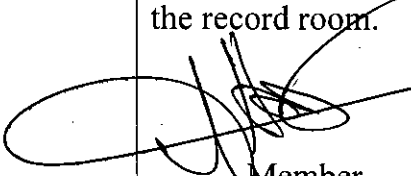



S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	12.2.2019	<p><u>Present.</u></p> <p>Mr. Noor Muhammad Khattak, .. For appellant Advocate Mr. Ziaullah, ... For respondents Deputy District Attorney</p> <p>Vide our detailed judgment of today, in connected Appeal No. 20/2017 (Nasib Khan Vs. Government of Khyber Pakhtunkhwa through Secretary Agriculture, Live Stock &amp; Cooperative Department, Peshawar and two others), we find no merits in the appeal in hand to be considered for grant of relief as claimed for. The same is, therefore, dismissed hereby. The Parties are left to bear their respective costs. File be consigned to the record room.</p> <p> Member</p> <p> Chairman</p> <p><u>ANNOUNCED</u> 12.2.2019</p>


13.12.2018

Counsel for the appellant and Mr. Muhammad Riaz  
Painda Khel, Assistant A.G for the respondents present.

Learned counsel for the appellant requests for  
adjournment as he could not prepare the brief due to  
engagement in nine other cases in Hon'ble High Court.

Adjourned to 12.02.2019 for hearing before the D.B.

  
Member

  
Chairman

A, A

A, A

**25.04.2018** The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on **21.06.2018** before S.B.


  
Reader

**21.06.2018** Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Tayyab Gul, Assistant for the respondents present. Written reply on behalf of respondents submitted. Copy of the same also handed over to learned counsel for the appellant. Adjourned. To come up for rejoinder and arguments on **17.08.2018** before D.B.

  
(Muhammad Amin Khan Kundi)  
Member

**17.08.2018** Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on **25.10.2018** before D.B.

  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

**25.10.2018** Due to retirement of Hon'ble Chairman, the tribunal is defunct. Therefore, the case is adjourned. To come up for same on **13.12.2018**.

  
READER

**VAKALATNAMA**

Before The Khyber Pakhtunkhwa Service tribunals  
OF 2017 Peshawar

Adam Khan (APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Agriculture Deptt (RESPONDENT)  
(DEFENDANT)

I/We Adam Khan  
Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, 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. \_\_\_/\_\_\_/2017

  
\_\_\_\_\_  
**CLIENT**

  
**ACCEPTED**  
**NOOR MOHAMMAD KHATTAK**  
&

**MUHAMMAD MAAZ MADNI**  
**ADVOCATES**

OFFICE:  
Flat No.3, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.  
Phone: 091-2211391  
Mobile No.0345-9383141

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

Appeal No. 21/2018

Mr. Adam Khan  
WMO

APPELLANT


**VERSUS**

1. Secretary to Govt. of Khyber Pakhtunkhwa Agriculture, Livestock & Cooperative Deptt: Peshawar
2. The Secretary Finance Department  
Khyber Pakhtunkhwa, Peshawar
3. The Director General,  
On Farm Water Management,  
Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

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3	Notification dated 24-11-2004	A	6-7
4	Notification dated 21-02-2006	B	8-9
5	Notification dated 21-03-2006	C	10
6	Notification dated 12-03-2007	D	11-12
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10	Section Officer Opinion-I letter	H	44

  
DEPONENT

**Director General,  
On Farm Water Management,  
Khyber Pakhtunkhwa, Peshawar**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

In the matter of Service Appeal No. 21/2018 of Adam Khan Water Management Officer

.....**Appellant**

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock and Coop: Department, Peshawar.
2. The Secretary Finance Department Khyber Pakhtunkhwa, Peshawar.
3. The Director General, On Farm Water Management Khyber Pakhtunkhwa, Peshawar.

.....**Respondents**

**PARA WISE COMMENTS ON BEHALF OF RESPONDENTS**

Respectfully Shewith

**Preliminary Objections**

1. That the appeal is badly time bared in the eyes of Law.
2. That the appellant has got no locus standi or cause of action against the replying respondents.
3. That the appellant has not approached this Hon'ble Tribunal with clean hands.
4. That no discrimination/injustice have been done to the appellant.
5. That due to concealment of material fact and misstatement the appeal is liable to be dismissed.

## COMMENTS

1. That the record reveals that the appellant Mr. Adam Khan along with others was recruited in the Project titled "On Farm Water Management World Bank Assisted Project IDA Credit No. 3516-PAK" as Water Management Officer vide Notification dated 24-11-2004 as per terms and conditions specified for recruitment against the project posts (copy of notification attached **Annex-A**). The contract Project services of the petitioner was extended from time to time and the appellant worked there till March, 2007 (copies of extensions orders attached **Annex-B&C**).
2. Pertains to record hence needs no comments.
3. Correct to the extent that the project service of the appellant in OFWM World Bank Assisted Project was extended from time to time and lastly up to March, 2007.

It is pertinent to mentioned here that the appellant Mr. Adam Khan was appointed as fresh candidate in another Project titled "National Program for Improvement/Lining of Watercourses Khyber Pakhtunkhwa, Component" vide Govt. of Khyber Pakhtunkhwa, Agriculture, Livestock & Cooperative Deptt: Peshawar notification No. SOE(AD)II(2)70/2007/WMO dated 12/03/2007 without through proper channel as per terms and conditions specified for project posts (**copy of recruitment order attached Annex-D**).

4. Incorrect, that the appellant Mr. Adam Khan along with others in 2<sup>nd</sup> spell of service i.e. from 12-03-2007 while serving in the Project titled "National Program for Improvement/Lining of Watercourses (Khyber Pakhtunkhwa Component) filed writ petition No. 2249/2011 in the honourable Peshawar High Court Peshawar for regularization of his services which was allowed by the honourable court vide judgment dated 15-09-2011 (copy of judgment attached **Annex-E**). The department filed CPLA

against the judgment dated 15-09-2011 of honourable Peshawar High Court Peshawar in august Supreme Court of Pakistan. The august Supreme Court of Pakistan vide judgment dated 22-03-2012 decided the case and in compliance to the decision of the august Supreme Court of Pakistan (**Annex-F**) the services of the appellant was regularized vide notification dated 03-07-2013 (**Annex-G**).

5. As explained in Para-4 above.
6. Correct to the extent that the appellant filed departmental appeal which was sent to the Govt. of Khyber Pakhtunkhwa Law Parliamentary Affairs & Human Rights Department for consideration. The law department considered the appeal with the opinion that "*therefore the regularization notification is to be made in accordance with the provision of Regularization Act, 2009 from the date of initial continuous officiating appointment, subject to final verdict of Supreme Court as the cases of regularization of the Project Employees is subjudice in apex court in Review Petition*" (copy of Section Officer Opinion-I Govt. of Khyber Pakhtunkhwa Law Parliamentary Affairs & Human Rights department attached **Annex-H**) which was duly communicated to the appellant.
7. The appeal of the appellant was considered by the competent authority therefore, the grievance of the appellant is out of place as his regularization order was issued w.e.from 12-03-2007.

### **GROUND**


- A. The notification dated 03-07-2013 is according to law, facts & material on record.
- B. Incorrect, the competent authority considered the appeal of the appellant as explained in para-4 above. Therefore, the plea of the appellant is not based on facts and out of place as the

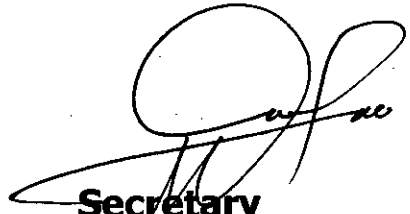



appellant has been treated in accordance with law, rules & policy on the subject matter and material on record.

- C. Needs no comments.
- D. The acts of Respondents are based on facts and material on record and he is not entitled for counting of his previous project service toward seniority.
- E. Incorrect, the appellant is treated as per law, rules and not discriminated in any way.
- F. The notification dated 03-07-2013 is based on facts, therefore, not liable to be reviewed.
- G. The regularization notification of the appellant is according to law and no disparity has been made.
- H. Incorrect, the appellant joined NPIWCs project on 12-03-2007 therefore, his seniority in the cadre will be reckoned from the date of continuous appointment against that very post, therefore, the same is not tenable and liable to be reviewed.
- I. That Respondents also seek permission of this Tribunal to advance further grounds during arguments.

In light of the above facts, it is prayed that appeal of the appellant may please be dismissed.

  
**Secretary**  
Govt. of Khyber Pakhtunkhwa  
Agriculture, Livestock & Coop: Deptt:  
Peshawar  
**(Respondent No. 1)**

  
**Secretary**  
Govt. of Khyber Pakhtunkhwa  
Finance Department  
**(Respondent No. 2)**

  
**Director General**  
On Farm Water Management  
Khyber Pakhtunkhwa, Peshawar  
**(Respondent No. 3)**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

Appeal No. 21/2018

Mr. Adam Khan  
WMO

APPELLANT

**VERSUS**

1. Secretary to Govt. of Khyber Pakhtunkhwa Agriculture,  
Livestock & Cooperative Deptt: Peshawar
2. The Secretary Finance Department  
Khyber Pakhtunkhwa, Peshawar
3. The Director General,  
On Farm Water Management,  
Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

**AFFIDAVIT**

I Shamshad Hussain **Director General On Farm Water Management Khyber Pakhtunkhwa, Peshawar** do hereby solemnly declare and affirm that the respondents have not suppressed the facts and actual position of the case from this Tribunal. The comments of affidavit and reply both are true and correct according to my knowledge, belief and nothing has been concealed from this Tribunal.

Identified by:

  
Deponent

Director General,  
On Farm Water Management,  
Khyber Pakhtunkhwa, Peshawar

NIC 15306-2010980-7

Amma - A  
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Government of NWFP  
Agriculture, Livestock and Cooperatives  
Department  
Peshawar dated the 24<sup>th</sup> November, 2004.

Notification

No. SOE(AD)11 (2) 70 / 2004. On the recommendation of the Departmental Selection Committee, Government of NWFP, Agriculture, Livestock & Cooperatives Department is pleased to appoint the following candidates as Water Management Officers (Eng.) BPS-17 purely on contract basis for a period of one year against the vacant posts in NWFP, OFWM Project (World Bank Assisted IDA Credit No.3516-PAK), from the date of assuming the charge of the post extendable to the remaining project period subject to their satisfactory performance.

1. Nasib Gul S/o Zirat Gul Mohallah Sharief Abad Batkhela Malakand Agency. ✓
2. Sami Ullah S/o Abdul Haiim Village and P.O Zirat Talash Tehsil Timergara Dir (Lower). ✓
3. Nizamud Dir S/o Muhammad Zarin Moh: Nasir Bagh Vill: Gul Mera P/O Lund Khawar Tehsil Takht-Bhai Distt: Mardan. ✓
4. Adam Khan S/o Raman Gul Village and P.O Haryankot Teh: Dargai Malakand. ✓
5. Salmaan Khan S/o Sher Zaman Khan Village and P.O Thana, Malakand Agency. ✓
6. Muhammad Qasim S/o Muhammad Younas Street No.3 House No19 Sir Syed Colony Mandian Abbottabad. ✓
7. Farnanullah S/o Pasham Khan Village Zermust P.O Sheraki F.R Kohat. ✓
8. Muhammad Fahim Khattak S/o Muhammad Azeem Khattak. Azeem Medical Center. Opp. DHQ Hospital D.I Khan. ✓
9. Fazal Hussain S/O Ghulam Akbar Khanb of Malakand Agency. ✓
10. Mian Zia ud Din S/o Mian Karim Bakhsh Village Damana P.O Madyan District Swat. ✓
11. Gulzari Lal S/o Sarichand R/O Pacha Kalay Pir Baba Distt: Buner. ✓
12. Fazal Sher S/o Ali Akbar Village and P.O Mulla Zai Tehsil and District Peshawar. ✓

5113  
29-11-04

Their appointment shall be governed by the following terms and conditions:

- a. Their appointment shall be on contract basis initially for a period of One year. The contract shall stand automatically terminated on the expiry of the initial period. Fresh contract would be executed if the services of any of the above named candidates were further required.
- b. The appointment shall be subject to the medical fitness report by the standing Medical Board.
- c. They shall be governed by such rules, regulations, orders, acts and ordinances etc relating to appointment, promotion, transfer, leave, T.A., Medical Attendance, seniority, efficiency & discipline and conditions as have been/may be prescribed by the Government for the category of Government servants of their status, from time to time and as interpreted by the Government.
- d. Their pay will be fixed in the Basic Pay Scale 17 i.e. Rs. 6210-465-15510 from the date of their taking over the charge of the post.

1765  
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- e. Their services shall be liable to termination on the following conditions:
- i. At any time without notice and without assigning any reasons during the period of their contract appointment if their work during this period was not found satisfactory.
  - ii. On One month notice by the Government on one side and by them on the other. In case the notice on either side is less than One month, a sum equivalent to the pay for the period by which the notice falls short of One month, will be paid by the Government to them or in lieu thereof One month pay shall be forfeited.
  - iii) By Government without previous notice if it is satisfied on material evidence that they are unfit and/or likely to remain unfit for a considerable period by reasons of ill health or physical disability to discharge their duties. The decision of the Government as to what constitute considerable period shall be final.
  - f. They shall not be entitled to any Traveling Allowance/Daily Allowance on their first appointment / posting.
  - g. They shall not contribute to G.P Fund and will not be entitled to pension, gratuity benefits.
  - h. This does not constitute inter se seniority and the appointees shall not be entitled to seniority as against any other Government Servant.

3. If the above terms and conditions are acceptable to the above named selected candidates they should convey their willingness individually and attend office of the Director OFWM for signing the Contract Agreement on or before 10.12.2004 positively. In case of non submission of acceptance/ signing of Contract Agreement, the offer will stand cancelled.

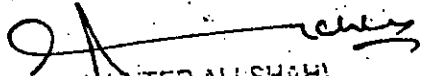
Sd/++++  
(ZAIRULLAH KHAN)

SECRETARY AGRICULTURE

Endst. No. No. SOE(AD)11 (2) 70 / 2004. Dated Peshawar the, 24<sup>th</sup> November, 2004

Copy of the above is forwarded to the:-

1. Accountant General, NWFP, Peshawar
2. Director General Health Services, NWFP, Peshawar. He is requested to kindly arrange for an early medical examination of the above named appointees through the Standing Medical Board and supply their medical examination certificates to this Department for record.
3. Director, On Farm Water Management Department NWFP, Peshawar w/r to his memo No.11674 dated 04-10-2004 with the request to furnish the posting proposal of the above appointees at the earliest.
4. All appointees as per list given in para-1 of the notification.
5. PS to Chief Secretary, NWFP
6. PS to Minister for Agriculture, NWFP
7. PS to Additional Chief Secretary P&D department.
8. PS to Secretary Agriculture.
9. Master file

  
(ARNTER ALI SHAH)  
SECTION OFFICER (ESTT.)

GOVERNMENT OF NWFP  
AGRI: LIVESTOCK AND COOP: DEPTT:  
Dated Peshawar, the 21-2-2006

**NOTIFICATION.**

NO.SOE(AD)II(2)70/2006.- In continuation of this Department Notification No. SOE(AD)11(2)70/2004 dated 24-11-2004, the competent authority has been pleased to accord sanction to the grant of extension in contract service for further period of one ( 01) year with effect from 15-1-2006 to 14-1-2007 in respect of the following Officers office of the Director General, Water Management, National Program for Improvement/Lining of Water courses in Pakistan ( NWFP component) as per condition laid down in the aforementioned notifications:-

Sl. No	Name of Officer	Designation
1	Tufail Ahmad	Assistant Director Buner
2	Aman Khan	Water Management Officer, Buner.
3	Khan Daraz	--do--
4	Bakht Jamair	--do--
5	Muhammad Nadeem	AD, Lakki Marwat
6	Muhammad Arif	WMO, Lakki Marwat
7	Inamullah	--do--
8	Wakil Khan	--do--
9	Muhammad Waseem	--do--
10	Moeen-ud-Din	AD, Chitral.
11	Zia-Ul-Haq	WMO Chitral
12	Mujeeb-ur-Rehman	--do--
13	Shahid Mehmood	AD, Mansehra
14	Muhammad Ayaz	WMO Mansehra
15	Muhammad Saeed	--do--
16	Fakhar-e-Alam	--do--
17	Ghulam Bitai	AD, D.I.Khan
18	Muhammad Shahid Nawaz	WMO DIKhan
19	Hussain Ara Begum	--do--
20	Aftab Ahmad	--do--
21	Muhammad Ayaz	WMO Kohat
22	Anwar Saeed	--do--
23	Muhammad Yaseen	--do--
24	Fazal Sattar	WMO Upper Dir
25	Qiaah Ahmad	WMO, Swabi
26	Muhammad Farooq	--do--
27	Rafiq ur Rehman	WMO Mardan
28	Nishat Lal Badshah	--do--
29	Muhammad Shoib	AD Battagram
30	Nasir Ahmad	WMO Battagram
31	Munir Ahmad Khan	--do--
32	Mian Abdul Qadir	--do--
33	Javed Akhtar	--do--
34	Rafiq Ahmad Ghuncha	--do--
35	Muhammad Uzir	AD, Swat.
36	Attaullah	--do--
37	Kifayat Zaman	--do--
38	Ihsan Ullah	WMO Swat
39	Hayat Zada	--do--
40	Asif Javid	--do--
41	Amir Hussain	--do--
42	Arfan Ullah	--do--
43	Mazhar Ullah	AD, Haripur
44	Alta Ulhaq	WMO Haripur
45	Khalil akbar	--do--
46	Faisal Younas	--do--
47	Alia Rashid	WMO Mansehra
48	Qasim	WMO Abbottabad
49	Amir Rabbani	--do--
50	Saeed Shah	AD Lower Dir.

51	Muhammad Idrees	--do--
52	Muhammad Aslam Khan	WMO, Lower Dir.
53	Muhammad Kalim Ullah	--do--
54	Fazal Hussain	--do--
55	Muhammad Tahir	WMO, Malakand
56	Amjad Ali	--do--
57	Muhammad Zakir	--do--
58	Muhammad Tufail	WMO Karak
59	Tahir Khan	WMO, Shangla
60	Abdullah	AD, Peshawar.
61	Muhammad Hanif Siddiqi	WMO Peshawar
62	Nauman Adil	--do--
63	Sadia Rehman	--do--
64	Zulfiqar Ali Khan	WMO Hangu
65	Qayyum Khan	AD, Bannu
66	Zahid Khaliq	WMO Bannu
67	Farman Ullah	--do--
68	Qazi Shafi Ur Rehman	--do--
69	Ahmad Din	--do--
70	Wajid Ali	WMO Nowshera
71	Said Muhammad	--do--
72	Mrs. Asma Ahmad	WMO Charsadda
73	Shaheen Iqbal	--do--
74	Muhammad Rahmat Ullah	--do--
75	Jehanzeb	--do--
76	Fazal Sher	WMO, Peshawar
77	Adam Khan	WMO Swat
78	Nisar Ahmad	--do--
79	Fazal Subhan	WMO Dir Lower
80	Samiullah	--do--
81	Muhammad Rauf	AD, lakki Marwat
82	Farmanullah	WMO, Kohat
83	Syed Muhammad Bilal Zaidi	WMO, Kohat
84	Naseeb Gul	WMO Malakand
85	Ahmad Zeb	--do--
86	Nirgas Bano	WMO, Bannu
87	Niaz Ahmad	WMO Haripur
88	Muhammad Qasim	WMO Abbottabad
89	Gulzari Lal	WMO Buner
90	Suleman Khan	WMO Shangla
91	Sultane Room	WMO Timergara
92	Qalb Abbas	WMO Hangu
93	Hamid Rasheed	Institutional Specialist Peshawar
94	Ihtashamul Haq	--do--
95	Hafeezullah	--do--
96	Nazia Iram Gul	--do--
97	Saleem Javed	--do--

No. 884-908 / DG NPI, Peshawar dt the 23/06/2006.

Copy to:-

1. All Dy:Director NPI, in NWFP:2.All Distt: officer NPI, in NWFP:
3. All Asstt:Director WM, NPI: for information and further n/action.

*(Signature)*  
 Assistant Director (Account)  
 Directorate Central  
 National Program for Improvement  
 of Water Course NWFP, Peshawar

Sd/-XXX

SECRETARY AGRICULTURE

Endst. of even No. & Date.

Copy forwarded for information and necessary action to:-

1. The Accountant General, NWFP, Peshawar.
2. The Director General, Water Management, National Program, NWFP, Peshawar with the request to circulate to all concerned subordinate Offices/Officers.
3. All District/Agency Accounts Officers in NWFP.
4. PS to Chief Secretary, NWFP
5. PS to Secretary Agriculture.
6. Master file.

No. 883 / DGNPI, Pesh  
 Copy to RLDD, DO, AD (JAVAI MAQBOOL BUTT)  
 in NWFP for information & further n/action  
 SECTION OFFICER-ESTT:

GOVERNMENT OF NWFP  
AGRI: LIVESTOCK AND COOP: DEPTT:

Dated Peshawar, the 24-3-2006

CORRIGENDUM.

NO.SOE(AD)II(2)70/2006.-

In partial modification of this Department Notification of even number dated 21-2-2006, the place of posting (Project) of the Officers at Sl.No.32,47,76 to 90 and 92-97 may be read/considered as World Bank Assisted Project instead of National Program.

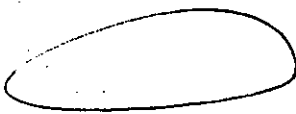
Sd/-XXX

**SECRETARY AGRICULTURE**

Endst. of even No. & Date.

Copy forwarded for information and necessary action to:-

1. The Accountant General, NWFP, Peshawar.
2. The Director General, Water Management, National Program, NWFP, Peshawar.
3. The Director, On-Farm Water Management, NWFP, Peshawar w/r to his memo: No.1893 dated 13/3/2006 with the request to circulate to all concerned.
4. PS to Secretary Agriculture.

  
(JAVAID MAQBOOL BUTT)  
SECTION OFFICER-ESTT:

16

53/14

GOVERNMENT OF NWFP  
AGRI: L/STOCK & COOP: DEPARTMENT.

DATED PESHAWAR, THE 12-3-2007.

NOTIFICATION.  
NO.SOE(AD)II(2)/0/2007/WMO.

On recommendation of the Departmental Selection Committee, the competent authority is pleased to appoint the following as Water Management Officer (Engineering) (BS-17) on contract basis for a period of One year against the vacant post in the National Program for Improvement/Lining of Watercourses in NWFP from the date of assuming the charge:-

1. Mr. Muhammad Qasim s/o Muhammad Younas, Manshra.
2. Mr. Farmanullah s/o Pasham Khan, Kohat.
3. Mr. Salim Javed s/o Khaista Rehman Dir Lower.
4. Mr. Khurram Sheraz s/o Muhammad Khurshid Anwar, Peshawar.
5. Mr. Amir Rehman s/o Ghani Rehman, Mardan.
6. Mr. Adam Khan s/o Rahman Gul Malakand Agency.
7. Mr. Fazal Sher s/o Ali Akbar, Peshawar.
8. Mr. Samiullah s/o Abdul Halim, Dir Lower.
9. Mr. Salman Khan s/o Sher Zaman Khan, Malakand.
10. Mr. Qalb-e-Abbas s/o Ghaffar Ali, Bangu.
11. Mr. Ayaz Ali s/o Mudassar Shah, Swabi.
12. Mr. Nasib Gul s/o Ziarat Gul, Malakand.
13. Mr. Muhammad ~~Suleman Iqbal~~ s/o Iqbal Mand, Swat.
14. Mr. Muhammad Imran s/o Mir Adnan Khan, Bonnu.
15. Mr. Sajid Mahnood s/o Amir Khan, Kohat.
16. Mr. Gulzari Lal s/o Sari Chand, Buner.
17. Mr. Muhammad Basit s/o Mian Fazl-e-Rabbi, Peshawar.
18. Mr. Harpal Kumar s/o Jewan Lal, Swat.

2. Their appointment shall be governed by the following terms and conditions:
  - a). Their appointment shall be on contract basis initially for a period of One year. The contract shall be renewed subject to the satisfactory performance on the expiry of the initial period but this renewal will not be counted towards their service regularization/seniority.
  - b). Their appointment shall be subject to the medical fitness report by the standing Medical Board.
  - c). They shall be governed by such rules, regulations, orders, acts and ordinances etc relating to appointment, promotion, transfer, leave, T.A., Medical Attendance, efficiency, discipline and conduct as have been/may be prescribed by the Government for the category of Government servants of their status, from time to time and as interpreted by the Government.
  - d). Their pay will be fixed in the Basic Pay Scale 17 i.e. Rs. 7140-535-17840 from the date of their taking over the charge of the post.
  - e). Their services shall be liable to termination on the following conditions:-
    - i) At any time without notice and without assigning any reasons during the period of their contract appointment if their work during this period was not found satisfactory.
    - ii) On One month notice by the Government on one side and by him on the other. In case the notice on either side is less than One month, or say equivalent to the pay for the period by which the notice falls short of One month, will be paid by the Government to him or in lieu thereof One month pay shall be forfeited.
    - iii) By Government without previous notice if it is satisfied on material evidence that they are unfit and/or likely to remain unfit for a considerable period by reasons of ill health or physical disability to discharge his duties. The decision of the Government as to what constitutes considerable period shall be final.
  - f). They shall not be entitled to any Traveling Allowance/Daily Allowance on their first appointment / posting.
  - g). They shall not contribute to G.P Fund and will not be entitled to pension, gratuity benefits
  - h). This does not constitutes inter se seniority and the appointees shall not be entitled to seniority as against any other Government Servant.
3. If the above terms and conditions are acceptable to them, they should convey their willingness and attend office of the Director General, Water Management (National Program) for Improvement of Water Courses in NWFP, Peshawar for signing the Contract Agreement on or

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before 31-3-2007 positively. In case of non-submission of acceptance/ signing of Contract Agreement, the offer will automatically stand cancelled.

Sd/xxx

SECRETARY AGRICULTURE

Dated Pesh: this, 12-3-2007.

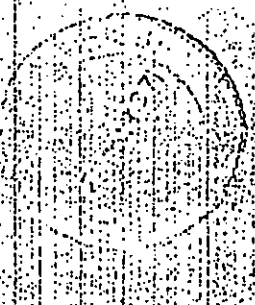
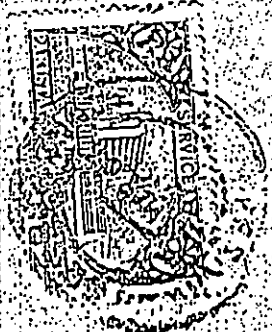
Encls: No. No. SOE(AD)11 (2) 70 / 2007/WMO  
Copy of the above is forwarded to the:-

1. Accountant General, NWFP, Peshawar.
2. Director General Health Services, NWFP Peshawar, He is requested to kindly arrange for an early medical examination of the above named appointees through the Standing Medical Board and supply their medical examination certificates to this Department for record.
3. Director General, Federal Water Management Cell Almarkaz F-8 Islamabad.
4. The Director General, Water Management (National Program), NWFP, Peshawar.
5. The Director General, On-Farm Water Management, NWFP, Peshawar.
6. Mr. Muhammad Qasim s/o Muhammad Younas, St.No.3 H.No.9, Sir Syed Colony Mandliar, Abbottabad.
7. Mr. Farmanullah s/o Pasham Khan Vill: Zarmust P/O Sheraki, Tehsil Kohat.
8. Mr. Salim Javed s/o Khaista Rehman Vill: Kotki Dehree, Tehsil Lal Qilla Dir Lower.
9. Mr. Khuram Sheraz s/o Muhammad Khurshid Anwar C/O Tobarak Hussein Galaxy Hair Dresser, Peshawar.
10. Mr. Amir Rehman s/o Ghani Rehman, Director General On-Farm Water Management.
11. Mr. Adam Khan s/o Rahman Gul Village & P/O Haryan Kod Tehsil Dargai Malakand Agency.
12. Mr. Fazal Sher s/o Ali Akbar, Village Mullazi P/O Nasir Bagh, Peshawar.
13. Mr. Samiullah s/o Abdul Halim, Vill: & P/O Ziarat Talash Tehsil Timergara Dir Lower.
14. Mr. Salman Khan s/o Sher Zaman Khan, Moh: Radutay, college Road Vill: & P/O Thana Malakand.
15. Mr. Qalb-e-Abbas s/o Ghaffar Ali, Vill: & P/O Ledhi Khela Tehsil & Distt: Hangu.
16. Mr. Ayaz Ali s/o Mudassar Shah, Directorate General Water Management.
17. Mr. Nasib Gul s/o Ziarat Gul, Moh: Sharif Abad Balkhela Malakand Agency.
18. Mr. Muhammad Sulman Iqbal s/o Haji Iqbal Mand: Irfan Brothers, Taj Chowk, Mingora, Swat.
19. Mr. Muhammad Inran s/o Mir Adam Khan, H.No.14 Bannu Township.
20. Mr. Said Mahmood s/o Amir Khan, Block No. 7B Flat No.12, G-9/2, Islamabad.
21. Mr. Gulzari Lal s/o Sari Chand, Village Pacha Kalley PO Pir Baba Tehsil Gadezai Buner.
22. Mr. Muhammad Basit s/o Mian Fazl-e-Rabbi, Street Sheikh Abad No.2 near Muqbara, Zia Jaf: Oil Lahori Gate, Peshawar.
23. Mr. Harpal Kumar s/o Jewan Lal, Harpal Cloth House-Cloth Market Mingora, Swat.
24. PS to Chief Minister, NWFP.
25. PS to Chief Secretary, NWFP.
26. PS to Minister for Agriculture, NWFP.
27. PS to Secretary Agriculture.
28. Master file.

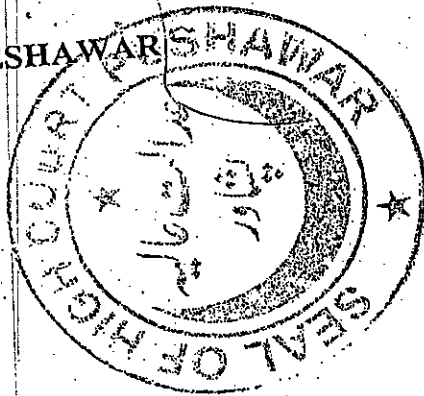


(JAVAID MAQBOOL BUTT)  
SECTION OFFICER (ESTT.)

PLN/...



BEFORE THE PESHAWAR HIGH COURT, PESHAWAR



Writ Petition No 1857 /2011

1. Amir Hussain, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Swabi.
2. Javed Akhtar, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Batagram.
3. Rafiq ur Rehman, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Swat.
4. Khalid Usman, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Mardan.
5. Khan Daraz, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Mardan.
6. Muhammad karimullah, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Dir Lower.
7. Qazi Shifa ur Rehman, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Karak.

.....Petitioners

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber  
Pakhtunkhwa, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock  
and Cooperatives Department, Peshawar.
3. Director General, On-Farm Water Management Department, Jamrod Road,  
Islamia College Gate, Khyber Pakhtunkhwa, Peshawar. ....Respondents

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EXAMINED  
Peshawar High Court

**JUDGMENT SHEET**

**IN THE PESHAWAR HIGH COURT,  
PESHAWAR  
JUDICIAL DEPARTMENT**

**WP No.360/2009**

**JUDGMENT**

Date of hearing 15.9.2011.

Petitioner (s) (Amir Hussain etc) By Mr. F.M Sabir, Advocate.

Respondents (Govt: & others) By Barrister Waqar Ali, AAG.

\*\*\*\*\*

**DOST MUHAMMAD KHAN, J.-** This single

judgment shall also decide the following writ

petitions as questions of law involved in all these

writ petitions are identical:-

1. WP No.360/09 entitled "*Amir Hussain & four other..*"
2. WP No.121/2008 entitled "*Muhammad Karimullah vs. Government of NWFP etc.*"
3. W.P.No.1519/2009 entitled "*Qias Ahmad Vs. Government of NWFP etc.*"
4. WP No.2877/2009 entitled "*Amjad Ali Vs. Government of NWFP etc.*"
5. WP No. 1518/2009 entitled "*Muhammad Farooq Khan Vs. Government of NWFP etc.*"
6. WPNo.1236/2011. entitled "*Naveed Ahmad vs. Gov. of NWFP etc.*"
7. WP No.1859/2011 entitled "*Muhammad Farooq etc Vs. Government of KPK etc.*"

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8. WP No.1858/2011 entitled "*Nauman Adil etc. Vs. Govt. of KPK etc.*"
9. WP No.1857/2011 entitled "*Amir Hussain vs. Govt. of KPK etc.*"
10. WP No.1744/2011 entitled "*Faisal Younas Khan etc. Vs. Chief Secretary Govt. of KPK etc.*"
11. WP No.1743/2011 entitled "*Nisar Ahmad etc. Vs. Chief Secy. Govt. of KPK etc.*"
12. WP No.2249/2011 entitled "*Saleem Javed. Vs. Govt. of KPK.*"
13. WP No.345/2009 entitled "*Muhammad Tufail vs. Govt. etc.*"
14. WP No.771/2010 entitled "*Noor Ali Khan etc. Vs. Addl. Chief Secretary FATA Peshawar etc.*"
15. WP No.3157/09 entitled "*Muhammad Bashir vs. Director Livestock etc.*"
16. WP No.3284/2010 entitled "*Asmatullah vs. Director Livestock etc.*"

2. The epitome of the controversy involved in

writ petitions at S.No. 1 to 13, mentioned above,

is that the petitioners therein were appointed as

Water Management Officers (Agriculture/

Engineering) (BPS-17), on contract basis, for

"National Program for improvement/ lining of

water courses in Pakistan (for NWFP)" vide

two different Notifications bearing even No. SOE


(AD) 11 (2) 70/2004 on 24.11.2004 and 4.2.2005

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for a period of one year extendable upto the project life on their satisfactory performance and were posted in different projects. Their contract was extended from time to time and was lastly extended vide Notification dated 16.9.2008 upto 30.6.2009.

Consequent upon approval of Chief Executive of the Province, sanction for creation of 275 posts was accorded by the competent authority in the offices called "*On-Farm Water Management Department*", at district level, with effect from 1<sup>st</sup> July, 2007 vide notifications dated 21.4.2007 and 30.7.2007 and by virtue thereof, equal number of posts on developmental side automatically stand abolished. The petitioners were expecting their adjustment/ appointments against the newly created 275 regular posts but vide notifications dated 21.2.2007 and 3.9.2008 certain contract employees of different projects

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were adjusted against some of those posts but the petitioners were ignored, for no plausible cause

3. In writ petitions at S.No. 14 to 16, mentioned above, the petitioners therein were appointed as Veterinary Assistants (BPS-6) in FATA under the Contract Policy of 2002 and were posted in various Developmental Schemes which were subsequently converted into regular strength. They continued as such till date and their contract was never renewed till the NWFP Civil Servants (Amendment) Act 2005 came into being, regularizing the services of contract employees by operation of law.

Vide the impugned order dated 2.1.2010, issued by respondent No.3, the services of the petitioners, in WP No. 771/2010, WP No. 3157/09 and WP No.3284/2010, were transferred from regular sanctioned posts to the project posts with the alleged malafide intention, on part of the respondents, to convert their pay scales into fixed

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pay due to which their salaries w.e.from January, 2010 have been withheld.

4. The petitioners are seeking benefit under the provisions of NWFP now KPK, Civil Servants (Amendment) Act, 2005 (NWFP Act No.IX of 2005) and similar legislation made by the NWFP, now KPK, Employees (Regularization of Services) Act 2009 (NWFP Act No. XVI of 2009 vide which the services of all adhoc & contractual employees were regularized by the Provincial legislature thus they have filed these constitutional petitions, praying for declaring the impugned orders, issued by the respondents, as without lawful authority as well as of no legal effect and have also prayed for issuing of writ to the respondents for regularization of their services.

5. Arguments heard and case law cited at the bar has been gone through minutely.

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6. The respondents were put on notice and by way of interim relief filling of the said posts against which the petitioners are seeking adjustment were held in abeyance.

7. Hon'ble Mr. Justice Mazhar Alam Khan-J on the petition of the petitioners accelerated the date from 8.11.2011 to the second week of August 2011 because of the interim injunction order, suspending the fresh appointments on these posts by the respondents.

Arguments heard extensively and record perused.

8. It was not contested by the respondents that the appointment orders of all the petitioners were made by the competent / appointing authority in the prescribed manner.

9. It deserves to mention here that at the time of appointments of the petitioners as project employees, the method of appointment was through departmental selection committee (DSC). The projects were funded by the ADP, however, keeping

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in view the progress made, the importance and utility of the projects, the services of the petitioners were retained/ extended but on contract basis. In their initial appointment orders, it was stipulated that their tenure would be extended/ extendable on yearly basis (with the approval of the competent authority) and will be subject to the terms and conditions noted/ notified vide their appointment letters.

10. It is worth to mention here that the posts, on which the petitioners were appointed as contract employees, were all duly published/ advertised by the respondents in two daily newspapers i.e. "The News" & "Mashriq Peshawar" on 23.6.2004 and 22.08.2002 respectively.

11. The petitioners after assuming charge of their assigned jobs on contract basis, initially served as project employees for a period of one year as was mentioned in their appointment orders but the tenure of their service was

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extended for further one year vide Notification No. SOE (AD)II(2)70/2007 dated 16.9.2008.

12. Two important facts are not contested by the parties i.e. that the petitioners in all these petitions were project employees thus, their tenure of service was dependent on the completion of the project. It is also not denied that after the successful operation and management of the projects and being of considerable public utility, the Provincial Government converted the schemes/ projects from project budget to the current budget and was taken on the roll and strength of the provincial civil service. The required funds were allocated for the same in the annual budget on currency basis.

13. Another development, providing cause of action / grievance to the petitioners, took place when the Government of NWFP presented a bill in the Provincial Assembly through which

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Section 19 of the NWFP Civil Service Act was to be amended. The said bill was passed by the Provincial Assembly of NWFP on the 5<sup>th</sup> July, 2005 and assented to by the Governor of NWFP on 12<sup>th</sup> July, 2005 which was notified/ published in the Gazette of NWFP, extra ordinary on 23<sup>rd</sup> July, 2005.

Sub-section (2) of Section 2 of the Amendment Act IX of 2005 is to the following effect:-

"2. Amendment of section 19 of N.W.F.P Act No. XVIII of 1973.- In the North- West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act No. XVIII of 1973) for section 19, the following shall be substituted:-

(19.1) Pension and gratuity.----Not relevant.

(2) A person though selected for appointment in the prescribed manner to service or post on or after the 1st day of July, 2001, till the commencement of the said Act but appointed on contract basis, shall, with effect from the commencement of the said Act be deemed to have been appointed on a regular basis. All such

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persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, alongwith the contributions made by Government to his account in the said fund, in the prescribed manner."

14. Through the above provision of law, the employees appointed on contract basis but in the prescribed manner were provided protection by regularizing their services. The proviso added thereto states that a person, who is selected for appointment in the prescribed manner to a service or post but appointed on contract basis, shall with effect from the commencement of this Ordinance or from the date of his continuous appointment whichever may be later, be deemed to have been appointed on regular basis in the department concerned. Such employee shall, for all intents & purposes, be regular

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employees of the Institution concerned except for the purpose of pension or gratuity. All such employees shall, in lieu of pension & gratuity, be entitled to the benefits of the Contributory Provident Fund scheme in the prescribed manner.

15. Again, through sub-section (2) of Section 2 of the (Amendment) Act of 2005, vide proviso added thereto, it was directed that a person though selected for appointment in the prescribed manner to a service or post on or after the 1<sup>st</sup> day of July 2001 till the commencement of the said Act but appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner, after the commencement of the said Act, shall, for all intents & purposes, be a civil servant except for the purpose of pension or gratuity. Such a civil servant in lieu of pension & gratuity be entitled to receive such amount contributed by him towards the Contributory

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Provident Fund along with contribution made by Government to his account in the prescribed manner.

Further provided that in the event of death of such civil servant, whether before or after the retirement, his family shall be entitled to receive the said amount, if it has already not been received by such deceased civil servant.


16. Once again, through the then NWFP now KPK (Regularization of Services) Act No. XVI of 2009, on the strength of provisions of Section 3 thereof, all employees including the recommendee of the High Court appointed on contract or adhoc basis holding that post on 31<sup>st</sup> December 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification & experience for a regular post subject to exception that the service / promotion quota of all service cadres shall not be affected.

17. Through the provision of Section 4-A of the Amendment Act, overriding effect was given to the provision of this Act over all other laws & rules for

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the time being enforce and it was further provided that any law or rule, coming in conflict with the provision of Amendment Act or inconsistent thereto, shall cease to have effect. This clause overriding & superimposing nature has equipped the provision of Amendment Act No. XLI of 2009, with ever lasting effect over all other laws & rules then in vogue.

18. Learned counsel for the petitioners invited attention of the Court to the earlier judgments of the Bench involving same & similar Issues which were rendered in the case of "*Dr. Rizwan Ullah & others Vs. Government of NWFP & others*" (W.P.No. 1510/1997) and in many other writ petitions, whose contractual services were regularized by the strength of the said judgment, elaborately dealing with each & every provision of law relevant to the subject matter promulgated from time to time and it was further stated at the bar that this judgment of the Court was accepted & acted upon by the various departments of the Provincial Government and services of contractual employees were duly

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regularized, issuing office orders at different occasions and no grudge or grievance was shown against it by the Government to take the matter to the Hon'ble Apex Court.

19. The learned counsel representing the petitioners further invited our attention to different office orders, issued in light of the judgment cited above by various Heads of the Institutions / Administrative Secretaries of the Provincial Government complying with the said judgment in full.

20. The learned counsel then invited the Court attention to the case of "*Mst. Shagufta Sayed Vs. Government of KPK & others*" W.P.No. 1731/2006 along with W.P.No. 475/2006 dated 11.09.2007, extending the benefit of the provision of Regularization of Services (Amendment) Act 2005 to various employees, who were appointed on contract basis on Farm Management Wing of the Agriculture Department. The learned counsel also produced copy of the judgment of the Hon'ble Apex

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Court given in Civil Appeals No. 150-P & 151-P of 2009 decided on 24.03.2011 where the abovementioned judgment of this Court was impugned. The Hon'ble Apex Court after elaborately & extensively dealing with each & every legal & factual aspect of the case, not only upheld the view held by this Court but also referred to its own judgment given in Civil Appeals No. 834-P to 837-P of 2010 decided on 01.03.2011 wherein, it was held that the cases of contractual employees though appointed on project are squarely covered by the provision of Section 19 (2) of the NWFP Civil Servants Act 1973. Accordingly, both the appeals filed by the Government in the said case were dismissed.

21. Confronted with the above ironclad legal position, the learned Additional Advocate General and the learned counsel appearing for the respondents were time and again asked to draw line of distinction between the case of the petitioners and of those to whom benefit of the said provision of law

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Peshawar High Court

was extended and their contractual services were regularized, however, they were found defenseless and were found having no answer muchless plausible to offer. We have on record the copies of the appointment orders issued by the Competent Authority appointing the petitioners at different occasions on different dates as contract employees on the posts in question

22. An ironclad proof in the shape of documentary record is available on file that the petitioners were appointed on contract basis by the Competent Authority, which is a fact undeniable in nature and their contractual services were renewed and extended from time to time.

23. The undeniable legal position is that the petitioners are contract employees because they have not been absorbed permanently in the departments concerned where they have been appointed, therefore, they are entitled to the protection of the beneficial provision of sub-section (2) of Section 2 of the then NWFP now KPK Civil Servants.

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(Amendment) Act 2005 and their rights are further protected in a more effective manner by provisions of Section 3 of the then NWFP now KPK Employees (Regularization of Services) Act, 2009 to which superimposing & overriding effect was given on all the rules & law to the contrary. The latest enactment came into force on 24<sup>th</sup> October 2009 when it was published in the official gazette of the Province extra ordinary.

24. The learned AAG and the learned counsel appearing for the respondents also took the plea that these are not substantive vacancies, therefore, the question of regularization of contractual services of the petitioners could not be made, is absolutely fallacious because in the first instance no document or record was produced to substantiate this plea. The contents of the published notice in the Press do not indicate in any manner that these vacancies are temporary and not substantive one, hence, this plea has been raised out of malafide and has no foundation to stand upon. However, in case the

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number of vacancies not commensurate with number of petitioners then, in that case some of them may be placed in the surplus pool for onward posting on various projects in near future when the circumstances so arises and re-adjustment becomes possible.

25. For the detailed reasons discussed above, we entertain no amount of doubt that the petitioners are entitled to the prayed relief because services of similarly placed employees of different Institutions/ departments, who were appointed on contract basis, were held to have been regularized through the provision of various enactments, discussed above, moreso, when the main judgment of this Court was not impugned before the Hon'ble Apex Court by the Provincial Government, therefore, no distinction can be drawn between the case of the petitioners and of those to whom the same and similar benefit was extended by this Court. Even otherwise, once the law

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has been interpreted in the earlier judgments of this Court in favour of the employees then, the subsequent Division Bench, in view of the long chain of authorities / dictas of the Hon'ble Apex Court, cannot deviate from the previous view, moreso, when we have no reason to differ with the earlier view.

26. Accordingly, this and all the connected petitions, cited in the opening paragraph, are admitted and allowed and the respondents are issued a writ, directing them to treat the petitioners of this and of all the connected petitions as regular/ permanent employees from the date the law came into force, as discussed above or from the date of officiating service as stated in the relevant provisions of law. Formal office order be immediately issued in this regard by the competent authorities in regard to the above legal position, the service books/ record of

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all the petitioners be duly arranged and prepared,  
however, their inter se seniority be determined by the  
competent authorities in accordance with law and  
rules on the subject.

Announced:  
15.09.2011.

Sd/- Dost Mohammad Khan  
Sd/- Yahya Afzidi-5

CERTIFIED TO BE TRUE COPY

*[Signature]*  
Examiner  
Peshawar High Court Peshawar  
Authorised Under Article 203 of  
The Qanun-e-Shahadaat Order, 1984

2916  
No. \_\_\_\_\_  
Date of Presentation of Application 25/9/11  
No of Pages 27  
Copying fee \_\_\_\_\_  
Urgent Fee 15/-  
Total 55/-  
Date of Preparation of Copy 5-10-11  
Date Given For Delivery 5/10/11

SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ  
Mr. Justice Khilji Arit Hussain  
Mr. Justice Tariq Parvez

CIVIL PETITION NOS. 562-P to 571-P, 588-P to 589-P, 605-P to 608-P OF 2011, 55-P & 56-P and 60-P OF 2012

(On appeal from the judgments dated 15.09.2011, 08.12.2011, 07.12.2011 passed by Peshawar High Court, Peshawar in WP Nos. 360/2009, 121/2008, 345/2009, 1518-1519/2009, 1743 to 1744/2011, 1857-1859/2011, 1236/2011, 2877/2011, 2249/2011, 771/2010, 3157/2009, 3284/2010, 7333/2011, 734/2011, 270/2010)

Government of KPK, Agriculture,  
Livestock & Cooperatives Department, Peshawar & others  
(in CPs 562-P & 563-P/2011)  
Chief Secretary Govt. of KPK, Peshawar & others  
(in CP 564-P/2011)  
Secretary Govt. of KPK, Peshawar & others  
(in CPs 565-P to 571-P/2011, 588-P to 589-P/2011, 605-P/2011, 55-P to 56-P/2012 and 60-P/2012)  
Director Livestock Dairy Development, FATA & others  
(in CP 606-P to 608-P/2011)

... Petitioners

VERSUS

Amir Hussain & others  
(in CPs 562-P to 569-P/2011)  
Muhammad Karimullah & another  
(in CP 563-P/2011)  
Muhammad Tufail  
(in CP 564-P/2011)  
Muhammad Farooq <sup>Khan</sup> & others  
(in CPs 565-P & 571-P/2011)  
Qaish Ahmad  
(in CP 566-P/2011)  
Nisar Ahmad & others  
(in CP 567-P/2011)  
Faisal Younas Khan & others  
(in CP 568-P/2011)  
Amir Hussain & others  
(in CPs 562-P & 563-P/2011)  
Nomann Adil & others  
(in CP 570-P/2011)  
Naveed Ahmed & others  
(in CP 588-P/2011)  
Amjad Ali & others  
(in CP 589-P/2011)

**ATTESTED**

Supervisor  
Supreme Court of Pakistan  
ISLAMABAD

Saleem Javed & others  
 (in CP605-P/2011)  
 Noor Ali Khan & others  
 (in CP606-P/2011)  
 Muhammad Bashhir & others  
 (in CP607-P/2011)  
 Asmatullah  
 (in CP608-P/2011)  
 Muhammad Shoaib & others  
 (in CP55-P/2012)  
 Ahmed Saeed & others  
 (in CP60-P/2012)

... Respondents

For the petitioners : Mr. Naveed Akhtar, Addl. AG.  
 For the respondents : Mr. Rooh ul Amin, ASC.  
 (in CPs562-P to 571-P, 588-P to 589-P, 605-P/2011).  
 Mr. Muhammad Ayub, ASC.  
 Mr. Muhammad Tariq Khan, ASC  
 (in CPs55-P to 56-P, 60-P/2012).  
 Nemo.  
 (in CPs606-P to 608-P of 2011).  
 Date of hearing : 22.03.2012.

ORDER

TARIQ PARVEZ, J. - Facts admitted from both the sides are that certain posts of Water Management Officers PBS-17 under the project "NWFP On-Farm Water Management Cooperation World Bank for the purpose of improving water courses in the Province of NWFP (Now Khyber Pakhtunkhwa)" were advertised to which respondents were selected. Their contracts have been extended from time to time which finally lasted up to 30<sup>th</sup> June, 2009. A summary was prepared and placed before the Chief Minister, KPK with the proposal that 275 posts may be created in the Water Management Department to accommodate the respondents. The posts so proposed were sanctioned. Meanwhile, Section 19 of the N.W.F.P. Civil

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Supra Intendant  
 Supreme Court of Pakistan  
 ISLAMABAD



(69)

Servants Act, 1973 was amended through N.W.F.P., Act No.IX of 2005 (Amendment Act, 2005). The respondents were considered to be project employees and not included as regular contract employees, therefore, their services were not regularized. Some of the colleagues of the respondents, feeling dissatisfied as their services were not regularized, approached the learned Peshawar High Court through Writ Petition No.1645 of 2007 which was decided on 22.12.2008. The petition was accepted and their services were regularized. The said order of the learned Peshawar High Court in Writ Petition was challenged before this Court by filing Civil Petition Nos.834, 835, 836 and 837 of 2010 in which services of their colleagues were regularized.

The respondents were expecting their appointments against 275 regular posts but they were ignored whereas certain contract employees of different projects were adjusted against some of those posts.

2. In the present petitions the Government of KPK (petitioners herein) has challenged the consolidated judgment in Writ Petition No.360 of 2009, decided on 15.09.2011 whereby it has been directed in terms of para-26 of the judgment impugned to treat the respondents as regular permanent employees from the date the law came into force; the same para is reproduced herein below:-

"26. Accordingly, this and all the connected petitions, cited in the opening paragraph, are admitted and allowed and the respondents are issued a writ, directing them to treat the petitioners of this and of all the connected petitions are regular/permanent employees from the date the law

ATTESTED

Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

(65)

came into force, as discussed above or from the date of officiating service as stated in the relevant provisions of law. Formal office order be immediately issued in this regard by the competent authorities in regard to the above legal position, the service books/record of all the petitioners be duly arranged and prepared, however, their inter se seniority be determined by the competent authorities in accordance with law and rules on the subject."

3. Learned counsel for the petitioners has argued that by virtue of Amendment Act, 2005 whereby Section 19 was amended, the contract employees were made regular, whereas under Section 3 of the NWFP (now KPK) Employees (Regularization of Services) Act, 2009, the services of the present respondents who were working on contract basis were to be regularized; but his contention is that although the learned High Court has not decided the validity of the Amendment Act, 2005 nor KPK Employees (Regularization of Services) Act, 2009 but the respondents cannot be regularized because whatever regular posts available with the Provincial Government, that have to be filled in on the basis of *inter se* merit of contractual employees. Learned counsel further states that in absence of any budgetary allocation and in absence of any sanctioned vacancy, the Provincial Government cannot be put under financial burden to adjust the respondents who were contract employees.

4. After hearing the learned counsel for the petitioners and learned counsel for some of the respondents, we find that the judgments of the learned Peshawar High Court impugned before us are not open to any exception. The laws on subject has been

**ATTESTED**

Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

promulgated by the petitioners itself; one in the year 2005 by amending the NWFP Civil Servants Act, 1973 and the other by introducing the Regularization Act of 2009 where-under services of contract employees have been regularized; For the sake of convenience, the relevant provisions of the Amendment Act. IX of 2005 are reproduced herein below: -

"19(1) .....  
19(2). A person though selected for appointment in the prescribed manner to a service or post on or after the 1<sup>st</sup> day of July, 2011, till the commencement of the said Act but appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act, shall, for all intents and purposes be civil servants, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, alongwith the contributions made by Government to his account in the said fund, in the prescribed manner."

Similarly, Section 3 of the Regularization Act, 2009 reads as under: -

"3. Regularization of services of certain employees. All employees including recommendees of the High Court appointed on contract or adhoc basis and holding that post on 31<sup>st</sup> December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post;

Provided that the service promotion quota of all service cadres shall not be affected."

5.

In above view of the matter, we find that under the Regularization Act, 2009, the services of all the persons appointed on contract were regularized.

ATTESTED

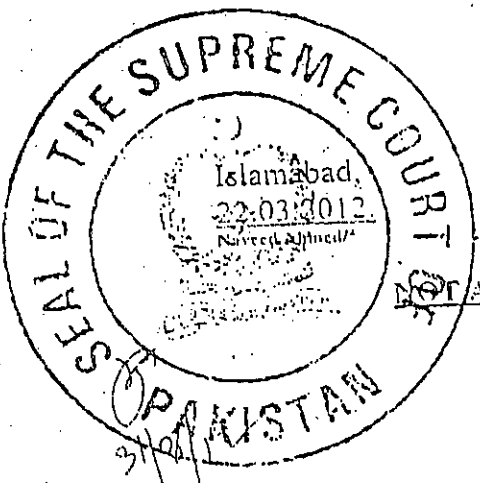
Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

6. In view of the fact that validity of the law is not in question and when undisputedly and admittedly the respondents were appointed in the prescribed manner though on contract basis but they otherwise fulfilled the requirements of the Amendment Act, 2005 as well as requirement of Regularization Act, 2009, they were entitled to same and similar treatment as meted out to other similarly placed colleagues of the respondents. Objection that vacancies are not available would be invalid because it is within the power of the Provincial Government to create/sanction additional posts in order to accommodate its contractual employees and to give effect to the Amendment Act, 2005 and Regularization Act, 2009.

For the foregoing reasons, we find no force in these petitions, therefore, same are dismissed. Leave refused.

Sd/Justice Muhammad Chaudhry, J  
 Sd/Justice Arif Hussain, J  
 Sd/Justice Tanvir Parvez, J

Certified to be True Copy  
 Superintendent  
 Supreme Court of Pakistan  
 ISLAMABAD



NOT APPROVED FOR REPORTING.

3366/12

JR. NO: \_\_\_\_\_

Date of Presentation: 27/3/12

No. of Words: 1860

No. of folios: 12

Registration Fee Rs: 1000

Copy Fee In: 1000

Court Fee stamps: 1000

Date of Completion of Copy: 3/4/12

Date of delivery of Copy: 3-4-12

Compared by: A. A. ...

Received by: \_\_\_\_\_



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
AGRICULTURE LIVESTOCK & COOPERATIVE  
DEPARTMENT

Dated the Peshawar the 3<sup>rd</sup> July, 2013

**Notification**

No.SOE(AD)/17-131/2004

In continuation to this department Office Order of even number dated 10.01.2013, the competent authority is pleased to regularize the services of the following Water Management Officers (BS-17) (In order of merit) under Section-19 sub Section (2) of the Khyber Pakhtunkhwa Civil Servant (Amendment) Act, 2005 and Regularization Act, 2009 from the date of their initial appointment noted against each:-

S/No	Name of Officers	Date of initial appointment
1.	Rafiq Ur Rahman	24.11.2004
2.	Faisal Younas Khan	24.11.2004
3.	Amir Hussain	24.11.2004
4.	Khalid Usman	24.11.2004
5.	Muhammad Tufail	24.11.2004
6.	Nisar Ahmad	24.11.2004
7.	Asma Ahmad	24.11.2004
8.	Muhammad Farooq	24.11.2004
9.	Waseemullah	24.11.2004
10.	Shaheen Iqbal	24.11.2004
11.	Moeen Ud Din	24.11.2004
12.	Javed Akhtar	24.11.2004
13.	Tahir Khan	24.11.2004
14.	Qiaash Ahmad	24.11.2004
15.	Muhammad Shoaib	24.11.2004
16.	Khan Daraz	24.11.2004
17.	Muner Ahmad Khan	24.11.2004
18.	Muhammad Karimullah	24.11.2004
19.	Saeed Shah	24.11.2004
20.	Qazi Shifa Ur Rahman	24.11.2004
21.	Fazal Sattar	24.11.2004
22.	Zulfiqar Ali Khan	24.11.2004
23.	Aman Khan	24.11.2004
24.	Ihsan Ullah Khan	24.11.2004
25.	Atta Ullah	24.11.2004
26.	Muhammad Idrees	24.11.2004
27.	Zia Ul Haq	24.11.2004
28.	Amjad Ali	24.11.2004
29.	Niaz Ahmad	15.1.2005
30.	Mohammad Yaseen	4.2.2005
31.	Fazal Hussain	4.2.2005
32.	Nauman Adil	4.2.2005
33.	Ahmad Saeed	3.3.2005
34.	Hafeezullah	12.3.2007
35.	Farmanullah	12.3.2007
36.	Saleem Javed	12.3.2007
37.	Adam Khan	12.3.2007
38.	Fazal Sher	12.3.2007
39.	Salman Khan	12.3.2007
40.	Ayaz Ali	12.3.2007
41.	Naseeb Gul	12.3.2007
42.	Gulzari Lal	12.3.2007
43.	Muhammad Qasim	12.3.2007

42.	Ubaid-ur-Rehman	Sub Engineer	BS-11
43.	Muhammad Nawaz	Sub Engineer	BS-11
44.	Muhammad Riaz	Sub Engineer	BS-11
45.	Zarmast Khan	Sub Engineer	BS-11
46.	Mohd. Shabir Ahmad	Sub Engineer	BS-11
47.	Shahzad Ali	Sub Engineer	BS-11
48.	Naveed Hilal	Sub Engineer	BS-11
49.	Anwar Ali	Sub Engineer	BS-11
50.	Abdullah	Sub Engineer	BS-11
51.	Ahmad Ali	Sub Engineer	BS-11
52.	Nasar Khan	Sub Engineer	BS-11
53.	Shujaat Ali Khan	Sub Engineer	BS-11
54.	Asif Khan	Sub Engineer	BS-11
55.	Farhad Ali	Sub Engineer	BS-11
56.	Azam Mehboob	Sub Engineer	BS-11
57.	Mazhar Iqbal	Sub Engineer	BS-11
58.	Jamil Ahmad	Sub Engineer	BS-11
59.	Nasir Hussain Shah	Sub Engineer	BS-11
60.	Akhtar Munir	Sub Engineer	BS-11
61.	Muhammad Tariq	Sub Engineer	BS-11
62.	Muhammad Naeem	Sub Engineer	BS-11
63.	Masood	Sub Engineer	BS-11
64.	Syed Asad Shah	Sub Engineer	BS-11
65.	Muhammad Asim	Sub Engineer	BS-11
66.	Mushtaq Ahmad	Sub Engineer	BS-11
67.	Abdul Salam	Sub Engineer	BS-11
68.	Mohammad Ashfaq	Sub Engineer	BS-11
69.	Gulistan Khan	Sub Engineer	BS-11
70.	Qazi Aziz-ur-Rehman	Sub Engineer	BS-11
71.	Farman Ali	Sub Engineer	BS-11
72.	Zahid Javed	Sub Engineer	BS-11
73.	Shahid Anjum	Sub Engineer	BS-11
74.	Sajjad Ahmad	Sub Engineer	BS-11
75.	Zia Ullah	Sub Engineer	BS-11
76.	Harinder Kumar	Sub Engineer	BS-11
77.	Farman Ali Shah	Sub Engineer	BS-11
78.	Shahid	Sub Engineer	BS-11
79.	Muhammad Niaz Khan	Sub Engineer	BS-11
80.	Fawad Ali	Sub Engineer	BS-11
81.	Javid Ali Khan	Sub Engineer	BS-11
82.	Rahim Badshah	Sub Engineer	BS-11
83.	Naveed Ahmad	Sub Engineer	BS-11
84.	Akhtar Ali	Sub Engineer	BS-11
85.	Mr. Abdul Subhan	Sub Engineer	BS-11
86.	Shir Shah	Sub Engineer	BS-11
87.	Bacha Ali	Sub Engineer	BS-11
88.	Ibrar Zeb	Sub Engineer	BS-11
89.	Faisal Hayat	Sub Engineer	BS-11
90.	Muhammad Asad	Sub Engineer	BS-11
91.	Fazl-ur-Rehman	Sub Engineer	BS-11
92.	Arif Khan	Sub Engineer	BS-11
93.	Shafiq-ur-Rehman	Sub Engineer	BS-11
94.	Muhammad Said	Sub Engineer	BS-11
95.	Muhammad Uzair	Sub Engineer	BS-11
96.	Khalid Mehmood	Sub Engineer	BS-11
97.	Liaqat Ali	Sub Engineer	BS-11
98.	Iftikhar Ahmad	Field Assistant	BS-6
99.	M. Farooq	Field Assistant	BS-6

103.	Shoukat Ali	Rodman	BS-1
104.	Rafiullah	Rodman	BS-1
105.	Syed Mustafa Shah	Rodman	BS-1
106.	Babu Khan	Rodman	BS-1
107.	Khaista Gul	Rodman	BS-1
108.	Mattiullah	Rodman	BS-1
109.	Abdul Hafecz	Rodman	BS-1
110.	Hamim	Rodman	BS-1
111.	Gul Shahzada	Rodman	BS-1
112.	Taj Muhammad	Rodman	BS-1
113.	Zaib-ul-Haq	Rodman	BS-1
114.	Fazal Rehman	Rodman	BS-1
115.	Niaz Muhammad	Rodman	BS-1
116.	Shams Ur Rehman	Rodman	BS-1
117.	Muhammad Saleem	Rodman	BS-1
118.	Muhammad Sajid	Rodman	BS-1
119.	Khalid Khan	Rodman	BS-1
120.	Muhammad Khurshid	Rodman	BS-1
121.	Khalid Mehmood	Rod man	BS-1
122.	Javed Rehman	Rod man	BS-1
123.	Shabeer Ahmed	Rod man	BS-1
124.	Jehangir Khan	Rodman	BS-1
125.	Muhammad Yousaf	Rodman	BS-1
126.	Muhammad Zahoor	Rodman	BS-1
127.	Muhammad Yasir	Rod man	BS-1
128.	Khan Afsar	Rod man	BS-1
129.	Ali Akhtar	Rod man	BS-1
130.	Sajid Ali	Rod man	BS-1
131.	Mohammad Zarroof	Rod man	BS-1
132.	Gul Nawaz	Rod man	BS-1
133.	Azhar Aqeel	Rodman	BS-1
134.	Murad Khan	Rodman	BS-1
135.	Syed Maqsood shah	Rodman	BS-1
136.	Muhammad Jamil	Rodman	BS-1
137.	Muhammad Zakir	Rodman	BS-1
138.	Laiq Rashid	Rodman	BS-1
139.	Noor Wali Khan	Rodman	BS-1
140.	Sherbaz	Rodman	BS-1
141.	Mohammad Ismail	Rodman	BS-1
142.	Muhammad Riaz	Rodman	BS-1
143.	Muhammad Naqab	Rodman	BS-1
144.	Ali Haider	Chowkidar	BS-1
145.	Shabeer Ahmed	Naib Qasid	BS-1
146.	Amjad Khan	Chowkidar	BS-1
147.	Haroon-ur-Rashid	Chowkidar	BS-1
148.	Muhammad Nawaz	Chowkidar	BS-1
149.	Muhammad Shoaib	Naib Qasid	BS-1
150.	Pir Gulab	Naib Qasid	BS-1
151.	Banaras Khan	Naib Qasid	BS-1
152.	Bibi Nasreen	Sweeper	BS-1
153.	Mushtaq Ahmed	Sweeper	BS-1
154.	Ibrahim	Sweeper	BS-1

Sd/-xxx

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA  
AGRIL, LIVE STOCK & COOP: DEPTT:

2. Terms and Conditions of their regularization in service are as under:-

1. Their services will be considered regular and are entitled to General Provident Fund in such a manner and at such rates as may be prescribed by the Government under Khyber Pakhtunkhwa Civil Servants (Amendments) Act, 2013.
2. Their services will be liable to termination on one month's notice from either side. In case of resignation without notice, their two month's pay/allowances shall be forfeited to Government.
3. They will be governed under such rules and regulations as may be issued from time to time by the Government.
4. In case of misconduct, they will be proceeded against the Government Servants (Efficiency & Discipline) Rules, 2011 and the Rules framed from time to time.

Sd/xx  
CHIEF SECRETARY

Endst. of even No. & Date.

Copy forwarded for information and necessary action to:-

1. Registrar Hon` able Peshawar High Court, Peshawar.
2. The Director General, On Farm Water Management, Khyber Pakhtunkhwa, Peshawar.
3. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The PS to Chief Secretary, Khyber Pakhtunkhwa.
6. The Budget Officer, Government of Khyber Pakhtunkhwa Finance Department w/r to his letter No.BOVII/FD/2-3/SNE/2012-13 dated 18.10.2012.
7. All District/Agency Accounts Officers in Khyber Pakhtunkhwa.
8. The Manager, Government Printing Press, Peshawar.
9. Officers/Officials Concerned.
10. PS to Minister Agriculture, Khyber Pakhtunkhwa, Peshawar.
11. PS to Secretary to Government of Khyber Pakhtunkhwa, Establishment Department.
12. PS to Secretary Agriculture, Live Stock and Cooperative Department.
13. PS to Secretary to Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs and Human Rights Department.
14. Master file.

(MUHAMMAD SHERAZ)  
SECTION OFFICER-ESTT:



365



GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS &  
HUMAN RIGHTS DEPARTMENT

No. SO(OP-I)/LD/5-1/2012-VOL-V/5765-66  
DATED: PESH: THE 21 FEB, 2017

To

The Secretary to Govt: of Khyber Pakhtunkhwa,  
Agriculture Livestock & Cooperative Department,

Subject:

CORRIGENDUM FOR AGRICULTURE DEPARTMENT NOTIFICATION NO.SOE (AD) 17-131/2004  
DATED 03-7-2013 IN RESPECT OF DATE OF JOINING.

Dear Sir,

I am directed to refer to your Department's letter No.SOE(AD)17-131/2016 dated 15-02-2017 on the subject noted above and to state that the High Court has discussed two laws, Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 and Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009 in its judgement/order dated 15-9-2011 in Writ Petition N.2877/2009 and other connected petitions. The High Court admitted in para-17 of the judgment, the supremacy/overriding effect of Regularization Act, 2009, over other laws and rules for the time being in force in light of Section-4-A of the Act *ibid*. It was further provided that any law or rule coming in conflict with the provisions of the Act shall cease to have effect. Thus, the regularization was to be made under the provisions of Regularization Act, 2009, which came into force on 24-10-2009 when it was published in the official Gazette. Section-3 of the Act *ibid* has been reproduced in para-16 of the Judgement.

2. Therefore, the regularization Notification is to be made in accordance with the provisions of Regularization Act, 2009 from the date of initial continuous officiating appointment, subject to final verdict of Supreme Court as the cases of regularization of Project Employees, is subjudice in Apex Court in Review Petition.

Yours Faithfully,

Section Officer (Opinion-I)

Handwritten notes: DS/SOCEI, 23/2/17, 24/2/17, and other scribbles.

Endst: of even No. & date.

Copy forwarded for information to the P.S to Secretary Law, Department.

Handwritten notes: ASH, PU, 23/2/17, and other scribbles.

Section Officer (Opinion-I)

Secretary Agriculture  
Diary  
No.....1797...  
Dated...22.02.2017

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

Appeal No. 21/2018

Mr. Adam Khan  
WMO

APPELLANT


**VERSUS**

1. Secretary to Govt. of Khyber Pakhtunkhwa Agriculture, Livestock & Cooperative Deptt: Peshawar
2. The Secretary Finance Department Khyber Pakhtunkhwa, Peshawar
3. The Director General, On Farm Water Management, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

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3	Notification dated 24-11-2004	A	6-7
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5	Notification dated 21-03-2006	C	10
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DEPONENT

**Director General,**  
**On Farm Water Management,**  
**Khyber Pakhtunkhwa, Peshawar**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

In the matter of Service Appeal No. 21/2018 of Adam Khan Water Management Officer

.....**Appellant**

**VERSUS**


1. Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock and Coop: Department, Peshawar.
2. The Secretary Finance Department Khyber Pakhtunkhwa, Peshawar.
3. The Director General, On Farm Water Management Khyber Pakhtunkhwa, Peshawar.

.....**Respondents**

**PARA WISE COMMENTS ON BEHALF OF RESPONDENTS**

Respectfully Shewith

**Preliminary Objections**

- 
1. That the appeal is badly time bared in the eyes of Law.
  2. That the appellant has got no locus standi or cause of action against the replying respondents.
  3. That the appellant has not approached this Hon'ble Tribunal with clean hands.
  4. That no discrimination/injustice have been done to the appellant.
  5. That due to concealment of material fact and misstatement the appeal is liable to be dismissed.

09.02.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. The appellant was working as Water Management Officer (BPS-17) on contract basis. He alongwith other colleagues filed writ petitioner no. 2877/09 in Peshawar High Court for regularization and was allowed vide judgment dated 15.09.2011. Respondents regularized his services w.e.f 12.03.2007 instead of 24.11.2004. He filed departmental appeal on 07.09.2007 which was not responded, hence, the instant service appeal. When learned counsel for the appellant confronted on the point that the present appeal is time barred he informed that an application for condonation of appeal has been submitted alongwith the main appeal. The appellant has not been treated according to law and rules.

Points urged need consideration. Admit, subject to limitation. Appellant is directed to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 26.03.2018 before S.B.

Appellant Deposited  
Security & Process Fee

(AHMAD HASSAN)  
MEMBER

26.03.2018

Appellant absent. Counsel present on behalf of appellant. Mr. Kabir Ullah Khattak, Addl: AG alongwith Mr. Tayab Gul, Assistant for the respondent present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 10.04.2018 before S.B.

Member

10.04.2018

Junior counsel for the appellant and Addl: AG alongwith Mr. Tayyab Gul, Assistant for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written/comments on 25.04.2018 before S.B.

Member

Form-A

FORM OF ORDERSHEET

Court of \_\_\_\_\_  
 Case No. 21/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	5/1/2018	<p>The appeal of Mr. Adam Khan Khan resubmitted today by Mr. Noor Muhammad Khattak Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;">REGISTRAR 5/1/18</p>
2-	4/1/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>22/01/18.</u></p> <p style="text-align: right;">CHAIRMAN</p>
	22.01.2018	<p>Junior to counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 09.02.2018 Before S.B</p> <p style="text-align: center;">(Muhammad Hamid Mughal) MEMBER</p>

The appeal of Mr. Adam Khan Water Management Officer, Office of the Distt. Officer Water Management Distt. Malakand received today i.e. on 18.12.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Annexures-A to F of the appeal are illegible which may be replaced by legible/better one.

No. 2694 /S.T,

Dt. 18/12 /2017

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

*Note:*

*Sir,*

*All objections have been removed,  
hence resubmitted today dated 5/1/2018.*

*5/1/2018*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

APPEAL NO. 21 /2018

**ADAM KHAN**

**VS**

**AGRICULTURE DEPTT:**

**INDEX**

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<b>8.</b>	Notification dt 3.7.2013	<b>F</b>	26- 27.
<b>9.</b>	Departmental appeal	<b>G</b>	28.
<b>10.</b>	Vakalat nama	.....	29.

**APPELLANT**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

**(Mobile No.0345-9383141)**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

APPEAL NO. 21 /2018

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1431

Dated 18-12-2017

Mr. Adam Khan, Water Management Officer (BPS-17),  
O/O District Officer Water Management, District Malakand

..... **APPELLANT**

**VERSUS**

- 1- Government of Khyber Pakhtunkhwa through Secretary Agriculture, Live Stock & Co-Operative Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director General on Farm water Management Department, Khyber Pakhtunkhwa, Peshawar.

..... **RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION DATED 10.1.2013 WHEREBY THE SERVICES OF THE APPELLANT HAS BEEN REGULARIZED W.E.F. 12.3.2007 INSTEAD OF FROM THE DATE OF FIRST APPOINTMENT I.E. 24.11.2004 AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STIPULATED PERIOD OF NINETY DAYS**

**PRAYER:**

**That on acceptance of this appeal the impugned Notification dated 10.1.2013 may kindly be modified/amended to the extent that the services of the appellant may be regularized w.e.f. from the date of first appointment i.e. 24.11.2004 instead of 12.3.2007 with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.**

Filed to-day  
Registrar  
18/12/17

**R/SHEWETH:**

**ON FACTS:**

1. That initially the appellant was appointed as Water management officer (BPS-17) on contract basis for a period of one year through proper recommendation of the Departmental Selection Committee vide Notification dated 24.11.2004. **Copy of the Notification is attached as annexure .....** **A.**

Re-submitted to -day  
and filed.

Registrar  
5/1/18



2. That vide Notification dated 11.1.2005 the appellant was posted as water management officer (BPS-17) at the office of District Officer Water management, District Malakand. That in response the appellant submitted his arrival report and started his duty quite efficiently and up to the entire satisfaction of his superiors. **Copy of the Notification dated 11.1.2005 is attached as annexure ..... B.**
3. That on completion of initial contract period of one year the services of the appellant as water management officer (BPS-17) were further extended for one year vide Notification dated 21.2.2006. **Copy of the Notification is attached as annexure ..... C.**
4. That as such the services of the appellant were extended from time to time and as such the provincial Assembly of Khyber Pakhtunkhwa promulgated an Act called "Regularization of Contract employees Act 2009" whereby all the provincial employees who were working on contract basis were regularized. That in light of the said Act the appellant along with his colleagues knocked the door of Peshawar High Court in writ petition No.2877/2009 for their regularization and the same was allowed vide judgment dated 15.9.2011. **Copies of the judgments are attached as annexure ..... D & E.**
5. That finally the respondents implemented the judgment of the Peshawar High Court through Notification dated 3.7.2013 whereby the services of the appellant as water management officer (BPS-17) were regularized but w.e.f. 12.3.2007 instead of 24.11.2004. **Copy of the Notification dated 3.7.2013 is attached as annexure ..... F.**
6. That feeling aggrieved the appellant preferred Departmental Appeal dated 7.9.2017 before respondent No.1 for fixation of his pay/regularization w.e.f. the date of his initial appointment i.e. 24.11.2004 instead of 12.03.2007 but the same has not been responded within the stipulated period. **Copy of the Departmental appeal is attached as annexure ..... G.**
7. That appellant feeling aggrieved and having no other remedy filed the instant appeal on the following grounds amongst the others.

**GROUND:**

- A- That the impugned order dated 3.7.2013 issued by the respondents is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/amended.

- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That similar nature case title Mian Siraj Vs Govt: of KPK has been decided by this august Tribunal vide judgment dated 2.7.2010 and as such the same was implemented by the Department, therefore under the principle of consistency reported in 2009 SCMR page 1 the appellant is also entitled for the grant of similar relief.
- D- That the respondents acted in arbitrary and malafide manner by not counting the contract service of the appellant towards regular service.
- E- That the action and inaction of the respondents is discriminatory and based on malafide.
- F- That the impugned Notification is based on malafide and ulterior motive, therefore liable to be reviewed.
- G- That under Article 38 (e) of the Constitution of Pakistan 1973, State is bound to reduce disparity in the income and earning of the individuals including persons in the various services of Pakistan.
- H- That appellant joined the respondent Department as water management officer (BPS-17) vide dated 24.11.2004 but the respondents have malafidely shown the date of first appointment as 12.3.2007, therefore the same is not tenable and liable to be reviewed.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as pray for.

Dated: 12-12-2017

**APPELLANT**

  
**ADAM KHAN**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**

  
**MUHAMMAD MAAZ MADNI**  
**ADVOCATES**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

APPEAL NO. \_\_\_\_\_ 2017

ADAM KHAN

VS

AGRICULTURE DEPTT:

**APPLICATION FOR CONDONATION OF**  
**DELAY IN FILING THE ABOVE NOTED**  
**APPEAL**

**R.SHEWETH:**

- 1- That the appellant has filed an appeal along with this application in which no date has been fixed so far.
- 2- That the appellant prays for the condonation of delay in filing the above noted appeal inter alia on the following grounds:

**GROUND OF APPLICATION:**

- A- That valuable rights of the appellant are involved in the case hence the appeal deserve to decide on merit.
- B- That it has been the consistent view of the Superior Courts that cases should be decided on merit rather on technicalities including the limitation. The same is reported in 2004 PLC (CS) 1014 and 2003 PLC (CS) 76.

It is therefore prayed that on acceptance of this application the delay in filing the above noted appeal may please be condoned.

**APPELLANT**

  
**ADAM KHAN**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

A-5

Government of Madhya Pradesh  
Agriculture, Investment and Co-operation  
Department  
Fashwal, Jhansi, Dist. Banda, U.P.

आदेश संख्या: 10/1990  
दिनांक: 12/11/1990

Selection of the Departmental Selection  
Officers (Eng.) DPS-7 for the Department of  
Agriculture, Investment and Co-operation  
to be posted to various P.O.s in the  
District of Banda, U.P. on the basis of  
their performance.

आदेश संख्या: 10/1990  
दिनांक: 12/11/1990

श्री राजेश कुमार अग्रवाल  
श्री राजेश कुमार अग्रवाल  
श्री राजेश कुमार अग्रवाल  
श्री राजेश कुमार अग्रवाल

आदेश संख्या: 10/1990  
दिनांक: 12/11/1990

श्री राजेश कुमार अग्रवाल  
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श्री राजेश कुमार अग्रवाल

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दिनांक: 12/11/1990

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श्री राजेश कुमार अग्रवाल

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श्री राजेश कुमार अग्रवाल

आदेश संख्या: 10/1990  
दिनांक: 12/11/1990

श्री राजेश कुमार अग्रवाल  
श्री राजेश कुमार अग्रवाल  
श्री राजेश कुमार अग्रवाल  
श्री राजेश कुमार अग्रवाल

13  
ATTESTED

6

... following conditions:

... signing any reasons during the period ... their work during this period was not found ...

... One month, a sum equivalent to the ... will be paid to the ... shall be forfeited.

... considered a period by reason ... their duties. The decision of the ... shall be final.

... Daily allowance on their last ... shall be entitled to pension, gratuity ...

... appointees shall not be entitled to ...

... to the above named selected candidates ... of the Director OFWM for signing ... in case of non submission of ... will be cancelled.

(ZAIBULLAH KHAN)

SECRETARY AGRICULTURE  
for the, 24<sup>th</sup> November, 2004

He is requested to kindly arrange ... appointees through the Standing ... certificates to this Department ...

WFP, Peshawar w/r to his memo ... with the posting proposal of the ...

**ATTESTED**

SECTION OFFICER (F&C)

Government of NWFP  
Agriculture, Livestock and Cooperatives  
Department

Peshawar dated the, 24<sup>th</sup> November, 2004

**Notification.**

No. SOE(AD)11(2)70/2004: On the recommendation of the Departmental Selection Committee, Government of NWFP, Agriculture, Livestock & Cooperatives Department is pleased to appoint the following candidates as Water Management Officers (Eng.) BPS-17 purely on contract basis for a period of one year against the vacant posts in NWFP, OFWM Project (Water Bank Assisted IDA Credit No. 8516-PAK), from the dated of assuming the charge of the post extendable to the remaining project period subject to their satisfactory performance.

1. Nasib Gul S/O Ziarat Gul, Mohallah Sharief Abad, Batkhela Malakand Agency.
  2. Sami Ullah S/O Abdul Halim Village and P/O Ziarat Talash Tehsil Timergara Dir (Lower).
  3. Nizamud Din S/O Muhammad Zarin Moh: Nasir Bagh Vill: Gul Mera P/O Lund Khwar, Tehsil Takht Bhai District Mardan.
  4. Adam Khan S/O Rahman Gul Village and P/O Haryankot Tehsil Dargai, District Malakand.
  5. Salman Khan S/O Sher Zaman Khan Village and P.O Thana, Malakand Agency.
12. Fazal Sher S/o Ali Akbar Village and P.O Mulla Zai Tehsil & Distrcit Peshawar.
2. Their appointment shall be governed by the following terms and conditions.
    - a. Their appointment shall be on contract basis initially for a period of one year. The contract shall stand automatically terminated on the expiry of the initial period. Fresh contract would be executed if the services of any at the above named candidates were further required.
    - b. the appointment shall be subject to the medical fitness report by the standing Medical board.
    - c. they shall be governed by such rules, regulations orders, acts and ordinances etc, relating to appointment, promotion, transfer, leave, T.A, Medical Allowances, Seniority, efficiency & disciplinary and conduct as have been/may be prescribed by the Government for the category of Government servants of their status, from time to time and as interpreted by the Government.

e. their services shall liable to termination on the following conditions:-

Sd/-

(ZAIBULLAH KHAN)

SECRETARY AGRICULTURE

Endst: No. SOE(AD)11(2)/70/2004.

Dated Peshawar the, 24<sup>th</sup> November, 2004

Copy forwarded to all concerned:

B-7

ADMINISTRATIVE OF NWFP  
 STOCK AND COOP DEPT.

dated December the 11.01.2005

... of this Department ...  
 ... is pleased to order the posting of the ...  
 ... against the post ...

	Office of the Director for Improvement of Water Courses
	Office of the District Officer for Improvement of Water Courses, On-Farm Water Management
	in the office of the Deputy Director, Water Management
	in the office of the Assistant Director, Water Management
	in the office of the Assistant Director, Water Management
	in the office of the Assistant Director, Water Management
	in the office of the Assistant Director, Water Management
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	in the office of the Assistant Director, Water Management
	in the office of the Assistant Director, Water Management
	in the office of the Assistant Director, Water Management

ATTESTED



Office of the Assistant Director, Water Management, District

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Office of the Assistant Director, Water Management, District

Field Team office of the District Officer, National Program for Improvement of Water Courses

Management Field Team, office of the District Officer, National Program for Improvement of Water Courses

Field Team office of the Assistant Director, National Program for Improvement of Water Courses

Field Team office of the District Officer, Water Management, District

Field Team office of the District Officer, Water Management, District

Field Team-II, office of the District Officer, National Program for Improvement of Water Courses

Field Team-II, office of the District Officer, National Program for Improvement of Water Courses

Field Team-I, office of the District Officer, National Program for Improvement of Water Courses

Field Team-II, office of the District Officer, National Program for Improvement of Water Courses

Management Field Team-II, office of the District Officer, National Program for Improvement of Water Courses

Field Team-I, office of the District Officer, National Program for Improvement of Water Courses

Field Team-II, office of the District Officer, National Program for Improvement of Water Courses

Field Team-II, office of the Assistant Director, National Program for Improvement of Water Courses

Management Field Team-II, office of the District Officer, National Program for Improvement of Water Courses

Field Team-I, office of the District Officer, National Program for Improvement of Water Courses

Management Field Team-II, office of the District Officer, National Program for Improvement of Water Courses

Field Team-II, office of the Assistant Director, National Program for Improvement of Water Courses

Field Team-I, office of the District Officer, National Program for Improvement of Water Courses

Management Field Team-II, office of the Deputy Assistant Director, National Program for Improvement of Water Courses

Field Team-I, office of the District Officer, National Program for Improvement of Water Courses

Field Team-I, office of the District Officer, National Program for Improvement of Water Courses

True Copy

ATTESTED

## GOVERNMENT OF NWFP

AGRI: LIVESTOCK AND COOP; DEPTT:

Dated Peshawar the 11.1.2005.

**NOTIFICATION.**

NO.SOE(AD)11(2)70/2004- In furtherance of this Department notification of even number dated 24-11-2004, the competent authority is pleased to order the posting of the following Water Management Officers (Engineering) BS-17 against the post noted against each with immediate effect:-

S. No.	Name of Office	Place of posting
1.	Mr. Nasib Gul	Water Management Officer in the office of the District Officer Water management National Program for improvement of water Courses Malakand Agency against a vacant post in NWFP On-Farm Water management Project (World Bank Assisted).
2.	Mr. Sami Ullah	Water Management Officer in the office of the District Officer Water management National Program for improvement of water Courses Lower Dir against a vacant post in NWFP On-Farm Water management Project (World Bank Assisted).
3.	Mr. Adam Khan	Water Management Officer in the office of the Deputy Director Water management District Swat against a vacant post in NWFP On-Farm Water management Project (World Bank Assisted).
4.	Mr. Salman Khan	Water Management Officer in the office of the Assistant Director, Water management National Program for improvement of water Courses Shangla against a vacant post in NWFP On-Farm Water management Project (World Bank Assisted).
9.	Mr. Fazal Sher	Water Management Officer in the office of the Deputy Director (F) Water management District Peshawar against a vacant post in NWFP On-Farm Water management Project (World Bank Assisted).
52.	Mr. Amjad Ali	Water Management Officer in the office of the District Officer Water management National Program for Improvement of Water Courses, Malakand Agency.

Sd/-XXX

**SECRETARY AGRICULTURE**

Endst: No. SOE(AD)11(2)70/2004

Dated Peshawar, the 11-1-2005

Copy forwarded to all concerned.

C-9

GOVERNMENT OF NWFP  
 WATER, RESTOCK AND COOP. DEPT.  
 Date: Peshawar; the 21-2-2006

In continuation of this Department Notification  
 of 24-11-2004, the competent authority has been  
 granted extension in contract service for further  
 period from 15-1-2006 to 14-1-2007 in respect of the  
 Director General, Water Management National  
 Institute of Water Courses in Peshawar NWFP  
 shown in the aforementioned list.

Sl. No.	Name	Designation
1	...	Assistant Director General Water Management Officer, Buner
2	...	--do--
3	...	--do--
4	...	AO, Lakki Marwat
5	...	WMO, Lakki Marwat
6	...	--do--
7	...	--do--
8	...	--do--
9	...	AD Chitral
10	...	WMO Chitral
11	...	--do--
12	...	AD, Mansehra
13	...	WMO Mansehra
14	...	--do--
15	...	--do--
16	...	AO, D.I.Khan
17	...	WMO DIKhan
18	...	--do--
19	...	--do--
20	...	WMO Kohat
21	...	--do--
22	...	--do--
23	...	WMO Upper Dir
24	...	WMO Swat
25	...	--do--
26	...	WMO Mardan
27	...	--do--
28	...	AD Baghram
29	...	AO Baghram
30	...	--do--
31	...	--do--
32	...	--do--
33	...	AD Swat
34	...	--do--
35	...	--do--
36	...	WMO Swat
37	...	--do--
38	...	--do--
39	...	--do--
40	...	--do--
41	...	--do--
42	...	AD Haripur
43	...	WMO Haripur
44	...	--do--
45	...	--do--
46	...	WMO Mansehra
47	...	WMO Abbottabad
48	...	--do--
49	...	AD Lower Dir

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**ATTESTED**

(10)

1	Aslam Khan	WMO, Lower Dir
2	Khalim Ullah	--do--
3	Behr	WMO, Malakand
4	Wakil	--do--
5	Wakil	WMO, Karak
6		WMO, Shangla
7		AD, Peshawar
8	Amir Siddiqi	WMO Peshawar
9		--do--
10		WMO, Tangai
11		AD, Kohat
12		WMO, Bannu
13		--do--
14		WMO, Nowshera
15		--do--
16		WMO, Charsadda
17		--do--
18	Amir Abbas	--do--
19		WMO, Peshawar
20		WMO, Swat
21		--do--
22		WMO, Lower
23		--do--
24	Amir Abbas	AD, Iakki Marwat
25		WMO Kohat
26	Amir Bilal Zaidi	WMO Kohat
27		WMO Malakand
28		--do--
29		WMO, Bannu
30	Amir Abbas	WMO Haripur
31	Muhammad Asim	WMO Abbottabad
32	Muhammad Asim	WMO Buner
33		WMO Shangla
34		WMO Timergara
35		WMO Manju
36		Institutional Specialist Peshawar
37		--do--
38		--do--
39		--do--
40		--do--

No. 884-903 /UG NFV, Peshawar dt the 22/08/2006.

- 1 All Dy:Director (P. I. NFPP:2.All Distt. OFF. of NFV, in NFPP)
- 5. All Asstt:Director WM, NFV: for information and further direction

Sd/-XXX  
SECRETARY AGRICULTURE

1. The following information and necessary action to:  
 2. The Accounts Officers, Nowshera, NWFP, Peshawar.  
 3. The Accounts Officers, Malakand, Water Management, National Program, NWFP.  
 4. request to circulate to all concerned subordinate  
 5. Accounts Officers in NWFP.  
 6. by NWFP  
 7. Agriculture.  
 8. Sd/-XXX

**ATTESTED**

NWFP, Peshawar  
 Dy: Director, DO, All Districts  
 (Accounts Officers)  
 AWALD MAZROOC  
 SECTION OFFICER

## GOVERNMENT OF NWFP

## AGRI: LIVESTOCK AND COOP: DEPTT:

Dated Peshawar; the 21.2.2006

**NOTIFICATION.**

NO.SOE(AD)ii(2)70/2006. In continuation of this Department Notification No. SOE(AD)11(2)70/2004 dated 24.11.2004, the competent authority has been pleased to accord sanction to the grant of extension in contract service for further period of one (01) year with effect from 15.1.2006 to 14.1.2007 in respect of the following Officers office of the Director General, Water Management, national Program for Improvement/Lining of Water courses in Pakistan (NWFP component) as per condition laid down in the aforementioned notification.

S. No.	Name of Officer	Designation
1.	Tufail Ahmad	Assistant Director Buner
2.	Aman Khan	Water Management Officer, Buner
3.	Khan Daraz	--do--
4.	Bakht Jamair	--do--
5.	Muhammad Nadeem	AD, Lakki Marwat
76.	Fazal Sher	WMO, Peshawar
77.	Adam Khan	WMO, Swat
78.	Nisar Ahmad	--do--
84.	Naseeb Gul	WMO Malakand
85	Ahamd Zeb	--do--
97.	Saleem Javed	Institutional Specialist Peshawar.

Sd/XXX

SECRETARY AGRICULTURE

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D-11

BEFORE THE PESHAWAR HIGH COURT PESHAWAR

2877/  
W.P No. 12009

*Arrested by the court on 21/11/09 the following persons have been implicated as per the court on 21/11/09*

1. Amjad Ali S/O Muhammad Salim, R/O Mahallah Irfan Abad, Tehsil Batkhela Malakand.

2. Khalid Usman S/O Abdul Ghafar, R/O Majad Abad, Street No. 14, Bajlighar Mardan.

3. Nasib Gul S/O Ziarat Gul, R/O Mohallah Sharif Abad, Tehsil Batkhela Malakand.

4. Adam Khan S/O Rahman Gul R/O Haryankot Tehsil Dargai Malakand.

5. M. Zakir S/O Gul Wahab R/O Haryankot, Tehsil Dargai Malakand.

6. Muhammad Idress S/O Abdul kabir bacha resident of village and p.o mian brangola Tehsil Adenzai District Dir

7. Farman Ullah resident of Kohat

8. Mohammad Yaseen S/O Arab Gul R/O Hangu.

9. Tahir Khan S/O Zafar Ullah resident of District Shangla.

*Co. Saadman Khan WMO Dist Shangla*  
Petitioners

VERSUS

1. Government of NWFP,  
Agriculture, Livestock & Cooperative Department Peshawar

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ATTESTED  
*[Signature]*  
Peshawar High Court  
**ATTESTED**

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,  
PESHAWAR  
JUDICIAL DEPARTMENT

12

W.P No. 2877/09.

JUDGMENT

Date of hearing 15.9.2011.

Petitioner (s) (Amjad Ali etc)

By Mr. Fawad Ahmad  
Uimankhel, Advocate.

Respondents (Govt: of NWFP etc)

By Barrister Waqar Ali,  
AAG alongwith Mr.  
Khurshid Khan Afridi,  
Deputy Director Water  
Management.

\*\*\*\*\*

DOST MUHAMMAD KHAN, J.- Same order

as in our detailed judgment of even date in the  
connected W.P. No.360/ 2009 entitled "Amir

Hussain etc Vs. Govt: & others".

Announced:  
15.9.2011

sd/ Dost Muh

sd/ Jahya Afridi

Office  
3/10

"Qaschi"

CERTIFIED TO BE TRUE COPY

SP  
15-9-11

ATTESTED

DEED SHEET

NATIONAL PESHAWAR HIGH COURT,  
PESHAWAR  
JUDICIAL DEPARTMENT

W/P No. 100/2009

ASSIGNMENT

Case No. 100/2009  
Petitioner: Mr. Iqbal Ahmad, Advocate  
Respondent: Government of NWFP, Advocate  
Barister Waqar Ali, AAG.

Justice M. Iqbal Ahmad, J.- This single  
subject shall also decide the following writ  
petitions which are involved in all these  
writ petitions are identical.

1. W/P No. 3/08 entitled "Amir Hussain & others."
2. W/P No. 121/2008 entitled "Muhammad Karimullah vs. Government of NWFP etc."
3. W/P No. 151/2008 entitled "Qiaish Ahmad vs. Government of NWFP etc."
4. W/P No. 287/08 entitled "Arif Ali vs. Government of NWFP etc."
5. W/P No. 1515/08 entitled "Anwarul Haque vs. Government of NWFP etc."
6. W/P No. 274/08 entitled "Naveed vs. Gov. of NWFP etc."
7. W/P No. 150/08 entitled "Muhammad vs. Government of NWFP etc."

  
**ATTESTED**



8. WP No.1858/2011 entitled "*Nauman Adil etc. Vs. Govt. of KPK etc.*"
9. WP No.1857/2011 entitled "*Amir Hussain vs. Govt. of KPK etc.*"
10. WP No.1744/2011 entitled "*Faisal Younus Khan etc. Vs. Chief Secretary Govt. of KPK etc.*"
11. WP No.1743/2011 entitled "*Nisar Ahmad etc. Vs. Chief Secy. Govt. of KPK etc.*"
12. WP No.2249/2011 entitled "*Saleem Javed. Vs. Govt. of KPK.*"
13. WP No.345/2009 entitled "*Muhammad Tufail vs. Govt. etc.*"
14. WP No.771/2010 entitled "*Noor Ali Khan etc. Vs. Addl. Chief Secretary FATA Peshawar etc.*"
15. WP No.3157/09 entitled "*Muhammad Bashir vs. Director Livestock etc.*"
16. WP No.3284/2010 entitled "*Asmatullah vs. Director Livestock etc.*"

2. The epitome of the controversy involved in writ petitions at S.No. 1 to 13, mentioned above, is that the petitioners therein were appointed as Water Management Officers (Agriculture/Engineering) (BPS-17), on contract basis, for "*National Program for improvement/ lining of water courses in Pakistan (for NWFP)*" vide two different Notifications bearing even No. SOE (AD) 11 (2) 70/2004 on 24.11.2004 and 4.2.2005

*UP*  
**ATTESTED**

ATTESTED



certain contract employees of different projects

wide notifications dated 21.2.2007 and 3.9.2008

against the newly created 275 regular posts but

were expecting their adjustment appointments

automatically stand abolished. The petitioners

equal number of posts on developmental side

21.4.2007 and 30.7.2007 and by virtue thereof,

effect from 1<sup>st</sup> July, 2007 wide notifications dated

*Management Department*, at district level, with

authority in the offices called *"On-Farm Water*

of 275 posts was accorded by the competent

Executive of the Province, sanction for creation

Consequent upon approval of Chief

30.6.2009.

extended wide Notification dated 16.9.2008 upto

was extended from time to time and was lastly

were posted in different projects. Their contract

project life on their satisfactory performance and

for a period of one year extendable upto the

were adjusted against some of those posts but the petitioners were ignored, for no plausible cause

3. In writ petitions at S.No. 14 to 16, mentioned above, the petitioners therein were appointed as Veterinary Assistants (BPS-6) in FATA under the Contract Policy of 2002 and were posted in various Developmental Schemes which were subsequently converted into regular strength. They continued as such till date and their contract was never renewed till the NWFP Civil Servants (Amendment) Act 2005 came into being, regularizing the services of contract employees by operation of law.

Vide the impugned order dated 2.1.2010, issued by respondent No.3, the services of the petitioners, in WP No. 771/2010, WP No. 3157/09 and WP No.3284/2010, were transferred from regular sanctioned posts to the project posts with the alleged mala fide intention, on part of the respondents, to convert their pay scales into fixed

*[Handwritten signature]*

*[Handwritten signature]*  
**ATTESTED**

pay due to which their salaries w.e. from January, 2010 have been withheld.

4. The petitioners are seeking benefit under the provisions of NWFP now KPK, Civil Servants (Amendment) Act, 2005 (NWFP Act No. IX of 2005) and similar legislation made by the NWFP, now KPK, Employees (Regularization of Services) Act 2009 (NWFP Act No. XVI of 2009) vide which the services of all adhoc & contractual employees were regularized by the Provincial legislature thus they have filed these constitutional petitions, praying for declaring the impugned orders, issued by the respondents, as without lawful authority as well as of no legal effect and have also prayed for issuing of writ to the respondents for regularization of their services.

5. Arguments heard and case law cited at the bar has been gone through minutely.

*[Handwritten signature]*

*[Handwritten signature]*  
**ATTESTED**

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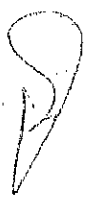
6. The respondents were put on notice and by way of interim relief filling of the said posts against which the petitioners are seeking adjustment were held in abeyance.

7. Hon'ble Mr. Justice Mazhar Alam Khan-J on the petition of the petitioners accelerated the date from 8.11.2011 to the second week of August 2011 because of the interim injunction order, suspending the fresh appointments on these posts by the respondents.

Arguments heard extensively and record perused.

8. It was not contested by the respondents that the appointment orders of all the petitioners were made by the competent / appointing authority in the prescribed manner.

9. It deserves to mention here that at the time of appointments of the petitioners as project employees, the method of appointment was through departmental selection committee (DSC). The projects were funded by the ADP, however, keeping



in view the progress made, the importance and utility of the projects, the services of the petitioners were retained/ extended but on contract basis. In their initial appointment orders, it was stipulated that their tenure would be extended/ extendable on yearly basis (with the approval of the competent authority) and will be subject to the terms and conditions noted/ notified vide their appointment letters.

10. It is worth to mention here that the posts, on which the petitioners were appointed as contract employees, were all duly published/ advertised by the respondents, in two daily newspapers i.e. "The News" & "Mashriq Peshawar" on 23.6.2004 and 22.08.2002 respectively.

11. The petitioners after assuming charge of their assigned jobs on contract basis, initially served as project employees for a period of one year as was mentioned in their appointment orders but the tenure of their service was

  
**ATTESTED**

extended for further one year vide Notification

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No. SOE (AD)II(2)70/2007 dated 16.9.2008.

12. Two important facts are not contested by the parties i.e. that the petitioners in all these petitions were project employees thus, their tenure of service was dependent on the completion of the project. It is also not denied that after the successful operation and management of the projects and being of considerable public utility, the Provincial Government converted the schemes/ projects from project budget to the current budget and was taken on the roll and strength of the provincial civil service. The required funds were allocated for the same in the annual budget on currency basis.

13. Another development, providing cause of action / grievance to the petitioners, took place when the Government of NWFP presented a bill in the Provincial Assembly through which

  
**ATTESTED**



persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, alongwith the contributions made by Government to his account in the said fund, in the prescribed manner."

14. Through the above provision of law, the employees appointed on contract basis but in the prescribed manner were provided protection by regularizing their services. The proviso added thereto states that a person, who is selected for appointment in the prescribed manner to a service or post but appointed on contract basis, shall with effect from the commencement of this Ordinance or from the date of his continuous appointment whichever may be later, be deemed to have been appointed on regular basis in the department concerned. Such employee shall, for all intents & purposes, be regular

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**ATTESTED**

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employees of the Institution concerned except for the purpose of pension or gratuity. All such employees shall, in lieu of pension & gratuity, be entitled to the benefits of the Contributory Provident Fund scheme in the prescribed manner.

15. Again, through sub-section (2) of Section 2 of the (Amendment) Act of 2005, vide proviso added thereto, it was directed that a person though selected for appointment in the prescribed manner to a service or post on or after the 1<sup>st</sup> day of July 2001 till the commencement of the said Act but appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner, after the commencement of the said Act, shall, for all intents & purposes, be a civil servant except for the purpose of pension or gratuity. Such a civil servant in lieu of pension & gratuity be entitled to receive such amount contributed by him towards the Contributory



  
**ATTESTED**

Provident Fund along with contribution made by Government to his account in the prescribed manner.

Further provided that in the event of death of such civil servant, whether before or after the retirement, his family shall be entitled to receive the said amount, if it has already not been received by such deceased civil servant.

16. Once again, through the then NWFP now KPK (Regularization of Services) Act No. XVI of 2009, on the strength of provisions of Section 3 thereof, all employees including the recommendee of the High Court appointed on contract or adhoc basis holding that post on 31<sup>st</sup> December 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification & experience for a regular post subject to exception that the service / promotion quota of all service cadres shall not be affected.

17. Through the provision of Section 4-A of the Amendment Act, overriding effect was given to the provision of this Act over all other laws & rules for

  
**ATTESTED**



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has been interpreted in the earlier judgments of this Court in favour of the employees then, the subsequent Division Bench, in view of the long chain of authorities / dictas of the Hon'ble Apex Court, cannot deviate from the previous view; moreso, when we have no reason to differ with the earlier view.

26. Accordingly, this and all the connected petitions, cited in the opening paragraph, are admitted and allowed and the respondents are issued a writ, directing them to treat the petitioners of this and of all the connected petitions as regular/ permanent employees from the date the law came into force, as discussed above or from the date of officiating service as stated in the relevant provisions of law. Formal office order be immediately issued in this regard by the competent authorities in regard to the above local position, the service books/ record of

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ATTESTED

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all the petitioners be duly arranged and prepared,  
however, their inter se seniority be determined by the  
competent authorities in accordance with law and  
rules on the subject.

Announced:  
15.09.2011.

sd/ DOST Mub alkh J  
sd/ Yahya A Eidi J

CERTIFIED TO BE TRUE COPY

Examiner  
Peshawar High Court Peshawar  
4/10/11

2960  
Date of Presentation of Application 20/9/11  
No of Pages 30 p  
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Date of Delivery of Copy 4-10-2011  
Received By *[Signature]*

*[Signature]*  
**ATTESTED**

GOVERNMENT OF  
 HYDERABAD  
 DEPARTMENT OF  
 AGRICULTURE & ANIMAL HUSBANDRY

Hyderabad the 3rd May, 2013

In continuation to the department Office Order of even  
 number 1144 dated 21.11.04, it is proposed to regularise the services of  
 Mr. [Name] (In order of merit) [Rank] [Post] [Department]  
 Civil Servant (Amendment) [Order No.] [Date]  
 [Additional details]

No.	Name	Date of Birth
1	[Name]	24.11.04
2	[Name]	24.11.04
3	[Name]	24.11.04
4	[Name]	24.11.04
5	[Name]	24.11.04
6	[Name]	24.11.04
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99	[Name]	24.11.04
100	[Name]	24.11.04

**ATTESTED**

Government of NWFP

Agriculture, Livestock and Cooperatives

Department

Dated Peshawar the, 3<sup>rd</sup> July, 2013**NOTIFICATION:**

No. SOE(AD)/17-131/2004 In continuation to this department Office order of even number dated 10.01.2013, the competent authority is pleased to regularize the services of the following Water Management Officers (BS-17) (In order of merit) under section-19 sub section (2) of the Khyber Pakhtunkhwa Civil Servant (Amendment) Act, 2005 and Regularization Act, 2009 from the date of their initial appointment noted against each:-

S. No.	Name of Officer	Date of initial appointment
1.	Rafiq ur Rehman	24.11.2004
2.	Faisal Younas Khan	24.11.2004
3.	Amir Hussain	24.11.2004
4.	Khalid Usman	24.11.2004
5.	Muhammad Tufail	24.11.2004
6.	Nisar Ahmad	24.11.2004
37.	Adam Khan	12.3.2007
38.	Fazal Sher	12.3.2007
39.	Salman Khan	12.3.2007
40.	Ayaz Ali	12.3.2007
41.	Naseeb Gul	12.3.2007
42.	Gulzari Lal	12.3.2007
43.	Muhammad Qasim	12.3.2007

2. Terms and conditions of their regularization in service are as under:-
- 1- Their services will be considered regular and are entitled to General provident Fund in such a manner and at such rates as may be prescribed by the Government under Khyber Pakhtunkhwa Civil Servants (Amendments) Act, 2013.
  - 2- Their services will be liable to termination on one month's notice from either side. In case of resignation without notice, their two month's pay/allowances shall be forfeited to Government.
  - 3- They will be governed under such rules and regulations as may be issued from time to time by the Government.
  - 4- in case of misconduct, they will be proceeded against the Government Servants (Efficiency & Discipline) Rules, 2011 and the Rules framed from time to time.

Sd/-XXX

**CHIEF SECRETARY**

Copy forwarded to all concerned.

... authorization in service are as under:-

- 1. ... are entitled to General Provident ... at such rates as may be prescribed by the ... Civil Servant (Amendments) Act, ...
- 2. ... to termination on one month's notice from either ... without notice, their two month's pay/allowances ...
- 3. ... for such rules and regulations as may be issued ...
- 4. ... will be proceeded ... Government ... Rules, 1911 and the ... framed from time ...

C-1/XX  
CHIEF SECRETARY

...

... and necessary action to:-

- 1. ... Court, Peshawar.
- 2. ... Management, Khyber Pakhtunkhwa, Peshawar.
- 3. ... Peshawar.
- 4. ... Khyber Pakhtunkhwa.
- 5. ... Pakhtunkhwa.
- 6. ... Khyber Pakhtunkhwa Finance Department w/y to ... dated 18.10.2012.
- 7. ... in Khyber Pakhtunkhwa.
- 8. ... Peshawar.
- 9. ...
- 10. ... Peshawar.
- 11. ... Establishment Department.
- 12. ... Department.
- 13. ... Law, Parliamentary Affairs
- 14. ...

(MUHAMMAD SEHERAZI)  
SECTION OFFICER-ESTT

ATTESTED

G-28

To

The Secretary,  
Agriculture, Livestock & Cooperative Department,  
Peshawar:

Through: *Proper Channel*

Subject: **DEPARTMENTAL APPEAL AGAINST NOTIFICATION NO. SOE (AD)17-131/2004 DATED 10-01-2013**

R/Sir,

Reference to the subject noted above, it is stated that I am appointed as Water Management Officer (Eng:) BPS-17 on contract basis vide Notification dated 28-11-2004. I submitted my arrival report and started performing my duties with full zeal & zest and have never given any one the chance of any complaint.

Accordingly, the contract period was renewed from time to time and finally vide Notification dated 03-07-2013 my services were regularized from the date of my initial appointment. Unfortunately, in the said Notification the initial date of appointment was mentioned as 12-03-2007 instead of 28-11-2004.

Moreover, other colleagues who were appointed with me by the same Departmental Selection Committee but were appointed in another project of the same Department were regularized from the date of their initial appointment i.e. w.e.f. 28.11.2004 but I have been ignored from regularization w.e.f. 28.11.2004.

It is therefore, most humbly requested that the Notification dated 10-01-2013 may kindly be modified/amended and my services be regularize from the date of my 1<sup>st</sup> appointment i.e. 28-11-2004 instead of 12.3.2007 with all consequential benefits.

Dated: 7.9.2017

*[Signature]*  
**ATTESTED**

Obediently Yours,

*[Signature]*

Adam Khan,  
Water Management Officer (B-17),  
District Malakand



## COMMENTS

1. That the record reveals that the appellant Mr. Adam Khan along with others was recruited in the Project titled "On Farm Water Management World Bank Assisted Project IDA Credit No. 3516-PAK" as Water Management Officer vide Notification dated 24-11-2004 as per terms and conditions specified for recruitment against the project posts (copy of notification attached **Annex-A**). The contract Project services of the petitioner was extended from time to time and the appellant worked there till March, 2007 (copies of extensions orders attached **Annex-B&C**).
2. Pertains to record hence needs no comments.
3. Correct to the extent that the project service of the appellant in OFWM World Bank Assisted Project was extended from time to time and lastly up to March, 2007.

It is pertinent to mentioned here that the appellant Mr. Adam Khan was appointed as fresh candidate in another Project titled "National Program for Improvement/Lining of Watercourses Khyber Pakhtunkhwa, Component" vide Govt. of Khyber Pakhtunkhwa, Agriculture, Livestock & Cooperative Deptt: Peshawar notification No. SOE(AD)II(2)70/2007/WMO dated 12/03/2007 without through proper channel as per terms and conditions specified for project posts (**copy of recruitment order attached Annex-D**).

4. Incorrect, that the appellant Mr. Adam Khan along with others in 2<sup>nd</sup> spell of service i.e. from 12-03-2007 while serving in the Project titled "National Program for Improvement/Lining of Watercourses (Khyber Pakhtunkhwa Component) filed writ petition No. 2249/2011 in the honourable Peshawar High Court Peshawar for regularization of his services which was allowed by the honourable court vide judgment dated 15-09-2011 (copy of judgment attached **Annex-E**). The department filed CPLA

against the judgment dated 15-09-2011 of honourable Peshawar High Court Peshawar in august Supreme Court of Pakistan. The august Supreme Court of Pakistan vide judgment dated 22-03-2012 decided the case and in compliance to the decision of the august Supreme Court of Pakistan (**Annex-F**) the services of the appellant was regularized vide notification dated 03-07-2013 (**Annex-G**).

5. As explained in Para-4 above.
6. Correct to the extent that the appellant filed departmental appeal which was sent to the Govt. of Khyber Pakhtunkhwa Law Parliamentary Affairs & Human Rights Department for consideration. The law department considered the appeal with the opinion that "*therefore the regularization notification is to be made in accordance with the provision of Regularization Act, 2009 from the date of initial continuous officiating appointment, subject to final verdict of Supreme Court as the cases of regularization of the Project Employees is subjudice in apex court in Review Petition*" (copy of Section Officer Opinion-I Govt. of Khyber Pakhtunkhwa Law Parliamentary Affairs & Human Rights department attached **Annex-H**) which was duly communicated to the appellant.
7. The appeal of the appellant was considered by the competent authority therefore, the grievance of the appellant is out of place as his regularization order was issued w.e.from 12-03-2007.


### **GROUND**

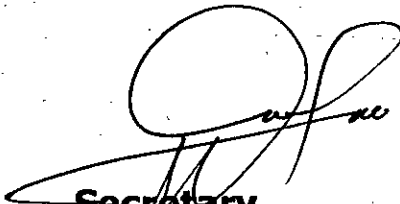
- A. The notification dated 03-07-2013 is according to law, facts & material on record.
- B. Incorrect, the competent authority considered the appeal of the appellant as explained in para-4 above. Therefore, the plea of the appellant is not based on facts and out of place as the


appellant has been treated in accordance with law, rules & policy on the subject matter and material on record.

- C. Needs no comments.
- D. The acts of Respondents are based on facts and material on record and he is not entitled for counting of his previous project service toward seniority.
- E. Incorrect, the appellant is treated as per law, rules and not discriminated in any way.
- F. The notification dated 03-07-2013 is based on facts, therefore, not liable to be reviewed.
- G. The regularization notification of the appellant is according to law and no disparity has been made.
- H. Incorrect, the appellant joined NPIWCs project on 12-03-2007 therefore, his seniority in the cadre will be reckoned from the date of continuous appointment against that very post, therefore, the same is not tenable and liable to be reviewed.
- I. That Respondents also seek permission of this Tribunal to advance further grounds during arguments.

In light of the above facts, it is prayed that appeal of the appellant may please be dismissed.

  
**Secretary**  
Govt. of Khyber Pakhtunkhwa  
Agriculture, Livestock & Coop: Deptt:  
Peshawar  
**(Respondent No. 1)**

  
**Secretary**  
Govt. of Khyber Pakhtunkhwa  
Finance Department  
**(Respondent No. 2)**

  
**Director General**  
On Farm Water Management  
Khyber Pakhtunkhwa, Peshawar  
**(Respondent No. 3)**

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Government of NWFP  
Agriculture, Livestock and Cooperatives  
Department  
Peshawar dated the 24<sup>th</sup> November, 2004.

Notification

No. SOE(AD)11 (2) 70/2004. On the recommendation of the Departmental Selection Committee, Government of NWFP, Agriculture, Livestock & Cooperatives Department is pleased to appoint the following candidates as Water Management Officers (Eng.) BPS-17 purely on contract basis for a period of one year against the vacant posts in NWFP, OFWM Project (World Bank Assisted IDA Credit No. 3516-PAK), from the date of assuming the charge of the post extendable to the remaining project period subject to their satisfactory performance.

1. Nasib Gul S/o Zirat Gul Mohallah Sharief Abad Batkhela Malakand Agency. ✓
2. Sami Ullah S/o Abdul Halim Village and P.O Zirat Talash Tehsil Timergara Dir (Lower). ✓
3. Nizamud Dir S/o Muhammad Zarin Moh: Nasir Bagh Vill: Gul Mera P/O Lund Knawar Tehsil Takht-Bhai Distt: Mardan. ✓
4. Adam Khan S/o Raman Gul Village and P.O Haryankot Teh: Dargai Malakand. ✓
5. Salman Khan S/o Sher Zaman Khan Village and P.O Thana, Malakand Agency. ✓
6. Muhammad Qasim S/o Muhammad Younas Street No.3 House No19 Sir Syed Colony Mandian Abbottabad. ✓
7. Farnanullah S/o Pasham Khan Village Zermust P.O Sheraki F.R Kohat. ✓
8. Muhammad Fahim Khattak S/o Muhammad Azeem Khattak. Azeem Medical Center. Opp. DHQ Hospital D.I Khan. ✓
9. Fazal Hussain S/O Ghulam Akbar Khanb of Malakand Agency. ✓
10. Mian Zia ud Din S/o Mian Karim Bakhsh Village Damana P.O Madyan District Swat. ✓
11. Gulzar Lal S/o Sarichand R/O Pacha Kalay Pir Baba Distt: Buner. ✓
12. Fazal Sher S/o Ali Akbar Village and P.O Mulla Zai Tehsil and District Peshawar. ✓

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29-11-04

Their appointment shall be governed by the following terms and conditions:

- a. Their appointment shall be on contract basis initially for a period of One year. The contract shall stand automatically terminated on the expiry of the initial period. Fresh contract would be executed if the services of any of the above named candidates were further required.
- b. The appointment shall be subject to the medical fitness report by the standing Medical Board.
- c. They shall be governed by such rules, regulations, orders, acts and ordinances etc relating to appointment, promotion, transfer, leave, T.A., Medical Attendance, seniority, efficiency & discipline and conduct as have been/may be prescribed by the Government for the category of Government servants of their status, from time to time and as interpreted by the Government.
- d. Their pay will be fixed in the Basic Pay Scale 17 i.e. Rs. 6210-465-15510 from the date of their taking over the charge of the post.

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- e. Their services shall be liable to termination on the following conditions.
  - i. At any time without notice and without assigning any reasons during the period of their contract appointment if their work during this period was not found satisfactory.
  - ii. On One month notice by the Government on one side and by them on the other. In case the notice on either side is less than One month, a sum equivalent to the pay for the period by which the notice falls short of One month, will be paid by the Government to them or in lieu thereof One month pay shall be forfeited.
  - iii. By Government without previous notice if it is satisfied on material evidence that they are unfit and/or likely to remain unfit for a considerable period by reasons of ill health or physical disability to discharge their duties. The decision of the Government as to what constitute considerable period shall be final.
- f. They shall not be entitled to any Traveling Allowance/Daily Allowance on their first appointment / posting.
- g. They shall not contribute to G.P. Fund and will not be entitled to pension, gratuity benefits.
- h. This does not constitute inter se seniority and the appointees shall not be entitled to seniority as against any other Government Servant.

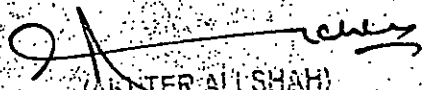
3. If the above terms and conditions are acceptable to the above named selected candidates they should convey their willingness individually and attend office of the Director OFWM for signing the Contract Agreement on or before 10.12.2004 positively. In case of non submission of acceptance/ signing of Contract Agreement, the offer will stand cancelled.

Sd/++++  
(ZAIBULLAH KHAN)

SECRETARY AGRICULTURE

Ends: No. No. SOE(AD)11(2)70/2004 Dated Peshawar the, 24<sup>th</sup> November, 2004  
Copy of the above is forwarded to the:-

1. Accountant General, NWFP, Peshawar
2. Director General Health Services, NWFP, Peshawar. He is requested to kindly arrange for an early medical examination of above named appointees through the Standing Medical Board and supply their medical examination certificates to this Department for record.
3. Director, On Farm Water Management Department NWFP, Peshawar w/r to his memo No. 11674 dated 04-10-2004 with the request to furnish the posting proposal of the above appointees at the earliest.
4. All appointees as per list given in para 1 of the notification.
5. PS to Chief Secretary, NWFP
6. PS to Minister, for Agriculture, NWFP
7. PS to Additional Chief Secretary, P&D department
8. PS to Secretary Agriculture
9. Master file

  
ARIF ALI SHAH  
SECTION OFFICER (ESTT.)

GOVERNMENT OF NWFP  
AGRI: LIVESTOCK AND COOP: DEPTT:  
Dated Peshawar, the 21-2-2006

**NOTIFICATION.**

NO.SOE(AD)II(2)70/2006.- In continuation of this Department Notification No. SOE(AD)11(2)70/2004 dated 24-11-2004, the competent authority has been pleased to accord sanction to the grant of extension in contract service for further period of one ( 01) year with effect from 15-1-2006 to 14-1-2007 in respect of the following Officers office of the Director General, Water Management, National Program for Improvement/Lining of Water courses in Pakistan ( NWFP component) as per condition laid down in the aforementioned notifications:-

Sl. No	Name of Officer	Designation
1	Tufail Ahmad	Assistant Director Buner
2	Aman Khan	Water Management Officer, Buner.
3	Khan Daraz	--do--
4	Bakht Jamair	--do--
5	Muhammad Nadeem	AD, Lakki Marwat
6	Muhammad Arif	WMO, Lakki Marwat
7	Inamullah	--do--
8	Wakil Khan	--do--
9	Muhammad Waseem	--do--
10	Moeen-ud-Din	AD, Chitral.
11	Zia-Ul-Haq	WMO Chitral
12	Mujeeb-ur-Rehman	--do--
13	Shahid Mehmood	AD, Mansehra
14	Muhammad Ayaz	WMO Mansehra
15	Muhammad Saeed	--do--
16	Fakhar-e-Alam	--do--
17	Ghulam Bilal	AD, D.I.Khan
18	Muhammad Shahid Nawaz	WMO DIKhan
19	Hussain Ara Begum	--do--
20	Aftab Ahmad	--do--
21	Muhammad Ayaz	WMO Kohat
22	Anwar Saeed	--do--
23	Muhammad Yaseen	--do--
24	Fazal Sattar	WMO Upper Dir
25	Qiaah Ahmad	WMO, Swabi
26	Muhammad Farooq	--do--
27	Rafiq ur Rehman	WMO Mardan
28	Nishat Lal Badshah	--do--
29	Muhammad Shoib	AD Battagram
30	Nasir Ahmad	WMO Battagram
31	Munir Ahmad Khan	--do--
32	Mian Abdul Qadir	--do--
33	Javed Akhtar	--do--
34	Rafiq Ahmad Ghuncha	--do--
35	Muhammad Uzir	AD, Swat.
36	Attaullah	--do--
37	Kifayat Zaman	--do--
38	Ihsan Ullah	WMO Swat
39	Hayat Zada	--do--
40	Asif Javid	--do--
41	Amir Hussain	--do--
42	Arfan Ullah	--do--
43	Mazhar Ullah	AD, Haripur
44	Atta Ulhaq	WMO Haripur
45	Khalil akbar	--do--
46	Faisal Younas	--do--
47	Alia Rashid	WMO Mansehra
48	Qasim	WMO Abbottabad
49	Amir Rabbani	--do--
50	Saeed Shah	AD Lower Dir.

51	Muhammad Idrees	--do--
52	Muhammad Aslam Khan	WMO Lower Dir.
53	Muhammad Kalim Ullah	--do--
54	Fazal Hussain	--do--
55	Muhammad Tahir	WMO Malakand
56	Amjad Ali	--do--
57	Muhammad Zakir	--do--
58	Muhammad Tufail	WMO Karak
59	Tahir Khan	WMO Shangla
60	Abdullah	AD Peshawar
61	Muhammad Hanif Siddiqi	WMO Peshawar
62	Nauman Adil	--do--
63	Sadia Rehman	--do--
64	Zulfiqar Ali Khan	WMO Hangu
65	Qayyum Khan	AD Bannu
66	Zahid Khaliq	WMO Bannu
67	Farman Ullah	--do--
68	Qazi Shafi Ur Rehman	--do--
69	Ahmad Din	--do--
70	Wajid Ali	WMO Nowshera
71	Said Muhammad	--do--
72	Mrs. Asma Ahmad	WMO Charsadda
73	Shaheen Iqbal	--do--
74	Muhammad Rahmat Ullah	--do--
75	Jehanzeb	--do--
76	Fazal Sher	WMO Peshawar
77	Adam Khan	WMO Swat
78	Nisar Ahmad	--do--
79	Fazal Subhan	WMO Dir Lower
80	Samiullah	--do--
81	Muhammad Rauf	AD Jalki Marwat
82	Farmanullah	WMO Kohat
83	Syed Muhammad Bilal Zaidi	WMO Kohat
84	Naseeb Gul	WMO Malakand
85	Ahmad Zeb	--do--
86	Nirgas Bano	WMO Bannu
87	Niaz Ahmad	WMO Haripur
88	Muhammad Qasim	WMO Abbottabad
89	Gulzari Lal	WMO Buner
90	Suleman Khan	WMO Shangla
91	Sultane Room	WMO Timergara
92	Qalb Abbas	WMO Hangu
93	Hamid Rasheed	Institutional Specialist Peshawar
94	Ihtashamul Haq	--do--
95	Hafeezullah	--do--
96	Nazia Iram Gul	--do--
97	Saleem Javed	--do--

No. 884-908 / DG NPI, Peshawar dt the 23/3/2006.  
Copy to:-

1. All Dy: Director NPI, in NWFP: 2. All Distt: officer NPI, in NWFP:
3. All Asstt: Director WM, NPI: for information and further n/action.

*(Signature)*  
Assistant Director (Account)  
Directorate Central  
National Program for Improvement  
of Water Courses NWFP, Peshawar

Sd/-XXX

SECRETARY AGRICULTURE

Endst. of even No. & Date.

Copy forwarded for information and necessary action to:-

1. The Accountant General, NWFP, Peshawar.
2. The Director General, Water Management, National Program, NWFP, Peshawar with the request to circulate to all concerned subordinate Offices/Officers.
3. All District/Agency Accounts Officers in NWFP.
4. PS to Chief Secretary, NWFP
5. PS to Secretary Agriculture.
6. Master file.

No. 883 / DGNPI, Pesh  
Copy to All DD, DO, AD (JAVAI MAQBOOL BUTT)  
in NWFP for information & further n/action.  
SECTION OFFICER-ESTT:

GOVERNMENT OF NWFP  
AGRI: LIVESTOCK AND COOP: DEPTT:

Dated Peshawar, the 24-3-2006

CORRIGENDUM.

NO.SOE(AD)II(2)70/2006.-

In partial modification of this Department Notification of even number dated 21-2-2006, the place of posting (Project) of the Officers at Sl.No.32,47,76 to 90 and 92-97 may be read/considered as World Bank Assisted Project instead of National Program.

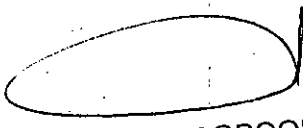
Sd/-XXX

**SECRETARY AGRICULTURE**

Endst. of even No. & Date.

Copy forwarded for information and necessary action to:-

1. The Accountant General, NWFP, Peshawar.
2. The Director General, Water Management, National Program, NWFP, Peshawar.
3. The Director, On-Farm Water Management, NWFP, Peshawar w/r to his memo: No.1893 dated 13/3/2006 with the request to circulate to all concerned.
4. PS to Secretary Agriculture.

  
(JAVAID MAQBOOL BUTT)  
SECTION OFFICER-ESTT:



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B

GOVERNMENT OF NWFP  
AGRI: L/STOCK & COOP. DEPARTMENT.

DATED PESHAWAR, THE 12-3-2007

NOTIFICATION.  
NO.SOE(AD)11(2)70/2007/WMO.-

On recommendation of the Departmental Selection Committee, the competent authority is pleased to appoint the following as Water Management Officer (Engineering) (BS-17) on contract basis for a period of One year against the vacant post in the National Program for Improvement/Lining of Watercourses in NWFP from the date of assuming the charge:-

1. Mr. Muhammad Qasim s/o Muhammad Younas, Mansehra.
2. Mr. Farmanullah s/o Pasham Khan, Kohat.
3. Mr. Salim Javed s/o Khaista Rehman Dir Lower.
4. Mr. Khurram Sheraz s/o Muhammad Khurshid Anwar, Peshawar.
5. Mr. Amir Rehman s/o Ghani Rehman, Mardan.
6. Mr. Adam Khan s/o Rahman Gul Malakand Agency.
7. Mr. Fazal Sher s/o Ali Akbar, Peshawar.
8. Mr. Samiullah s/o Abdul Halim, Dir Lower.
9. Mr. Salman Khan s/o Sher Zaman Khan, Malakand.
10. Mr. Qalb-e-Abbas s/o Ghaffar Ali, Hangu.
11. Mr. Ayaz Ali s/o Mudassar Shah, Swabi.
12. Mr. Nasib Gul s/o Ziarat Gul, Malakand.
13. Mr. Muhammad ~~Suleman Iqbal~~ s/o Iqbal Maud, Swat ✓
14. Mr. Muhammad Imran s/o Mir Adnan Khan, Bannu.
15. Mr. Sajid Mahmood s/o Amir Khan, Kohat.
16. Mr. Gulzari Lal s/o Sarf Chand, Buner.
17. Mr. Muhammad Basit s/o Mian Fazl-e-Rabbi, Peshawar.
18. Mr. Harpal Kumar s/o Jewan Lal, Swat.

2. Their appointment shall be governed by the following terms and conditions:

- a). Their appointment shall be on contract basis initially for a period of One year. The contract shall be renewed subject to the satisfactory performance on the expiry of the initial period but this renewal will not be counted towards their service regularization/seniority.
- b). Their appointment shall be subject to the medical fitness report by the standing Medical Board.
- c). ~~They shall~~ be governed by such rules, regulations, orders, acts and ordinances etc relating to appointment, promotion, transfer, leave, T.A., Medical Attendance, efficiency, discipline and conduct as have been/may be prescribed by the Government for the category of Government servants of their status, from time to time and as interpreted by the Government.
- d). Their pay will be fixed in the Basic Pay Scale 17 i.e. Rs. 7140-535-17840 from the date of their taking over the charge of the post.
- e). Their services shall be liable to termination on the following conditions:-
  - i). At any time without notice and without assigning any reasons during the period of their contract appointment if their work during this period was not found satisfactory.
  - ii). On One month notice by the Government on one side and by him on the other. In case the notice on either side is less than One month, a sum equivalent to the pay for the period by which the notice falls short of One month, will be paid by the Government to him or in lieu thereof One month pay shall be forfeited.
  - iii). By Government without previous notice if it is satisfied on material evidence that they are unfit and/or likely to remain unfit for a considerable period by reasons of ill health or physical disability to discharge his duties. The decision of the Government as to what constitutes considerable period shall be final.
- f). They shall not be entitled to any Traveling Allowance/Daily Allowance on their first appointment / posting.
- g). They shall not contribute to G.P Fund and will not be entitled to pension, gratuity benefits.
- h). This does not constitutes inter se seniority and the appointees shall not be entitled to seniority as against any other Government ~~Servant~~ **Servant**.

3. If the above terms and conditions are acceptable to them they should convey their willingness and attend office of the Director General, Water Management (National Program) for Improvement of Water Courses in NWFP, Peshawar for signing the Contract Agreement on or

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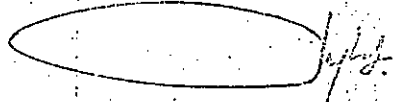
before 31-3-2007 positively. In case of non-submission of acceptance/ signing of Contract Agreement, the offer will automatically stand cancelled.

Sd/xxx

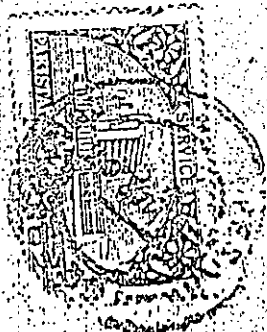
SECRETARY AGRICULTURE  
Dated Pesh: the, 12-3-2007.

Endst: No. No. SOE(AD)11 (2) 70 / 2007/WMO  
Copy of the above is forwarded to the:-

1. Accountant General, NWFP, Peshawar.
2. Director General Health Services, NWFP Peshawar, He is requested to kindly arrange for an early medical examination of the above named appointees through the Standing Medical Board and supply their medical examination certificates to this Department for record.
3. Director General, Federal Water Management Cell, Almarkaz F-8 Islamabad.
4. The Director General, Water Management (National Program), NWFP, Peshawar.
5. The Director General, On-Farm Water Management, NWFP, Peshawar.
6. Mr. Muhammad Qasim s/o Muhammad Younas, S.No.3 H.No.9, Sir Syed Colony Mandian, Abbottabad.
7. Mr. Farmanullah s/o Pasham Khan Vill: Zarmust P/O Sheraki, Tehsil Kohat.
8. Mr. Salim Javed s/o Khaista Rehman Vill: Kotki Duhree, Tehsil Lal Qilla Dir Lower.
9. Mr. Khuram Sheraz s/o Muhammad Khurshid Anwar C/O Toobarak Hussain Galaxy Hair Dresser, Peshawar.
10. Mr. Amir Rehman s/o Ghani Rehman, Director General On-Farm Water Management.
11. Mr. Adam Khan s/o Rahman Gul Village & P/O Haryan Kod Tehsil Dargai Malakand Agency.
12. Mr. Fazal Sher s/o Ali Akbar, Village Mullaazi P/O Nasir Bagh, Peshawar.
13. Mr. Samiullah s/o Abdul Halim, Vill: & P/O Ziarat Talash Tehsil Timergara Dir Lower.
14. Mr. Salman Khan s/o Sher Zaman Khan, Moh: Radatay, college Road Vill: & P/O Thana Malakand.
15. Mr. Qalb-e-Abbas s/o Ghaffar Ali, Vill: & P/O Ledhi Khela Tehsil & Distt: Hangu.
16. Mr. Ayaz Ali s/o Mudassar Shah, Directorate General Water Management.
17. Mr. Nasib Gul s/o Ziarat Gul, Moh: Sharif Abad Batkhela Malakand Agency.
18. Mr. Muhammad Suleman Iqbal s/o Haji Iqbal Mand, Irfan Brothers, Taj Chowk, Mingora, Swat.
19. Mr. Muhammad Imran s/o Mir Adam Khan, H.No.14 Bannu Township.
20. Mr. Said Mahmood s/o Amir Khan, Block No. 7B Flat No.12, G-9/2, Islamabad.
21. Mr. Gulzari Lal s/o Sari Chand, Village Pacha Kallej PO Pir Baba Tehsil Godezai Buner.
22. Mr. Muhammad Basit s/o Mian Fazi-e-Rabbi, Street Sheikh Abad No.2 near Muqbara, Zia Jaf: Oil Lahori Gate, Peshawar.
23. Mr. Harpal Kumar s/o Jewan Lal, Harpal Cloth House-Cloth Market Mingora, Swat.
24. PS to Chief Minister, NWFP.
25. PS to Chief Secretary, NWFP.
26. PS to Minister for Agriculture, NWFP.
27. PS to Secretary Agriculture.
28. Master file.

  
(JAVAID MAQBOOL BUTT)  
SECTION OFFICER (ESTT.)

PUNJAB



BEFORE THE PESHAWAR HIGH COURT, PESHAWAR



Writ Petition No 1857/2011

1. Amir Hussain, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Swabi.
2. Javed Akhtar, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Batagram.
3. Rafiq ur Rehman, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Swat.
4. Khalid Usman, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Mardan.
5. Khan Daraz, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Mardan.
6. Muhammad karimullah, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Dir Lower.
7. Qazi Shifa ur Rehman, Water Management Officer (Agriculture)  
Office of the District Officer, Water Management,  
Khyber Pakhtunkhwa, Karak.

.....Petitioners

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber  
Pakhtunkhwa, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock  
and Cooperatives Department, Peshawar.
3. Director General, On-Farm Water Management Department, Jamrod Road,  
Islamia College Gate, Khyber Pakhtunkhwa, Peshawar. ....Respondents

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Peshawar High Court

**JUDGMENT SHEET**

**IN THE PESHAWAR HIGH COURT,  
PESHAWAR  
JUDICIAL DEPARTMENT**

**WP No.360/2009**

**JUDGMENT**

Date of hearing 15.9.2011.

Petitioner (s) (Amir Hussain etc) By Mr. F.M Sabir, Advocate.

Respondents (Govt: & others) By Barrister Waqar Ali, AAG.

\*\*\*\*\*

**DOST MUHAMMAD KHAN, J.-** This single

judgment shall also decide the following writ

petitions as questions of law involved in all these

writ petitions are identical:-

1. WP No.360/09 entitled "*Amir Hussain & four other..*"
2. WP No.121/2008 entitled "*Muhammad Karimullah vs. Government of NWFP etc.*"
3. W.P.No.1519/2009 entitled "*Qias Ahmad Vs. Government of NWFP etc.*"
4. WP No.2877/2009 entitled "*Amjad Ali Vs. Government of NWFP etc.*"
5. WP No. 1518/2009 entitled "*Muhammad Farooq Khan Vs. Government of NWFP etc.*"
6. WPN0.1236/2011 entitled "*Naveed Ahmad vs. Gov. of NWFP etc.*"
7. WP No.1859/2011 entitled "*Muhammad Farooq etc Vs. Government of KPK etc.*"

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8. WP No.1853/2011 entitled "*Nauman Adil etc. Vs. Govt. of KPK etc.*"
9. WP No.1857/2011 entitled "*Amir Hussain vs. Govt. of KPK etc.*"
10. WP No.1744/2011 entitled "*Faisal Younas Khan etc. Vs. Chief Secretary Govt. of KPK etc.*"
11. WP No.1743/2011 entitled "*Nisar Ahmad etc. Vs. Chief Secy. Govt. of KPK etc.*"
12. WP No.2249/2011 entitled "*Saleem Javed. Vs. Govt. of KPK.*"
13. WP No.345/2009 entitled "*Muhammad Tufail vs. Govt. etc.*"
14. WP No.7/1/2010 entitled "*Noor Ali Khan etc. Vs. Addl. Chief Secretary FATA Peshawar etc.*"
15. WP No.3157/09 entitled "*Muhammad Bashir vs. Director Livestock etc.*"
16. WP No.3284/2010 entitled "*Asmatullah vs. Director Livestock etc.*"

2. The epitome of the controversy involved in writ petitions at S.No. 1 to 13, mentioned above, is that the petitioners therein were appointed as Water Management Officers (Agriculture/Engineering) (BPS-17), on contract basis, for "*National Program for improvement/ lining of water courses in Pakistan (for NWFP)*" vide two different Notifications bearing even No. SOE (AD) 11 (2) 70/2004 on 24.11.2004 and 4.2.2005

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for a period of one year extendable upto the project life on their satisfactory performance and were posted in different projects. Their contract was extended from time to time and was lastly extended vide Notification dated 16.9.2008 upto 30.6.2009.

Consequent upon approval of Chief Executive of the Province, sanction for creation of 275 posts was accorded by the competent authority in the offices called "*On-Farm Water Management Department*", at district level, with effect from 1<sup>st</sup> July, 2007 vide notifications dated 21.4.2007 and 30.7.2007 and by virtue thereof, equal number of posts on developmental side automatically stand abolished. The petitioners were expecting their adjustment/ appointments against the newly created 275 regular posts but vide notifications dated 21.2.2007 and 3.9.2008 certain contract employees of different projects

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were adjusted against some of those posts but the petitioners were ignored, for no plausible cause

3. In writ petitions at S.No. 14 to 16, mentioned above, the petitioners therein were appointed as Veterinary Assistants (BPS-6) in FATA under the Contract Policy of 2002 and were posted in various Developmental Schemes which were subsequently converted into regular strength. They continued as such till date and their contract was never renewed till the NWFP Civil Servants (Amendment) Act 2005 came into being, regularizing the services of contract employees by operation of law.

Vide the impugned order dated 2.1.2010, issued by respondent No.3, the services of the petitioners, in WP No. 771/2010, WP No. 3157/09 and WP No.3284/2010, were transferred from regular sanctioned posts to the project posts with the alleged malafide intention, on part of the respondents, to convert their pay scales into fixed

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pay due to which their salaries w.e.from January, 2010 have been withheld.

4. The petitioners are seeking benefit under the provisions of NWFP now KPK, Civil Servants (Amendment) Act, 2005 (NWFP Act No.IX of 2005) and similar legislation made by the NWFP, now KPK, Employees (Regularization of Services) Act 2009 (NWFP Act No. XVI of 2009 vide which the services of all adhoc & contractual employees were regularized by the Provincial legislature thus they have filed these constitutional petitions, praying for declaring the impugned orders, issued by the respondents, as without lawful authority as well as of no legal effect and have also prayed for issuing of writ to the respondents for regularization of their services.

5. Arguments heard and case law cited at the bar has been gone through minutely.

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6. The respondents were put on notice and by way of interim relief filling of the said posts against which the petitioners are seeking adjustment were held in abeyance.

7. Hon'ble Mr. Justice Mazhar Alam Khan-J on the petition of the petitioners accelerated the date from 8.11.2011 to the second week of August 2011 because of the interim injunction order, suspending the fresh appointments on these posts by the respondents.

Arguments heard extensively and record perused.

8. It was not contested by the respondents that the appointment orders of all the petitioners were made by the competent / appointing authority in the prescribed manner.

9. It deserves to mention here that at the time of appointments of the petitioners as project employees, the method of appointment was through departmental selection committee (DSC). The projects were funded by the ADP, however, keeping

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in view the progress made, the importance and utility of the projects, the services of the petitioners were retained/ extended but on contract basis. In their initial appointment orders, it was stipulated that their tenure would be extended/ extendable on yearly basis (with the approval of the competent authority) and will be subject to the terms and conditions noted/ notified vide their appointment letters.

10. It is worth to mention here that the posts, on which the petitioners were appointed as contract employees, were all duly published/ advertised by the respondents in two daily newspapers i.e. "The News" & "Mashriq Peshawar" on 23.6.2004 and 22.08.2002 respectively.

11. The petitioners after assuming charge of their assigned jobs on contract basis, initially served as project employees for a period of one year as was mentioned in their appointment orders but the tenure of their service was

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extended for further one year vide Notification  
No. SOE (AD)II(2)70/2007 dated 16.9.2008.

12. Two important facts are not contested by the parties i.e. that the petitioners in all these petitions were project employees thus, their tenure of service was dependent on the completion of the project. It is also not denied that after the successful operation and management of the projects and being of considerable public utility, the Provincial Government converted the schemes/ projects from project budget to the current budget and was taken on the roll and strength of the provincial civil service. The required funds were allocated for the same in the annual budget on currency basis.

13. Another development, providing cause of action / grievance to the petitioners, took place when the Government of NWFP presented a bill in the Provincial Assembly through which

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Section 19 of the NWFP Civil Service Act was to be amended. The said bill was passed by the Provincial Assembly of NWFP on the 5<sup>th</sup> July, 2005 and assented to by the Governor of NWFP on 12<sup>th</sup> July, 2005 which was notified/ published in the Gazette of NWFP, extra ordinary on 23<sup>rd</sup> July, 2005.

Sub-section (2) of Section 2 of the Amendment Act IX of 2005 is to the following effect:-

"2. Amendment of section 19 of N.W.F.P Act No. XVIII of 1973. - In the North- West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act No. XVIII of 1973) for section 19, the following shall be substituted:-

(19. (1) Pension and gratuity. ---Not relevant.

(2) A person though selected for appointment in the prescribed manner to service or post on or after the 1st day of July, 2001, till the commencement of the said Act but appointed on contract basis, shall, with effect from the commencement of the said Act be deemed to have been appointed on a regular basis. All such

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persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, alongwith the contributions made by Government to his account in the said fund, in the prescribed manner."

14. Through the above provision of law, the employees appointed on contract basis but in the prescribed manner were provided protection by regularizing their services. The proviso added thereto states that a person, who is selected for appointment in the prescribed manner to a service or post but appointed on contract basis, shall with effect from the commencement of this Ordinance or from the date of his continuous appointment whichever may be later, be deemed to have been appointed on regular basis in the department concerned. Such employee shall, for all intents & purposes, be regular

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employees of the Institution concerned except for the purpose of pension or gratuity. All such employees shall, in lieu of pension & gratuity, be entitled to the benefits of the Contributory Provident Fund scheme in the prescribed manner.

15. Again, through sub-section (2) of Section 2 of the (Amendment) Act of 2005, vide proviso added thereto, it was directed that a person though selected for appointment in the prescribed manner to a service or post on or after the 1<sup>st</sup> day of July 2001 till the commencement of the said Act but appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner, after the commencement of the said Act, shall, for all intents & purposes, be a civil servant except for the purpose of pension or gratuity. Such a civil servant in lieu of pension & gratuity be entitled to receive such amount contributed by him towards the Contributory

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Provident Fund along with contribution made by Government to his account in the prescribed manner.

Further provided that in the event of death of such civil servant, whether before or after the retirement, his family shall be entitled to receive the said amount, if it has already not been received by such deceased civil servant.

16. Once again, through the then NWFP now KPK (Regularization of Services) Act No. XVI of 2009, on the strength of provisions of Section 3 thereof, all employees including the recommendee of the High Court appointed on contract or adhoc basis holding that post on 31<sup>st</sup> December 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification & experience for a regular post subject to exception that the service / promotion quota of all service cadres shall not be affected.

17. Through the provision of Section 4-A of the Amendment Act, overriding effect was given to the provision of this Act over all other laws & rules for

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the time being enforce and it was further provided that any law or rule, coming in conflict with the provision of Amendment Act or inconsistent thereto, shall cease to have effect. This clause overriding & superimposing nature has equipped the provision of Amendment Act No. XLI of 2009, with ever lasting effect over all other laws & rules then in vogue.

18. Learned counsel for the petitioners invited attention of the Court to the earlier judgments of the Bench involving same & similar Issues which were rendered in the case of "*Dr. Rizwan Ullah & others Vs. Government of NWFP & others*" (W.P.No. 1510/1997) and in many other writ petitions, whose contractual services were regularized by the strength of the said judgment, elaborately dealing with each & every provision of law relevant to the subject matter promulgated from time to time and it was further stated at the bar that this judgment of the Court was accepted & acted upon by the various departments of the Provincial Government and services of contractual employees were duly

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regularized, issuing office orders at different occasions and no grudge or grievance was shown against it by the Government to take the matter to the Hon'ble Apex Court.

19. The learned counsel representing the petitioners further invited our attention to different office orders, issued in light of the judgment cited above by various Heads of the Institutions / Administrative Secretaries of the Provincial Government complying with the said judgment in full.

20. The learned counsel then invited the Court attention to the case of "*Mst. Shagufia Sayed Vs. Government of KPK & others*" W.P.No. 1731/2006 along with W.P.No. 475/2006 dated 11.09.2007, extending the benefit of the provision of Regularization of Services (Amendment) Act 2005 to various employees, who were appointed on contract basis on Farm Management Wing of the Agriculture Department. The learned counsel also produced copy of the judgment of the Hon'ble Apex

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Court given in Civil Appeals No. 150-P & 151-P of 2009 decided on 24.03.2011 where the abovementioned judgment of this Court was impugned. The Hon'ble Apex Court after elaborately & extensively dealing with each & every legal & factual aspect of the case, not only upheld the view held by this Court but also referred to its own judgment given in Civil Appeals No. 834-P to 837-P of 2010 decided on 01.03.2011 wherein, it was held that the cases of contractual employees though appointed on project are squarely covered by the provision of Section 19 (2) of the NWFP Civil Servants Act 1973. Accordingly, both the appeals filed by the Government in the said case were dismissed.

21. Confronted with the above ironclad legal position, the learned Additional Advocate General and the learned counsel appearing for the respondents were time and again asked to draw line of distinction between the case of the petitioners and of those to whom benefit of the said provision of law

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was extended and their contractual services were regularized, however, they were found defenseless and were found having no answer muchless plausible to offer. We have on record the copies of the appointment orders issued by the Competent Authority appointing the petitioners at different occasions on different dates as contract employees on the posts in question

22. An ironclad proof in the shape of documentary record is available on file that the petitioners were appointed on contract basis by the Competent Authority, which is a fact undeniable in nature and their contractual services were renewed and extended from time to time.

23. The undeniable legal position is that the petitioners are contract employees because they have not been absorbed permanently in the departments concerned where they have been appointed, therefore, they are entitled to the protection of the beneficial provision of sub-section (2) of Section 2 of the then NWFP now KPK Civil Servants

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(Amendment) Act 2005 and their rights are further protected in a more effective manner by provisions of Section 3 of the then NWFP now KPK Employees (Regularization of Services) Act, 2009 to which superimposing & overriding effect was given on all the rules & law to the contrary. The latest enactment came into force on 24<sup>th</sup> October 2009 when it was published in the official gazette of the Province extra ordinary.

24. The learned AAG and the learned counsel appearing for the respondents also took the plea that these are not substantive vacancies, therefore, the question of regularization of contractual services of the petitioners could not be made, is absolutely fallacious because in the first instance no document or record was produced to substantiate this plea. The contents of the published notice in the Press do not indicate in any manner that these vacancies are temporary and not substantive one, hence, this plea has been raised out of malafide and has no foundation to stand upon. However, in case the

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EXAMINER

number of vacancies not commensurate with number of petitioners then, in that case some of them may be placed in the surplus pool for onward posting on various projects in near future when the circumstances so arises and re-adjustment becomes possible.

25. For the detailed reasons discussed above, we entertain no amount of doubt that the petitioners are entitled to the prayed relief because services of similarly placed employees of different Institutions/ departments, who were appointed on contract basis, were held to have been regularized through the provision of various enactments, discussed above, moreso, when the main judgment of this Court was not impugned before the Hon'ble Apex Court by the Provincial Government, therefore, no distinction can be drawn between the case of the petitioners and of those to whom the same and similar benefit was extended by this Court. Even otherwise, once the law

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EXAMINER

has been interpreted in the earlier judgments of this Court in favour of the employees then, the subsequent Division Bench, in view of the long chain of authorities / dictas of the Hon'ble Apex Court, cannot deviate from the previous view, moreso, when we have no reason to differ with the earlier view.

26. Accordingly, this and all the connected petitions, cited in the opening paragraph, are admitted and allowed and the respondents are issued a writ, directing them to treat the petitioners of this and of all the connected petitions as regular/ permanent employees from the date the law came into force, as discussed above or from the date of officiating service as stated in the relevant provisions of law. Formal office order be immediately issued in this regard by the competent authorities in regard to the above legal position, the service books/ record of


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all the petitioners be duly arranged and prepared,  
however, their inter se seniority be determined by the  
competent authorities in accordance with law and  
rules on the subject.

Announced:  
15.09.2011.

Sd/- Dost Mohammad Khan  
Sd/- Jahya Afzals-5

CERTIFIED TO BE TRUE COPY

  
Examiner  
Peshawar High Court Peshawar  
Authorised Under Article 27 of  
The Qanun-e-Shahada Order 1984

5/10/11

2916

No. \_\_\_\_\_  
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H

22-3-2012

(69)

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present**

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ  
Mr. Justice Khilji Arit Hussain  
Mr. Justice Tariq Parvez

**CIVIL PETITION NOS. 562-P TO 571-P, 588-P TO 589-P, 605-P TO 608-P OF 2011, 55-P & 56-P AND 60-P OF 2012**

(On appeal from the judgments dated 15.09.2011, 08.12.2011, 07.12.2011 passed by Peshawar High Court, Peshawar in WP Nos. 360/2009, 121/2008, 345/2009, 1318-1519/2009, 1743 to 1744/2011, 1857-1859/2011, 1236/2011, 2877/2011, 2249/2011, 771/2010, 3157/2009, 3284/2010, 733/2011, 734/2011, 270/2010)

Government of KPK, Agriculture,  
Livestock & Cooperatives Department, Peshawar & others  
(in CPs 562-P & 563-P/2011)

Chief Secretary Govt. of KPK, Peshawar & others  
(in CP 564-P/2011)

Secretary Govt. of KPK, Peshawar & others  
(in CPs 565-P to 571-P/2011, 588-P to 589-P/2011, 605-P/2011, 55-P to 56-P/2012 and 60-P/2012)

Director Livestock Dairy Development, FATA & others  
(in CP 606-P to 608-P/2011)

... Petitioners

**VERSUS**

Amir Hussain & others  
(in CPs 562-P to 569-P/2011)

Muhammad Karimullah & another  
(in CP 563-P/2011)

Muhammad Tufail  
(in CP 564-P/2011)

Muhammad Farooq & others  
(in CPs 565-P & 571-P/2011)

Qaish Ahmad  
(in CP 566-P/2011)

Nisar Ahmad & others  
(in CP 567-P/2011)

Faisal Younas Khan & others  
(in CP 568-P/2011)

Amir Hussain & others  
(in CPs 562-P & 563-P/2011)

Nomann Adil & others  
(in CP 570-P/2011)

Naveed Ahmed & others  
(in CP 588-P/2011)

Amjad Ali & others  
(in CP 589-P/2011)

**ATTESTED**

*[Signature]*  
Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

22-3-2012



Saleem Javed & others  
 (in CP605-P/2011)  
 Noor Ali Khan & others  
 (in CP606-P/2011)  
 Muhammad Bashhir & others  
 (in CP607-P/2011)  
 Asmatullah  
 (in CP608-P/2011)  
 Muhammad Shoaib & others  
 (in CP55-P/2012)  
 Ahmed Saeed & others  
 (in CP60-P/2012)

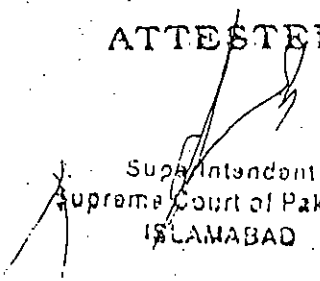
Respondents

For the petitioners : Mr. Naveed Akhtar, Addl. AG.  
 For the respondents : Mr. Rooh ul Amin, ASC.  
 (in CPs562-P to 571-P, 588-P to 589-P, 605-P/2011).  
 Mr. Muhammad Ayub, ASC.  
 Mr. Muhammad Tariq Khan, ASC  
 (in CPs55-P to 56-P, 60-P/2012).  
 Nemo.  
 (in CPs606-P to 608-P of 2011).  
 Date of hearing : 22.03.2012.

ORDER

TARIO PARVEZ, J. – Facts admitted from both the sides are that certain posts of Water Management Officers PBS-17 under the project “NWFP On-Farm Water Management Cooperation World Bank for the purpose of improving water courses in the Province of NWFP (Now Khyber Pakhtunkhwa)” were advertised to which respondents were selected. Their contracts have been extended from time to time which finally lasted up to 30<sup>th</sup> June, 2009. A summary was prepared and placed before the Chief Minister, KPK with the proposal that 275 posts may be created in the Water Management Department to accommodate the respondents. The posts so proposed were sanctioned. Meanwhile, Section 19 of the N.W.F.P. Civil

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 Superintendent  
 Supreme Court of Pakistan  
 ISLAMABAD

(69)

Servants Act, 1973 was amended through N.W.F.P., Act No.IX of 2005 (Amendment Act, 2005). The respondents were considered to be project employees and not included as regular contract employees, therefore, their services were not regularized. Some of the colleagues of the respondents, feeling dissatisfied as their services were not regularized, approached the learned Peshawar High Court through Writ Petition No.1645 of 2007 which was decided on 22.12.2008. The petition was accepted and their services were regularized. The said order of the learned Peshawar High Court in Writ Petition was challenged before this Court by filing Civil Petition Nos.834, 835, 836 and 837 of 2010 in which services of their colleagues were regularized.

The respondents were expecting their appointments against 275 regular posts but they were ignored whereas certain contract employees of different projects were adjusted against some of those posts.

2. In the present petitions the Government of KPK (petitioners herein) has challenged the consolidated judgment in Writ Petition No.360 of 2009, decided on 15.09.2011 whereby it has been directed in terms of para-26 of the judgment impugned to treat the respondents as regular permanent employees from the date the law came into force; the same para is reproduced herein below:-

"26. Accordingly, this and all the connected petitions, cited in the opening paragraph, are admitted and allowed and the respondents are issued a writ, directing them to treat the petitioners of this and of all the connected petitions are regular/permanent employees from the date the law

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Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

came into force, as discussed above or from the date of officiating service as stated in the relevant provisions of law. Formal office order be immediately issued in this regard by the competent authorities in regard to the above legal position, the service books/record of all the petitioners be duly arranged and prepared, however, their inter se seniority be determined by the competent authorities in accordance with law and rules on the subject."

3. Learned counsel for the petitioners has argued that by virtue of Amendment Act, 2005 whereby Section 19 was amended, the contract employees were made regular, whereas under Section 3 of the NWFP (now KPK) Employees (Regularization of Services) Act, 2009, the services of the present respondents who were working on contract basis were to be regularized; but his contention is that although the learned High Court has not decided the validity of the Amendment Act, 2005 nor KPK Employees (Regularization of Services) Act, 2009 but the respondents cannot be regularized because whatever regular posts available with the Provincial Government, that have to be filled in on the basis of *inter se merit* of contractual employees. Learned counsel further states that in absence of any budgetary allocation and in absence of any sanctioned vacancy, the Provincial Government cannot be put under financial burden to adjust the respondents who were contract employees.

4. After hearing the learned counsel for the petitioners and learned counsel for some of the respondents, we find that the judgments of the learned Peshawar High Court impugned before us are not open to any exception. The laws on subject has been

**ATTESTED**

Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

promulgated by the petitioners itself; one in the year 2005 by amending the NWFP Civil Servants Act, 1973 and the other by introducing the Regularization Act of 2009 where-under services of contract employees have been regularized; For the sake of convenience, the relevant provisions of the Amendment Act. IX of 2005 are reproduced herein below: -

“19(1) .....

19(2). A person though selected for appointment in the prescribed manner to a service or post on or after the 1<sup>st</sup> day of July, 2011, till the commencement of the said Act but appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act, shall, for all intents and purposes be civil servants, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, alongwith the contributions made by Government to his account in the said fund, in the prescribed manner.”

Similarly, Section 3 of the Regularization Act, 2009 reads as under: -

“3. Regularization of services of certain employees. All employees including recommendees of the High Court appointed on contract or adhoc basis and holding that post on 31<sup>st</sup> December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post;

Provided that the service promotion quota of all service cadres shall not be affected.”

5.

In above view of the matter, we find that under the Regularization Act, 2009, the services of all the persons appointed on contract were regularized.

ATTESTED

Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

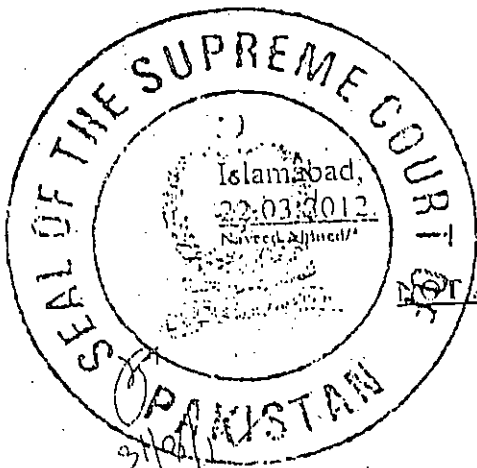
6. In view of the fact that validity of the law is not in question and when undisputedly and admittedly the respondents were appointed in the prescribed manner though on contract basis but they otherwise fulfilled the requirements of the Amendment Act, 2005 as well as requirement of Regularization Act, 2009, they were entitled to same and similar treatment as meted out to other similarly placed colleagues of the respondents. Objection that vacancies are not available would be invalid because it is within the power of the Provincial Government to create/sanction additional posts in order to accommodate its contractual employees and to give affect to the Amendment Act, 2005 and Regularization Act, 2009.

For the foregoing reasons, we find no force in these petitions, therefore, same are dismissed. Leave refused.

Sd/Justice Muhammad Chaudhry  
 Sd/Justice Arif Hussain, J  
 Sd/Justice Tahir Pankaj, J

Certified to be True Copy

Supintendent  
 Supreme Court of Pakistan  
 ISLAMABAD



NOT APPROVED FOR REPORTING.

3366/12

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Date of Presentation: 22.3.12

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GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
AGRICULTURE LIVESTOCK & COOPERATIVE  
DEPARTMENT

Dated the Peshawar the 3<sup>rd</sup> July, 2013

**Notification**

No.SOE(AD)/17-131/2004 In continuation to this department Office Order of even number dated 10.01.2013, the competent authority is pleased to regularize the services of the following Water Management Officers (BS-17) (In order of merit) under Section-19 sub Section (2) of the Khyber Pakhtunkhwa Civil Servant (Amendment) Act, 2005 and Regularization Act, 2009 from the date of their initial appointment noted against each:-

S/No	Name of Officers	Date of initial appointment
1.	Rafiq Ur Rahman	24.11.2004
2.	Faisal Younas Khan	24.11.2004
3.	Amir Hussain	24.11.2004
4.	Khalid Usman	24.11.2004
5.	Muhammad Tufail	24.11.2004
6.	Nisar Ahmad	24.11.2004
7.	Asma Ahmad	24.11.2004
8.	Muhammad Farooq	24.11.2004
9.	Waseemullah	24.11.2004
10.	Shaheen Iqbal	24.11.2004
11.	Moeen Ud Din	24.11.2004
12.	Javed Akhtar	24.11.2004
13.	Tahir Khan	24.11.2004
14.	Qiaash Ahmad	24.11.2004
15.	Muhammad Shoaib	24.11.2004
16.	Khan Daraz	24.11.2004
17.	Muner Ahmad Khan	24.11.2004
18.	Muhammad Karimullah	24.11.2004
19.	Saeed Shah	24.11.2004
20.	Qazi Shifa Ur Rahman	24.11.2004
21.	Fazal Sattar	24.11.2004
22.	Zulfiqar Ali Khan	24.11.2004
23.	Aman Khan	24.11.2004
24.	Ihsan Ullah Khan	24.11.2004
25.	Atta Ullah	24.11.2004
26.	Muhammad Idrees	24.11.2004
27.	Zia Ul Haq	24.11.2004
28.	Amjad Ali	24.11.2004
29.	Niaz Ahmad	15.1.2005
30.	Mohammad Yaseen	4.2.2005
31.	Fazal Hussain	4.2.2005
32.	Nauman Adil	4.2.2005
33.	Ahmad Saeed	3.3.2005
34.	Hafeezullah	12.3.2007
35.	Farmanullah	12.3.2007
36.	Saleem Javed	12.3.2007
37.	Adam Khan	12.3.2007
38.	Fazal Sher	12.3.2007
39.	Salman Khan	12.3.2007
40.	Ayaz Ali	12.3.2007
41.	Naseeb Gul	12.3.2007
42.	Gulzari Lal	12.3.2007
43.	Muhammad Qasim	12.3.2007

42.	Ubaid-ur-Rehman	Sub Engineer	BS-11
43.	Muhammad Nawaz	Sub Engineer	BS-11
44.	Muhammad Riaz	Sub Engineer	BS-11
45.	Zarmast Khan	Sub Engineer	BS-11
46.	Mohd. Shabir Ahmad	Sub Engineer	BS-11
47.	Shahzad Ali	Sub Engineer	BS-11
48.	Naveed Hilal	Sub Engineer	BS-11
49.	Anwar Ali	Sub Engineer	BS-11
50.	Abdullah	Sub Engineer	BS-11
51.	Ahmad Ali	Sub Engineer	BS-11
52.	Nasar Khan	Sub Engineer	BS-11
53.	Shujaat Ali Khan	Sub Engineer	BS-11
54.	Asif Khan	Sub Engineer	BS-11
55.	Farhad Ali	Sub Engineer	BS-11
56.	Azam Mehboob	Sub Engineer	BS-11
57.	Mazhar Iqbal	Sub Engineer	BS-11
58.	Jamil Ahmad	Sub Engineer	BS-11
59.	Nasir Hussain Shah	Sub Engineer	BS-11
60.	Akhtar Munir	Sub Engineer	BS-11
61.	Muhammad Tariq	Sub Engineer	BS-11
62.	Muhammad Nacem	Sub Engineer	BS-11
63.	Masood	Sub Engineer	BS-11
64.	Syed Asad Shah	Sub Engineer	BS-11
65.	Muhammad Asim	Sub Engineer	BS-11
66.	Mushtaq Ahamd	Sub Engineer	BS-11
67.	Abdul Salam	Sub Engineer	BS-11
68.	Mohammad Ashfaq	Sub Engineer	BS-11
69.	Gulistan Khan	Sub Engineer	BS-11
70.	Qazi Aziz-ur-Rehman	Sub Engineer	BS-11
71.	Farman Ali	Sub Engineer	BS-11
72.	Zahid Javed	Sub Engineer	BS-11
73.	Shahid Anjum	Sub Engineer	BS-11
74.	Sajjad Ahmad	Sub Engineer	BS-11
75.	Zia Ullah	Sub Engineer	BS-11
76.	Harinder Kumar	Sub Engineer	BS-11
77.	Farman Ali Shah	Sub Engineer	BS-11
78.	Shahid	Sub Engineer	BS-11
79.	Muht Niaz Khan	Sub Engineer	BS-11
80.	Fawad Ali	Sub Engineer	BS-11
81.	Javid Ali Khan	Sub Engineer	BS-11
82.	Rahim Badshah	Sub Engineer	BS-11
83.	Naveed Ahmad	Sub Engineer	BS-11
84.	Akhtar Ali	Sub Engineer	BS-11
85.	Mr. Abdul Subhan	Sub Engineer	BS-11
86.	Sher Shah	Sub Engineer	BS-11
87.	Bacha Ali	Sub Engineer	BS-11
88.	Ibrar Zeb	Sub Engineer	BS-11
89.	Faisal Hayat	Sub Engineer	BS-11
90.	Muhammad Asad	Sub Engineer	BS-11
91.	Fazl-ur-Rehman	Sub Engineer	BS-11
92.	Arif Khan	Sub Engineer	BS-11
93.	Shafiq-ur-Rehman	Sub Engineer	BS-11
94.	Muhammad Said	Sub Engineer	BS-11
95.	Muhammad Uzair	Sub Engineer	BS-11
96.	Khalid Mehmood	Sub Engineer	BS-11
97.	Liaqat Ali	Sub Engineer	BS-11
98.	Iftikhar Ahmad	Field Assistant	BS-6
99.	M. Farooq	Field Assistant	BS-6

103.	Shoukat Ali	Rodman	BS-1
104.	Rafiullah	Rodman	BS-1
105.	Syed Mustafa Shah	Rodman	BS-1
106.	Babu Khan	Rodman	BS-1
107.	Khaista Gul	Rodman	BS-1
108.	Mattiullah	Rodman	BS-1
109.	Abdul Hafecz	Rodman	BS-1
110.	Hamim	Rodman	BS-1
111.	Gul Shahzada	Rodman	BS-1
112.	Taj Muhammad	Rodman	BS-1
113.	Zaib-ul-Haq	Rodman	BS-1
114.	Fazal Rehman	Rodman	BS-1
115.	Niaz Muhammad	Rodman	BS-1
116.	Shams Ur Rehman	Rodman	BS-1
117.	Muhammad Saleem	Rodman	BS-1
118.	Muhammad Sajid	Rodman	BS-1
119.	Khalid Khan	Rodman	BS-1
120.	Muhammad Khurshid	Rodman	BS-1
121.	Khalid Mehmood	Rodman	BS-1
122.	Javed Rehman	Rodman	BS-1
123.	Shabceer Ahmed	Rodman	BS-1
124.	Jehangir Khan	Rodman	BS-1
125.	Muhammad Yousaf	Rodman	BS-1
126.	Muhammad Zahoor	Rodman	BS-1
127.	Muhammad Yasir	Rodman	BS-1
128.	Khan Afsar	Rodman	BS-1
129.	Ali Akhtar	Rodman	BS-1
130.	Sajid Ali	Rodman	BS-1
131.	Mohammad Zarooof	Rodman	BS-1
132.	Gul Nawaz	Rodman	BS-1
133.	Azhar Aqcel	Rodman	BS-1
134.	Murad Khan	Rodman	BS-1
135.	Syed Maqsood shah	Rodman	BS-1
136.	Muhammad Jamil	Rodman	BS-1
137.	Muhammad Zakir	Rodman	BS-1
138.	Laiq Rashid	Rodman	BS-1
139.	Noor Wali Khan	Rodman	BS-1
140.	Sherbaz	Rodman	BS-1
141.	Mohammad Ismail	Rodman	BS-1
142.	Muhammad Riaz	Rodman	BS-1
143.	Muhammad Naqab	Rodman	BS-1
144.	Ali Haider	Chowkidar	BS-1
145.	Shabceer Ahmed	Naib Qasid	BS-1
146.	Amjad Khan	Chowkidar	BS-1
147.	Haroon-ur-Rashid	Chowkidar	BS-1
148.	Muhammad Nawaz	Chowkidar	BS-1
149.	Muhammad Shoaib	Naib Qasid	BS-1
150.	Pir Gulab	Naib Qasid	BS-1
151.	Banaras Khan	Naib Qasid	BS-1
152.	Bibi Nasreen	Sweeper	BS-1
153.	Mushtaq Ahmed	Sweeper	BS-1
154.	Ibrahim	Sweeper	BS-1

Sd/-xxx

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA  
AGRI, LIVE STOCK & COOP. DEPTT:



2. Terms and Conditions of their regularization in service are as under:-

1. Their services will be considered regular and are entitled to General Provident Fund in such a manner and at such rates as may be prescribed by the Government under Khyber Pakhtunkhwa Civil Servants (Amendments) Act, 2013.
2. Their services will be liable to termination on one month's notice from either side. In case of resignation without notice, their two month's pay/allowances shall be forfeited to Government.
3. They will be governed under such rules and regulations as may be issued from time to time by the Government.
4. In case of misconduct, they will be proceeded against the Government Servants (Efficiency & Discipline) Rules, 2011 and the Rules framed from time to time.

**Sd/xx**  
**CHIEF SECRETARY**

Endst. of even No. & Date.

Copy forwarded for information and necessary action to:-

1. Registrar Hon` able Peshawar High Court, Peshawar.
2. The Director General, On Farm Water Management, Khyber Pakhtunkhwa, Peshawar.
3. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The PS to Chief Secretary, Khyber Pakhtunkhwa.
6. The Budget Officer, Government of Khyber Pakhtunkhwa Finance Department w/r to his letter No.BOVII/FD/2-3/SNE/2012-13 dated 18.10.2012.
7. All District/Agency Accounts Officers in Khyber Pakhtunkhwa.
8. The Manager, Government Printing Press, Peshawar.
9. Officers/Officials Concerned.
10. PS to Minister Agriculture, Khyber Pakhtunkhwa, Peshawar.
11. PS to Secretary to Government of Khyber Pakhtunkhwa, Establishment Department.
12. PS to Secretary Agriculture, Live Stock and Cooperative Department.
13. PS to Secretary to Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs and Human Rights Department.
14. Master file.

(MUHAMMAD SHEERAZ)  
SECTION OFFICER-ESTT:

365



GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS &  
HUMAN RIGHTS DEPARTMENT

No. SO(OP-I)/LD/5-1/2012-VOL-V/5765-66  
DATED: PESH: THE 21 FEB, 2017

To

The Secretary to Govt: of Khyber Pakhtunkhwa,  
Agriculture Livestock & Cooperative Department,

Subject:

CORRIGENDUM FOR AGRICULTURE DEPARTMENT NOTIFICATION NO.SOE (AD) 17-131/2004  
DATED 03-7-2013 IN RESPECT OF DATE OF JOINING.

Dear Sir,

I am directed to refer to your Department's letter No.SOE(AD)17-131/2016 dated 15-02-2017 on the subject noted above and to state that the High Court has discussed two laws, Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 and Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009 in its judgement/order dated 15-9-2011 in Writ Petition N.2877/2009 and other connected petitions. The High Court admitted in para-17 of the judgment, the supremacy/overriding effect of Regularization Act, 2009, over other laws and rules for the time being in force in light of Section-4-A of the Act *ibid*. It was further provided that any law or rule coming in conflict with the provisions of the Act shall cease to have effect. Thus, the regularization was to be made under the provisions of Regularization Act, 2009, which came into force on 24-10-2009 when it was published in the official Gazette. Section-3 of the Act *ibid* has been reproduced in para-16 of the Judgement.

2. Therefore, the regularization Notification is to be made in accordance with the provisions of Regularization Act, 2009 from the date of initial continuous officiating appointment, subject to final verdict of Supreme Court as the cases of regularization of Project Employees, is subjudice in Apex Court in Review Petition.

Handwritten notes: DS/SOE/SE, 22/2/17, 22/2/17, and a signature.

Yours Faithfully,  
  
Section Officer (Opinion-I)

Endst: of even No. & date.

Copy forwarded for information to the P.S to Secretary Law, Department.

Handwritten notes: ASH, PU, 22/2/17, and a signature.

Section Officer (Opinion-I)

Secretary Agriculture  
Diary  
No.....1797...  
Dated...22.2.17