

*Judgment Sheet*  
**PESHAWAR HIGH COURT, PESHAWAR**  
*(Judicial Department)*

**Writ Petition No.1630-P of 2019**

**Aurangzeb Khan & others**  
**Vs.**  
**Federation of Pakistan & others**

**JUDGMENT**

Date of hearing: **19.09.2019**

Petitioner(s) by: Mr. Muhammad Asif  
Yousafzai, Advocate.

Respondent(s) by: Mr. Muhammad Riaz Khan,  
AAG.

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**AHMAD ALI, J.-** Through the instant Writ  
Petition, under Article 199 of the Constitution of  
Islamic Republic of Pakistan, 1973, the petitioners  
are seeking the following relief: -

- (1) Declare the discriminatory treatment of the respondents and not regularizing the petitioners as other the Social Male Mobilizers are regularized and discriminatory treatment of the respondents may be declared as illegal, unlawful, unconstitutional discriminatory and against the spirit of Articles-2A, 4, 9, 25 & 38 (e) of the Constitution. Therefore, such discriminatory treatment of the respondents is not tenable under the law and ineffective upon the rights of petitioners.**

- (2) Direct the respondents to treat the petitioners at par with those regularized Male Mobilizers of Population Welfare Department and those regularized in other province and all of other areas of the country in light of judgment of Superior Court's with all back and consequential benefit.**
- (3) Any other remedy which this august court deems appropriate may also be awarded in favour of petitioners".**

2. Brief and essential facts leading to present petition are that petitioners were appointed as Male Mobilizers in the year 2007 in Population Welfare Programme FATA. Thereafter, the Population Welfare Department FATA has been given under the control of provincial government vide memo 24.10.2018 henceforward petitioners have been serving under the control of Provincial Secretary of Population Welfare Department. Although Male Mobilizers of Population Welfare Department Islamabad have been regularized vide notifications dated 16.11.2012 but petitioners are being discriminated. They are entitled to similar treatment and hence, the present writ petition.

3. Counsel for petitioners argued that 24 persons of Population Welfare Project Employees including 20 male mobilizers have been

regularized by virtue of the decision of Cabinet sub-Committee on 06.08.2012 vide notification dated 16.11.2012 whereas, petitioners have been discriminated. He maintained that after the merger of FATA in the province Khyber Pakhtunkhwa new posts are being created for the welfare of the people of erstwhile FATA, therefore, petitioners are entitled for regularization.

4. Learned AAG controverted the stance of petitioners and argued that previously, other male mobilizers filed writ petitions No.87/2011 and 1848/2011 at Principal Seat and D.I.Khan Bench of this Honourable Court which were allowed vide Judgments dated 20.06.2013 and 23.05.2013 and male mobilizers were regularized but in appeal from Department the august Supreme Court of Pakistan vide Judgment dated 04.03.2014 in Civil Appeals No.1486 & 1487/2013 was pleased to set aside both the judgments of this Honourable Court. Therefore, petitions are not entitled to regularization.

5. Arguments heard and record gone through.

6. The sifting of record reflects that petitioners were appointed as male mobilizers in the erstwhile FATA during the year 2007 and thereafter they worked under the Administrative Control of Secretary Social Sector Department FATA funded through Ministry of National Health Services Regulation & Coordination Islamabad. On the basis of 25<sup>th</sup> Constitutional amendment, promulgated on 5th June 2018, consequent whereupon, Article 247 of the Constitution was omitted and relevant changes in Article 246 of the Constitution were made. Eventually, FATA/PATA were merged with the Province of Khyber Pakhtunkhwa. Thus, petitioners also came under the administrative control of Population Welfare Department, Khyber Pakhtunkhwa. The main stress of learned counsel for petitioners was that the petitioners were previously serving under the administrative control of Federal Government and the Federal Government vide Office Order dated 16.11.2012, regularized the services of 20 social mobilizers, whereas, petitioners were discriminated as they were working in the FATA.

Owing to merger of FATA, petitioners have come under the control of provincial government, therefore, their services are also required to be regularized by treating them at par with those whose services were regularized by the Federal Government. There is no cavil to the fact that the petitioners were appointed in due course of law as per the criteria laid down for the appointment of male mobilizer.

7. It is undisputed that petitioners were appointed vide office order bearing F. No.1(1) Vol-II/2007-08/Pop/3192-3215 dated 06.12.2007 issued by Deputy Director of the Population Welfare Directorate FATA. A resume of the terms & conditions mentioned therein reveals that the same was fixed pay employment for a contract period of two years or till the completion of the project, whichever is earlier. Clause No.3 of the terms & conditions provides that the contract is for two years or till the completion of the project whichever is earlier. However, the project is still continued and petitioners have been serving with unblemished service record. They are serving for

the last 12 years without any job security. Petitioners, even otherwise, have become overage to get the job anywhere else and especially in the circumstances when they have acquired the requisite qualification for the post; they have the right to continue against the same. Reliance is placed on the case titled “Sher Alam and 9 others Vs. Government of Pakistan through Secretary SAFRON, and 5 others” **2019 PLC (C.S.) 12 (Peshawar High Court)**.

8. We have carefully perused the Judgments dated 20.06.2013 and 23.05.2013 passed earlier by this Court in writ petitions No.87/2011 and 1848/2011 whereby services of some other male mobilizers were regularized, however, these judgments were set aside by august Supreme Court of Pakistan vide Judgment dated 04.03.2014 passed in Civil Appeals No.1486 & 1487/2013. Perusal of the ibid judgments reveals that the services of male mobilizers were regularized on the touchstone of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, XVI of 2009. However, the august Supreme Court was pleased to hold that under

Section 2(b) of the said Act, employees appointed against project post were specifically excluded from the benefit of the Act *ibid*. Besides, there was a specific condition in the appointment letter of said mobilizers that since the job is based on contract so the rules and regulations which apply to government servants will not be applicable and that the employee will not claim the privileges reserved for government employees. But the present petitioners are neither seeking their regularization on the basis of Act XVI of 2009 nor there is any condition which may restrain petitioners from claiming the privileges as government employees. A twelve years long service career of petitioners cannot be overlooked particularly when there is nothing on the entire case record to suggest that the services of petitioner would not be needed in the future. The august Supreme Court of Pakistan has taken serious view of keeping employees in hanging position for a long time without regularizing their services. Reliance is placed on the case titled “BISE, Faisalabad through Chairman and others

VS. Tanveer Sajid and others” (2018 S C M R 1405), wherein it was held:-

**“Daily wagers/contract employees of Board of Intermediate and Secondary Education ("the Board")---Regularization in service---Respondent-employees had been working in the establishment of the Board for long period of time ranging between 3 to 12 years, on contract basis---Contracts of said employees provided that they were initially appointed for a period of 89 days but after the expiry of said period, their contracts were renewed from time to time for further periods of 89 days at a time with an artificial break of 1 or more days; held, that motive behind such artificial break was to avoid regularization of respondents' services on the pretext that they were not continuously in service---Since the respondents were in service for a long time, it clearly showed that the posts they were occupying were permanent in nature and not casual or temporary---Services of respondents were not only required but also beneficial to the Board and that they (respondents) had been performing their duties with due diligence to the satisfaction of the authorities---High Court had rightly directed the Board to regularize services of respondents---Supreme Court deprecated the practice of keeping employees on temporary basis for long periods of time without confirming or regularizing their services---Petition for leave to appeal was dismissed and leave was refused.**

9. Even, otherwise, the Male Mobilizers appointed in Province of Punjab had filed Writ Petition No.13784 of 2010 which was allowed on 26.09.2013, where against the respondents had filed ICA before the Hon’ble Lahore High Court, which was also dismissed vide Judgment dated



17.03.2014. Same Judgment was assailed before the Apex Court in Civil Petition No.646-L/2014, which was also dismissed vide order dated 19.02.2016. Hence, the Judgment of Lahore High Court passed in the ibid Writ Petition attained finality. Same is the view of Hon'ble Sindh High Court, Karachi taken in CPs No.D-1303 of 2016, No.D-980, D-1133, D-1304, D-1350, D-1351, D-1383, D-1429, D-1502, D-1829, D-2299, D-2300 of 2016 and No.D-6802 of 2017 vide its Judgment/order dated 12.03.2018. Therefore, this Court cannot take other view than the one taken by the Hon'ble Lahore High Court and Sindh High Court, Karachi; and on the basis of the same, the present petitioners are also entitled to be treated with same yardstick.

**10.** According to the terms and conditions of the appointment order of petitioners, they have been engaged on fixed pay on the basis of two years contract which is in continuance till date and therefore, they cannot be termed as retained employees against retained fee. Therefore, the objection raised by the respondents in their

comments that petitioners are retained against a monthly retainer fee holds no water. Petitioners by all intents and purposes are contract employees of the project which is sustained from 2007 with no end in the future particularly after the 25<sup>th</sup> Constitutional Amendment, there is need to do much more to resolve the socio-economic problems in the erstwhile FATA.

11. Criteria for appointment, responsibilities, objectives and SOPs of the male mobilizer or social mobilizer are defined in Clause 6.3.15 of the PC-1 of the Population Welfare Programme FATA (2010-15), according to which the social mobilizers play a pivotal role in enlighten adoption of family planning, responsible parenthood and mother & child healthcare. According to sub-Para-c, the Male Mobilizer has been re-designated as Social Mobilizer, Para-d denotes that the social mobilizer will be recruited on contract basis with fixed emoluments with fixed yearly increment. Thus, it has become crystal clear that the appointment of male/social mobilizer is on contract basis. Since petitioners have been serving

for the last twelve years, it means the male mobilizers are eternal need of the department and now the merger of erstwhile FATA, has increased their importance. Their services have been matured and as such, they have earned entitlement for regularization of their services. Regularization of employees does not require any statutory rules rather the same depends on the length of their service, therefore, they are fully entitled to be regularised. Reliance is placed on the cases titled, Abdul Ghafoor and others VS. The President National Bank of Pakistan and others **(2018 SCMR 157)**, Board of Intermediate and Secondary Education, DG Khan and another VS. Muhammad Altaf and others **(2018 SCMR 325)**, Board of Intermediate and Secondary Education, Faisalabad through Chairman and others Vs. Tanveer Sajid and others **(2018 SCMR 1405)**, and Messrs State Oil Company Limited Vs. Bakht Siddique and others **(2018 SCMR 1181)**.

12. In view of the above, as petitioners are still performing their duties on their respective posts for about 12 year with a transparent service

career without any security, therefore the instant writ petition is allowed and services of petitioners are regularized from the date of their first appointment. However, they will be entitled to notional increase of their pay from the date of their appointment without any arrears and their past service shall also be computed towards their pensionary benefits.

**CM No.1444-P of 2019:**

The plea of petitioner for his impleadment in the panel of petitioners has been acceded by the parties besides ground urged for his impleadment seems genuine, therefore, this CM is allowed and office is directed to add his name in the panel of petitioners.

**ANNOUNCED.**  
**19.09.2019.**

**CHIEF JUSTICE**

**J U D G E**

DB

Hon'ble Mr. Justice Waqar Ahmad Seth, CJ  
Hon'ble Mr. Justice Ahmad Ali