but they were offered new contracts from time to time after their previous contracts had expired. The record reveals that such breaks were artificial. The said breaks cannot render the employment of the Respondents to be purely temporary. The Respondents have been performing their duties in their respective schools since long and such artificial breaks in their employment do not negate the fact that the Respondents had been continuously serving the Appellants/Petitioners for a long time. Reliance in this regard is placed on the case titled ***Board of Intermediate and Secondary Education, Multan vs Muhammad Sajid (2019 SCMR 233 Supreme Court)*** wherein it was held as follows:-

> *" It is an admitted position that the respondents before us have been working with the petitioner-Board since long, however, in their clumsy attempt to break the continuity of their service, the petitioner has been employing them for 89 days only, and has been re-hiring them for the next 89 days, and thus continued to avail their service for a long period by creating artificial breaks in their service period. The fact that they have, in fact, continuously served the petitioner for a long period of time, albeit the breaks created by the petitioner, as noted above, clearly show that they have been performing the job of a*

permanent nature and have not been serving on casual posts."

It is not the case of the Appellants before us that the Respondents were temporarily working against temporary posts and that such posts no longer exist. The fact that FPSC was approached to test the qualifications and antecedents of Respondents and make its recommendations by itself shows that these posts were permanent in nature.

13. As noted above, the said Principals of the respective Schools where the Respondents were performing services were acting in the aide of the Appellants/Petitioners under an elaborate mechanism/*modus operandi* provided by the Appellants/Petitioners. The powers of the said principals were being exercised on the instructions and under supervision of the Appellants/Petitioners and with their express consent and approval.

14. The learned DAG has stated that there were breaks in the services rendered by the Respondents, however, he has been unable to show from the record where and when there were such breaks in the daily wage services rendered by the Respondents. The only argument advanced by him in this regard is that the Respondents were working on a stop-gap arrangement. We are unable to agree with the learned DAG in this regard. By no stretch of imagination can it be conceived that when the Respondents were working against their respective posts for long periods (in some cases for more than 10 years), the same can by any definition of the word be

termed as a stop-gap arrangement. A stop-gap arrangement is one where a temporary arrangement is made for a limited time for a few months at the most until something better or more suitable can be found. Such an arrangement is typically made until someone can be hired permanently through the process provided in the law, rules or regulations. The Respondents were admittedly employed for long periods of time running into years and cannot be termed as stop-gap. The definition of "stopgap" provided in Collins Dictionary and as understood by Courts in our country clearly means:-

> *"A stopgap is something that serves a purpose for a short time, but is replaced as soon as possible"*

15. The meaning of a stopgap arrangement was interpreted by this Court in the case titled as ***Chairman Evacuee Trust Property Board and others vs Khawaja Shahid Nazir (2006 PLC(CS) 1261 Supreme Court)*** in the following terms:-

> *"The Tribunal had failed to interpret the notification dated 29-6-2000 in its true perspective by ignoring the clear stipulation contained therein that respondent was appointed as Secretary BPS-19 and such appointment was till further orders. From such stipulation it can be inferred without any doubt that it was not a regular appointment in accordance with section 11(1) of the Act and was by way of stopgap arrangement. This Court in the case of Abdul Majid Sheikh v. Mushafee Ahmed and another PLD 1965 SC 208 while examining the effect of the phrase "a person holds an appointment till further orders" pronounced that it only means that he holds it till orders are passed terminating his services."(Underlining is ours)*

The learned DAG has been unable to show us any document on the record which suggests that the Respondents were employed for a specific period of time subject to the arrival of permanent employees. The only term in this regard

as found from the appointment orders of the Respondents is that there would be no commitment in this regard from either the Respondents or the Appellants/Petitioners. The mere insertion of this vague term in the contracts of the Respondents does not mean that they were employed as a stop-gap arrangement. The Appellants/Petitioners never terminated services of the Respondents. The Respondents retired from their services after they were regularized, that too in most, after more than 10 years of service. Adding artificial breaks to the employment of the Respondents does not convert the employment of the Respondents into a stop-gap arrangement. They were not employed for a short period till the arrival of someone permanent, but, were employed against their respective posts for almost the whole of their professional lives. As such, the argument of the learned DAG in this regard does not hold much water and the employment of the Respondents was to be treated as permanent in nature as correctly held by the Tribunal.

COULD THE RESPONDENTS BE EMPLOYED ON DAILY WAGES BASIS CONSIDERING THE NATURE OF THEIR WORK?

16. Teachers strengthen the foundation of any state as well as play a pivotal role in nation building by imparting education which is necessary to uplift a society consisting of educated and aware citizens who believe in values and strengthen democracy and democratic values. Employing teachers on daily wages basis is not only detrimental to the education sector of Pakistan but is also a discouraging factor

for future teachers who in turn are demotivated and discouraged a profession which is pivotal in the lives of our future generations. It is pertinent to mention that primary education is a fundamental right guaranteed under Article 25-A of the Constitution of the Islamic Republic of Pakistan, 1973. The Universal Declaration of Human Rights also recognizes education as one of the most important rights of children. Article 3 of the Constitution provides that all forms of exploitation shall be eliminated. One of the reasons for which this becomes relevant to the present controversy is that notwithstanding the importance of the services they render to society, which have consequences for generations, the Respondents were made to work under uncertain conditions on the pattern of unskilled and uneducated or semi-educated labour hired on a daily wage basis for seasonal projects expected to last for a limited period. We are appalled at this irresponsible, casual and utterly unprofessional approach of the policy makers towards a matter as important and as serious as education of our future generations. We have no hesitation whatsoever in strongly deprecating the same. These actions of the Appellants/Petitioners are not only contrary to Constitutional dictates but also contrary to the Principles of Policy enshrined in the Constitution which state that there has to be an equal adjustment of rights between employers and employees.

17. The Impugned Judgment of the learned Tribunal is well reasoned, proceeds on the correct factual and legal premises and has correctly applied the relevant law, rules and

regulations to the facts and circumstances of the cases before us. No legal, jurisdictional defect, error or flaw in the Impugned Judgment has been pointed out to us that may furnish a valid basis or lawful justification to interfere in the same. The Learned AAG has not been able to persuade us to take a view different from the Tribunal in the facts and circumstances of the instant Appeal/Petitions. We accordingly affirm and uphold the Impugned Judgment of the Learned High Court

18. For the reasons noted above, we find no merit in the Appeal and the same is accordingly dismissed. As for the Petitions, no question of law of public importance in terms of Article 212(3) of the Constitution has been raised. Accordingly, we find no merit in these Petitions and the same are dismissed. Leave to appeal is refused.

Chief Justice

Judge

Judge

ISLAMABAD, THE
27th of January 2021
*Haris LC/**
~~*NOT*~~ *APPROVED FOR REPORTING*