

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P.No.4283-P of 2017

JUDGMENT

Date of hearing 28.6.2018

Petitioner (s) (Sher Alam and other) by Mr. Asad Jan, Advocate.

Respondent (s) (Govt. and others) by Ms. Samreen, A.D. Litigation on behalf of respondents.

MUHAMMAD NASIR MAHFOOZ, J:- Through this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have prayed for the following relief:-

It is, therefore, most humbly prayed that on acceptance of the instant writ petition an appropriate writ may please be issued and the respondents be directed to reinstate the petitioners since their initial appointments in the interest of justice and decision/recommendations of the appellate authority regretting the petitioners appeal vide letter No.14705-7 dated 27.9.2017 issued by Deputy Director (Establishment) and address to agency Education Officer, Khyber Agency and other office order or letter against the interest of the petitioners be declared without lawful authority, void, illegal, and ineffective upon petitioners rights or any other order deem fit and proper in favour of the petitioners may kindly be passed in the interest of justice.

2. Petitioners were appointed as PTC Teachers/ Communal School Teachers in BPS-07 on contract basis in Landi Kotal, Bara and Jamrud Tehsil Khyber Agency in the years 1998 to 2004 and they continued to perform their duties till 31.12.2012 when their services were terminated. On 03.01.2013 the termination order was cancelled. On 05.4.2013 respondents approved re-appointment of the petitioners against the available sanctioned post subject to the condition that petitioners will have to acquire the prescribed professional and academic qualification for the post within 24 months after their re-appointment against the regular post. On 31.7.2013 the services of petitioners were again terminated which was challenged in departmental appeal but no order was passed on the said appeal, so petitioners alongwith some other filed W.P.No.3682-P/2015 which was dismissed on 28.9.2016. The said order was challenged before the august Supreme Court of Pakistan in CP No.3464-P/2016 which was disposed of on 27.4.2017 for sympathetic consideration by the respondents but the petitioners were dismissed from service, hence the instant writ petition.

3. Respondents submitted their comments and denied the entitlement of petitioners to be re-appointed on the subject post.

4. We have heard learned counsel for the petitioner and Ms. Samreen A.D. Litigation representative on behalf of respondents.

5. It is worthwhile to reproduced para-10 of the judgment passed in W.P.No.3682-P/2015 dismissed on 28.9.2016 as follows:-

Since the petitioners failed to convince the Court regarding their eligibility and fitness for the post of PST, as per existing criteria and rules, therefore, they cannot claimed the protection of Act-IX of 2005 and Act XVI of 2009 on the touchstone that the project has been converted to regular side. The eligibility and fitness for the appointment against a particular post cannot be relaxed under any circumstances, in view of which this writ petition being devoid of legal substances is hereby dismissed.

6. This order was assailed in CPLA No.3464/2016 which was disposed of on 27.4.2017 with the following observations:-

The petitioners claimed to have worked for quite some time. Let the petitioners submit applications to respondents Nos.2 and 3. We are confident that they will look into this matter sympathetically in view of the facts and circumstances of the case. Obviously, anybody already legally appointed, should not be disturbed.

7. The said writ petition filed by petitioners was dismissed through the judgment passed by this court reveals, that the same was dismissed after evaluating all the legal and factual controversies as raised therein. Learned counsel for the petitioner has relied on judgment passed by this court in W.P.No.4657-P/2016 titled Mazullah Khan Vs. Director Education FATA and others decided on 29.3.2018. The said writ petition was allowed, wherein, the petitioners had performed duties in Bara Communal School Landi Kotal Khyber Agency. The relevant part of the judgment is quoted below:-

The petitioner has served the department for a period of more than nine years and there is no single complaint against him and the project against which petitioner was appointed, still continues. Petitioner, even otherwise, has become overage to get his job anywhere else and especially in the circumstances when he has acquired the requisite qualification for the post he has the right to continue against the same.

In view of the above, this writ petition is allowed as prayed for.

8. The observations recorded in the said judgment also support the present petitioners as all of them were appointed in Communal School operating in the then Federally Administered Tribal Area. Petitioners were initially appointed in the year 2003 for the project for the period of

three years and continued to perform their duties till their services were dispensed with/terminated through impugned order vide which the departmental appeal of petitioners was dismissed and conveyed through letter No.14705-7 dated 27.9.2017 impugned herein. In view of the judgment already passed by this court, we need not dwell into discussing the detail merits of the case but reference to a letter dated 03.01.2013 quoted below issued by the office of respondent No.6 would be essential:-

Subject:- Re-appointment of Community School Teachers against the Regular PST Posts.

Memo:

I am directed to refer to this office letter No.3257-69 dated 28.12.2012 on the above cited subject. The sentence reproduced as under within the inverted comma's in the above quoted letter may be treated as deleted.

“dispensed with the adhoc/contract services of under qualified and in-eligible community school teachers”.

Furthermore, you are requested to reinstate all the community school teachers whose services have been dispensed with in light of the above mentioned letter.

9. This letter is addressed to all the Agency Education Officers in the then FATA and has clearly laid down that the services of Communal Teachers that were dispensed with are to be reinstated after the condition of dispensing of their services as mentioned in letter dated 28.12.2012 has been treated as deleted.

10. Present petitioners are still performing their duties on their respective posts and have unblemished service record having served for about than 15 years but with no job security till date. We feel that the petitioners have made out a case to allow the instant writ petition as they have availed every available opportunity for the redressal of their grievance.

11. In view of the above, the instant writ petition is allowed and the impugned letter is declared as without jurisdiction and without lawful authority, with no order as to costs.

Announced
28.6.2018

CHIEF JUSTICE

J U D G E