

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

**Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
Mr. Justice Athar Minallah**

Civil Petition No.4424 of 2021

(Against the judgment dated 03.06.2021 of the Peshawar High Court, Peshawar passed in Writ Petition No.962-P of 2020)

Muhammad Suleman

...Petitioner(s)

Versus

Chief Secretary, Govt. of Khyber
Pakhtunkhwa, Civil Secretariat,
Peshawar and others

...Respondent(s)

For the petitioner(s): Mr. Muhammad Umair Baloch, ASC

For the respondent(s): Not represented.

Date of hearing: 17.08.2023

ORDER

Athar Minallah, J.- Muhammad Suleman son of Abdul Rahim

has sought leave against judgment dated 03.06.2021 of the Peshawar High Court whereby his constitutional petition was dismissed.

2. The Principal, Government College, Landi Kotal, Khyber Agency had appointed the petitioner as a Lecturer. The appointment was on temporary basis and against a fixed remuneration of Rs.5000/-. It is not disputed that the appointment of the petitioner had not been made in a transparent manner i.e. pursuant to publication of the vacancy and inviting applications from eligible persons. Moreover, the remuneration was paid from the Agency Development Fund of the Political Agent of Khyber Agency. The Peshawar High Court vide order dated 08.06.2009 disposed of Writ Petition No.161/2008 and the respondents were directed to decide the pending representation of the petitioner. Since the competent authority had failed to comply with the direction, therefore, a second petition i.e. Writ Petition No.1839-P/2009 was filed and it was allowed by the Peshawar High Court vide judgment, dated 15.10.2009. The

said judgment was assailed by the Principal, Government Degree College, Landi Kotal before this Court. In the meanwhile, the petitioner was regularized vide notification, dated 03.10.2011 in compliance with the direction of the Peshawar High Court but it was explicitly made subject to the disposal of the petition by this Court. Civil Appeal No.99-P/2010 was disposed of by this Court vide order dated 20.03.2019 with the consent of the parties in the light of the direction given by this Court in paragraph 5 of an earlier order dated 07.03.2019 passed in Civil Petition No.55-P of 2017. In compliance with the said order of this Court, the case of the petitioner was considered by the competent authority and the latter declared that the petitioner was not eligible for the purposes of regularization under the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 (**the Act of 2009**). Consequently, notification, dated 09.01.2020 was accordingly issued. The said notification was assailed by the petitioner by invoking the jurisdiction of the Peshawar High Court vested under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and it was dismissed vide the impugned judgment, dated 03.06.2021.

3. We have heard the learned counsel.

4. It is not disputed that the petitioner had not been appointed through a competitive transparent process. Moreover, the appointment was made by the Principal of the College against a fixed remuneration paid from the Agency Development Fund. The appointment had not been made by the "Government" nor a "Government Department" as defined under clauses 'c' and 'd' respectively, of the Act of 2009. The expression 'employee' has been defined in clause 'b' *ibid* as meaning an *ad hoc* or a contract employee appointed by the Government on *ad hoc* or contract basis or second shift/night shift but excluded the employees of

project post or appointed on work charge basis or who were paid out of contingencies. The petitioner, therefore, did not fall within the definition of the expression 'employee' for the purposes of Section 3 of the Act of 2009. This Court has consistently held that appointments of any nature, whether initial or *ad hoc*, permanent or temporary, if made in violation of the principle of transparency and competitive process, *inter alia*, without inviting applications from the public is in violation of the Constitution and are, therefore, void. Selecting a qualified, eligible and most deserving person is a sacred trust which is to be discharged honestly and fairly in a just and transparent manner and in the best interest of the public.¹²³⁴ As already noted above, the petitioner was not eligible to be regularized under the Act of 2009 and therefore, the decision of the competent authority communicated vide notification, dated 09.01.2020 was unassailable. In the circumstances, no substantial question of law has arisen for consideration of this Court and therefore, leave is refused and consequently, the petition stands dismissed.

Judge

Judge

Islamabad, the
17th August, 2023
Approved for reporting.
*M. Azhar Malik/**

¹ *Govt of NWFP and others v. Muhammad Tufail Khan* (PLD 2004 SC 313)

² *Chief Secretary Punjab and others v. Abdul Raoof Dasti* (2006 SCMR 1876)

³ *Muhammad Ashraf Tiwana and others v. Pakistan and others* (2013 SCMR 1159)

⁴ *Muhammad Yasin v. Federation of Pakistan and others* (PLD 2012 SC 132)