

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Mian Saqib Nisar, CJP
Mr. Justice Umar Ata Bandial
Mr. Justice Faisal Arab

CIVIL APPEALS NO.1515 & 1516 OF 2016

(On appeal from the judgment/order dated 02.06.2015 passed by
Peshawar High Court, Peshawar in W.Ps. Nos.4122/2010 & 214/2011)

Govt. of Khyber Pakhtunkhwa, Thr. Secretary Energy & Power Department, Peshawar, etc.	Appellants. (in both cases)
Versus			
Ihsan Ullah	Respondent (in C.A.1515/2016)
Masood Khan & others	Respondent (in C.A.1516/2016)

For Appellant No.1 : Mr. Umar Farooq Adam, Addl.AG KPK
(in both cases)

For Appellants (2-3) : Mr. Shumail Butt, ASC.
**(in C.A.1515/2016 & for
Appellants 2-6 in C.A.1516/2016)**

For respondents : Mr. Zulfiqar Khalid Maluqa, ASC.
(in both cases)

Date of hearing : 08.02.2017.

JUDGMENT:

UMAR ATA BANDIAL, J. – The Appellants challenge
the common judgment of the learned Peshawar High Court dated
02.06.2015, holding that the contract services of the Respondents
stand regularised by operation of law, under Section 19(2) of the

KPK Civil Servants Act 1973 ("**Act, 1973**"), as amended by the KPK Civil Servants (Amendment) Act, 2005 ("**Amendment Act, 2005**").

2. The Respondents were appointed in 2004 as Accountants BPS-16 for one year on contract basis to project posts in various projects of the Sarhad Hydel Development Organisation ("**SHYDO**") now known as the Pakhtunkhwa Energy Development Organisation ("**PEDO**"), which organisation is represented by Appellants No. 2 to 5. The Respondents' contracts were repeatedly extended until December 2010, when they were informed that their employment was being terminated due to the completion of their respective projects. The Respondents challenged their termination vide Writ Petitions before the learned Peshawar High Court. By the impugned judgment dated 02.06.2015, the learned High Court allowed the Petitions and held that the Respondents stood regularized by operation of law, as already noted above.

3. We have heard the learned counsel for the parties and have gone through the impugned judgment carefully and perused the record.

4. In 2005, Section 19(2) was inserted into the Act, 1973 by the Amendment Act, 2005 which reads as under:

"19. Pension and Gratuity

(1) ...

(2) A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act, but appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been

appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after commencement the said Act shall, for all intents and purposes, be civil servant, except for the purposes of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, along with the contributions made by Government to his account in the said Fund in the prescribed manner." (*emphasis supplied*)

5. The fiction of regularisation of service created by Section 19(2) *supra* was applied by the learned High Court because the date of contract employment of the Respondents falls within the qualifying period prescribed in the said provision. However, we are unable to subscribe to the view taken by the learned High Court for a number of reasons.

6. Firstly, it is pertinent to note that according to Section 2(1)(b) of the Act, 1973:

"2.(1) ...

(a) ...

(b) "civil servant" means a person who is member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include-

- (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
- (ii) a person who is employed on contract, or on work-charged basis or who is paid from contingences; or
- (iii) a person who is "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923)." (*emphasis supplied*)

In other words, according to the Act, 1973 civil servants are employees who are in the service of the provincial government or

who hold a civil post in such government. According to the Sarhad Hydel Development Organisation Act, 1993 (now in its amended form known as the Pakhtunkhwa Energy Development Organisation Act, 1993) SHYDO/PEDO is not a government department; it is rather a semi-autonomous body. The expressions "service or post" used in Section 19(2) *ibid* manifest the attributes given in the aforesaid definition of a civil servant in Section 2(1)(b) of the Act, 1973. It becomes clear that Section 19(2) applies to employees of the government and not to employees of semi-autonomous bodies. Therefore, in the absence of material showing that the Respondents are members of a Provincial service or are holding regular sanctioned posts in the Provincial Government, they are not eligible for the benefit granted by Section 19(2) *ibid*.

7. Secondly, it is an undisputed fact that the Respondents were project employees. Their letters of appointment clearly state that their posts were "temporary project posts" which would be "likely to continue till the completion of the project." The rationale for the 2005 amendment incorporating Section 19(2) in the Act, 1973 refutes the view that the new sub-Section applies to project employees. Under its 2002 Contract Policy, the KPK government made contract based appointments on sanctioned posts falling under the provincial government budget. Such employment created disparity between the rights and privileges of regular and contract employees of the government. Section 19(2) *ibid* was introduced to mitigate that imbalance. A factual narrative of the remedial object of

the said provision is available in the judgment of the learned Peshawar High Court in **Tariq Habib vs. Govt of NWFP** [2011 PLC (CS) 1479].

8. The impugned judgment by the learned High Court places reliance on **Government of KPK and others vs. Kaleem Shah and others** (2011 SCMR 1004) as authority for regularisation of project employees. The view expressed in the said judgment follows the judgment of this Court dated 01.03.2011 passed in Civil Appeals Nos. 834 to 837 of 2010 titled **Govt. of NWFP and others vs. Abdullah Khan and others**. In that case, the employer government department had failed to prove that the contesting respondents were project employees. Consequently the latter were granted regularisation in service. The facts of the present case are different. The Respondents are admittedly project employees in a semi-autonomous statutory body of the provincial government and the only question is whether such employment qualifies for regularization under Section 19(2) of the Act, 1973. We have already observed that the eligibility criterion for relief under Section 19(2) of the Act, 1973, namely, being member of a provincial service or holder of a civil post in the provincial government, is not met by the Respondents. The KPK (Regularisation of Services) Act, 2009 also excludes project employees from its ambit, therefore, the Respondents are ineligible even on that score. Consequently, we are not persuaded by the relevance of the **Kaleem Shah**'s case *supra* relied by the learned High Court to the matter in issue.

9. The Respondents have also alleged that they have been discriminated against by their employer SHYDO/PEDO. We do not, however, find reliable material to accept this contention. The Respondents have cited the cases of numerous SHYDO employees who have been regularised but these employees were not shown to be project employees. The difference of status between the said regularised employees and the Respondents is clear from their respective letters of appointment. Unlike the Respondents, the letters of appointment of the regularised employees do not offer employment on temporary project posts. The Respondents are therefore, *prima facie*, not similarly placed as the regularised employees. The learned counsel for the Respondents cited the regularisation of one Mr. Anwar Zeb, a project employee. The Appellant employer has, however, stated that Mr. Anwar Zeb was 'inadvertently' regularised but his status has been reversed. In view of the foregoing, the Respondents' plea of discrimination is, *prima facie*, misconceived.

10. Be that as it may and in the interest of justice, the Respondents may within one month hereof place documentary evidence of the regularisation of service of any project employee of SHYDO/PEDO before the Appellant authority in order to show that notwithstanding the employment of such employee on a temporary project post his services were nevertheless regularised by the Appellant. In such event, the Appellant authority shall after

Verification forthwith regularise the services of the Respondents in SHYDO/ PEDO with effect from the date of termination of their services.

For the foregoing discussion, the impugned judgment dated 02.06.2015 is set aside and these appeals are partly allowed in the above terms.

Chief Justice

Judge

Judge

Announced
in Court on **05.05.2017.**

Sd/-
Judge

NOT APPROVED FOR REPORTING.