

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Munib Akhtar
Mr. Justice Shahid Waheed
Ms. Justice Musarrat Hilali

(D.J.-AFR)

Civil Appeal No.441 of 2020

[On appeal against the judgment dated 30.09.2019 passed by the High Court of Balochistan, Quetta, in C.P.No.1120 of 2017]

Chief Secretary, Government of Balochistan, ...Appellant(s)
Civil Secretariat, Quetta & others

VERSUS

Adeel-ur-Rehman & others ...Respondent(s)

For Appellant(s)	: Mr. Muhammad Ayaz Swati, Additional Advocate General, Balochistan
For Respondent(s)	: Mr. Muhammad Shoaib Shaheen, ASC Mr. Muhammad Ali Kanrani, ASC
Date of Hearing	: 31.10.2023

JUDGMENT

Musarrat Hilali, J.— This appeal, by leave of the Court, is directed against judgment dated 30.09.2019 passed by the High Court of Balochistan, Quetta, in Constitution Petition No.1120 of 2017, whereby the appellants were directed to regularize the services of the respondents and also to pay them the arrears of salaries and allowances. Leave to appeal was granted by this Court vide order dated 27.03.2020 as follows:

“The learned Additional Advocate General, Balochistan contends that the Respondents were employed on contract in a project against the posts which fell within the purview of Balochistan Public Service Commission (BPSC) and on transfer of the said project on non-development side although services of 43 other employees of the project were regularized but the Respondents were not given the said benefit as they were holding the posts of BPS-16 and above were required under the law to be appointed after undergoing the process of BPSC and there is no law or rule

on the basis of which such condition could have been relaxed by the competent authority. He adds that in the impugned judgment also the learned High Court has not made reference to any such law or rule while accepting the writ petition filed by the Respondents and thus it suffers from illegality”.

2. The submissions made by the learned Additional Advocate General, Balochistan need consideration. Leave to appeal is therefore granted to consider inter alia the same”.

2. Necessary facts of the case are that in pursuance of a publication made in the daily Mashriq, Quetta dated 26.06.2009 the respondents on the recommendation of the Project Appointment Selection Committee were initially appointed, on contract basis, as I.T. Instructors in BPS-17 by the Project Director. Apart from the respondents, certain other appointments were also made by the Project Director in pursuance of the above-mentioned publication. On completion of the project, the Finance Department, Government of Balochistan vide its letter dated 05.11.2013 conveyed administrative approval regarding shifting of 58 project posts including I.T. Instructors from development to non-development side with direction to follow the codal formalities as per existing Government Policy for adjustment of project employees on the regular strength from development to non-development side. In the summary moved to the Chief Minister Balochistan, the recommendations were made for regularization of the project employees including the present respondents. The Chief Minister Balochistan while agreeing with the proposal given by the Finance Secretary on 21.03.2016 approved that only those employees are regularized who are recommended by the Project Head of CIDA through letter No.2138-41/CIDA dated 10.09.2013. The names of the respondents were included in the above referred

letter dated 10.09.2013 for regularization but the Secretary, Secondary Education Department, contrary to the approval, approved regularization of only 43 employees serving in BPS-7 and below on 30.06.2016 and services of the respondents, who were in BPS-17 were not regularized. The respondents, then filed constitution petition before the Peshawar High Court, seeking their regularization, which was allowed vide the impugned judgment.

3. Heard learned counsel for the parties and with their assistance perused the record.

4. The case of the appellant is that a summary of 43 contract employees into regular service was approved while for BPS-17 and above, the appellants were not competent to appoint or regularize any contract employee as the same come within the domain of the Balochistan Public Service Commission, however, the learned High Court allowed the writ petition of the respondents purely on the ground of discrimination.

5. Rule 9(1)(a) of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 (**the AP&T Rules**) clearly provides that the appointment to posts in BPS-16 and above or equivalent, if fall within the purview of the Commission, shall be made on the basis of a test and interview to be conducted by the Balochistan Public Service Commission (**the Commission**). Similarly, Rule 3(i)(a) of the Balochistan Public Service Commission (Functions) Rules, 1982 (**the BPSC Functions Rules**), provides that the Commission shall conduct tests and examinations for initial recruitments to civil posts in BPS 16 to 22 connected with the affairs of the province, except those specified in

the Schedule appended to the Rules. Sub clause (b) of Rule 3 (i) of the BPSC Functions Rules further empowers the Commission to conduct a test and interview for initial recruitment to any other post which may be referred to it by the Government, which may otherwise not fall within the purview of the Commission.

6. As far as the question of regularization of similarly placed persons by the Department vide Notifications dated 26th July, 2007 and 22nd February, 2011 is concerned, suffice it to say that Article 25 of the Constitution does not envisage negative equality. Such right can only be claimed when decision is taken in accordance with law. A wrong concession in favour of one person does not entitle any other person to claim benefit of a wrong decision. This Court in plethora of judgments has ruled out that the posts in BPS-16 and above shall be filled through Public Service Commission. Reference can be made to the case reported as **Province of Sindh and others v. Muhammad Taqi Shah** [2018 SCMR 1607]. As far as the regularization of contract employees subsequent to creation of posts on regular side is concerned, in number of cases it has been held by this Court that mere creation of posts on regular side does not confer, in the absence of any statutory support, an automatic right of regularization in favour of the contract employees working against project posts. Reliance is placed on the case reported as **Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock and Cooperative Department Peshawar and others v. Saeed-Ul-Hassan and other** [2021 SCMR 1376].

7. For the discussion made above, we are of the considered view that case of the present respondents falls within

the purview of Rule 9 (1) (a) of the AP&T Rules so also under Rule 3 (i) (a) and 3 (i) (b) of the BPSC Functions Rules. The decision given by the High Court in the Constitution Petition is without any basis and is not sustainable in the eye of law, therefore, the same is set-aside. The Government of Balochistan is directed to refer these posts to the Commission for recruitment in accordance with the law through fresh publication on open merit basis. The respondents are directed to participate in the fresh recruitment process to be undertaken by the Commission and the Commission is directed to entertain their applications. In the peculiar circumstances of the case, the question, if any, of any age limit shall not be a hurdle in the way of the respondents. The appeal, in above terms stands disposed of.

Sd/- J
Sd/- J
Sd/- J

ISLAMABAD
APPROVED FOR REPORTING
Washmi

Announced in open Court on 1st of December, 2023