29.08.2019

Counsel for the appellant present. Addl: AG alongwith Mr. Roheen Naz, ADO, Mr. Zakaullah, Senior Auditor and Mr. Sajid, Supdt for respondents present. Written reply on behalf of respondents 5 and 6 not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on behalf of respondents no. 5 and 6 on 26.09.2019 before S.B.

> (Ahmad Hassan) Member

26.09.2019

Counsel for the appellant present. Addl: AG alongwith Mr. Roheen Naz, ADO, Mr. Sajid, Supdt and Mr. Zakiullah, Senior Auditor for respondents present.

Learned counsel for the appellant submitted an application that the appeal in question may be disposed of in the light of decision of this Tribunal dated 07.08.2019 passed in service appeal no. 113/2019 and the same is placed on file. The grievance agitated through the instant appeal has already been redressed through notification dated 22.05.2019, whereby services of fixed pay employees were regularized w.e.f 01.07.2008.

As the grievances of the appellant have been redressed, therefore, the appeal in hand is disposed of. File be consigned to the record room.

<u>Announced:</u> 26.9.2019

Ahmad Hassan) Member

#### 15.04.2019

Clerk to counsel for the appellant present. Written reply not submitted. Miss Roheen Naz ADO Legal representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 23.05.2019 before S.B

Member

23.05.2019

Junior to counsel for the appellant present. Written reply not submiited. Sajjad Superintendent (for respondent No.1)Roheen Naz ADO (for respondent No.4) present and seek time to furnish written reply/comments. Hayat AD (for respondent No.3) and Zaki Ullah representative of respondent No.5 absent. Respondents No.2, 3, 5 & 6 as well as absent representatives be put to notice for submission of written reply. Adjourn. To come up for written reply/comments on 03.07.2019 before S.B

Member

03.07.2019

2 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Roheen Naz ADO for the respondents No. 1 to 4 and. Zaki Ullah Senior Auditor on behalf of respondent No. 5 & 6 present and seek time to furnish written reply/comments. Adjourned. To come up for written reply/comments on 29.08.2019, before S.B.

el Status



25.1.2019

Mr. Muhammad Asif Advocate for appellant present.

1.11

Pre-admission notice be issued to the respondents to resolve the controversy in terms that whether the appellant would be entitled for consideration of his service from the date of appointment and not from the date of regularization for the pension benefits.

To come up on 27.02.2019 before S.B.

27.02.2019

81/2/2000

Counsel for the appellant present. Nemo for the respondents.

Chairman

Chairmar

Pre-admission notice was required to be issued to the respondents on 25.01.2019. The same has been sent on 30.1.2019, however, no one is in attendance to represent the respondents. Instant appeal is, therefore, admitted for regular hearing subject to all just exceptions.

siten ocess Fee

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 15.04.2019 before S B.

## Form- A

# FORM OF ORDER SHEET

	Court Case No.	152-2 /2018					
S.No. Date of order Order or other proceedings with signature of judge proceedings							
		3					
1	·· 2	3					
1-	24/12/2018	The appeal of Mr. Jan Badshah presented today by Mr. Muhammad Asif Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.					
		REGISTRARev 2-4/12-1					
2-	27/12/18.	This case is entrusted to S. Bench for preliminary hearing to be put up there on $25  01   2019$ .					
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### <u>BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL.</u> <u>PESHAWAR</u>

S.A.No. 1522 /2018

Jan Badshah..... Appellant

#### VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Finance Civil Secretariat, Peshawar & others

.....Respondents

S.No.	Description of documents.	Annexure	Pages.	
1	Memo of appeal.		1-4	
2	Affidavit.	· · · · ·	5	
3	Addresses of the parties.		6	
4	Copy of appointment letter	A	7	
5	Copy of service book	В	8-18	
5	Copy of appeal	С	19	
6.	Copy of Repart of Let	D	20	
7	Copy of Charge report	É E	21	
8.	Wakalatnama	<u> </u>	22	

#### INDEX

Appellant

Through

Off:

Muhammad Asif Advocate Supreme Court 214 Syed Ahmad Ali Building Near Taj Autos, Sunehri Masjid Road, Peshawar Cantt. Office No.091-5279292 Cell: 0302-8885187 0311-1934339

#### Dated: 22.12.2018

### <u>BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL.</u>

<u>PESHAWAR</u>

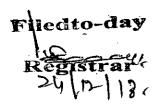
S.A.No. 1522 /2018

yber Pakhtukh vice Tribunat Diary No.

Jan Badshah son of Toti Badshah R/o Mohallah Faqir Abad Shakzai, Baba Jee Kaley P.O.Khoishgi Bala, Koishgi Payan, District Nowshera...... Appellant V E R S U S

- 1) Government of Khyber Pakhtunkhwa, through Secretary Finance Civil Secretariat, Peshawar.
- 2) Government of Khyber Pakhtunkhwa, through Secretary Education, Civil Secretariat, Peshawar.
- 3) Director Elementary and Secondary Education, near Govt. Higher Secondary School No.1 G.T. Road, Peshawar City.
- 4) District Education Officer (Male), District Nowshera.
- 5) Accountant General, Accountant General Office, Fort Road, Peshawar Cantt, Peshawar.
- 6) Senior District Account Officer, District Account Officer, Nowshera.

.....Respondents



APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORAL ORDER OF RESPONDENTS OF REFUSAL TO ISSUE PENSION TO THE APPELLANT FROM THE DATE OF i.e. 11.09.2017 WHILE RETIREMENT APPEAL FILED ON 1. 2.2018 HAS NOT SINCE BEEN REPLIED/ DECIDED AND THE STATUTORY PERIOD OF 3 MONTHS HAVE EXPIRED.

#### Prayer:

On acceptance of this appeal, the respondents may kindly be directed to issue pension and pensionary benefits to the appellant from the date of retirement i.e. 11.09.2017 by setting aside the oral refusal of the respondents regarding issuing pension to the appellant.

#### Respectfully Sheweth;

Appellant humbly submits as under:

- That appellant was appointed as Class-IV Chowkidar/ Naib Qasid on 29.08.1994 in Govt. Girls Primary School Mulla Kila Nowshera, Tehsil and District Nowshera and took charge against a vacant post of Chowkidar on fixed pay after producing medical fitness certificate. (Copy of appointment letter is Annexure "A").
- 2) That later on the services of the appellant was confirmed and the appellant was granted BPS-1 and in the year 2011 was granted BPS-2 and retired on 11.09.2017 in BPS-04. (Copy of service book is Annexure "B").
- 3) That after retirement appellant was confident that as appellant has served the department for more than 22 years therefore, appellant was confident that after due process pension would be granted to the appellant after due process.
- 4) That in the month of October 2018 appellant inquired from the respondents regarding pension and pensionary benefits on which appellant was informed that hon'ble Peshawar High Court Peshawar has decided the writ petition regarding the pension and pensionary benefits therefore, after proper approval from competent authority the cases of pension would be decided/ processed.

- 5) That appellant was further informed that decision regarding pension would take some time because a lot of cases has to be considered individually and thus appellant should wait.
- 6) That finally when appellant did not get any response from, appellant again contacted the respondents. However, from the office of respondents, appellant came to know that pension and pensionary benefits have been granted only to those whom have challenged the same.
- 7) That appellant filed appeal to the respondents No.2 and 3 but 3 months have been passed and uptil now the pension and pension benefits have not been granted to the appellant. Moreoer appeal of the appellant has not been decided. (Copy of appeal is Annexure "C")
- 8) That aggrieved with, appellant has came before this Hon'ble Tribunal in this appeal on the following grounds amongst the others for pension and pensionary benefits.

#### GROUNDS:

- a. That the oral order refusal of respondents of not granting pension and pensionary benefits to the appellants is against law and facts hence untenable in the eyes of law.
- b. That by not deciding the appeal of appellant regarding pension and pensionary benefits to the appellant. Moreover not granting pension and pensionary benefits to the appellant, respondents are exercising powers not vested to them under the law.
- c. That respondents failed to appreciate the fact that appellant after joining the service and was retired on superannuation i.e. on 60 years of age and thus has served the department for more than 22 years and is entitled for pension and pensionary benefits.

- That respondents failed to appreciate the fact that a person who servers for 10 years is entitled for the pension and pensionary benefits.
- That under the law for granting pension and pensionary benefits the period of service i.e. regular and temporary are counted.
- That respondents under the law were bound to decide the case of each employee to whom pension and pensionary benefits were refused in the light of decision of Peshawar High Court, Peshawar.
- That respondents failed to appreciate the real point involved in the case of appellant and thus has acted illegally.
  - That the oral decision of respondents of not granting pension and pensionary benefits to the appellant is perversant and against the settled principle of law and justice and as such is liable to be set aside.

It is, therefore, requested that on acceptance of this appeal, respondents may kindly be directed to release pension and pensionary benefits to the appellant from the date of retirement along with any other remedy which deems fit and necessary and not specifically asked for may also be awarded with costs.

Bly St. OF Appellant

Through ammad As

Off:

Advocate, Supreme Court of Pakistan 214 Syed Ahmad Ali Building near Taj Autos, Sunehri Masjid Road, Peshawar Cantt. Cell: 0302-8885187 Off: 091-5279292

### **CERTIFICATE:**

d.

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h.

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



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,

#### <u>PESHAWAR</u>

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

Jan Badhshah..... Appellant

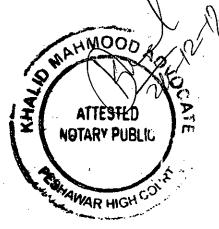
#### VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Finance Civil Secretariat, Peshawar & others

.....Respondents

#### AFFIDAVIT

I, Jan Badshah son of Toti Badshah R/o Mohallah Faqir Abad Shakzai, Baba Jee Kaley P.O.Khoishgi Bala, Koishgi Payan, District Nowshera 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.



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### <u>BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,</u> <u>PESHAWAR</u>

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

Jan Badshah..... Appellant

#### VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Finance Civil Secretariat, Peshawar & others

.....Respondents

#### **ADDRESSES OF THE PARTIES**

#### APPELLANT:

Jan Badshah son of Toti Badshah R/o Mohallah Faqir Abad Shakzai, Baba Jee Kaley P.O.Khoishgi Bala, Koishgi Payan, District Nowshera

#### RESPONDENTS:

- 1) Government of Khyber Pakhtunkhwa, through Secretary Finance Civil Secretariat, Peshawar.
- 2) Government of Khyber Pakhtunkhwa, through Secretary Education, Civil Secretariat, Peshawar.
- 3). Director Elementary and Secondary Education, near Govt. Higher Secondary School No.1 G.T. Road, Peshawar City.
- 4) District Education Officer (Male), District Nowshera.
- 5) Accountant General, Accountant General Office, Fort Road, Peshawar Cantt, Peshawar.
- 6) Senior District Account Officer, District Account Officer, Nowshera.

سجان مارند) کا Appellant

Through

Muhammad Asif Advocate Supreme Court AN CINTMENT OF CLASS IV ON CONTRACT BASIS."

OFFICE ORDER

# Mr. Jan Badshals10 Jolie Badshal

rend dent of Village Rimms Hala Kalli condidate is hereby appointed as Class IV (Chowkidar) Naib Casid on Rs 1200/- P.M Fixed under the rules with effect from the date of his thking over chage at Govt: Cirls Frimary School Main Kalli (Newly Crested Post) of Chowkidar Fost according the AGRE MENT BCND under the following terms and as canditions:-

GONDITIONS .....

12 Charge reports should be submitted to all concerned. 2- No T.A/ D.A is allowed being Ist Apriontment.

3- No Joining time is allowed what is absolutely necessary for the transit.

4- The appointment is nurely on Tempory basis& subject to the termination at any time and without any notic

5- In case he wiches to leave the Deptt: he should have

to submit one month prior notice.

6- H e should produced his Health & age Certificate for the concerned Civial Surgen with in 7 days of reporting arrival a duty as required under the rules F.R-10 Sr. 4.

7- In case the condidate fails to take over charge with in 7 days from the date of is us of this order, his appointment

will stand automatically CANCELLED.

8- The candidate should not be handover charge if his ege is not between 18-45 Years.

9- He will produce photo copies of the relevant documents i.e. time of taking over charge.

10-He will be death with under the E&D rules if he violated Govt: rules and regulations.

> (MISS NASEEN SULTAN) Sub Divitional Education Officer, (Fomale) Nowshera.

Didst No. 5337 F.No. 5/Appointment of Class IV Dated.

Distt: Education Officor, (Female) Pry: Nowshera.

N.P.A.P. 11

P/ File.

Hendmistress GGFS Mala Killi Distt: N ovenera.

Syn Divisional Education Officer, (F\_male) Nowshera.

#### OFFICE OF THE SB DIVISIONAL EDUCATION OFFICER, (E) NOWSHERA

#### Appointment Order of Class IV Contract Basis Office Order

Mr. Jan Badshah S/o Jilice Badshah resident of village Mala kali candidate is hereby appointed as class IV Chowkidar/ N/Qasid on Rs: 1200/-PM fixed under the rules with effect from the date of his taking over charge at Govt Girls Primary School Mala Kalli (Newly Created post) of Chowkidar According the Agreement Bond under the following terms and conditions

- 1. Charge reports should be submitted to all concerned.
- 2. NO TA/DA is allowed.
- 3. No joining time is allowed what is absolutely necessary for the transit.
- 4. The appointment is purely on temporary basis & subject to the termination at any time and without any notice.
- 5. In case he wishes to leave the Deptt: the should have submit on month prior notice.
- 6. He/ Should produced his health & age certificate for the concerned civil Surgeon with in 7 days of reporting arrival a duty as required under the rules FR 10 Sr.4
- 7. In case the condition fails to take over charge with in 7 days from the date of issue of this order his apptt: will stand automatically cancelled.
- 8. The candidate should not be handover charge if his are is set between 18-45 years.
- 9. He will produce photo copies of the relevant documents i.e. time of taking over charge.
- 10. He will be dealt with under the E&D s if he violated Govt: Rules and regulation.

Miss Naseem Sultan Sub Divisional Education Officer (Female) Nowshera

Endst No. 6332-35/F.No.5/Appointment of Class iV dated 29.8.94. Copy of the above is submitted to the:-

- 1. District Education Officer Female Pry. Nowshera
- 2. headmistress GGPS Mala Killi Distt: Nowshera
- 3. ADEO Accounts Local office.
- 4. M.P.A.P.F.11
- 5. P/File

ATTEST

Sub Divisional Education Officer (Female) Nowshera

shoul be dated. Jan Badshah Name Ashan Rac: -Fesidence: Moh: Fasin Aback Khesty Anda Baba Tee kilk: To khes & Fayan Teh: & Dist! Nous Res Toti Badshah Father's name and residence: 12-09-1957 (12th September N.H. fifty Seven) Date of birth by Christian era as nearly as can be ascertained: 5-6 Exact height by measurement: Personal marks for identification: Left hand thumb and Finger impression of (Non-Gazetted) officer: **Ring Finger:** Little Finger: Fore Finger: Middle Finge Thumb: 0 - Attested Signature of Government Servant: verse) aldeste Bels Signature and designation of the D.D.O. (F) Head of the office, or other Attesting SE Deptt. Nowshera Officer.

If officiating, state ure and Other Whether substan-(i) substantive e head o Pay in Additional emolument Date tive or officiating appointment, or her attes Signature of falling pay for of and whether (ii) Whether service substantive Name of Post Government servanin attesta Appointment officiating post under the permanent or counts for pension columns term "pay" under Art. 371 C.S.R. temporary. Ch sutidar GGPS Male light ین (دمشا) 29 08 - izel م ن بر نک 12 la ÓŨ Custo 1800 . ۲ میک ن بادن که Ø ĪW H ج ن بارا ĥ بى بورشاة 1<u>-</u> 2<u>@3</u> ng co 00 120 ج ن إ د تدكي B 12 200 Kisho G Øø 12 1800 2000 50 ATTE tt th A at D.D.O. (F) SE Deptt. Nowsherd ÷

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4 12 11 10Leave Reference to any Ľ recorded Allocation of period of Signature of the head of the office Reason of Nature leave on average pay punishment or termination Signature of the head of the office and cesure, or reward upto four months for d Designation (such as. duraor other attesting or praise of the þ Date of had of the office which leave salary is G promotion, tion tattesting officer alestation of termination of or other attesting Government officer. debitable to another of leave transfer, Servent appointment officer Government taken dismissal. imns 1 to 8 Government to etc.) R what Keliquel 017 ĮĮ on .O.E た 氏子 Att 60.40m. aun 9-0 11 Le Ū, ÷., AITES

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O



#### OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) NOWSHERA

#### OFFICE ORDER

The competent authority is pleased to grant of sanction to the retirement of the following official as mentioned against his name.

More over in pursuance of section 20 of civil servant revised leave rules 1981. Sanction is hereby accorded to the grant of Encashment on full pay in lieu of LPR as admissible to him under the rules.

S#	Name of Official	Date of Birth	Date of 1 <sup>st</sup> Appointment	Date Retirement	Leave for Encashment.	Remarks.
1.	Jan Badshah S/O Toti Badshah Chow kidar GGPS. Mulla Kili P.NO.00367213	12/9/1957	29/8/1994 (Fixed) 1/7/2008 (Regular)	11/9/2017	365 Days	On Superannuation (60 years)

1. Necessary entry to this effect should be made in his Service Book accordingly.

#### (FAYAZ HUSSAIN) DISTRICT EDUCATION OFFICER (FEMALE) NOWSHERA

Endst No

Class-IV Retirement Dated Nowshera the 14 109/2017.

Copy forwarded for information & necessary action to the:-

- 1. Senior District Accounts Officer, Nowshera.
- 2. Sub Divisional Education Officer (Female) Nowshera w/r to his letter No.1783-84 dated 5/9/2017
- 3. Superintendent Establishment (Local Office).
- 4. ADEO (F) Primary: Estt: (Local Office).

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- 5. Accountant (Local Office)
- 6. Official Concerned.

DISTRIC DIANO (FEMALE) NOWSHERA

ATTEST

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لعراك ſ, دعوتي جاز بار y in in ج م باعث تحريرا نكه مقدمه مندرجه عنوان بالامين اين طرف سي داسط بيردي دجواب دبي دكل كاردائي متعلقه مقررکر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کا روائی کا کا ل اختیار ، وگا۔ نیز سے مرکز رو س وسميل صباحب كوراضي نامه كريف وتقرر دثالت ہ فيصله برحلف دينيج جواب دہی ادرا قبال دعو کاللا بهسورت ذکری کرنے اجراءا درصولی چیک درویئ ارعرضی دعوی ادر درخواست ہرشم کی تصدیق زرای پردستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیردی یا ڈگری کیطرفہ یا اپیل کی برامدگی ادر منسوکل کر · نیز دائر کرنے اپیل نگرانی دنظر ثانی دبیر دی کرنے کا اختیار ہوگا۔ از بھورت ضرود یک مقدمہ مذکور کے کل پاجز دی کاردائی کے داسطے اور دکیل پامختار قانونی کواپنے ہمراہ پاکھینے بچائے تقر کا کا تتیار موكا اورماحب مفررشده كوبهى داى جمله ندكوره بااختيارات حاصل يول كملاكمان كاسالت مرداخت منظور تبول موكا ... دوران مقدمه ميں جوخر چدد مرجان التوائي مقدمه محصر بيب ك دموكا کوئی تاریخ بیشی مقام دورہ پر ہویا حد ۔۔ باہر ہوتو دیک صاحب پابند ہوں کے۔ کم پیروی مد*کود کریں ۔ لہدا*وکالت نامہ کھدیا کہ سندر ہے ۔ ÷20 کے لئے منظور ہے۔ 6 ward

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