

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

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

CIVIL APPEALS NO.240 & 272 OF 2020

(Against the judgments dated 06.09.2016&15.05.2018 passed in Writ Petition No.382-A/2014 & Writ Petition No.1109-A/2016 of the Peshawar High Court)

Government of KPK through Secretary Industries, ...Appellant(s)
Commerce & Technical Education, Manpower
Training Department, Peshawar & Others

VERSUS

Shahzad Iqbal and Others Respondents in C.A#240/2020
Muhammad Asif & another Respondents in C.A#272/2020

For the Appellant(s): Mr. Shumail Ahmad Butt, AG KP.
Mr. Atif Ali Khan, Ad AG KP
Barrister Qasim Wadood, Ad AG KP
Irum Shaheen, DD, HED
Asif Khan, Litigation Officer, HED
Amin Jan, AD, Fisheries
Gulzar Mahmood, AD Fisheries KP
Engr. Falak Niaz, AD(Dost)
Rajbar Khan, SDO, PHE, KP
Saadullah, Asstt. Secretary, BOR, KP
Faheem Ullah Khan, Sr.LO, KPPSC
Assad Ullah Khan, SO, P&D Deptt
Amanatullah Qureshi, Dy.Secy,
Finance Deptt. KP

For the Respondents: Hafiz S.A. Rehman, Sr. ASC
Muhammad Sharif Janjua, AOR

Date of Hearing: 25.11.2020 *(A-1 / Sri Janjua (in CA-240/2020) & in CA-272/2020)*

JUDGMENT

IJAZ UL AHSAN, J.- By this single judgment, we propose to decide Civil Appeals (hereinafter referred to as "CA") No.240 and 272 of 2020 as these involve common questions of law.

2. Through the instant Appeals, the Appellants have challenged the judgments of the Peshawar High Court dated 06.09.2016 & 15.05.2018 passed in W.P.No.382-A/2014 & W.P.No.1109-A/2016 (hereinafter referred to as "The Impugned Judgements") whereby the petitions of the Respondents were accepted, and the Appellants were ordered to regularize the Respondents on their respective posts.

3. The necessary facts giving rise to this *lis* are that the Respondents were appointed in Skill Development Centers (SDC's) in KPK by the Technology Up Gradation & skill development company (TUSDEC), a fully owned subsidiary company of the Pakistan Industrial Development Cooperation (PIDC), on a contractual basis for a one-year period which was extended from time to time. The SDC's were established by virtue of a 2006 Agreement between the Provincial Government, PIDC and TUSDEC, as part of a rehabilitation plan for imparting skills and vocational training to the local people affected by the 2005 earthquake in Manshera. Under the terms of the agreement, the PIDC would establish two SDC's through TUSDEC and after operating them for a one-year period from its own resources, the charge of these institutions would be handed over to the Provincial Government. Subsequently, the project was handed over to the government of KPK and upon taking charge, the provincial government advertised various posts for making appointments on *ad hoc* basis for a one-year period or till the availability of a *recomendee* of the Public Service Commission.

3

Aggrieved, the Respondents filed W.P before the Peshawar High Court for regularization of their services under the KPK (Regularization of Services) Act 2009, which was allowed vide Impugned Judgements dated 06.09.2016 & 15.05.2018. Aggrieved of the same, the Appellants approached this Court and sought leave to appeal.

4. Leave to appeal was granted by this Court vide order dated 09.03.2020 which is reproduced below for ease of reference:

"The learned Additional 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 further contends that in all impugned judgements, the learned High Court has merely allowed writ petitions on basis of similarly placed persons, but without at all adverting to the facts and circumstances of each and every case separately and 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 the Respondents who are employees on projects or contract employees or Section 42 employees were not liable to be regularized and thus their regularization by the learned High Court through the Impugned Judgement in these petitions was altogether illegal. In support of the contentions, the learned law officer has referred to a three-member judgement of this Court dated 24.06.2014 passed in Civil Appeal No.587 of 2014 (Government of Khyber, Agriculture, 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 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, operation of impugned judgement(s) shall remain suspended."

5. The main argument advanced by the learned counsel for the Appellants is that the Respondents were appointed by TUSDEC which was fully under the control of the Federal Ministry of Industries. It is clear that none of the Respondents were regular employees of the department as they were appointed by the project authorities and therefore they were not eligible to be regularized under the 2009 Act. He submits that the Respondents were at liberty to apply for appointment against the advertised *ad hoc* posts on the basis of their qualification and experience gained in the project. However, instead of applying for the said posts, they filed writ petitions before the Peshawar High Court. Learned counsel further argued that being project employees, the Respondents are explicitly excluded from the purview of the KP Regularization Act, 2009 by virtue of section 2(b) of the Act.

6. Learned counsel for the Respondents, on the other hand, has vehemently argued that the services of the Respondents should be regularized under the Regularization Act, 2009 on ground of regularization of similarly situated employees, whilst relying on the impugned judgments.

7. We have heard the learned counsel for the parties at considerable length and gone through the record with their assistance. The question of law which falls for determination

by this Court is whether the Peshawar High Court correctly interpreted the law by concluding that the respondents, being project employees of TUSDEC, fell under the purview of the Regularization Act, 2009 and were entitled to benefit from the same.

8. A bare perusal of the appointment orders of the Respondents reveal that they were appointed on contractual basis in the Skill Development Centers by TUSDEC, a fully owned subsidiary of PIDC which is a state corporation working under the Ministry of Industries and Production. It was clear from the outset that the Respondents were temporary employees of the project authorities and hence were not the employees of the Department. Subsequently, the project was handed over to the Provincial Government, which upon taking charge of the said project advertised various posts for making *ad hoc* appointments. It is pertinent to note that the Respondents did not apply to the advertised appointments and instead filed constitutional petitions before Peshawar High Court.

9. It is well settled law that where a project employee is recruited by a Company for a definite period of time, such an employee does not under any circumstances either directly or by implication become an employee of the provincial government. Therefore, it is apparent that the cases of the respondents clearly fall outside the ambit of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act,

6

2009 as they were all hired against project posts by TUSDEC and the project itself was to be executed by the Company under the control of the Federal Government for a requisite period of time before it was handed over to the Provincial Government. For the said Act to apply, it is the Provincial Government that must employ the individual. We are, therefore, in no manner of doubt that there is a qualitative and conceptual difference between contract employees covered by the provisions of the 2009 Act and the temporary employees hired by TUSDEC during the time they operated the project before handing it over to the provincial government. Such employees cannot by any stretch of the language be termed or treated as employees hired by the KP Government. In these circumstances, the benefit of the Regularization Act, 2009 was not available to them.

10. Even otherwise, being project employees, the Respondents were excluded from the benefits of the 2009 Act by virtue of section 2(b). A bare perusal of the Act clearly indicates that the term 'employee' explicitly excludes any persons appointed for project posts. Section 2(b) of the Act provides the definition of the term "employee" which is reproduced hereunder for convenience:

"employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies".

11. We, therefore, find that the learned High Court erred in law by concluding that the benefit of Regularization

7
Act, 2009 is available to the Respondents. Consequently, we find the impugned judgments to be unsustainable.

12. In light of what has been discussed above, these appeals are allowed. Accordingly, the impugned judgements dated 06.09.2016 & 15.05.2018 passed by the Peshawar High Court are set aside.

Sd/ — H CJ
Sd/ — J
Sd/ — J

Announced in court.

'Not Approved For Reporting'