

01.07.2019

Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General alongwith M/S Zaki Ullah Senior Auditor on behalf of the respondents No. 7 & 8, Sajid Superintendent on behalf of the respondent No.1 & Akhtar Hussain on behalf respondents No.2 present and seeks time to furnish written reply/comments. Last opportunity. Adjourned. To come up for written reply/comments on 27.08.2019 before S.B.



Member

27.08.2019

Appellant alongwith counsel and Addl. AG alongwith Sajid Superintendent for the respondents present.

It is stated that the appellant has been paid the arrears of pension while his monthly pension has been released and is being credited into his bank account. Copies of Pension Roll DATA Sheet and Cheque No. 1464001 for Rupees 229798/- have been submitted which are placed on record.

In the circumstances the present appeal has become infructuous and is accordingly disposed of. The appellant may pursue his remedy, if any, in accordance with law irrespective of disposal of instant appeal.



Chairman

ANNOUNCED

27.08.2019

10.04.2019

Counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Rehmat Khan Superintendent for the respondents present.

Representative of the respondents states that the preparation of requisite reply is under process which shall complete shortly. He, therefore, requests for adjournment.

Adjourned to <sup>16.05</sup>18.06.2019 before S.B. The learned DDA shall expedite the filing of reply by other respondents on the next date.

  
Chairman

16.05.2019

Clerk to counsel for the appellant present. Written reply not submitted. Khalid Khan Superintendent representative of respondents No.1 to 6 present and seeks time to furnish written reply/comments. No one present on behalf of respondents No.7 & 8. Notice be issued to respondents No.7 & 8 with direction to furnish written reply/comments. Last opportunity is granted. Adjourn. To come up for written reply/comments on 01.07.2019 before S.B.

  
Member

17.01.2019

Counsel for the appellant present.

Contends, inter-alia, that the appellant was inducted in service on 02.08.2000 as a Valveman against fixed pay. Subsequently in view of order dated 30.08.2008, his services were regularized from 01.07.2008, however, the appellant and similarly placed other civil servants were not allowed pension/gratuity and G.P.Fund in the said ~~rules~~<sup>order</sup>. Some of the aggrieved persons submitted Writ Petition No. 1118 before the Honourable Peshawar High Court in the year 2014 wherein they were extended the relief in terms that they were entitled to pension benefits.

On the other hand, the retirement order of appellant issued on 13.08.2018 allowed his retirement w.e.f. 31.07.2018 but without pension benefits. It is contended that discrimination was meted out to the appellant while he was entitled for pension benefits.

For what has been argued instant appeal merits admission. Admit. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 28.02.2019 before S.B.

Appellant Deposited  
Security & Process Fee →

Chairman


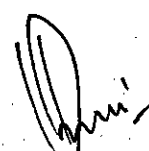
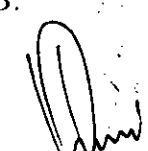
28.02.2019 Clerk to counsel for the appellant present. Khalid Khan JC representative of the respondent department present. Written reply not submitted. Representative of the respondent department seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 10.04.2019 before S.B.

Member

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1396/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/11/2018	<p>The appeal of Mr. Sher Ghani presented today by Mr. Zaffar Ali Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 14/11/18</p>
2-	17-11-2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>4-12-18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	04.12.2018	<p>Learned counsel for the appellant requests for adjournment in order to further prepare the appeal and also place on record certain documents on which the appellant relied upon. Adjourned to 17.01.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,

PESHAWAR

S.A.No. 1396 /2018

Sher Ghani..... Appellant

**Versus**

Govt of K.P through Secretary Finance and others ..... Respondents

**I N D E X**

S.No.	Description of documents.	Annexure	Pages.
1	Memo of appeal.		1-3
2	Affidavit.		4
3	Addresses of the parties.		5
4	Copy of the appointment order	A	6
5	Copy of service book	B	7 - 19
5	Copy of retirement order	C	20
6	Copy of departmental appeal and postal receipts	D	21
7.	Wakalatnama.		22

Appellant

Through

**ZAFAR ALI KHAN**

Advocates High Court Peshawar

Off: 214 Syed Ahmad Ali Building

Near Taj Autos, Sunehri Masjid  
Road, Peshawar Cantt.

Office No.091-5279292

Cell: 0306-5965853

0333-9349442

Dated:

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL.

PESHAWAR

Khyber Pakhtunkhwa  
Service Tribunal

S.A.No. 1346 /2018

Diary No. 1635

Dated 14-11-2018

Sher Ghani s/o Aimal Baz Khan  
R/o Mohallah Mehrab Hayat Khan, village Bughdana,  
District Mardan..... *Appellant*

VERSUS

- 1) Government of Khyber Pakhtunkhwa, through Secretary Finance Civil Secretariat, Peshawar.
- 2) Government of Khyber Pakhtunkhwa, through Secretary Public Health Civil Secretariat, Peshawar.
- 3) Chief Engineer Public Health Department, Peshawar Fort Road, Peshawar Cantt.
- 4) Superintendent Engineer Public Health Department, District Nowshera.
- 5) Executive Engineer Public Health, Nowshera.
- 6) Sub-Divisional Engineer Public Health, Nowshera.
- 7) District Account Officer, Nowshera
- 8) Accountant General, Fort Road, Peshawar Cantt, Peshawar.

.....*Respondents*

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APPEAL UNDER SECTION 4 OF THE  
SERVICE TRIBUNAL ACT, 1974 AGAINST  
THE RESPONDENT WHEREBY THE  
DEPARTMENTAL REPRESENTATION OF  
THE APPELLANT HAS NOT BEEN  
DECIDED AND THE STIPULATED PERIOD  
HAS BEEN PASSED.

Filed to-day

Registrar

14/11/18

Prayer:

On acceptance of this appeal, the appellant may kindly be declared entitled for the pension, gratuity and other benefits and direct the respondents to issue pension, gratuity and other benefits immediately.

**Respectfully Sheweth;**

Appellant humbly submits as under:

- 1) That appellant was appointed as Class-IV Valve man on dated 02.08.2000 in Public Health Department. (Copy of the order is Annexed as Annexure "A").
- 2) That later on the services of the appellant was regularized, as BPS-01 on 30.08.2008. (Copy of service book is Annexure "B").
- 3) That the appellant has been retired from service on 31.07.2018. (Copy of the order is Annexure "C").
- 4) That appellant moved departmental appeal to the respondent No.2 for the issuance of pension, gratuity and other benefits on dated 10.08.2018 but still has not been decided by the respondents and the stipulated period has been passed. (Copy of departmental appeal is Annexure "D").
- 5) That aggrieved with, appellant has come before this Hon'ble Tribunal in this appeal on the following grounds amongst the others for a direction to the respondents to issue pension along with other benefits to the appellant.

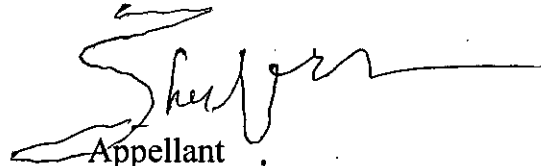
**GROUND:**


- a. That the respondent is not issuing pension, gratuity and other benefits to the appellant is against the facts and untenable in law.
- b. That the appellant has served in the ~~P.H.E~~ department for a period of almost 17/18 years, therefore, according to law and rules of services the appellant is entitled for the pension, gratuity and other benefits.
- c. That the respondents failed to appreciate the real point involved in the case in its perspective. Hence has arrived at an incorrect conclusion.

- d. That by not awarding/ issuing the pension to the appellant, respondents are violating the terms and conditions of service as well as the service laws and rules.
- e. That by not issuing the pension benefits to the appellant, respondents are violating the fundamental rights of the appellant because there is no source of income of appellant except this pension etc.
- f. That the respondents by not issuing the pension to the appellant are exercising the powers not vested to them under the law.
- g. That the non-disposal of departmental appeal by the respondents is perversant and against the settled principle of law and justice.

It is, therefore, requested that on acceptance of this appeal, the appellant may kindly be declared entitled for the pension, gratuity and other benefits and direct the respondents to issue pension, gratuity and other benefits immediately.

Any other relief which this Hon'ble Tribunal deems appropriate in the circumstances of the case and not specifically asked for may kindly also be granted.

  
Appellant

Through 

**ZAFAR ALI KHAN**  
Advocate High Court Peshawar

**CERTIFICATE:**

Certified as per information furnished by my client that no such like appeal has earlier been filed before this Hon'ble Tribunal.

  
Advocate



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,

PESHAWAR

S.A.No. \_\_\_\_\_/2018

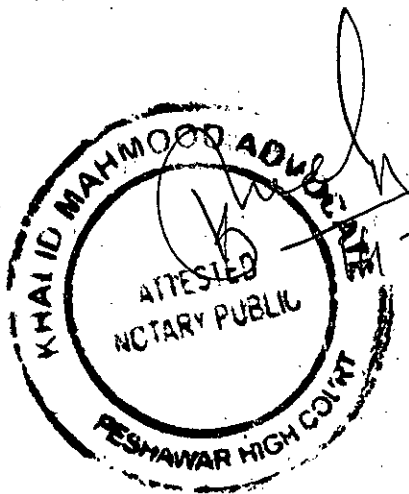
Sher Ghani..... Appellant

**Versus**

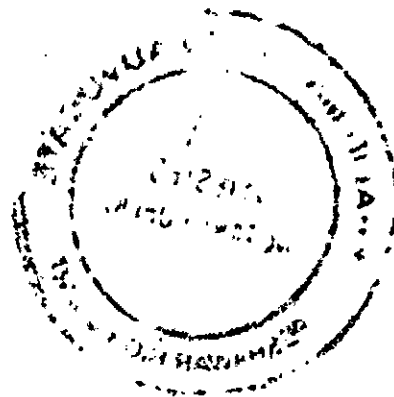
Govt of K.P through Secretary Finance and others .....Respondents

AFFIDAVIT

I, Sher Ghani s/o Aimal Baz Khan R/o Mohallah Mehrab Hayat Khan, village Bughdana, District Mardan do hereby affirm and declare on oath that the contents of the accompanying **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this hon'ble court.



*Sher Ghani*  
Deponent



5

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR

S.A.No. \_\_\_\_\_/2018

Sher Ghani ..... Appellant

**Versus**

Govt of K.P through Secretary Finance and others ..... Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Sher Ghani s/o Aimal Baz Khan  
R/o Mohallah Mehrab Hayat Khan, village Bughdana,  
District Mardan

RESPONDENTS:

- 1) Government of Khyber Pakhtunkhwa, through Secretary Finance Civil Secretariat, Peshawar.
- 2) Government of Khyber Pakhtunkhwa, through Secretary Public Health Civil Secretariat, Peshawar.
- 3) Chief Engineer Public Health Department, Peshawar Fort Road, Peshawar Cantt.
- 4) Superintendent Engineer Public Health Department, District Nowshera.
- 5) Executive Engineer Public Health, Nowshera.
- 6) Sub-Divisional Engineer Public Health, Nowshera.
- 7) District Account Officer, Nowshera
- 8) Accountant General, Fort Road, Peshawar Cantt, Peshawar.

Appellant

Through



**ZAFAR ALI KHAN**

Advocate High Court Peshawar

6  
Annex A

OFFICE OF EXECUTIVE ENGINEER, PHE: T/WELL DIVN: PESHAWAR.  
OFFICE ORDER NO. 522/B /DATED, PESHAWAR THE 2/8/2000  
To

Mr. Sher Ghani S/O Amal Baz Khan  
Moh: Mehrab Hayat Khan Village Baghdada  
Distt: Mardan.

SUBJECT:-

ESTABLISHMENT OF OPERATIONAL STAFF.

As selected by Selection Committee you are hereby appointed as V/Man on Water Supply Scheme, Khairabad District Nowshera on Rs. 1800/- P.N fixed with effect from the actual date of arrival in PHE: T/Well Division Peshawar on the following terms and conditions:-

1. The post is temporary but likely to be continued on contract basis.
2. Your service can be terminated at any time without assigning any reasons.
3. Should you desire to resign from service you will have to give one month notice or deposit one month pay in lieu of notice period.
4. You will governed by Public Health Engg. Department service rules and services conditions.
5. You will liable to serve any where in PHE: T/Well Division Peshawar.
6. You will have to furnish a declaration in writing that you have not previously been dismissed from Govt: service or any autonomous body or agency.
7. NO T.A./D.A is allowed for joining the place of duty.
8. You shall have to produce medical certificate of fitness from the Medical Superintendent of Distt: at time of joining the duty.
9. the post is purely temporary contract basis and will be renewable on yearly basis.
10. If you accept the appointment on the terms and conditions specified above you should report for the duty to the Sub Division Officer PHE: S/Divn: Nowshera within (14) days of the issue of the order failing which the order shall stand cancelled automatically.

EXECUTIVE ENGINEER,  
PHE: TUBE WELL DIVISION  
PESHAWAR.

ENDST. NO. E-15/Nc/16 / DATED PESHAWAR THE 2/8/2000.

Copy forwarded to:-

1. Accountant General, NWFP, Peshawar for information.
2. SDO, PHE: S/Divn: Nowshera.
3. Divisional Accounts Officer (Local) for necessary action.

ATTACHED

EXECUTIVE ENGINEER,  
PHE: TUBE WELL DIVISION  
PESHAWAR.

6/A

**OFFICE OF THE EXECUTIVE ENGINEER, PHE T WELL DIVN.  
PESHAWAR  
OFFICE ORDER NO. 528/03 DATED, PESHAWAR THE 02.08.2000**

To

Mr. Sher Ghani S/o Aamal Baz Khan  
Moh: Mehrab Hayat Khan village Baghdada  
District Mardan.

**SUBJECT: ESTABLISHMENT OF OPERATIONAL STAFF.**

As selected by selection committee you are hereby appointed as V/ Man on Water Supply Scheme Khairabad District Nowshera on Rs. 1800/- P.M fixed with effect from the actual dates of arrival in PHE T Well Division Peshawar on the following terms and conditions

1. The post is temporary but likely to be continued on contract basis.
2. Your service can be terminated at any time without assigning any reasons.
3. Should you desire to resign from service you will have to give one month notice or deposit one month pay in lieu of notice period.
4. You will governed by public Health Engg. Department service rules and services conditions.
5. You will liable to service any where in PHE T/Well Division Peshawar.
6. You will have to furnish a declaration in writing that you have not previously been dismissed from Govt: Service or any autonomous body or agency.
7. No TA/DA is allowed for joining the place of duty.
8. You shall have to produce medical certificate of fitness from the Medical Superintendent of Distt: At time of joining the duty.
9. The post is purely temporary contract basis and will be renewable on yearly basis.
10. If you accept the appointment. On the terms and conditions specified above you should report for the duty to the Sub Division Officer PHE: S/Divn: Nowshera within 14 days of the issue of the order failing which the order shall stand cancelled automatically.

Executive Engineer  
PHE Tube Well Division  
Peshawar

Endst No. E-15/No/16 Dated Peshawar the 02.08.2000.

Copy forwarded to:-

1. Accountant General NWFP Peshawar for information.
2. SDO, PHE, S/ Divn: Nowshera.
3. Divisional Accounts Officer (Local) for necessary action.

ATTACHED

Executive Engineer  
PHE Tube Well Division  
Peshawar

Note—The entries in this page should be renewed or re-attested at least every five years and the signature to lines 9 and 10 should be dated

7

1. Name Mr. Sher Ghani

Annex B

2. Race Muslim

3. Residence village Bagdada Distt: Mardaw

4. Father's name and residence Amal Buz Khan

5. Date of birth by Christian era as nearly as can be ascertained 1959 (1-7-1959)

6. Exact height by measurement 5-6

7. Personal marks for identification Black mole on chest

8. Left hand thumb and Finger impression of (non-gazetted) officer

Little Finger. Ring Finger

Middle Finger. Fore Finger

Thumb.

9. Signature of Government servant

*[Handwritten Signature]*

10. Signature and designation of the Head of the Office, or other Attesting Officer.

*[Handwritten Signature]*  
Ra

*[Handwritten Signature]*

Public Health

*[Handwritten Signature]*  
Executive Engineer  
Public Health Engg. Division  
Norshera

Date

1 Name of Post	2 Whether substantive or officiating and whether permanent or temporary	3 If Officiating, state (i) Substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	4 Pay in substantive Post	5 Additional Pay for officiating	6 Other emolument falling under the term "Pay"	7 Date of Appointment	8 Signature of Government Signature and designation of the head of the office or other officiating officer in attestation of columns 1 to 8
Fix V/Man. 500			Fixed Pay Rs 2000/ P.M	Fixed		3 <sup>08</sup> / <sub>200</sub>	Smy
							Smy
			Rs=2500/ P.M			9 <sup>08</sup> / <sub>02</sub>	Smy

*[Handwritten signature]*





1 Name of Post	2 Whether substantive or officiating and whether permanent or temporary	3 Officiating, etc. (i) Substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	4 Pay in substantive Post	5 Additional Pay for officiating	6 Other emolument falling under the term "Pay"	7 Date of Appointment	8 Signature and designation of the head of the office or other Government officer in attestation of (columns 1 to 8)
Valve Man (Fixed)			RS-2800/-	PM		17/2-3	SM
— 11 —			RS-3000/-	PM			
— 11 —			RS-3500/-	PM		17/2-5	SM

RECEIVED



1 Name of Post	2 Whether substantive or officiating and whether permanent or temporary	3 Officiating, (i) Substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	4 Pay in substantive Post	5 Additional Pay for officiating	6 Other emolument falling under the term "Pay"	7 Date of Appointment	8 Signature and designation of the head of the office or other officiating officer in attestation of columns 1 to 8 Signature of Government Secretary
V/Man (Fixed)					4000/- 11/68		Shy
<p>Revised Entries due to Regularization of Service in BPS-1 vide Govt of NWFP Finance Dept No: Hoi/FD/1-22/20-8-09 Dt 30-7-2008 (w.e.f 1-7-2008)</p>							
BPS-1 VM					1245/	08	
1245-35-2296					1245/	03-2006	
- 11 -					1245/	1-12-2006	
- 11 -					1280/	1-12-2001	
1870-55-3520					1925/	1-12-01	
- 11 -					1980/	1-12-02	
- 11 -					2035/	1-12-03	
- 11 -					2090/	1-12-04	
2150-65-4100					2410/	1-7-05	
- 11 -					2475/	1-12-05	
- 11 -					2540/	1-12-06	
2475-75-4725					2925/	1-7-07	
- 11 -					3000/	1-12-07	
2970-90-5670					3600/	01-7-2008	
							Shy Draw 566150/

AT

**PENSION ROLL DATA SHEET  
NOT A PAYMENT ADVICE**

Date of issue : 02.07.2019  
 PPO Type : FRESH  
 PPO Number : 00287207-01  
 Pensioner ID : 00287207  
 Pension Register No: 8025/NSR  
 Pensioner's Name : SHER GHANI  
 Father / Husband name : AMAL BAZ KHAN  
 Designation: VALVEMAN  
 NIC No.: 1610139197627  
 Grade / Scale : 04  
 Department Min: SEN PHE DISTRICT NOWSHERA  
 Pensioner's Type: SELF  
 Pension Type: SUPERANNUATION  
 Date of Birth : 01.07.1959  
 Date of appointment: 03.08.2000  
 Date of retirement: 31.07.2018  
 Date of Death:  
 Date of commence : 01.08.2018  
 Date of Restoration :  
 Accounts office ID : NR  
 Accounts office Name : Nowshera  
 Federal / Province : Khyber Pakhtunkhwa  
 Length of Qualifying Service : 17 years, 11 months, 28 days  
 No. and Date of sanction of pension / Letter No. :  
 and the date of the other Audit and Accounts officer authorising  
 the Pension/Gratuity/Commutation  
 Permanent Address: STREET SUHRAB HAYAT KHAN,  
 MEENZ KANDAY, MARDAN

Note :  
 Age : 60 years  
 Last Drawn pay/Emoluments(Rs.): 16500.00  
 Gross Pension(Rs.) : 6930.00  
 1/4th Surrendered Portion (Rs.) :  
 Commuted Portion (Rs.) : 2425.50  
 Net Pension (Rs.) : 10000.00  
 Net Family Pension (Rs.) : 0.00  
 Amount of Commutation(Rs.) : 360096.00  
 With Held Amount (Rs.) : 0.00  
 Life Time Arrears (Rs.) : 0.00  
 Arrears Of Pension (Rs.) : 0.00  
 Special Additional Pension (Rs.) : 0.00  
 Commutation Percentage : 35.00  
 Commutation Table value : 12.37  
 Recovery on A/C of :  
 Debitable to Govt : Khyber Pakhtunkhwa

**PROPOSED PENSION SLIP**

Payment details


Wage Type	Wage Type Text	Amount
0100	Monthly Pension - Self	10000.00
1599	Medical Allow - Pensioner	1126.00
1600	Med All 2015 Pensioner	281.50
5901	Arrears of Pension	125488.00 ✓

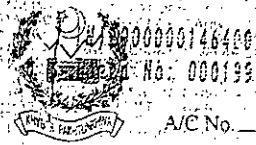
He/She is also entitled to the following increases

Sr. No.	Period	Increase % or amount	Increase Amount	W.E.F.
1.	JUL.2018	Rs. 0.00	0.00	01.07.2018
2.	0.	Rs. 0.00	0.00	
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				

Bank Details

Bank Account Number : 3045122775  
 Bank Branch : MARDAN MAIN BRCH  
 MARDAN MAIN BRCH  
 Payment Mode : NATIONAL BANK OF PAKISTAN

DISCOUNTS OFFICER  
 (Pension) G.  




GOVERNMENT OF KHYBER PAKHTUNKHWA

Cheque No. 1464001

A/C No. \_\_\_\_\_ A/C Type NON-FOOD A/C (THOUS) Pre-Audit Cheque Dated 17.07.2019

Department \_\_\_\_\_

Office of PENSION - ACCUMULATION

On the State Bank of Pakistan National Bank of Pakistan

Pay to SPEER CHAR, SUD AHAL BAZ KHAN

Rs. \*\*\*223,3981-\*\*\* Rupees TWO HUNDRED TWENTY-NINE THOUSAND SEVEN HUNDRED NINETY-EIGHT ONLY

and charge the same against the account of the Government of Khyber Pakhtunkhwa  
and this cheque is current for three months only after the month of issue.

DO NOT WRITE BELOW THIS LINE

*Received by Sher Mami*

*on 17/07/2019*

*[Signature]*

*Payee's A/c Only*

*[Signature]*  
District Accounts Officer  
Newspaper  
*17/07*



1 Name of Post	2 Whether substantive or officiating and whether permanent or temporary	3 If Officiating, etc (i) Substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	4 Pay in substantive Post	5 Additional Pay for officiating	6 Other emolument falling under the term "Pay"	7 Date of Appointment	8 Signature of the Government Secretary or other attesting officer in attestation of columns 1 to 6 Signature and designation of the attesting officer in attestation of columns 1 to 6
E970-905670					Rs 3690	12/08	
BPS-1							Shy
—							
—							
—							
—							
—							
—							
—							
—							
BPS-01 480-150-9300							
—							
—							

No Area put to 12-08  
2008

2970  
3600  
ADD BASIC  
385670 BPS  
2308

RECEIVED  
2308

RECEIVED  
2308

9 Signature of the head of the office or other attesting officer in attestation of columns 1 to 8	10 Date of termination of appointment	11 Reason of termination (such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting Officer	13 Leave Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government Period Government to which debitable		14 Signature of the head of the office or other attesting officer	15 Reference to recorded punish or censure, or of praise of Government Service
27/5/11		Annual increment granted	And H. R. A.	A.D.O. & Senior Works & Services Dept. Now here.			
28/5/11		Annual increment granted	And H. R. A.	Assistant Engineer Water Supply & Sanitation NOVS IERA			
29/5/11		Annual increment granted	And H. R. A.				
30/5/11		Pay fixed	Increased	will be	CRs = 6300/- PM		
31/5/11		Annual increment granted	And H. R. A.	Sub Div. Control Public Health Engg. Sub Division-II Now here			

ATTACHED

SUB DIVISIONAL OFFICER Public Health Engg. Sub Division-II Now here



MEDICAL CERTIFICATE

Mr. Sher Ghani.

Muslim.

Aamal Baz Khan.

R/O Moh: Nehrab Hayat Khan Village Bahada

Distt: Bahawalpur, Mardans

1959.

Height measurement 5' 6"

Personal mark of identification Black mole on chest

Signature of the Official [Signature]

Signature of head of office [Signature]

Seal of Office of Public Health

I do hereby certify that I have examined Mr. Sher Ghani a candidate for employment in the Office of the Executive Engineer and can not discover that he had any disease communicable or other constitutional affection or bodily infirmity except Nil

I do not consider this as disqualification for employment in the Office of the Executive Engineer his age according to his own statement is 37 years and by appearance about 35 years

Medical Superintendent, Bahawalpur

ATTESTED

2/1/59

Note: The entries on this page should be renewed or re-attested at least every five years and the Signature to lines 9 and 10 should be dated.

1. Name: Sher Ghan

2. Race: \_\_\_\_\_

3. Residence: Village Baghdad District  
Mardan



4. Father's name and residence: Amel Beg Khan - as above

5. Date of birth by Christian era as nearly as can be ascertained: 1959

6. Exact height by measurement: 5'-6"

7. Personal marks for identification: \_\_\_\_\_

8. Left hand thumb and Finger impression of (Non-Gazetted) officer:

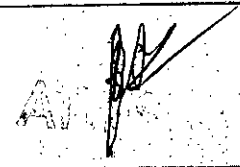
Little Finger:  Ring Finger: 

Middle Finger:  Fore Finger: 

Thumb: 

9. Signature of Government Servant: \_\_\_\_\_

10. Signature and designation of the Head of the office, or other Attesting Officer. Shifor



Executive Engineer  
Public Health Division

1	2	3	4	5	6	7	8
Name of Post	Substantive Whether substan- tive or officiating and whether permanent or temporary.	If officiating, state (i) substantive appointment, or (ii) Whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating	Other emolument falling under the term "pay"	Date of Appointment	Signature of Government servant
ULM		Revised entries on					
		A/c of scale upgraded from					
		BPS-01 + BPS-02 w.e.f.					
		01-07-2007					
BPS-01 1245-35-2296				=1245/PM		03-8-2000	
— II —				=1245/PM		01-12-2000	
— II —				=1280/PM		01-12-2001	
1870-55-3520				=1925/PM		01-12-2001	
— II —				1980/		1-12-2002	
— II —				2035/		1-12-03	
— II —				2090/		1-12-2004	
2150-65-4100				2410/		01-7-05	
— II —				2475/		1-12-05	
— II —				2540/		1-12-06	
2475-75-4725				2925/		01-7-07	
BPS-02 2530-85-5080				2955/		01-7-07	
— II —				3040/		1-9-07	
— II —				3125/		01-12-07	
BPS-02 3035-100-6035				3735/		01-7-08	
— II —				3835/		1-12-08	
— II —				3935/		1-12-09	
						1-12-2010	

ATTACHED



1	2	3	4	5	6	7	8
Name of Post	Whether substantive or officiating and whether permanent or temporary.	If officiating, state (i) substantive appointment, or (ii) Whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating.	Other emolument falling under the term "pay"	Date of Appointment	Signature of Government servant
BPS-02 V/M 4900-170-10500				= 6600 PM		01/07/2011 (F.N)	
— ll	TR	1407 9/10/15		= 6770 PM		01/10/2011 (F.N)	Jey
<p>Ann B: 11902/ on A/S Asses                  pay allows as per fixation                  W.S. 1<sup>12</sup> to 31<sup>9</sup>                  2013 2015</p>							
<p>Office of the Accountant General                  Mysore                  Pay Fixed in the Budget of Home Dept. 2011-12</p>							
37357 2/8				2035 1006030 3735	1800 1000000 6000	17/9	
6600 2							
— ll				= 6940 PM		1 <sup>12</sup> 2/12	
<p>ATTN: [Signature]</p>							



1	2	3	4	5	6	7	8
Name of Post	Whether substantive or officiating and whether permanent or temporary.	If officiating, state (i) substantive appointment, or (ii) Whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating	Other emolument falling under the term "pay"	Date of Appointment	Signature of Government servant
BPS-02 4900-170-10000			/	= 7110/PM		12/2013	Shy
				SUB PH	OFFICER SION	12/2013	Shy
BPS-02 4900-170-10000				= 7280/		12/2014	Shy
BPS-02 v/man 4900-170-10000				Rs-7450/ PM		12/01/14	Shy
						ATTESTED	



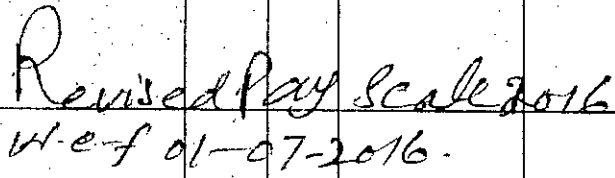
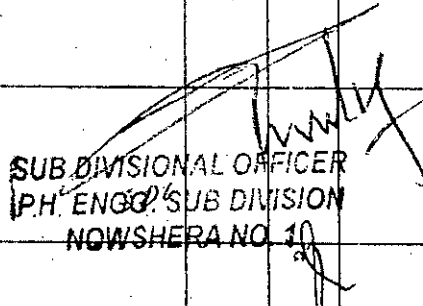
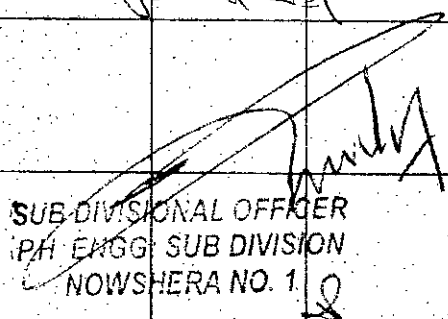
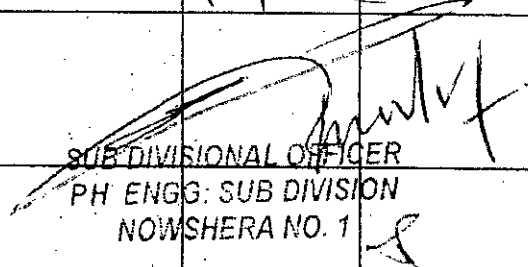
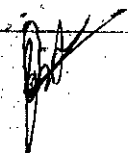
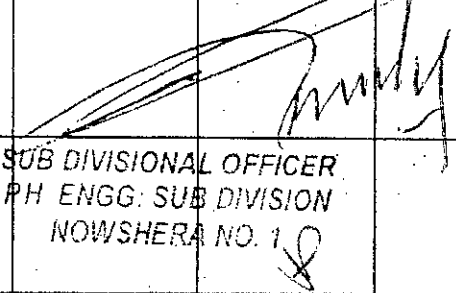


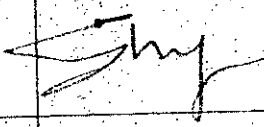
1	2	3	4	5	6	7	8
Name of Post	Whether substantive or officiating and whether permanent or temporary.	If officiating, state (i) substantive appointment, or (ii) Whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating	Other emolument falling under the term "pay"	Date of Appointment	Signature of Government servant
BPS-02 valve man			Revised pay scale 2015				
6335-220-12935				RS=9635/- PM		7 01-15	Shy
= etc =				RS=9855/- PM		01-12 15	Shy
BPS-04 valve man		upgraded Two pay scale BPS-02 to BPS-04-2-12-15					
6730-300-15730				RS=10330/- PM		12 02-15	Shy

ATTACHED



1	2	3	4	5	6	7	8
Name of Post	Whether substantive or officiating and whether permanent or temporary.	If officiating, state (i) substantive appointment, or (ii) Whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating	Other emolument falling under the term "pay"	Date of Appointment.	Signature of Government servant
BPS-04 8280-370-19380		Rs	12720/- PM			7 1/2016	Sly
BPS-04 8280-370-19380			Rs-13090/- PM			11/2 2016	Sly
9635/2015							
12720/4							Sly
15620/4							
BPS-04 9900-440-23100		2017	Rs=15620/- PM			1/07 2017	
<p>Office of the Accountant General Khyber Pakhtunkhwa Peshawar Pay Fixed in the Revised Basic Pay Scale</p>							
<p>R.B.P.S 6335-220-12735 Pay Fixed @ Rs 9635/ w.e.f 01-07-2015</p>							
<p>8280-370-19380 Pay Fixed @ Rs 12720/ w.e.f 01-07-2016</p>							
<p>R.B.P.S 9900-440-23100 Pay Fixed @ Rs 15620/ w.e.f 01-07-2017</p>							
<p>Date of Next Increment is on 01-12-2017</p>							
<p>Account Officer</p>							

9 Signature and Designation of head of the office or other attesting officer (in attestation of columns 1 to 8)	10 Date of termination or appointment	11 Reason of termination (such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting officer	13 Leave		14 Signature of the head of the office or other attesting officer.	15 Reference to any recorded punishment or censure, or reward or praise of the Government Servant
				Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitabale to another Government		
					Period		
	30 <sup>6</sup> / <sub>2016</sub>		 Revised Pay Scale 2016 w.e.f 01-07-2016.				
			 SUB-DIVISIONAL OFFICER PH. ENGG. SUB DIVISION NOWSHERA NO. 1				
		Annual increment granted	 SUB-DIVISIONAL OFFICER PH. ENGG. SUB DIVISION NOWSHERA NO. 1		service verified w.e.f 01-12-2015 to 30-11-2016 as on the ACR Roll & other Record of this office.		
					 SUB-DIVISIONAL OFFICER PH. ENGG. SUB DIVISION NOWSHERA NO. 1		
		Pay Fixed Rs. 5620/- per month Right of Finance Deptt. Nabil Feature No. FD/SOCSR-101-1/2017 Dated Peshawar the 17-07-2017	 SUB-DIVISIONAL OFFICER PH. ENGG. SUB DIVISION NOWSHERA NO. 1				
					 SUB-DIVISIONAL OFFICER PH. ENGG. SUB DIVISION NOWSHERA NO. 1		

1	2	3	4	5	6	7	8
Name of Post	Whether substantive or officiating and whether permanent or temporary.	If officiating, state (i) substantive appointment, or (ii) Whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating	Other emolument falling under the term "pay"	Date of Appointment	Signature of Government servant
BPS-04 Valuer man 9900-440-23100				Rs-1606/pm		12/2017	
				Rs 16500/2			
			(Pay for Pension Purpose)				
			ATTENDED				





OFFICE OF THE  
EXECUTIVE ENGINEER PUBLIC HEALTH  
ENGINEERING DIVISION NOWSHERA.

20

Office Order No. 02/E-6

Dated 13/08/2018.

Anno C<sup>20</sup>

OFFICE ORDER

As recommended by Sub Divisional officer No.1 vide his letter No. E-5/01 Dated 10/08/2018. Mr. Sher Ghani Valveman BPS-04, Water Supply Scheme Khair Abad has been retired from govt Service w.e.f 31-07-2018.

Sanction is hereby also accorded for grant of 365 days encashment in lieu of L.P.R. He has sufficient leave at his credit. The Official has retired from govt Service w.e.f 31-07-2018 (After Noon) on (Willing) basis. His date of Birth is 01-07-1959.

EXECUTIVE ENGINEER

No.& date even.

Copy forwarded to:-

1. The Superintending Engineer PHE Circle Peshawar.
2. The District Accounts Officer Nowhere.
3. The Deputy Commissioner Nowhere
4. The Sub Divisional Officer PHE Sub Division No-I Nowshera.
5. The official Concerned.

ATTENDED

EXECUTIVE ENGINEER



دیباچہ نمٹل اپیل

Annex D

میں اپیلانٹ محکمہ پبلک پینشنر ٹرسٹ میں بطور Valman

موجودہ 08 02 کو تعینات ہوا تھا اور محکمہ مزدورہ سے

معارف 07 31 کو سب سے پہلے پر ریٹائرڈ ہوا ہوں۔ میں اپیلانٹ

نے محکمہ مزدورہ میں تقریباً 17/18 سال ملازمت کی ہے اور

اپنی ڈرافٹ انیس طریقے سے کی ہے۔

لہذا، اپیلانٹ بمطابق 17/18 سال ملازمت پیش و غیرہ کا

حقدار ہوں۔ لہذا میں اپیلانٹ کو پینشن وغیرہ جاری کرنے

کا حکم صادر فرمایا جائے۔

کیونکہ میں اپیلانٹ اب اس عمر میں وٹ کا آج کا نہیں ہوں

چونکہ پینشن وغیرہ میں اپیلانٹ کا تعلق ہے۔

اس لئے جاری کرتا ہوں کہ میں اپیلانٹ کو پینشن وغیرہ

جاری کرنے کا حکم صادر فرمایا جائے۔

CNIC: 16101-3919762-7

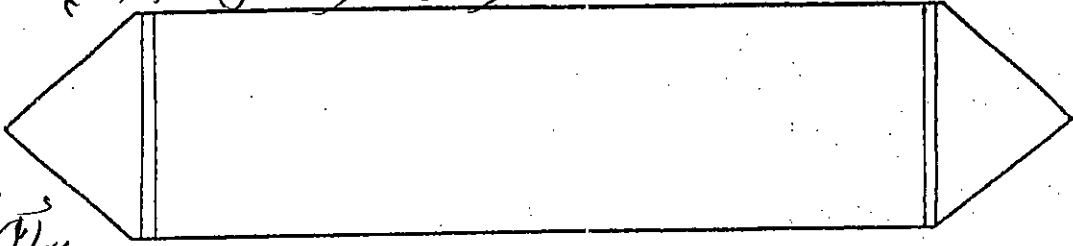
سرکاری دار عمل باز خان

محکمہ ہوائی سروسز عیادت خان، گندے لعدارہ تحصیل منگل پورہ

AT/AS/18

Shaffer 10-8-18

بعدالت جواب سروس ٹریبونل KP پٹا



2 منجانب سٹیشن / سٹیشن  
بنام حکومت

مورخہ  
مقدمہ  
دعویٰ  
جرم  
S. A / 2018

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
آن مقام پٹنہ کیلئے طفر علی خان اور وکیل

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلاف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور صولی چیک دروپہار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی  
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ  
پر داخستہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جاتہ التوائے مقدمہ کے سبب سے ہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سندر ہے۔

Accepted  
ATTENDED

المرقوم \_\_\_\_\_ ماہ \_\_\_\_\_ 20

بمقام \_\_\_\_\_

کے لئے منظور ہے۔

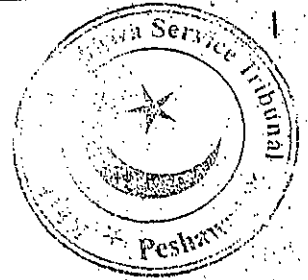
Signature

1

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

SERVICE APPEAL NO. 1055/2014

Date of institution ... 19.08.2014  
Date of judgment ... 12.10.2017



Jamroz Khan Son of Momin Khan  
R/o Lakrai, Tehsil and District Nowshera

... (Appellant)

VERSUS

1. Senior District Accounts Officer Nowshera.
2. Executive District Education Officer Nowshera.
3. Sub-Divisional Education Officer (Female) District Nowshera.
4. District Education Officer (Female) Primary District Nowshera.
5. Director of Education (Female) Dabgari Garden, Peshawar.
6. Govt. of KPK through Secretary Education, Civil Secretariat, Peshawar.
7. Govt. of KPK through Secretary Finance, Civil Secretariat, Peshawar.
8. Accountant General, Accountant General Officer, Govt. of KPK, Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST  
THE RESPONDENTS WHEREBY THE DEPARTMENTAL  
REPRESENTATION OF THE APPELLANT HAS NOT BEEN  
DECIDED AND THE STIPULATED PERIOD HAS BEEN  
PASSED.

**ATTESTED**

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Mr. Iftikhar Ali, Advocate.  
Mr. Kabirullah Khattak, Additional Advocate General

For appellant.  
For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI  
MR. MUHAMMAD HAMID MUGHAL

MEMBER (JUDICIAL)  
MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI MEMBER: - Our this single

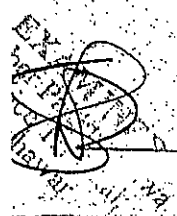
Judgment shall also dispose of service appeal titled Wakeel Khan-Versus-Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar and others bearing No. 1213/2013 and service appeal titled Amir Aman-Versus--Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar and others bearing

no. 1214/2013 being identical nature arising out from the same law, facts and circumstances.

2. This appeal has been filed under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 4.10.2013 whereby the appellant was retired from service on superannuation but without extending the benefits of pension. The appellant also filed departmental appeal on 14.05.2014 but the same was not responded hence, the present service appeal on 19.08.2014.

3. Learned counsel for the appellant contended that the appellant was appointed as Class-IV Chowkidar on pay of Rs. 1200/- per month on (fixed) on 12.10.1995 in Education Department. It was further contended that later on the service of the appellant was regularized on 30.07.2008. It was further contended that the appellant was retired from service on 04.10.2013 but benefits of pension etc was not extended to the appellant on the ground that length of the service of the appellant was less than qualifying service. It was further contended that the appellant filed departmental appeal for issuance of pension, gratuity and other benefits but the same was not responded. It was further contended that according to Rule 2.2 of West Pakistan Civil Services Pension Rules, 1963 the service of the government servant begin to qualify for pension when he takes over charge of the post to which he is first appointed. It was further contended that according to Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963 temporary and officiating service shall count for pension if he has rendered more than five years continuous temporary service for the purpose of pension or gratuity and temporary and officiating service followed by confirmation shall also count for pension or gratuity. It was further contended that the NWFP Civil Servant (Amendment Bill), 2005 was passed by the Provincial Assembly on 5<sup>th</sup> July 2005 and assented by the Governor of the Province on 12<sup>th</sup> July 2005 whereby section 19 was amended and all the employees of the Provincial Government selected for appointment in the prescribed manner to the post on or after 1<sup>st</sup> July 2001 but on contract basis were deemed to be appointed on regular basis. However, they were held disentitled for the pensionary benefits. It was further contended that section- 19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended by the Khyber

ATTESTED



Pakhtunkhwa Civil Servants (Amendment) Act, 2013 and the person selected for appointment on contract basis were declared to be deemed as regular employ and subsequently were held entitled for pensionary benefits. Therefore, it was contended that the service of the appellant will be considered from the date of appointment i.e 12.10.1995 and the same will be counted for pension and gratuity etc. The learned counsel for the appellant also relied unreported judgments of the Worthy Peshawar High Court in Writ Petition No. 1188 of 2014 decided on 09.09.2014 titled Baghi Shah Versus-The State etc, Writ Petition No. 1590 of 2014 decided on 11.09.2014 titled Mst. Wajihat W/o Nisar Muhammad-Versus-Senior District Accounts Officer & others, Writ Petition No. 1659-P/2014 decided on 27.11.2014 titled Yaqoob Khan S/o Abdul Manan-Versus-Government of Khyber Pakhtunkhwa etc and Writ Petition No. 3394-P/2016 decided on 22.06.2017 titled Amir Zeb-Versus-The District Account Officer, District Nowshera etc. It was further contended that in the present service appeal the departmental appeal was filed after some delay but since the service appeal pertains to the matter of pay, pension and other emolument therefore, the limitation does not fore closed the right of the appellant accrued to him in such like matter the limitation does not run and relied in this regard on 2002 PLC (C.S) 1388 Punjab Service Tribunal and prayed that the appeal may be accepted and the department may be directed to consider the length of service of the appellant from the date of his appointment and pay pensionary benefits to the appellant.

4. On the other hand, the learned Assistant Advocate General Mr. Kabirullah Khattak opposed the contention of learned counsel for the appellant and contended that the appellant was appointed as Class-IV Chowkidar on pay of Rs. 1200/- per month on adhoc relief on (fixed) vide order dated 12.10.1995 and he was regularized vide order dated 30.07.2008 with effect from 01.07.2008. It was further contended that the appellant was retired on 04.10.2013 and the appellant served as regular employee only for five years hence, he is not entitled for pensionary benefits. In this regard he also relied on unreported judgment of the Worthy Peshawar High Court passed in Writ Petition No. 23-P/2015 decided on 24.06.2015 titled Sher Badshah S/o Amir Badshah-

ATTESTED

EXAMINED  
by  
vice  
Peshawar

Versus- Senior District Accounts Officer, Nowshera etc and PLD 1990 Supreme Court page 719 and prayed for dismissal of appeal.

5. We have heard the arguments and gone through the record available on file:

6. Perusal of the record reveals that the appellant was appointed as Class-IV Chowkidar on pay of Rs. 1200/- per month on fixed pay under relevant rules on 12.10.1995. The record further reveals that the service of the appellant was regularized on 30.07.2008. The record further reveals that the appellant was retired from service on 04.10.2013 but pension and gratuity was not extended to the appellant.

7. Regarding the question of entitlement of the appellant to the pension, we would like to reproduce the relevant rules of the West Pakistan Civil Services Pensions Rules, 1963 below, as these would be advantageous in resolving the controversy:-

**"2.2. Beginning of Service-**


Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.

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

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity, and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

8. The rules ibid reveal that the service of government servant begins to qualify for pension from the very first day of his/her taking over the charge, irrespective of the fact whether his/her appointment and entry in to service was temporary or regular. It is also clear from sub-rule (i) that continuous temporary service of a civil servant shall also be counted for the purpose of pension and gratuity and by virtue of sub rule (ii), temporary and officiating service followed by conformation shall be counted for pension and gratuity.

**ATTESTED**

  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

We deem it appropriate to mention here that question of interpretation and true import to the term pension was raised before the august Supreme Court of Pakistan in case titled "Government of NWFP through Secretary to Government of NWFP Communication & Works Department, Peshawar Vs Muhammad Said Khan and others (PLD 1973 Supreme Court of Pakistan 514) wherein it was held that:

"It must now be taken as well settled that a person who enters government service has also something to look forward after his retirement to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well settled that pension like salary of a civil servant is no longer a bounty but a right acquired after putting a satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."

10. In case titled "Secretary To Govt: of the Punjab, Finance Department Vs M. Ismail Tayer and 269 others" 2015 PLC (CS) 296, the august Supreme Court of Pakistan was pleased to held that the pensionary benefits is not a bounty or ex-gratia payment but a right acquired in consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant.

11. In the present case the appellant was initially appointed on 12.10.1995 followed by his regularization on 30.07.2008. Though the appellant has rendered temporary service for a continuous period of more than 12 years and 9 months service and regular service of more than 5 years and 2 months meaning thereby that as a whole he has more than 17 years service at his credit. By virtue of rule 2.3 as well as Chapter-IV rule 4.4 of the West Pakistan Civil Services Pensions Rules, 1963, he has qualified the prescribed service for pensionary benefits, therefore, the objections raised by the respondents is not tenable and not supported by any rule or regulation. Judgment of hon'ble Peshawar High Court in Mst. Wajihat case (Writ Petition No. 1590-P/2014), Baghi Shah's case (Writ

ATTESTED

Signature and stamp of the official.

122

Petition No. 1188-P/2014, Yaqoob Khan case's (Writ Petition No. 1659-P/2014) and in Amir Zeb case's (Writ Petition No. 3394-P/2016) may be quoted as a reference.

12. In the light of the above discussion we are constrained to accept the appeal and direct the respondent-department to finalize the pension case of the appellant and grant pensionary benefits to him. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
12.10.2017

SD/- M. Amin Khan Kundi  
Member

SD/- M. Hamid Mughal  
Member

Certified to be true copy  
F. 11/11/17  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of presentation of copy 16-10-17  
Number of copies 2400  
Cost of copies 14  
Urgent 14  
Total 14  
Name of Comptroller  
Date of Completion 28-11-17  
Date of Delivery of Copy 28-11-17



BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

In re

S.A.No.1396/2018

Sher Ghani.....Petitioner

**VERSUS**

Govt. of KP through Secretary Finance and others  
..Respondents

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Appellant  
Through

**Zafar Ali Khan**

Advocate, Peshawar

Off: 214 Syed Ahmad Ali  
Building near Taj Autos,  
Sunehri Masjid  
Road, Peshawar Cantt.  
0333-9349442/ 0313-9539269

Dated:

BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

In re

S.A.No.1396/2018

Sher Ghani.....Petitioner

**VERSUS**

Govt. of KP through Secretary Finance and others  
..Respondents

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APPLICATION FOR PLACING ON  
RECORD THE BELOW MENTIONED  
DOCUMENTS ON FILE.

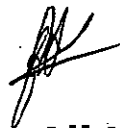
*Respectfully Sheweth;*

- 1) That the above service appeal is pending adjudication before this hon'ble Tribunal.
- 2) That the appellant want to place on file some necessary documents which are necessary for just decision of the case on merit.

It is, therefore, requested that the appellant may kindly be allowed to place on file the attached documents for the just decision of Revision Petition.

Appellant

Through



**Zafar Ali Khan**  
Advocate, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

In re

S.A.No.1396/2018

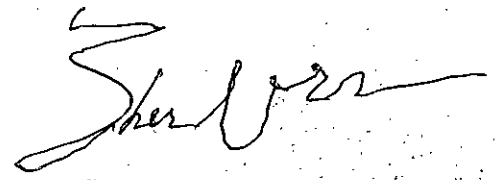
Sher Ghani.....Petitioner

**VERSUS**

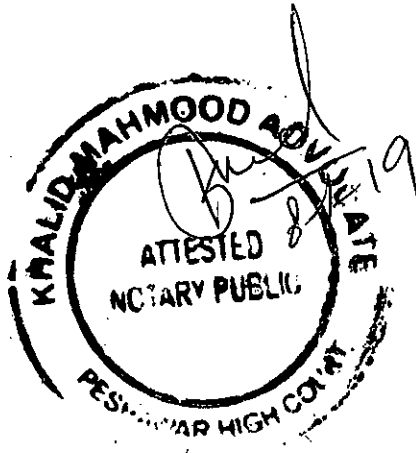
Govt. of KP through Secretary Finance and others  
..Respondents

AFFIDAVIT

I, Sher Ghani S/o Aimal Baz Khan R/o Mohallah Mehrab Hayat Khan Village Bughdaan District Mardan (Appellant), do hereby affirm and declare on oath that the contents of the accompanying Application are true and correct and nothing has been concealed from this hon'ble court.



Deponent



Handwritten scribbles and marks, possibly including the number '110'.



GOVERNMENT OF NWFP  
FINANCE DEPARTMENT

No:BO1/FD/1-22/2008-09/  
Dated Peshawar, the 30/7/2008

3

To

The Accountant General,  
NWFP, Peshawar.

Annex "A"

Subject:- BUDGET SPEECH 2007-08 CONVERSION OF FIXED PAY CLASS-IV INTO REGULAR BPS-1 CP FUND SCHEME.

Dear Sir,

I am directed to refer to your letter No.H.24(85)/Kohistan/Vol-II/851 dated 18/6/2008 on the subject noted above and to clarify that all the Class-IV Fixed Pay Employees have been regularized in BPS-1 giving them the status of Civil Servant, with effect from 1<sup>st</sup> July, 2008 (but not from the date of their appointments) as per provision of Section 19 of the Civil Servant Act, 1973 (read with Civil Servants(Amendment) Act, 2005). Under the Act *ibid*, these employees are entitled for Contributory Provident Fund (C.P. Fund) instead of Pension/Gratuity and G.P. Fund. Since length of service of the employees was at variance, therefore, in order to meet the demand of natural justice, fixation of pay has been allowed to them with effect from the dates of appointment bringing their salaries at par with the respective length of service. However, they shall not be entitled for arrears of pay and allowances as clarified in the instructions. So, it is confirmed that they are entitled for CP Fund instead of Pension/Gratuity and GP Fund, unless otherwise provided in the relevant Rules/Regulations.

Yours faithfully,

(Fida Muhammad)  
Budget Officer-I

Endst.No. & Date even:

Copy is forwarded w/r to Finance Dept's circular letter No.B01/1-22/2007-08/FD dated 29/1/2008, for information & necessary action to:-

- 1) All Administrative Secretaries to Government of NWFP
- 2) Secretary to Governor, NWFP, Peshawar
- 3) Principal Secretary to Chief Minister, NWFP, Peshawar
- 4) All District Coordination Officers in NWFP
- 5) All Heads of Attached Departments in NWFP
- 6) The Registrar, Peshawar High Court, Peshawar
- 7) The Registrar, NWFP Service Tribunal, Peshawar
- 8) The Secretary Provincial Assembly, NWFP, Peshawar
- 9) The Secretary, Board of Revenue, NWFP, Peshawar
- 10) All District Accounts Officers in NWFP
- 11) All Budget/Section Officers in Finance Department, Peshawar

BUDGET OFFICER-I

ATTESTED

*[Handwritten signature]*  
④  
Annex B<sup>01</sup>

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
PESHAWAR

JUDICIAL DEPARTMENT

W.P. No. 1188 of ..... 2004

JUDGMENT

Date of hearing 09-09-2014

Petitioner Baghi Shah by Mr. Zartaj Anwar Khan Adv

Respondent The state etc by Mr. Mujahid Ali AAG

\*\*\*\*\*

NISAR HUSSAIN KHAN, J.- Instant petition has

been filed with the following prayer:-

"On acceptance of this writ petition,  
the office order No.Pension-II/B-3/2012-  
B/W-5/2013-14/168, dated 19.2.2014  
may please be set aside, and an  
appropriate writ may please be issued  
directing the respondents to finalize  
the pension case of petitioner and he

**ATTESTED**

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be paid his monthly pension, or any other remedy deemed proper, in the circumstances of the case may also be allowed."

2. Petitioner has averred in his petition that he was initially appointed as Cooly on fixed pay in Highway Division Peshawar on 31.12.1995 and his service was regularized with effect from 1.7.2008 and ultimately retired on 6.1.2013 from the Government service, on attaining the age of superannuation; that his case for grant of pension was processed but was objected by the Accountant General office with the plea that the petitioner is not entitled for pension due to lack of fulfilment of prescribed length of service as a permanent employee. He maintained that his similarly placed colleagues have been extended the benefit of pension but discriminatory treatment has been meted out to him, hence the instant petition.

**ATTESTED**



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3. Respondents in Para-5 of their comments have stated that pensionary benefits are not admissible to the petitioner under the Rules because he has only four years, 6 month and 4 days regular service on his credit. So by virtue of Finance Department letter No.BO.1/FD/1-22/2008-09, dated 30.7.2008, he is not entitled to the pensionary benefits.

4. Learned counsel for petitioner argued that the respondents have wrongly discriminated the petitioner whereas his similarly placed colleagues have been extended the benefits of pension and by virtue of Rule 2.3 of West Pakistan Civil Service Pensionary Rules 1963, he is entitled for pensionary benefits.

5. Learned AAG vehemently opposed the contentions of learned for petitioner and argued that in view of Section 19(2) of NWFP Civil Servants Act, 1973, he is not entitled to pensionary benefits.

APPROVED



Handwritten marks: a signature and a circled number '7'.

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6. We have scanned the entire material available on file in the light of the arguments of the learned counsel for the parties.

7. Admitted facts of the case are that petitioner was initially appointed as Cooly on fixed pay in Highway Division, Peshawar on 31.12.1995 and his services were regularized with effect from 1.7.2008, vide Notification No.BO.1/1-22/2007-08, dated 29.1.2008. Later he was retired from service, vide office order No.139/6-E, dated 7.2.2013 with effect from 6.1.2013. After retirement, he filed application for pension and gratuity to the concerned office of Assistant Accountant General on 18.11.2013, which was processed. However, it was returned on the objection of the Finance Department that petitioner did not have prescribed length of service qualifying him for pension and gratuity on his credit, so was not entitled for pensionary benefits, vide their letter No. Pension-II/

**ARRESTED**

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B-3 /2012-B /W-5/ 2013-14/ 168, dated 19.2.2014, The petitioner has also raised question of discrimination in Para-7 of the writ petition and the same has also not been specifically denied in their comments and simply stated that since it pertains to the record, hence no comments.

8. To resolve the controversy, Rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, is reproduced herein below:-

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

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

ATTESTED

A-1

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It is manifest from the *ibid* Rule that how temporary and officiating service shall be counted for pension and gratuity. It is elaborated in sub-rule(i) that five years continuous temporary service of a civil servant shall count for the purpose of pension and gratuity and by virtue of sub rule(ii) of *ibid* Rules, temporary and officiating service followed by confirmation shall also count for pension and gratuity.

9. In the case of petitioner, he was initially appointed on 31.12.1995 and was regularized on 29.1.2008 with effect from 1.7.2008 when he had rendered temporary service for a continuous period of 12 years and six months followed by regular service of 4 years and six months. By virtue of Rule 2.3 of the *Ibid* Rules, he has qualified the prescribed requirement for pensionary benefits as provided in West Pakistan Civil Service Pension Rules, 1963. Thus the

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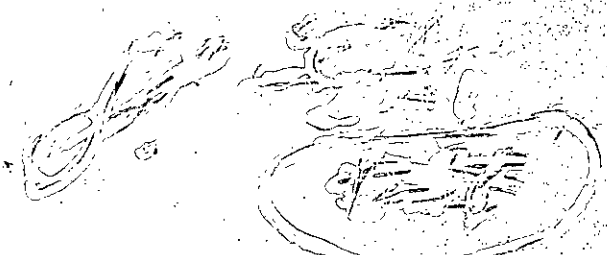
objection raised by the Finance Department is not tenable which is not supported by any Rule or regulation.

10. Beside that petitioner has specifically averred in his petition that his similarly placed colleagues who were initially appointed on the fixed pay and later on their services were regularized, have been awarded benefit of pension but he has been discriminated. The respondents in para-7 of their comments have not specifically denied allegation of the petitioner and such evasive answer of the respondents amounts to admission. In view of the command of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, nobody can be discriminated on any ground whatsoever, with only exception that an intelligible differentia can be made. But it is not the case of respondents herein. It is a clear case of discrimination when similarly placed persons are treated differently or differently

ATTACHED

employees,

employees are



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placed are treated alike. The courts, being the custodian, are to safeguard the inalienable rights of the citizens as enshrined in the Constitution. Whenever any such infringement of rights is brought to the notice of the court, that is to be struck down. Here in the instant case, since respondents have not denied discrimination as averred in the petition, so their act of depriving the petitioner of his pensionary benefits is not condonable and is liable to be struck down.

10. Thus by accepting the instant petition, the impugned office order of respondents is set aside and they are directed to finalize the pension case of petitioner within a period of two months positively.

Announced on  
9<sup>th</sup> Sept., 2014.

*Am*  
**JUDGE**  
*Rajendra*  
**JUDGE**

office  
 15/09/14

**ATTACHED**

IN THE PESHAWAR HIGH COURT PESHAWAR

3394-P

Annex C

WRIT PETITION No. \_\_\_\_\_/2016



Amir Zeb,  
Widower of Asiya Shafi,  
R/o Fazal Ganj, Siace Mandi,  
Risalpur, District Nowshera.....Petitioner

Versus

1. The District Account Officer,  
District Nowshera.
2. The Accountant General,  
Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female),  
District Nowshera.
4. The Director,  
Elementary & Secondary Education Department,  
Khyber Pakhtunkhwa, Peshawar.
5. The Secretary,  
Govt: of Khyber Pakhtunkhwa,  
Elementary & Secondary Education Department,  
Peshawar.
6. The Secretary,  
Govt: of Khyber Pakhtunkhwa,  
Finance Department, Peshawar.....Respondents

WRIT PETITION UNDER ARTICLE, 199 OF THE  
CONSTITUTION OF THE ISLAMIC REPUBLIC OF  
PAKISTAN, 1973.

FILED TODAY  
Deputy Registrar

03 SEP 2016

Respectfully Sheweth,

ATTESTED

WP3394P2016-GROUNDS

ATTESTED  
EXAMINER  
Peshawar High Court  
04 OCT 2017

The concise facts giving rise to the present writ petition are as under:-

1. That petitioner's wife (Late) Asiya Shafi was appointed as PTC on contract basis by an office order dated 28-02-2003 (Annexed-A) passed by the Executive District Officer Nowshera. In pursuance of which she assumed the charge of her duty after completing the requisite codal formalities. The respondent No. 3 had also maintained service book of petitioner's wife therein necessary entries have been made from time to time. Copies of the extracts of service book attached as (Annexed-B).
2. That later on, the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 (IX of 2005) dated 23-07-2005 thereby Section 19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 was substituted according to which all the persons appointed 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 this Amended Act but such appointments made on contract basis shall be deemed to have been appointed on regular basis. Therefore the service/appointment of deceased employee was fully covered by amended law and thus she was the regular employee of the Department.
3. That on 31-07-2015 the wife of petitioner was died during service and in this regard an office order was issued on 31-08-2015 (Annexed-C) by the respondent No. 3. In this connection a death certificate was also issued by the Secretary Union Council Kheshgi Payan (36) district Nowshera dated 10-08-2015 (Annexed-D).
4. That petitioner/widower of Asiya Shafi was the legal heir so he applied for obtaining the Certificates of Succession and

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03 SEP 2016

4.

ADMITTED  
EXAMINER  
Peshawar High Court  
04 OCT 2017

ADMITTED

Guardianship which were allowed by the Competent Courts of Law after due process and then he applied for the payment of all admissible retirement amounts due against the department including leave encashment, GP fund, benevolent fund, Group Insurance, gratuity and pension etc. The amount of leave encashment, GP fund and other admissible funds were paid to him but when the papers of pension were prepared by the office of respondent No. 3 and submitted in the office of respondent No.1 that were returned by the respondent No. 2 with the objection that she was not entitled to pensionary benefits being appointed on contract basis vide letter dated 30-11-2015 (Annexed-E).

Hence Petitioner being aggrieved of the impugned letter and finding no adequate and efficacious remedy is constrained to file this petition on the following amongst other grounds:-

**Grounds:**

- A. That respondent No. 1 has misconceived the case of petitioner and unlawfully denied to accept the papers of pension and grant him pensionary benefits which is not sustainable under the law.
- B. That petitioner's wife was regular and permanent employee of the education department and she was entitled to pensionary benefits on her retirement but unfortunately she was died during service and now petitioner is entitled to receive such benefits which was denied on frivolous and baseless grounds by the respondent No.1 which is unfair, unjust, illegal, mala fide and not tenable under law and rules on subject.

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Deputy Registrar

03 SEP 2016

ATTESTED

WP3394P2016-GROUNDS

ATTESTED

EXAMINER  
Peshawar High Court

04 OCT 2017



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- C. The order of refusal of respondents for not granting the pension along with other benefits is perverse and against the settled principle of law and justice and as such is liable to be set aside.
- D. That in the similar cases this Hon'ble Court has allowed the writ petitions thereby declared the legal heirs of deceased employees entitled to the pensionary benefits on the same point of law. Copies of judgments are attached as (Annexed-F & G).

It is therefore, humbly prayed that this Hon'ble Court may be pleased to:-

- (i) **Declare** the impugned letter dated 30-11-2015 as illegal, perverse, without lawful authority, of no legal effect, ineffective on the rights of petitioner, mala fide and liable to be set aside.
- (ii) **Direct** the respondents to entertain the papers of pension of the deceased wife of petitioner and release the pension and other benefits to petitioner/widower without any delay.
- (iii) Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioner.

*Amir*  
*ebk*

Petitioner

Through

*Khush Dil Khan*  
Advocate,  
Supreme Court of Pakistan

Dated: 02/09/2016

FILED TODAY

Deputy Registrar

03 SEP 2016

*Khush Dil Khan*  
ATTESTED


ATTESTED

EXAMINER  
Peshawar High Court

04 OCT 2017

## CERTIFICATE

Certified on instruction that petitioner has not previously moved this Hon'ble Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 regarding present matter.

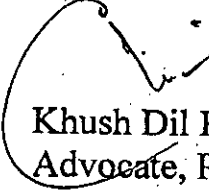
  
Khush Dil Khan  
Advocate, Peshawar

## List of Books

1. The Constitution of the Islamic Republic of Pakistan, 1973.
2. Services Law.

## NOTE

1. Three spare copies of the Writ Petition are enclosed in a separate file cover.
2. Memo of addresses is also attached.

  
Khush Dil Khan  
Advocate, Peshawar

FILED TODAY  
Deputy Registrar  
03 SEP 2016

ATTESTED

ATTESTED  
EXAMINER  
Peshawar High Court  
04 OCT 2017

IN THE PESHAWAR HIGH COURT PESHAWAR

3394 F

W.P. No. \_\_\_\_\_/2016

Amir Zeb,  
Widower of Asiya Shafi,  
R/o Fazal Ganj, Siace Mandi,  
Risalpur, District Nowshera.....Petitioner

Versus

The District Account Officer,  
District Nowshera and others.....Respondents

AFFIDAVIT

I, Amir Zeb, R/o Fazal Ganj, Siace Mandi, Risalpur, District Nowshera, do hereby solemnly affirm and declare on oath that the contents of this writ petition are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.

*Amir Zeb*  
Deponent

Identified by

*Khush Dil Khan*  
Advocate, Peshawar

No. .... 6960 .....
Certified that the above has been verified on solemnly affirmation before me on the ..... 2nd ..... day of ..... Sep ..... 16 at ..... Amn. 7. Feb .....
by ..... Khan Badsha ..... who was identified to me by ..... Khush Dil Khan ..... Who is personally known to me:
<i>[Signature]</i> 2/9/2016 Cath. Commissioner Peshawar High Court, Peshawar.

FILED TODAY  
Deputy Registrar  
03 SEP 2016

~~ATTESTED~~

ATTESTED  
EXAMINER  
Peshawar High Court  
04 OCT 2017

IN THE PESHAWAR HIGH COURT PESHAWAR

W.P. No. 3394 /2016

Amir Zeb,  
Widower of Asiya Shafi,  
R/o Fazal Ganj, Siace Mandi,  
Risalpur, District Nowshera.....Petitioner

Versus

The District Account Officer,  
District Nowshera and others.....Respondents

**ADDRESSES OF PARTIES**

Amir Zeb,  
Widower of Asiya Shafi,  
R/o Fazal Ganj, Siace Mandi,  
Risalpur, District Nowshera.....Petitioner

Versus

1. The District Account Officer,  
District Nowshera.
2. The Accountant General,  
Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female),  
District Nowshera.
4. The Director,  
Elementary & Secondary Education Department,  
Khyber Pakhtunkhwa, Peshawar.

The Secretary,  
Govt: of Khyber Pakhtunkhwa,  
Elementary & Secondary Education Department,  
Peshawar.

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Deputy Registrar  
03 SEP 2016

**ATTES**

**ATTES**  
EXAMINER  
Peshawar High Court  
04 OCT 2017

6. The Secretary,  
Govt: of Khyber Pakhtunkhwa,  
Finance Department, Peshawar.....Respondents

Petitioner

Through

Khush Dil Khan  
Advocate,  
Supreme Court of Pakistan

Dated: 2/09/2016

FILED TODAY

Deputy Registrar

03 SEP 2016

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EXAMINER  
Peshawar High Court

04 OCT 2017

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Amir Zeb D

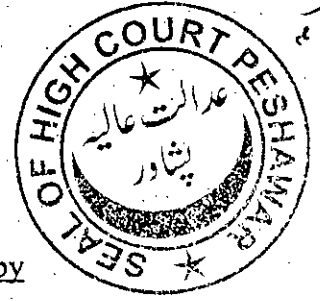
**IN THE PESHAWAR HIGH COURT,  
PESHAWAR,  
[Judicial] Department].**

**Writ Petition No.3394-P/2016**

Date of hearing:- 22.06.2017

Petitioner(s):- Amir Zeb Widower of Mst. Asiya Shafi by  
Mr. Khush Dil Khan, Advocate.

Respondent (s):-The District Account Officer, Nowshera & 05  
others by Syed Qaisar Ali Shah, AAG.



**JUDGMENT**

**ROOH-UL-AMIN KHAN, J:-** Through this Common judgment, we, propose to decide the following Constitutional Petitions filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution), as identical questions of law and facts are involved therein and the writ sought by the petitioners is also one and the same.

1. **Writ Petition No.3394-P/2016**  
(Amir Zeb Vs District Account Officers Nowshera etc)
2. **Writ Petition No.2867-P/2016**  
Mst. Akhtar Bibi Vs District Education Officer (M) Kohat etc).
3. **Writ Petition No.3143-P/2014**  
(Muhammad Shah Zaib etc Vs Govt of Khyber Pakhtunkhwa through Chief Secretary and others)
4. **Writ Petition No.2872-P/2014.**  
Hakeem Khan through LRs Vs Govt of KPK through Sectary Elementary & Secondary Education, Peshawar etc)
5. **Writ Petition No.1339-P/2014**  
(Mst. Rani Vs Sub-Division Education Officer etc).
6. **Writ Petition No.55-P/2015**  
(Mst. Bibi Bilqees Vs Govt of KPK through Secretary Finance, Peshawar).

**ATTESTED**

**ATTESTED**  
EXAMINER  
Peshawar High Court  
OCT 2017

2. Amir Zeb petitioner in W.P. No.3394-P/2016 is the widower of Mst. Asiya Shafi (late). His grievance is that on 28.02.2003, his wife was initially appointed as PTC on contract basis and, later on, by virtue of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, her service was regularized. On 31.07.2015, during her service, she met her natural death, therefore, he being her widower/LR applied for payment of her all admissible retirement benefits, in pursuance whereof, leave encashment, GP fund and other admissible funds were paid to him by the respondents, but his pension claim was refused by the respondents on the ground of lack of prescribed length of her regular service, excluding the period of her service on contract, hence, this petition.

3. Mst. Akhtar Bibi, the petitioner in Writ Petition No.2867-P/2016, is the widow of (late) Lal Din Class-IV employee. She has averred in her writ petition that her late husband was initially appointed as Chowkidar on 01.10.1995 on contract basis, however, later on, his service was regularized vide Notification No.BO1-1-22/2007-08 dated 05.08.2008. On 15.05.2010, the deceased died during his service, so she applied for her pension but the same was refused to her on the ground that the regular service of the deceased employee was less than the prescribed length of regular service, hence, this petition.

*looked at*

**ATTESTED**

**ATTESTED**  
EXAMINER  
Peshawar High Court  
04 OCT 2017

4. Muhammad Shah Zaib and Muhammad Afnan Alam are the LRs of deceased Fakhar Alam. Their grievance is that their deceased father was appointed as Chowkidar on 13.01.1998 in Mother Child Health Centre Tank, who, later on, during his service was murdered, for which FIR was registered against the accused. Petitioners applied for retirement of the deceased. Vide notification dated 31.12.2013, the deceased was retired from service on account of his death w.e.f. 21.10.2013. The family pension of the deceased was prepared and processed, however, the same was refused to the petitioners, hence, this petition.

5. Petitioners in Writ Petition No.2872-P/2014, are the LRs of deceased Hakeem Khan Class-IV employee, who died during pendency of the instant writ petition. Grievance of the petitioners is that their predecessor was appointed as Chowkidar on fixed pay in Education Department on 24.04.1993. Vide order dated 29.01.2008, service of the deceased alongwith his counterparts was regularized by virtue of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 w.e.f. 30.06.2001. On attaining the age of superannuation, the deceased got retired on 31.12.2012, so petitioner applied for grant of his pension but the same was refused, hence, this petition.

6. Mst. Rani, petitioner in Writ Petition No.1339-P/2014, is the widow of Syed Imtiaz Ali Shah (late) Class-IV employee. She has averred in her writ

ATTESTED

ATTESTED  
EXAMINER  
Peshawar High Court  
04 OCT 2017



petition that on 15.01.1996 her late husband was appointed as Chowkidar in the respondents department on adhoc basis/fixed pay, whose service was, later on, regularized on 30.07.2008. During his service, the deceased met his natural death on 15.01.2012, hence, the petitioner applied for her pensionary benefits, but the same was refused on the ground that though service of the deceased was regularized but without pension gratuity, hence, this petition.

7. Mst. Bibi Bilqees, petitioner in Writ Petition No.55-P/2015, is the widow of Saif ur Rehman deceased. Her grievance is that her deceased husband was initially appointed as Chowkidar on 09.07.1995 in Public Health Department Nowshera on contract basis, however, his service was regularized on 01.07.2008. The deceased died during his service on 05.05.2012, so when petitioner applied for his pensionary benefits, the same was refused to her on the ground that the deceased was lacking the prescribed length of regular service, hence, this petition.

8. Respondents in the above writ petitions have filed their respective Para-wise comments, wherein they have admitted the fact that the pensions have been refused to the petitioners/LRs of the deceased employees because they were lacking the prescribed length of their regular service, whereas period of adhoc or contract service cannot be counted towards regular service for the purpose of pension.

*Looked into*  
**ATTESTED**

**ATTESTED**  
 EXAMINER  
 Peshawar High Court  
 04 OCT 2017

The learned Addl. A.G. also questioned the maintainability of the writ petitions on the ground that section 19 (2) of the Khyber Pakhtunkhwa Civil Servant Acts deal with right of pension of deceased civil servant, which squarely falls in Chapter-II, pertaining to terms and conditions of service, therefore, jurisdiction of this Court under Article 212 of the Constitution is barred.

9. Having heard the arguments of learned counsel for the parties, record depicts that undisputedly the deceased employees were the Civil Servants and instant writ petitions have been filed by their LRs qua their pensions. Since the controversy pertains to pension of the deceased employees which according to the contention of worthy Law Officer is one of the terms and conditions of a civil servant under section 19 (2) of the Civil Servants Act, 1973, hence, before determining the eligibility of the deceased employees to the pension or otherwise, we, would like to first meet the legal question qua maintainability of the instant writ petitions on the ground of lack of jurisdiction of this Court under Article 212 of the Constitution. To answer the question, it would be advantageous to have a look over the definition of "Civil Servant" as contemplated under section 2(b) of Khyber Pakhtunkhwa Civil Servants Acts, 1973 and section 2 (a) of Khyber Pakhtunkhwa Service Tribunal Act, 1974. For the sake of convenience and ready reference, definition

*For the Court*

**ATTESTED**

**ATTESTED**  
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given in both the Statute are reproduced below one after the other

"2(b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include---

- (i) A person who is on deputation to the Province from the Federation of any other Province or other authority;
- (ii) A person who is employed on contract or on work charged basis, or who is paid from contingencies; or
- (iii) A person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VII of 1923)".

"S.2(a) "Civil Servant" means a person who is or has been a civil servant within the meaning of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.XVIII of 1973), but does not include a civil servant covered by the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991;]

As per the definitions of a "civil servant" given in the two Statutes referred to above, the petitioners neither holding any civil post in connection with the affairs of the Province nor have been remained as civil servants, thus, do not fall within the definition of "civil servant".

10. Though section 19(2) of the Khyber Pakhtunkhwa Civil Servants Acts, 1972, in the event of death of a civil servant, whether before or after retirement conferred a right of pension on his/her family who shall be entitled to receive such pension or gratuity or both as prescribed by Rules. It is also undeniable fact that pension and gratuity fall within the ambit of terms and conditions of a civil servant, but a legal question would arise as to whether the legal heirs i.e. family of a deceased civil servant would be competent to agitate his/her/their grievance regarding pension before the Service Tribunal, particularly, when

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he/she/they do not fall within the definition of Civil Servant. The Service Tribunals have been constituted under Article 212 of the Constitution for dealing with the grievances of civil servants and not for their legal heirs. The question regarding filing appeal by the legal heirs of deceased's civil servant and jurisdiction of Service Tribunal, cropped up before the Hon'ble Supreme Court in case titled, "Muhammad Nawaz Special Secretary Cabinet Division through his Legal Heirs Vs Ministry of Finance Government of Pakistan through its Secretary Islamabad" (1991 SCMR 1192), which was set at naught in the following words:-

"A 'civil servant' has been defined in section 2(b) of the Civil Servants Act, 1973. A right of appeal under the Service Tribunals Act, 1973 has been given to a civil servant aggrieved by any final order whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his serve. The appellants admittedly are the legal heirs of the deceased civil servant and there being no provision in the service Tribunals Act of 1973 to provide any remedy to the successors-in-interest of a civil servant, the learned Tribunal, in our view, was correct in holding that the appeal before it stood abated and the same is hereby maintained".

In case titled, "Rakhshinda Habib Vs Federation of Pakistan and others" (2014 PLC (C.S) 247), one Habib ur Rehman Director General in Ministry of Foreign Affairs, aggrieved by his supersession filed appeal before the worthy Service Tribunal, but unfortunately, during pendency of appeal he died, therefore, his appeal before the Federal Service Tribunal Islamabad was abated. Rakhshinda Habib, the widow of

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deceased then filed constitution petition No.1021 of 2010 before the Islamabad High Court, but the same was dismissed vide judgment dated 13.06.2013, against which she preferred aforesaid appeal before the Hon'ble Supreme Court, which was allowed and it was held by the worthy apex court that:-

“That civil servant could not be promoted after his death, however, pensionary benefits of promotion could be extended to the legal heirs of the deceased employees”.

11. Going through the law on the subject and deriving wisdom from the principles laid down by the Honble apex Court in the judgments (supra), we are firm in our view that petitioners/legal heirs of the deceased employees have locus standi to file these petitions because the pensionary benefits are inheritable which under section 19 (2) of the Khyber Pakhtunkhwa Civil Servant Act, on the demise of a civil servants, devolves upon the legal heirs. The petitioners, as stated earlier, being LRs of the deceased civil servants do not fall within the definition of “Civil Servant”, and they having no remedy under section 4 of the Service Tribunal Act to file appeal before the Service Tribunal, the bar under Article 212 of the Constitution is not attracted to the writ petitions filed by them and this Court under Article 199 of the Constitution is vested with the jurisdiction to entertain their petitions. Resultantly, the objection regarding non-maintainability of the petitions stands rejected.

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12. Adverting to question of entitlement of the deceased employees to the pension, we, would like to reproduce the relevant rules of the West Pakistan Civil Services Pensions Rules, 1963 below, as these would advantageous in resolving the controversy:-

**“2.2. Beginning of service-** Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.”

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

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

13. The rules *ibid* reveal that the service of government servant begins to qualify for pension from the very first day of his/her taking over the charge, irrespective of the fact whether his/her appointment and entry in to service was temporary or regular. It is also clear from sub-rule (i) that continuous temporary service of a civil servant shall also be counted for the purpose of pension and gratuity and by virtue of sub rule (ii), temporary and officiating service followed by confirmation shall be counted for pension and gratuity. It is undeniable fact that the NWFP Civil Servant (Amendment Bill), 2005 was passed by the provincial assembly on 5<sup>th</sup> July 2005 and

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assented by the Governor of the Province on 12<sup>th</sup> July 2005 whereby section 19 was amended and all the employees of the Provincial Government selected for appointment in the prescribed manner to the post on or after 1<sup>st</sup> day of July 2001, but on contract basis were deemed to be appointed on regular basis. They were declared Civil Servants, however, were held disentitled for the pensionary benefits. Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013. The text of section 19 (4) (proviso 1 and 2) are reproduced as below:-

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

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

14. From bare reading of section 19 of Amendment Act, 2005 and 2013 respectively, it is manifest that the persons selected for appointment on contract basis shall be deemed as regular employee and subsequently were held entitled for pensionary benefits. The deceased employees have completed the prescribed length of service as their service towards pension shall be counted from the first day of their appointment and not from the date of regularization of their service.

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15. We deem it appropriate to mention here that question of interpretation and true import of the term pension was raised before the august Supreme Court of Pakistan in case titled "Government of NWFP through Secretary to Government of NWFP Communication & Works Department, Peshawar Vs Muhammad Said Khan and others (PLD 1973 Supreme Court of Pakistan 514) wherein it was held that:

*"It must now be taken as well settled that a person who enters government service has also something to look forward after his retirement to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well settled that pension like salary of a civil servant is no longer a bounty but a right acquired after putting a satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."*

16. In case titled "Secretary to Govt: of the Punjab, Finance Department Vs M. Ismail Tayer and 269 others" 2015 PLC (CS) 296, the august Supreme Court of Pakistan was pleased to held that the pensionary benefits is not a bounty or ex-gratia payment but a right acquired in consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant.

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17. For what has been discussed above, we by allowing these writ petitions, issue a writ to the respondents departments to pay pension of the deceased employees to the petitioners/LRs of the deceased.

Announced:  
22.06.2017  
Straj Afridi P.S.

Sd/- Rooh ul Amin  
Sd/- Qadander Ali Khan  
Sd/- Syed Muhammad Ali  
Sd/- Ghani

Rooh ul Amin  
JUDGE  
Qadander Ali Khan  
JUDGE  
Syed Muhammad Ali  
JUDGE



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The Qanun-e-Shahadat Order 1974  
04 OCT 2017