IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE YAHYA AFRIDI
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEAL NO.1414 OF 2021
(On appeal from the judgment dated 18.02.2019 passed by the Peshawar High Court, Bannu Bench in W.P.No.218-B/2017)

Muhammad Raqeeb ... Appellant

VERSUS

Government of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar & others. ...Respondents

For the Appellant: Mr. Anwar-ul-Haq, ASC
(Via video link at Peshawar)
Syed Rifaqat Hussain Shah, AOR

For Respondents 2&3: Mr. Waseem-ud-Din Khattak, ASC
(Via video link at Peshawar)

For Respondents 1&4: Mr. Zahid Yousaf Qureshi, Addl. AG, KPK

Date of Hearing: 02.03.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Appeal with the leave of this Court is directed against the judgment dated 18.02.2019 passed by the Peshawar High Court in W.P. No.218-B/2017 whereby the writ petition filed by the appellant was dismissed.

2. The transitory features of the case are that the appellant was appointed as Assistant Manager (Marketing) in a project of NWFP (Now Khyber Pakhtunkhwa), Small Industries Development Board vide appointment order dated 27.02.1984 and subsequently, he was promoted to the post of Project Manager with effect from 17.05.2006. On 01.06.2010, the appellant was served with a notice that his services are no more required, which was assailed by the appellant before the Peshawar High Court in the Writ Petition No.86-B/2010. The High Court, *vide* judgment dated 28.05.2015, allowed the writ petition with the direction to the respondents to reinstate and

regularize the services of the appellant with effect from 21.06.2007. The judgment of the High Court was challenged by the respondents in this Court vide CPLA No.2253/2015 which was allowed and the judgment of the High Court was set aside. The appellant had also filed a Review Petition which was dismissed by this Court *vide* order dated 19.09.2016. In the present case, the appellant has entreated that he was relieved from service *vide* order dated 30.12.2015, but, during his service, the KPK Small Industries Development Board Peshawar had introduced a pension scheme and provided an option to the employees to opt for either pension or gratuity and, as a consequence thereof, the appellant opted for pension rather than gratuity. The grievance of the appellant is that the other employees who opted for the pension scheme have been allowed to receive their pension, but the appellant has been discriminated against and has not been allowed the same. In order to assert his right to receive pensionary benefits, the appellant again approached the Peshawar High Court by means of Writ Petition No. 218-B/2017 but it was dismissed *vide* impugned judgment dated 18.02.2019.

3. Leave to appeal was granted vide order dated 18.10.2021 in the following terms:-

> "The learned counsel for the petitioner contends that the petitioner was a confirmed employee of NWFP (Now Khyber Pakhtunkhwa) Industries Development Board, Peshawar as Assistant Manager (Marketing) by an Office Order dated 28.02.1987, available at page 25 of the paper book, which shows that he was appointed as Assistant Manager (Marketing) on one year's probation with effect from 11.03.1985 for Leather Goods Service Centre, Bannu in BPS-16 and has successfully completed his probation period on 10.03.1986 and, therefore, confirmed as Assistant Manager (Marketing) with effect from 11.03.1986 for Leather Goods Service Centre, Bannu. The learned counsel further contends that in the letter dated 12.11.1986 of Small Industries Development Board (SIDB), NWFP (now Khyber Pakhtunkhwa), Leather Goods Service Centre (LGSC), STE Kohat Road, Bannu, options were sought for payment of pension under the NWFP (now Khyber Pakhtunkhwa) Civil Services Liberalized Rules in the SIDB from the regular employees of LGSC, Bannu and the name of the petitioner appeared at Serial No.1 of this letter, which is available at page 68 of the paper book. He further contends that the pension scheme was introduced in the NWFP (now Khyber Pakhtunkhwa) vide letter dated 15.05.1986, available at page 67 of the paper book, for the regular employees of the Board and the petitioner being regular employee was entitled to grant of pension and the Peshawar High Court, Bannu Bench, in the impugned judgment did not consider these very material facts of the matter in dismissing the writ petition filed by the petitioner".

4. The learned counsel for the appellant argued that action of the respondents depriving the appellant from pensionary benefits is in clear violation of the Articles 4, 11, 25 and 27 of the Constitution of the Islamic Republic of Pakistan, 1973. He further argued that the appellant had served the respondents for a long period, hence refusal to pay pension when other regular employees have been allowed a similar benefit is sheer discrimination with the appellant which aspect has been ignored by the learned High Court.

5. The Additional Advocate General, KPK argued that the appellant was a project employee who was promoted against a project post and not against a regular or permanent post and, after the completion of the project his services were no longer required. It was further averred that the pension scheme was only introduced for the regular employees and not for project employees. He also relied on the judgment of this Court rendered in Civil Petitions No 2073 to 2075, 2214, 2216 and 2253 of 2015 decided on 05.11.2015, including the orders passed on Civil Review Petition No.777 of 2015 on 19.09.2016. He concluded that the appellant was lawfully terminated being a project employee and he was not entitled to be considered for regularization of service under the provisions of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 ("**2009 Act**").

6. Heard the arguments. The litigation between the parties triggered from the Office Order dated 01.06.2010 issued by the Joint Director (Admn), Khyber Pakhtunkhwa Small Industries Development Board, Peshawar (SIDB) Bannu, whereby the contractual service of twelve (12) employees, including the appellant, was terminated on the notion that, according to the PC-I, the period of project "Leather Goods Service Center Bannu Phase-V" will be completed during the Financial Year 2009-10 and the project will be closed on 30.06.2010, hence the service of the contractual employees of the project was terminated w.e.f. 01.06.2010. Being aggrieved and dissatisfied by the termination letter, the appellant filed W.P.No.86-B/2010 in the Peshawar High Court and prayed for a declaration of the Court that the refusal of the respondents to give him regular status in the service of the Khyber Pakhtunkhwa Small Industries Development Board was unlawful, and sought a further declaration that the

termination letter of his service dated 01.06.2010 was without lawful authority and not sustainable in the eyes of the law.

7. The High Court, while relying on Section 3 of the 2009 Act, allowed the Writ Petition and set aside the termination letter dated 01.06.2010 with a direction to the respondents to reinstate and regularize the service of the appellant from the date of his regular service w.e.f. 21.06.2007. The judgment of the High Court was challenged by the Khyber Pakhtunkhwa Small Industries Development Board in this Court by dint of C.P.No.2253/2015 which was clubbed with other Civil Petitions and, *vide* consolidated judgment dated 05.11.2015, a three Member Bench of this Court set aside the judgment of the High Court and recorded the finding that the 2009 Act is not applicable in the circumstances as it only related to the ad hoc or contract employees appointed by the government and did not cover the project employees.

8. The aggrieved persons filed Civil Review Petitions and the appellant before us was also heard in Suo Motu Review Petition No.777 of 2015. However, the learned Members of the Bench, after hearing the review petitions, dismissed all review petitions *vide* order dated 19.09.2016. After attaining finality, the appellant again approached the Peshawar High Court *vide* Writ Petition No.218-B/2017 with the prayer that the respondent be directed to grant him all pensionary benefits from the date of appointment till his termination, but *vide* impugned judgment the petition was dismissed and the learned High Court merely relied on the earlier round of litigation which culminated in this Court after the dismissal of the main petition, as well as the review petitions.

9. In order to embark on the controversy, the definition of “employee” under Section 2 (b) and the provision laid down under Section 3 for regularizing the services of employees provided under the 2009 Act are quite relevant which are reproduced for the ease of reference as under:-.

> **Section 2 (b)**
>
> (b) "employee" means an ad hoc or a contract employee appointed by Government on ad hoc 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;

Section 3

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 31st 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 for a regular post:

Provided that the service promotion quota of all service cadres shall not be affected.

10. On one hand, the appellant is pleading that he was a permanent employee and is also requesting the grant of pensionary benefits, but on the contrary, in the memo of his petition in W.P.No.86-B/2010 he himself pleaded that some other project employees were regularized by the Board, and therefore he should also be regularized in service which is sufficient to divulge by his own conduct that he was not a regular employee but performing his duties as project employee, otherwise there was no logical purpose to approach the High Court for regularization of services in terms of the 2009 Act. If we look at the niceties of the 2009 Act, the definition of "employee" refers to the employment status of an employee appointed by the Government on ad hoc or contract basis or second shift/night shift, but does not include the employees for project posts, or those appointed on work charge basis, or those who are paid out of contingencies. According to Section 3 of the 2009 Act, only those employees who were appointed on contract or ad hoc basis and were holding the post on December 31, 2008 or till the commencement of the 2009 Act were deemed to have been validly appointed on regular basis. While reading this provision in conjunction with the definition of "employee" provided under the 2009 Act it is lucidly clear that the persons performing their contractual duties for project post or on work charge basis or who are paid out of contingencies were excluded from the definition of employee. Hence by all means the contractual employees performing their duties on project post could not claim regularization in terms of the aforesaid Act. The status of the appellant's engagement with the respondents had already been examined and set at rest in the first round of litigation up to the level of this Court, hence at this stage the earlier judgment passed in the case of

appellant cannot be re-examined or re-visited again by this Court, particularly when the review petition was also dismissed much earlier. Hence, no cause of action accrued to the appellant to re-agitate a similar controversy with regard to his erstwhile employment status for the relief of pensionary benefits.

11. At this juncture, Article 114 of the Qanun-e-Shahadat Order, 1984 is also quite significant which defines the doctrine of estoppel under which, when a person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. In fact this principle is founded on equity and justness with a straightforward objective to prevent fraud and ensure justice. Although it is described as a rule of evidence, it may have the effect of constituting a substantive right as again the person estopped being well-defined legal precept that impedes someone from averring a truth that is defined as contradictory to an already established truth. The appellant himself approached the High Court for the relief of regularization of his project job. In the case in hand, besides the doctrine of estoppel, the doctrine of election and doctrine of *qui approbat non reprobat* (one who approbates cannot reprobate) are also applicable.

12. In the earlier round of litigation this Court has already held that all the employees were performing duties on contract basis as project employees, thus the continuity of their services with the Board will by itself furnish no ground for grant of relief of regularization of their services and the Review Petition was also dismissed. The doctrine of finality is primarily focused on a long-lasting and time honored philosophy enshrined in the legal maxim "*Interest reipublicae ut sit finis litium*" which recapitulates that "in the interest of the society as a whole, the litigation must come to an end" or "it is in the interest of the State that there should be an end to litigation". Finality of judgments culminates the judicial process, proscribing and barring successive appeals or challenging or questioning the judicial decision keeping in view the rigors of the renowned doctrine of *res judicata* explicated under Section 11 of the Code of Civil Procedure, 1908. The

Latin maxim "*Re judicata pro veritate occipitur*" expounds that a judicial decision must be accepted as correct. This doctrine lays down the principle that the controversy flanked by the parties should come to an end and the judgment of the Court should attain finality with sacrosanctity and imperativeness which is necessary to avoid opening the floodgates of litigation. Once a judgment attains finality between the parties it cannot be reopened unless some fraud, mistake or lack of jurisdiction is pleaded and established. The foremost rationale of this doctrine is to uphold the administration of justice and to prevent abuse of process with regard to the litigation turn out to be final and it also nips in the bud the multiplicity of proceedings on the same cause of action. In the case in hand, for all practical purposes, the controversy attained finality and even under the doctrine of past and closed transaction, the controversy cannot be reopened by this Court in the second round of litigation which on the face of it is an abuse of process of the Court.

13. Since we did not find any illegality or impropriety in the impugned judgment of the High Court, therefore the Civil Appeal was dismissed *vide* our short order dated 02.03.2023. Above are the reasons of our short order.

Judge

Judge

Judge

Islamabad, the
2nd March, 2023
Khalid
Approved for reporting.