In the Federal Constitutional Court of Pakistan
(Appellate Jurisdiction)

Present:
Justice Aamer Farooq
Justice Syed Arshad Hussain Shah

C.P.L.A. No.632-P of 2018
(On appeal from judgment of the Peshawar High Court,
Peshawar dated 31.5.2018 passed in Writ Petition No.4147 of 2010)

Government of Khyber Pakhtunkhwa through Chief Secretary and others

Petitioners

Versus

Tanveer Ahmad & others

Respondents

For the petitioners: Mr. Shah Faisal Ilyas,
Additional Advocate General, KP

Respondents: N.R.

Date of hearing: 19.5.2026

Judgement

Syed Arshad Hussain Shah, J – The instant petition calls into question the judgment of the Peshawar High Court, Peshawar dated 31.5.2018, passed in Writ Petition No.4147 of 2010, filed by respondents No.1 & 2 (hereinafter referred to as the respondents), whereby their writ petition was allowed and they were directed to be reinstated in their services. Operative part of the impugned judgment is reproduced below for ease of reference: -

> "6. For the reasons discussed above, we admit and allow this writ petition and direct the respondents to reinstate the petitioners in their services and issue their formal regularization orders against their respective posts, strictly in accordance with law, however, the interregnum period, during which they have not performed duties rather not worked against their respective posts, shall be treated as extra-ordinary leave without pay.".

2. Brief facts leading to instant controversy are that respondents were appointed as Dispensers (BS-6) w.e.f. 28.11.2002 & 6.3.2007 respectively, on contract basis in erstwhile Federally Administered Tribal Area (hereinafter referred to as FATA). Consequent upon deletion of health facilities from the ADP 2010-11, services of staff

working in health facilities under ADP Scheme, including the respondents, were terminated w.e.f. 30.6.2010. The respondents, having failed to obtain relief through their departmental appeals, invoked the jurisdiction of the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan (hereinafter referred to as the Constitution) by way of filing writ petition, which was allowed in terms reproduced in the preceding paragraph.

3. Learned Law Officer vehemently argued that the High Court, while passing the impugned judgment, did not appreciate the facts in their true perspective and erred in law while directing reinstatement of respondents in their services, inasmuch as, they were contract employees appointed for particular project(s) and, on closure of the project(s), their services were liable to be terminated automatically. He further contended that the respondents, being contract employees, have no vested right to be regularized. In this regard, reliance was placed on the case reported as Deputy Director Finance and Administration FATA versus Lal Marjan **(2022 SCMR 566)**.

4. We have given our anxious consideration to the submissions advanced by the learned Law Officer and perused the record with his able assistance.

5. At the very outset, it may be noted that the case of respondents falls within the ambit of Cabinet Decision Case No.76/10/2008 dated 4.6.2008 issued vide Establishment Division O.M. No.10/30/2008-R.II dated 29.8.2008, whereby the Government of Pakistan regularized all contract employees working in BS-1 to BS-15 prior to 4.6.2008, including the employees of FATA. Accordingly, the respondents should have been regularized in their services under the above-mentioned decision/directions/policy of the Federal Government. However, they were illegally deprived of their right, which led them to suffer a lot. It may further be observed that neither the advertisement nor the appointment letters mentioned that the appointments of the respondents were for particular project(s). Hence, termination of services of the respondents on closure of the project(s) was illegal and not tenable in law.

6. As far as law laid down in the case of Lal Marjan *supra* is concerned, suffice it to observe that though the petitioner(s)/appellant(s)

in the above cited case(s) were employees of FATA, but they did not claim their right of regularization under the above referred decision/ directions/policy of the Federal Government, rather they claimed regularization of their services under KP Employees (Regularization of Services) Act 2009, which was obviously not applicable in the cases pertaining to FATA. Therefore, their cases were bound to fail. *Prima facie,* it seems that at the time of hearing of the appeals, the Supreme Court was not adequately assisted in this regard, which led to the dismissal of appeals.

7. Adverting to the issue of regularization of contract employees, it may be observed that it is not merely a matter of service jurisprudence but is linked with the enforcement of fundamental rights guaranteed under the Constitution. Article 9 of the Constitution, which guarantees the right to life, has been expansively interpreted by the superior judiciary to include within its fold the right to livelihood and job security. The concept of 'life' under Article 9 is not to be construed narrowly but must be given a broad and purposive interpretation so as to ensure meaningful existence, which necessarily includes the assurance of stable employment where the nature of work is permanent. The continued retention of employees on contract basis for years together, despite the existence of permanent posts and continuous need for their services, reflects an arbitrary exercise of power, which is not sustainable in law.

8. After issuance of O.M. referred to in paragraph 5 *ibid,* termination of services of the respondents, instead of regularization, is also hit by Article 25 of the Constitution, which guarantees equality before law and equal protection of law, necessarily implying that persons similarly placed must be treated alike. It may be observed here that the right to life includes the right to livelihood, necessitating regularization for those performing permanent duties. "*Right to life as envisaged by Article 9 of the Constitution, includes the right to livelihood*". 2015 SCMR 1257 refers. Further regularization is not strictly dependent upon the existence of statutory service rules, rather it is linked with the length of service and the enforcement of fundamental rights under Articles 9 and 25 of the Constitution. *Regularization of the employees is not a part of the terms and conditions of service of the employees for which there need to be some statutory rules but it depends upon the length of service and in*

terms of equity that a person who has given his prime life and youth to a department is always kept in dark and his services were taken in a very explorative manner. 2018 SCMR 1181 refers. Similarly, widespread practice adopted by public authorities to engage employees on temporary or contract basis for prolonged periods, often by giving artificial breaks in service, with the sole object of depriving them of the benefits of regularization, has always been deprecated. *The superior Courts have always condemned the practice of keeping the employees on temporary basis for long periods of time without confirming or regularizing their services.* 2018 SCMR 1405 refers.

9. In the light of above, it is held that the continued retention of employees on contract basis for years together, particularly, where the nature of work is permanent and their services are continuously required, constitutes a form of economic exploitation and administrative arbitrariness, which is violative of the Constitution and the law. Therefore, the principle of regularization is grounded not only in considerations of equity and fairness but also in the enforcement of fundamental rights guaranteed under the Constitution.

10. As a sequel to above, we see no force in the instant petition, which is dismissed and leave to appeal is refused.

Judge

Judge

Islamabad
19th May, 2026
Approved for reporting
Riaz