

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.1598-P/2018

Altaf, Junior Clerk,
 Store Purchase Section,
 University of Peshawar and others.

Petitioner (s)

VERSUS

The Chancellor,
 Peshawar University, Peshawar and others.

Respondent (s)

For Petitioner (s) :-	<u>Mr. Muhammad Asif Yousafzai, Advocate.</u>
For Respondents :-	<u>M/S Khalid Rehman Waseem ud Din</u> <u>Khattak, Advocates.</u>
Date of hearing:	<u>12.01.2021</u>
Date of decision :	_____

JUDGMENT

ROOH-UL-AMIN KHAN, J:-Through this common judgment, we propose to decide the instant writ petition and the following connected writ petitions, as identical question of law and fact is involved therein.

- i. **Writ Petition No.3258-P/2018**
Muhammad Ayaz Vs Chancellor Peshawar University, Peshawar and others.
- ii. **Writ Petition No.4893-P/2018**
Walayat Khan and others Vs Chancellor Peshawar University, Peshawar and others.
- iii. **Writ Petition No.5195-P/2019**
Mst. Neelam Naz Vs Chancellor Peshawar University, Peshawar and others.
- iv. **Writ Petition No.5274-P/2019**
Muhammad Haris Khan and another Vs Chancellor Peshawar University, Peshawar and others.
- v. **Writ Petition No.6055-P/2019**
Muhammad Ali and others Vs Chancellor Peshawar University, Peshawar and others.

- vi. **Writ Petition No.7281-P/2019**
Muhammad Zubair and others Vs Chancellor
Peshawar University, Peshawar and others.
- vii. **Writ Petition No.1316-P/2020**
Shahda Parveen and others Vs Chancellor
Peshawar University, Peshawar and others.
- viii. **Writ Petition No.2281-P/2020**
Akram ur Rehman and others Vs Chancellor
Peshawar University, Peshawar and others.
- ix. **Writ Petition No.2557-P/2020**
S.Muhammad Roman & others Vs
Chancellor Peshawar University, Peshawar
and others.
- x. **Writ Petition No.2610-P/2020**
Abdul Qudoos Khan and others Vs
Chancellor Peshawar University, Peshawar
and others.
- xi. **Writ Petition No.2639-P/2020**
Zahid Ali Shah and others Vs Chancellor
Peshawar University, Peshawar and others
- xii. **Writ Petition No.3176-P/2020**
Ishtiaq ur Rehman Vs Chancellor Peshawar
University, Peshawar and others
- xiii. **Writ Petition No.3504-P/2020**
Ziarat Shah Vs Chancellor Peshawar
University, Peshawar and others
- xiv. **Writ Petition No.3558-P/2020**
Pir Fawad Khan Vs Chancellor Peshawar
University, Peshawar and others
- xv. **Writ Petition No.3765-P/2020**
Manzoor Khan Vs Chancellor Peshawar
University, Peshawar and others
- xvi. **Writ Petition No.3919-P/2020**
Khaista Gul Vs Chancellor Peshawar
University, Peshawar and others
- xvii. **Writ Petition No.3938-P/2020**
Ayaz ul Haq Khan Vs Chancellor Peshawar
University, Peshawar and others
- xviii. **Writ Petition No.4216-P/2020**
Muhammad Iftikhar Vs Chancellor
Peshawar University, Peshawar and others
- Writ Petition No.1562-P/2020**
Syed Shoaib Abdullah Vs Chancellor
Peshawar University, Peshawar and others

Writ Petition No.1763-P/2020

Salim Khan and others vs Chancellor
Peshawar University, Peshawar and
others.

2. Petitioners are the contractual employees of the Peshawar University, Peshawar. In their respective writ petitions they have alleged that initially they were appointed in the respondents-University against various vacant posts of permanent nature on the recommendations of the Selection Committee, but on contract and fixed pay basis. Their contracts were extended from time to time and till date they are performing their duties in the same status and capacity for the last more than thirteen years without any break. Grievance of the petitioners is that they despite having considerable length of service approached and requested the respondents by submitting applications and representations to regularize their service but to no avail, hence, these writ petitions.

3. Respondents have filed their comments wherein they have refuted the claim of the petitioners on the ground that they being contractual employees, under the Khyber Pakhtunkhwa Universities Act, 2012 (as amended by the Act of 2016), have no vested right to claim regularization.

4. Arguments of learned counsel for the parties heard and record perused with their able assistance.

5. As stated earlier, petitioners are the contractual employees of the Peshawar University, Peshawar, which is the creation of Statute, namely, University of Peshawar

Act, 1950. Subsequently, the University of Peshawar Ordinance, 1973 was promulgated followed by the University of Peshawar Act, 1974. The University was brought within the purview of the Khyber Pakhtunkhwa Universities Act, 2012 (as amended by the Act of 2016), which is by now applicable to all the Universities established under the Government of Khyber Pakhtunkhwa.

6. There is no denial of the fact that petitioners in all the writ petitions are the contractual employees of the respondents-University and they are still holding their respective positions in the same status and capacity. No doubt, the petitioners are serving in the respondents University for a considerable period of about thirteen years, however, the Khyber Pakhtunkhwa Universities Act, 2012 (as amended by the Act of 2016), governing the respondents-University and its employees does not provide any provision under which the petitioners could claim regularization as their vested right. The status of the contractual employees and their claim regarding regularization as a right cropped up before the Hon'ble Supreme Court of Pakistan in case titled, **“Pakistan Telecommunication Co.Ltd through Chairman vs Iqbal Nasir and others” (PLD 2011 Supreme Court 132)**, which was dealt with in the following way:-

*“All the employees having entered into contracts of service on the same or similar terms and **conditions have no vested right to seek regularization of their employment, which is discretionary with the master.** The master is well within his rights to retain or dispense with the service of an employees on the basis of satisfactory or otherwise performance”.(emphasis supplied)*

The controversy with regard to regularization and re-instatement of the contractual employees once again was brought by the employees of Worker Welfare Board before this court and succeeded to get relief of regularization on the ground of long length of service, however, on the petitions filed by the Workers Welfare Board, the honorable apex Court set-aside the judgment of this court through consolidated judgment rendered in **Civil Petitions No.4504 to 4576, 4588 and 4589 of 2017**, dated 08.01.2018 (Niamatullah case). Relevant part of the judgment is reproduced below:-

*“Having heard the learned counsel for the parties, **we find that contractual employees have no right to be regularized until there is a law provided to that effect and we are not confronted with any such legal proposition.** They are the contractual employees and they have to serve till the pleasure of their master and in case of any wrongful termination, which according to them has taken place, they cannot seek the reinstatement. At the best, they can only have the compensation for the wrongful termination by*

applying to the competent Court of law. Resultantly, these petitions are converted into appeals and allowed and the impugned judgment is set aside.” (emphasis supplied).

Subsequently, **Civil Review Petitions No.61 to 96 and 88 to 91 and 91 and Suo Moto No.69 of 2018**, filed by the employees against the judgment (supra) was also dismissed by the Apex court.

7. Matter with regard to contractual employees of the Workers Welfare Board once again came up before the august Supreme Court of Pakistan in **CP No.73 of 2020, titled, “Government of Khyber Pakhtunkhwa Workers Welfare Board through its Chairman vs Raheel Ali Gohar & others”** decided on 16.07.2020, wherein while dilating upon the rights of the contractual employees, the Hon’ble Supreme Court ruled as under:-

“In additional to these issues, we also find ourselves at odds with the fact that the present Respondents approached the High court in its writ jurisdiction to seek regularization without there being any law conferring a right that may have been denied and was sought to be enforced by way of a petition under Article 199 of the Constitution. It is settled law that as contractual employees, the relationship between the Respondents and the Appellant is governed by the principle of master and servant. In these circumstances, the Respondents did not have the

right to approach the High Court to seek redressal of their grievance relating to regularization. As noted above, in case of a contractual dispute the Respondents could have sought appropriate redressal of their grievance before a competent court of law. However, only by virtue of being contract employees, no automatic right of regularization has accrued in their favour. In this regard, reference may also be made to the judgment of this Court in *Chairman NADRA Islamabad and another v Muhammad Ali Shah and others (2017 SCMR 1979)*.” (***Emphasis supplied***).

8. In Suo Motu action regarding regularization of contract employees of Zakat Department as well as appointment of Chairman of Central Zakat Council) (**2013 SCMR 304**), the Honorable apex court while placing reliance on the judgment rendered in case titled **“Government of Balochistan V Zahida Kakar (2005 SCMR 642)**, was please to laid down the law that contract employees did not have a vested right for regular appointment.

9. Following the ratio of judgments of the Honorable Supreme Court, this court in case titled, **“Lt. Col. Rtd Sultan Zeb Khan vs Board of Governors Fazle Haq College, Mardan through Chairman and 05 others”** has also held that:-

“Contract of employment did not create any vested right in the appointee so as to make

him entitled to be served with notice before termination of contract of his service.”

10. In case titled, **“Miss Mehwish Asif vs Vice Chancellor Shaheed Benazir Bhutto University and 02 others” (2016 MLD 95)**, this court while placing reliance on **2013 SCMR 13 and 2013 SCMR 304**, has ruled that:-

“Contract employee had no right to claim regularization or continuation in service”.

Again this Court in its judgment dated 07.06.2016, rendered in Writ Petition No.122-P/2016, while dilating upon the controversy of the contractual employees in light of judgments of the Honorable Supreme Court has observed as under:-

“Thus drawing wisdom from the judgments of the august apex court, it is safely held **that contract employees and fixed salaried employees have no right to claim regularization**, reinstatement or continue in service by invoking the constitutional jurisdiction of this Court. Reliance in this respect is advantageously placed on “Tehsil Municipal Officer TMA Kahuta and another vs Gul Faraz Khan” (2013 SCMR 13), “Federation of Pakitan through Secretary Law, Justice and Parliamentary Affairs Vs Muhammad Azam Chattha” (2013 SCMR 120) and “Muzaffar Khan and others Vs Government of Pakitan and others” (2013 SCMR 304)”(*Emphasis supplied*).

Similar is the view of the Honorable Lahore High Court in case titled, “Mubashar Majeed vs Province of Punjab and 03 others” (2017 PLC (CS) 940). Relevant part of the judgment is reproduced below:-

“As the appellant was a contract employee and was governed by the principle of master and servant, therefore, the appellant does not have any vested right to seek extension of the contract. It is an established principle that in such like cases the constitutional petition is not maintainable.”

11. No doubt, the petitioners have served the respondents-University for a long period of about 13 years but the fact remains that during this period their status was that of the contractual employees. Thus mere fact that they have served the Respondents University for a long period, in absence of any Statute to provide a mechanism or provision for their absorption on permanent basis or their regularization, would not be sufficient to entitle them for regularization in light of ratio of the judgments (supra).

12. As regards the arguments of learned counsel for the petitioners that the posts of the petitioners have been brought on regular budgetary side, some of which have been advertised and some are about to be advertised, and it is, therefore, the petitioners are only entitled to be appointed against the same is also unpersuasive in light of ratio of judgment dated 23.11.2020, rendered by the

Honorable Supreme Court in case titled, “***Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar and others Vs Muhammad Asif and others***” relevant part of which is reproduced below:-

*“The afore-noted two provisions leave us in no manner of doubt that in the first place there was no vested right to regularization. Further, if at all the project posts were converted into regular budgetary post, the same were required to be filled in accordance with the prescribed rules through Public Service Commission or the Departmental Selection Committee. **It was further clarified that ex-project employees had no vested right of adjustment against regular post. However, they could apply for the post along with other candidates.** (Emphasis supplied).*

13. Deriving wisdom from the judgments (supra), we hold that in case of advertisement of the posts, the petitioners may apply for their appointments and compete with other candidates. However, in case of qualifying the test and interview, it would be in the interest of justice that preference be given to the petitioners as compared to fresh candidates, keeping in view their experience on the respective posts.

14. So far as the argument of learned counsel for the petitioners that juniors of the petitioners who were

similarly placed have been regularized by the respondents- University and the same relief has been denied to the petitioners is concerned, suffice to say that nothing in black & white has been brought on record by learned counsel for the petitioners to substantiate his argument.

15. For what has been discussed above, we have reached to an irresistible conclusion that contract employees and fixed salaried employees have no right to claim regularization as a vested right. Resultantly, this and the connected writ petitions are hereby dismissed.

16. Before parting with the judgment, we deem it appropriate and in the interest of justice to mention that most of the petitioners are serving against janitorial posts including Mali, Watchmen etc. Definitely they are low paid employees, therefore, it is expected that if their posts are lying vacant and the University is in need of their service, they may be retained on contract or the University appoint them against regular posts, as the University deems proper.

Announced:

M.Siraj Afridi PS

SENIOR PUISNE JUDGE

JUDGE

DB of Hon'ble Mr. Justice Rooh ul Amin Khan
And Hon'ble Mr. Justice Muhammad Nasir Mehfooz.

