

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No.4397-P of 2024 with IR.

Nadeem Ahmed and others

Vs.

Government of Khyber Pakhtunkhwa, through the Secretary,
Sports, Tourism, Archaeology, Museums and Youth Affairs
Department, Peshawar and others

Date of hearing 10.09.2024
Petitioner(s) by: Mr. Shumail Ahmad Butt, Advocate.
Respondent(s) by: Syed Sikandar Hayat Shah, AAG along
 with Ali Gohar Durrani, Advocate, and
 Tashfeen Haider, DG (KPCTA).

JUDGMENT

IJAZ ANWAR, J. Through this single judgment, we intend to decide the instant writ petition, as well as the connected writ petition bearing titled and No. **“Omair Khattak and others Vs The Chief Minister Khyber Pakhtunkhwa/Chairman Board of Directors Tourism Corporation through Principal Secretary Govt. of Khyber Pakhtunkhwa, Chief Minister Secretariat, Peshawar and others” No.4495-P/2024** as in both these petitions, similar questions of law and facts are involved.

2. In the instant writ petition, petitioners have prayed for the following relief: -

“It is, therefore, very humbly prayed that on acceptance of this writ petition, this honorable Court may very magnanimously hold, declare and order that:

I. That the petitioners have duly been appointed after due process of advertisement, written test and interview against their respective positions thus impugned inaction on part of the respondents for not regularizing the petitioners against their permanent positions is

illegal, unlawful, without lawful authority and being violative of the law and thus ineffective upon the right of the petitioners.

II. The respondents shall regularize the services of the petitioners since their appointment and shall accordingly be allowed all back benefits and wages from the date of their regularization including but not limited to their promotions, due from time to time.

III. In the Alternate: the respondents may immediately advertise positions and re-hire the petitioners thereupon after affording them preference, as postulated, statutorily.

IV. Cost throughout.

V. Any other relief, not specifically prayed may also graciously be granted to the petitioner, if appears just, necessary and appropriate”.

3. In essence, it is the claim of petitioners that they were appointed on a contract basis, on different posts, after due process of recruitment i.e. advertisement etc, and their contracts were extended from time to time. Petitioners are now seeking regularization in services from the date of their appointment along with all back benefits or in alternate seeking direction of this Court to the respondents to re-advertise the positions and re-hire them in preference to other candidates. They requested the respondents time and again but to no avail, hence the instant writ petition.

4. Learned counsel for the petitioners contended that petitioners were initially appointed on contract basis, however, since amendment is expected in the Khyber Pakhtunkhwa Tourism Act, 2019, regarding the status of contract employees, as such, the petitioners have every right to continue in the services of the respondent Authority.

5. Arguments heard and record perused.

6. Perusal of the record transpires that petitioners were appointed on contract basis pursuant to an advertisement inviting applications for appointment on contract basis. It was specifically mentioned in the terms and conditions of the advertisement that "*all of the above positions/posts are on contract basis for the period of three years*". Similarly, when the appointment letters were issued it also contained the conditions that "*Status of employment: Contract for one year extendable to three years subject to performance*". Similarly, it is also a term agreed in the appointment contract that "*The appointment shall be liable to termination on one month's notice or payment of one month's salary in lieu thereof by either side under Section 32 of the Act ibid*".

7. We have also gone through the provisions of the *Khyber Pakhtunkhwa Tourism Act, 2019, (Khyber Pakhtunkhwa Act No. XXVIII of 2019)*, Section 32 of the Act provides the status of employment, which being relevant is reproduced as under:-

"32. Status of the employment.— All employees shall be hired on contract basis for a specific period terminable on one months' notice by either side or payment of one month salary in lieu thereof: Provided that no extension shall be made in the service of contract employees however he shall be eligible for fresh hiring under a new contract: Provided further that in fresh hiring, preference shall be given to candidates who have served in the Authority with good performance reports".

8. Thus, according to the above provision of law after completion of three years, in case of fresh hiring, preference will be given to the candidates, who have served the authorities, with good performance reports. Besides, *the Khyber Pakhtunkhwa Culture and Tourism Authority Employees (Appointment and Conditions of Service) Regulations, 2020*, framed under Section 56 of *the Khyber Pakhtunkhwa Tourism Act, 2019*, also provides a maximum duration of contract employment as three years.

9. The learned counsel for the petitioners insists that similarly placed contract employees are in service beyond the statutory contract period of three years, and thus, petitioners are going to be discriminated. As such, we after hearing this case, called for the personal attendance of a responsible officer from the respondent Authority. After break, the Director General of the respondent-authority appeared before the Court and stated that all employment in the respondent-authority is on contract basis, he further stated that as and when the Authority intended to make employment petitioners would be given preference. He, however, stated that in view of the financial crunch and over-employment, presently, there is no such intention of re-advertising these posts.

10. It is pertinent to mention here that the August Supreme Court of Pakistan, repeatedly held that contract employment gave no right for its continuation or

regularization. The August Supreme Court of Pakistan throughout is unanimous on the status of the contract employees, relevant paras from the judgments of the Hon'ble Apex Court are reproduced for ready reference. *"The High Court could not have amended or altered the terms and conditions of the contract of the respondents in exercise of its constitutional jurisdiction under Article 199 of the Constitution¹".* Similarly, it was also held by the Apex Court that: *"It is settled law that contractual terms and conditions can neither be enforced, nor a contract be extended or renewed under Article 199 of the Constitution²".* Likewise, the Hon'ble Supreme Court of Pakistan in another case has held that: *"The Court cannot force the employer to reinstate or extend the contract of the employee³".* Similarly, it was also held by the Hon'ble Apex Court that *"On expiry of contract appointment, if no extension is granted, it is ensured that the contract employee is not allowed to continue in service. Contract appointment is liable to be terminated on one month's notice or on one month's pay, in lieu thereof, on either side without assigning any reason. The contract provides that the contract appointment shall not confer any right of regular appointment nor shall such appointment be regularized under any circumstances. A contract employee shall, under*

¹ "Khushal Khan Khattak University and others Vs Jabran Ali Khan and others" (2021 SCMR 977)

² Vice-Chancellor Bacha Khan University Charsadda and others Vs Tanveer Ahmad and others" (2021 SCMR 1995)

³ "Miss Noureen Naz Butt Vs Pakistan International Airlines and Others" (2020 SCMR 1625)

no circumstances, claim conversion of his contract appointment into regular appointments⁴”.

Likewise, reference can be made to a case decided by the Hon'ble Supreme Court of Pakistan, wherein, it is held that: *“The question is that a person whose fate has been so determined, although he was a contract employee, had no legal entitlement to continue in contract employment because subject to holding him entitled to draw salary in lieu of the notice period, he could not have agitated the matter in any manner. In addition to it, it is a cardinal principle of law that a contract employee instead of pressing for his reinstatement to serve for the leftover period can at best claim damages to the extent of unexpired period of his service⁵”.* Similarly, reference can be made to a decision rendered by Hon'ble Lahore High Court, wherein, it is held that:- *“A contract employee instead of pressing for his reinstatement of service for the leftover period can at best claim damages to the extent of the un-expired period of service. It has also been held that contract of service cannot be specially enforced The contract employees are governed by the doctrine of master and servant and in the event of arbitrary dismissal or unwarranted termination of employment, the employee can sue for damages equal to wages, allowances and other benefits which would have been otherwise been payable under the contract of*

⁴ “Province of Punjab through Secretary L&DD Department and others Vs Dr. Javed Iqbal and others” (2021 SCMR 767)

⁵ Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs Vs Muhammad Azam Chatta” (2013 SCMR 120)

employment. Furthermore, recently the Honourable Supreme Court in *Ameer Solangi v. WAPDA*, (2016 SCMR 46) held as under: *The appointment letter dated 27.03.1995 spells out the status of the appellants. It is mentioned in the appointment letter that the appellants shall be employed on contract basis and shall have no right to claim regular absorption in the WAPDA. It was further provided that the terms and conditions of the appellants would be governed by the Contract. This clear distinction creates a separate category of the appellants who have been shown to be employed on contract in the Project and extension in their contract period during the completion process of the Project does not give them any right to claim regularization in the WAPDA. Contention of the learned counsel for the appellants has been duly answered in the judgment of this Court in the case of Anwar Ali Sahto v. Federation of Pakistan PLD 2002 SC 101. Appellant cannot claim extension of the contract as a matter of right rather it is prerogative of the competent authority either to dispense with services of the Appellant or to continue with the same by extending the contract⁶*". Similarly, in another case the Hon'ble Supreme Court of Pakistan has held that: *"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*

⁶ Mubashar Majeed Vs Province of Punjab and others" (2017 PLC (CS) 940).

rights to retain or dispense with the services of an employee on the basis of satisfactory or otherwise performance. The contract employees have no right to invoke writ jurisdiction, particularly in the instant case where their services have been terminated on completion of period of contract. Since they fall within the definition of workman, they would be entitled to one month's notice or salary in lieu thereof, as permissible to them under the rule of master and servant⁷".

11. In light of the above determinations, we are of the view that contract employment terminates on the expiry of the contract period and it is the choice of the employer either to extend it or to discontinue it, and prima facie it does not create any vested right, while in this case, even there is no option for the competent authority to allow extension beyond three years in view of provisions contained in Act and Regulation above referred.

12. For the reasons stated above, this and the connected writ petition having no merit is accordingly dismissed and disposed of in *limine*.

Announced
Dt:10.09.2024.

7
**Senior
Puisne Judge**


Judge

(Amir Shehzad) * (DB) Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Sahibzada Asadullah.

⁷ "Pakistan Telecommunication through Chairman Vs Iqbal Nasir and others" (PLD 2011 Supreme Court 132)