

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE GULZAR AHMED, HCJ  
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL  
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CIVIL APPEAL NOS. 957 & 958 OF 2014**

(On appeal against judgment dated 19.06.2013 passed  
by the Peshawar High Court, Peshawar in Writ Petition  
No. 2927/2009)

Secretary Local Government, Election  
Rural Development, KPK etc

(In both cases)

... Appellants

**VERSUS**

Muhammad Tariq Khan  
Muhammad Tahir Abbas etc

(In CA 957/2014)

(In CA 958/2014)

... Respondents

For the Appellants: Barrister Qasim Wadood, Addl. A.G.  
(In both cases)

For the Respondent: Mr. Muhammad Akram Sheikh, Sr. ASC  
(In CA 957/2014)

Syed Iqbal Hussain Shah Gillani, ASC  
(For respondent No. 1 in CA 958/2014)

Mr. Sabah ud Din Khattak, ASC  
(For respondent No. 2 in CA 958/2014)

Date of Hearing: 25.05.2021

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Through this consolidated judgment, we intend to decide the above-titled civil appeals filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, as they have nexus inter-se and a common question of law has been raised in these appeals.

2. The facts of Civil Appeal No. 957/2014 are that the respondent was appointed as Assistant Director Civil (BPS-17) in the Provincial Urban Development Board on contract basis vide order dated 16.02.1995. However, on 30.05.1998 he along with several other employees was terminated from service by the department. Being aggrieved by his termination, the respondent filed Writ Petition No. 973/1998 before the Peshawar High Court. Some other employees also

challenged the said termination before the Peshawar High Court by filing other writ petitions. During the proceedings before the High Court vide an interim order, the respondent and others were allowed to continue in service till the final disposal of the writ petitions. Ultimately, vide consolidated judgment dated 30.09.1999, the writ petitions filed by the respondent and others were adjudicated and decided wherein the department was directed to consider them for appointment on available vacancies, while evaluating their case on merits upon the basis of 'last cum first go'. The respondent challenged the said order before this Court by filing Civil Petition No. 116-P/2000 but the same was dismissed as barred by time vide order dated 13.10.2000. He also filed Civil Review Petition No. 279/2000 before this Court, however, it also met the same fate vide order dated 01.11.2001. Thereafter, the respondent again filed Writ Petition No. 225/2009 but the same was dismissed as withdrawn on 09.06.2009. The respondent filed yet another Writ Petition No. 2927/2009 before the Peshawar High Court, which was disposed off with certain observations vide order dated 04.02.2010. Being aggrieved by this judgment, the Government of KPK challenged it before the High Court by filing review petition but the same stood dismissed vide order dated 15.06.2010. This order in review was challenged before this Court in Civil Petition No. 660-P/2010 and this Court vide order dated 07.11.2012 remanded the matter back to the High Court with certain observations to decide Writ Petition No. 2927/2009 afresh. During the proceedings before the learned High Court after remand, the impugned judgment dated 19.06.2013 has been passed with a direction to the appellant department to re-adjust the respondent with all benefits accrued to him except the wages of the intervening period. As far as facts of Civil Appeal No. 958/2014 are concerned, the respondent No. 1 Muhammad Tahir Abbas was appointed as Assistant Director Civil (BPS-17) in the Provincial Urban Development Board on contract basis vide order dated 18.10.1993. However, on 30.05.1998 he along with several other employees was terminated from service by the department. Being aggrieved by his termination, the respondent filed Writ Petition No. 978/1998 before the Peshawar High Court. Some other employees also challenged the said termination before the Peshawar High Court by filing various writ petitions. However, the respondent did not press his petition before the High Court provided he

was given pay and other allowances upto 31.05.1998 i.e. the expiry of the project and the same was disposed of accordingly vide consolidated order dated 30.09.1999. So far as the other employees are concerned, the learned High Court vide the judgment dated 30.09.1999 directed the department to consider the aggrieved employees for appointment on available vacancies on merit. It appears from the record that the respondent did not challenge this order of the High Court before this Court and it ultimately attained finality. However, the record shows that subsequently, he filed another Writ Petition No. 102/2002 against his termination and when he was declined the relief sought for from the High Court, he challenged the same before this Court by filing Civil Petition No. 1241/2002, which was disposed of on 16.03.2005 by observing that the respondent being junior most, his service was rightly terminated and he was advised to approach the Government for consideration for fresh recruitment being a previous employee of the Board. The respondent then approached the department but when he saw that nothing favourable to him is likely to happen, he filed another Writ Petition No. 322/2009 wherein vide order dated 06.10.2011, the department was once again asked by the High Court to consider the case of the respondent on humanitarian grounds but the department vide order dated 05.01.2012 refused to adjust the petitioner, which led to filing of yet another Writ Petition No. 1180/2012, which has been disposed of vide impugned order dated 19.06.2013 whereby the appellants are directed to adjust the respondent with all consequential benefits except wages. Hence, the instant appeals by leave of this Court.

3. Learned Additional Advocate General, KPK, while opening address *inter alia* contended that the respondents were project employees; that it is clearly mentioned in their appointment letters that appointment is contractual/temporary in nature and would be liable to be terminated subject to one month's notice; that the project was never regularized or taken on the budget and the same was completed; that the matter of termination of the respondents had already been decided by this Court in the earlier round of litigation and the same has attained finality; that the respondents cannot be given any leverage on the basis of earlier order of this Court dated 13.10.2000 passed in Civil Petition Nos. 1752/1999 etc because only those persons who

were party to that order were appointed by the department; that the Project Management Unit as also Provincial Urban Development Board, NWFP, do not exist being dissolved and instead new development companies like Mardan Development Authority and Peshawar Development Authority etc have been created; that the learned High Court has wrongly interpreted and applied the principle of discrimination in the impugned judgments; that the respondents could not be adjusted against the posts of Assistant Directors as no post is available in the department; that the impugned judgment suffers from legal and factual infirmities and requires interference by this Court.

4. On the other hand, learned counsel for the respondent in Civil Appeal No. 957/2014, *inter alia*, contended that if one category of the employees is given relief, the other category falling under the same parameter cannot be denied the relief; that the respondent was never non-suited by this Court and his rights are in continuity; that keeping in view the performance of the respondent, he was subsequently promoted to BS-18, which shows that he is a competent employee; that after the afore-referred judgment of this Court dated 13.10.2000, the terminated Assistant Directors including the respondent were included in the seniority list of Assistant Directors and the name of the respondent was placed at serial number 92, which impliedly means that the department had recognized all the Assistant Directors to be regular employees of Provincial Urban Development Board; that if the similarly placed employees have been re-appointed by the department, the respondent also deserves the same treatment to be meted out and this fact has already been mentioned in paragraph 6 of the impugned judgment; that the respondent was appointed as BS-18 officer in the Municipal Services Delivery Program but after the impugned judgment, resignation was taken from him and he was reinstated as Assistant Director in BPS-17.

5. Learned counsel for the respondent No. 1 in Civil Appeal No. 958/2014 while adopting the arguments of learned counsel for the respondent in the connected Civil Appeal No. 957/2014, *inter alia*, contended that pursuant to judgment of this Court dated 16.03.2005 passed in Civil Petition No. 1241/2002, the respondent was considered to be employee of the Board and not a project employee, therefore, the order of the termination had no force.

6. *We have heard learned counsel for the parties and have perused the available record.*

7. *The issues involved in these appeals are three fold: (i) whether the project/temporary employees have the right to be retained in service after expiry of the project; (ii) whether on the matter of re-appointment, the respondents have been discriminated against; and (iii) whether the subsequent writ petitions filed by the respondents were maintainable and not contrary to the principle of res judicata?*

8. *Admittedly, the respondents were contract employees and were hired by the Project Management Unit for the project of slum upgrading, site and service etc, which subsequently came to an end and the respondents were terminated from service. This Court in a number of cases has held that contract/project employees have no vested right to claim regularization. The direction for regularization, absorption or permanent continuance cannot be issued unless the employee claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules and against the sanctioned vacant posts, which admittedly is not the case here. Respondents were appointed on temporary basis pursuant to the Provincial Urban Development Board Service Rules, 1988. There was no provision in the said Rules for absorption of a project employee. The said Provincial Urban Development Board was dissolved and probably a new department City Development and Municipal Development was created, which has its own different Rules. The respondents have no vested right to claim regularization against regular posts, being contractual employees of the project, the tenure of which has already been expired, thus they being project employees and hired for the said project period are not entitled to be regularized. When the project is completed and closed, the employees have to go along with its closure. Temporary/project employees, who are appointed specifically till the completion of a certain project cannot be regularized as they have neither any vested right to hold such post beyond prescribed period nor the Government owes any obligation to maintain continuity in their service for an unlimited period. We have perused the appointment orders of the respondents and found that regularization / re-adjustment was not part of terms and conditions of their service. In*

*paragraph No. 4 of the appointment letter of respondent Muhammad Tariq Khan dated 16.02.1995, it has been specifically mentioned that his employment was purely temporary and could be terminated at one month's notice. Similarly, the appointment letter of respondent Muhammad Tahir Abbas dated 18.10.1995 clearly stipulates that his services were on contract basis and would be liable to termination at any time without any notice. Both the respondents had accepted the contingent terms of service and cannot blow hot and cold in the same breath to claim regularization subsequently.*

9. *Now the question which remains to be looked at is whether the respondents have been discriminated against or not. In the earlier round of litigation, after the consolidated judgment of the Peshawar High Court dated 13.09.1999 whereby the department was directed to consider the terminated Assistant Directors for appointment on available vacancies on merit and on the basis of 'last cum first go', the respondent Muhammad Tariq Khan had approached this Court by filing Civil Petition No. 116-P/2000, which was dismissed solely on the ground of being barred by time vide order dated 13.10.2000. He had also filed Civil Review Petition No. 279/2000 but the same was also dismissed vide order dated 01.11.2001. So far as the respondent Muhammad Tahir Abbas is concerned, he had not pressed his writ petition bearing No. 978/1998 before the High Court provided he was given pay and other allowances upto 31.05.1998. This prayer was accepted by the learned High Court and the writ petition was disposed of as not pressed. The order of the learned High Court dated 30.09.1999 specifically finds mention of this fact. It appears from the record that the respondent Muhammad Tahir Abbas did not challenge this order before this Court and subsequently filed another writ petition against his termination order and when he did not get any relief from the High Court, he challenged the said order before this Court by filing Civil Petition No. 1241/2002, which was disposed of on 16.03.2005 by observing that the respondent being junior most, his service was rightly terminated. He was advised to approach the Government for consideration of fresh recruitment being a previous employee of the Board. The respondent then approached the department but when he could not get any relief, he filed yet another Writ Petition No. 322/2009. When the petition of respondent Muhammad Tariq Khan*

*was dismissed as being barred by time before this Court vide order dated 13.10.2000 and respondent Muhammad Tahir Abbas had not pressed his writ petition before the High Court, the matter had attained finality. Knocking the doors of High Court and this Court again and again amounts to mockery of law. The other employees, who had also filed writ petitions and whose writ petitions were decided on 13.09.1999 vide consolidated judgment by the Peshawar High Court had filed Civil Petition Nos. 1752, 1753/1999 etc before this Court, which were disposed of vide order dated 13.10.2000 and the department was directed to reconsider the facts of the cases of the petitioners therein in juxtaposition with the cases of 29 other Assistant Directors, who were retained in service although they were junior to them. It appears from the record that pursuant to this judgment of this Court, a seniority list of 93 Assistant Directors was prepared and some of them were adjusted. Learned counsel for the respondents put much stress on the point that pursuant to the judgment of this Court dated 13.10.2000 passed in Civil Petition Nos. 1752, 1753/1999, the respondents ought to have been adjusted but they were discriminated against. However, we do not tend to agree with learned counsel for the respondents because the afore-referred judgment of this Court was restricted only to the Assistant Directors, who were party/petitioners in the said case. This Court in the judgment dated 27.08.2012 passed in Civil Petition No. 346-P/2003 while dealing with the cases of similarly placed Assistant Directors has specifically taken note of this fact and has held that "this Court (vide order dated 13.10.2000) had not ordered the re-instatement of the petitioners before it but directed that their cases be considered viz-a-viz some other Assistant Directors. The relief granted by the Supreme Court was restricted to the petitioners before it." So far as certain appointments/regularization of Assistant Directors, which have been mentioned by the learned High Court in the impugned judgments are concerned, neither their letters of termination nor appointment letters are available on record so that we could know as to what were their terms and conditions of service. Even otherwise, the learned High Court itself has mentioned that not all terminated Assistant Directors have been re-appointed/adjusted/regularized. Although some of them have been adjusted but still there are persons, who have not been adjusted again, therefore, the question of discrimination does not arise. So far as the argument of learned*

*counsel for the respondent Muhammad Tariq Khan that he was appointed as BS-18 officer in the Municipal Services Delivery Program but after the impugned judgment, resignation was taken from him and he was reinstated as Assistant Director in BPS-17 is concerned, despite our asking, learned counsel could not place on record any document to support his argument, therefore, we are unable to consider the same.*

10. *Now we come to the third question i.e. whether the writ petitions filed by the respondents in the instant round of litigation are hit by the principle of res judicata? There is an old latin maxim 'res judicata pro veritate accipitur'. According to this maxim, a suit/dispute in which the matter directly or substantially in the issue has been directly/substantially in issue in a former suit/proceeding between the same parties or between parties under whom they or any of them claim has been decided by a competent court shall not be tried again in the same matter in any other courts. In simple words, a decision once rendered by a competent court on a matter in issue between the parties after a full inquiry should not be permitted to be agitated again by the same court or some other court between the same parties in the same matter. The rule of estoppel by res judicata is a rule of evidence, which prevents any party to a suit/proceeding which has been adjudicated upon by the competent court from disputing or questioning the decision on merit in subsequent litigation. It is based on the concept of public policy and private justice which apply to all the judicial proceedings. According to this, public policy involves that the general interest of the litigation must come to an end or that the litigation must have its finality. Similarly, private justice requires that an individual should be protected from vexatious multiplication of suits and prosecutions at the instance of an opponent whose superior power and resources may enable him to abuse the process of court. A decision by a competent court, which is final, should be binding and the same questions are sought to be controverted in the subsequent litigation for which this maxim applies. The only point in issue on which the respondents filed the subsequent writ petitions was their termination from service. As discussed in the preceding paragraph, the issue was already put to rest and once it attained finality, the second/continued litigation by filing number of writ petitions was not warranted under the law. It*



would be of considerable advantage to refer to a judgment of this Court reported as Khurshid Soap and Chemical Industries (Pvt) Ltd Vs. Federation of Pakistan (PLD 2020 SC 641) wherein it was held as under:-

"9. The principle of res judicata is a principle of peace. Once a controversy with regard to a right in property or a right to office is adjudicated upon and attains finality through a judicial pronouncement of a competent Court of law, it no more remains open to challenge in any subsequent judicial proceedings between the same parties on the same subject matter. This principle is intended not to afford a litigant more than one opportunity for resolution of a judicial dispute and thus eliminates the chances of repetitious and successive litigation against a party on the same issue. The maxim that there should be an end to litigation is germane to such matters.

10. Any relief which a litigant seeks in a judicial proceeding with regard to any power or a right or an obligation connected with some property or an office which power or right or obligation is not dependent upon the legitimacy of a legislative enactment and stands or falls on its own strength then in such cases when the decision rendered by a court of competent jurisdiction attains finality, there is no difficulty in applying the principle of res judicata to such a decision. However, it would be difficult to apply such a principle in matters where a power or a right or an obligation solely depend upon the very legitimacy of the enactment that has come under challenge in a Court of law on the touchstone of the Constitution. In such a situation the existence of such power or right or obligation would solely depend on the final adjudication as to the legal validity of the enactment itself. This could be understood from a situation where a controversy as regards constitutional validity of an enactment has come under challenge before two High Courts, one declaring the enactment ultra vires the Constitution and the other intra vires. If the principle of res judicata is applied to the decision of the High Court that declared the law ultra vires as the same was not challenged any further by the Government then two conflicting declarations would stand side by side on the legitimacy of a legislative enactment, one party treating the law valid and the other invalid. This would lead to treating an Act of the parliament valid for some and invalid for others though both the set of persons are similarly placed. If the decision rendered by the High Court that declared the law intra vires the Constitution is only challenged before the Supreme Court and after examining the merits of the case the enactment is declared by this Court to be intra vires the Constitution, then in such peculiar situation when this Court finally validates the legislative enactment then the same has to be applied uniformly to every person falling within its ambit. Such final judicial determination on the legitimacy of a legislative enactment has to be treated as a judgment in rem regardless of the fact that the judgment of the High Court that invalidated the very same enactment was not challenged before this Court. Such a situation warrants departure from the doctrine of res judicata. Omission of a public functionary to file appeal cannot put fetters on the universal application of a legislative enactment declared by this Court to be constitutionally valid as it would amount to repealing the statute for some and treating

*it valid for others. Hence conflicting decisions on the vires of a legislative enactment of two High Courts, decision of one remains unchallenged in the hierarchy as no appeal was preferred and the other is challenged before this Court, then the verdict of the High Court that went unchallenged, which is in conflict with the final decision of this Court has to be treated as outmoded and no longer executable. The Supreme Court of the United States of America took note of a similar situation in the case of United States v. Stone and Downer Co. [274 U.S. 225 (1927)] and held that if some of the persons are released from the application of a provision of legislative enactment on the principle of res judicata, it will lead to inequalities and discrimination causing injustice and confusion. It was held that in such a situation the plea of res judicata cannot be sustained."*

***(Underlined to lay emphasis)***

11. *In view of the above said discussion on various aspects of the case and the law laid down by this Court, we are of the considered view that the relief sought by the respondents does not commensurate or is covered by any legal premises / provision of law on the subject and the same is claimed on its own strength without any backing of law. We are, therefore, constrained to hold that the Constitutional Petitions filed by the respondents before the Peshawar High Court, which have been decided through the impugned judgments, were primarily not maintainable being hit by the principle of res judicata.*

12. *For what has been discussed above, these appeals are allowed and the impugned judgments are set aside.*

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad  
Announced on 01.07.2021  
Approved For Reporting  
**Khurram**