

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 1212-P/2016

J U D G M E N T .

Date of hearing: **24.1.2017**

Petitioner: _____

Respondent: _____

WAQAR AHMAD SETH, J:- Through the instant Writ Petition, the petitioners have prayed for issuance of an appropriate writ directing the respondents to reinstate them as Class-IV and pay them all monthly salaries/wages outstanding against the respondents.

2. In essence, case of the petitioners is that they were appointed against the posts of Baildars (BPS-1) and Pump Operator (BPS-4) but no salaries/wages were paid to them despite performing their duties and vide impugned order dated 16.3.2016, their services were terminated; hence, the instant Writ Petition.

3. Comments were called from respondent No.3, which he accordingly furnished and stated therein that petitioners have not been paid any salaries because they have not performed any kind of duty. Moreover, the pre-audit has objected regarding the appointments of petitioners subject to

approval requesting ban relaxation, as such, their case was referred to respondent No.1 through letter dated 31.12.2015 for ex-post facto sanction for relaxation of Ban and vide letter dated 2.2.2016, the request was turned down on the ground that there are no rules available for ex-post facto sanction and in light thereof, the petitioners' services were terminated. Besides, an anonymous resolution was passed on 19.10.2015 by Tehsil Council Mardan, in which, the council demanded that all the appointments of the petitioners before 30 June 2015 be cancelled.

4. Arguments heard and record perused.
5. Admittedly, petitioners were appointed by the Competent Authority and as per recommendations of the Selection Sub Committee, as class-IV employees in BPS-1 & 4 in the year 2014-15 and thereafter vide office order No.434/TMA(M) dated 4.12.2015, all the employees / officials in the TMA Mardan, appointed on contract basis were confirmed / regularized as per police of the Provincial Government. The order of confirmation reads as under:-

“In pursuance of minutes of the meeting held on 25.8.2015 duly circulated vide Govt: of Khyber Pakhtunkhwa LG&RDD, Local Council Board Peshawar letter No. AO.IV/LCB/1/T-1/2015 dated 29.9.2015, Clause -2 para (b), all the employees / officials in TMA Mardan, appointed on contract basis, are

hereby regularized as per police of the Provincial Government.”

6. Record suggests that after the confirmation the departmental authorities requested for ex post facto sanctioned for relaxation of ban, but the same was refused and vide office impugned order dated 16.3.2016, the appointment orders were cancelled with immediate effect. There is nothing on record showing that before cancellation of appointment order any show cause was issued to the petitioners or they were given any change of personal hearing.

7. The case of respondents is not that the petitioners were appointed by an incompetent person, therefore, when they were appointed by the competent authority and the same authority in view of Government Policy regularized their services then how can the appointment order be cancelled without withdrawing the regularization order. There is nothing on record showing that petitioners were not eligible, competent and fit to be appointed against their post in BPS-1 & 4 nor the respondents have alleged any other act against the petitioners. If at all there was a ban, then it was the duty of the competent authority to have obtained relaxation in the said ban, but the petitioners could not be punished for any irregularity committed by the department.

8. Viewing the case from all aspect and the record so produced, it held that at the most there is an irregularity

while appointing the petitioners and getting them regularized, but no one can, even the department could say that the appointment orders were void and illegal. We are forfeited by the judgment of apex court that when there is a mere irregularity in the appointment order the low paid employees cannot be punished and that too; without issuing them show cause or giving them the chance of personal hearing. Reliance is placed on SCMR-1996 8413, titled Secretary to Government of NWFP Zakat/Social Welfare Department, Peshawar Vs Sadullah Khan, wherein it has been held as under:-

“---R. 10 (2)---Constitution of Pakistan (1973), Art. 212 (3)---Termination of services on ground that appointment of civil servant was irregular---Service Tribunal ordered reinstatement of civil servant---Validity---Departments’ plea was not that civil servant lacked qualifications for the post in question--- Department having itself appointed civil servant on temporary basis in violation of rules could not be allowed to take benefit if its lapses in order to terminate services of civil servant merely because it had itself committed irregularity in violating procedure governing such appointment--- Service Tribunal having reinstated civil servants could not be deemed to have committed any illegality or irregularity.--- Leave to appeal was refused in circumstances.

Likewise in the case of Muhammad Shoaib and 2 others Vs Government of NWFP through The Collector

D.I Khan and others, reported in 2005 SCMR-85 it has

been held as under:-

“---S.4---Removal from service---Audi Alteram partem, principle of--- Applicability---Illegal act of authorities— Effect—Civil servants were appointed in Agriculture Department without any advertisement and test---Civil servants were removed form service without any show cause notice on the ground that their appointments were illegal and against the prescribed rules---Service Tribunal dismissed the appeal—Validity-- -Authorities were bound to issue show cause notice to the civil servants in that regard—If such notice would have been issued, the civil servants might have come out with the defence that the appointments were not illegal and that the illegality if at al had been committed by the department itself for which action the civil servants could not be penalized--- Civil servants in circumstances, were condemned unheard and were made to suffer for the illegality committed by the Government itself--Principle of natural justice and audi alteram partem, was violated and non issuance of notice could not be ignored unless a fair opportunity of representing their point of view had been given to the civil servant at one stage or the other---No such opportunity was given at any stage before termination of service---Supreme Court required that action be taken against those who were guilty of making illegal appointments and deprecated that the same authority committed illegality itself not once but twice one at the time of appointment and second at the time of removing the civil servants from service---Authority could not be allowed to punish others for the illegal act of its own—Order of removal from service of civil servants was declared void as well as violative of the principles of natural justice, locus poenitentiae and estoppel---Judgment passed by Service

Tribunal was set aside and civil servants were reinstated in service with back benefits.

9. Such action of the respondents was nothing but colourable exercise of powers, as the appointment order as well as regularization order are protected by law of locus poenitentiae and the plea that appointments were made during ban period does not hold the field, as valid plea.

10. In view of above this writ petition is allowed. Petitioners are deemed to be in regular service from the date of their initial induction, with all back benefits including wages.

ANNOUNCED.
Dated:24.1.2017

JUDGE

JUDGE

Nawab Shah

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