

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE IOBAL HAMEEDUR RAHMAN

(On appeal against the judgment dated 15.09.2015
Passed by the Peshawar High Court Peshawar, in
R.P.No.32-P/2014 in W.P.No.2547-P/2012)

VERSUS

Divisional Forest Officer, Mardan
Wildlife Division, Mardan and others. í í Respondents

Date of hearing : 25-02-2016

JUDGMENT

AMIR HANI MUSLIM, J.- This Appeal, by leave of the Court is directed against order dated 19.05.2015 passed by the Peshawar High Court, Peshawar, whereby the Review Petition filed by the Appellant against the order dated 13.02.2014 passed in Writ Petition No.2547-P of 2012, was dismissed.

2. The facts necessary for the present proceedings are that on 01-02-2010, the Appellant was appointed as Wildlife Watcher (BS-05) in Sakra Wildlife Range, Mardan, on contract basis till the expiry of the Project. On 25.05.2012, during the contract period of the Appellant, the Finance Department, Government of KPK, vide letter No.BO11/FC/1-

and the contract posts of Wildlife Watchers into permanent posts in the said Range. However, the Appellant was not considered for appointment on permanent basis and his services were terminated, vide order dated 05.06.2012.

3. The Appellant assailed the order of his termination before the Peshawar High Court, by filing Writ Petition No.2547 of 2012, which was dismissed. The Appellant filed Review Petition against the judgment passed by the learned High Court in the Writ Petition, which too was dismissed. The Appellant assailed the judgments of the learned Peshawar High Court before this Court by filing Civil Petition for leave to Appeal in which leave to Appeal was granted on 16.12.2015. Hence this Appeal.

4. The learned Counsel for the Appellant has contended that the post against which the Appellant was appointed had been converted to a regular post, therefore, the Appellant ought to have been appointed against the regular post. He submits that many other employees working on contract basis in the projects were regularized after the project posts had been converted to regular posts.

5. On the other hand, the learned Additional Advocate General, KPK, has supported the impugned judgments.

6. We have heard the learned Counsel for the Appellant and the learned Additional Advocate General, KPK. The only distinction between the case of the present Appellant and the case of the Respondents in Civil Appeals No.134-P of 2013 etc. is that the project in which the present Appellant was appointed was taken over by the KPK Government in the

st 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 Appellant was appointed in the year 2010 on contract basis in the project after completion of all the requisite codal formalities, when on 25.05.2012, the project was taken over by the KPK Government. It appears that the Appellant was not allowed to continue after the change of hands of the project. Instead, the Government by cherry picking, had appointed some other person in place of the Appellant. The case of the present Appellant 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 was discriminated against and was entitled to continue the job with the employees who were similarly placed and were allowed induction on regular basis.

7. We, for the aforesaid reasons, allow this Appeal and set aside the impugned judgments. The Appellant shall be reinstated in service from the date of his termination and is entitled to the back benefits for the period he has worked with the project or the KPK Government. The service of the Appellant for the intervening period i.e. from the date of his termination till the date of his reinstatement shall be counted towards his pensionary benefits.

Judge

Judge

Islamabad the, 25th Feb, 2016.

Approved for reporting.
Sohail/**

Judge