

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT D.I. KHAN BENCH**  
**JUDICIAL DEPARTMENT**

W.P. No. 495 of 2013

**JUDGMENT**

Date of hearing 22-1-2015

Appellant / petitioner Asifullah Khan & others by M/s  
Saleem Jan, Malik Muhammad Asad & Sh. Iqbalullah Advocates

Respondent Elementary Education Foundation (E.E.F.) by  
Mr. Jahar Rahman Khattak & Samiullah Khan B.A.G.

**IKRAMULLAH KHAN J.**:- Petitioners have invoked the constitutional jurisdiction of this court by filing the instant writ petition for redressal of their grievances and have prayed for as;

"It is therefore humbly prayed that on acceptance of this writ petition, an appropriate writ may please be issued declaring the acts & omissions of Respondents whereby they are discriminating in respect of Petitioners & those of employees of head office; the

Petitioners are serving the E.E.F for the last so many years on contract/fixed pay basis while their counterparts appointed in the head office are considered as regular employees by allowing them National Pay Scale, & other fringe benefits as well. Discriminatory treatment meted out to the Petitioners is highly illegal, unlawful, without lawful authority, against the Constitution & thus not maintainable. The services of the petitioners may please be regularized, & be allowed all the benefits enjoyed by the Staff Head Office with arrears & back benefits. Since terming E.E.F/Mufti Mahmood Public School & College, wherein' the Petitioners are serving as Project; is highly illegal, unlawful, the same is malafide and should not be countenanced".

2. The learned counsel for petitioners contended that petitioners were initially appointed by the respondents as teaching and non-teaching staff at Mufti Mahmood Public School and College( thereafter MMPS&C) Dera Ismail Khan; that staff of head office of Elementary Education Foundation (thereafter EEF) were regularized, however, petitioners were meted out with discrimination in matter of their services, not so far been regularized.

3. On the other hand, learned counsel for official department and the learned A.A.G argued that petitioners, being contract employees, appointed purely on temporary basis for a specific term have no any right of regularization. Further, contended that presently no such policy on behalf of the respondents is in vogue, which accrue right of regularization to petitioners; that petitioner No.63 is estopped on her conduct to challenge and demand for regularization of service as she had already been denied the same relief as

prayed for by this court as well by the Honourable Supreme Court of Pakistan in previously instituted writ petition.

4. We have heard learned counsel for parties and have also gone through the record.

5. The available record and comments filed by respondents reveal that the MMPS&C, D.I.Khan is not a component or established by EEF, but;

6. In essence, MMPS&C, D.I.Khan had established by the Government of erstwhile N.W.F.P now Khyber Pakhtunkhwa in private sector, however, it was placed under control of EEF for the purpose of construction and at initial phase to recruit employees and manage it but in the year 2011 on the desire of the EEF, the Chief Minister Khyber Pakhtunkhwa detached MMPS&C, D.I.Khan from further management of EEF and in this regard the Chief Minister Khyber Pakhtunkhwa was pleased to constitute the Board of Governors (BOG), in exercise of its power, being conferred

upon him under section 4 of Government of Khyber Pakhtunkhwa, Education and Training Institutions Ordinance, 1971, in order to administer and manage the MMPS&C, D.I.Khan being a public sector institution by Board of Governors through notification dated 16.5.2011, which reads as;

*"In exercise of the powers conferred on him under section-4 of NWFP Educational & Training Institutions Ordinance, 1971 and amended in 2005 the Chief Minister NWFP/Controlling Authority is placed to appoint the following Chairman/Members of the Board of Governors of Mufti Mahmood Public School & College D.I.Khan with immediate effect;*

1	Minister for Elementary & Secondary Education Khyber Pakhtunkhwa.	Chairman
2	Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department.	Vice Chairman
3	Secretary to Government of Khyber Pakhtunkhwa Establishment Department.	Member
4	Secretary to Government of Khyber Pakhtunkhwa Finance Department.	Member
5	Commissioner, D.I.Khan Division D.I.Khan.	Member
6	Principal, Mufti Mahmood Public School & College.	Secretary of the Board

7. A board of Governors constituted under section 4 of the Khyber Pakthunkhwa Government Educational and Training Institutions Ordinance, 1971 in view of section 8 shall have full powers to administer and manage an institution and in particular in respect of the following matters, which reads as;

- "(a).....
- (b) *recruitment and determination of the terms and conditions of service of the Principal and other members of the staff of the institution and of other officers and servants of the Board;*
- (c) .....
- (d) .....
- (e) .....
- (f) ....."

8. The BOG may in view of section 20 subject to the approval of Government frame regulation not inconsistent with the provisions of this Ordinance and the rules made thereunder, to carry out the purpose of this Ordinance, in particular and without prejudice to the generality of the foregoing power, such regulations may provide for;

- "(a) the notice on which an ordinary or specially meeting may be convened.*
- (b) the time and place at which meeting of the Board may be held;*
- (c) the manner in which the minutes shall be circulated and confirmed;*
- (d) the manner in which the Executive Committee or a Standing Committee shall be constituted and the powers and functions that may be exercised and performed by the Committee;*
- (e) The recruitment, tenure of office, terms and conditions of service of the officers and servants appointed by the Board;*
- (f) the delegation of administrative and financial powers of the Executive Committee, Standing Committee, or other officers and servants of the Board;*
- (g) the manner in which the funds shall be disbursed;*
- (h) any other matter required under any of the provisions of this Ordinance to be prescribed."*

9. But as regulation of the kind mentioned in section 20 of the Ordinance, 1971 has so far not been approved by the Government of Khyber Pakhtunkhwa, the MMPS&C, D.I.Khan as per summary moved to the Chief Minister the Controlling Authority under section 9 of the Ordinance, 1971, approved that till the draft regulation of BOG of MMPS&C, D.I.Khan is not approved by the

Government MMPS&C, D.I.Khan shall be administered and managed in matter of services of the employees under the regulation framed for "Peshawar Public School", which reads as;

*"MMPS&C, D.I.Khan will follow the Peshawar Public School and College, Peshawar (Terms and Conditions of Services) Regulation, 2009 till the approval of its terms and conditions."*

10. In such view of the matter in hand and under direction being issued by the Controlling Authority, the services of all the employees of MMPS&C, D.I.Khan shall be governed under Regulation 2009 of Peshawar Public School & College.

11. The contention of learned counsel that MMPS&C, D.I.Khan is a constituent institution of EEF is misconceived in this regard.

12. Part-II of the Regulation 2009 of Peshawar Public School and College deals with recruitment whereof paragraph 3 prescribes



the status of the employees of the Board which reads as;

*"3. Tenure of office of Board employees:- Every employee of the Board shall hold office during the pleasure of the Board of Governors".*

13. Paragraph 4 of Regulation 2009 Peshawar Public School & College prescribes the appointment authority for appointment of various teaching and non-teaching staff which reads as;

*"4. Appointing authority:- Appoint to various posts shall be made:-*

- (a) In case of the posts of Principal, Senior House Master, Senior Master, Senior Mistress, Bursar, Medical Officer or any other post in BP-17 & above and posts of equivalent grades, by the chairman, on the recommendations of the Selection Board of Selection Committee and*
- (b) In case of the other posts in BPS-16 and below by the Principal".*

Paragraph 5 of Regulation 2009 Peshawar Public School & College prescribes the method of recruitment while paragraph 6 & 7 prescribe eligibility criteria as;

"5. Method of Recruitment:- Appointment to various posts shall be made by initial recruitment, by promotion or by transfer or deputation as the Board may determine from time to time.

6. Age:- (i) No person shall be appointed to a post by initial recruitment who is not within the age limit prescribed by the Board for the post.

Provided that where a person within the prescribed age limit is not available and it is not in the interest of the School to keep the post vacant, the Principal in case where he is appointing authority, and in other cases, the Board may authorize the recruitment of persons of age higher or lower than the prescribed age.

(ii) For the purpose of these regulations age shall be reckoned:-

(a) Where recruitment is to be made on the basis of written examination, on the first of January of the year in which the examination is proposed to be held; and

(b) In other cases on the last date fixed for submission of application for appointment.

7. Qualification:- No person shall be appointed to a post by initial recruitment or by transfer unless he/she possesses the qualification prescribed for the post under these regulations.

Provided that where a person of the prescribed qualification is not available and it is not in the interest of the school to keep the post vacant till next recruitment, the principal in the case where he is appointing authority, and in other cases the Board may authorize the recruitment of a person of the

*qualification lower than the prescribed qualification".*

14. Apart from appointment of persons on various permanent post sanctioned by BOG in this regard, the Appointing Authority as envisaged thereunder paragraph 4 may also appoint person on contract basis or work charge basis on such terms and conditions, which has to be specified in such cases as the case may be, in view of paragraph 8 of the Regulation *ibid*.

15. To construe paragraph 5 & 8 of Regulation 2009 of Peshawar Public School & College, appointing authority has conferred with the power to recruit persons on permanent post by initial recruitment as well as by contract or work charge basis for a specific duration on such terms and conditions as to be specified.

16. Perusal of appointment orders of all petitioners herein, reveal that all the petitioners were appointed on contract basis

for specific period of time on particular terms and conditions well mentioned therein, each appointment order duly annexed with this petition by petitioners. But petitioners were allowed to continue their services while if considered to be appointed or deemed to be appointed on permanent post, many of the petitioners have successfully completed their probation period as pre-requisite condition for confirmation on permanent post as envisaged thereunder paragraph 9 of Regulation 2009 of Peshawar Public School & College, Peshawar, which reads as;

( "9. Probation and confirmation:- A person appointed to a permanent post, initial recruitment shall remain on probation for a period of two years whereas the persons appointed by promotion, shall remain on probation for a period of one year. The initial probation period shall automatically extend for another one year if not terminated by the competent authority. After successful completion of probationary period the employee shall be confirmed provided that he holds a substantive post". )

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17. So in light of the given facts and circumstances, some of the petitioners were appointed by competent authority in view of the provisions contained in paragraph 4 of the Regulation 2009, though for a specific period but were retained on permanent post thereafter successfully completed their probation period even if the longest terms of two years to be considered as probation period and shall be treated as appointed on permanent post and be treated as confirmed employee, in view of paragraph 9 of the Regulation 2009 of Peshawar Public School & College, (Peshawar or more specifically those petitioners who were appointed by competent authority as envisaged thereunder paragraph 9 of Regulation 2009 on various teaching and non-teaching cadres thereafter 16.5.2011 when the administration and management of the institutions was given to BOG are to be treated as confirmed employees.)

*important*  
18. And also all those petitioners who are appointed though on contract basis but on permanent post prior to 16.5.2011 by any competent authority in that behalf on the recommendation of the selection committee as envisaged thereunder rule 5 of the Frontier Education Foundation Rules of Business, 2008 under section 9 of the Frontier Education Foundation Act, 2002 as the case may be, shall be treated as confirmed employees on teaching or non-teaching post in MMPS&C, D.I.Khan as prior to 23.5.2011, it was administer and managed by Frontier Education Foundation.

19. In so far as the question of discrimination is concerned, reasonable classification on intelligible differtea is not prohibited nor against the mandate of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

20. In case of Secretary Economic Affairs Division, Islamabad and other Vs.

Anwar-ul-Haq and others (2013 SCMR

1687) the Honourable Supreme Court of Pakistan is observed as:-

*"We are also conscious of the provisions of Article 25 of the Constitution, which guarantees equality of citizens. However, denying such protection in peculiar circumstances of the case on basis of reasonable classification founded on an intelligible differentia which distinguishes persons or things that are grouped together from those who have not been left out. The differentia, however, must have rationable nexus to the object sought to be achieved by such classification."*

21. Likewise in case of Dr. Shahnaz

Wajid Vs. Federation of Pakistan (2011

SCMR 1737) it was held by the apex Court as:-

*"It is well settled by law that equality clause does not prohibit different laws for those differently circumstances provided a rational standard is laid down to guide discretion of the relevant authority to choose the appropriate law. A state may classify persons and object for the purpose of legislation and make laws applicable only to persons or objects within a class."*

22. No any instance was pointed out that any employee of the MMPS&C, D.I.Khan

had given the status different there from the petitioners, appointed on the same terms and conditions as the petitioner or on different terms and conditions in the same institution. }

23. No any factum of discrimination is pointed out by the learned counsel for petitioners, on basis of which petitioners could be treated like civil servants, serving in Government departments or schools and Colleges.

24. The object of the establishment of the MMPS&C, D.I.Kham could easily be gathered there from the summary approved by the Chief Minister Khyber Pakhtunkhwa on 28.2.2005 under which it was established in line with private institute, however, the Government was made bound down to provide financial assistance, funds till it stand on its own feet.

25. The judgment of this Court rendered in writ petition No.2324/2009 in case titled Mst.Shahnaz Adalat & another Vs.



Government of Khyber Pakhtunkhwa referred by learned counsel for petitioners, whereby employees of educational institutions under control and management of Frontier Education Foundation were regularized, but the ratio of that very judgment could not be applied upon the facts and circumstances of this writ petition as the employees of Frontier Education Foundation had got no nexus with the employees of MMPS&C, being a private educational institution, governed by BOG of MMPS&C, D.I.Khan, while the Elementary Education Foundation had given charge of MMPS&C (D.I.Khan for construction and at initial stage to recruit the teaching and non-teaching staff but has no more stand attach with the affairs of the MMPS&C, D.I.Khan thereafter constitution of the BOG by the Chief Minister Khyber Pakhtunkhwa under section 4 (1) of the Elementary Education Foundation Ordinance, 1971. Even both the foundation, Frontier Education Foundation and

Elementary Education Foundation have come into being by different enactment and for different purposes.

26. In case of Tahria Yasmin and others VS. Govt: of Punjab and others (2014 PLC (C.S) 1256), the Honourable Lahore High Court is observed as:-

*"Regularization of one post will not entitle persons on another post to demand regularization and on the same terms".*

27. The august Supreme Court of Pakistan in S.M.C No.15 of 2010, C.M.A Nos.2689, 3244 of 2010 and C.M.A.Nos.5383, 3068 of 2011 (2013 SCMR 304) also had held similar view.

28. For the reasons given hereinabove, this writ petition is admitted and partly allowed to the extent, and in manner in terms of the direction given hereinabove in regard to petitioners, separately discussed hereinabove. However, respondents shall place the cases of all the petitioners before the BOG to scrutinize

each and every case in light of direction of this Court and thereafter pass an appropriate confirmation order in regard to the services of the petitioners and also in regard to those who were not qualified to be confirmed on their post as soon as possible but not later than three (03) months from the date of announcement of this judgment.

ANNOUNCED  
22.1.2015.  
Aftab/\*

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