

NATIONAL INDUSTRIAL RELATIONS COMMISSION

Peshawar Bench Peshawar

Before: Muhammad Zubair Khan, Member

Case No. 4B (63)/2022-P
24B (19)/2022-P

Waqar Ahmad S/o Liaqat Ali, Laboratory Assistant, Farm Manager, Tobacco Research Station Khan Garhi Mardan.

..... Petitioner

Versus.

Pakistan Tobacco Board, through its Chairman, 46-B, Office Enclave, Phase-V, Hayatabad, Peshawar & 03 others.

..... Respondents

Present: Mr. Bilal Ahmed Kakaizai, counsel for petitioner
Mr. Asad Jan, counsel for respondents

O R D E R

13.09.2023

Petitioner brought this petition u/s 33 of the Industrial Relations Act, 2012 for considering him as confirmed / permanent employee of Pakistan Tobacco Board since his initial appointment, contending that the petitioner was initially appointed as Laboratory Assistant vide order dated 15.09.2010, copy of appointment is Annexure-A. Further contending that the services of the petitioner were extended from time to time for a period of 89 days with one day artificial break; that the petitioner performed duties as Laboratory Assistant since his initial appointment and thus attained the status of permanent worker as guaranteed under the Standing Order, Ordinance, 1968.

Further contending that he is still performing the same duties in the establishment of Pakistan Tobacco Board and he is treated as daily wager; that the respondent department regularized number of its employees having lesser tenure of service than. The petitioner requested and prayed that on acceptance of this petition, the secured and guaranteed right of the petitioner be enforced and he be ordered to be treated as permanent employee of the Pakistan Tobacco Board since his initial appointment with all services benefits.

2. The petition annexed with petition his appointment order annexure-A; his various extension orders annexure-B, copy of grievance notice Ex-F.

3. The respondents were summoned who submitted application for summarily dismissal of the petition.

4. The petitioner submitted reply to the application and the learned Predecessor of this Court vide order dated 27.04.2023 decided the application and held the following:

"8. The petitioner is daily wage employee and the service Rules of Pakistan Tobacco Board 1985 are not applicable to him as per provisions of Rule 1(3)(a)(b). Therefore, Standing Order Ordinance, 1968 is applicable.

9. In view of above facts, this Commission has got jurisdiction to entertain the petition. The application is rejected. Respondent is directed to submit reply/para-wise comments on 18.05.2023".

5. Thereafter, the respondents submitted written reply to the petition on 18.05.2023 by raising preliminary as well as factual objections. The respondents claiming that Pakistan Tobacco Board is a Federal Government entity, established through an

Ordinance and having its statutory service rules 1985. On facts, it contended that the services of the petitioner were hired on day-to-day basis for a specific period purely on temporary basis. Further contending that the Pakistan Tobacco Board established through an Ordinance and having its statutory rules and provisions of Industrial Relations Act, 2012 as well as Standing Order, Ordinance 1968 does not apply to Pakistan Tobacco Board as its having statutory service rules and not a commercial establishment. The respondents requested for dismissal of the petition.

6. Arguments heard and record perused.

7. As per record the petitioner was appointed as Laboratory Assistant BPS-06 on day-to-day basis vide order dated 15.09.2010 which order was extended after lapse of 89 days and the last extension was issued on 16.11.2022 which means that the petitioner was serving against the post which is permanent in nature and served more than nine months after artificial break of one day. Rule-1 of service rules of Pakistan Tobacco Board Peshawar dated 08.04.1985 provides as under:-

“(1) These rules may be called the Pakistan Tobacco Board (Service) Rules, 1985.

(2) They shall come into force at once.

(3) They shall apply to all employees, except those.-

(a) appointed on contract unless their terms of contract make these rules applicable; and

(b) paid from contingencies.

8. It means that the statutory rules do not apply to the petitioner as he was paid on daily basis from the contingency and, therefore, he is a workman. The learned counsel though argued that Pakistan Tobacco Board is not a commercial entity and, therefore, the Standing Orders, Ordinance 1968 as well as Industrial Relations Act, 2012 is not applicable. According to section-2(x) of the Industrial Relations Act, 2012:-

2. Definitions.-

(x) “establishment” means any office, firm, factory, society, undertaking, company, shop or enterprise, which employs workmen directly or through a contractor for the purpose of carrying on any business or industry and includes all its departments and branches in the Islamabad Capital Territory or falling in more than one province, whether situated in the same place or in different places and except in section 62 includes a collective bargaining unit, if any, constituted by any establishment or group of establishment”.

9. The word ‘industry’ is defined in section-2(xvii) “industry includes any business, trade, calling, employment or occupation for production of goods or provisions of services in the Islamabad Capital Territory and falling in more than province, and excluding those set up exclusively for charitable purposes”.

10. Learned counsel for the respondents unable to produce any documents showing that the Pakistan Tobacco Board is a charitable entity which exclude operation of Industrial Relations Act, 2012. The petitioner also produced office order dated 13.07.2023 which reads thus:

"In compliance of the directions of the Special Committee on Affected Employees under the Chairmanship of Mr. Qadir Khan Mandokhel, MNA and establishment Division's O.M No. 10/1/2023-R-II dated 13.06.2023 the Chairman PTB is pleased to regularize the services of Mr. Waqar Ahmad S/o Liaqat Ali, CNIC No.17101-5224005-3, Village & Post Office Zarbab Garhi, Tehsil & District Charsadda as Laboratory Assistant/BPS06 (15760-840-40960) at Pakistan Tobacco Board. Tobacco Research Station, Mardan with immediate effect".

11. What has been discussed above, it is held that the case of the petitioner is not covered by the statutory rules of the Pakistan Tobacco Board and that he is working on the permanent post for more than nine months, therefore, he attained the status of permanent employee with all financial benefit available to the permanent employee, therefore, the petition is allowed in the above terms and respondents are directed to issue the order in this respect within a period of 30 days on receipt of this order. No orders as to costs. File be consigned to record room.

Announced in the open court

(Muhammad Zubair Khan)
Member

Certificate:

Certified that this order consisting of Five pages. Each page is corrected and signed.

(Muhammad Zubair Khan)
Member

Iffikhar