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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN

AFR
CIVIL PETITION NO.2911 OF 2018.

(Against the order dated 12.04.2018 passed by the Peshawar High Court, Peshawar in Writ Petition No.5210 of 2017).

Owais Shams Durrani and others.

...Petitioner(s)

Versus

Vice Chancellor, Bacha Khan University,
Charsadda and another.

...Respondent(s)

For the Petitioner(s): Mr. Nasir Mehmood, ASC.
 Mr. Mehmood A. Sh., AOR.

For the Respondent(s): N.R.

Date of Hearing: 29.04.2020.

ORDER

IJAZ UL AHSAN, J.- The petitioners seek leave to appeal against a judgment of the Peshawar High Court, Peshawar dated 12.04.2018 (***"impugned judgment"***). Through the impugned judgment, a constitutional petition filed by the petitioners was dismissed.

2. Briefly stated the facts of the case are that the petitioners were appointed as Upper Division Clerks (***"UDCs"***) in Bacha Khan University, Charsadda purely on contract basis for a period of six months. Such contract was extended from time to time but for specific periods. Vide a notification dated 27.03.2017, the contract employment of the petitioners was converted on fixed pay as per their last pay drawn for a

period of one year. It was clearly and categorically mentioned in the said notification/office order that services of the petitioners may be terminated at any time/stage without serving any prior notice to this effect. The said one year period of appointment of the petitioners expired on 12.03.2018 when their services were terminated.

3. The petitioners challenged such termination before the High Court by way of a constitutional petition seeking the relief that they may be allowed to continue their duties and the Respondents may be directed to consider them as regular employees of the Respondent-University, as similarly placed employees of a different University (*Abdul Wali Khan University*) had been regularized. However, the High Court, vide the impugned judgment dated 12.04.2018 dismissed the petition. Aggrieved of the same, the petitioners have approached this Court through the instant petition.

4. Learned counsel for the petitioners contends that the petitioners were appointed on temporary basis against available posts. Their appointment contracts were extended from time to time for fixed periods. However, vide notification dated 27.03.2017 their contract employment was converted to that of fixed pay for a period of one year. He maintains that having served the Respondent-University for many years, the petitioners were entitled to regularization of their services. He further maintains that in 2015 budgetary posts were advertised, some of the petitioners had submitted applications for appointment against such posts. However,

they were not appointed as the posts were filled by way of promotions. He also maintains that the petitioners have been discriminated against in so far as similarly placed employees of Abdul Wali Khan University which is a different University had been regularized. He therefore maintains that the learned High Court has erred in law in denying relief to the petitioners.

5. We have heard the learned counsel for the petitioners at length and have gone through the case record. It appears that the petitioners were appointed as UDCs in exercise of powers available to the Vice Chancellor of the Respondent-University in terms of Section 11(5)d of the Khyber Pakhtunkhwa Universities Act, 2012 [*hereinafter to be referred as "the Act, 2012"*]. Perusal of the said provision shows that the power of the Vice Chancellor to create temporary posts and make appointments against the same is restricted to a maximum of three years. It is clearly stated in the Act, 2012 that there will be no power of extension beyond the aforementioned period of three years. Admittedly, three years period had expired in 2017 and for all intents and purposes the power to make such appointments came to an end. Thereafter, the petitioners were granted fresh appointments on fixed pay for a period of one year by virtue of notification dated 27.03.2017. The petitioners accepted such appointments and on expiry of said one year period their services were terminated. It is note worthy that the notification in question was not challenged by the petitioners

before any forum till such time that their services were terminated.

6. We have asked the learned counsel for the petitioners if the initial appointments in terms of Section 11(5) d of the Act, 2012 were undertaken on the basis of any process requiring advertisement of the posts, open competition, transparency in the process of appointment and appointments on merit through a validly constituted Selection Committee. He has not been able to satisfy us that any such process was followed in the matter of initial appointments of the petitioners. It appears that the petitioners were appointed directly without following the above process which is required to be followed for making such appointments.

7. Admittedly, the petitioners' appointments were made in terms of Section 11(5)d of the Act, 2012 which limits the power of the Vice Chancellor to create temporary posts and make appointments to a maximum period of three years. There is no denial of the fact that the petitioners worked for three years and thereafter their contracts expired with efflux of time and even otherwise the power on the basis of which the appointments were made exhausted itself by operation of law.

8. We have also asked the learned counsel for the petitioners if the posts of the UDCs have been abolished. He concedes that such posts indeed had been abolished but contends that the posts in question have been upgraded and

the petitioners claim regularization against such upgraded posts. In the first place, initially having been appointed on contract basis there was no vested right to seek regularization in terms of settled principles of law as well as the provisions of Section 11(5)d of the Act, 2012. Further, re-appointment in terms of notification dated 27.03.2017 was for a period of one year only on expiry of which their services were terminated. The notification 27.03.2017 did not confer any right to seek regularization and the Respondent-University reserved to itself the right of termination of petitioners' services at any time/stage without serving any prior notice to that effect to them. The petitioners accepted such appointments and did not challenge the notifications before the terms of their appointments expired.

9. As far as the argument of the learned counsel that the petitioners have been discriminated against as some of the employees of Abdul Wali Khan University have been regularized is concerned, we are not impressed by the same. Every University has its own criteria for appointment and any decision made by one University cannot bind another University which is to be governed by its own Statutes, Rules and Regulations. In addition, nothing has been shown to us that may demonstrate that employees of both Universities were similarly placed and were governed by the same law. Further, no law has been pointed out to us on the basis of which the petitioners could seek regularization.

10. It is trite that where a citizen seeks relief in constitutional jurisdiction he must point to a right statutory or constitutional which vests in him and has been denied in violation of the law. The petitioners have failed to point out any right to seek regularization on the basis of any constitutional guarantee or statutory law or instrument which may have been denied to them. Their terms and conditions of service were governed by their appointment notifications and in our opinion the learned High Court acted lawfully and within the parameters of its jurisdiction in coming to the conclusion that there was no right of regularization available to the petitioners and their services were correctly terminated as per terms and conditions of service on the basis of which they were appointed in the first place. Nothing has been shown to us that may persuade us to come to a different conclusion or take a contrary view.

11. For reasons recorded above, we do not find any merit in this petition. It is accordingly dismissed. Leave to appeal is refused.

Sd/- HCJ
Sd/- J

ISLAMABAD.

29.04.2020.

ZR/*

~~'Not Approved For Reporting'~~

Encl
4/5/20