

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P.No.1793-P of 2016

JUDGMENT

Date of hearing 27.6.2018

Petitioner (s) (Dr. Wisal Mehmood and others) by Sahibzada Anwar Ali and
Mr. Javed Iqbal Gulbela, Advocates.

Respondent (s)(Government of Pakistan through Additional Chief Secretary
FATA and others) by Mr. Muhammad Jamal Afridi, Advocate

MUHAMMAD NASIR MAHFOOZ, J:-. By way of this single judgment recorded in W.P.No.1793-P/2016, we intend to dispose of connected W.P.No.1777-P/2016, as common question of law and fact is involved in both these matters.

2. Petitioners, who are in large numbers, have invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and prayed for the following relief:-

It is, therefore, most humbly prayed that on acceptance of instant petition, the impugned office Orders No.17574-90/DHS/FATA/ Admn dated 14.7.2015, No.26655/60/DHS/ FATA/Admn and No.364/MHP/DHS/ FATA dated 10.3.2016 of the office of the respondents No.6 and 7 be set aside, cancelled and the petitioners may very graciously be regularized into their services

and be declared as Regular Civil Servants for all intents and purposes in terms of pension, gratuity, seniority and promotion with effect from initial induction in the project in question with all back benefits.

3. The Government of Pakistan introduced the project known as “*Mobile Hospital Programme FATA*” in the year 2002/2003 and petitioners being Doctors and Surgeons were inducted into service and were enrolled in the Project. Their nature of duties involved travelling throughout the then Federally Administered Tribal Area. According to terms of appointment, the service of the petitioners were to persist till life of the project and were non-transferable but in spite of that they were transferred on 14.7.2015. This order was challenged in civil suit wherein interim injunction was granted but on 24.11.2015 the interim order was recalled which was upheld by the learned Additional District Judge-XIV, Peshawar on 24.02.2016. Moreover, petitioners have prayed for regularization of their service in another project with new nomenclature known as UPAP alongwith others employees of the old project.

4. Respondents were summoned who submitted their comments. It is alleged in the comments that petitioners remained absent but received their salaries and therefore, their services were terminated but later on they were re-instated in service.

5. We have heard learned counsel for the parties and have gone through the record of the case with their assistance.

6. At the time of hearing of the instant writ petition, we are informed that petitioner No.4 has resigned from the subject post and is no more interested in the present writ petition, therefore, to the extent of petitioner No.4, the instant writ petition is not pressed.

7. Vide appointment order dated 18.6.2013 petitioners were appointed on fixed pay of Rs.50,000/- per month under the Mobile Hospital Programme in FATA. According to condition No.1 of the appointment order their appointments were to continue upto the life of the project from the date of their joining service and shall be extended on yearly basis on satisfactory performance. Earlier petitioners had filed a civil suit for the same subject matter as in the instant writ petition but it was later on not pressed. However, in the instant petition, a very short point is involved as to whether petitioner could be regularized on their relevant post which falls within the definition of project employees. According to the NWFP Policy Regulating appointment to posts in development project framed u/s 25 of the NWFP Civil Servant Act, 1973 a fix pay package for the project post shall be sanctioned at the time of approval of PC-I. In the

instant case, PC-I is placed on file and it appears that the life of the project has been extended from time to time. Law on the regularization is now well settled by august Supreme Court in the following cases, wherein, it was held that:-

1. Case reported as 2016 SCMR-1443

The present Appellants were appointed in the year 2007 on contract basis in the project and after completion of all the requisite codal formalities, the period of their contract appointments was extended from time to time up to 30.06.2011, when the project was taken over by the KPK Government. It appears that the Appellants were not allowed to continue after the change of hands of the project. Instead, the Government by cherry picking, had appointed different persons in place of the Appellants. The case of the present Appellants is covered by the principles laid down by this Court in the case of Civil Appeals No.134-P of 2013 etc. (Government of KPK through Secretary, Agriculture v. Adnanullah and others) (2016 SCMR 1375), as the Appellants were discriminated against and were also similarly placed project employees.

Case reported as 2016 SCMR 1375

The record further reveals that the Respondents were appointed on contract basis and were in employment/service for several years and Projects on which they were appointed have also been taken on the regular Budget of the Government, therefore, their status as Project employees has ended once their services were transferred to the different attached Government Departments, in terms of Section 3 of the Act. The Government of KPK was also obliged to treat the Respondents at par, as it cannot adopt a policy of cherry picking to regularize the employees of certain Projects while terminating the services of other similarly placed employees.

Case reported as 2016 SCMR 1602

The only distinction between the case of the present Appellant and the case of the Respondents in Civil Appeals Nos.134-P of 2013 etc. is that the project in which the present Appellant was appointed was taken over by the KPK Government in the year 2012 whereas most of the projects in which the aforesaid Respondents were appointed, were regularized before the cut-off date provided in North West Frontier Province (now KPK) Employees (Regularization of Services) Act, 2009. The present Appellant was appointed in the year 2010 on

contract basis in the project after completion of all the requisite codal formalities, when on 25.05.2012, the project was taken over by the KPK Government. It appears that the Appellant was not allowed to continue after the change of hands of the project. Instead, the Government by cherry picking, had appointed some other person in place of the Appellant. The case of the present Appellant is covered by the principles laid down by this Court in the case of Civil Appeals Nos.134-P of 2013 etc. (Government of KPK through Secretary, Agriculture v. Adnanullah and others), as the Appellants was discriminated against and was entitled to continue the job with the employees who were similarly placed and were allowed induction on regular basis.

8. In view of the above, we hold that under the project policy, petitioners shall continue to hold the post on which they are serving at present till the life of project as per condition laid down therein.

Both the writ petitions are allowed in the above terms, with no order as to costs.

Announced
27.6.2018

JUDGE

JUDGE