

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

Civil Appeal No. 634/2014 and
Civil Appeals No.431 & 432/2020

(On appeal from the judgment/Order dated 8.5.2012
and dated 20.4.2018 passed by the Peshawar High
Court, Peshawar in W.P.3095/2011 and
W.P.No.3058/2011).

1. Aqeel Shahzad & others ...(In CA.634/2014)

2. Director General Agriculture (Extension) Govt. of KPK
Peshawar & others ...(In CA.431/2020)

3. The Chairman, Peshawar Market Committee, Fruit and
Vegetable, Peshawar & others(In CA.432/2020)

...APPELLANTS

VERSUS

1. Govt. of KPK thr. Chief Secretary KPK Peshawar &
others ...(In CA.634/2014)

2. Muhammad Israr & others ...(In CA.431/2020)

3. Muhammad Israr & others(In CA.432/2020)

...RESPONDENTS

For the appellants: Mr. Misbahullah Khan, ASC
Mr. M.S. Khattak, (Absent)
(In CA.634/2014)

Mr. Zahid Yousaf Qureshi,
Addl.A.G., KP
Mr. Saadullah Jandoli, AOR (Absent)

*(In CA.431/20 also for respondents No.1-5
in CA.No.634/14)*
Sardar Ali Raza, ASC
Syed Rifaqat Hussain Shah, AOR
(In CA.432/20)

For the respondents 1-16:

Mr. Khalid Rehman, ASC
Mr. M.S.Khattak, AOR (Absent)

(In CAs.No.431-432/20)

Other respondents: Nemo

Date of hearing: 22.7.2020

JUDGMENT

MAZHAR ALAM KHAN MIANKHEL, J.-

We have before us an appeal (Civil Appeal No.634/2014) with leave of this Court vide order dated 15th April, 2014 against a judgment dated 8th May, 2012 of Peshawar High Court, Peshawar whereby the Writ Petition No.3095/2011 filed by the appellants for regularizing their services from the date of their initial appointments was dismissed. Similarly a Writ Petition No.3058/2011 was filed by the employees of Peshawar Market Committee, almost with the similar prayer as in the above noted Writ Petition which is reproduced herein-below:-

“On acceptance of this writ petition, this Hon’ble Court may graciously be pleased to:-

- i) Direct the respondents to convert the appointment order dated 01.10.2010 into respective regular basic pay scale/grace.
- ii) Further direct the respondents to issue order of regularization of services of petitioners scale-wise since the entry into their respective services.

- iii) Direct the respondents to release the outstanding salaries of the petitioners since June 2011 forthwith.
- iv) Any other relief deemed appropriate by this Honourable Court may also be granted in favour of petitioners”.

which was allowed by a Division Bench of the Peshawar High Court vide its judgment dated 20th April, 2018. The Appellants '*Director General Agriculture (Extension) Govt. of Khyber Pakhtunkhwa Peshawar & others*' AND '*The Chairman, Peshawar Market Committee, Fruit and Vegetable, Peshawar & others*' in Civil Appeals No.431/2020 & 432/2020 respectively have questioned the said judgment with leave of this Court dated 3rd April, 2020.

Since common questions of law and facts are involved in these appeals so taken together.

2. The appellants of Civil Appeal No.634/2014 and private respondents of Civil Appeals No.431/2020 & 432/2020 (The Employees) were appointed and working against different posts since 1994 to 2010 on fixed pay but in different pay scales. Their services were initially regulated under the erstwhile Act and Rules i.e. 'The Agricultural Produce Markets Act, 1939 (V of 1939)' and 'Agricultural Produce Markets Rules, 1940' since repealed by the Khyber Pakhtunkhwa Agricultural and Livestock Produce Markets Act, 2007 (The Act, 2007) and Khyber Pakhtunkhwa Agricultural Produce Markets General Rules, 2011 (The Rules 2011). Besides the Rules 2011, bye-laws under Section 36 of the Act, 2007 were also approved by the Government of the Khyber Pakhtunkhwa vide letter No.SOAI (AD)4(5)3/2012/Vol-I dated 12th February, 2013.

3. Learned counsel for the parties and learned Additional Advocate General, Khyber Pakhtunkhwa were heard and record of the case was perused.

4. Record of the case would reveal that Section 16 of the repeal Act of 1939 and the Act 2007 deal with the appointment of employees of the Market Committees. Whereas Section 17 of the both the laws *ibid* provide the status of the employees of Market Committees as that of public servants within the meaning of Section 21 of the Pakistan Penal Code 1860 (PPC). Bye-laws of 2006 under the erstwhile Act of 1939 provide three categories of employees' i.e. (1) Regular (2) Contract (3) Contingent, whereas Bye-laws of 2013 under the Act 2007 provide two categories of employees i.e. (1) Regular (2) Daily Wages.

The employees before us in both the cases were appointed between 1994 to 2010. The employees so appointed continued with their services. The erstwhile Act, 1939 was once repealed having become redundant due to the Khyber Pakhtunkhwa Local Government Ordinance, 2001 *vide* Ordinance No.XXXVIII of 2002 and then again the erstwhile Act, 1939 was revived by repealing the Ordinance, 2002 *ibid vide* Khyber Pakhtunkhwa, Act VII of 2004. The Government kept on improving the market committees' system. In the same effort, the Government made Bye-law of 2006 under the Act 1939. Thereafter, the Government promulgated yet another Act "Khyber Pakhtunkhwa Agricultural and Livestock Produce Markets Act, 2007" (Act IV of 2007). The Government also made and published/notified rules under Section 35 of the Act, 2007 with the name 'The Khyber

Pakhtunkhwa Agricultural Produce Markets General Rules, 2011’ and Bye-laws under Section 36 thereof.

Rule 71 of 2011 Rules deals with the appointments, terms and conditions of service of employees. *(Sub-Rules 1,2,5 & 6 are relevant)*. Relevant sub-rules of Rule 71 ibid are reproduced for ready reference:-

“71. **Appointment terms and conditions of service of employees.**

- (i)

The pay scales as prescribed in Schedule ‘IV’ annexed hereto shall apply to all the employees of a market committee.
- (ii)

Recruitment/promotion to the posts of a market committee in future shall be made in accordance with-

(a)

The pay scales as prescribed in Schedule ‘IV’ and

(b)

The qualifications as prescribed in Schedule ‘V’
- (iii)

.....
- (iv)

.....
- (v)

If any person already employed by a market committee is not covered by Schedule ‘IV’ he shall be allowed to continue as such or may be absorbed at his request at place where such vacancy exists, with the prior approval of Government. (Emphasis supplied).
- (vi)

In respect of service conditions including disciplinary matters and other matters ancillary thereto, the employees of the market committee shall be governed mutatis mutandis by the rules applicable, from time to time, to the employees of Government.
- (vii)

.....
- (viii)

.....”

5. The employees before us were appointed by the competent authority as mentioned in both the laws *ibid* with an admitted fact that there was no proper service structure at the time of such appointments. But a letter by Director General, Agriculture (Extension) KPK bearing No. E&M/29/165-D 14400/DGA dated 26.8.2011 present at Page/108,109 of the original file of Civil Appeal No.634/2014 would reflect that some 101 contingent/daily wages staff was regularized by ex-Market Committee. A letter bearing No. PMC/1-1/05 dated 02.09.2010 regarding regularization of contingent employees which is available on Page/51 of the Paper Book of Civil Appeal No.431/2020 confirms the fact of regularization of contingent employees. The above letter dated 26.8.2011 also refers to eleven other employees of different grades appointed during 1994, 1995 and 1996. It further says that terms and conditions and BPS mentioned in their appointment orders clearly indicate that their appointments were made on regular basis and they have served PMC for more than seventeen years and they as per Section 17 of the Act, 2007 are public servants and entitled to all benefits of pay and allowances as admissible to other Government employees. The Government was asked to consider their cases by keeping in mind span of their services. All the names contained in the said letter are of the appellants except the one at Serial No.11, Imdad Khan. His name does not appear in the array of appellants rather one Tanveer Khan has been arrayed as appellant No.11.

6. In both the Writ Petitions the stance of the Government of Khyber Pakhtunkhwa (The Government) and the Peshawar Market Committee (PMC) was almost the same that the

appointments made by the PMC were carried out in absence of any rules/instructions from the Government and there was no proper service structure for such appointments. The Government while realizing this fact constituted a committee vide its letter No.SOAII (AD)4(5)/2011/Vol-XIX dated 25.5.2011 to get a proper service structure and approved the recommendations of the said committee vide letter No.SOAII 4(5) 2011/Vol XX dated 26.8.2011. Besides the above, the contention of the learned Additional Advocate General and the counsel for the Peshawar Market Committee was that the Government has approved proper budget for the employees of Peshawar Market Committee as well as laid down a service structure and after approval of the same, appointments in the Market Committee would be made in accordance with the same.

The stance of the Government put forth through its comments in both the Writ Petitions regarding recommendations of the above noted committee was not so clear. The categoric stance of the committee in its second meeting held on 28.5.2011 was that appointments of the staff were carried out in absence of any rules/instructions of the Government and having no legal status may be terminated. Further recommended that till appointment of regular staff in the light of Schedule-IV of the Rules 2011, the noted thirteen staff members will perform their duties. These thirteen include the names of appellants.

7. While going through the impugned judgment dated 08.05.2012, we have noted that the learned Division Bench of the High Court has taken the very harsh and technical aspect of the matter which even goes against the provisions of the Act of 2007,

Rules of 2011 and the By-Laws of 2013 on the subject. Appointing Authority under Section 16 of the Act of 2007 is the Market Committee. Terms and conditions of the employees as reflected in the different appointment orders (both under the existing and the repealed laws) would show that the same were of permanent and regular nature. We, in the circumstances, don't think that the findings of the High Court are in accordance with law on the subject, hence are not maintainable.

8. We have noted that employees of the PMC who have spent/rendered services in the Committee since 1994-95 and that too without any blemish and in spite of the Act 2007, its Rules 2011 and the Bye-laws of 2013, have been made rolling stones struggling for their fundamental rights. We consider the action of respondents to terminate appellants and to make fresh appointments to be oppressive and against their fundamental rights specially when Rule 71(V) quoted above also gives protection to the persons already employed. While serving the PMC for such a long time, almost all of them would have lost their chance of fresh appointments in other Government departments. We in the circumstances cannot concur with the decision of the government and the Peshawar Market Committee (PMC) for termination of the employees or their fresh appointments under the Act 2007 and its rules and bye-laws *ibid*. We have also noted that the termination order dated 26.8.2011 of the employees in Writ Petition No.3058/2011 was passed after the Rules, 2011 were notified/published on 14.4.2011; such termination itself is in violation of Rule-71 (V) *ibid*.

So, in this view of the matter, while allowing Civil Appeal No.634/2014, we set aside the impugned judgment. Resultantly, the order of termination dated 26.8.2011 of the appellants, being illegal and unlawful, having no legal effect, is also set aside. We further direct the Government and the Peshawar Market Committee to consider regularization of the services of the Appellants in accordance with law. Civil Appeals No.431/2020 and 432/2020 are dismissed with no order as to costs.

Chief Justice

Judge

Judge

Islamabad,
22nd July, 2020
Sarfraz. /-
'Not approved for reporting'