

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ

MR. JUSTICE MIAN SAQIB NISAR

MR. JUSTICE AMIR HANI MUSLIM

MR. JUSTICE IQBAL HAMEEDUR RAHMAN

MR. JUSTICE KHILJI ARIF HUSSAIN

CIVIL APPEAL NO.605 OF 2015

(On appeal against the judgment dated 18.2.2015)

Passed by the Peshawar High Court Peshawar, in

Writ Petition No.1961/2011)

Rizwan Javed and others

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Appellants

VERSUS

Secretary Agriculture Livestock etc

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Respondents

For the Appellant :

Mr. Ijaz Anwar, ASC

Mr. M. S. Khattak, AOR

For the Respondents:

Mr. Waqar Ahmed Khan, Addl. AG KPK

Date of hearing

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24-02-2016

ORDER

AMIR HANI MUSLIM, J.- This Appeal, by leave of the

Court is directed against the judgment dated 18.2.2015 passed by the

Peshawar High Court, Peshawar, whereby the Writ Petition filed by the

Appellants was dismissed.

2. The facts necessary for the present proceedings are that on

25-5-2007, the Agriculture Department, KPK got an advertisement

published in the press, inviting applications against the posts mentioned in

the advertisement to be filled on contract basis in the Provincial Agri-

Business Coordination Cell [hereinafter referred to as ‘the Cell’]. The

Appellants alongwith others applied against the various posts. On various

dates in the month of September, 2007, upon the recommendations of the Departmental Selection Committee (DPC) and the approval of the Competent Authority, the Appellants were appointed against various posts in the Cell, initially on contract basis for a period of one year, extendable subject to satisfactory performance in the Cell. On 6.10.2008, through an Office Order the Appellants were granted extension in their contracts for the next one year. In the year 2009, the Appellants' contract was again extended for another term of one year. On 26.7.2010, the contractual term of the Appellants was further extended for one more year, in view of the Policy of the Government of KPK, Establishment and Administration Department (Regulation Wing). On 12.2.2011, the Cell was converted to the regular side of the budget and the Finance Department, Govt. of KPK agreed to create the existing posts on regular side. However, the Project Manager of the Cell, vide order dated 30.5.2011, ordered the termination of services of the Appellants with effect from 30.6.2011.

3. The Appellants invoked the constitutional jurisdiction of the learned Peshawar High Court, Peshawar, by filing Writ Petition No.196/2011 against the order of their termination, mainly on the ground that many other employees working in different projects of the KPK have been regularized through different judgments of the Peshawar High Court and this Court. The learned Peshawar High Court dismissed the Writ Petition of the Appellants holding as under : -

“6. While coming to the case of the petitioners, it would reflect that no doubt, they were contract employees and were also in the field on the above said cut of date but they were project employees, thus, were not entitled for regularization of their services as explained above. The august Supreme Court of Pakistan in the case of Government of Khyber

Pakhtunkhwa Agriculture, Live Stock and Cooperative Department through its Secretary and others vs. Ahmad Din and another (Civil Appeal No.687/2014 decided on 24.6.2014), by distinguishing the cases of *Government of NWFP vs. Abdullah Khan* (2011 SCMR 989) and *Government of NWFP (now KPK) vs. Kaleem Shah* (2011 SCMR 1004) has categorically held so. The concluding para of the said judgment would require reproduction, which reads as under : -

“In view of the clear statutory provisions the respondents cannot seek regularization as they were admittedly project employees and thus have been expressly excluded from purview of the Regularization Act. The appeal is therefore allowed, the impugned judgment is set aside and writ petition filed by the respondents stands dismissed.”

7. In view of the above, the petitioners cannot seek regularization being project employees, which have been expressly excluded from purview of the Regularization Act. Thus, the instant Writ Petition being devoid of merit is hereby dismissed.

4. The Appellants filed Civil Petition for leave to Appeal No.1090 of 2015 in which leave was granted by this Court on 01.07.2015. Hence this Appeal.

5. We have heard the learned Counsel for the Appellants and the learned Additional Advocate General, KPK. The only distinction between the case of the present Appellants and the case of the Respondents in Civil Appeals No.134-P of 2013 etc. is that the project in which the present Appellants were appointed was taken over by the KPK Government in the year 2011 whereas most of the projects in which the aforesaid Respondents were appointed, were regularized before the cut-off date provided in North West Frontier Province (now KPK) Employees (Regularization of Services) Act, 2009. The present Appellants were appointed in the year 2007 on contract basis in the project and after completion of all the requisite codal formalities, the period of their contract appointments was extended from

time to time up to 30.06.2011, when the project was taken over by the KPK Government. It appears that the Appellants were not allowed to continue after the change of hands of the project. Instead, the Government by cherry picking, had appointed different persons in place of the Appellants. The case of the present Appellants is covered by the principles laid down by this Court in the case of Civil Appeals No.134-P of 2013 etc. (Government of KPK through Secretary, Agriculture vs. Adnanullah and others), as the Appellants were discriminated against and were also similarly placed project employees.

7. We, for the aforesaid reasons, allow this Appeal and set aside the impugned judgment. The Appellants shall be reinstated in service from the date of their termination and are also held entitled to the back benefits for the period they have worked with the project or the KPK Government. The service of the Appellants for the intervening period i.e. from the date of their termination till the date of their reinstatement shall be computed towards their pensionary benefits.

Chief Justice

Judge

Judge

Judge

Judge

Announced in open Court on _____.

J

Approved for reporting.
Sohail/**