

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 464/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.08.2022	<p>The execution petition of Mst. Naheed Begum submitted today by Mr. Mir Zaman Safi Advocate may be entered in the relevant register. This execution petition be put up before Single Bench at Peshawar on <u>12-08-2022</u>. Original file be requisitioned.</p>


REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 464 /2022
In

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 982
Dated 11/08/2022

Appeal No. 6573/2021

NAHEED BEGUM

VS

HEALTH DEPTT:

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PETITIONER/APPLICANT

THROUGH:


MIR ZAMAN SAFI
ADVOCATE

MOBILE NO.0333-9991564
0317-9743003

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2022

In

Appeal No. 6573/2021

Mst; Naheed Begum, Ex-LHW (retired),
O/O the District Health Officer/CD Bin Bahar Colony, Peshawar

.....**APPELLANT**

VERSUS

- 1- The Secretary, Health Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director General, Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Accountant General, Khyber Pakhtunkhwa Fort Road, Peshawar.
- 5- The District Health Officer, District Peshawar.

.....**RESPONDENTS**

IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT
OF THIS AUGUST TRIBUNAL DATED 17.06.2022 IN
LETTER AND SPIRIT

R/SHEWETH:

- 1- That the petitioner filed Service appeal bearing No. 6573/2021 before this august Service Tribunal for the grant of pay fixation and release of pension.
- 2- That the appeal of petitioner was finally heard by this august Tribunal on 17.06.2022 and decided in favor of the petitioner vide judgment dated 17.06.2022 with the view that *“In view of the provision of Rule 2.3(ii) of the West Pakistan Civil Services Pension Rules, 1963 as well as 2010 PLC 354, the contractual period of services of the appellant has been followed by regularization under special law but w.e.f. 01.07.2012. The contractual period of the appellant is therefore countable towards pension and she is entitled for pensionary benefits. The appeal in hand is, therefore, allowed and the respondents are directed to release pension to the appellant as per her due rights and entitlement w.e.f 04.05.2021”*. Copy of the judgment is attached as annexure.....**A.**
- 3- That after obtaining attested copy of the judgment dated 17.06.2022 the petitioner submitted the same before the respondents for implementation but till date the judgment of this

Tribunal has not been implemented by the respondent in letter and spirit.

- 4- That the petitioner has no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may very kindly be directed to implement the judgment of this august Tribunal dated 17.06.2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Dated: 11.08.2022.

PETITIONER


NAHEED BEGUM

THROUGH:


**MIR ZAMAN SAFI
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2022

In

Appeal No. 6573/2021

NAHEED BEGUM

VS

HEALTH DEPTT:

AFFIDAVIT

I **Mir Zaman Safi, Advocate** on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.


MIR ZAMAN SAFI
ADVOCATE



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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 6573 /2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6623

Dated 24/6/2021

Mst; Naheed Begum, Ex-LHW (BPS-05) (Retired),
O/O the District Health Officer/CD Dinbahar Colony, Peshawar.

.....APPELLANT

VERSUS

- 1- The Secretary, Health Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director General, Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Accountant General, Khyber Pakhtunkhwa Fort Road, Peshawar.
- 5- The District Health Officer, District Peshawar.

.....RESPONDENTS

APPEAL UNDER SECTION- 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR FIXATION OF PAY/REGULARIZATION OF CONTRACTUAL PERIOD IN LIGHT OF RULE 2.3 OF THE WEST PAKISTAN PENSION RULES, 1963 w.e.f 07-02-1996 FROM THE DATE OF INITIAL APPOINTMENT ON CONTRACT BASIS AGAINST THE POST OF LADY HEALTH WORKER TILL 01.7.2012 AND FOR THE GRANT OF FULL PENSIONARY BENEFITS IN RESPECT OF QUALIFYING SERVICE OF THE APPELLANT AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the appellant may very kindly be allowed/granted pay fixation/regularization of contractual service in light of Rule 2.3 of the West Pakistan Pension Rules, 1963 w.e.f 07-02-1996 till the date of regularization of service i.e. 01.07.2012 and also grant/release full pension w.e.f 04.05.2021 when the appellant got retired from service on superannuation (60 years) with all other consequential benefits. Any other remedy which this august Service Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:

- 1- That the appellant was initially appointed in the respondent Department as Lady Health Worker vide order dated 07-02-1996 on contract basis. (Copy of the appointment order is attached as annexure.....A).

Filed to-day
Registrar
27/6/21

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 6573/2021

BEFORE: SALAH-UD-DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)

Mst; Naheed Begum, Ex-LHW (BPS-05) (Retired), O/O the District Health Officer/CD Dinbahar Colony, Peshawar..... (Appellant)

VERSUS

1. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
3. The Director General, Health Services Department, Khyber Pakhtunkhwa, Peshawar.
4. The Accountant General, Khyber Pakhtunkhwa Fort Road, Peshawar
5. The District Health Officer, District Peshawar.....(Respondents)

Present:

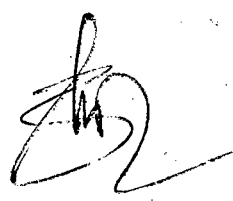
MR. MIR ZAMAN SAFI.
Advocate. --- For Appellant.

MR. NASEER-UD-DIN SHAH.
Assistant Advocate General. --- For respondents.

Date of Institution ... 21.06.2021
Date of hearing ... 17.06.2022
Date of Decision ... 17.06.2022

JUDGEMENT.

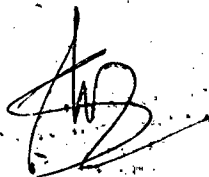
MIAN MUHAMMAD, MEMBER(E):- The service appeal has been instituted with the prayer that the appellant be allowed/granted pay fixation/regularization of contractual service in light of Rule 2.3 of the West Pakistan Pension Rules, 1963 w.e.f. 07.02.1996 till the date of regularization of service i.e. 01.07.2012 and also grant/release full pension w.e.f. 04.05.2021 when the appellant got retired from service on superannuation (60) years with all other consequential benefits.



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02. Brief facts, as arrayed from contents of the service appeal in hand, are that the appellant was initially appointed as Lady Health Worker (LHW) on contract basis vide order dated 07.02.1996. Her contract service alongwith others was regularized w.e.f. 01.07.2012 under the Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and Employees (Regularization and standardization) Act, 2014. Her departmental appeal dated 19.03.2021 submitted to respondent No. 3 with the same plea and prayer, was not decided within the statutory period whereafter she filed the instant service appeal on 21.06.2021. The appellant attained the age of superannuation and was retired from service w.e.f. 03.05.2021 vide Notification dated 04.05.2021.

03. Learned counsel for the appellant vehemently contended that the appellant has rendered more than 25 years service in the far flung areas of district Charsadda and Peshawar. She has been requesting to the authorities for regularization of her contractual service with effect from her initial appointment of 1996 but her service was regularized w.e.f. 01.07.2012. While referring to Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963, learned counsel for the appellant argued that there was no break in the service of appellant from the date of initial appointment in 1996 till regularization of service on 24.09.2014, therefore, she was entitled for regularization in service and grant of pay fixation under the said Rules. To strengthen his arguments, he relied on 2010 PLC 354, 2019 PLC (C.S) 1065, 2021 SCMR 116 and this Tribunal judgement delivered on 13.09.2021 in service appeal No. 9137/200 titled Ahmad Ullah son of Zafar Ali (Driver) STI Versus Government of Khyber Pakhtunkhwa through Secretary Administration and Seven others.



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04. Learned Assistant Advocate General conversely argued and contended that the appellant's service was regularized as Lady Health Worker (LHW) in BS-05 under the directions of august Supreme Court of Pakistan dated 03.10.2012 in Cr. Original Petition No. 15 and 73 of 2021 in Human Rights case 16360 of 2009 and constitution Petition No. 36 of 2012 "Bushra Arain Versus Jehanzeb Khan, Secretary Health and others, with effect from 1st July 2012. Since she had only 08 years, 10 months and 02 days regular service to her credit, therefore, she was not entitled for any pensionary benefits. Moreover, the pensionary liability will accrue after 10 years of regular service from the date of regularization i.e. June, 2022, as decided by the Council of Common Interests (CCI) on 23.01.2013. The appellant has therefore been treated in accordance with relevant law and rules. The appeal being devoid of merit, may graciously be dismissed with costs, he requested while concluding his arguments.

05. As a matter of the record, It is not disputed that the appellant was initially appointed as LHW on contract basis vide order dated 07.02.1996 and there is no service break in her service till regularization w.e.f. 01.07.2012 under the Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and Employees (Regularization and Standardization) Act, 2014. Since then she has rendered 08 years, 10 months and 02 days regular service which is less than 10 years of required service for pensionary benefits. It is, however, of importance to make reference to Rule 2.3 (ii) of the West Pakistan Civil Services Pension Rules, 1963 which stipulates;

2.3 Temporary and officiating service—Temporary and officiating service shall count for pension as indicated below:-



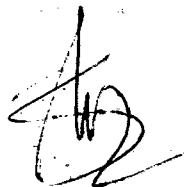
(i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and.

(ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

In the above scenario, the 16 years admitted contractual service of appellant was followed by regularization through enactment of provisional legislation which allows her to stand on the pedestal of eligibility and entitlement for the said benefits. The august Supreme Court of Pakistan in its judgement reported as 2010 PLC 354, has laid down the cordinal principle as follows:

"When an employee was regularized his total length of service, was to be computed from the day he joined the service that could be temporary or otherwise-Even period of an employee of daily wages would be counted for the purpose of computing pensionary benefits."

06. In view of the provision of Rule 2.3(ii) of the West Pakistan Civil Services Pension Rules, 1963 as well as 2010 PLC 354, the contractual period of service of the appellant has been followed by regularization under special law but w.e.f. 01.07.2012. The contractual period of the appellant is therefore countable towards pension and she is entitled for pensionary benefits. The appeal in hand is, therefore, allowed and the respondents are directed to release pension to the appellant as per her due rights and



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entitlement w.e.f 04.05.2021. Parties are left to bear their own costs. File be
consigned to the record room.

07. Pronounced in open court at Peshawar and given under our hands
and seal of the Tribunal this 17th of June, 2022.



(SALAH-UD-DIN)
MEMBER (J)

(MIAN MUHAMMAD)
MEMBER (E)

Certified to be true copy
E. M. D. Khan
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 04-07-22
Number of Words 2000
Copies of for 22/
Urgent 4/
Total 26/
Name of Applicant _____
Date of Presentation of Application 04-07-22
Date of Delivery of Copy 04-07-22

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2022

Naheed Begum

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Department

(RESPONDENT)
(DEFENDANT)

I/We Naheed Begum

Do hereby appoint and constitute **MIR ZAMAN SAFI, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2022

Naheed Begum
CLIENT

Mir Zaman Safi
ACCEPTED
MIR ZAMAN SAFI
ADVOCATE

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