

21/21

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN, J
MR. JUSTICE MUNIB AKHTAR, J

(AFR)

CIVIL APPEAL NO.258 OF 2020

(Against the judgment dated 30.11.2017 passed in Writ Petition No.4801-P/2017 of the Peshawar High Court, Peshawar).

Government of Khyber Pakhtunkhwa ...Appellant(s)
through Chief Secretary & Others

VERSUS

Muhammad Younas ...Respondent

For the Appellant(s): Mr. Shumail Ahmad Butt, AG KP
Mr. Atif Ali Khan, Ad AG KP
Barrister Qasim Wadood, Ad AG KP
Irum Shaheen, DD, HED
Asif Khan, Litigation Officer, HED
Amin Jan, AD, Fisheries
Gulzar Mahmood, AD Fisheries KP
Engr. Falak Niaz, AD (Dost)
Rajbar Khan, SDO, PHE, KP
Sadullah, Asst. Secretary, BOR, KP
Faheem Ullah Khan, Sr. LO, KPPSC
Assad Ullah Khan, SO, P&D Deptt.
Amanatullah Qureshi, Dy. Secy. Fin. Div. KP.

For the Respondents: N.R

Date of Hearing: 25.11.2020 (J.R)

JUDGMENT

IJAZ UL AHSAN, J.-. Through the instant Appeal, the Appellants have challenged the judgment of the Peshawar High Court dated 30.11.2017 passed in W.P No.4801-P of 2017 (hereinafter referred to as "The Impugned Judgment"), whereby the constitution petition filed by the Respondent

(*Muhammad Younas*) was allowed, and the Appellants were ordered to regularize the Respondent on his respective post.

2. The necessary facts giving rise to this *lis* are that the Respondent was appointed as Assistant Research Officer in the Provincial Government's developmental Project, namely the "Promotion and Support of R&D in Public & Private Sector Phase-1", on contractual basis. A summary was moved by the Appellants for regularization of various posts, and as such, the posts *inter alia*, of Assistant Research Officers were regularized in 2014 and converted to the regular budget. The Respondent approached the Appellants' department for his regularization but this effort of the Respondent bore no fruit. The Respondent was terminated from service 11.12.2015 on account of completion of the project period. Aggrieved of not being regularized and instead, being terminated from service, the Respondent filed a Constitutional Petition before the Peshawar High Court for regularization and reinstatement of his services, which was allowed vide the Impugned Judgment. Aggrieved of the same, the Appellants approached this Court by way of filing a Civil Petition for Leave to Appeal.

3. Leave to appeal was granted by this Court vide order dated 09.03.2020 which is reproduced below for ease of reference:

"The learned Additional Advocate General, Khyber Pakhtunkhwa contends that all the Respondents in these petitions were employed either on project posts or on contract basis or were employees under Section 42 of the Companies Act, 2017 and in no circumstances their services were to be regularized. He further contends that in all impugned judgments,

the learned High Court has merely allowed writ petitions on basis of similarly placed persons, but without at all adverting to the facts and circumstances of each and every case separately and without applying its mind to the same. He adds that even the laws under which their appointments were made were not adverted to. He submits that the Respondents who are employees on projects or contract employees or Section 42 employees were not liable to be regularized and thus their regularization by the learned High Court through the Impugned Judgment in these petitions was altogether illegal. In support of the contentions, the learned law officer has referred to a three-member judgment of this Court dated 24.06.2014 passed in Civil Appeal No.687 of 2014 (Government of Khyber, Agriculture, Livestock and Cooperative Department through its Secretary and others v Ahmad Din and another).

2. We note that some of the petitions are time barred and in one of the petitions even no condonation of delay has been filed. The learned Law Officer states that such will be done by the petitioners.

3. The contentions raised by the learned Additional Advocate General, Khyber Pakhtunkhwa need consideration. Therefore, subject to limitation, leave to appeal is granted in these petitions to consider inter alia the same. The appeal stage paper books shall be filed within a period of one month with permission to the parties to file additional documents, if any. As the matter relates to service, the office is directed to fix the same expeditiously preferably after three months.

4. In the meantime, operation of impugned judgment(s) shall remain suspended."

4. The main argument advanced by the learned counsel for the Appellants is that according to the appointment order of the Respondent, upon completion of the project, the services of the Respondent were to automatically terminate. He further submits that the contractual appointment of the Respondent did not confer any right of absorption or regularization onto him. Learned counsel further contends that the cut-off date of the Regularization Act 2009 is 24.10.2009, whereas the posts, including that, against which the Respondent was appointed, was converted

to regular budget in 2014. Therefore, he argues that the case of the Respondent falls outside the purview of the 2009 Act as the post was converted to the regular budget after the cut-off date promulgated by the Act. The learned counsel further added to his submissions that, the project policy which governed the project within which the Respondent was employed, at paragraphs 5(vii) and 10(vi), specifically mentioned that, upon completion of *inter alia*, the said project, the services of Respondent amongst other employees shall stand terminated, therefore, the view taken by the learned High Court on sympathetic grounds and the reliance on a judgment of the High Court placed thereunder is flawed.

5. We have heard the Advocate General KP at considerable length and gone through the record. The substantial questions of law which fall for the determination of this Court are:-

a. Whether project employees appointed to a project which was converted to the regular budget after the cut-off date of the 2009 Act i.e.24.10.2009, were eligible to be regularized under the relevant provisions of the Act; and

b. Whether the employment of the Respondent was dependant upon the life of the project.

**WHETHER PROJECT EMPLOYEES APPOINTED TO A
PROJECT WHICH WAS CONVERTED TO THE REGULAR
BUDGET AFTER THE CUT-OFF DATE OF THE 2009 ACT
I.E. 24.10.2009, WERE ELIGIBLE TO BE REGULARIZED
UNDER THE RELEVANT PROVISIONS OF THE ACT?**

6. Before examining this issue, the legal position ought to be laid out clearly. In this regard, reference is made to Section 3 and 2 (b) of the 2009 Act:

"3. Regularization of services of certain employees.--All employees including recommendees of the High Court appointed on contract or adhoc basis and holding that post on 31st December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post."

"2(b) employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies".

A plain reading of the above provisions makes it abundantly clear that contractual or *adhoc* employees appointed before 24.10.2009 i.e. the date of the commencement of the Act, were eligible for regularization. However, since the post against which the Respondent was appointed, was converted to the regular budget in 2014, it is clear that the Respondent falls outside the purview of the 2009 Act. Before the conversion of the post to the regular budget, the Respondent was simply a project employee. Under section 2(b) of the 2009 Act, project employees are categorically excluded from the benefit of regularization under Section 3 of the 2009 Act. Through the Impugned Judgement, the learned High Court has, in essence, extended the cut-off date provided in the 2009 Act by almost four years which is not permissible under the law. Courts of law are required to interpret the law and can neither rewrite the law nor read into the law something which is not provided therein. No matter how sympathetic a Court may feel towards a litigant or a set of litigants, Courts are duty-bound and required by the Constitution of the Islamic Republic of Pakistan to adhere to the letter of law and

not decide cases based on subjective feelings of sympathy which can vary from person to person. Law and its interpretation must be clear and consistent which is precisely why the adherence to the law is insisted upon as it lends stability to the system and increases the confidence of citizens in the law and the legal system. Involvement of subjectivity has the potential to make dispensation of justice variable and uncertain which is an anathema to a system based upon laws. Therefore, the Peshawar High Court in our opinion fell in grave error by concluding that the Respondents were entitled to regularization under the provisions of the 2009 Act despite the fact that the said Act was clearly inapplicable to them.

WHETHER THE EMPLOYMENT OF THE RESPONDENT WAS DEPENDANT UPON THE LIFE OF THE PROJECT?

7. A bare perusal of the Policy Governing Appointment Against Project Posts makes it abundantly clear that upon conversion of the project to the regular budget, the services of the Respondents shall stand terminated. The relevant part is reproduced below for ease of reference:

"5 (viii) On completion of the project or its conversion to current budget, the services of the Project staff appointed on contract basis shall stand terminated. However, the Government Servants serving in the project on deputation basis or on EOL (without pay) basis shall be repatriated to their parent department."

"10 (vi) In case the project posts are converted into regular budgetary posts, the posts shall be filled in according to the rules prescribed for the post through the Public Service Commission or the Department Selection Committee, as the case may be. Ex-project employees shall have no right of adjustment against the

regular posts. However, if eligible, they may also apply and compete for the posts with other candidates."

Furthermore, the appointment orders also clearly provided that the services of the Respondents shall be terminated upon expiry of project period and that they shall not have any right to regularization. It is pertinent to note that the Respondents were fully aware of these terms and conditions when they applied and subsequently got appointed onto their respective former posts.

8. We, therefore, find that the conclusion of the learned High Court that the benefits of the Regularization Act, 2009 to the extent of regularization of service were available to the Respondents is clearly based on incorrect appreciation and interpretation of the law and is unsustainable.

9. In view of the foregoing, the appeal is allowed. The impugned judgment dated 30.11.2017 passed by the Peshawar High Court is accordingly set-aside.

Sd/- H CJ
Sd/- J
Sd/- J

ANNOUNCED IN OPEN COURT ON 22.02.21 AT
ISLAMABAD

Fizza LC/*
Not Approved For Reporting'