

NATIONAL INDUSTRIAL RELATIONS COMMISSION
FULL BENCH AT ISLAMABAD

Before: Abdul Rasool Memon, Chairman
Abdul Qayyum Khan, Member
Muhammad Siraj ul Islam Khan, Member

Appeal No. 12A(07)/2023-P
CMA No. 24B(07)/2023-P
Riasat etc

WAPDA etc Vs.

Appeal No. 12A(13)/2022-P
CMA No. 24B(14)/2022-P
Daulat Khan etc

WAPDA etc Vs.

Present: Mr. Sajjad Zafar, counsel for the appellant
Mr. M. Asif Gujjar, counsel for the respondent

Appeal No. 12A(131)/2022
CMA No. 24A(83)/2022
Adnan Ajaib

WAPDA etc Vs.

Appeal No. 12A(132)/2022
CMA No. 24A(84)/2022
Ghulam Bilal

WAPDA etc Vs.

Present: Mr. Sajjad Zafar, counsel for the appellant
Mr. Ishfaq Khan, counsel for the respondent

ORDER

18.09.2023 **Muhammad Siraj ul Islam Khan, Member**

This order in appeal No. 12A(07)/2023-P will dispose of the above titled appeals having same question of law and facts except date of appointments and some other minor variations but these variations will not effect the nature of the case.

2. The instant appeal has been filed by the appellants WAPDA against the impugned order dated 26.01.2023 according to which the learned Single Member has allowed the grievance petition of the

petitioners by holding that the petitioners are entitled to be regularized in compliance of the Standing Order 1 (b) of Industrial & Commercial Employment (Standing Orders) Ordinance 1968. The learned Single Bench has declared that the petitioners are permanent workman.

3. The appellant challenged the orders through the instant appeal by maintaining that the impugned orders will create grave administrative and financial implications in the appellant establishment. It is argued that in appellant organization the employees are recruited through competitive exams after observing all codal formalities like advertisement, test and interview etc. Another group of employees are recruited on contract basis, again after passing through competitive process of recruitment. The third category is the employees appointed under the daily wages employment. These appointments are made for daily routine work and to meet the departmental daily requirements according to the financial resources. He further asserted that all the said recruitments are based on policies and procedures of appellant organization. These appointments are made in accordance with the administrative, sanctioned number of posts, budget, in accordance with the provisions of WAPDA Act 1958, rules and policies made under the said Act. So the learned Single Bench should not ignore the said policies and the frame work of appellant organization by holding that the services of petitioners are to be regularized. He further argued that it will increase the financial burden initially on the appellant organization and subsequently on the general public. The learned counsel for the appellant states that policy was made in the year 2005 according to which daily wagers are entitled to be regularized who have completed five years tenure of service, however in the year 2017 this policy was substituted with new policy and the said policy of regularization was discontinued and it is held that no daily wagers will

be recruited in future and no daily wagers will be regularized. He also produced copy of WAPDA Act, 1958 and relied on the section 18 and 29. The learned counsel for the appellant argued that the grievance petition filed by the respondent deserved dismissal and the instant appeal be allowed.

4. The respondent made the case by arguing that the petitioners are labourer/workmen working with appellant organization for more than 9 months after successful completion of three months probation on permanent nature of post. The learned counsel for the respondent argued that some employees have been regularized vide office order FO (B&F)/10-131/Vol-7/4007-4106 dated 21.04.2009 by the appellant organization. This regularization was made in compliance of orders passed in W.P. No. 3002/2016 dated 25.04.2018 by Hon'ble Lahore High Court Lahore Rawalpindi Bench. This order was challenged by the appellant organization in ICA No. 137/2018 which was dismissed on 08.09.2020. The appellant challenged the said judgment in august Supreme Court of Pakistan vide CP No. 2777/VV which was also dismissed vide order dated 02.03.2021 by holding the following observation:

"Gulzar Ahmed, C.J. – The respondents had filed writ petition in the Lahore High Court, Rawalpindi which was allowed vide order dated 25.04.2018. against such order the petitioners filed ICA which by the impugned order dated 08.09.2020 has been dismissed. The only submission of the learner counsel for the petitioners is that the respondents have been appointed on non sactioned post. We note from the impugned order that the respondents are working as Chowkidars with the petitioners for almost 5 years and the High Court in terms of the provisions contained ijn the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 has found them to be permanent workmen by the very afflux of time and also the nature of job which they were performing the submission that the respondent

have been appointed on non sanctioned post in the circumstances neither finds any support from the record nor the same could be justified in view of the provisions of law as has been discussed by the learned High Court in the impugned order, No illegality has been shown in the impugned order, This petition is, therefore, dismissed and leave refused."

5. The learned counsel for respondent relied upon judgment reported as 2022 SCMR 292 in case titled Divisional Superintendent Quetta Postal Division and others Vs M. Ibrahim and others, 1996 PLC 385 in case titled Executive Engineer Division Pak PWD Quetta Vs Abdul Aziz and 2013 SCMR 1547 in case titled Province of Punjab Vs Ahmed Hussain. Reliance is also placed on PLD 2000 SC 207 in case titled Lahore Development Authority and another Vs Abdul Shafique and others. The learned counsel for the respondent has prayed that the appeal filed by the appellant may kindly be dismissed.

6. Arguments heard and record perused.

7. The argument adopted by appellant that the provisions of the WAPDA Act, 1958 prevail upon the standing order 1968 as the regulations and Act not referred daily wagers rather it discussed only officers and servants. So the law which does not speak about specific section of employees/workers cannot supersede the law which loudly speak about specific category of employees/workers. In our humble view such law will apply. In addition to that the judgment referred by respondents reported as 2022 SCMR 292 has addressed this issue by holding:

"It is to be noted that exactly this very proposition came up under consideration in the case of Punjab Seed Corporation v. Punjab Labour Appellate Tribunal (1996 SCMR 1947) wherein the respondent was appointed as Field Supervisor on temporary basis on 25.06.1980 and continued as such till

30.07.1991 when his services were terminated. On receipt of notice of termination, he served a grievance notice on the department alleging that he was a permanent workman and as such his services could have not been terminated without a show cause notice. He ultimately filed petition before Labour Court, which was dismissed, as such appeal was filed before the Punjab Labour Appellate tribunal, which was accepted and the relief was granted to him. The writ petition, challenging the said order was dismissed and this Court also declined to grant leave to appeal. Relevant paras from the said order are reproduced here in below:-

"4. The learned High Court finding no substance in the aforementioned contentions, which are reiterated before us held as under:-



"There is no substance in the arguments of the learned counsel that the respondent was a temporary workman in as much as no such objection was never (sic) taken by the petitioner in his written statement. Even otherwise, the appointment letter Annexure 'A' would demonstrate that he was appointed on 25.06.1980 and that his services were terminated on 20.07.1981. In other words, the respondent had been working on his job beyond six months to the satisfaction of the Corporation. There was also no complaint against him. This being so, he became a permanent workman in the petitioner-Corporation within the meanings of West Pakistan Standing Orders Ordinance, 1968 against a permanent job. The learned Tribunal has appreciated the evidence on record and concluded that the respondent was a permanent workman under the petitioner. Thus, undoubtedly, a finding of fact, having been given by the learned Appellate Tribunal on the basis of a reliable evidence which cannot be interfered with in these proceedings."

"In the case of Executive Engineer v. Abdul Aziz (PLD 1996 SC 610), the services of the work charged employees of Pak PWD who continued to work for a period between 2 years to 7 years, were terminated, as such they approached the Labour Court Balochistan, Quetta through applications under section 25A of the IRO, 1969, which were allowed holding that they were permanent workers and termination of their services was illegal. The matter came to this Court when Mr.

Justice Ajmal Mian, J. (as then he was), formulated following three questions:-

- (i) Whether the respondents are civil servants in terms of section 2(1)(b) of the Act?
- (ii) Whether the respondents can press into service the provisions of Standing Orders Ordinance? And
- (iii) Whether the respondents are entitled to press into service section 25 of the I.R.O.?

With regard to the first question, it was held that respondents were not civil servants. For reference, relevant para there form is reproduced here in below:-

"18 It may be observed that prima facie respondents are covered by item No. 8 of the above II Schedule to workmen's Compensation Act and, therefore, they are also excluded from definition of "civil servant" on that account. It is, therefore, evident that respondents cannot be treated as civil servants for the above two reason."

"28. The work of construction or maintenance of buildings, which is performed by the respondents, does not have nexus with the sovereign functions of the State, and therefore, they cannot be described as persons employed in the administration of the State. The above work can be carried out through contractors. The respondents have nothing to do with the running of the Government they may be said to be contributing towards facilitating the functioning of the Government. I am, therefore, of the view that the respondents are not employed in the administration of the State and, hence, the above clause (b) of sub section (3) of section 1 of the I.R.P is not attracted to. It must, therefore follow that the provisions of the I.R.O. could have been invoked by the respondents. Since the respondents' grievance was that their services were terminated in spite of the fact that they were permanent employees. In view of above paragraph 1 (b) of the Schedule to the Standing Orders Ordinance in violation of Standing Order No. 12, they could have filed the applications under section 25-A of the I.R.O."

"In the case of Secretary, Irrigation and Power Department, of Punjab v. Muhammad AKhtar (200 SCMR 320) this court upheld the findings of the Labour Court, whereby directions

were issued for regularization of services of the work-charged employees."

"Thus, it is held that service of respondent shall be governed by Standing Orders Ordinance, 1968 and he shall be considered permanent employee, as he is performing his duties continuously for more than 9 months since 1998 and the learned High Court has rightly issued writ in his favour."

8. In case titled Anwar Saleem Vs Member, National Industrial Relations Commission, Lahore Bench, Lahore and others reported in 1998 PLC 9 it is held that:



"This being a petition against the interim order, it was entertained to consider the limited question as to whether the employees of WAPDA were civil servants and as such not amenable to the jurisdiction of National Industrial Relations Commission. The exception pleaded and debated by the counsel for respondent No. 2 is dependent on one fact only as to whether the petitioner and respondent No. 2 are in any manner connected with the generation and transformation of energy or not. Since it was conceded by both the learned counsel for the parties that the petitioner and respondent No. 2 are connected with generation and transformation of energy, therefore, the rule of law laid down in WAPDA Vs Muhammad Ashraf Hassan (Civil Appeal No. 305 of 1986) is squarely applicable in the facts and circumstances of this case wherein it has been held that the case of the persons employed by WAPDA who are connected with the generation and transformation of energy were workers or workmen within the meanings of the words as defined in Factories Act, 1934 or the Workmen's Compensation Act, 1923 and as such were amenable to the jurisdiction of NIRC if a proper case is made out under the law applicable thereto. This being the present any judgment of the Supreme Court to the contrary, I respectfully respondent No. 2 are workers or workmen, therefore, their case is one of exception and would not be covered by the definition of civil servants as contained in section 2 of the Civil Servants Act, 1973. This being so respondent No. 2 could invoke the jurisdiction of NIRC to seek redressal of his grievance. The allied question as to whether it was a case of any unfair labour practice or the other questions relating to the proceedings presently pending

before the Member, NIRC shall of course be determined by respondent No. 1 during the course of hearing of the petition pending before him. I have specifically refrained myself from entering upon the controversy forming subject-matter of the above said question because in doing so I may not inadvertently by usurping the jurisdiction of NIRC."

9. Regarding the plea taken by appellant that policy of 2017 will apply on the petitioners, it is held that this plea is not valid as the petitioners were appointed before 2017 and policy pertaining to year 2005 under which the right of regularization was provided by holding that such daily wagers who have completed their 5 years of service. This policy is very much applicable to respondents as the policy of 2017 cannot operate proposition of retrospectively rather it will operate prospectively. It is well settled law that rules and policies will not operate retrospectively rather will operate prospectively.

10. It was also argued by the appellant that the post under which the respondents were working are not of permanent nature. This is not a valid argument and it can be safely held that the petitioners are working since 2013 till the date on the same posts, how it can be said that the employees are working temporarily. So, it is held that Standing Order 1 (b) of Industrial & Commercial Employment (Standing Orders) Ordinance 1968 is applicable to services of respondents. So, the stance of appellant that it was a stop gap/temporary assignment has no force of law.

11. Regarding the objection that respondents have not sent the grievance notices prior to filing their grievance petitions in compliance of section 33 of IRA 2012 also does not hold the ground as while perusing the record it is observed that respondents have annexed the copies of grievance notice sent to appellant at page 9 to 22 and the postal receipts are also attached at page 23. Moreover, in a judgment

reported as 2023 MLD 846 Sindh titled M. Salahuddin Vs FOP etc it is held that question of regularization is continuous cause of action. In this context another judgment is also relevant to quote here which says that in case of a continuous wrong, laches will not be bar in granting relevant relief? Reference is also placed on 2015 PLC CS 537 Islamabad. Recently in judgment reported as PLD 2022 Lahore 715 principle of continued cause of action has been described in para 6:

"The primary question involved in this case is whether the decree passed by the Family Court for the recovery of maintenance under section 17A (1) of the Act can only be for the period commencing the date of decree and not prior to that? To answer that question, it is imperative to refer to certain fundamental principles governing the grant of relief in suits. For it to succeed, the claim of a party against another must be based on a cause of action i.e. infringement of a right, title or interest recognized by law of the land. Generally speaking, in civil litigation, the entitlement to any relief covers the period commencing accrual of the cause of action. Such entitlement may, however, be controlled, curtailed or restricted by an appropriate legislature by express words or necessary implications. Additionally, in cases where claimants succeed in establishing a cause of action but without proof of the exact date of accrual thereof, relief is usually granted from the date of institution of the suit. If a cause of action is recurring or continuous one, the relief is granted for the future period covering entitlement of the claimant."

12. In the result of the discussion made above, these appeals having no force of law are dismissed. No order as to costs. File be consigned to the record room after due completion.

(Abdul Rasool Memon)
Chairman

(Abdul Qayyum Khan)
Member

(Muhammad Siraj ul Islam Khan)
Member