

MIN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

PRESENT:

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

CIVIL APPEALS NO.228 AND 234 OF 2020

(Against orders dated 18.02.2014 and 07.10.2015 passed  
by Peshawar High Court, Peshawar in Writ Petitions  
No.1924-P of 2013 and 196-P of 2015).

Govt. of Khyber Pakhtunkhwa & others                      Appellants (in CA#228 of 20)

Govt. of Khyber Pakhtunkhwa through  
Secretary Higher Education, Archives  
and Libraries Department, Peshawar  
and others    Appellants (in CA#234 of 20)

VERSUS

Sher Ali etc    Respondents (in CA#228 of 20)

Qismat Gul and Others    Respondents (in CA#234 of 20)

For the Appellant(s): Mr. Shumail Ahmad Butt,  
Advocate General,  
Khyber Pakhtunkhwa.  
Mr. Atif Ali Khan, Additional Advocate  
General, Khyber Pakhtunkhwa.  
Barrister Qasim Wadood, Additional  
Advocate General, Khyber  
Pakhtunkhwa.  
Irum Shaheen, DD, HED  
Arif Khan, Litigation Officer, HED

For the Respondents: Mr Khalid Rahman, ASC

Date of Hearing:                      25.11.2020

JUDGMENT

IJAZ UL AHSAN, J-, Through                      this                      single  
judgment, we intend to decide Civil Appeals No.228 and  
234 of 2020 as they involve a common question of law.

2. Through the instant Appeals, the Appellant has challenged the Judgment dated 18.02.2014 passed in Constitutional Petition No. 1924-P of 2013 by the Peshawar High Court, Peshawar and the Judgment dated 07.10.2015 passed in Constitutional Petition No. 196-P of 2015 passed by the Peshawar High Court, Peshawar. The Respondents had, through the Constitutional Petitions, sought the regularization of their services, which was allowed.

3. The brief facts giving rise to this *lis* are that the Respondents in CA No 288 of 2020 were employed on contract in 1992 in the Rehman Baba Shrine (hereinafter referred to as "The Shrine"), Khyber Pakhtunkhwa (hereinafter referred to as "KP"). The Respondents in CA No 234 of 2020 were employed on contract in the Khushal Khan Khattak Library (hereinafter referred to as "The Library"). Both The Shrine and The Library were subsequently handed over to the Archives and Libraries Department, KP. As a result to this conversion, posts occupied by the Respondents in CA No 228 of 2020 were sanctioned by the Finance Department with the direction to fill the same by fresh recruitment. The Respondents in CA 234 of 2020 were not regularized as well. The Respondents approached the concerned authorities for their adjustment against the sanctioned posts, however, they remained unsuccessful. The Respondents assailed this action of the Appellants through Constitutional Petitions in the Peshawar High Court,

Peshawar which were allowed, and the Appellants were directed to reinstate and regularize the Respondents.

4. Leave to appeal by this Court was granted vide order dated 09.03.2020 in the following terms: -

*"The Learned 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 contends that this very aspect of the matter has time and again come before this Court where it has been held that such employees could not be regularized. He further contends that in all the Impugned Judgments, the learned High Court has merely allowed writ petitions on the basis of similarly placed persons 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 Respondents who are employees on project of 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 his 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, Agricultural, 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 application for 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, the operation of the Impugned Judgment(s) shall remain suspended."

5. Learned Additional Advocate General, KP submits that the language of the KP Regularization Act 2009 specifically excludes project employees from its definition. He adds that the Respondents as such cannot take benefit of its provisions. He further submits that the services of the Respondents were contingent upon the life of the project and thereafter, there vested no right to regularization. He adds that the sanctioned posts in the case of employees of The Complex were to be advertised and filled afresh as not following the process and procedure for such appointments would be contrary to law.

6. The main argument of the Learned Counsel for the Respondents is that the KP Regularization Act 2009 (hereinafter referred to as the "2009 Act") provided that all employees appointed on Contract basis before the promulgation of the Act *ibid* would be deemed to be regular employees. As such, refusal of the Appellant to regularize the Respondents was arbitrary, illegal and violative of their rights guaranteed under the Constitution.

7. Before we examine the controversy, for the sake of clarity we would like to frame the issues that require determination of this Court. These are:-

- (i) Whether the Respondents are covered by the provisions of the 2009 Act; and
- (ii) What the consequence of the handing over of The Shrine and The Library to the Archives and Libraries Department, KP.



Whether the Respondents are covered by the provisions of the 2009 Act?

8. The 2009 Act was promulgated on 24.10.2009. Its preamble provides the purpose of the Act as the regularization of services of certain employees appointed on contract or ad hoc basis. Section 3 of The Regularization Act specifies the class of employees who were to benefit from the Act of 2009. The same is reproduced below for ease of reference: -

*"3. Regularization of Services of certain employees. -- All employees including recommendees of the High Court appointed on contract or ad hoc basis and holding that post on 31<sup>st</sup> 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 of a regular post:*

*Provided that the service promotion quota of all service cadre shall not be affected."*

9. Section 3 *ibid* provides three pre-conditions for regularization. The first is that the appointment must have been on a contract or ad hoc basis. The second that the employee must have been holding the said post on 31<sup>st</sup> December 2008 or, till the commencement of The Regularization Act and the third, that the appointee must also have the same qualification and experience as for the regular post.

10. A bare perusal of the record reveals that the Respondents were employed on a contract basis before 24.10.2009, which is the date of promulgation of the 2009 Act. This position has been endorsed by the Law Ministry of

the Government of KP vide order dated 25.04.2013 addressed to the Higher Education, Archives and Libraries Department, Government of KP; the Department which is having administrative control of both, The Shrine and The Library. The only caveat mentioned in the said order is that the benefit of the 2009 Act shall not be given to employees appointed after 01.07.2012. This caveat does not apply to the Respondents. As such, when the Government of KP has itself endorsed this position, then, the Appellants cannot at this stage change their own stance and now take the stance that the Respondents could not be regularized.

11. Even otherwise, the contention of the learned Additional Advocate General, KP, to the effect that the Respondents were project employees is untenable. The Finance Department vide notification dated 29.11.2008 converted the services of the Respondents to those of Civil Servants which was according to the NWFP Civil Servants (Amendment) Act 2005. The Impugned Judgment dated 18.02.2014 mentions this fact. The learned Additional Advocate General has been unable to point out any illegality in the said notification. His position that the officer who served the notification had no power to do so is not tenable since no effort was made to cancel or withdraw such notification which appears still to be holding the field.

What is the consequence of the handing over of The Shrine and The Library to the Archives and Libraries Department, KP?

12. The Shrine and The Library were subsequently handed over to the administrative control of the Archives and Libraries Department, Government of KP and thus posts in The Shrine and The Library stood converted to the regular side and the requisite notification was issued by the concerned department which still holds the field. The Respondents were given assurances that they would be adjusted against the said posts. The Respondents had already been declared as Civil Servants vide office order dated 30.06.2008 with effect from 01.07.08. Vide office memo dated 21.07.2012, it was stated that the Respondents of The Shrine had been appointed as per the prescribed rules and procedure, therefore, they should be adjusted against the posts that were sanctioned. The Impugned Judgment has correctly held that the Appellants have unlawfully relieved the Respondents because, to do so, plausible reasons were required which were not given. In the absence of such reasons, and, by omitting to follow the correct procedure to relieve a Civil Servant, the Appellants have committed an illegality.

13. Section 3 of the 2009 Act provides that all contractual or ad hoc employees who had been appointed before the promulgation of the 2009 Act would be deemed to have been validly appointed against regular posts. As such, the Appellant cannot at this stage circumvent the law and take a different position which is neither supported by the law, nor by the record of its own actions. Even otherwise, the

letter of the KP Law Ministry dated 25.04.13 appraised the Appellants of the requirement, scope and applicability of the 2009 Act and its requirements. When the Archives and Libraries Department of KP has acceded to the appointment of the Respondent, we do not see why the same should not be done, when a conscious decision has been made to give administrative control of The Shrine and The Library to the said department.

14. It was only the Khushal Khan Khattak Library Trust Fund which was abolished, and that too because funds from the budget were, in our view, going to be approved for The Library. The said abolition has no nexus with the employment status of the Respondents in the circumstances narrated above.

15. The Impugned Judgment of the learned High Court dated 18.02.2014 is well reasoned, proceeds on the correct factual and legal premises and has correctly applied the applicable law, rules and regulations to the facts and circumstances of the cases before us. No legal, jurisdictional defect, error or flaw in the Impugned Judgment has been pointed out to us that may furnish valid basis or lawful justification to interfere in the same. The Learned Advocate General KP has, despite his best efforts, not been able to persuade us to take a view different from the High Court in the facts and circumstances of the instant Appeal. We accordingly affirm and uphold the Impugned Judgment of the learned High Court



16. For reasons recorded above, we find no merit in the present Appeals. The same are accordingly dismissed.

ISLAMABAD, THE

25<sup>th</sup> of November, 2020

Haris, LC.

~~Not Approved For Reporting~~