

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ.

MR. JUSTICE IJAZ UL AHSAN.

MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

Civil Appeal No.73 of 2020

Against judgment dated 29.03.2018 of
Peshawar High Court, Peshawar in Writ
Petition No.4765-P of 2017.

Government of Khyber Pakhtunkhwa, Workers Welfare Board,
through its Chairman.

Appellant

Versus

Raheel Ali Gohar & Others.

Respondent(s)

For the Appellant(s):

Khawaja Azhar Rasheed, ASC.
Ahmed Nawaz Chaudhary, AOR.
M. Azhar Hussain Shah, Dir (Edu),
Taj Wali Said, Dir (Fin)
Qudrat Ullah, AD (L)
Said Umar (LA)

For the Respondent(s):

Mr. M. Shoaib Shaheen, ASC.
Syed Razaqat H. Shah, AOR.

Dates of Hearing:

16.07.2020

ORDER

IJAZ UL AHSAN, J-. This appeal arises out of a judgment of the Honourable Peshawar High Court dated 29.03.2018 in WP No.4765-P of 2017 (the "**Impugned Judgment**"). Through the Impugned Judgment, the Writ Petition filed by the Respondents was allowed. This Court granted leave to appeal vide order dated 27.01.2020 in the following terms:

"Learned counsel for the petitioner, by relying upon the order of this Court dated 09.05.2018 passed in the case of Secretary/Chairman Workers Welfare Board, KPK, Peshawar Vs. Muhammad Younas and others Civil Petition

Nos.204 to 208 of 2018 etc.), a bunch of cases copy of which is available at page 65 of CMA No.65/20, contends that the present case is also of similar nature as noted in the said order and thus, leave to appeal may be granted in the instant case. Having considered the submission of the learned ASC and after having gone through the record, we find that the submissions of the learned counsel require consideration.

2. Leave to appeal is, therefore, granted to consider, *inter alia*, the same. The appeal shall be heard on the available record. However, the parties are allowed to file additional documents within a period of one month. As the matter relates to service, the office is directed to fix the same expeditiously, preferably after three months."

2. Brief facts necessary for the decision of this *lis* are that the Respondents are all employees of the Workers Welfare Board KPK ("WWB") working at the Polytechnic Institute, Mono Tech Institute, and Matric Tech Institute on different scales throughout KPK on contractual basis and their services for this purpose had been extended from time to time. After the WWB did not accede to their requests for regularization, the Respondents approached the Peshawar High Court through WP No. 4765-P/2017 which was allowed vide the Impugned Judgment, whereby the Appellant was directed to regularize the services of all the Respondents. Aggrieved, the Appellant has now approached this Court assailing the Impugned Judgment.

3. Learned Counsel for the Appellant has argued that the Respondents were appointed without following legal formalities and without any recommendation for appointment from the selection committee. Moreover, the Respondents were appointed by the Secretary WWB, who is not the competent authority designated for this purpose. Under section 11-B(3) of the Workers Welfare Fund Ordinance, 1971

(the "**Ordinance**"), only the Chairman of the WWB could have made these appointments. In support of his arguments, learned Counsel for the Appellant has also cited the Formal Charge Sheet dated 12.09.2019 (the "**Charge Sheet**") against Secretary of the WWB along with other officers describing the various corrupt and illegal practices employed in the selection and appointments of various officers.

4. On the other hand, Counsel for the Respondents has submitted that similarly placed employees in the Province of Sindh have been regularized and that the refusal to Regularize the Respondents by the Appellant amounts to discrimination and is a violation of their constitutional rights. To this end, he has also pointed out the extensions given to the contractual employment of various Respondents from time to time and has argued that not regularizing them after such a considerable time will come in the ambit of forced labour and amount to a violation of Article 11 of the Constitution of the Islamic Republic of Pakistan (the "**Constitution**").

5. We have heard the learned Counsel for the parties and have also perused the available record with their assistance. At the outset, we find it pertinent to note that the employment of all the present Respondents was contractual in nature and that none of their contracts contain any provisions for regularization. However, in coming to its decision in the Impugned Judgment, the learned High Court has relied on a judgment of this Court in Civil Appeal Nos.

1109 of 2013 and 1424 to 1428 of 2016 dated 14.04.2016. In the said judgment, the principle of regularization in the context of school teachers employed by the WWB has been discussed. The present matter can clearly be distinguished on the facts given that the Respondents are not school teachers but rather employed at technical institutes across KPK. However, more importantly, in the present case the validity and *bona fides* of their employment cannot be established in the same manner. We note that all the appointments in the present matter were made by a person who was not authorized to make the same by virtue of section 11-B(3) of the Ordinance. In any case, the appointments made by the Secretary, WWB have come under question based on the various allegations and charges of corruption, nepotism, and illegal acts brought against him and several other officers of the department before the accountability courts.

6. In any case, this Court in recent judgments has unequivocally held that contractual employees have no automatic right to be regularized unless the same has specifically been provided for in a law. Most recently, in a judgment of a bench of this Court in Civil Petition Nos. 4504 to 4576, 4588 and 4589 of 2017 dated 08.01.2018 this court has held that:

“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."

The aforementioned judgment was further upheld in review *vide* the order dated 12.09.2018 of this Court in Civil Review Petition Nos. 61 to 68, 89 to 91, and Suo Motu Review Petition No. 69 of 2018.

7. From the facts and circumstances of the present matter, as well as the principle discussed above, it is clear and obvious to us that the present case is distinguishable on the facts and the law from earlier cases wherein regularization has been granted to such employees. Not only is this due to the fact that the contracts of the present Respondents do not provide for regularization and there is no specific law providing the same but also due to the fact that their appointment itself was illegal and not made through the appropriate legal mechanisms provided for in the Ordinance.

8. In addition 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 grievances relating to

regularization. As noted above, in case of a contractual dispute the Respondents could have sought appropriate redressal of their grievances 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).

9. We find that the above material legal aspects of the case escaped the notice of the High Court while passing the Impugned Judgment. As such, the same is not sustainable.

10. While hearing these and a large number of other matters, we were shocked and appalled at the way Khyber Pakhtunkhwa Workers Welfare Board ("**the Board**") has been operating for the past many years. It presents a pathetic picture of total and complete disregard, violation and disrespect for the law, rules and regulations. Rules and regulations have either been bent, amended bypassed or ignored from time to time; notifications have been issued with impunity for questionable reasons and official documents have been generated to facilitate and cover up corruption, cronyism, favoritism and personal or political favours at the expense of public exchequer. Huge amounts of funds have been doled out to favourites with connections who were given appointments without due process, without following the principles of open merit, competition, transparency and level

playing field for all those who may have wanted to compete for appointments against available posts. Scores of appointments were made by unauthorized officers without seeking approval from anybody and without following the procedures required to be followed for such appointments. Large number of appointments were indiscriminately made without regard to or settling parameters, criteria, benchmarks, minimum qualifications and other material factors. Appointments were made in a slipshod manner, without due process or following the standard operating procedures required to be followed for appointments in public sector entities and Government departments. As long as patrons remained posted at the relevant posts, such employees continued to receive salaries and enjoy perks and privileges and remained on the payrolls of the Board. However, when such patrons got displaced by reason of transfer, promotion or retirement, the successors cancelled or recalled earlier appointments with questionable motives apparently to accommodate their own cronies and favorites. The resultant mess led to multiplicity of litigation resulting in a flurry of judgments rendered by different Courts which at times were inconsistent and contrary to each other.

11. We have noted with great concern the following glaring flaws, irregularities and violation of laws, rules and regulations, etc in the process of making appointments to different posts by the Board:

- i) *Large number of appointments were made by persons, who did not have the power nor were competent to make such appointments. In a*

number of cases, there was no independent, impartial and duly approved Selection Board authorized by the competent authorities on the basis of rules or regulations to evaluate the academic credentials, competence, merit and suitability of applicants/candidates and make recommendations for appointments based upon merit.

- ii) Despite a large number of vacancies available or created whether the same were required or not for which no justification was ever given or is available on record, there were no job descriptions, organograms, minimum academic qualifications, required experience (if any) or a selection criteria laid down for various posts.
- iii) Stopgap and ad hoc arrangements and criteria were utilized to tailor to the needs and objectives of the persons who were interested in making appointments for extraneous considerations which had no correlation or nexus with the needs or requirements of the Board and there was no internal and external accountability of any nature.
- iv) There was a constant rift between the Chairman of the Board and its Secretary which led to collapse of whatever system (if any) was there resulting in total disarray and chaos in the organization as well as amongst employees who worked and operated according to their own whims and caprices.
- v) The Board invariably acted as a helpless, hapless and disinterested onlooker with no sense of responsibility and no inclination to interfere or assert its powers to stop this blatant abuse of power.
- vi) No effort was made to put in place an employment policy and a well thought and well designed service structure for employees of the

Board and the hundreds of teachers and other staff hired much in excess of the actual requirement for schools set up and run by the Board.

12. We have been informed that no effort was ever made to take a policy decision regarding schools and institutions as well as allocation and utilization of funds. There was no thought process on a policy level in deciding whether or not staff was to be appointed on contract, *ad hoc* or permanent basis. Terms and conditions of their service, dealing with their disciplinary matters and legal implications of terminating their services depending upon whether they were appointed on contract or permanent basis and the possible outcome of any litigation that may be initiated by aggrieved employees of the Board was also never considered. The affairs of the Board have been run in a most haphazard, irresponsible and unprofessional manner. Unfortunately, the Board has been used by its successive Chairmen and Secretaries to advance their own personal agendas and has been more of a rubber stamp rather than an effective entity conscious of its responsibility to ensure that matters approved or consented to by the Board are in accord with the objects and purposes of the Workers Welfare Fund. We get a distinct feeling that money which actually belongs to workers have been wasted most recklessly and callously on undertakings and projects which have nothing to do with the welfare of the workers or their children. We have been informed that the Governing Board of the Workers Welfare

Fund had initially approved setting up of 24 Schools but no effort was made to provide a service structure for teachers and other staff that was required to be hired to run such schools. The decisions were taken in a most careless and casual manner which was not in accord with the role of the Board as a Trustee for the funds contributed by the workers directly or indirectly.

13. Initially the governing body of the Workers Welfare Fund ("**WWF**") approved 24 Schools to be established for the purpose of providing educational facilities to the children of workers at affordable rates. It appears that about 47000 students were enrolled in the said Schools and 1065 teachers were recruited on contract basis.

14. Subsequently, an ingenious but devious scheme was introduced allegedly by one of the Secretaries of the Board who doubled the number of Schools, without, in most instances, undertaking any physical addition in terms of school buildings or increase in the number of students enrolled. He bifurcated most of the Schools from one into two treated the bifurcated Schools as altogether different schools and created a large number of posts at all levels including posts for teaching and other staff thereby exponentially increasing the salary bill of the Board for such Schools without any incremental benefit towards increasing the number of Schools or staff. We have been informed that actually the number of students and the standard of education in such schools declined drastically. Currently, it

appears that in the said so called 48 Schools only 13000 students are enrolled while on account of fresh appointments the number of teachers has increased to more than 5000 which has resulted in a fantastic and totally unheard of student teacher ratio of one teacher for 2.6 students. The said action of the Secretary is subject matter of a NAB Reference which according to the information provided to us is *sub judice*. Therefore, we would not like to comment further on this matter, lest any observation made by this Court should prejudice the case of either side or hamper their due process rights.

15. We have also been informed that in order to govern the terms and conditions of service of employees of WWF, the Workers' Welfare Fund (Employees Service) Rules, 1997 ("**Rules, 1997**") were adopted. In terms of Rule 9 of the Rules, 1997 service in WWF was required to consist of different cadres as specified in Appendix-I to the Rules, 1997. In terms of Appendix-I, only three cadres are provided namely (i) Administrative and Ministerial Cadre, (ii) Engineering Cadre and (iii) Finance and Account Cadre. Further, the Rules, 1997 clearly and categorically provide that they were not applicable to contract employees who were specifically and by intendment excluded from applicability of such Rules. We however find that the Board acted in a haphazard and inconsistent manner insofar as staff for these Schools was hired on contract basis for a limited period. Such contracts were extended from time to time inasmuch as some of the

teachers worked for the Board for decades. For some reason, the term of some contracts was not extended which resulted in considerable litigation in different Courts. Further, some of the contract employees were "regularized" apparently by the Board itself without any policy, rules or law providing for such regularization which resulted in other employees approaching the Courts seeking similar treatment. On account of inability on the part of the Board to show the law, facts or circumstances on the basis of which similarly placed employees may have been regularized while others were not, orders were passed by various *fora* directing that services of contract employees especially the teachers hired in the Schools run by WWF may be regularized.

16. It may be noted that although the Schools in question are permanent in nature and are required to be run once these have been established, the amount of funds available to the Board is variable on yearly basis. This is in view of the fact that revenues are dependent on the number of Industries operating in a Province and the amount of contributions made by such Industries towards WWF. By way of background, it may be noted that WWF was initially a Federal entity and contributions were collected by the Federal Government from all over Pakistan and distributed on the basis of a certain criterion amongst all four Provinces. However, after the Eighteenth Constitutional Amendment, the WWF has devolved upon the Provinces and some of the Provinces including Punjab and Sindh have promulgated their

own laws authorizing them to deal with WWF. How much money would the Provinces will they be able to generate is unclear and uncertain.

17. We have been informed that the reason for hiring teachers for the said Schools on contract basis was that unlike Government Schools WWF does not receive budgetary grants from the Government to run the Schools which would make it impossible to have permanent staff in view of the fact that availability of funds for the aforesaid reasons is subject to fluctuation. A certain degree of flexibility was required in order to cater for situations where enough funds were not generated to maintain such large number of staff.

18. The learned Additional Advocate General, Khyber Pakhtunkhwa has informed us that currently only the salary bill for contract employees for WWF is about Rs.2.2 billion. It is also significant to note that the main object and purpose of WWF is to provide housing facilities for workers and provision of education to children of workers though important in its own right is an ancillary purpose of WWF. Yet it appears that successive Boards under the influence of Chairmen and Secretaries who had their own agendas motives and goals did not pay much heed nor much thought to creating a structure which would efficiently utilize available funds and provide the requisite facilities.

19. During the course of hearing these matters, we have found alarming disorganization, lack of commitment and

total failure of systems to run the projects. The projects are taken up haphazardly in a slipshod and non serious manner without proper planning and without putting into place necessary administrative and employment structures which has resulted in disastrous consequences and legal issues which are regularly brought before the Courts. Unless positive well thought and meaningful steps are taken, large sums of money which consist of contributions made by on behalf of the workers will continue to go waste and no corresponding benefit would come to workers or their children who are real owners and beneficiaries of these funds. The powers available with the Board, the Chairmen and the Secretaries are in the nature of a Trust which appears to have been violated, abused and misused with impunity in a most callous, careless and irresponsible manner.

20. It must be understood that funds provided to the Board are in the nature of a Trust and it is the responsibility first of the Government of Khyber Pakhtunkhwa and thereafter of the Board to ensure that such funds are utilized in a most responsible, conscientious and honest manner with the object of advancing the welfare of the workers, contributions on whose account, constitute the substratum of the funds. Further, its affairs must be subjected to regular audit by an independent government agency.

21. On the basis of our examination of the record, we are left in no manner of doubt that the Board is neither performing nor is it capable of performing its functions under

the law, rules and regulations. This has led to indiscriminate loss and wastage of funds, a deluge of litigation and gross abuse and misuse of authority for personal or political motives.

22. We have confronted the learned ASC appearing for the Board as well as the learned Additional Advocate General, Khyber Pakhtunkhwa with the above situation. They have not been able to defend either the Government of Khyber Pakhtunkhwa or the Board. Funds of the Board and the Board itself have become a pie in which all competing interests whether personal or political, vie and compete to snatch a share. Even Unions have been formed in order to create pressure groups to advance vested interests. This situation required interference which the Government does not seem to have done despite the dire state of affairs explained above. Consequently, in public interest we are constrained to issue the following directions in exercise of our jurisdiction under Article 187 read with Articles 184(3) and 190 of the Constitution of the Islamic Republic of Pakistan, 1973:

- i) *The Government of Khyber Pakhtunkhwa is directed to constitute a committee headed by its Chief Secretary and consisting of highly respected and independent professionals possessing the higher degree of integrity from the fields of Education, Administration, Finance, Human Resource and Employment Laws, etc. Such committee shall in the first instance examine the*

laws, rules and regulations governing the setting up, operation and functioning of the schools systems set up by the Board.

- ii) The Board shall provide the Committee all data, information financial documents, employment documentations, etc relating to terms and conditions of employment of the entire staff working in these Schools and such other information as the Committee may require. The Committee may with the approval of Chief Secretary/Chairman of the Committee co-opt any other member from any Government or private entity who may in the majority opinion of the Committee facilitate and add value to its deliberations.*
- iii) The Committee shall also have the power to constitute sub-committees consisting of two or more members who will examine and streamline the entire process of employing persons in the projects of the Board especially its school projects. It will also examine and suggest changes in the system of appointments which would be made by Selection Boards constituted on the basis of recommendations to be made by this Committee. It shall also make recommendations for promulgating afresh or amending rules dealing with all existing staff in the schools/institutions and all matters related to their appointments. The Committee shall also get conducted an independent audit of the Board*

with special reference to school projects for the past seven years in order to fix responsibility for cronyism, favoritism, unnecessary litigation and leakage and wastage of funds with relation to illegal appointments made at various stages.

- iv) The Committee shall also prepare a comprehensive report regarding other aspects of the workings of the Board and its school projects within a period of three months and submit such report not only to the Government of Khyber Pakhtunkhwa but also to this Court for our perusal in Chambers. It has also review the powers, working and procedures of the Board and make recommendations to streamline its working and making all major decisions including sanction of projects and allocation of funds subject to approval of the Board. Recommendations shall also include measures to create a workable balance between the powers of the Board, the Chairman and Secretary and suggest inbuilt counterchecks on exercise of power at every stage.*
- v) The Committee shall also coordinate with the National Accountability Bureau and Anti-Corruption Establishments and such other entities as may be charged with the responsibility to oversee and undertake accountability initiatives where public funds are utilized. It shall also point out the individuals who have been found by it to be involved in financial*

- mismanagement, corruption, favoritism and misuse/abuse of authority for initiation of proceedings against them in accordance with law.*
- vi) *The Committee shall also look into the working of the Board, its Management Committee, Chairmen as well as Secretaries of the Board for the past seven years and recommend appropriate action where any violation of the rules, regulations and laws, etc have been found.*
- vii) *It shall also examine the decisions taken by the Board and notifications issued from time to time to determine the objective behind the same, ensure that the same have been issued in the best interest of the Board and are in accordance with laws and rules failing which appropriate actions against those responsible for the same shall be recommended.*
- viii) *The Committee shall make such other and further recommendations as it may consider appropriate for better functioning of the Board so that it runs as an efficient, well structured, well planned and responsible entity.*
- ix) *We have been informed that an exercise to scrutinize and screen teachers hired from February, 2011 to June, 2016 and to propose a rationalization programme to streamline the strength of teaching and non-teaching staff was undertaken by a rationalization Committee by the*

Khyber Pakhtunkhwa Workers Welfare Board in the year 2016. The said Committee after an elaborate and painstaking exercise submitted a comprehensive report on June 20, 2016 alongwith its recommendations. On our query about the fate and outcome of the report and implementation of its recommendations, we have been informed that the report was put in cold storage and never saw the light of the day. The reasons for such in action are not hard to fathom. We direct that the Committee constituted herein will consider the said report, replicate the exercise for the period between 2016 to 2020 and then ensure implementation of recommendations in letter and spirit.

23. Let the aforesaid exercise be undertaken within a period of three months from the date of receipt of a certified copy of this order. The report of the Committee shall be placed before us in chambers for further orders if necessary.

24. For the foregoing reasons, this appeal is allowed with the directions issued above. The Impugned Judgment of the Peshawar High Court dated 29.03.2018 passed in Writ Petition No.4765-P of 2017 is set aside. All pending CMAs are accordingly disposed of.