

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Muhammad Ali Mazhar
Justice Musarrat Hilali

Civil Petition No.578-P of 2024

Against the judgment dated 08.12.2022
passed by Khyber Pakhtunkhwa Medical
Teaching Institutions Appellate
Tribunal, in M.T.I. Appeal No.215/2021

Dean, Pakistan Institute of Community of
Ophthalmology (PICO), Peshawar

...Petitioner

Versus

Nasira Begum and others

...Respondents

For the Petitioner:

Mr. Rehman Ullah, ASC

For the Respondents:

Nemo.

Date of Hearing:

13.05.2026

Judgment

Muhammad Ali Mazhar, J. This Civil Petition for leave to appeal is directed against the judgment dated 08.12.2022 passed by Khyber Pakhtunkhwa Medical Teaching Institutions Appellate Tribunal (**Tribunal**) in M.T.I. Appeal No.215/2021.

2. The respondent No. 1 & 2 approached the Tribunal for seeking their regularization in the Pakistan Institute of Community Ophthalmology (**PICO**), Hayatabad Medical Complex (**HMC**), Peshawar. Both the said respondents were appointed on

26.12.2001 and were performing their duties in Hayatabad Medical Complex (**HMC**) since 2001 without any break. The Government of Khyber Pakhtunkhwa Health Department issued Notification on 3rd June, 2010 that Khyber Pakhtunkhwa Medical and Health Institution and Regulations of Health Care Services Ordinance, 2002, (**Ordinance 2002**) shall apply to the PICO HMC Peshawar, with immediate effect and as a consequence thereof, PICO was brought under the administrative and management control of the HMC hence PICO became a part of HMC. Meanwhile, NWFP (Khyber Pakhtunkhwa) Medical and Health Institution and Regulations of Health Care Services Ordinance, 2002, was amended through Amendment Act 2006 (**Amendment Act 2006**), whereby Proviso attached to sub Section (1) of Section 11 of the Ordinance, 2002, was substituted with the new one which provided that a person appointed on contract basis shall with effect from the date of his continuous appointment, which ever may be latter, be deemed to have been appointed on regular basis in the Institutions concerned. The contention of respondent No. 1 and 2 before the Tribunal was that the Ordinance 2002 was amended in 2006, while they were appointed in 2001, therefore, they are entitled to be treated as regular employees by virtue of operation of law. Taking into account the amendment made in the aforesaid law, the learned Tribunal allowed the appeal with the directions to treat them as regular employees of the PICO, HMC, Peshawar by operation of law promulgated by Amendment Act, 2006.

3. Keeping in view the office report, this petition is barred by time. However, an application for condonation of delay has been filed by means of CMA No.785-P/2024 with certain substantial grounds hence delay is condoned and matter is taken up for hearing on merits.

4. The learned counsel for the petitioner argued that the appellants were the contractual employees hence there was

a relationship of master and servants and they should have approached the Civil Court for the redress of their grievance but there was no denial on his part that the law itself amended and provided a benefit or facility of regularization of service from contractual to permanent.

5. We have heard the learned counsel for the petitioner at some length and have also carefully gone through the available record.

A comparative study of the relevant provisions of the Ordinance, 2002 (North-West Frontier Province Medical and Health Institutions and Regulation of Health-Care Services Ordinance, 2002) and Amendment Act, 2006 (North-West Frontier Province Medical and Health Institutions and Regulation of Health-Care Services (Amendment) Act, 2006) is indispensable to reaching a fair and just conclusion. At the outset, we will examine Section 11 of the Ordinance 2002, which is reproduced as under: -

“Section 11: Employees of the public institution: (1) Subject to sub-section (2), the Management Council, in relation to a medical institution, and the Management Committee, in relation to a public health institution, may appoint such persons in the service of the institution concerned as deemed necessary and on such terms and conditions as may be prescribed:

Provided that such employees shall be appointed on contract basis and shall not be considered as Civil Servants or Government Servants. [Emphasis supplied]

(2) All persons serving in connection with the affairs of an institution to which this Chapter applies or is applied shall continue to serve the institution on the same terms and conditions as applicable to them immediately before the issuance of the notification under sub- section (3) of section 1 till further orders.

(3) If at any time, a public institution reverts to Government for running under its own administration and management for any reason, the employees appointed under sub-section (1), shall continue to serve the institution on the same terms and conditions as applicable to them immediately before such reversion.

(4) The private practice of employees of medical institutions and health institutions, mentioned in sub-section (1) and (2), shall be prohibited with immediate effect, except within the premises of the medical

institutions or health institutions, and subject to such terms and conditions as may be prescribed: Provided that residential accommodation within such premises shall, for all intents and purposes of this section, be deemed to be a place outside such premises.

(5) Subject to the foregoing provisions of this Ordinance and the direction, if any, of Government, the concerned Management Council or Committee or body or authority shall be authorised and responsible for the administrative arrangements and other related matters for carrying out the institution-based practice within the boundaries of respective institutions.

(6) Notwithstanding anything to the contrary contained in this Ordinance, Government may, from time to time, approve and notify any other place for such private practice, in addition to the boundaries of the aforesaid institutions”.

6. The proviso attached to the original text of Sub-section 1 of Section 11 explicitly sets forth that the employees shall be appointed on contract basis and shall not be considered as Civil Servants or Government Servants. However, Section 11 was amended by dint of Amendment Act, 2006 (North-West Frontier Province Medical and Health Institutions and Regulation of Health-Care Services (Amendment) Act, 2006). According to Section 5 of this Amendment Act, Section 11 of the Ordinance 2002 was amended as under:

“5. Amendment of Section 11 of N.W.F.P. Ord. No. XLVII of 2002. In the said Ordinance, in Section 11:

i) in sub-section (I), for the existing proviso, the following provisos shall be substituted, namely:

Provided that a person though selected for appointment in the prescribed manner to a service or post, but appointed on contract basis, shall with effect from the commencement of this Ordinance or from the date of his continuous appointment, whichever may be latter, be deemed to have been appointed on regular basis in the institutions concerned. Such employee shall for all intents and purposes be a regular employee of the institution concerned, except for the purpose of pension or gratuity. All such employees shall, in lieu of pension and gratuity, be entitled to the benefits of contributory provident fund scheme in the prescribed manner:

Provided further that employees having regular status before their appointment in an institution by the Management Committee or as the case may be by the Management Council, shall be entitled to the same

benefit as regards pension and gratuity as were admissible to them before joining the institution. Such employees shall however cease to be civil servants or Government servants after their appointment in the institution. The seniority may be maintained from the date of appointment."

Sub-sections (4), (5) and (6) shall be deleted".

7. A fiction of law is a supposition made by a court or lawmakers that a fact is true, even though it may be false or unproven. In fact, legal fiction is a tool of convenience and justice. In this case, by virtue of the amended statute, the contractual employee was deemed to be regularized in service which is a powerful statutory command from the lawmakers which should be implemented in letter and spirit rather than searching for avenues to spoil and mess up the fundamental spirit of amendment for the benefits of employees serving on contract basis. The fundamental elucidation of the word "deemed" used in the amended statute automatically changed the status of contractual employees by the operation of law subject to the conditions and baseline provided for satisfying the deeming clause, therefore, the concerned department was duty bound to complete the paperwork and fulfill the legal obligations in accordance with law without administrative delays. If the department, despite statutory command, refuses to convert the status of contractual employee into permanent employment, it amounts to violation of law. The operation of law was triggered automatically on the date of commencement, therefore, the department could not artificially delay the administrative process for regularization. The Amended Act 2006 was enacted with the fair-minded rationale for finding ways to facilitate the employees on contract who gave their blood, toil, tears, and sweat for a considerable period. Therefore, it was the responsibility of the concerned Department to allow the benefit to all employees across the board without any discrimination. When the law maker enacts any beneficial

law, there must be a blanket implementation without any conservative or rigid approach. When implementation is delayed, the deprived persons have to knock the doors of the Courts unnecessarily just because of contravention of law by the department itself rather than religious implementation of law without any bias.

8. The effect of deeming clause has been discussed in detail in the judgment authored by one of us in the case of Dr. Abdul Nabi versus Executive Officer, Cantonment Board, Quetta **(2023 SCMR 1267= PLJ 2024 SC 80)**. According to Black's Law Dictionary, Ninth Edition, Pg. 477-478, the meaning of the word “Deem” is to treat (something) as if it were really something else, or it has qualities that it does not have. “‘Deem’ has been traditionally considered to be a useful word when it is necessary to establish a legal fiction either positively by ‘deeming’ something to be what it is not or negatively by ‘deeming’ something not to be what it is...”. In order to interpret the statute, the Court is obligated to give effect to the deeming provisions while taking into consideration the object of such legal fiction and also dredge up the rationales of statutory fiction to its cogent finale vis-à-vis the intention of legislature so it should not cause any injustice. Legal fictions give rise to explicit objectives restricted to the purposes which should be construed contextually but should not be elongated further than the legislative wisdom for which it has been created. In the case of All Pakistan Newspapers Society vs. Federation of Pakistan **(PLD 2012 SC 1)**, this Court, while referring to the case of Mubeen-us-Salam v. Federation of Pakistan **(PLD 2006, SC 602)**, held that the purpose of importing a deeming clause is to place an artificial construction upon a word/phrase that would not otherwise prevail and sometimes it is to make the construction certain. It was further held that a deeming clause is a fiction, which cannot be extended beyond the language of

the section by which it is created or by importing another fiction. The classic statement as to the effect of a deeming clause is to be found in the observations of Lord Asquith in East End Dwelling Company Ltd. v. Finsbury Borough Council [1952] AC 109 = [1951] UKHL J0725-2], that "where the statute says that you must imagine the state of affairs, it does not say that having done so you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs". In the case of Central Bureau of Investigation, Bank Securities and Fraud Cell and Ors. V. Ramesh Gelli and Ors. ((2016) 3 SCC 788), the Court dilated upon the situation when the Rajasthan Municipalities Act, 1959 deemed every member to be a public servant within the meaning of Section 21 of the Penal Code, 1860 and the Court observed that when the legislature creates a legal fiction, the court has to ascertain for what purpose the fiction is created and after ascertaining this, to assume all those facts and consequences which are incidental or inevitable corollaries for giving effect to the fiction and finally held that there is no escape from the conclusion that the Appellant is a public servant within the meaning of Section 21 of the Penal Code.

9. It is a well-settled exposition of law that the purpose of ratifying a beneficial provision is to grant rights, privileges or financial advantages to a specific individual or the public which ought to be interpreted profusely in order to achieve and realize its intended framework. Even if the language is found to be equivocal, the Courts normally incline to an interpretation that favors the public good rather than restrictive or narrow verbatim reading. The rule of construction of beneficial provisions is a fundamental principle of legal interpretation which strikes a chord when a statute provides benefit or remedy, the Courts should interpret it to fulfill its purpose rather than defeating it on the whims of the other side. It is better for a law to have

effect than to be destroyed (**Ut res magis valeat quam pereat**). The primary goal must be to suppress the mischief and advance the remedy. When any law or its provision is designed for social safety, welfare, or administrative equity, courts must interpret them with empathy and a purpose-oriented perspective. One more important aspect that cannot be lost sight of is that the amended provision changing the employment status is not only beneficial but it is remedial also. According to the Words and Phrases - Permanent Edition, Volume 36-A, (page 526, 537 to 539 & 547), the legislation which is regarded “remedial” in its nature includes statutes which abridge superfluities of former laws, remedying defects therein, or mischiefs thereof, implying an intention to reform or extend existing rights, and having for their purpose the promotion of justice and the advancement of public welfare and of important and beneficial public objects, such as the protection of the health, morals, and safety of society, or of the public generally. A remedial statute is one which cures defects in or enlarges or abridges scope of former law, such as statute granting therefore a nonexistent remedy for wrong inflicted.

10. In the case of Province of Punjab through Chief Secretary, Lahore versus Qasim Mehmood (**2024 SCP 412 = 2025 SCMR 14**), while speaking for the bench, one of us held that the sagacity of Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 accentuates the doctrine of equality before law or equal protection of law and no action detrimental to the life, liberty, body, reputation, or property of any person can be taken except in accordance with law. In all fairness, the public functionaries are duty-bound to perform in good faith with sheer dedication but within the peripheries of their powers, to ensure equal treatment, being mindful to the tenets and precepts enshrined under Article 3 of the Constitution wherein the State is obligated to ensure the elimination of

all forms of exploitation and commit to the gradual fulfillment of the fundamental principle: “from each according to his ability, to each according to his work,” which is further fortified under Article 38 of the Constitution (Principles of Policy) wherein, yet again, the State has a duty to secure the well-being of the people by raising their standards of living and ensuring equitable adjustment of rights between employer and employees and providing for all citizens, within the available resources of the Country, facilities for work and adequate livelihood, and reducing disparity in income and earnings of individuals.

11. In the wake of the above discussion, we do not find any perversity, infirmity or legal flaw in the impugned judgment passed by the learned Tribunal. Consequently, this civil petition is dismissed and leave to appeal is declined.

Judge

Judge

Islamabad
13th May, 2026
Mudassar
Approved for reporting