

REGISTERED



**GOVERNMENT OF THE PUNJAB
SPECIAL EDUCATION DEPARTMENT**

ORDER

No. LO(Writ)3-5/2024. WHEREAS, Ms. Asma Batool, Wife of Nayyer Abbas, Caste Khokhar, Resident of Noor Pur Thal, District Khushab, presently engaged as Daily Wager at Govt. Special Education Centre, Khushab ('petitioner') filed Writ Petition No. 11604 of 2024 before Hon'ble Lahore High Court, Lahore with following prayer:

"It is, therefore, very humbly prayed that the instant writ petition may kindly be accepted and the respondents may graciously be directed to regularize the services of the petitioner since her first appointment, to meet the ends of justice.

It is further prayed that petitioner may be allowed to perform her duties and respondents may graciously be directed to release the payable salaries of the petitioner till final disposal of main writ petition.

Any other relief which this Honourable Court deems fit and proper may also very graciously be granted."

The Hon'ble Lahore High Court, Lahore vide order dated 23.02.2024, disposed of the case with following order:

"xxx.2. In view of the above, let a copy of this petition alongwith its annexures be remitted to respondent No.1 who shall treat it as a part of pending representation, if pending, and shall decide the same strictly in accordance with law through a reasoned order after hearing all the necessary parties within a period of 60 days from the receipt of a certified copy of this order.

3. It is clarified that this order shall not be construed to be recognition of any right of the petitioner and respondent No.1 shall decide the case of the petitioner on its own merits.

*4. With the above direction, this petition stands **disposed of.**"*

2. **AND WHEREAS**, in order to comply with the directions of Hon'ble Court contained in order dated 23.02.2024, the petitioner and all necessary parties were afforded an opportunity of personal hearing on 13.03.2024. The petitioner appeared on the fixed date and while reiterating the stance already taken by her in her application and Writ Petition and *inter alia* contended that on the approval of Chief Executive Officer, District Education Authority, Khushab and after fulfilling all coal formalities, her services were engaged as Daily Wager vide order dated 16.03.2020 for a period of 89-days; that due to her satisfactory work and conduct, her services were re-engaged from time to time and she is still performing her duties without any complaint from any corner; that she requested for regularization of her services and for said purpose she earlier filed Grievance Petition before Labour Court No. 5, Sargodha (Camp at Khushab) which was returned under Order VII, Rule 10 CPC being not maintainable vide order dated

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2023; that subsequent thereto, she filed Writ Petition No. 3702/2024 before Hon'ble Lahore High Court, Lahore for regularization of her services which was disposed of being suppressed vide order dated 18.01.2024; that after that she filed an application before Secretary, Special Education Department on 29.01.2024 with request to regularize her services but no action was taken, hence she again filed Writ Petition No. 11604/2024 before Hon'ble Lahore High Court, Lahore with the prayer to direct the authorities to regularize her services since her first appointment to meets the ends of justice; that she is entitled for the relief claimed for in the application and Writ Petition on the ground that her performance during her engagement as Daily Wager has remained satisfactory; that she is discharging her duties as Aya in Government Special Education Center, Khushab and keeping in view her long tenure as Daily Wager which span over 04-years her services may be regularized.

3. **AND WHEREAS**, on behalf of Directorate General of Special Education, Punjab, **Director (Admin)**, Directorate General of Special Education, Lahore, Punjab attended the hearing. Whereas, from the field formation, **District Education Officer (Special Education), Sargodha** and Mr. Anayat Ullah Niazi, Headmaster, **Focal Person of Special Education, District Khushab** also attended the hearing. The stance taken by all the Departmental Representatives can be summed in the manner that the petitioner filed application before the then Deputy Commissioner, Khushab for her engagement as Daily Wager, and after approval of the then Deputy Commissioner, Khushab the petitioner was enrolled as Daily Wager for a period of 89-days without any competitive process; that the petitioner has not been appointed as contract employee and she is drawing her salary from the Head of Contingent Paid Staff and it is settled principle of law that a contingent paid employee cannot claim regularization as a matter of right; that the petitioner was engaged on contingent basis for a specific time period which never exceeded 89 days and she was re-engaged from time to time keeping in view administrative exigencies; that services of the petitioner were not hired on sanctioned posts rather she being engaged as Daily Wager is discharging her duties as Aya and the stance of the petitioner that she has been engaged on the post of Aya is misconceived; that the petitioner being Daily Wager is not entitled for regularization under the Punjab Regularization of Services Act, 2018 which ousts the persons engaged as Daily Wager from the definition of Employee; that the petitioner is not work charge / contractual employee and she was engaged purely on daily wages basis for some specific period. The said hiring of contingent paid staff was only allowed for effective service delivery to the special students of the Centre. The Departmental Representatives further apprised that for contingent paid staff / daily wager, there is no vested right to be regularized in the service because regularization is an executive function requiring sanctioned post as it involves financial considerations upon Government exchequer. In the instant case, there is sufficient record available that shows that the petitioner was not recruited through competitive process on contract basis against any sanctioned post of the Centre, but was temporarily engaged/employed and as Daily Wager, thus her services could not be regularized. They further stated that stance of the petitioner that she is enrolled as Daily Wager for last 04 years, hence her services are liable to be regularized is based on misconception because it is settled by now that mere

length of service cannot be made sole basis to seek regularization. The Departmental Representative further asserted that the petitioner has failed to persuade through record and also failed to place on record any law/rule/policy through which it could be established that what she is claiming through her application is lawfully permissible.

4. **AND WHEREAS**, during the course of hearing the petitioner was confronted with the query *'whether she was recruited through competitive process (after fulfilling all codal and legal formalities) as claimed by her in her application and Writ Petition?* In response to that the petitioner replied in negative and admitted that she filed an application for her engagement as Daily Wager and no competitive process was held for her engagement as Daily Wager. The petitioner was also confronted with the query, *'whether she ever participated in competitive process for any post during her engagement as Daily Wager?'* In response to that the petitioner stated that she applied for a post in recruitment process carried out in the year 2020 but she could not qualify. The petitioner was also asked *'whether she is aware of the fact that a person engaged as Daily Wager cannot claim regularization of her services and her engagement is purely temporary is nature?'* In response, she stated that she is aware of this fact and she has filed instant application for consideration on compassionate grounds. The petitioner was also asked *'whether she is aware of her Competent / Appointing Authority and had she filed any application before said authority for regularization of her services?'* In reply the petitioner stated that Headmaster concerned is her Competent / Appointing Authority and she has not filed any application before said authority.

5. **AND WHEREAS**, after hearing all concerned and examining the record/material related to the case, it is observed that the petitioner was engaged as contingent paid staff / Daily Wager on the basis of her own application (*which contain the request for appointment as Daily Wager*) vide order dated 16.03.2020. The petitioner was not enrolled after advertising any posts through competition on open merit. As per record, the petitioner had been granted extension in her term of engagement only for 89-days (*from time to time*). The petitioner having been engaged temporarily as daily wagger, *without any competitive process*, is drawing salary from head of account Contingent Paid Staff and not against any post. It is admitted at all hands that the petitioner was engaged as Contingent Paid Staff on daily wage basis and she was not recruited against any sanctioned post. The jurisprudence evolved on the subject holds that there is no vested right to seek regularization for employees hired on daily wages and enrollment through daily wages, without any prescribed criteria, standards and transparent procedure, cannot be a route to become civil servant or regular employee in Public Sector. It is imperative to observe that the process of regularization requires backing of any law, rules or policy, the applicable law regulating the regularization of services of employees i.e., the Punjab Regularization of Services Act, 2018, Section 2(c) of which expressly excludes the daily wagger / persons appointed as work charged employees from the ambit of this law. Moreover, the services of the petitioner were engaged in the year 2020, *without advertising any posts through competition on open merit*, and it is also settled by now that mere length of service or efflux of time cannot be made sole basis to seek regularization.

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It is also important to observe here that undersigned is neither Competent nor Appointing / Hiring Authority of Daily Wager. The petitioner instead of filing application before the concerned appointing authority has filed application before the undersigned which is not maintainable. Moreover, the August Supreme Court of Pakistan in case reported as **PLJ 2022 SC 35** has held as under;

"Daily Wagers cannot be regularized, untill and unless the posts, where against they were working, are advertised, as per rules--In all fairness, they may be given a maximum five percent additional marks, for their past service as daily Wagers, while evaluating their candidature on open merit, after public advertisement."

6. **NOW, THEREFORE**, in the light of above stated facts, I, **Saima Saeed**, Secretary Special Education / Respondent No. 1 in the instant case, after having considered all the aspects, material related to the case alongwith applicable laws/rules, verbal submissions of the petitioner, am of considered view that I am neither Competent nor Appointing / Hiring Authority of the petitioner and she has not filed any application before the authority who is her Appointing Authority. Moreover, the petitioner is a Daily Wager and excluded from the definition of employee under the provisions of applicable law i.e., the Punjab Regularization of Services Act, 2018. The relief claimed by the petitioner through application is contrary to the applicable law/rules/policies. Hence, the application of the petitioner is found to be not maintainable and devoid of merits. In view thereof, application of the petitioner is hereby **dismissed** being not maintainable, contrary to the law/rules/policies and devoid of merits, substance and legal force. The order dated 23.02.2024 passed by Hon'ble Lahore High Court, Lahore in Writ Petition No. 11604/2024 is hereby complied with in above stated terms.

Saima Saeed

(SAIMA SAAED)
SECRETARY to

GOVERNMENT OF THE PUNJAB
SPECIAL EDUCATION DEPARTMENT /
RESPONDENT NO. 1

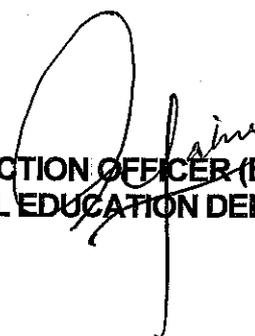
Dated Lahore, the
March 21st / 2024

No. & Date Even:

A copy is forwarded for information and necessary action to the: -

1. Deputy Registrar (Judicial), Lahore High Court, Lahore in compliance of order dated 23.02.2024 passed in Writ Petition No. 11604/2024.
2. Director General, Special Education, Punjab, Lahore.
3. Director (Admin), Directorate General of Special Education, Punjab, Lahore.
4. District Education Officer (Special Education), Sargodha to ensure delivery of this order to the petitioner under intimation to this department.
5. Headmaster/Headmistress, Govt. Special Education Centre, Khushab to ensure delivery of this order to the petitioner under intimation to this department.

6. P.S. to Secretary Special Education Department.
7. Petitioner / **Ms. Asma Batool**, Wife of Nayyer Abbas, Caste Khokhar, Resident of Noor Pur Thal, District Khushab, presently engaged as Daily Wager at Govt. Special Education Centre, Khushab.
8. Master File.


SECTION OFFICER (ESTT.)
SPECIAL EDUCATION DEPARTMENT