

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P No. 713-M/2017
With I.R (N), C.M 530-M/2019 & C.M 1336/2019

Arshad and 03 others

(Petitioners)

Versus

*The Government of Khyber Pakhtunkhwa through Secretary
Forest, Environment and Wildlife, Peshawar and others.*

(Respondents)

Present:

Mr. Aziz-ur-Rehman, Advocate for the petitioners.

*Mr. Wilayat Ali Khan, A.A.G. for respondents
alongwith Mr. Abdul Ghafoor D.F.O, Wildlife, Swat.*

Date of hearing: 24.09.2019

JUDGMENT

SYED ARSHAD ALI, J.- Arshad son of Muhammad Karim and 03 others have approached this Court through the instant Constitutional petition with the following prayer.

“It is, therefore, very respectfully prayed that on acceptance of this petition the respondents may very kindly be directed firstly to withdraw the order No. 2083-87/WLS dated Saidu Sharif the 31.05.2017 and secondly the respondents may very kindly be ordered to regularize the petitioners against the permanent posts caused due to the winding up of the project.

Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted”.

2. It is noteworthy that indeed the petitioners had moved C.M No. 530-M/2019 which was fixed today before the Court with the prayer for early hearing of the

main writ petition. The C.M is allowed, and the writ petition is taken up for hearing today.

Similarly, Respondent No.4 has also moved C.M No. 1336-M/2019 for placing on file certain documents. Since, the documents attached with the C.M are notified service rules of Wildlife Department, therefore, this application is also allowed and the mentioned rules are considered as part and parcel of this petition.

3. It is averred in the petitioner that the present petitioners alongwith seven others were appointed as Wildlife Watchers on fixed pay under the project “Strengthening and Development of Wildlife Resources in Chitral, Dir and Swat Wildlife Division” ‘Project’. Later their services were extended till 30.06.2017 through order dated 08.08.2016, however, despite the fact that the Project was taken on regular budget, the services of the present petitioners were terminated vide impugned order dated 31.05.2017.

4. The respondents were put on notice who have filed their comments. In Para-viii of the reply, the respondents have alleged that the Project was neither merged into department nor the posts were regularized/ made permanent, therefore, the petitioners have no vested right for regularization of their services. They have further asserted that the Project is closed since 30.06.2017.

5. The learned counsel appearing on behalf of petitioners has vehemently argued the case by placing his reliance on the judgment dated 15.09.2011 passed by this Court in W.P No. 360/2009 as well as the judgment of the august Supreme Court dated 22.03.2012 in Civil Petition Nos. 562-P to 571-P etc and has urged that once the Project was taken on regular budget then the petitioners have an inalienable right of regularization into their services.

6. Against that the learned A.A.G. assisted by Mr. Abdul Ghafoor, D.F.O Wildlife, Swat, has argued that the case of petitioners had been forwarded to Chief Conservator with the request to regularize their services. He further contended that the Project was never regularized by the Provincial Government and no regular budget was sanctioned for the same. The learned A.A.G. has further argued that for strengthening the administration of Wildlife department and for its effective management, the Khyber Pakhtunkhwa Wildlife and Biodiversity (Protection, Preservation, Conservation and Management) Act, 2015 was promulgated. He added that through Section 4 of the said Act, the Wildlife establishment, excluding ministerial staff, was declared as Wildlife Force having its own mechanism of recruitment. He further relied upon the respective service Rules

according to which the following criteria has been provided for recruitment of Wildlife Watchers.

S#	Nomenclature of the Post	Minimum Qualification for Appointment by Initial Recruitment	Age Limit for Initial Recruitment	Method of Recruitment
3.	Wildlife Watcher (B-07)	(a) At least 2 nd class Intermediate certificate with Matric Science from a recognized Board; and (b) Physical fitness i. Height: five feet and six inches (minimum) ii. Chest size: 34-36 inches (minimum) iii. Eye Sight V-6J (with glasses) each eye 6x6 Note: It is essential that the candidate will have to qualify Marathon race of 2 Km within 20 minutes	18 to 30 years	By initial recruitment. Note: The candidates who have been recruited will have to undergo one year training course of Forest Guard or Wildlife Watcher at the Khyber Pakhtunkhwa Forest School Thai Abbottabad.

7. Arguments heard and record perused with able assistance of learned counsel for the petitioners and learned A.A.G.

8. It is evident from record that the present petitioners were appointed on fixed pay of Rs.10,000/- per month in the Project vide Office Order No. 26 dated 02.05.2014. In Clause 5 of the Terms and Conditions of the said order, it is mentioned that the appointment of petitioners shall not confer on them any right of regular appointment/absorption against the vacant posts of Wildlife Watchers or any other posts in the Department

and their services shall not count towards seniority/promotion, pension or GP fund etc besides they shall also not be treated as civil servants. The petitioners could not place on record any document that the Project was taken on regular budget. This fact has also been denied by the respondents by stating that the life of the Project had expired. Since the appointment of the present petitioners was contractual and on fixed pay, therefore, they have no vested right for regularization of their services. By now the law has been settled by august Supreme Court that the contract appointment terminates on the expiry of contract period or any extended period on the choice of employer or appointing authority, such appointment per se does not create any vested right. In the case of "Muzaffar Khan and others V/s. Government of Pakistan and others" 2013 SCMR 304, the august Supreme Court while re-affirming its earlier view expounded in "Government of Baluchistan, Department of Health through Secretary, Civil Secretariat, Quetta V/s. Dr. Zahida Kakar and 43 others" reported as 2005 SCMR 642, has observed that:

"Be that as it may, the fact remains that the petitioners are contractual employees and on that score according to the consistent view of this Court do not have vested right for regular appointment".

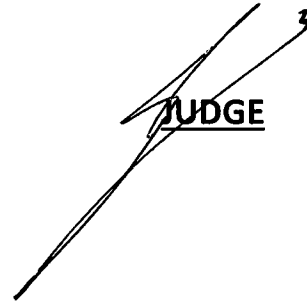
It is further reiterated that it is a trite concept of law that the Constitutional Court cannot issue any direction to the Government or other statutory functionary to do a particular act unless it is their statutory or legal obligation to do the same.

9. In view of the above, we find no merits in this petition thus the same is accordingly dismissed.

Announced.

Dt: 24.09.2019


JUDGE


JUDGE

Office
30/9/2019