

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE GULZAR AHMED, C.J.

MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CIVIL APPEALS NO. 759/2020, 1448/2016, 1483/2019, 760/2020, 761/2020, 1213/2020 TO 1230/2020**

(On appeal from the judgments/orders dated 20.06.2017, 18.09.2015, 27.10.2016, 27.03.2018, 14.03.2016, 07.04.2016, 11.09.2017, 19.09.2017, 16.10.2017, 18.04.2018, 03.05.2018, 17.05.2018, 24.05.2018, 18.10.2018, 11.10.2018, 04.07.2017, 20.11.2018, 15.05.2019 and 07.03.2019 of the Peshawar High Court, Peshawar; Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat; KPK Service Tribunal, Peshawar; and Peshawar High Court, D.I. Khan Bench passed in Writ Petition Nos. 1714-P/2015, 3592-P/2014, 3909-P/2015, 602-P/2015 and 4814-P/2017; Civil Revision No.493-P/2015; Writ Petition Nos. 1851-P/2014, 3245-P/2015, 429-M/2014 and 3449-P/2014; Appeal Nos.62/2020, 63/2020 and 326/2015; and Writ Petitions No.778-M/2017, 1678-P/2016, 3452-P/2017, 4675-P/2017, 2446-P/2016, 3315-P/2018, 667-D/2016, 2096-P/2016, 2389-P/2018 and 965-P/2014)

1. **Civil Appeal No.759/2020:**  
Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar etc. Vs. Intizar Ali etc.
2. **Civil Appeal No.1448/2016:**  
Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar etc. Vs. Javed Khan etc.
3. **Civil Appeal No.1483/2019:**  
Government of Khyber Pakhtunkhwa through Secretary Education (E & S.E) K.P, Peshawar etc. Vs. Muhammad Ilyas
4. **Civil Appeal No.760/2020:**  
Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar etc. Vs. Behramand etc.
5. **Civil Appeal No.761/2020:**  
Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar etc. Vs. Kifayatullah etc.
6. **Civil Appeal No.1213/2020:**  
Secretary Elementary & Secondary Education, Govt. of Khyber Pakhtunkhwa Civil Secretariat, Peshawar etc. Vs. Mst. Safia Begum etc.
7. **Civil Appeal No.1214/2020:**  
Government of K.P. through Secretary (E & S) Education, Peshawar etc. Vs. Akhter Biland

8. **Civil Appeal No.1215/2020:**  
*District Education Officer (Male) District Swabi etc. Vs. Muhammad Israr & another*
9. **Civil Appeal No.1216/2020:**  
*Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar etc. Vs. Shujaullah*
10. **Civil Appeal No.1217/2020:**  
*Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar etc. Vs. Sheraz Badshah etc.*
11. **Civil Appeal No.1218/2020:**  
*Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar etc. Vs. Zahid Ali*
12. **Civil Appeal No.1219/2020:**  
*Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar etc. Vs. Shah Hussain*
13. **Civil Appeal No.1220/2020:**  
*Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar etc. Vs. Muhammad Hayat*
14. **Civil Appeal No.1221/2020:**  
*Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar etc. Vs. Dir Nawab Khan etc.*
15. **Civil Appeal No.1222/2020:**  
*Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar etc. Vs. Muhammad Faridoon Khan etc.*
16. **Civil Appeal No.1223/2020:**  
*Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar etc. Vs. Shafiq Ahmad*
17. **Civil Appeal No.1224/2020:**  
*District Education Officer (Male) Charsadda etc. Vs. Yahiya Jan*
18. **Civil Appeal No.1225/2020:**  
*Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education (E&SE) Khyber Pakhtunkhwa, Peshawar etc. Vs. Syed Attaullah Shah etc.*
19. **Civil Appeal No.1226/2020:**  
*Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar etc. Vs. Noor ud Din*

20. **Civil Appeal No.1227/2020:**  
Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar etc. Vs. Asmatullah Khan
21. **Civil Appeal No.1228/2020:**  
Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar etc. Vs. Mst. Bakht Zari etc.
22. **Civil Appeal No.1229/2020:**  
Secretary Elementary & Secondary Education KP, Peshawar etc. Vs. Attaullah Jan
23. **Civil Appeal No.1230/2020:**  
Government of Khyber Pakhtunkhwa through Secretary Communication & Works Department, Peshawar etc. Vs. Sajjad Ahmad & another

For the appellant(s): Mr. Shumail Butt, Advocate General, KPK  
Barrister Qasim Wadood, Addl.A.G., KPK  
Mr. Atif Ali Khan, Addl.A.G., KPK  
Mr. Zahid Yousaf Qureshi, Addl.A.G., KPK  
Mr. Iftikhar Ghani, DEO (Male) Bunir  
Mr. Muhammad Aslam, S.O. (Litigation)  
Mr. Fazle Khaliq, Litigation Officer/DEO (Male) Swat  
Mr. Fazal Rehman, Principle/DEO Swat  
Ms. Roheen Naz, ADO (Legal)/DEO(F) Nowshera  
Malik Muhammad Ali, S.O. C&W Department, KPK  
Mr. Jehanzeb Khan, SDO/XEN C&W  
**(In all cases)**

For the respondent(s): Sh. Riaz-ul-Haque, ASC  
**(In C.As.759/2020, 1483/2019, 760, 1214, 1215, 1217, 1218, 1220 & 1223/2020)**

Mr. Fazal Shah, ASC  
**(Respondents No.1 & 2 in C.A.1448/2016, respondents No.2 to 4, 8, 99, 11 & 12 in C.A.1213/2020 & respondents in C.A.1229/2020)**

Mr. Abdul Munim Khan, ASC  
**(In C.A.761/2020)**

Barrister Umer Aslam Khan, ASC  
**(Respondent No.1 in C.A.1213/2020)**

Mr. Taufiq Asif, ASC  
**(In C.A.1221/2020)**

Mr. Misbah Ullah Khan, ASC  
**(In C.A.1222/2020)**

Hafiz S. A. Rehman, Sr. ASC  
**(Respondents No.1, 3 to 8 in C.A.1225/2020)**

*Mr. Saleem Ullah Ranazai, ASC  
(In C.A.1227/2020)*

*Chaudhry Muhammad Shuaib, ASC  
(Respondent No.2 in C.A.1228/2020)*

*Mr. Fida Gul, ASC  
(In C.A.1230/2020)*

*Nemo  
(Respondents No. 5 to 7 & 10 in C.A.1213/2020,  
respondents in C.As.1216/2020, 1219/2020,  
1224/2020 & 1226/2020, respondent No.2 in  
C.A.1225/2020 & respondents No.1 & 3 in  
C.A.1228/2020)*

*Date of hearing: 03.06.2021*

### **JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** *Through these appeals by leave of the Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have called in question the judgments of the learned Peshawar High Court and KPK Service Tribunal whereby the Writ Petitions, Service Appeals and Civil Revision filed by the respondents were allowed and they were re-instated in service under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012.*

2. *Briefly stated the facts of the matter are that the respondents were appointed on different posts in various departments of Government of KPK on various dates in the years 1995 & 1996 on temporary/fixed/ad-hoc basis. Later on their services were terminated by the appellants vide different orders passed in the years 1996 & 1997 on the ground that they lack requisite qualification and experience. In the year 2010, the Federal Government enacted the Sacked Employees (Re-instatement) Act, 2010 for the purpose of providing relief to persons who were appointed in a corporation/autonomous/semi-autonomous bodies or in Government service during the period from 01.11.1993 to 30.11.1996 and were dismissed, removed or terminated from service during the period from 01.11.1996 to 12.10.1999. Following the Federal Government, the provincial Government of KPK also promulgated the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 for reinstatement of sacked employees, who*

were dismissed, removed or terminated from service during the period from 1<sup>st</sup> day of November, 1996 to 31<sup>st</sup> day of December, 1998. Pursuant to the said legislation, a number of employees were reinstated but the respondents were not given the said relief, which led to their filing of writ petitions, service appeals and Civil Revision arising out of a suit before the Peshawar High Court and KPK Service Tribunal, which have been allowed vide impugned judgments mainly on the ground that as the similarly placed employees have been reinstated, the respondents are also entitled for the same relief. Hence, these appeals by leave of the Court.

3. Learned Advocate General, KPK, contended that the respondents were temporary employees and the relief sought for under Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 was only meant for those employees who were appointed on regular basis having the prescribed qualification and experience for the respective post during the period from 01.11.1993 to 30.11.1996 and were dismissed, removed or terminated from service during the period from 01.11.1996 to 31.12.1998. Contends that even the respondents did not have the requisite qualification and experience at the time of their first appointment and they obtained the same after their termination from service. Contends that the learned High Court and the Tribunal in the impugned judgments has acknowledged this fact that the respondents did not have the requisite qualification yet they were ordered to be reinstated. Contends that under Section 7 of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, to avail the benefit of reinstatement an employee had to file an application within thirty days of the commencement of the Act i.e. 20.09.2012 but none of the respondents have fulfilled that condition. Contends that this Court has held that the requirement of Section 7 of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 is mandatory in nature and if an employee has not complied with the spirit of said provision, no relief can be given to him. Lastly contends that in such circumstances, the impugned judgments are liable to be set aside.

4. Hafiz S.A. Rehman, learned Sr. ASC for respondents No.1, 3 to 8 in C.A.1225/2020 contended that minutes of meeting of

*the department held on 02.09.2015 show that all the respondents had applied within the stipulated period of time. Contends that factual controversy is involved in the present appeals as the disputed questions whether the respondents applied within the 30 days cutoff period after the commencement of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 and whether they had the requisite qualification/experience having assailed in the present appeals, therefore, the present appeals are not maintainable. Contends that no question of law of public importance within the meaning of Article 212(3) of the Constitution of Islamic Republic of Pakistan is involved in the present appeals, therefore, they are liable to be dismissed. Contends that the learned High Court has not passed any injunctive order and has only remanded the cases back to the department for reconsideration on the basis of factual controversy. Contends that the respondents were regular employees and the term 'temporary' only refers to those employees who are on probation.*

5. *Sh. Riaz-ul-Haque, learned ASC for the respondents in C.As.759/2020, 1483/2019, 760, 1214, 1215, 1217, 1218, 1220 & 1223/2020 contended that the onus to prove that whether the respondents applied within 30 days cut-off period after the commencement of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 and whether they had the requisite qualification/experience is burdened with the appellant (Government) and they never raised this very issue before the High Court. On our specific query, he admitted that he does not know the date as to when the respondents had applied for re-employment in pursuance of Section 7 of the said Act.*

6. *In response to our query as to whether the respondents were regular employees having requisite qualification/experience and had applied within 30 days, Mr. Fazal Shah, learned ASC for respondents No.1 & 2 in C.A.1448/2016, respondents No.2 to 4, 8, 99, 11 & 12 in C.A.1213/2020 & respondents in C.A.1229/2020 admitted that the respondents were appointed on temporary/ad hoc basis. However, he kept on insisting that the respondents were duly qualified and possessed requisite qualification, therefore, the impugned judgments may be upheld.*

7. Barrister Umer Aslam Khan, learned ASC for respondent No. 1 in CA 1213/2019 stated that the respondent had equivalent to intermediate qualification but did not have the sanad/certificate at the time of appointment, which was procured later on in the year 2011. He supported the impugned judgments by stating that the respondent possesses all the requisite qualification/experience, therefore, he deserves to be reinstated.

8. Mr. Saleemullah Ranazai, learned ASC for the respondent in Civil Appeal No. 1227/2019 contended that the respondent was a regular employee and was wrongly terminated from service. Contends that after the promulgation of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, the respondent had filed the application within the prescribed period of 30 days. He further contends that he was holding the degree of Bachelor of Arts at that time whereas the required qualification was matriculation.

9. Mr. Fida Gul, learned counsel for the respondent in Civil Appeal No.1230/2019 argued that both the respondents were appointed in Khyber Agency at the relevant time. Contends they had filed the application for statutory benefit/relief well within time and they had the requisite qualification/experience.

10. M/s Abdul Munim Khan, Taufiq Asif, Misbahullah Khan, Ch. Muhammad Shoaib learned ASCs have adopted the arguments of Hafiz S.A. Rehman, learned Sr. ASC.

11. Having heard the learned counsel for the parties at extensive length, the questions which crop up for our consideration are **(i)** whether the respondents were regular employees of the Government of KPK, **(ii)** whether they had the requisite qualification/experience at the time of appointment, **(iii)** whether they had applied for reinstatement within the cutoff period of 30 days as stipulated in Section 7 of the Act and **(iv)** what is the effect of our judgment passed in Muhammad Afzal Vs. Secretary Establishment (2021 SCMR 1569) whereby the Sacked Employees (Re-instatement) Act, 2010 enacted by Federal Government for similarly placed employees of Federal Government was held ultra vires the Constitution.

12. Firstly, we will take up the issue as to whether the respondents were 'regular employees' and had the requisite qualification/experience at the time of appointment. Before proceeding with this issue, it would be advantageous to reproduce the very Preamble of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, which reads as under:-

*"Whereas it is expedient to provide relief to those sacked employees who were appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience required for the said post, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and were dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on various grounds."*

13. The intent behind the promulgation of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 clearly reflects that it was a legislation promulgated to benefit those regular employees sacked without any plausible justification enabling them to avail the same so that they may be accommodated within the parameters of legal attire. A bare reading of the Preamble of the Act shows that it was enacted to give relief to those sacked employees, who were appointed on '**regular basis**' to a civil post in the Province of Khyber Pakhtunkhwa while possessing the prescribed qualification and experience for the said post during the period from 1<sup>st</sup> day of November, 1993 to the 30<sup>th</sup> day of November, 1996 (both days inclusive) and were dismissed, removed or terminated from service during the period from 1<sup>st</sup> day of November, 1996 to 31<sup>st</sup> day of December, 1998. Therefore, keeping in view the intent of the Legislature, it can safely be said that to become eligible to get the relief of reinstatement, one has to fulfill three conditions i.e. **(i)** the aggrieved person should be a regular employee, **(ii)** he must have the requisite qualification & experience for the post during the period from 01.11.1993 to 30.11.1996 and not later, and **(iii)** he was dismissed, removed or terminated from service during the period from 01.11.1996 to 31.12.1998. At the time of hearing of these appeals, we had directed the learned Advocate General so also the respondents to provide us a chart containing dates of appointments of the respondents, whether they were regular employees or not, their qualifications/experience at the time of appointment, dates of



termination, dismissal or removal from service and the dates on which they had filed applications to avail the benefit under Section 7 of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012. The requisite data was provided to us through various CMAs. We have minutely looked at the credentials of each of the respondent and found that except (respondent Asmatullah in Civil Appeal No. 1227/2020) none of the respondents was appointed on regular basis. Although a very few, like a drop in a bucket, had the requisite qualification/experience, had applied within thirty days, the cutoff period as mandated but one thing is common in all of them, that they all were daily wagers/temporary/fixed employees. The foremost and mandatory condition to become eligible to get the relief under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 was that the aggrieved person should be a regular employee *stricto sensu* whereas all the respondents do not meet the said statutory requirement. If an employee does not meet the mandatory condition to become eligible for reinstatement that he should be a regular employee then even if he was dismissed / removed / terminated from service, he cannot get the relief of reinstatement because he has not fulfilled the basic requirement of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012. Admittedly, the respondents were temporary/fixed/ad-hoc/contract employees. The temporary employees have no vested right to claim reinstatement/regularization. This Court in a number of cases has held that temporary/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 before us. This Court in the case of PTCL Vs. Muhammad Samiullah (2021 SCMR 998) has categorically held that ad-hoc, temporary or contract employee has no vested right of regularization and this type of appointment does not create any vested right of regularization in favour of the appointee. In an unreported judgment dated 11.10.2018 passed in Civil Petition Nos. 210 & 300 of 2017, this Court has candidly held that the sacked employee, as defined in the Act, required to be regular employee to

*avail the benefit of reinstatement and if an employee is not a regular employee his case does not fall within the ambit of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012. So far as the argument of learned counsel for the respondents Hafiz S.A. Rehman that the respondents were regular employees and the term 'temporary' refers to those employees who are on probation is concerned, the same is misconceived. Permanent or regular employment is one where there is no defined employment date except date of superannuation whereas temporary position is one that has a defined/limited duration of employment with specified date unless it is extended. If a person is employed against a permanent vacancy, there is specifically mentioned in his appointment letter that he will be kept on probation for a specific period of time but in the case of a temporary employee it is mentioned that he is employed on temporary basis either for a cutoff period of time or for the completion of a certain period either related to a project or assignment. The appointment letters of the respondents clearly show that they were appointed on temporary/fixed basis and not on regular basis.*

14. *Now we would advert to the second question as to whether the respondents had the requisite qualification/experience at the time of appointment. Although, when none of the respondents was a regular employee, the question whether they had the requisite qualification/experience at the time of appointment or not loses its significance but despite that we have carefully perused the particulars of each of the respondents and found that except 2/3 respondents none had the requisite qualification and experience at the time of appointment. Even otherwise, as discussed above, if an employee had the requisite qualification/experience but he was employed on adhoc/temporary/daily wages, he could not claim reinstatement under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012.*

15. *The third question is whether the respondents had applied for reinstatement within the cutoff period of 30 days as stipulated in Section 7 after the commencement of the Act, 2012. Under Section 7(1) of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, to avail the benefit of reinstatement/re-*

appointment, an employee had to file an application within thirty days of the commencement of the Act i.e. 20.09.2012. Before discussing this aspect of the matter, it would be advantageous to reproduce the said Section for ready reference. It reads as under:-

**"7. Procedure for appointment.**---(1) A sacked employee, may file an application, to the concerned Department within a period of thirty days from the date of commencement of this Act, for his appointment in the said Department:--

*Provided that no application for appointment received after the due date shall be entertained."*

16. In an unreported judgment dated 23.02.2021 passed in Civil Appeal No. 967/2020, the respondent was appointed as C.T. Teacher on 25.02.1996 and was terminated from service on 13.02.1997. After the promulgation of KPK Sacked Employees (Appointment) Act, 2012, the respondent submitted an application for his reinstatement, which did not find favour with the department and ultimately the matter came to this Court wherein it has been found that neither the respondent was a regular employee nor he had applied for reinstatement within thirty days within the purview of Section 7 of the Act. It would be in fitness of things to reproduce the relevant paragraphs of the judgment of this Court, which read as under:-

"Section 7 of the Act of 2012, requires an employee to make an application to the concerned department within a period of thirty days from the date of commencement of the Act of 2012. The respondent did not apply under the Act of 2012 for his reinstatement rather on the basis that some of the employees were granted benefits of the Act of 2012, he also filed a writ petition taking chance of his reinstatement. The very question that whether the respondent applied under the Act of 2012 for reinstatement being disputed question, the High Court in the first place was not justified in exercising its writ jurisdiction, for that, the very fact that the respondent has applied under the Act of 2012 for reinstatement into service, was not established on the record.

7. The learned Additional Advocate General further contends that the respondent was a temporary employee and thus, was also not entitled to be reinstated into service under the Act of 2012. Such aspect of the matter has not been considered by the High Court in the impugned judgment. We, therefore, do

*not consider it appropriate to examine the same and give our finding on it. The very fact that the respondent has not applied under the Act of 2012 for being reinstated into service, Section 7 of the Act of 2012 was not complied with and thus, the High Court was not justified in passing of the impugned judgment, allowing the writ petition filed by the respondent.*  
**(Underlined to lay emphasis)**

17. Similarly, in Civil Petition No. 639-P/2014, this Court has held that in order to avail the benefit of reinstatement under the KPK Sacked Employees (Appointment) Act, 2012, it is necessary for an employee to approach the concerned department in terms of Section 7 within thirty days and in case of failure, as per its proviso, he would not be entitled for appointment in terms thereof. We have noticed that except for a very few respondents none of them have fulfilled the mandatory condition of applying/approaching the department within 30 days after the commencement of the Act i.e. 20.09.2012, therefore, they are not entitled to seek the relief sought for. The respondents who had applied within time were not regular employees, therefore, even though they had applied within time but it would not make any difference as they do not fulfill the very basic requirement for reinstatement i.e. that to avail the benefit of reinstatement, an employee should be a regular employee. In a number of judgments, the superior courts of the country have held that when meaning of a statute is clear and plain language of statute requires no other interpretation then intention of Legislature conveyed through such language has to be given full affect. Plain words must be expounded in their natural and ordinary sense. Intention of the Legislature is primarily to be gathered from language used and attention has to be paid to what has been said and not to that what has not been said. This Court in Government of KPK Vs. Abdul Manan(2021 SCMR 1871) has held that when the intent of the legislature is manifestly clear from the wording of the statute, the rules of interpretation required that such law be interpreted as it is by assigning the ordinary English language and usage to the words used, unless it causes grave injustice which may be irremediable or leads to absurd situations, which could not have been intended by the legislature. In JS Bank Limited Vs. Province of Punjab through Secretary Food, Lahore (2021 SCMR 1617), it has been held by this Court that for the interpretation of statutes purposive rather than a

*literal approach is to be adopted and any interpretation which advances the purpose of the Act is to be preferred rather than an interpretation, which defeats its objects. We are of the view that the very object of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, as is apparent from its very Preamble, was to give relief to only those persons, who were regularly appointed having possessed the prescribed qualification/experience during the period from 01.11.1993 to 30.12.1996 and were thereafter dismissed, removed or terminated from service during the period from 01.11.1996 to 31.12.1998. The learned High Court and the Service Tribunal did not take into consideration the above aspects of the matter and passed the impugned orders, which are against the very intent of the law.*

18. On the same analogy on which the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 was enacted, earlier Legislature had enacted Sacked Employees (Re-instatement) Act, 2010 for the sacked employees of Federal Government. However, this Court in the recent judgment reported at Muhammad Afzal Vs. Secretary Establishment (2021 SCMR 1569) has declared the Sacked Employees (Re-instatement) Act, 2010 to be *ultra vires* the Constitution by holding as under:-

*“Legislature had, through the operation of the Act of 2010, attempted to extend undue benefit to a limited class of employees---In terms of the Act of 2010 upon the 'reinstatement' of the 'sacked employees', the 'status' of the employees currently in service was violated as the reinstated employees were granted seniority over them---Legislature had, through legal fiction, deemed that employees from a certain time period were reinstated and regularized without due consideration of how the fundamental rights of the people currently serving would be affected---Rights of the employees who had completed codal formalities through which civil servants were inducted into service and complied with the mandatory requirements laid down by the regulatory framework could not be allowed to be placed at a disadvantageous position through no fault of their own---Act of 2010 was also in violation of the right enshrined under Art. 4 of the Constitution, that provided citizens equal protection before law, as backdated seniority was granted to the 'sacked employees' who, out of their own volition, did not challenge their termination or removal under their respective regulatory frameworks---Given that none of the 'sacked employees' opted for the remedy available under law upon termination during the limitation period, the transaction had essentially become one that was past and closed; they had foregone their right to challenge their orders of termination or removal---Sacked Employees (Reinstatement) Act, 2010 had extended undue advantage to a certain class of citizens thereby*

*violating the fundamental rights (Articles 4, 9, and 25 of the Constitution) of the employees in the Service of Pakistan and was thus void and ultra vires the Constitution."*

19. *This judgment in Muhammad Afzal supra case was challenged before this Court in its review jurisdiction and this Court by dismissing Civil Review Petition Nos. 292 to 302/2021 etc upheld the judgment by holding that "the Sacked Employees (Re-instatement) Act, 2010 is held to be violative of inter alia Articles 25, 18, 9 and 4 of the Constitution of Islamic Republic of Pakistan, 1973 and therefore void under the provisions of Article 8 of the Constitution." The bare perusal of the Preamble of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 shows that since the Federal Government had passed a similar Act namely Sacked Employees (Re-instatement) Act, 2010, the Government of KPK following the footprints of Federal Government also passed the Act of 2012. It would be in order to reproduce the relevant portion of the Preamble, which reads as under:-*

*"Whereas the Federal Government has also given relief to the sacked employees by enactment;*

*And Whereas the Government of the Khyber Pakhtunkhwa has also decided to appoint these sacked employees on regular basis in the public interest"*

20. *The term 'ultra vires' literally means "beyond powers" or "lack of power". It signifies a concept distinct from "illegality". In the loose or the widest sense, everything that is not warranted by law is illegal but in its proper or strict connotation "illegal" refers to that quality which makes the act itself contrary to law. Constitution is the supreme law of a country. All other statutes derive power from the constitution and are deemed subordinate to it. If any legislation over-stretches itself beyond the powers conferred upon it by the constitution, or contravenes any constitutional provision, then such laws are considered unconstitutional or ultra vires the constitution. When two laws are enacted for the same purpose though in different jurisdictions and one of the same has been declared ultra vires the Constitution by the Apex Court of the country, then according to the dictates of justice, the other enacted on the same analogy also loses its sanctity and ethically becomes null and void. However, at this stage, we do not want to comment on this aspect of the matter*

*in detail. Even if we keep aside this aspect of the matter, as discussed in the preceding paragraphs, there is nothing available on the record, which could favour the respondents.*

21. *So far as the argument of Hafiz S.A. Rehman, learned Sr. ASC that as factual controversy is involved, these appeals are liable to be dismissed is concerned, even on this point alone the impugned judgments are liable to be set aside because it is settled law that superior courts could not engage in factual controversies as the matters pertaining to factual controversy can only be resolved after thorough inquiry and recording of evidence in a civil court. Reliance is placed on Fateh Yarn Pvt Ltd Vs. Commissioner Inland Revenue (2021 SCMR 1133). Admittedly, the learned High Court while passing the impugned judgments had went into the domain of factual controversy, which was not permissible under the law. We have noticed that in Civil Appeal No. 1213/2020 although the respondents had filed the civil suit but they were not appointed on regular basis and most of them do not have the required qualification/experience at the time of their appointment. Learned counsel had stated that no question of law of public importance within the meaning of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, is involved in these appeals. However, this argument of the learned counsel is misconceived. The question of applicability of Article 212(3) of the Constitution arises only when any party has approached this Court against the judgment passed by the Federal Service Tribunal but except Civil Appeal Nos. 1218 to 1220/2020 same is not the case here, therefore, this has no relevance in the present proceedings. Even in the aforesaid Civil Appeals, the respondents were neither regular employees nor they had the requisite qualification/experience at the time of their appointment nor had they filed the application within thirty days within the purview of Section 7 of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, therefore, as discussed in the preceding paragraphs, the learned Service Tribunal could not have directed for their reinstatement.*

22. *Mr. Fida Gul, learned counsel for the respondents in Civil Appeal No.1230/2019 had contended that both the respondents were appointed on regular basis in Khyber Agency at*

*the relevant time, had filed the application within time and had the requisite qualification, therefore, they deserve to be reinstated in service. However, we have noticed that they were Agency Cadre (FATA) employees. The Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 was applicable to the Provincial Employees of KPK as explained in para 2(b) & (e) of the Act and has never been extended to FATA. According to Article 247 of the Constitution of Islamic Republic of Pakistan, 1973, the Provincial Assembly of Khyber Pakhtunkhwa could not legislate for FATA. We have noted that only the residents of Khyber Agency were eligible to be appointed but it is a fact that both the respondents were residents of Charsadda/KPK. Even otherwise, we have found that respondent Sajjad Ahmad was initially appointed as Mate (BS-02) in the office of Chief Engineer (FATA) and was subsequently promoted to the post of Worker Superintendent (BPS-09) but according to the method of recruitment, the post of Worker Superintendent was required to be filled in by initial appointment and not by promotion amongst the Mate, therefore, his promotion was irregular. As far as respondent Amir Ilyas is concerned, he was appointed as Store Munshi in FATA but we have been informed that the Stores were closed in FATA on 26.11.1992, therefore, his subsequent appointment as Store Munshi on 26.12.1995 was irregular.*

23. *We have found that so far as the case of the respondent Asmatullah in Civil Appeal No. 1227/2020 is concerned, the same is different. Although, he was initially appointed as Security Sergeant in BPS-05 for a period of six months by the then Agricultural Engineer, DI Khan but subsequently, he was regularized against the post of Crank Shaft Grinder (BPS-05) vide order dated 02.04.1996. He had the requisite qualification/experience and had also applied for reinstatement on 09.10.2012 i.e. within thirty days of the commencement of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, therefore, to his extent the impugned judgment is liable to be maintained.*

24. *For what has been discussed above, all the appeals except Civil Appeal No. 1227/2020 are allowed and the impugned judgments are set aside. As far as Civil Appeal No. 1227/2020 is concerned, the same is dismissed.*



25. *Before parting with the judgment, we observe with concern that in a number of cases the statutory departments, due to one reason or the other, do not formulate statutory rules of service, which in other words is defiance of service structure, which invariably affects the sanctity of the service. It is often stressed by the superior courts that framing of statutory rules of service is warranted and necessary as per law. It is invariably true that an employee unless given a peace of mind cannot perform its functions effectively and properly. The premise behind formulation of statutory rules of service is gauged from Articles 4 and 9 of the Constitution of Islamic Republic of Pakistan, 1973. An employee who derives its employment by virtue of an act or statute must know the contours of his employment and those niceties of the said employment must be backed by statutory formation. Unless rules are not framed statutorily it is against the very fundamental/structured employment as it must be guaranteed appropriately as per notions of the law and equity derived from the Constitution being the supreme law.*

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the  
Approved For Reporting

Announced on 28.01.2022

**Khurram**