

**JUDGMENT SHEET
IN THE PUNJAB SERVICE TRIBUNAL, LAHORE**

Appeal No. 3732, 3735 and 3736 of 2015

1. Asad Abbas Magsi, Section Officer, Agriculture Department Government of the Punjab, Agriculture Department, Lahore
2. Mst. Naila Tayyab, Section Officer (Admn-I) Government of the Punjab Agriculture Department, Civil Secretariat Lahore
3. Mst. Shafq Saleem, Section officer (on leave) c/o Services and General Administration Department Government of the Punjab Civil Secretariat, Lahore

.....Appellants

VERSUS

1. Additional Chief Secretary, Government of the Punjab, Civil Secretariat, Lahore
2. Chief Secretary, Govt. of the Punjab Civil Secretariat, Lahore

.....Respondents

Appellants by:

- Mr. Masud Ahmad Riaz Advocate.
(Appeal No. 3732/2015)
- Mian Inam ul Haq Advocate (appeal
No.3735/2015 and 3736/2015)

Respondents by:

- Mr. Hamad Mehmood Khatana, DA
- Mr. Javed Hussain, Law Officer D.R
- Mr. Rameez Zafar, Section Officer
(Admn-IV) S&GAD, D.R

Date of Hearing: 29.6.2016, 30.6.2016 and 8.9.2016

Date of Decision: 30.9.2016

CONSOLIDATED JUDGMENT

JAWAD-UL-HASSAN, MEMBER-I: - Since common questions of law and facts are involved in the above titled three appeals, therefore, I intend to dispose of the same by consolidated judgment as all the

JUDGMENT SHEET

Appeal No. 3732, 3735 and 3736 of 2016

Service) Rules, 1974. No wisdom and reasons were found why both the conditions of probation as contained in section 5 of the Punjab Civil Servants Act, 1974 and rule 7 of Punjab Civil Servants (A & C of Service) Rules, 1974 and PMS (Probationers) Training, Final Passing Out Examination and Seniority Rules, 2012 and such reasons were not explained by the department as found and held in the preceding paragraph, the PMS (Probationers) Training, Final Passing Out Examination and Seniority Rules, 2012 are not applicable in case of the appellant, therefore, the conditions are contradictory in nature which violates the mandate of law i.e. section 5 of PCS Act, 1974 and rules framed thereunder.

13. The condition (iii) as attached with the appointment letter restrict that the appellants cannot claim any benefits including the seniority for the period of their contractual appointments. Likewise, the condition as contained in item No. viii regarding excluding the period of their contract appointment for the purpose of pension, gratuity, leave etc. The "seniority" of a civil servant is actually an advantage that he gets by working for provincial government for a long time. In a widely celebrated judgment the honourable Supreme Court of Pakistan Muhammad Aslam Awan Advocate Supreme Court Vs. Federation of Pakistan (see 2014 SCMR 1289 at page 1312 in paragraph 31) held as under:

"We find that even in service matters, while considering the seniority of civil servants, the seniority is reckoned from the date of initial appointment and not from the date of confirmation or regularization."

JUDGMENT SHEET

Appeal No. 3732, 3735 and 3736 of 2016

The question arises what was the date of initial appointment of the appellants. The appellants were appointed on contract basis in the year **1999, 2004 and 2005** and were regularized accordingly on the recommendations of the Punjab Public Service Commission on **24.4.2012 with immediate effect**. The honourable Lahore High Court, Lahore in Dr. Khawaja Khursheed Ahmad's case (see 2014 PLC CS 1068) at page 1075 in para 13 held as under:-

"Another question raised during arguments is whether Associate Professors working on contract basis in the Provincial Government should be offered regularization in service if they satisfy the prescribed qualification applicable on the date of their contract appointment or must they fulfill the qualification prescribed on the date when their services are considered for regularization. To simply, this question translates to whether the regularization amounts to initial recruitment or confirmation of an existing employment. This Court has in the case of Aftab Ahmad and others V. Government of the Punjab and others (2012 PLC (CS) 602) concluded that the prescribed qualification for the purpose of regularization of service of a contract appointee should be that which was prevalent at the time of his appointment. This view has the support of reason in that regularization in service is not an initial recruitment but the confirmation of an existing employment."

According to the dictum laid down in 2014 SCMR 1289 and 2014 PLC CS 1068 the date of the initial recruitment of the appellant is from the dates (i.e. 4.4.2005, 2.10.2004 and 13.2.1999 respectively) when they were initially appointed as Section Officer on contract basis. Their seniority will be reckoned from the said date and not from the date of their regular appointment i.e. 1.8.2012. Thus from the above discussion it is found that the exclusion of their contract

JUDGMENT SHEET

Appeal No. 3732, 3735 and 3736 of 2016

period for the purpose of seniority and pensionary benefits, gratuity and leave etc is illegal and violative of law.

14. The contentions of the D.R as well as D.A is that the appellants cannot invoke the jurisdiction of this Tribunal as they accepted terms and conditions of their regular appointment. Thus, no relief can be granted. According to them, they have been stopped to challenge the terms and conditions of their regular appointment, in this regard, no formal acceptance of the appellants was produced for consideration. It is noticeable that at the relevant time, the appellants were not in position to deny the terms and conditions on account of fear of unemployment and losing the job. In case of Abdul Bari and 524 others Vs. National Bank of Pakistan reported as 2005 SCMR 100 at page 116 the honourable Supreme Court of Pakistan considered such circumstances and held as under:-

" In the case of Pakistan V. Public at large PLD 1987 SC 304 it was contended that before the Shariat appellate bench of this Court that the provisions of law impugned therein amounted to a contract between the Government and the civil servant and thus they involved his consent. It was observed that in fact it is not in the nature of a free consent between the agents. On one hand, state power was projected in the form of statute and on the other, the civil servant had no choice of a bargain on those provisions when joining the service. He could not get it changed. In Habibullah Vs. Government of the Punjab and 5 others PLD 1980 Lah, 37, it was held that the employer being placed in position of authority and strength could always coerce employees to their legal protection and accept contractual terms and the pains of his job."

(underlines are mine).

JUDGMENT SHEET

Appeal No. 3732, 3735 and 3736 of 2016

15. Upshot of above discussions is that the impugned orders are not sustainable in the eye of law. Thus, it is declared that the appellants are not probationers within the meaning of **the PMS (Probationers) Training, Final Passing Out Examination and Seniority Rules, 2012** and these rules are not applicable in case of the appellants. Moreover, the previous service rendered by the appellants on contractual basis with the department shall be counted towards seniority, retirement, pensionary benefits.

15. For what has been discussed above, the appeals are accepted and impugned orders are set aside. The office is directed to place on record copy of the instant judgment in connected appeals.

ANNOUNCED
30.9.2016

MEMBER-I

Note:

This judgment has been dictated, read and signed by the undersigned which consists of 20 signed pages.

ANNOUNCED
30.9.2016

MEMBER-I

"Approved for reporting."