

2023 P L C (C.S.) 780**[Supreme Court of Pakistan]****Present: Gulzar Ahmed, C.J., Mazhar Alam Khan Miankhel and****Muhammad Ali Mazhar, JJ****The CHAIRMAN AGRICULTURE POLICY INSTITUTE, MINISTRY OF NATIONAL FOOD SECURITY AND RESEARCH, GOVERNMENT OF PAKISTAN, ISLAMABAD and another****Versus****ZULQARNAIN ALI and another**

Civil Petition No. 2892 of 2020, decided on 13th December, 2021.

(Against the judgment dated 02.09.2020 Federal Service Tribunal, Islamabad in Appeal No. 327(R)CS/2019)

(a) Civil service---

---Termination of service---Verbal order of termination---Legality---Termination of service by a verbal order was alien to the labour and service laws of the country and also against the principles of good governance and natural justice.

There was no provision under the Labour Laws or the Service Laws permitting the employer to terminate the services verbally without a written order containing the explicit reasons or cause of termination even in the case of termination simpliciter and for disciplinary proceedings on account of misconduct, obviously separate procedure was laid down which accentuated the issuance of show cause notice, holding inquiry unless dispensed with by the competent authority considering all attending circumstances of the case and after personal hearing, appropriate action may be taken in accordance with the law. The termination of service by a verbal order was alien to the labour and service laws of the country and also against the principle of good governance which was a process of gauging whether the Government, its departments/institutions and authorities were conducting their affairs lawfully and performing their duties honestly, conscientiously and transparently including their process of decision making in accordance with rules and regulations.

Verbal termination order was otherwise against the principles of natural justice.

(b) Civil service---

---Natural justice, principles of---Scope---Before taking any adverse action, the affected party must be given a fair opportunity to respond and defend the action---Principles of natural justice did not lay down any differentiation or inequality between a quasi-judicial function and or an administrative function/action for applying evenly and uniformly to secure justice and prevent miscarriage of justice--Before taking any punitive or adverse action, putting to end the services of any employee/workman or civil servant, the precept of fairness and reasonableness

commanded that an evenhanded opportunity to put forth the defence should be afforded.

(c) Civil service---

---Appointment and termination of service orders---Written orders---Due to negligent and unprofessional practice or conduct of issuing verbal termination orders of service, the action of employer was often defeated and non-suited in the court of law without touching the merits of the case despite having sometimes valid grounds for termination of service, therefore, in order to avoid such anomalies and eventualities, even in the case of contractual or temporary engagements, the employees should be issued appointment letters in writing with the terms and conditions of engagement and in the case of termination, explicit reasons of termination should be assigned.

Sohail Mehmood, Additional Attorney General for Petitioners.

Nemo for Respondents.

Date of hearing: 13th December, 2021.

JUDGMENT

MUHAMMAD ALI MAZHAR, J.---This Civil Petition is brought to challenge the judgment dated 02.09.2020, passed by learned Federal Service Tribunal, Islamabad in Appeal No. 327(R)CS of 2019 whereby appeal filed by the respondent No.1 was allowed and the impugned verbal order of termination was set aside with the directions to the petitioners to reinstate the services of respondent No.1 with back benefits.

2. The learned Additional Attorney General argued that the respondent No.1 was not appointed in accordance with the law. The Chairman, Agriculture Policy Institute was not competent to regularize the services of the contract employees. It was further contended that there was no sanctioned post of driver hence the case of respondent No.1 was not covered under the criteria laid down for the regularization of service, therefore, the reinstatement order passed by the learned Service Tribunal was unjustified.

3. Heard the arguments. It is reflected from the record that by dint of an Office Order dated 11.1.2012, issued by the Deputy Director (Admin), Agriculture Policy Institute, Government of Pakistan, the Chairman of the Agriculture Policy Institute appointed five persons on Daily Wages basis for a period of 89 days and in this office order, the name of the respondent No.1 was mentioned at Serial No.2 against the post of Driver. It was also pleaded by the respondent No.1 before the learned Tribunal that initially he was engaged on daily wages basis on 1.4.2011 for 89 days which period was extended from time to time and lastly it was extended on 11.1.2012. The Minutes of the Meeting of Cabinet Sub-Committee dated 31.5.2012, conspicuously portray that meeting was convened for dealing the cases for Regularization of Contract and Daily Wages Employees performing their duties in the different Ministries, Divisions, Attached Departments, Autonomous Bodies and

Organizations in the Establishment Division and after due deliberation, Cabinet Sub-Committee decided and approved the regularization of their services. According to the niceties and statistics of the decision arrived at in the meeting of Cabinet Sub Committee, the services of 38 contract and 16 daily wages employees of the main Ministry, 275 daily wages employees of National Agricultural Research Centre (NARC) and 77 daily wages employees of Pakistan Agriculture Research Council were regularized subject to availability of posts on Non-Development Budget and fulfillment of recruitment criterion. So far as the contract employees of "Agricultural Policy Institute" the services of seven contractual employees were regularized and the name of respondent No.1 is mentioned at Serial No.4 against the nomenclature of driver.

4. The bone of contention before the learned Federal Service Tribunal was that the services of the respondent No.1 was terminated through a verbal order in the month of July 2012. To assail this order, the respondent No.1 filed a Departmental Appeal on 31.07.2012 which was also rejected by the petitioners on 04.01.2019. As a last resort, he approached to the learned Federal Services Tribunal. In fact, no issue of regularization of services was involved before the learned Tribunal but the main disquiet which was engrossed and contested, whether the services of the respondent No.1 could be terminated verbally or not?.

5. There is no provision under the Labour Laws or the Service Laws permitting the employer to terminate the services verbally without a written order containing the explicit reasons or cause of termination even in the case of termination simpliciter and for disciplinary proceedings on account of misconduct, obviously separate procedure is laid down which accentuates the issuance of show cause notice, holding inquiry unless dispensed with by the competent authority considering all attending circumstances of the case and after personal hearing, appropriate action may be taken in accordance with the law. The termination of service by a verbal order is alien to the labour and service laws of this country and also against the principle of good governance which is a process of gauging whether the Government, its departments/ institutions and authorities are conducting their affairs lawfully and performing their duties honestly, conscientiously and transparently including their process of decision making in accordance with rules and regulations.

6. The verbal termination order was illegal hence the learned Tribunal rightly set aside the termination order with the directions to the petitioners to reinstate the respondent No.1 in service with back benefits and also dealt with the intervening period aptly. The verbal termination order is otherwise against the principle of natural justice which turn of phrase was originated from the Roman word 'Jus Naturale', which means principles and moralities of natural law, justice, equity, and good conscience that, is fervently and exuberantly founded in the judicial conscience. It is an elementary rule of law that before taking any adverse action, the affected party must be given a fair opportunity to respond and defend the action. This principle does not lay down any differentiation or inequality between a quasi-judicial function and or an administrative function/action for applying evenly and uniformly to secure justice and prevent miscarriage of justice. Before taking

any punitive or adverse action, putting to end the services of any employee/workman or civil servant, the precept of fairness and reasonableness commands that an evenhanded opportunity to put forth the defence should be afforded. Due to negligent and unprofessional practice or conduct of issuing verbal termination orders of service, the action of employer is often defeated and non-suited in the court of law without touching the merits of the case despite having sometimes valid grounds for termination of service, therefore, in order to avoid such anomalies and eventualities, even in the case of contractual or temporary engagements, the employees should be issued appointment letters in writing with the terms and conditions of engagement and in the case of termination, explicit reasons of termination should be assigned.

7. The learned Additional Attorney General made much emphasis that the Cabinet Sub-Committee regularized the service subject to availability of posts on "Non Development Budget" and fulfillment of criterion but he could not justify the prudence of issuing verbal termination order without assigning any reason. Even in the comments filed by the petitioners before the learned Tribunal, no such plea was taken that there was lack of sanctioned post or the respondent No.1 failed to fulfill the criteria for regularization of service or he was not on job at the time of regularization decided and approved by the Committee. It is manifesting from the judgment of learned Tribunal that the outcome and legitimacy of verbal termination order of services was not dealt with by the Appellate Authority in the order of Departmental Appeal.

8. In the wake of above discussion, this civil petition is dismissed and leave is refused.

MWA/C-22/SC Petition dismissed.

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