

S.A No. 549/2018

Dr. Rafi Ullah

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary & 4 others.

Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney for the respondents present.

2. Arguments heard. File perused.

3. Appellant, allegedly appointed as Medical Officer on contract basis vide order dated 28.11.1995 got regularization of his service and his colleagues in the year 2005 under the Khyber Pakhtunkhwa Civil Servants (Amendment) Act 2005. Government of Khyber Pakhtunkhwa further amended Section-19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 vide Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 wherein it is provided that those appointed in the prescribed manner to a service or post on or after 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis. Ultimately vide Notification dated 19.12.2017 the services of the appellant were regularized w.e.f 01.07.2001. Not contended with the said Notification dated 19.12.2017, the appellant has filed the present service appeal for regularization of his service from initial date of appointment and consequential service benefits.

4. Learned counsel for the appellant conceded that identical nature service appeals have already been dismissed by this Tribunal vide common judgment dated 12.11.2019 passed in Service Appeal No.318/2018 filed by Dr. Akram Khan. Learned counsel for the appellant

11.3.2020

however raised objection that during the course of arguments in the identical service appeals, he vehemently contested/agitated the case of Dr. Muhammad Iqbal however Para-11 of the common judgment speaks otherwise.

5. Objection raised by learned counsel for the appellant is found misconceived in as much as it is not mentioned in Para-11 of the common judgment that the learned counsel for the appellant has not contested/agitated the case of Dr. Muhammad Iqbal rather this Tribunal has given the findings that the case of Dr. Muhammad Iqbal was dealt with U/S 23 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and this fact was not contested by the learned counsel for the appellant. Copy of Notification No.SO(E)II-II/8-18/2006 dated 09.12.2006 annexed by the appellant, with the memo of appeal, reflects that the services of Dr. Muhammad Iqbal were regularized in exercise of powers U/S 23 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with President Order No.10 of 1969.

6. As a sequel to above the present service appeal is also rejected in terms of common judgment dated 12.11.2019 passed in Service Appeal No.318/2018 filed by Dr. Akram Khan. Parties are left to bear their own costs. File be consigned to the record room.



(Hussain Shah)
Member (E)



(Muhammad Hamid Mughal)
Member (J)

ANNOUNCED.

11.03.2020

28.02.2020

Learned Assistant Advocate General present. Due to rush of work, further proceedings in the case in hand could not be conducted. Adjourn. To come up for order on 11.03.2020 before D.B.


Member


Member

~~28.02.2020~~

25.10.2019 Due to tour of the Hon'ble Members to Camp Court, Abbottabad. To come up for the same on 31.01.2020 before D.B.

Reader

31.01.2020 Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney present and stated that identical nature service appeals have already been dismissed vide common judgment dated 12.11.2019 passed in service appeal No.318/2018. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 24.02.2020 before D.B.


Member


Member

24.02.2020 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Dr. Salim Javid Litigation Officer present. Arguments heard. To come up for order on 28.02.2020 before D.B.


Member


Member

18.04.2019

Clerk to counsel for the appellant present. Written reply not submitted. M/S Rehmat Khan Superintendent representative of respondent No.4 and Jafar Ali Assistant representative of respondent No.5 present and seek time to furnish written reply/comments. Amjad Ali Assistant representative of respondent No.2 and Saleem Khan Superintendent representative of respondent No.3 absent. They be summoned with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 12.06.2019 before S.B.


Member

12.06.2019

Mr. Akhtar Ilyas, Advocate present on behalf of counsel for the appellant. Addl: AG alongwith Mr. Jafar Ali, Assistant for respondents present. Written reply submitted which is placed on file. Case to come up for arguments on 07.08.2019 before D.B.


(Ahmad Hassan)
Member

07.08.2019

Appellant in person present. Mr. Muhammad Jan learned DDA present. Appellant submitted rejoinder which is placed on file and seeks adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 25.10.2019 before D.B.


Member


Member

05.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 20.12.2018. Written reply not received.

READER

20.12.2018

Clerk to counsel for the appellant present. Written reply not submitted. No one present on behalf of respondent department. Notice be issued to the respondent department for 06.02.2019. To come up for written reply/comments on the date fixed before S.B.



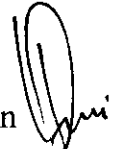
Member

06.2.2019

Clerk for counsel for the appellant and AG for the respondents present.

Notices be repeated ~~for~~ to respondents for submission of written reply. Adjourned to 20.03.2019 before S.B.

Chairman



20.03.2019

Clerk to counsel for the appellant and Mr. Kabirullah Khattak learned Addl; AG alongwith Mr. Rehman Khan Superintendent for the respondents present. Written reply not submitted. Last opportunity is granted. ~~Learned~~ ~~AG, seeks time to file written reply.~~ To come up for written reply/comments on 18.04.2019 before S.B.

(Hussain Shah)
Member



27.06.2018

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant has filed the present service appeal for the grant of seniority, pensionary benefits from the date of initial contractual appointment.

Points raised need consideration. The present appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 02.08.2018 before S.B.

Appellant Deposited
Security & Process Fee


Member

02.08.2018

Neither appellant nor his counsel present. Mr. Kabirullah Khattak, Addl: AG for respondents present. To come up for written reply/comments on 12.09.2018 before S.B.


Chairman

11.09.2018




Since 12th September 2018 has been declared as public holiday, by the Provincial Government on account of 1st Mukharram-ul-Haram, therefore the case is adjourned to 05.11.2018 for Written reply/comments before S.B.


Chairman

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 549/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17/04/2018	<p>The appeal of Dr. Rafi Ullah Khan presented today by Mr. Muhammad Ayub Shinwari Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR 17/4/18</p>
2-	19/04/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>30/04/18.</u></p> <p style="text-align: right;"> MEMBER</p>
	30.04.2018	<p>None present on behalf of appellant. The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on 27.06.2018 before S.B.</p> <p style="text-align: right;"> Reader</p>

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 549 /2018

Dr Rafiullah Khan

.....Appellant

Versus

Government of KPK through Chief Secretary & others

.....Respondents

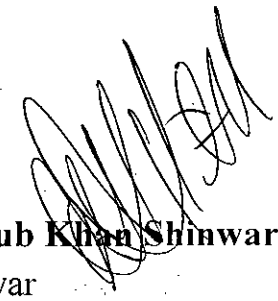
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3.	Copy of the Directives	10-08-05	B	8-10
4.	Copy of the judgment		C	11-22
5.	Appointment and Regularization order of Dr M Iqbal		D & E	23-24
6.	Copy of Directives		F	25-26-1
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Appellant,

Through


Muhammad Ayub Khan Shinwari
Advocate Peshawar

Chamber:

7-A, Haroon Mansion,
Khyber Bazar, Peshawar.
Cell No 03219068514

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 549 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 583

Dated 17/4/2018

Dr Rafiullah S/o Arsala Jan,
Demonstrator, BMC, Bannu

.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Department of Health, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
5. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

**Service Appeal Under Section 4 of Khyber
Pakhtunkhwa Service Tribunal Act, 1974 against
Notification dated 19-12-2017**

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

1. That the appellant was appointed as Medical Officers (BPS-17) in the respondent Department on contract basis by the competent authority in the prescribed manner after fulfilling all the codal formalities vide appointment order dated 28-11-1995. (Copy of the appointment order is filed herewith and attached as **Annex-A**)
2. That the Appellant was performing his duties, meanwhile Government of Khyber Pakhtunkhwa erstwhile NWFP promulgated NWFP Civil Servants (Amendment) Act (IX) 2005 whereby Section 19 of the NWFP (now Khyber Pakhtunkhwa) Civil Servant Act, 1973 was amended and the services of all the contract employees were regularized.
3. That thereafter respondent No 3 i.e., Secretary, Establishment and Administration Department, Regulation Wing, Khyber Pakhtunkhwa, Peshawar issued a directive dated 10-08-2005, wherein all the administrative Secretaries of the province were directed to the effect that all the Government employees whose services are regularized under the NWFP (now Khyber Pakhtunkhwa) Civil Servant (Amendment) Act, 2005 shall be for all intents and purposes be Civil Servants except pension as laid down in NWFP (now Khyber Pakhtunkhwa) Civil Servant Act, 2005, meaning

Filed to-day

Registrar

17/4/19

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thereby that they are civil servants with effect from the date of appointment under Section 2(2) read with Section 19 of Khyber Pakhtunkhwa Civil Servant Act, 1973. (Copy of the directive is attached herewith as **Annex-B**)

4. That after the promulgation of the aforesaid NWFP Civil Servants (Amendment) Act (IX) 2005, the respondents were reluctant to regularize the services of the colleagues of the Appellant who were performing duties on contract basis and falling in the ambit of the aforesaid Act, the colleagues of the Appellant filed various Writ Petitions including Writ Petition No 1510/2007 before Honorable Peshawar High Court, Peshawar, which were allowed vide Judgment and order dated 18-11-2008 wherein an elaborate findings have been given on the prescribed manner of appointment for contract employees and other related issues falling in the ambit of NWFP Civil Servants (Amendment) Act, 1973. (Copy of the Judgment and Order is attached herewith as **Annex-C**)
5. That in pursuance of the aforesaid Judgment and Order of Honorable Peshawar High Court, Peshawar in the said Writ Petitions, the Respondents regularized the services of the colleagues of the Appellant but with effect from the date of promulgation of NWFP Civil Servants (Amendment) Act (IX) 2005 i.e., 23-07-2005 whereas, services of the appellant have been regularized with effect from 09-02-2005. It is pertinent to mention here that one of the colleagues of Appellant namely Dr Muhammad Iqbal S/o Amir Waiz Khan who was much junior than the Appellant, was initially appointed on contract basis vide Office Order 08-07-1998 has been regularized with effect from the date of his contractual appointment. (Copy of appointment and regularization order of Dr Iqbal is filed herewith and annexed as **Annex-D & E**)
6. That the Government of Khyber Pakhtunkhwa further amended the section 19 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 vide Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 wherein it is clearly mentioned that those who are appointed in the prescribed manner to a service or post on or after 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis and the respondent No 4 has also issued direction to implement it. (Copy of the directives and Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 are attached herewith as **Annex-F & G**)
7. That after the promulgation of the aforesaid Act, the Appellant was again under legitimate expectancy that her revised regularization order will be issued by the respondents under Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 with effect from initial date of appointment but all in vain.
8. That the colleagues of the Appellant approached the respondents several times for redressing their grievance, to issue their revised regularization

order under Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 with effect from the initial date of appointment but all in vain. Some of the colleagues of the Appellant filed Writ Petition No 3960-P/2014 before the Peshawar High Court, Peshawar. The said Writ Petition was disposed off vide Judgment and Order dated 20-12-2016 with the following directions:

“Arguments were heard at length. It has been clearly mentioned in clause-5 of substituted Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 that in case any difficulty arises in giving effect to any of the provisions of this section, the secretary to Government, Establishment Department shall constitute a Committee comprising of Secretary to Government, Finance Department, Secretary to Government Law Department and Accountant General, Khyber Pakhtunkhwa for removal of the difficulty. When the learned AAG was confronted with the aforesaid clause of Act, he conceded the same.

In view of the concurrence of learned AAG, we direct the respondents to constitute a Committee in light of clause-5 of Act (Ibid) with fifteen (15) days. The Petitioners are directed to file their Departmental appeals before the said committee, who is directed to dispose of the same within next one month by giving explicit reason”

(Copy of the judgment is filed herewith and attached as **Annex-H**).

9. That in pursuance of the aforesaid Judgment, the respondents have issued the impugned Notification whereby the services of the Appellant have been regularized with effect from 01-07-2001. (Name of the appellant is at serial No 4 of the impugned Notification) (Copy of the impugned Notification is filed herewith and annexed as **Annex-I**)

10. That feeling aggrieved of the aforesaid Notification, the appellant filed Departmental Appeal which has not been decided yet and the statutory period for deciding the Departmental Appeal has lapsed. (Copy of the Departmental Appeal is filed herewith and annexed as **Annex-J**)

Hence, the instant Service Appeal on the following amongst other grounds:

Grounds:

- a. That the impugned Notification of respondent Department is against the law, illegal, unlawful and without lawful authority.
- b. That the treatment met to the Appellant is against the fundamental rights of the Petitioners enshrined and protected under the Constitution of Islamic Republic of Pakistan, 1973.
- c. That both the NWFP Civil Servants (Amendment) Act (IX) 2005 and Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 are

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regularization laws whereby the services of the contract employees are regularized, both the Acts have not made *de novo* appointments or creating a new job on regular basis of contract employees. Both the Acts are promulgated for an uninterrupted continuation of the service of the previous contract employees till the completion of their normal tenure and making their employment status equal to their contemporaries appointed on regular basis and as such the respondents are duty bound to regularize the service of the Appellant with effect from initial date of appointment by issuing amended regularization Notification.

- d. That Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 is a beneficial legislation as it had regularized the services of all the contract employees falling in its ambit. The said Act has substituted Section 19 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 by a deeming clause and created a legal fiction by laying down that those who are appointed in the prescribed manner to a service or post on or after the 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis. It is a well settled principle of interpretation of statutes, that the interpretation of statute should be beneficial, and one which would advance the object of legislation, suppress the mischief and advance the remedy and not one which would lead to its frustration. In the instant case, the respondents are duty bound to implement the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 in its letter and spirit and issue revised regularization orders of the Appellant.
- e. That as per settled principles of interpretation of Statutes, the statute has to be read as a whole and its provisions cannot be read in isolation. In the instant case Section 2(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 and its other provisions read with its Section 19 amended by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 entitles the Appellant for regularization with effect from initial date of appointment.
- f. That under the rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, the service of the Appellant with effect from dates of appointment till date of regularization i.e., 03-12-1995 to 01-07-2001 shall be counted for pension or gratuity.
- g. That the treatment met to the Appellant is against the dictums of August Supreme Court of Pakistan and this Honorable Court.
- h. That the treatment met to the Appellant is not only based on discrimination but also the same is based on colorful exercise of powers which is not warranted under law.
- i. That the treatment met to the Appellant is not only against the principles of natural justice but also against the settled principles of administrative law.

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- j. That the Appellant crave permission of this Honorable Tribunal to rely on other grounds at the time of arguments and produce any additional document if required in support of his Service Appeal.

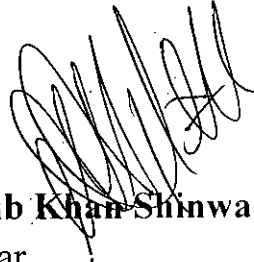
It is, therefore, prayed that on acceptance of the title Service Appeal, the impugned Notification may kindly be set aside and the respondents may kindly be directed to issue revised regularization order of the Appellant with effect from initial date of appointment and also be granted graded pay and seniority and other pension benefits with effect from the initial date of appointment and making her employment status equal to their contemporaries appointed on regular basis.

Any other relief, deemed fit and appropriate by this Honorable Tribunal, in the circumstances of the service appeal which has not been prayed for, may graciously be granted.



Appellant,

Through



Muhammad Ayub Khan Shinwari

Advocate Peshawar.

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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Service Appeal No _____/2018

Dr Rafiullah Khan

.....Appellant

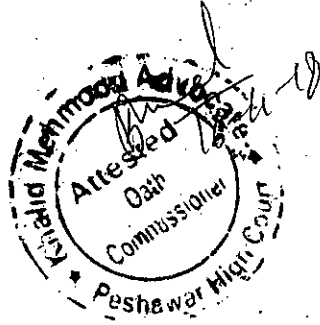
Versus

Government of KPK through Chief Secretary & others

.....Respondents

Affidavit

I, Dr Rafiullah Khan, Demonstrator, BMC, Bannu hereby solemnly affirm and declare on oath that the contents of the accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



Deponent

Annex A 7

DIRECTORATE GENERAL HEALTH SERVICES, N.F.P., PESHAWAR.

NO: 30928/E-I,

DATED: 28/11/1995.

To,

Dr. Rafullah So
Asala Jan

SUBJECT:- OFFER OF APPOINTMENT ON CONTRACT BASIS.

MEMORANDUM:-

Reference your application on the above subject for the post of Medical Officer/Women Medical Officer/Dental Surgeon.

1. The Competent authority is hereby appoint you as Medical Officer/ Women Medical Officer/Dental Surgeon in the Health Department, Govt: of N.F.P, on contract basis in B-17 for a period of one year or till the availability of Public Service Commission selected/return of original incumbent from leave/deputation whichever is earlier, on the terms and conditions laid down in the attached Agreement Deed. You shall be posted to B.H.A. Adamzar Lakki. This contract appointment is not transferable.
2. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
3. If you accept the offer of appointment on contract basis as a Medical Officer/Women Medical Officer/Dental Surgeon, the attached Agreement Deed should be filled in duly signed by you and should report at your own expense.
4. If you fail to report for duty at the station specified in para-3 above, within Ten (10) days, the offer of appointment on contract basis will be deemed to have been withdrawn automatically and no further correspondence shall be entertained in this respect.

Dr. Azmat Khan Afridi
(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, N.F.P., PESHAWAR.

NO _____ /E.I. DATED _____ PESHAWAR THE _____ /1995.

Copy forwarded to the :-

1. Secretary to Govt: of N.F.P, Health Deptt: Peshawar for information with reference to his letter No.SO(H)IV/3-18/93, dated, 16th Nov: 1995.
2. Medical Superintendent, _____ for information and n/action.
3. Divisional Director Health Services, D.I. Khan
4. District Health Officer/Agency Surgeon, Lakki
5. Accountant General, N.F.P Peshawar.
6. District/Agency Accounts Officer, Lakki

for information and necessary action please.

Dr. Azmat Khan Afridi
(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, N.F.P., PESHAWAR.

ATTESTED
4

P.F.O.

حکومت صوبہ سرحد

سٹیبلشمنٹ اینڈ اینڈیفنسٹیشن ڈیپارٹمنٹ
(ریگولیشن ونگ)

مورخہ پشاور ۱۵ اگست ۲۰۰۵ء

ای اینڈ ایف ڈی (ای اینڈ ایف ڈی) ۱۳/۱۳/۲۰۰۵ء

دور

- ۱۔ تمام انتظامی معتمدین حکومت صوبہ سرحد
- ۲۔ معتمد برائے گورنر صوبہ سرحد
- ۳۔ معتمد برائے وزیر اعلیٰ صوبہ سرحد
- ۴۔ معتمد صوبائی اسپلی سکرٹریٹ
- ۵۔ تمام ڈسٹرکٹ سیشن جج، صوبہ سرحد
- ۶۔ رجسٹرار پشاور ہائی کورٹ پشاور
- ۷۔ معتمد بنگلہ پروس کیشن صوبہ سرحد
- ۸۔ رجسٹرار پروس کیشن پشاور
- ۹۔ ایڈووکیٹ جنرل صوبہ سرحد پشاور
- ۱۰۔ تمام سربراہان خود پشاور/پشاور خود پشاور ادارہ جات صوبہ سرحد
- ۱۱۔ تمام ضلعی رائٹ افسران پشاور ان ایسی صوبہ سرحد

سال معزلی پشاور صوبہ سرحد کی سول ملازمتیں پشاور ۱۹ اگست ۲۰۰۵ء کا نفاذ

صوبائی کابینہ نے سال ۲۰۰۵ء کے بجٹ منظور کرتے ہوئے فیصلہ کیا کہ آئندہ تمام باقاعدہ آسامیوں پر تعیناتی بذریعہ
 پبلک سروس کمیشن کی جائے گی۔ تاہم پبلک سروس کمیشن کی ذمہ داریاں بڑھے اخراجات سے چھکا دیا جائے۔ واضح رہے کہ پراجیکٹ پوسٹوں، تھروٹ
 کے ذریعے آسامیوں اہل اہل (Contingent paid staff) سے نکلنے والے افراد پر تعینات افراد دوبارہ تعیناتی اور
 پبلک سروس کمیشن کے ذریعے ریٹائرمنٹ آسامیوں پر تعیناتی پہلے بھی بذریعہ کنٹریکٹ کی جاتی تھی اور آئندہ بھی جاری رہے گی۔ کم جولائی ۲۰۰۵ء
 کے لیے پبلک سروس کمیشن پر تعیناتی چھک سروس کمیشن کے دائرہ اختیار میں نہیں تھی۔ چھک سروس کمیشن کے دائرہ میں لازم کے ذریعے انہیں یہ
 تعینات کیا گیا۔

ATTESTED

۲۔ محکمہ خزانہ صوبہ سرحد نے بحوالہ مراسلہ نمبر FD/(SOSR-II)12-1/2002 مورخہ ۱۲۶ نومبر ۲۰۰۵ء کو صوبائی حکومت میں تمام باقاعدہ آسامیوں کو پُر کرنے کیلئے کنٹریکٹ پالیسی جاری کیں۔ کنٹریکٹ پالیسی پر تفصیلی جائزہ لیا گیا۔ اور صوبائی کابینہ کی منظوری سے سول سرورٹ ایکٹ مجریہ ۱۹۷۳ء کی شق نمبر ۱۹ میں ترمیم کی منظوری دی۔ ترمیمی ایکٹ ۲۰۰۵ء کی کاپی منسلک ہے۔ مذکورہ ترمیم کے مطابق یکم جولائی ۲۰۰۵ء سے لیکر اس قانون کے نافذ ہونے تک مجوزہ طریقہ کار کے مطابق مجاز فورم کی سفارشات پر وہ تمام افراد جو باقاعدہ منظور شدہ آسامیوں پر تمام قانونی لوازمات پوری کرنے کے بعد کنٹریکٹ پر تعینات کیئے گئے تھے، سول سرورٹ تصور کیے جائیں گے۔ اور وہ تمام مراعات کے حقدار ہونگے جو کہ سول سرورٹ ایکٹ میں پہلے سے موجود ہیں۔ ماسوائے پنشن کے۔ یہ افراد پنشن کی بجائے شراکتی کفایت شعاری فنڈ (CP FUND) کے حقدار ہونگے جس کے لیے متعلقہ ملازم اور حکومت دونوں بحساب دس فیصد ادائیگی کریں گے۔

۳۔ وہ تمام ملازمین جو باقاعدہ سول سرورٹ تعینات ہیں، وہ بدستور پنشن کے حقدار ہونگے۔ وہ تمام کنٹریکٹ ملازمین جو کہ مجاز فورم کی سفارشات یا مجوزہ طریقہ کار کے مطابق بھرتی نہیں ہوئے یا پراجیکٹ پوسٹوں، عارضی آسامیوں یا اتفاقی مہارت سے فکسڈ تنخواہ پر تعینات افراد جو کنٹریکٹ کی بنیاد پر تعینات کیئے گئے تھے وہ بدستور کنٹریکٹ ملازمین رہیں گے اور ان کی ملازمت کے شرائط و قواعد ہی ہونگے جنکی بنیاد پر انکی بھرتی کی گئی تھی۔ واضح رہے کہ مجاز فورم سے مراد صوبائی پبلک سروس کمیشن اور حکمانہ چناؤ کمیشن ہیں۔ جنکے ذریعے تعیناتی کی سفارشات کی جاتی ہیں۔ جو آسامیاں پبلک سروس کمیشن کے دائرہ اختیار میں آتی ہیں ان کے لیے پبلک سروس کمیشن ہی مجاز فورم ہے۔ اور جو آسامیاں پبلک سروس کمیشن کے دائرہ اختیار میں نہیں آتی ہیں ان کے لیے حکمانہ چناؤ کمیشن مجاز فورم ہیں۔ بشرطیکہ دیگر تمام لوازمات کو ملحوظ خاطر رکھا گیا ہو۔

۴۔ مندرجہ بالا قانون کے نفاذ کے بعد آئندہ تمام باقاعدہ منظور شدہ آسامیوں پر مجوزہ طریقہ کار کے مطابق اور مجاز فورم کی سفارشات پر باقاعدہ بھرتی بحیثیت سول سرورٹ کی جائیگی۔ تاہم پیشکش ملازمت (Offer of appointment) میں یہ واضح طور پر لکھا جائے گا کہ یہ افراد پنشن کی بجائے حکومت کے مقرر کردہ شراکتی کفایت شعاری فنڈ کے حقدار ہوں گے۔ لہذا تمام محکمہ جات کو ہدایت کیجاتی ہے کہ یکم جولائی ۲۰۰۵ء سے لیکر مندرجہ بالا قانون کے نفاذ تک باقاعدہ آسامیوں پر مجاز فورم کی سفارشات اور مجوزہ طریقہ کار کے ذریعے بھرتی کئے گئے کنٹریکٹ ملازمین کی ریگولر ازیشن کیلئے متعلقہ مجاز حکام سے منظوری حاصل کی جائے۔ خلاصہ جات میں اس بات کی تصدیق کی جائے کہ مذکورہ آسامی ایک باقاعدہ آسامی ہے۔ اور اس پر بھرتی مجوزہ طریقہ کار اور مجاز فورم کی سفارشات پر تمام قانونی تقاضے پورے کرنے کے بعد لائی گئی تھی۔

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مندرجہ بالا ہدایات پر سختی سے عمل درآمد کی درخواست کی جاتی ہے۔ اس خط کی موصول شدہ تین کاپیاں مندرجہ ذیل کے ذریعہ

محمد ہمالیون
(محمد ہمالیون)

معتد خصوصی (ضوابط)

نقل برائے اطلاع:-

- ۱- حساب دار عمومی صوبہ سرحد
- ۲- تمام ضلعی ڈائجسٹری انفران حساب داری صوبہ سرحد
- ۳- ذاتی معتد برائے وزیر اعلیٰ صوبہ سرحد
- ۴- ذاتی معتد برائے گورنر صوبہ سرحد
- ۵- ذاتی معتد برائے معتد اعلیٰ صوبہ سرحد
- ۶- ذاتی معتد برائے سینئر ڈپٹی صوبہ سرحد
- ۷- تمام ذاتی معتدین برائے صوبائی وزراء

حسین شاہ
(حسین شاہ)

نائب معتد (ضوابط)

تظہیر نمبر و تاریخ انشاء:-

نقل برائے اطلاع:-

- ۱- تمام انسانی معتدین رنائب معتدین محکمہ سٹیبلشمنٹ اور ایڈمنسٹریشن صوبہ سرحد پشاور
- ۲- ناظم سٹاف ٹریننگ انسٹیٹیوٹ مینولینٹ فنڈ بلڈنگ پشاور صدر
- ۳- تمام سیکشن آفسران اسٹیٹ آفسر محکمہ سٹیبلشمنٹ اور ایڈمنسٹریشن صوبہ سرحد پشاور
- ۴- ذاتی معتد برائے معتد محکمہ سٹیبلشمنٹ صوبہ سرحد پشاور
- ۵- اسٹنٹ معتد مینولینٹ فنڈ سٹیبلشمنٹ اور ایڈمنسٹریشن صوبہ سرحد پشاور
- ۶- بہتر کتب خانہ محکمہ سٹیبلشمنٹ اور ایڈمنسٹریشن صوبہ سرحد پشاور

سید محمد فقیر
(ستار محمد فقیر)

افسر صفحہ (ضوابط - ۶)

ATTESTED

Judgment Sheet

Annex B-II

IN THE PESHAWAR HIGH COURT, PESHAWAR

JUDICIAL DEPARTMENT

Writ Petition No.1510 of 1997.

JUDGMENT

Date of hearing.....18-11-2008.....

Petitioners (Dr. Rizwanullah and others) By Mr. Rasool Amin, Advocate

Respondents (Smt. etc.) By M.S. Bhatti, Rasheed Akhbar, Dr. Alam
Dor, Asst. Director Health & Bug Control
S.O Health.

DOST MUHAMMAD KHAN, J.- This single

judgment shall also decide the following connected writ petitions:-

- (i) Writ Petition No. 1509/07,
Dr. Aziz Khan and others
Versus
Government of NWFP and others;
- (ii) Writ Petition No. 1059/07,
Mohammad Khalid and another
Versus
Province of NWFP through Secretary Zakat
and others;
- (iii) Writ Petition No. 1742/07,
Dr. Mumtaz Hussain and another
Versus
Government of NWFP and others;
- (iv) Writ Petition No. 739/08,
Dr. Mansoor Ahmand and others
Versus
Government of NWFP and others;

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(v) Writ Petition No. 1741/07,
Dr. Ali Muhammad and others
Versus
Government of NWFP and others;

(vi) Writ Petition No. 1721/07,
Dr. Tehmina Jalil
Versus
Government of NWFP and others;

(vii) Writ Petition No. 1677/07,
Dr. Mustafa and others
Versus
Government of NWFP and others;

(viii) Writ Petition No. 1842/07,
Dr. Muhammad Jawad
Versus
Government of NWFP and others;

(ix) Writ Petition No. 1846/07
Dr. Farkhanda Jabeen
Versus
Government of NWFP and others;

(x) Writ Petition No. 2088/07,
Dr. Hamidullah
Versus
Government of NWFP and others;

(xi) Writ Petition No. 1682/07
Dr. Shah Wali Khan
Versus
Government of NWFP and others;

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(xii) Writ Petition No. 27/2008,
Fida Muhammad Khan
- Versus
Government of NWFP and others;

(xiii) Writ Petition No. 365/08,
Dr. Saleem Qasim and others
Versus
Government of NWFP and others;

(xiv) Writ Petition No. 460/08,
Abdur Rashid Pharmacist
Versus
Government of NWFP and others;

(xv) Writ Petition No. 908/08,
Dr. Aurangzeb
Versus
Government of NWFP and others;

(xvi) Writ Petition No. 2090/07,
Dr. Shahida Begum
Versus
Government of NWFP and others;

(xvii) Writ Petition No. 242/07
Dr. Abdul Qasim
Versus
Government of NWFP and others;

(xviii) Writ Petition No. 2002/07,
Tauseef Aman
Versus
Government of NWFP and others;

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Peshawar High Court

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because identical questions of law having decisive force are involved in all these petitions.

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2. Before taking for discussion the law points involved herein, it is deemed proper to mention here that during hearing in the case of Dr. Farmanullah vs. Chief Secretary, Government of NWFP and others (Civil Appeal No. 504/2008) before the Honourable Supreme Court, the learned Additional Advocate General, NWFP made a statement that Writ Petition No. 1510/2007 (the present one) involving similar questions of law was pending before this Court, thus, made a prayer that as a rule of propriety, the above Civil Appeal No. 504/2008 shall be kept pending so that the ibid Writ Petition No. 1510/2007 (of the present petitioner) is disposed of and the Apex Court was pleased to order accordingly. The Registrar of this Court was directed to place the said Writ Petition No. 1510/2007 before the Honourable Chief Justice for expeditious disposal. After receipt of the said order, the Honourable Chief Justice directed listing of all these cases for early disposal.

3. Today preliminary arguments were heard and because 2 judgments of this Court delivered in the case of Miss Shagufta Sayed and others vs. Government of N.W.F.P. Writ Petition No. 1731/2006

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Decided on 11.9.2007 and the other given in the case of Mst. Naveed Yousaf, PST and 21 others vs. E.D.O. and others Writ Petition No. 1648/07 dated 24.9.2008 was cited at the Bar, therefore, this petition along with the above connected writ petitions were admitted to full

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hearing. The learned Additional Advocate General and the learned counsels representing the petitioners in the above petitions agreed that let all be decided today because of the directions given by the Apex Court and with the consent of the learned Additional Advocate General, the para-wise comments filed in this petition were treated as comments in all the above writ petitions because he did not want to add any thing to the already submitted comments in this case. The learned counsels were directed to address the Court after the break.

4. Arguments heard and available record/documents annexed with the said petitions were perused and the admitted position in all these cases on factual side is that all the petitioners in these petitions were initially appointed on contract basis by the departmental heads/departmental selection committees and their appointments were duly notified by the Government.

5. Some of the petitioners were appointed way back in 1995, others in 1999 and their contract period was duly renewed/extended from time to time through various notifications issued by the competent departmental authority. The last one in the series in some cases was issued in the year 2004 while in other cases, the last notifications were

issued in the year 2007. Thus the learned Additional Advocate General

did not dispute that the present petitioners were holding posts in the Health and other departments as employees appointed on contract basis when the NWFP Civil Servants (Amendment) Act (IX) of 2005 came

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into force on 23rd July, 2005. He also did not controvert that after the notification of the Act in the extra ordinary gazette of N.W.F.P., some of the petitioners were still kept as contract employees by their respective departments, extending the tenure of their contract employment vide different notifications issued from time to time. Thus, it is an established fact that the petitioners in this writ petition and all those in the connected writ petitions, were contract employees working on their respective posts at the time when the NWFP Civil Servants (Amendment) Act (IX) 2005 came into effect.

6. The learned counsel for the petitioners, in all these petitions, raised the following points of law which, may be summed up as follows:-

- (i) this Court in the case of Miss Shagufta Saved and others vs. Government of N.W.F.P. and others, vide judgment given in Writ Petition No. 1731/2006 dated 11.9.2007 had conclusively decided all the law points involved herein. Thus a subsequent D.B. cannot hold a different opinion from the one already formed;
- (ii) that admittedly the petitioners in all these petitions were contract employees under the Government of NWFP and were serving in different departments when the Amendment Act (IX) of 2005 came into effect. Thus in view of the amendments introduced in S.19 of the NWFP Civil Servants Act XVIII of 1973 on the strength of sub-section (2) of Section 2 of the Amendment Act 2005, the contract services of all the petitioners ipso facto stood regularized but the respondents, putting unreasonable and irrational construction on the above provision of law, have refused to regularize their services which is, an act ab initio void and coram non iudice;

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EXAMINER
Peshawar High Court

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- (iii) that all these petitioners were duly selected and appointed in the prescribed manner on contract basis by the competent authority and all of them have successfully undergone written test/interview taken by the departmental selection committees/competent authorities; and
- (iv) The contract employment of the petitioners was extended from time to time till the date when they earned the benefit of the provision of the Amendment Act (IX) 2005 and because the Provincial Government has regularized similar contract employees in different Provincial Departments simply through executive orders/notifications but the petitioners herein, are given discriminatory treatment which has been forbidden by the constitutional command contained in Articles 4, 8 and 25 of the Constitution, 1973.

7. The learned Additional Advocate General, raised three-fold contentions with regard to the legal propositions involved herein, which are briefly cited below:-

- (i) that all the petitioners were appointed on contract basis under a written agreement as stopgap arrangement and they were supposed to quit the posts they were holding, on the arrival of the selectees of the NWFP Public Service Commission;
- (ii) that the petitioners are estopped by their conduct because even after the promulgation/coming into force of the Civil Servants (Amendment) Act (IX) 2005, they sat quiet and did not agitate their grievance with regard to non-regularization of their services. Thus they cannot avail any relief from this Court.
- (iii) that rule (4) of the N.W.F.P. Public Service Commission (Functions) Rules, 1983 amended vide Notification No. SOR-1(E&AD)1-99/73 dated 2.11.2002 has impliedly brought the selection of civil servant on contract for BPS-11 and above, within jurisdiction/powers of Public Service Commission, therefore, the petitioners herein were not appointed in the "prescribed manner". Hence, they are not entitled to avail the beneficial provision of subsection (2) of Section 2 of the Amended Act (IX) 2005 because they were selected/appointed by the departmental heads/Selection committees and not by the Provincial Public Service Commission.

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19. The above discussion and the reproduction of different legislation made from time to time by the Provincial Assembly lead one to a definite conclusion which shall go without any fear of rebuttal that the petitioners' contractual services were duly regularized and the phrase "prescribed manner" so used in the former and for those who are regularly appointed (repeated) would lead to an inference that the Act (IX) has drawn a clear distinction between the petitioners and those who are appointed on regular basis otherwise there was no need to mention both the categories of employees tagged with the words "prescribed manner". Thus the impression given by the learned counsel for the Government is absolutely fallacious and does not stand to reason. As already discussed in the earlier para, the appointment of employees on contractual basis have been taken away from the purview and domain of NWFP Public Service Commission and for such appointments, the above statutory provision has authorized the Governor of the Province or those authorized/appointed by him to be the competent authorities for appointment of contract employees. Therefore, if the amended rule-4 of the NWFP Public Service Commission (Functions) Rules, 1983 is construed in the way adopted by the said counsel, then in that case the rule can be held to be ultra vires because it has been framed/issued by the Government under the delegated powers of legislation is for all intents and purposes must remain subordinate and subservient to the statutory law and the latest shall override the same for all purposes and intentions.

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 Peshawar High Court

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20. The two categories of employees i.e. contract employees and regularly appointed employees are thus placed under the domain of two different authorities i.e. the Governor or persons authorized by him and the Provincial Public Service Commission. Thus the statutory law has provided two different channels for appointment of the above two categories of employees. Hence, the appointment of contract employees by the authorities/departmental heads/selection committees etc. authorized by the Governor is an appointment in the "prescribed manner" and similarly for regular appointment of civil servants through Public Service Commission to a post in civil service of the Province is another mode of appointment in the "prescribed manner". Both the matters/channels on no yardstick or legal basis can be intermingled for the purpose of holding the contrary view because both have been placed by the statutory law poles apart. Both the authorities i.e. the one authorized/appointed by the Provincial Government and the Provincial Public Service Commission, under the statutory law have domain over the appointment/selection of two different types/categories of employees. However, to be more clear the appointments of the petitioners were made by the above referred authorities in the "prescribed manner" by the departmental authorities/administrative secretaries in the manner prescribed by the statutory law i.e. in the "prescribed manner". Therefore, the petitioners on the strength of subsection (2) of Section 2 of the Act (IX) 2005 are undoubtedly entitled to regularization of their services and they have been duly regularized under the above provision of law and no executive authority

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within the Province has been left with any powers or authority to undo what is intended by the legislature. They have no role to play in the matter except to determine the inter se seniority of such contractual employees/the petitioners on the strength of length of their service.

21. The above discussion and findings would also answer the points raised by the learned Additional Advocate General shown as (i) and (ii) because it is a century old principle of law that no estoppel shall operate against a Statute which aspect is otherwise not established in view of the admitted facts on record. Government and the Authorities concerned can be held responsible in this regard for not complying with the requirements of the Amendment Act (IX) 2005 and the petitioners cannot be blamed for the inaction of the former.

22. This Bench cannot form a different opinion on the law point from the one which has already been enunciated by the former Division Bench of this Court in the earlier cited two cases as the Honourable Supreme Court has consistently held that a subsequent Division Bench cannot differ with the opinion of the earlier Bench on the same point of law and in case it wishes to do so, it may ask the Chief Justice to constitute a larger Bench or to leave the matter for the decision of the Honourable Supreme Court. On this point, the following case law of the Apex Court is relied upon:

- (a) The Province of East Pakistan vs. Dr. Azizul Islam
(PLD 1963 Supreme Court 296 at page-308);
- (b) The Province of East Pakistan vs. Sirajul Haq Patwari
(PLD 1966 Supreme Court 854 at page-920);

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JUDGE
High Court

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© Multiline Associates vs. Ardeshir Cowasjee and others
(1995 SCMR 423);

(d) Haji Ali Khan and Company, Abbottabad vs. M/s Allied Bank of Pakistan Limited
(PLD 1995 Supreme Court 362)

and the other view held by the Supreme Court of India in the case of Sidheswar Ganguly vs. State of West Bengal (PLD 1958 Supreme Court (India) 337).

23. During the course of hearing, the Court was informed that amongst the petitioners many have appeared in the screening test/interview held by the NWFP Public Service Commission for the same posts they are holding and have remained successful but could not be appointed either for insufficient zonal quota seats or other reason. This assertion was not controverted/disputed by the learned Additional Advocate General at the Bar.

24. The Court has gone through the comments and the other documents annexed therewith and there is nothing on record to show that the petitioners at any stage were found inefficient or were complained against by their superiors in office almost majority of the petitioners have rendered services in the field for 4 to 10 years continuously. Thus, in all probabilities the petitioners have acquired rich experience in the relevant field and may deliver significant services on this score. Therefore, they would be of much worth in their respective field as compared to the new entrants/selectees of the Provincial Public Service Commission not possessed of such long experience. Therefore,


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Supreme Court of Pakistan

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this factor is an additional ground, worth consideration in favour of the petitioners.

25. For what has been discussed above and in view of the conclusions drawn after interpreting all the provisions of law relevant to the subject, it is held that all the petitioners have been duly regularized in view of the provision of Section 2 subsection (2) of the NWFP Civil Servants (Amendment) Act (IX) 2005, all these petitions are allowed in the above terms and as a mere formality and for the purpose of preparing their service books/record, the appointing authorities/administrative secretaries of the petitioners may issue formal order/orders with regard to their inter se seniority and other relevant particulars required to be entered therein. The needful be done by all concerned by keeping in view the two dates i.e. terminus ad quem and terminus a quo, within a period of a month positively. The authorities/administrative Secretaries/departmental heads of the petitioners shall also create a contributory funds and gratuity funds as is required by the above provision of law and the petitioners shall be directed to contribute towards that besides the Government own share/liability of contribution towards the said fund.

All petitions are allowed.

sd: Dost Mohammad Khan — J
sd: Zia-ud-Din Khatkhat — J

CERTIFIED TO BE TRUE COPY
Examined
Peshawar High Court Peshawar
Authorized Under Section 15 of the Code
17-10-09

W. F. S. P. W.

NO. 19530 /E-I,
DATED. 08/07 /1998.

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Annex D

Dr. Mohammad Iqbal B/O Amir Waiz Khan,
Vill: & P.O. Murar, Tehsil & Distt: Bannu.

SUBJECT: - OFFER OF APPOINTMENT ON CONTRACT BASIS.

REF: - Reference your applications on the above subject for the post of ~~Medical Officer/Women Medical Officer/Dental Surgeon.~~

1. The Competent authority is hereby appoint you as Medical Officer/Women Medical Officer/Dental Surgeon in the Health Deptt: Govt: of NWFP. on contract basis in B-17 W.C.F. 01.7.1998 to 16.5.1999 till the availability of Public Service Commission selectee/return of original incumbent from leave/deputation whichever is earlier, on the terms and conditions laid down in the attached Agreement Deed. You shall be posted to AMU, Gahral (Distt: Swat)
This contract appointment is not transferable.
2. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
3. If you accept the offer of appointment on contract basis as a ~~Medical Officer/Women Medical Officer/Dental Surgeon~~, the attached Agreement Deed should be filled in duly signed by you and should report at your own expense.
4. If you fail to report for duty at the station specified in para-3 above, within Ten(10) days, the offer of appointment on contract basis will be deemed to have been withdrawn automatically and no further correspondence shall be entertained in this respect.

(DR. HAQ-DAD)
DIRECTOR GENERAL HEALTH,
SERVICES, NWFP, PESHAWAR.

NO. 19531-39/E-I, DATED PESHAWAR THE 08 / 07 / 1998.

Copy forwarded to the :-

1. Secretary to Govt: of NWFP, Health Deptt: Peshawar, for information with reference to his letter No. SO(H)IV/3-18/93, dt: 27.6.1998
2. Medical Superintendent, _____ for information and n/action
3. Divisional Director Health Services, AMU, Division: Swat, Swat.
4. District Health Officer/Agency Surgeon, _____
5. Accountant General, NWFP, Peshawar.
6. District/Agency Accounts Officer, _____

for information and necessary action please.

(DR. HAQ-DAD.)
DIRECTOR GENERAL HEALTH,
SERVICES, NWFP, PESHAWAR.

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ANNEX

Dated: Peshawar, the 9th December, 2006.

NOTIFICATION.

No.SO(E)II-II/S-18/2006, In exercise of the powers under section 23 of the N.W.F.P Civil Servants Act, 1973 read with president order NO.10 of 1969, the Governor N.W.F.P is pleased to convert the contractual appointment of Dr.Muhammad Iqbal son of Amir Waiz Khan presently working as Medical Officer BS-17 BIU Mairagai District Swat on regular basis with effect from the date of his contractual appointment as such.

SECRETARY HEALTH.

Encl. No. & date even.

Copy to the:-

1. Secretary to Governor N.W.F.P
2. Accountant General, N.W.F.P
3. Director General, Health Services, N.W.F.P
4. EDO (II) Swat.
5. PS to Chief Secretary N.W.F.P
6. PS to Secretary Health.
7. DAO Swat.
8. SO (Litigation) Health Department
9. Doctor concerned.

Section Officer-II.

RECEIVED



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

No. SOSR-III/FD/12-1/2005
Dated Peshawar, the 27/02/2013

1. All the Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. All the Divisional Commissioners in Khyber Pakhtunkhwa.
7. All the Head of attached Departments in Khyber Pakhtunkhwa.
8. The Registrar, Khyber Pakhtunkhwa, Public Service Commission.
9. The Registrar, Khyber Pakhtunkhwa, Service Tribunal, Peshawar.
10. The Registrar, Peshawar High Court Peshawar.
11. All the Deputy Commissioners/Political Agents/District and Session Judges in Khyber Pakhtunkhwa.

Subject: DEDUCTION OF GENERAL PROVIDENT FUND FROM THE
PROVINCIAL CIVIL SERVANTS REGULARIZED UNDER KHYBER
PAKHTUNKHWA CIVIL SERVANTS (AMENDMENT) ACT-2013.

Dear Sir,

The Khyber Pakhtunkhwa Civil Servants (Amendment) Bill 2013 - passed by the Provincial Assembly on 15th January 2013 and assented to by the Governor of Khyber Pakhtunkhwa on 17th January 2013 - has been published as an Act of the Provincial Assembly of Khyber Pakhtunkhwa. Under the said Act, all Civil Servants appointed to a service or post on or after 1st July 2001 shall be deemed to have been appointed on regular basis and will be eligible for pension/deduction of G.P.Fund. Accordingly the following instructions/guidelines are issued for compliance of all concerned Departments/Organizations.

- a) Deductions on account of General Provident Fund at prescribed rates from all the Civil Servants, who have become eligible for pension under the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 should be started forthwith.
- b) All deductions/subscriptions in respect of Contributory Provident Fund made before the commencement of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 from such Civil Servants, excluding Government counterpart share, shall immediately be transferred to their respective General Provident Fund Accounts. However, such Civil Servants will be entitled to markup on so declared G.P.Fund as announced on yearly basis from the date the C.P.Fund deductions / subscriptions were made.
- c) Markup on prescribed rates, as notified by the Provincial Government from time to time, may be added to the General Provident Fund Accounts of concerned Civil Servants/Subscribers as per prescribed mechanism for maintenance of such accounts.
- d) CNIC/Personal Numbers allotted to the subscribers will be used as General Provident Fund Account Numbers for such subscribers.
- e) Similar action /treatment may be afforded to all those Provincial Civil servants posted in FATA/PATA on deputation basis.

ATTACHED

25/1 3202

Better Copy

GOVERNMENT OF KHYBER PAKHTUNKHWA

FINANCE DEPARTMENT
(REGULATION WING)

No.SOSR-III/FD/12-1/2005
Dated Peshawar, the 27.02.2013

1. All the Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. All the Divisional Commissioners in Khyber Pakhtunkhwa.
7. All the Head of attached Departments in Khyber Pakhtunkhwa.
8. The Registrar, Khyber Pakhtunkhwa, Public Service Commission.
9. The Registrar, Khyber Pakhtunkhwa, Service Tribunal, Peshawar.
10. The Registrar, Peshawar High Court, Peshawar.
11. All the Deputy Commissioner/ Political Agents/ District and Session Judge in Khyber Pakhtunkhwa.

Subject: DEDUCTION OF GENERAL PROVIDENT FUND FROM THE
PROVINCIAL CIVIL SERVANTS REGULARIZED UNDER KHYBER
PAKHTUNKHWA CIVIL SERVANTS (AMENDMENT) ACT-2013

Dear Sir,

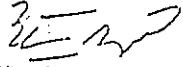
The Khyber Pakhtunkhwa Civil Servants (Amendment) Bill 2013- passed by the Provincial Assembly on 15th January 2013 and assented to by the Governor of Khyber Pakhtunkhwa on 17th January, 2013- has been published as an Act of the Provincial Assembly of Khyber Pakhtunkhwa. Under the said Act, all Civil Servants appointed to a service or post on or after 1st July 2001 shall be deemed to have been appointed on regular basis and will be eligible for pension/ deduction of G.P.Fund. Accordingly the following instructions/ guidelines are issued for compliance of all concerned Departments/ Organizations.

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- c. Markup on prescribed rates, as notified by the Provincial Government from time to time, may be added to the General Provident Fund Accounts of concerned Civil Servants/ Subscribers as per prescribed mechanism for maintenance of such accounts.
- d. CNIC/ Personal Numbers allotted to the subscribers will be used as General Provident Fund Account Numbers for such subscribers.
- e. Similar action/ treatment may be afforded to all those Provincial Civil Servants posted in FATA/ PATA on deputation basis.

26

Existing arrangements for deduction of C.P. Fund from employees of Autonomous Medical Institutions appointed under Medical and Health Institutions and Regulation of Health Care Services Ordinance as amended in 2006 shall continue.

Note: The above guidelines/instructions are not applicable to those employees who are not Civil Servants as defined in Section 2 (b) of the Khyber Pakhtunkhwa Civil Servants Act 1973, like those on deputation to the Provincial Government or working on contract / work charge / contingent basis.

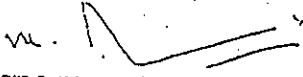

(MUHAMMAD IMTIAZ AYUB)
Additional Secretary Regulation

Encls: No. & date even.

Copy is forwarded for information and necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director Finance, Lady Reading Hospital, Peshawar.
3. Director Finance, Khyber Teaching Hospital, Peshawar
4. Accountant General (PR) Sub office, Peshawar.
5. Director, Local Fund Audit Department, Khyber Pakhtunkhwa, Peshawar.
6. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
7. Director General, Provincial Disaster Management Authority, Khyber Pakhtunkhwa Peshawar.
8. Director, FMIU, Finance Department.
9. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
10. District Comptroller of Accounts Peshawar, Mardan, Kohat, Bannu, D.I. Khan, Abbottabad and Swat.
11. All the District/Agency Accounts Officers in Khyber Pakhtunkhwa/ FATA.
12. Treasury Officer, Peshawar.

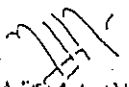
With reference to meeting held in Finance Deptt on 12/02/2013.


(RAEES KHAN AFRIDI)
Deputy Secretary (Reg-1)

Encls: No. & date even.

Copy is forwarded for information and necessary action to the:-

1. P.S to Minister for Finance Khyber Pakhtunkhwa.
2. P.S to Chief Secretary, Khyber Pakhtunkhwa.
3. P.S to Additional Chief Secretary, Khyber Pakhtunkhwa.
4. P.S to Finance Secretary Khyber Pakhtunkhwa.
5. P.A to Special Secretary Finance Khyber Pakhtunkhwa.
6. P.As to all Additional Secretaries and Deputy Secretaries in Finance Department.
7. All the Section Officers/Budget Officers in Finance Department.


(NAZMA SHAKEEN)
Section Officer (SR-III)

ATTESTED

26/1

- f. Existing arrangements for deduction of C.P.Fund from employees of Autonomous Medical Institutions appointed under Medical and Health Institutions and Regulation of Health care Services Ordinance as amended in 2006 shall continue.

Note: The above guidelines/ instructions are not applicable to those employees who are not Civil Servants as defined in Section 2 (b) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, like those on deputation to the Provincial Government or working on contract/ work charge/ contingent basis.

Endst: No. & date even

Copy is forwarded for information and necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director Finance, Lady Reading Hospital, Peshawar
3. Director Finance, Khyber Teaching Hospital, Peshawar
4. Accountant General (PR) Sub Office, Peshawar.
5. Director, Local Fund Audit Department, Khyber Pakhtunkhwa, Peshawar
6. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
7. Director General, Provincial Disaster Management Authority, Khyber Pakhtunkhwa, Peshawar.
8. Director FMIU, Finance Department.
9. All Autonomous/ Semi Autonomous Bodies in Khyber Pakhtunkhwa.
10. District Comptroller of Accounts Peshawar, Mardan, Kohat, Bannu, D.I.Khan, Abbottabad and Swat.
11. All District/ Agency Accounts Officers in Khyber Pakhtunkhwa/ FATA
12. Treasury Officer, Peshawar.

With reference to meeting held in Finance Deptt on 12.02.2013

(RAEES KHAN AFRIDI)
Deputy Secretary (Reg-I)

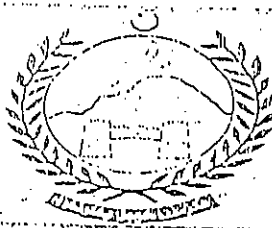
Endst No. & date even

Copy is forwarded for information and necessary action to the:-

1. P.S to Minister for Finance Khyber Pakhtunkhwa
2. P.S to Chief Secretary, Khyber Pakhtunkhwa
3. P.S to Additional Chief Secretary, Khyber Pakhtunkhwa
4. P.S to Finance Secretary Khyber Pakhtunkhwa
5. P.A to Special Secretary Finance Khyber Pakhtunkhwa
6. P.As to all Additional Secretaries and Deputy Secretaries in Finance Department.
7. All the Section Officers/ Budget Officers in Finance Department.

(NAZMA SHAHEEN)
Section Officer (SR-III)

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

(REGULATION WING)

No. SOR-VI/E&AD/1-13/ 2009
Dated Peshawar, the 13th February, 2013

ANNEX 6 27

To

1. Addl:Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Department.
2. Addl:Chief Secretary (FATA), FATA Secretariat Peshawar.
3. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
4. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
5. The Secretary to Governor, Khyber Pakhtunkhwa.
6. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.

Subject:- KHYBER PAKHTUNKHWA CIVIL SERVANTS (AMMENDMENT ACT, 2013 KHYBER PAKHTUNKHWA ACT, 2013)

Dir Sir,

I am directed to refer to the subject noted above and to enclosed herewith a copy of Gazette Notification bearing No. PA/ Khyber Pakhtunkhwa/Bills/ 2013/ 2048 dated 22-01-2013 from Provincial Assembly Secretariat Khyber Pakhtunkhwa regarding Khyber Pakhtunkhwa Civil Servant, (Amendment) Act, 2013. (Khyber Pakhtunkhwa Act No. III of 2013) for information, necessary action and further dissemination among all concerned.

Yours faithfully,

naizam

(NAJ-MUS-SAHAR)
SECTION OFFICER (REG-VI)

Endst. No. of even & date.

1. All Divisional Commissioners in Khyber Pakhtunkhwa.
2. All Heads of Attached Departments in Khyber Pakhtunkhwa.
3. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
4. All Deputy Commissioners Khyber Pakhtunkhwa and Political Agents in FATA.
5. The Registrar Peshawar High Court, Peshawar.
6. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
7. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
8. All Additional Secretaries, Deputy Secretaries and Section Officers in Establishment & Administration Department.

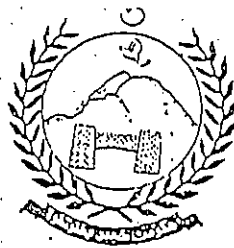
naizam

SECTION OFFICER (REG-VI)

Civil servants posted in FATA/PATA on deputation basis.

ATTACHED

EXTRAORDINARY
GOVERNMENT



23
REGISTERED NO. PIII

G A Z E T T E

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 22ND JANUARY, 2013.

PROVINCIAL ASSEMBLY SECRETARIAT KHYBER
PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 22nd January 2013.

No. PA/Khyber Pakhtunkhwa/Bills/2013/2048.— The Khyber Pakhtunkhwa Civil Servants (Amendment) Bill, 2013 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 15th January, 2013 and assented to by the Governor of the Khyber Pakhtunkhwa on 17th January, 2013 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA CIVIL SERVANTS
(AMENDMENT) ACT, 2013

(KHYBER PAKHTUNKHWA ACT NO. III OF 2013)

*(First published after having received the assent of the Governor of the
Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa
(Extraordinary), dated 22nd January, 2013).*

AN
ACT

further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973.

Preamble. WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. Short title and commencement--- (1) This Act may be called the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013.
(2) It shall come into force at once and shall be deemed to have taken effect from 30th day of June, 2001.

505

Civil servants posted in FATA/PATA on deputation basis.

ATTESTED

29

2. Substitution of section 19 of Khyber Pakhtunkhwa Act No. XVIII of 1973.---In the Khyber Pakhtunkhwa Civil Servants Act (Khyber Pakhtunkhwa Act NO. XVIII of 1973), for section 19, the following shall be substituted, namely,-

"19 Pension and gratuity.--- (1) On retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed.

(2) In the event of death of a civil servant, whether before or after retirement, his family shall be entitled to receive such pension or gratuity, or both, as may be prescribed.

(3) No pension shall be admissible to a civil servant who is dismissed or removed from service for reasons of discipline; but government may sanction compassionate allowance to such civil servant, not exceeding two-third of the pension or gratuity which would have been admissible to him had he been invalided from service on the date of such dismissal or removal.

(4) If the determination of the amount of Pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualifies for pension or gratuity, and any over payment on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family:

Provided that those who are appointed in the prescribed manner to a service or post on or after the 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis:

Provided further that the amount of Contributory Provident Fund subscribed by the civil servant shall be transferred to his General Provident Fund.

(5) In case any difficulty arises in giving effect to any of the provisions of this section, the Secretary to Government, Establishment Department shall constitute a Committee comprising of the Secretary to Government, Finance Department, Secretary to Government Law Department and Accountant General, Khyber Pakhtunkhwa for removal of the difficulty."

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMANULLAH)
Secretary,
Provincial Assembly of Khyber Pakhtunkhwa.

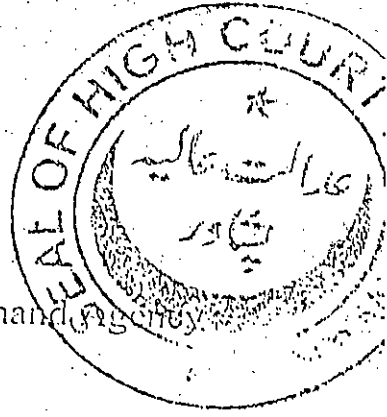
Printed and published by the Manager,
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Peshawar

Civil servants posted in FATA/PATA on deputation basis.

ATTESTED

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No 3960 /2014



1. Dr Yusuf Khan S/o Said Rehman, M.O, ATO, Mohmand Agency
2. Dr Alif Jan S/o Amir Jan, M.O, RHC Darra
3. Dr Rabnawaz S/o Haji Said Jan, M.O, Civil Hospital, Jamrod
4. Dr Akram Khan S/o Arbab Khan, M.O, LRH, Peshawar
5. Dr Rawesh S/o Ahmad Jan, M.O, SHS, Mohmand
6. Dr Munawar, M.O, THQ Bisham, Shangla
7. Dr Taj Muhammad S/o Jan Mohammad,
M.O, Distt Coordinator, National Program/LHW, Kohistan.
8. Dr Yusuf Khan S/o M Ibrahim, LRH, Peshawar
9. Dr Aurangzeb S/o Ghulam Hussain, M.O, Khyber Agency
10. Dr M Shafiq S/o Raza Khan,
M.O, Mian Rashid Hussain Shaheed Hospital, Pabbi
11. Dr Khan Akbar Afridi S/o Zafar Shah Afridi,
Medical Officer, Civil Dispensary, Peshawar
12. Dr Syed Arneen Shah S/o Abdullah Shah,
M.O, Hayatabad Medical Complex, Peshawar
13. Dr Wali Khan S/o Mamir Khan, M.O, LRH, Peshawar
14. Muhammad Hanif S/o Gul Sahib Khan, Dental Surgeon Karak
15. Dr Said Zaman Khattak S/o Sheikh Payo,
Dental Surgeon, E.D.O (H) Karak
16. Dr Mehboob Shah S/o Muhammad Taqi, Dental Surgeon, RHC
Shinkyari, Mansehra
17. Dr Sultan un Nisa D/o Mohabbat Khan,
Women Medical Officer, DHQH Chitral

ATTESTED

EXAMINER
Peshawar High Court

24 DEC 2014

ATTESTED

FILED TODAY

20 DEC 2014



with effect from the initial date of appointment and making their employment status equal to their contemporaries appointed on regular basis and

- c. *To direct the respondents to treat the Petitioners at par with Dr. Muhammad Iqbal and Dr. Farmanullah and similarly placed other employees whose services have been regularized with effect from initial date of appointment and*
- d. *Any other relief deemed appropriate by this Honorable Court in the circumstances of the case which has not been prayed for, may graciously be granted".*

3. Arguments were heard at length. It has been clearly mentioned in clause-5 of substituted Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 that in case any difficulty arises in giving effect to any of the provisions of this section, the Secretary to Government, Establishment Department shall constitute a Committee comprising of the Secretary to Government, Finance Department, Secretary to Government Law Department and Accountant General, Khyber Pakhtunkhwa for removal of the difficulty. When the learned AAG was confronted with the aforesaid clause of Act, he conceded the same.

4. In view of the concurrence of learned AAG, we direct the respondents to constitute a Committee in light of clause-5 of the Act (ibid) within fifteen (15) days. The petitioners are directed to file their departmental appeals

ATTESTED

ATTESTED
EXAMINER
Poonchwar High Court

ATTESTED



before the said Committee, who is directed to dispose of the same within next one month by giving explicit reason.

5. All these Writ Petitions are disposed of in the above terms.

ANNOUNCED.

Dated: 29.12.2016

Sd/- Nawab Shah of code - 1
871 Jinnah Road Rawl

Nawab Shah



CERTIFIED TO BE TRUE COPY
Peshawar Examiner
Authorized Under Article 87 of
The Constitution of the Punjab Order 1964
24 DEC 2016

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Date of Delivery of Copy 24/12/16
Received By

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 19th December, 2017

NOTIFICATION

NO. SO(E)H-II/3-18/2016: In continuation to this Department Notification of even No. dated 17.10.2017 and in pursuance of Judgment of Peshawar High Court Peshawar dated 18-11-2008 in Writ Petition No. 1510 of 2007 read with sub section 2 of Section 2 of the Khyber Pakhtunkhwa, Civil Servant (Amendment) Act, 2005 (Khyber Pakhtunkhwa Act no. IX of 2005) and provision under sub section 4 of section 19 of Civil Servant (Amendment) Act 2013 coupled with the regularization order of appellants and similarly placed w-e-f 2005, the service of the following Medical Officers/Woman Medical Officers BS-17 mentioned below is hereby regularized (appellants as well as similarly placed) with effect from date as mentioned:

EV, 13/11/17
13/11/17

S#	Name of Doctor	D.O.B / Domicile	Date of Initial Appointment on contract basis	Date of Regularization under Act 2005
1.	Dr. Munawar S/o Molvi Hassan, attached to THQH Besham, Shangla	07.01.1968/ Kohistan	21.11.1995	01.07.2001
2.	Dr. Mohammad Hamayun S/o Mohammad Usman, attached to LRH Peshawar	10.10.1970/ Bajaur Agency, FATA	12.09.1996	01.07.2001
3.	Dr. Gul Nazar S/o Samandar, attached to THQH Besham, Shangla	02.05.1968/ Kohistan	24.02.1999	01.07.2001
4.	Dr. Rafiullah Khan S/o Arsala Jan, Demonstrator BMC Bannu	16.01.1960/ Bannu	28.11.1995	01.07.2001
5.	Dr. Taj Mohammad S/o Jan Mohammad, Coordinator DHO Kohistan	01.03.1966/ Kohistan	21.11.1995	01.07.2001
6.	Dr. Ibrahim Iqbal S/o Saleh Khan, attached to City Hospital, Lakki Marwat	03.09.1961/ Bannu	22.11.1995	01.07.2001
7.	Dr. Khalid Ur Rehman S/o Abdul Jamil, attached to THQH Besham, Shangla	01.01.1971/ Kohistan	24.02.1999	01.07.2001
8.	Dr. Inayatullah Khan S/o Saifullah Khan, attached to DHO Office, D.I.Khan	04.03.1962/ D.I.Khan	24.11.1995	01.07.2001
9.	Dr. Shams Ul Qamar D/o Mohammad Hanif, attached to Cat-D Hospital, Tajik Peshawar	07.09.1973/ Bajour Agency, FATA	29.01.2002	29.01.2002
10.	Dr. Hamidullah S/o Said Amin Khan, attached to MTI/KTH, Peshawar	15.06.1971/ Dir Lower	08.09.1999	01.07.2001

Note: Their Inter se seniority will be notified separately.

Endt No of even and date.

SECRETARY HEALTH

Copy of the above is forwarded to:-

1. Registrar, Peshawar High Court Peshawar.
2. Accountant General, Khyber Pakhtunkhwa.
3. PSO to Chief Secretary, Khyber Pakhtunkhwa.
4. Director General, Health Services, Khyber Pakhtunkhwa.
5. District Health Officers, Shangla/Kohistan/Lakki Marwat/D.I.Khan/Peshawar.
6. Coordinator PMRU, O/O Chief Secretary, Khyber Pakhtunkhwa.
7. Manager Printing Press, Khyber Pakhtunkhwa with the request to publish in the official gazette
8. 10.PS to Secretary Health, Khyber Pakhtunkhwa.

ATTACHED

(Signature)

Secretary Health
Government of Khyber Pakhtunkhwa
(Jibreel Raza)

To

The Secretary Health
Government of Khyber Pakhtunkhwa
Peshawar.

Through Proper Channel

Subject: - **DEPARTMENTAL APPEAL AGAINST NOTIFICATION DATED
19.12.2017 FOR CONSIDERING INITIAL DATE OF CONTRACTUAL
APPOINTMENT FOR SENIORITY AND PENSION BENEFITS.**

Respected Sir,

I was initially appointed as Medical Officer (BPS-17) on contract basis on 28.11.1995 through in prescribe manner against the regular sanctioned and lien containing post. I continuously perform my service without any break until Government of Khyber Pakhtunkhwa brought amendment in section-19 of Civil Servant Act 1973 via Act-IX of 2005. I and my colleagues were regularized w.e.f 23.07.2005 under the said Act on the direction of Peshawar High Court Peshawar in WP No. 1510/2007 dated: 18.11.2008, while other Departments regularizes their Civil Servants under the same Act w.e.f their initial date of contractual appointment.

Government of Khyber Pakhtunkhwa brought another amendment in Seciton-19 Civil Servant Act 1973 via Act-III of 2013, I and my colleagues approached Peshawar High Court Peshawar and ultimately I have been regularized w.e.f 01.07.2001 while again some other employees have been regularized w.e.f their initial date of appointment in the same Notification dated: 19.12.2017.

Beside above mention Supreme Court of Pakistan in two separate Judgments 2014 SCMR 1289 & 2016 PLD (SC) 534 decided that seniority and pension benefits shell reckon from initial date of contractual appointment followed by regularization. The Peshawar High Court Peshawar in two separate Judgments in WP No. 1188/2012 dated: 09.09.2014 and WP No. 3394 dated: 22.06.2017 also decided that pension benefits shall be considered w.e.f initial date of appointment followed by regularization.

In the light of above mentioned and dictum of Superior Courts; it is requested that I may kindly be granted seniority and pension benefits w.e.f my initial date of contractual appointment dated: 28.11.1995 due to continuous officiating service followed by regularization.

Yours sincerely

46177/21
28/12/17

ATTESTED

28/12/2017
Dr. Rafiullah Khan
S/O Arsala Jan
SMO RHC Gambila
Lakki Marwat

43

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO. 549 OF 2018

Dr. Rafiullah Khan.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa & others.....Respondents

Respectfully Sheweth:

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Preliminary Objections:-

1. That the appellant has got neither cause of action nor locus standi.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Law and Rules.
4. That the appeal is not maintainable in the present form and also in the present circumstances of the issue.
5. That the appellant has filed the appeal in a non proper form and may be dismissed.
6. That the appellant has not come to the Tribunal with clean hands.
7. That the appeal is time barred.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate the matter.

ON FACTS:

1. Correct, being matter of record.
2. Correct, being matter of record.
3. Under the Civil Servants (Amended) Act 2005, the service of all those contract employees were regularized who were appointed on contract basis on or after 01.07.2001.
4. According to Civil Servant (Amended) Act 2005, those employees are entitled for regularization who were appointed on or after 01.07.2001 while the appellant was appointed on contract basis w.e.f. 22.11.1995 and does not come under the ambit of aforesaid Act.
5. Incorrect. The services of the appellant were also regularized w.e. from 23.07.2005 in the light of Judgment of Peshawar High Court Peshawar (now his services have been regularized w.e.f 01.07.2001 under sub section 4 of section 19 of Civil Servant (Amendment) Act 2013. Dr. Mohammad Iqbal was regularized from the date of his contractual appointment i.e. 08.07.1998 by the competent authority.

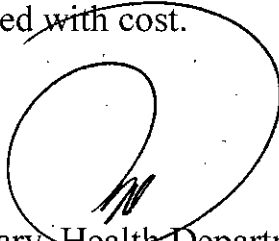
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6. According to Civil Servant (Amendment) Act 2013 employees appointed during the period from 01.07.2001 to 23.07.2005 are entitled to be regularized from the date of his 1st appointment. The appellant was appointed on contract basis on 22.11.1995 and does not fall in the ambit of the aforesaid Act. Even then his service has been regularized w.e from 01.07.2001.
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 8. Incorrect. The services of the appellant alongwith his colleagues have been regularized w.e from 01.07.2001 vide Notification dated 17.10.2017.
 9. According to Civil Servant (Amended) Act 2005 and 2013 contract appointees are entitled for regularization w.e from 01.07.2001 and not from the date of their initial appointment during 1995.
 10. Pertain to record.

GROUND.

- a. Incorrect, the Services regularization Notification dated 17.10.2017 of the appellant is legal and according to law and issued by lawful authority.
- b. Incorrect, the treatment met to the appellant is not against the fundamental rights.
- c. According to aforesaid Act 2005 and 2013, the appellant cannot be regularized from his initial date of appointment i.e 03.12.1995 as there is no provision for regularization of services of contract employees appointed before 01.07.2001 in the aforesaid two Acts.
- d. As in Para-C above.
- e. As in Para-C above.
- f. Under pension rules 1963 contract service of the appellant is countable for pension gratuity.
- g. The appellant has been treated according to law.
- h. Incorrect, no discrimination has been done.
- i. The appellant has been treated as per Principles of natural Justice and administrative law.
- j. The respondents also seek permission to raise additional grounds at the time of arguments.

PRAYER:

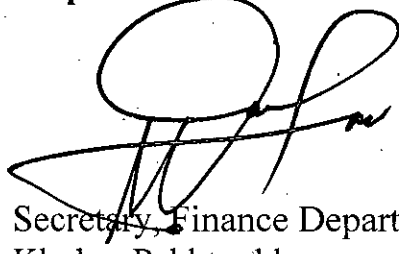
Keeping in view of the above, it is prayed that the appeal may kindly be dismissed with cost.



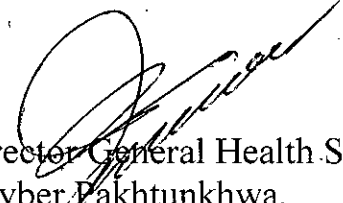
Secretary, Health Department,
Khyber Pakhtunkhwa.
Respondent No. 02




Secretary, Establishment Department,
Khyber Pakhtunkhwa.
Respondent No. 03



Secretary, Finance Department,
Khyber Pakhtunkhwa.
Respondent No. 04



Director General Health Services,
Khyber Pakhtunkhwa.
Respondent No. 05
DD (HRM) 

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO. 549 OF 2018

Dr. Rafiullah Khan.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa & others.....Respondents

Respectfully Sheweth:

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Preliminary Objections:-

1. That the appellant has got neither cause of action nor locus standi.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Law and Rules.
4. That the appeal is not maintainable in the present form and also in the present circumstances of the issue.
5. That the appellant has filed the appeal in a non proper form and may be dismissed.
6. That the appellant has not come to the Tribunal with clean hands.
7. That the appeal is time barred.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate the matter.

ON FACTS:

1. Correct, being matter of record.
2. Correct, being matter of record.
3. Under the Civil Servants (Amended) Act 2005, the service of all those contract employees were regularized who were appointed on contract basis on or after 01.07.2001.
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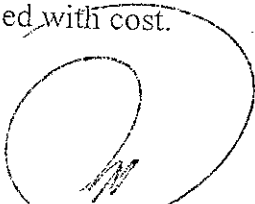
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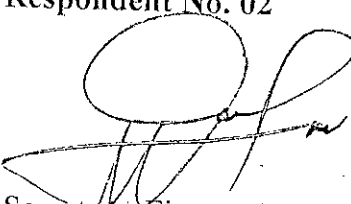
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- a. Incorrect, the Services regularization Notification dated 17.10.2017 of the appellant is legal and according to law and issued by lawful authority.
- b. Incorrect, the treatment met to the appellant is not against the fundamental rights.
- c. According to aforesaid Act 2005 and 2013, the appellant cannot be regularized from his initial date of appointment i.e 03.12.1995 as there is no provision for regularization of services of contract employees appointed before 01.07.2001 in the aforesaid two Acts.
- d. As in Para-C above.
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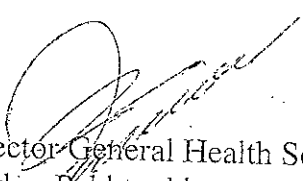
PRAYER:

Keeping in view of the above, it is prayed that the appeal may kindly be dismissed with cost.


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Respondent No. 02


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Respondent No. 05
BOC 10/10/01

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re-Service Appeal No 549 /2018

Dr. Rafiullah Khan

Versus Govt of KP & others

Rejoinder on behalf of the Appellant

On Preliminary Objections:

All the preliminary objections are formal, wrong and incorrect, hence denied.

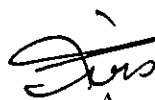
On Facts:

1. Para No "1" of the appeal is admitted to be correct, hence needs no reply.
2. Para No "2" of the appeal is admitted to be correct, hence needs no reply.
3. Para No "3" of the comments is wrong, incorrect, misleading and misconceived, hence denied, while that of Service Appeal is correct.
4. Para No "4" of the comments is wrong, incorrect, misleading and misconceived, hence denied, while that of service appeal is correct.
5. Para No "5" of the Service Appeal is wrong, incorrect, misleading and misconceived, hence denied, while that of service appeal is correct.
6. Para No "6" of the comments is wrong, incorrect, misleading and misconceived, hence denied, while that of service appeal is correct.
7. Para No "7" of the comments is wrong, incorrect, misleading and misconceived, hence denied, while that of service appeal is correct.
8. Para No "8" of the comments is wrong, incorrect, misleading and misconceived, hence denied, while that of service appeal is correct. In fact the revised regularization order is issued w.e.f 01-07-2001, whereas the Appellant is entitled for regularization with effect from initial date of appointment.
9. Para No "9" of the comments is wrong, incorrect, misleading and misconceived, hence denied, while that of service appeal is correct.
10. Para No "10" of the Service Appeal is correct.

On Grounds:

- a. Para "a" of the comments is wrong, incorrect, misleading and misconceived, hence denied, while that of service appeal is correct.
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- i. Para "i" of the comments is wrong, incorrect, misleading and misconceived, hence denied, while that of service appeal is correct.
- j. Needs no reply.

It is, therefore, prayed that the title Service Appeal may kindly be allowed as prayed for.



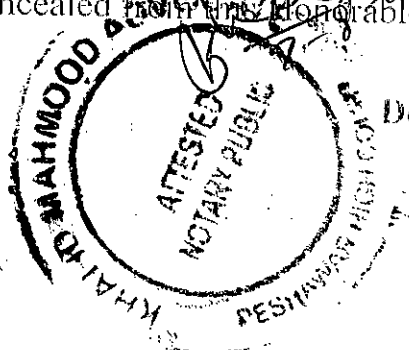
Appellant

Through

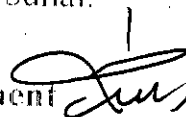

Muhammad Ayub Khan Shinwari
Advocate Peshawar

Affidavit

I, Dr. Rafiqullah Khan, Demonstrator, BMC, Bannu do hereby solemnly affirm and declare on oath that the contents of the accompanying rejoinder are true and correct to the best of knowledge and belief and nothing is concealed from this Honorable Tribunal.



Deponent



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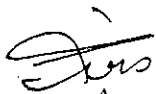
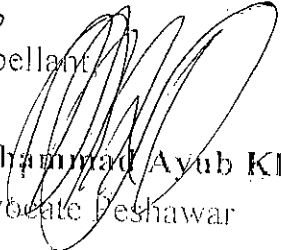
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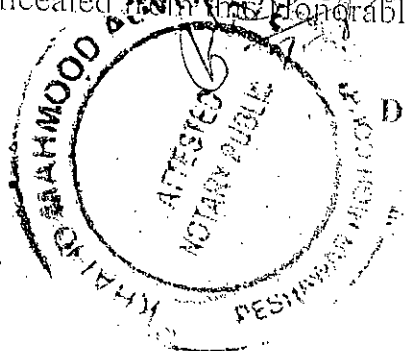
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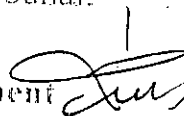
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Appellant
Through

Muhammad Ayub Khan Shinwari
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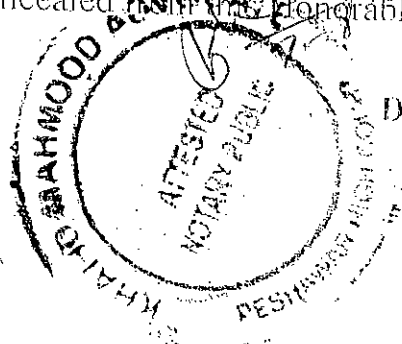
Appellant

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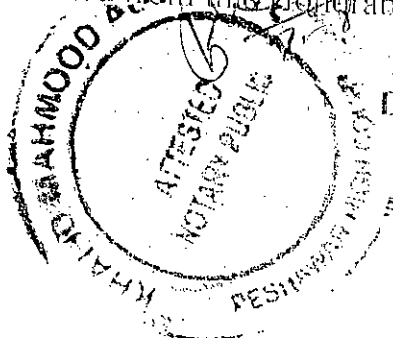
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