**IN THE SUPREME COURT OF PAKISTAN**
(APPELLATE JURISDICTION)

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

AFR

**CIVIL APPEALS NO.239, 274 AND 283 OF 2020.**
*(Against the judgment dated 27.09.2016, 17.07.2018 and 14.11.2018 passed by the Peshawar High Court, Peshawar in Writ Petitions No.767-P, 1674-P of 2016 and 3108-P of 2018).*

Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering, Peshawar and others.
*(in CA.239/2020)*

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others.
*(in CA.274/2020)*

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others.
*(in CA.283/2020)*

*...Appellant(s)*

***Versus***

Abdul Manan and others.
*(in CA.239/2020)*

Ijaz Ali Shah and others.
*(in CA.274/2020)*

Muhammad Nawaz and others.
*(in CA.283/2020)*

*...Respondent(s)*

For the Appellant(s): Mr. Shumail Ahmad Butt, A.G. KP.
Mr. Atif Ali Khan, Addl. A.G. KP.
Barrister Qasim Wadood, Addl. A.G. KP.
Mr. Irum Shaheen, DD. HED.
Mr. Asif Khan, Litigation Officer, HED.
Mr. Amin Jan, AD, Fisheries, KP.
Mr. Gulzar Mahmood, A.D. Fisheries, KP.
Engr. Falak Niaz, AD (Dost).
Rajbar Khan, SDO, PHE, KP.
Mr. Saadullah, Asstt. Secretary, BOR, KP.

Mr. Faheem Ullah Khan, Sr. Law Officer, KPPSC.
Mr. Assad Ullah Khan, SO, P&D, Department.
Mr. Amanatullah Qureshi, Deputy Secretary, Finance Department, KP.

For the Respondent(s): Mr. Khaled Rahman, ASC. *(in CA.274/2020)*

Mr. M. Ijaz Khan Sabi, ASC. *(in CA.283/2020)*

N.R. *(in CA.239/2020)*

Date of Hearing: 25.11.2020 *(Judgment Reserved)*

**JUDGMENT**

**IJAZ UL AHSAN, J.-** Through this single judgment, we intend to decide Civil Appeals No. 239, 274 and 283 of 2020 (hereinafter referred to as "**CA**") as they involve a common question of law.

2. Through the instant appeals, the Appellants have sought to challenge the judgments of the Peshawar High Court, Peshawar dated 14.11.18 passed in Writ Petition No. 3108-P/2018, 17.07.18 passed in Writ Petition No. 1674-P/2016 and 27.09.2016 passed in Writ Petition No. 767-P/2016 (hereinafter referred to as "**Impugned Judgments**"). Through the impugned judgments, the Respondents had challenged the action of the Appellants to not regularize them. Their respective petitions were allowed, and, the Appellants were ordered to regularize the Respondents in their respective posts.

3. The brief facts giving rise to this *lis* are that the Respondents in CA 239 of 2020 were appointed against different posts on a contract basis. They were subsequently regularized with effect from 2008 and not from the dates of their respective initial appointments. The Respondents in CA 283 of 2020 were appointed as Office Assistant, Typist, and *Naib Qasid*. Respondent No. 01 in CA 283 of 2020 was later promoted out of turn as Settlement *Tehsildar* in 2009 and later on, was demoted, because the correct mechanism to appoint him as provided in Section 7 of the Civil Servant Promotion and Transfer Rules, 1989, was not followed. The Respondents in CA 274 of 2020 were appointed in the project known as "Capacity Building Phase-II" and, after the expiry of the said project, were relieved. All of the Respondents filed their respective writ petitions before the learned High Court, which were allowed. The Appellants are aggrieved and have approached this Court.

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 judgments, 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 Judgment in these petitions was altogether illegal. In support of the 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, 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 judgment(s) shall remain suspended."*

5. The Learned Additional Advocate General, Khyber Pakhtunkhwa (hereinafter referred to as "**KP**") contends that the Respondents in CA's 283 and 274 were project employees with no right to regularization. He has further argued that the Respondents being project employees are not covered under the KP Civil Servants (Amendment) Act, 2005 (hereinafter referred to as the "**2005 Act**") because the 2005 Act specifically excludes project employees from its purview. Further, that the KP (Regularization of Services) Act, 2009 (hereinafter referred to as the "**2009 Act**") also specifically excludes project employees from its application, and, as such, the Respondents are not covered under the 2009 Act. He adds

that the Respondent in CA 239 of 2020 was appointed on a stop-gap arrangement which is not covered for regularization under Section 19 of the 2005 Act. As such, the High Court erroneously held that the judgment rendered in W.P 854/2000 applied to the said Respondent's case because the said judgment applied to employees of District Swat only. He further submits that, whenever a position is advertised, it has to be filled after following correct procedure and formalities. As such, the Respondents could not have been arbitrarily appointed against their respective posts without following the procedure of transparent appointment or, the procedure provided by the KP Public Service Commission (hereinafter referred to as "**KPPSC**").

6. The learned ASC appearing on behalf of the Respondents argued that other similarly placed employees were regularized whereas the Respondents were not, as such, this amounts to discrimination on part of the Appellants which is impermissible under the law. He further argued that all Respondents were validly appointed and, the Appellants could not relieve them from their positions arbitrarily when they have regularized other similarly placed employees. He further submits that the Respondents in CA 239 of 2020 should have been regularized from the date of their initial appointment as opposed to 2008. Since the Respondents had been working against their respective posts before the promulgation of the 2005 Act, they ought to have been treated as civil servants and thus, regularized from before

04.11.92. He adds that not extending benefits to the Respondents in CA 239 of 2020 from 04.11.92 amounts to an illegality when the same benefits have been extended to other employees who stood on the same footing.

7. We have heard the learned AAG and also the learned Counsel for the Respondents. The questions which fall before this Court for determination are as follows:-

(i) Could the Respondents be regularized under the 2009 and 2005 Acts;

(ii) Could the Respondents in CA 239 of 2020 be regularized with effect from an earlier date as opposed to 2008.

**COULD THE RESPONDENTS BE REGULARIZED UNDER THE 2009 AND 2005 ACTS?**

8. The learned AAG submits that the 2009 Act was inapplicable to all of the Respondents because they were project employees. To examine this issue, Section 3 of the 2009 Act is reproduced as under for ease of convenience:-

*"**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."*

The word employee has been defined in Section 2(b) of the 2009 Act *supra* which is produced as under:-

*" "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;" (Underlining is ours)*

A bare perusal of the aforenoted provision of the 2009 Act reveals that, to be regularized under the 2009 Act the employee in question may be an *ad hoc* or a contract employee who must be appointed by the Government. There are three categories of employees who cannot take benefit of Section 3 *supra* and claim regularization. First, project employees, that is, employees who are appointed against a project post. Whenever the said project comes to an end unless otherwise provided, the posts in the said project too come to an end and all appointees stand relieved. Second, employees appointed on a work charge basis. Third, those employees who are paid out of contingencies. The last proviso is perhaps there because funds for contingencies are limited and mostly time-bound. As such, whenever the contingent funds run out, employees may be relieved, by following the proper procedure.

9. It is an admitted fact that the Respondents in CA 274 of 2020 were project employees. Section 2(b) of the 2009 Act specifically excludes project employees from its purview, therefore, by no stretch of the imagination could the learned High Court have read into the 2009 Act what it does not specifically provide. When the intent of the legislature is manifestly clear from the wording of the statute, the rules of interpretation require 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. Only then, the Court may see the mischief which the legislature sought to remedy and interpret the law in a manner that meets the intent of the legislature. We are therefore of the view that the conclusion to this effect reached by the High Court is quite erroneous and unsustainable in law.

10. The learned High Court has held that the Respondents were fully covered by Section 19(2) of the 2005 Act. For ease of reference, the relevant portion of Section 19(2) is reproduced as under: -

> *"A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July 2001, till the commencement of the said Act, but appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis." (Underlining is ours)*

It has been argued by the learned AAG that the posts against which the Respondents were appointed are specifically excluded from the application of Section 19 and consequently, they could not have been regularized. A bare perusal of the aforenoted provision shows that anyone who wishes to avail the benefit of Section 19 has to be appointed in the prescribed manner. What this effectively means is that an incumbent has to go through the process of selection and appointment which consists of advertisement, open competition, a level playing field for all, and transparency and other processes followed by the Federal or Provincial Public Service Commission. Admittedly, none of the Respondents

were appointed through the said Commission or the aforenoted processes as is evident from their appointment orders, and, were initially appointed on contract. As such, the Respondents cannot claim that they were covered under the said provision of the law unless they prove that they went through the process of the KP Public Service Commission or equivalent or had come through the processes alluded to above and, were then appointed against their respective posts.

11. Even otherwise, the class of employees to which the Respondents belong has been specifically excluded from the definition of a civil servant as provided in Section 2(b) of the KP Civil Servants Act, 1973 which is reproduced as under: -

> *"(b) —civil servant means a person who is member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include-*
>
> *(i) a person who is on deputation to the Province from the Federation or any other Province or other authority;*
> *(ii) a person who is employed on contract, or on work charge basis or who is paid from contingences; or*
> *(iii) a person who is —worker or —workman as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923);*

The Respondents in CA 283 were appointed in the Settlement Operation, which, according to the learned AAG, was to be run as a project. As such, upon expiry of the Settlement Operation, the Respondents were to be relieved and no regular appointments thereto were to be made. The

learned AAG further submits that the matter of regularization of the Respondents relates to the terms and conditions of their appointments, which squarely falls within the jurisdiction of the Service Tribunal in light of Article 212 of the Constitution of the Islamic Republic of Pakistan. When confronted with this argument, the learned ASC for the Respondents merely stated that since others were regularized, therefore, the Respondents should have been regularized as well. We note that the Respondents have conceded that they were working in a Project as evident from their Writ Petition before the High Court where they have stated the following:-

> *"That the services of the petitioners are retained by the respondents in the Settlement Project Chitral till date" (Underlining is ours)*

11. When the Respondents themselves are conceding that they were project employees, they cannot change their stance at this stage and claim that they ought to have been regularized under Section 19 of the 2005 Act which specifically excludes project employees from its purview. As such, the High Court without examining this position taken by the Respondents held that they were entitled to regularization. This amounts to reading into the 2005 Act so also the KP Civil Servants Act, 1973, something which has not been provided in the said Acts. This is, in our view, a transgression of the mandate of Article 199 of the Constitution of the Islamic Republic of Pakistan which is impermissible and constitutes an excessive exercise of jurisdiction. Section 19 has to be read with the rest of the KP

Civil Servants Act, 1973. Though Section 19 of the 2005 Act provides the regularization of certain employees subject to the fulfilment of certain conditions and deems all those appointed while following the prescribed procedure as civil servants, nevertheless, the ambit of Section 19 cannot be stretched to include a separate class of employees into the definition of civil servant provided in Section 2(b) of the KP Civil Servants Act, 1973. When the definition is unambiguous, the High Court cannot stretch it to include the Respondents in its purview. This amounts to a usurpation of the powers of the Legislature and the Executive as envisaged in Article 7 of the Constitution of the Islamic Republic of Pakistan.

**COULD THE RESPONDENTS IN CA 239 OF 2020 BE REGULARIZED WITH EFFECT FROM AN EARLIER DATE AS OPPOSED TO 2008?**

12. The learned AAG argued that the services of the Respondents in CA 239 were regularized according to the law i.e. Section 19(2) of the 2005 Act read with the First Proviso of Section 19 of the KP Civil Servants (Amendment) Act, 2003. Further, that the judgment in W.P No. 854/2000 is specific to the employees of District Swat only and has no bearing on the present Respondent's case. As such, the Respondents in CA 239 could not have been regularized from the date of their appointments, and, were properly regularized with effect from 2008. As noted above, Section 19(2) of the 2005 Act provides that all those employed on contract on or before 01.07.01 till the commencement of the 2005 Act shall be deemed to be appointed on regular basis. The 2005 Act was published in

the official gazette on 23.07.05. By no means can the Respondents mentioned above claim that they ought to have been regularized with effect from their respective dates of appointments which predate the cut-off dates of the 2005 Act. As such, the learned High Court erred in concluding that they should have been regularized from the dates of their appointments. When the law itself provides a date of its application, the learned High Court cannot, on any ground, amend the said date and extend the application of the 2005 Act to the extent that those who are not covered under it, gain its benefit.

13. The learned High Court has based reliance on the judgment in W.P No. 854/2000 to hold that the Respondents should have been regularized from the date of their initial appointments. We find this reliance to be misplaced for the reason that the said judgment pertains to employees of a different department and, only relates to the regularization of the petitioners therein. It does not talk about pre-dating the regularization of the petitioners therein. As such, placing reliance on the said judgment is erroneous and is distinguishable from the circumstances. When the competent authority has regularized the Respondents per the law, merely by stating that since others were regularized in a different set of facts and circumstances from an earlier date, the High Court has erred in law and its findings to this effect are unsustainable.

14. The Impugned Judgments of the learned High Court proceed on an incorrect factual and legal premise and have incorrectly applied the relevant law, rules, and regulations to the facts and circumstances of the cases before it. We are therefore in no manner of doubt that the impugned judgments are unsustainable in law as well as facts and are liable to be set aside.

15. For reasons recorded above, we allow these appeals and set aside the Impugned Judgments of the Peshawar High Court dated 27.09.2016, 17.07.2018 and 14.11.2018.

Chief Justice

Judge

Judge

Announced in open Court at Islamabad on 14.07.2021

Judge

*Haris, L.C.*
*'Not Approved For Reporting'*