

05.03.2019

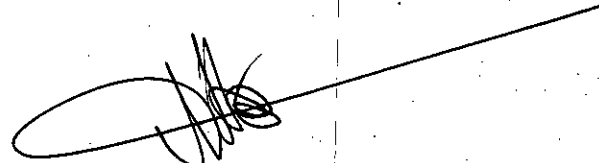
Clerk to counsel for the appellant present. Mian Amir Qadir, District Attorney alongwith Mr. Obaid Ur Rehman, ADO for respondents present. Clerk to counsel for the appellant seeks adjournment on the ground that counsel for the appellant was busy before the High Court, Swat Bench. Case to come up for further proceedings on 06.03.2019.


Member
Camp Court, Swat

06.03.2019


Counsel for the appellant present. Mian Amir Qadir, District Attorney for respondents present. Counsel for the appellant submitted an application for withdrawal of the instant appeal. As such application is allowed and the instant appeal is hereby withdrawn. File be consigned to the record room.

Announced:
06.03.2019


Member
Camp Court, Swat

04.12.2018

Appellant absent. Learned counsel for the appellant absent. Mr. Usman Ghani learned District present. Written reply not submitted. No one present on behalf of respondents. Notice be issued to the appellant as well as to the respondents for 09.01.2019. Adjourn. To come up for written reply/comments on the date fixed before S.B at Camp Court Swat.

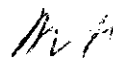

Member

Camp Court, Swat.

Camp Court Swat

09.01.2019

Clerk of the counsel for appellant present. Mr. Obaid-ur-Rehman, ADO on behalf of respondent No. 3 alongwith Mr. Mian Ameer Qadir, District Attorney for the respondents present. Written reply on behalf of respondents not submitted. Learned District Attorney requested for further adjournment. Adjourned. Case to come up for written reply/comments on 05.03.2019 before S.B at Camp Court Swat.




(Muhammad Amin Khan Kundi)

Member

Camp Court Swat

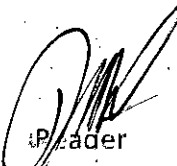
04.07.2018

Mr. Shamsul Hadi Advocate counsel for the appellant present. Mr. Usman Ghani learned District Attorney for respondents present. Written reply not submitted. Adjourned. To come up for written reply/comments on 07.08.2018 before S.B at camp court Swat.


Chairman
Camp Court, Swat


07.08.2018

Clerk to counsel for the petitioner present. Due to summer vacations, the case is adjourned. To come up for the same on 05.09.2018 at camp court Swat.


Reader

05.09.2018

Clerk of counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Written reply not submitted. Requested for adjournment to submit the same on the next date of hearing. Granted. Case to come up for written reply/comments on 05.11.2018 before S.B at camp court Swat.


Member
Camp Court Swat

05.11.2018

Due to retirement of the Hon'ble Chairman Service Tribunal is incomplete. Tour to Camp Court Swat has been cancelled. To come up for the same on 04.12.2018 at camp court Swat.


Reader

09.03.2018

Counsel for the appellant present. Preliminary arguments heard. Vide my detailed order of today in connected service appeal No. 209/2018 entitled "*Shamsher Vs. DEO (F) Baunir and others*", this appeal is also admitted to regular hearing. 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 05.04.2018 before S.B at camp court, Swat.


Appellant Deposited
Security Process Fee


Chairman

Camp Court, Swat.

05.04.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith for the respondents present. Written reply not submitted. Learned District Attorney seeks adjournment. Granted. To come up for written reply/comments on 10.05.2018 before S.B at Camp Court, Swat.


Chairman
Camp court, Swat

09.05.2018

The Tribunal is non-functional due to retirement of the Worthy Chairman. To come up for the same on 07.06.2018 before the S.B at camp court, Swat.


Reader

07.06.2018



Neither appellant nor his counsel present. None is present on behalf of the respondents. However, Mr. Usman Ghani, District Attorney put appearance on behalf of the respondents. Adjourned. To come up for written reply/comments on 04.07.2018 before S.B at Camp Court, Swat.


Chairman
Camp Court, Swat

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 140/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26/1/2018	<p>The appeal of Mr. Hazrat Ghulam resubmitted today by Mr. Shamsul Hadi Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	8-2-2018	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on <u>09-03-2018</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Hazrat Ghulam son of Mandrai r/o village Chalandry Chagharzay Distt. Bunir received today i.e. on 24.01.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Heading of the appeal is incomplete which may be completed.
- 2- Copy of retirement and impugned order mentioned in the memo of appeal (Annexure-C) are not attached with the appeal which may be placed on it.
- 3- Annexures of appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 4- In the memo of appeal many places have been left blank which may be filled up.
- 5- Annexures of the appeal are illegible which may be replaced by legible/better one.
- 6- Annexures of the appeal may be flagged.
- 7- Two copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 193 /S.T,

Dt. 25/01 /2018


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Shamsul Hadi Adv.

After removing the objections, the case file is resubmitted for further processing.


PTO

Reply of the objection

- 1) Heading is completed as we mentioned in our prayers.
- 2) Copy of the impugned order is attached at page no-14
- 3) Serial wise.
- 4) The blank places are free
- 5) Better copy is attached
- 6) appeal is flagged
- 7) Two extra copy are attached.



27/11

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. 140 /2018.

Hazrat Ghulam.....Appellant

V E R S U S

District Education Officer (M) Bunir and others.....Respondents

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S.N	Description of Documents	Annex	Pages
1.	Memo of Appeal.		1--- 3
2.	Affidavit.		4
3.	Addresses of the Parties.		5
4.	Copies of Appointment letter and Service	A	6-10
5.	Copy of regularization notification of 2008.	B	11-13
6.	Copy of impugned office order dated:30.07.2012	C	14-
7.	Copies of writ petitions and judgments	D	15-42
8.	Copies of Judgment dated:04.10.2017 and application.	E	43-59
7.	Wakalat Nama		60

Appellant

Through



Shams ul Hadi

Dated: 26/01/2018.

Advocate, Peshawar.

Office: Near Al-Falah Mosque, Hayat

Abad, Mingora.

Cell No. 0347-4773440.

①

**BEFORE THE KHYBER PAKHTOON KHWA SERVICES
TRIBUNAL, PESHAWAR**

Service Appeal No. 140 /2018.

Hazrat Ghulam S/o Mandrai

R/o Village Gulono Bowray Chagharzay District Bunir....Appellant.

VS

1. District Education Officer(male) Bunir.
2. Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Account Officer, Bunir.
4. Accountant General Khyber Pakhtunkhwa, Peshawar.
5. The Government of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat, Peshawar.....(Respondents)

**APPEAL UNDER SECTION 4 OF KHYBER
PUKHTUNKHWA SERVICES TRIBUNAL ACT 1974
AGAINST THE IMPUGNED OFFICE
ORDERS DATED:30.07.2012.**

PRAYER IN APPEAL:

On acceptance of this appeal the impugned Orders dated: 30.07.2012 regarding non sanctioning after retirement benefits i-e pension and gratuity of appellant may kindly be set aside and the appellant may kindly be awarded pension and gratuity etc of appellant of his service with all back benefits of after retirement of service.

Respectfully Sheweth:

1. That the appellant served as Class-IV Employee in the Education Department Bunir and as such got his retirement on the said post. (Copies of Appointment letter and Service Book are annexure "A").
2. That keeping in view the agonies and the financial constrains of the family of the low grade retiring employees, the provincial government was pleased to

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 134

Dated 24-1-2018

Filed to-day

Registrar

24/1/18

Re-submitted to -day
and filed.

Registrar

26/1/18

regularized the services/Posts of the appellants in the year 2008 and as such they were declared civil servants and further the said order was confirmed according to "Regularization Act,2010" and as such the appellant performed his duties as permanent employees of Education Department in Bunir, till date of their retirement.(Copy of notification is annexure-B)

3. That the appellant keeping in view of the above circulation was hopeful to get pension benefits etc after his retirement and as such waited for the same when they were taken by surprise when the Respondents No. informed the appellant, that they are not qualifying for pension benefits and others benefits after retirement.(Copy of impugned office order dated:30.07.2012 is annexure-C)
4. That against the illegal actions of the respondents, the appellant finally approached Peshawar High court Mingora Bench as in similar nature issues pension benefits of the others similar placed employees were awarded by the Honorable high court through various judgments, but finally the a larger bench was constituted in the issue in hand, where writ petitions of the appellant and others treated as departmental appeals respondents were directed to decide the same in accordance with law and rules and in light of the judgment delivered in Amir Zeb's case.(Copies of writ petitions and judgments are annexure-D)
5. That the judgment was communicated to the respondents in shape of departmental appeal but the same was not decided within the statutory period.(Copy of application and judgment are annexure-E)

That being aggrieved the appellants prefer this appeal on the following grounds amongst others inter-alia.

GROUNDS:

- A. That actions and inactions of the respondents are violative of the constitution and the relevant laws laid down for the purpose, hence needs interference of this august Court.
- B. That the appellant has a poor financial background and served the department for long considerable period with the hopes of further benefits after retirement but the respondents did not observe the prescribed rules, regulations and denied the benefits in shape of pension to the appellant.
- C. That the issue in hand has now already been decided by this august court through a similar similar nature cases hence the appellant deserve for the same treatment.

It is, therefore, humbly prayed that *On acceptance of this appeal the impugned Orders dated: 30.07.2012 regarding non sanctioning after retirement benefits i-e pension and gratuity of appellant may kindly be set aside and the appellant may kindly be awarded pension and gratuity etc of appellant of his service with all back benefits of after retirement of service.*

Or

Any other relief which this august Court deems appropriate may kindly be awarded to meet the ends of justice.

Appellant

حضرت غلام

Hazrat Ghulam

Through


Shams ul Hadi

Dated: 26/01/2018

Advocate, Peshawar.

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2018.

Hazrat Ghulam.....Appellant

V E R S U S

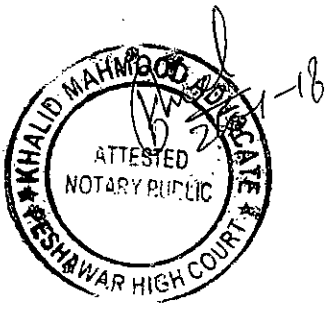
District Education Officer (M) Bunir and others.....Respondents

AFFIDAVIT

I, **Shams ul Hadi**, Advocate, Peshawar do hereby as per information conveyed to me by my client solemnly affirm and declare that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



ADVOCATE



(5)

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. _____/2018.

Hazrat Ghulam.....Appellant

V E R S U S

District Education Officer (M) Bunir and others.....Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Hazrat Ghulam S/o Mandrai

R/o Village Gulono Bowray Chagharzay District Bunir

Cell No.

RESPONDENTS:

1. District Education Officer(male) Bunir.
2. Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Account Officer, Bunir.
4. Accountant General Khyber Pakhtunkhwa, Peshawar.
5. The Government of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat, Peshawar.

Appellant

Through

Shams ul Hadi

Advocate, Peshawar.

Dated: 26/01/2018

A M
A M

(6)

OFFICE OF THE SUB-DIVISIONAL EDUCATION OFFICER(M), DAGGAR DISTT. BUNER
OFFICE ORDER.

APPOINTMENT.

The following appointments of Chowkidar are hereby ordered in R.B.P.S.IORs, 920/- plus usual allowances admissible under the rules against newly created posts in the School noted against each with effect from the date of their taking over charge in the interest of public service with the following terms and conditions:-

S.NO.	Name;	Parantage;	Residence;	Name of School where apptt;	Remarks,
1.	Hazret Ghulam	S/O Mandrai	Belga (Chagh)	GPS Belga	H/O/P
2.	Rahim Gul	S/O	Karam Gul	Ghalandrai	Ghalandrai (Expected)

TERMS AND CONDITIONS.

- 1-Charge report should be submitted to all concerned in duplicate.
- 2-No TA/DZ and Transfer Grant is allowed being 1st; apptt; under the rules.
- 3-The appointment is purely temporary and subject to termination at any time without notice and assigning any reason. In case of resignation they should have to submit one month prior notice to the Deptt; or forfeit one month pay to the Govt; in Liew thereof.
- 4-They should produce his Health and age certificates from the M.S. concerned.
- 5-The Head of the Institution concerned is required to check relevent documents of the candidate concerned before handing over the charge.
- 6-The candidates are required to take over charge within 14 days.
- 7-The candidates should not be handed over the charge if age exceeds 45 years or below 18 years.
- 8-The appointment will be valid provided the Land Donor has not claim for the post.

-Sd-
 (MIAN SAID BUHAR)
 SUB-DIVISIONAL EDUCATION OFFICER(M),
 DAGGAR DISTRICT BUNER.

Endst No. 471-73 / Dated Daggat the 10/8/1992

- Copy of the above forwarded for information and n/a to:-
1. The distt; Education Officer(M) Primary District Buner.
 2. The H/Teacher concerned.
 3. The Candidates concerned.

SUB-DIVISIONAL EDUCATION OFFICER(M),
 DAGGAR DISTRICT BUNER. 6/2/92

ctz

7

EXECUTIVE DISTRICT OFFICER
SCHOOLS AND LITERACY, BUNER.

No. 5721 F.No. C-IV File.

Dated. 3/12/2002.

The Director,
(Schools and Literacy)
NWFP Peshawar.

Subject; - REQUEST FOR REGULAR APPOINTMENT AND REGULARISATION.

Re:-

Kindly refer your letter No. 485/A-20/C-IV dt; 5-11-02 on the subject cited above.

Mr. Neer Zada, Samiul Haq, Hazrat Ghulam and Rahman Gul were appointed as regular chowkidars, by the Sub Divisional Education Officer (M) Daggar Buner vide his Sds; Nos. 3707-38 dated 5-7-92, No. 4334-36 dated 20-7-92 and No. 4771-75 dated 10-8-92.

Their services were converted into contract without stating any reason for contract post vide sub Divisional Education Officer (M) Daggar Bunsdt; No. 8402-44 dated 31-12-92 in negligence and thus their posts on which they are working were converted into contract and are still working on contract posts.

Therefore you are requested to approach the finance Department and to convert these contract posts into regular posts again under their appointment so that their services on regular posts can be regularised please.

3/12/02
EXECUTIVE DISTRICT OFFICER
SCHOOLS AND LITERACY, BUNER.

C.A.C
~~C.A.C~~

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Executive district officer
Schools and Literacy Buner
No. 6721 F.No.C-IV File.
Dated 3/12/2002.

To,

The Director,
(Schools and Literacy)
NWFP Peshawar

Subject:- **REQUEST FOR REGULAR APPOINTMENT FOR CHOWKIDAR**
Memo :-

Kindly refer your letter No.485/ _ -20 /C-IV dated 5-11-2002 on the subject cited above.

Mr.Noor Zada, Samiul Haq, Hazrat Ghulam and Raham Gul were appointed as regular chowkidar , by the Sub Divisional Education Officer (M) Daggar Buner vide his Ends, Nos. 3785-88 dated 5-7-92, No.4334-36 dated 20-7-92 and No.4771-73 dated 10-8-92.

Their services were converted into contract without stating any reason for contract Sub Divisional Education Officer (M) Daggar Endst; No.8442-44 dated 31-12-92 in negligence and thus their posts on which they are working were converted into contract and are still working on contract posts.

Therefore you are requested to approach the finance Department kindly to convert these contract posts into regular posts again since their appointment so that their services on regular post can be regularized please.

*EXECUTIVE DISTRICT OFFICER
SCHOOLS AND LITERACY BUNER*

A-C

Disc
23-02

SCHOOLS AND LITERACY
No. 1007 Dated

The Director (Schools & Literacy)
S.W.S.P Peshawar.

(8) (9)

Subject: CONVERSION OF CONTRACT POSTS OF
CHOWKHAR INFO REGULAR IN THE
PURPOSE OF ADJUSTMENT OF STRENGTH

Cont. dated 1-2-2005 on the subject of Mr. Noor Zafar, Samiul Haq, Hazi, Gulab and
Rahman Gul were appointed as regular chowkhari by the sub-
Divisional Education Officer (H) Daggar Diner, Peshawar
No. 378588 dated 5-7-92, No. 4334-36 dated 20-7-92 and No. 477-92
dated 10-8-1992.

Their services were converted into regular posts
stating the reasons for contract post vide sub-divisional
Officer (H) Daggar Diner, Peshawar, No. 3442 dated
31-12-1992 in negligence and Mr. Afroz Khan was appointed
as sub-Divisional Education Officer at that time and since
their posts on which they are working were converted into
contract and are still working on contract post.

Therefore you are requested to approach the
Finance Department to kindly convert these contract posts
into regular post again since their appointment so that their
services on regular posts can be regularised and these poor
officials can get rid of this difficulty.

[Signature]
14/2/03
EXECUTIVE DISTRICT OFFICER
SCHOOLS AND LITERACY PESHAWAR

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Executive district officer
Schools and Literacy Buner
No.1062 dated 15/2/2003.

The Director (Schools and Literacy)
NWFP, Peshawar.

Subject :- CONVERSION OF CONTRACT POSTS OF THE LAB : ATTENDANT
/CHOWKIDAR INTO REGULAR IN BPS NO.FOR THE
Memo:- PURPOSES OF ADJUSTMENT OF CHOWKIDAR (REGULAR NO.1

Kindly refer your office Endst: No.57-59/ 20/ c-IV Cont; dated 1-2-2003 on the subject cited above.

Mr.Noor Zada, Samiul Haq, Hazrat Ghulam and Raham Gul were appointed as regular chowkidar , by the Sub Divisional Education Officer (M) Daggar Buner vide his Endst, Nos. 3785-88 dated 5-7-92, No.4334-36 dated 20-7-92 and No.4771-73 dated 10-8-1992.

Their services were converted into contract without stating any reason for contract post vide Sub Divisional Education Officer (M) Daggar xxxxxxxxxxxxxxxxxxxxxx Endst; No.8442-44 dated 31-12-92 in negligence and Mr. Afreen khan was performing at sub divisional Education Officer at that time and thus their posts on which they are working were converted into contract and are still working on contract posts.

Therefore you are requested to approach the finance Department to kindly convert these contract posts into regular posts again since their appointment so that their services on regular post can be regularized and these poor officials can get rid of this difficulty .

EXECUTIVE DISTRICT OFFICER
SCHOOLS AND LITERACY BUNER

A.C.

9

OFFICE OF THE EXECUTIVE DIRECTOR,
SCHOOLS & LITERACY DEPT.,
GOVT. OF NWFP, PESHAWAR.
No. _____ /CONVERSION/ALX/BUNER
Dated Buner the, 6/7/2004.

The Section Officer,
Budget and Accounts,
Schools & Literacy Deptt.,
GOVT. OF NWFP, Peshawar.

Subject: DRAFT SUMMARY FOR CONVERSION OF CONTRACT INTO REGULAR FOR THE
PURPOSE OF ADJUSTMENT OF CLASS-IV INTO REGULAR.

Reference your Memo No. SO(B&A)/2-01/1/03/Buner dated 14.6.2004 on the
subject noted above.

It is requested that the following chowkidars were appointed on regular
basis of the S.D.O(N) Buner vide his Office Memo No. noted against each:

Name	Schools where appointed.	No & Date of Appointment order.	Remarks.
Noor Zada Chowkidar	GPS Namdar	3785-80 dt 5/7/1992	
Samiul Haq	GPS No. 2 Sura.	4334-36 dt 20/7/1992	
Ahazrat Ghulam	GPS Bela.	4771-73 dt 10/8/1992	
Kahim Gul	GPS Chalandri	4771-73 dt 10/8/1992	

But the appointment of the above mentioned chowkidars were made in accordance
with the receipt of the instructions of Govt. of NWFP Education Deptt. vide O.O. No. 147
dated 30/6/92 through the Director of Education NWFP Peshawar vide his
Office Memo No. 544-1041 dated 6/7/1992.

It is worth mentioning that contract policy regarding the appointment of chowkidars
in Primary Education was applicable from 1/11/1992 as per decision of the Govt.
vide No. W-1/2-1/92-93/ED dated 4/11/1992.

Keeping the receipt of instructions in view, it was not certain from which date
contract policy would be applicable, therefore the hold in subyance of orders
of appointment was in good faith.

Keeping the above factual position in view it is apparent that neither the
Government Officials are in fault, however their appointment on regular basis
should be from the date of their appointment on regular basis.

All the four posts of chowkidars needs to be converted from contract to regular
basis and following financial & implications will be involved to be incurred
on conversion.

Allowances due on 30/6/2004, Total	Drawn	Differents
564544/-	381024/-	1245568/ 906800/ 402222/

Executive Director,
Schools and Literacy Deptt.,
GOVT. OF NWFP, PESHAWAR.

7999-8001

Copy of this above is forwarded for information to the:-

- Director Schools and Literacy NWFP Peshawar.
- Director Coordination Officer Buner at Daggar.
- Section Officer-V, Govt. of NWFP Finance Deptt. Peshawar with refer to his
Memo No. EO/FS/1-16/2003-2004/415/Primary dated 15/5/2004.

[Handwritten signatures and marks]

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9



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OFFICE OF THE EXECUTIVE DISTRICT
OFFICER SCHOOLS AND LITERACY BUNER
No. _____/Conversion/ADO/Estt:
Dated Buner the, 6/ 7/ 2004.

The Section officer,
Budget and accounts
Schools & Literacy Deptt.
Govt of NWFP, Peshawar.

Subject: Draft summary for conversion of contract into regular for the purpose of
adjustment for Class-IV into regular.

Memo:-

Reference your Memo: NO.SO(B&A)/2-11/103/Buner 14.6.2004. on the subject noted
above.

It is requested that the following chowkidar were appointed on regular of the
S.D.E.O(M) Buner vide his Office Memo: No- noted against each.

No	Name	Schools where Appointed	No & Date of appointment Order	Remarks
1	Noor Zada Chowkidar	GPS Namdar	3785-88 dt 5/7/1992	
2	Samiul Haq -do--	GPS No.2 Sura	4334-36 dt 20/7/1992	
3	Hazrat Ghulam--do--	GPS Bela.	4771-73 dt 10/8/1992	
4	Rahim Gul--do--	GPSChalandri	4771-73 dt 10/8/1992	

But the appointment of the above mentioned chowkidar were held in abeyance one to the of
the instruction of Govt of NWFP Education Deptt: vide S.O (G)/ ___/6-14 dated 30/6/1992
through the Director of Education NWFP Peshawar Endorsed vide his Office Memo:No.984-1041
dated 6/1/1992.

It is worth mentioning that contract Policy regarding the apptt: of chowkidar of Primary
Education was applicable w.e.f 4 11/1992 as per decision of the cabinet

Keeping the receipt of instructions in view, it was no certain from which date contract policy
would be applicable, therefore the held in abeyance of orders and appointment was in good faith.

Keeping the above factual position in view it is apparent that neither the _____ the officials
are in fault. However their appointment on regular basis and w.e.f the date of their appointment on
regular basis.

All the four posts chowkidar needs to be _____ from contract to regular _____ and
following financial implications will be involved to be incurred.

4/6/2004 Allowances due to 30/6/2004, Total Drawn differents.

4544/- 381024/-

1245568/904800/40768.

Endst 7999-8001

EXECUTIVE DISTRICT OFFICER
SCHOOLS AND LITERACY BUNER

Copy of the above is forwarded for information to the:-

Director schools and literacy NWFP Peshawar.
District Coordination Officer Buner at Daggar.

_____ officer -w Govt of NWFP Finance Deptt: Peshawar with the refer to his
No. _____ No BOV/FS/1-16/2003/2004/415/ Primary dated 15/5/2004.

C.A.C

GOVERNMENT OF PAKISTAN
 ACCOUNTANT GENERAL GENERAL TAX/TAKHTUNKHWA
 Dis. No: Bunsir at Dagga

SN: 2415

PAYROLL SYSTEM

P Sec: 001 Month: August 2011
 BD6009 -DY DISTT OFFICER EDU BUNIR
 Min: Education Schools
 NTN:
 CPF #:
 Old #:

Pers #: 00350034 -Buckle:
 Name: HAZRAT GHULAM
 Des: CHOUKIDAR
 NIC No: 1510147341521
 CPF-Interest-Free

3901 Regular / Contract

DEPTT 0001BD6009

-13

PAYS AND ALLOWANCES:

0901-Basic Pay	7,500.00
1000-House Rent Allowance	891.00
1210-Convey Allowance 2005	850.00
1300-Medical Allowance	1,000.00
1516-Dress/ Uniform Allowance	100.00
1567-Washing Allowance	100.00
1911-Compen Allow 20% (1-15)	882.00
1948-Adhoc Allowance 2010@ 50%	2,295.00
1970-Adhoc Relief Allow 2011	688.00
Gross Pay and Allowances	17,290.00

14306

DEDUCTIONS:

CPF Balance	3,120.00	Subrc:	312.00
3501-Benevolent Fund			120.00
3511-Addl Group Insurance			3.00
3404-Group Insurance			58.00

2295
 688
 2983

Total Deductions

493.00

NET AMOUNT PAYABLE

16,797.00

QUALIFYING SERVICE

YRS MON D. O. B

LFP Quota:
 Payment through DDO.

18 Years 08 Months 001 Days

Government Contribution To CPF : 312.00

CAC

[Signature]

CAC

[Signature]

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۱۱/۱۱/۲۰۰۸

رابطہ سہیل - آؤ - اے - ۸۱۲۲ - ۲۰۰۷ - ۲۰۰۷
موجودہ ۲۹ جنوری، ۲۰۰۸

(11)

(11)

(11)

- ۱- تمام انتظامی معتمدین حکومت صوبہ سرحد۔
- ۲- معتمد برائے گورنر صوبہ سرحد، پشاور۔
- ۳- پرنسپل سٹاف آفیسر برائے ڈیڑی رائل صوبہ سرحد۔
- ۴- تمام سربراہان ماتحت محکمہ جات صوبہ سرحد۔
- ۵- تمام ضلعی رابطہ افسران صوبہ سرحد۔
- ۶- رجسٹرار پشاور ہائی کورٹ، پشاور۔
- ۷- رجسٹرار، سرحد ٹریبونل، پشاور، پشاور۔
- ۸- سیکرٹری، صوبائی پبلک سروس کمیشن، صوبہ سرحد، پشاور۔
- ۹- سیکرٹری بورڈ آف ریونیو صوبہ سرحد۔

Answer
"B"

ATTESTED

[Signature]

Head Master
Govt. High School
Bath, Malakand

بجٹ تقریر ۰۸-۲۰۰۷ - ۲۰۰۷ چارم کے مقررہ تنخواہ پانے والے (Fixed pay) ملازمین کے لئے کیا۔ فی۔ فنڈ کا اعلان۔

عنوان:-

جناب عالی!

مجھے ہدایت کی گئی ہے کہ عنوان بالا کا حوالہ دیتے ہوئے عرض کروں کہ صوبائی حکومت نے تمام درجہ چارم (مقررہ تنخواہ Fixed pay) پانے والے ملازمین کو یکم جولائی ۲۰۰۸ سے این ڈبلیو ایف پی سول ملازمین ایکٹ ۱۹۷۳ کے تحت سول ملازمین کا درجہ دیگر بنیادی سکیل - ۱ (BPS-1) دینے کی منظوری دی ہے۔

۲- مذکورہ ملازمین کی تنخواہوں کا تعین (Fixation of pay) ان کی بھرتی کے تاریخ (Date of Appointment) سے کیا جائے گا۔ تاہم یہ ملازمین تنخواہوں اور الاؤنسز وغیرہ کی مد میں کسی قسم کی بتایا جات (arrears) کے مستدار نہیں ہوں گے۔

۳- اس سلسلے میں پہلے سے جاری شدہ تمام پالیسی ہدایات یکم جولائی ۲۰۰۸ سے مندرجہ تصور ہو گے۔

آپ کا مخلص

[Signature]

سرا شرافت خان (رہنما)

سرگودھا (سرگودھا)

c.c

[Signature]

c.c

[Signature]

نقل برائے اطلاع:

- (۱) اکاؤنٹ جنرل، صوبہ سرحد، منجہ گزارش، کہ مندرجہ بالا اقدامات کی نافذ العمل کو یقین بنانا۔
- (۲) جملہ ایگزیکٹو ڈسٹرکٹ آفیسرز، فنانس اینڈ پلاننگ، صوبہ سرحد۔
- (۳) جملہ ضلعی آفیسران حساب داری، صوبہ سرحد۔

فرماندہ

میزانیہ آفسر (۱) محکمہ خزانہ

تظہر نمبر و تاریخ الصفا:

نقل برائے اطلاع:

- (۱) سنی معتمد برائے چیف سیکرٹری صوبہ سرحد۔
- (۲) جملہ اضافی معتمدین و نائب معتمدین محکمہ خزانہ، صوبہ سرحد۔
- (۳) جملہ بچت آفیسرز، پیکشن آفیسرز محکمہ خزانہ، صوبہ سرحد۔
- (۴) ڈائریکٹر، FMIU، محکمہ خزانہ صوبہ سرحد۔
- (۵) سنی معتمد برائے فنانس سیکرٹری صوبہ سرحد۔

فرماندہ
میزانیہ آفسر (۱) محکمہ خزانہ

OFFICE OF THE ACCOUNTANT GENERAL, NWFP PESHAWAR.

No.H-24(113)/RBPs-2006-07/Prov: Central Corresponds file: 734

Dated: 20/02-2008

Copy of the above is forwarded for information and necessary action to all concerned.

1. All DAOs/ AAOs in NWFP.
2. All Payrolls Section (L)
3. PAs to DAGs.

Asstt. Accounts officer (KAE),
NWFP Peshawar

A.L.

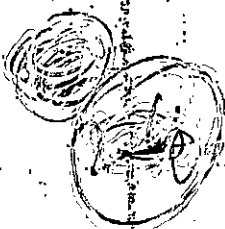
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Office of the
Accountant General
 Khyber Pakhtunkhwa Peshawar
 Phone: 091- 9211915

13



Dated: 24-01-2012

No-HAD/Fixed Employees / Corrp./2011-12/ 1173

The Secretary,
 to Govt. of Khyber Pakhtunkhwa,
 Finance Department (Regulation Wing).

[Handwritten initials]

01 FEB 2012

Subject: AWARD OF REGULAR BPS-1 TO CLASS -II

Kindly refer to your office letter in Urdu vide No. B.O-I/1-22/80-2008/FD dated: 29/01/2008 and letter containing clarification vide No. FD(SR-I)Miss/2008 dated: 13/07/2009 on the above subject.

Policy for appointment of class -IV on fixed salary was introduced w.e.f. 04/11/1992, hence several class-IV were working against the contract post on fixed salary, till in the refer letter they first were regularized from the date of their first appointment without any arrears.

In light of policy 2008, their pay was fixed just like a regular employee from the date of initial appointment without any arrears of pay prior to 01/07/2008, however while fixing their salary the following points need clarification, that whether,

- 1) The employees appointed prior to 31/12/2001, having qualification over and above the prescribed qualification are entitled for advance increments in light of para-5 pay Revision 1991.
- 2) The Employees regularized in the refer letter from the date of initial appointment and appointed prior to 01/07/2007 are entitled for up-gradation in light of General up-gradation order vide your office letter No. FD/SO(FR)7-2/2007 dated: 01/07/2007.

This office is of the view that as the employees have been regularized from the date of their initial appointment hence they are entitled for the benefit of increments, revisions and up-gradation allowed from time to time as general on notional basis but no arrears is admissible prior to 01/07/2008.

The views of this office if correct may kindly be confirmed.

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 ACCOUNTS OFFICER (HAD)

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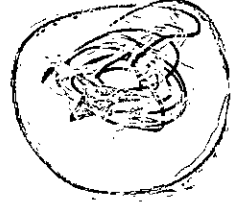
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Office of the
Accountant General
Khyber pakhtunkhwa Peshawar
Phone : 091-9211915



No-Had/Fixed Employee/Corrp/2011-12/___

Dated 24-01-2012.

To,

The Secretary,
To. Govt of Khyber pakhtunkhwa,
Finance Department (Regulation Wing)

Subject: **AWARD OF REGULAR BPS-1 TO CLASS**

Kindly refer to your office letter in urdu vide No. B.O-1/1-22/80-2008/FD dated. 29/01/2008.
And letter containing clarification vide FD/SR-1) Miss/2008 dated 13/07/2009 on the above subject.

Policy for appointment of class-IV on fixed salary was introduced w.e.f 01/11/1992, hence several class-IV were working against the contract post on fixed salary, till in the refer letter they first were regularized from the date of their first appointment without any arrear.

In the light of policy, 2003, their pay was just like a regular employee from the date of initial appointment without any arrear of pay prior to 01/07/2008, however while fixing their salary the following points need clarification that whether.

- 1) The employee appointed prior to 31/12/2001 having qualification over and above the prescribed qualification are entitled for advance increments in light of para-5 pay Revision-1991.
- 2) The Employee regularized in the refer letter from the date of initial appointment and appointed prior to 01/07/2007 are entitled for up-gradation in light of General up-gradation order vide your office letter No.FD/SO (FR)7-2,2007 dated:01/07/2007.

This office is of the view that as the employee have been regularized from the date of their initial appointment hence they are entitled for the benefits of increments, revisions and up-gradation allowed from time to time as general on national basis but no arrear is admissible prior to 01/07/2008.

The views of this office if correct may be confirmed.

ACCOUNTS OFFICER (HAD)

ct-c

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Accountant
C-1

OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY & SECONDARY EDUCATION
BUNER

SANCTION:

Sanction is hereby accorded to the grant of retirement from service on attaining the age of superannuation in R/O Hazrat Ghulam Contract Chowkidar GPS Bailla with effect from 30/06/2012 as forwarded by the Deputy District Officer Male Primary Buner w/r to his letter No. 667 dated 20/06/2012.

NOTE:

Sanction of Retirement without pension and gratuity, only for CPF etc.

(RAJ MUHAMMAD KHAN)
EXECUTIVE DISTRICT OFFICER
ELEMENTARY & SECONDARY
EDUCATION BUNER

Indst. No. 10511¹⁷ F.No. 237DA No.6 Dated. 30/07/2012.
Copy forwarded for information to the:

1. Dy. District Officer (M) Pry. Buner w/r to his office memo No. as above.
2. District Accounts Officer Buner.
3. Official Concerned.
4. PA to EDO local office.

Raj Muhammad Khan
EXECUTIVE DISTRICT OFFICER
ELEMENTARY & SECONDARY
EDUCATION BUNER

C.A.C

C.A.C

(14) Better Copy

OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY & SECONDARY EDUCATION BUNIR.

SANTION

Sanction is hereby accorded to the grant of retirement from service on attaining the age of superannuation in R/o Raham Gul Contract Chowkedar GPS Chalandry with effect from 30.06.2011 as forwarded by the Deputy District Officer Male Primary Buner W/r to his letter No.5338-40 dated:20.06.2011.

Note: Sanction of without pension and Gratuity only for CPF etc.

Raj Muhammad Khan

Executive District Officer Elementary and
Secondary Education Bunir.

Dated:28.07.2011

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Answer D

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

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W.P.No. 1188 / 2014

Baghi Shah S/o Alam Shah (late) Village & P.O Umer Payan,
Tehsil & District, Peshawar

..... Petitioner

VERSUS

- 1) The Govt. of KPK through Secretary Finance, Civil Secretariat, Peshawar KPK.
- 2) The Accountant General Khyber Pakhtunkhwa, Peshawar.
- 3) Executive Engineer Highway Division, Peshawar.

..... Respondents

13/2/14

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

PRAYER IN WRIT PETITION:

On acceptance of this Writ Petition the office order NO.Pension-II/B-3/2012-B/W-5/2013-14 168 dated 19.02.2014 may please be set-aside, and an appropriate writ may please be issued directing the respondents to finalize the pension case of the

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Deputy Registrar

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

Respectfully Submitted;

- 1) That the petitioner was initially appointed as Cooly on fixed pay vide Highway Division Peshawar dated 31.12.1995.
- 2) That vide Notification No.13.0,1/1-22/2007,08 dated 29.01.2008 the service of the petitioner brought on Regular side w.e.f 01.07.2008 and convert to Regular Civil Servant. (Copy of service book is attached as Annexure "A")
- 3) That the petitioner vide office order No.139/6-E dated 07.02.2013 retired from Government Service on attaining the age of superannuation with effect from 06.01.2013. (Office order dated 07.06.2013 is attached as Annexure "B")
- 4) That the petitioner thereafter submitted application for pension and or gratuity from the Assistant Accountant General Office on 18.11.2013. (Copy of the form dated 18.11.2013 is attached as Annexure "C")
- 5) That in the mean time his case for pension was sent and he was waiting for the finalization of his pension case. That while preparing his pension papers it was objected by the Accountant General Office vide No.Pension-II/B-3/2012-13/W-5 2013-14/168 dated 19.02.2014. That the Finance Department does not agree that the services of the fixed servant are entitle for pension w.e.f

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Deputy Registrar,

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR

JUDICIAL DEPARTMENT

W.P. No. 1188 of 2014

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:-

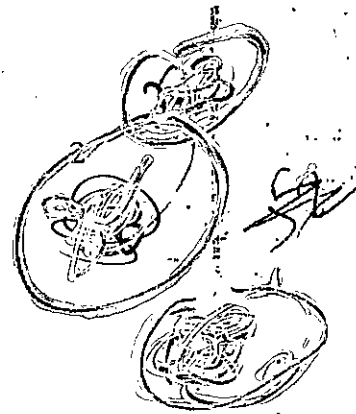
"On acceptance of this writ petition,
the office order No.Pension-II/B-3/2012-
B/W-5/2013-14/168, dated 19.2.2014
may please be set aside, and an
appropriate writ may please be issued
directing the respondents to finalize
the pension case of petitioner and he

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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.

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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.

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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/

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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.

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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.

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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.

office
 15/09/14

Announced on
9th Sept., 2014.

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 JUDGE
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 JUDGE

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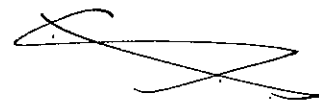
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2. Brief facts of the case are that petitioners were initially appointed as Class-IV Employees in the Education Department Malakand. Later on, the provincial government regularized their services in the year 2012 in view of "*Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009*" and the petitioners performed their duties in the Education Department till attaining the age of superannuation. Thereafter, the cases of petitioners for grant of pension were processed, but the same were objected by the respondents No. 3 & 4 on the ground that they did not qualify for pension benefits as they have not completed their tenure/period of service for pension.

3. The respondents were put on notice, who submitted their comments, wherein it has been mentioned that though the services of petitioners had been regularized in view of *ibid* Regularization Act, but averred that their pensionary rights would be considered not from their date of appointment, rather

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would be from the date of their regularization of service. So, prayed that petitioners are ^{not} entitled for pensionary benefits due to lack of fulfillment of prescribed length of service.

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4. Learned counsel for the petitioners argued that this matter has already been settled by their Lordships of the Peshawar High Court, in W.P. No. 118 of 2014 titled as "Baghi Shah vs. The State etc" decided on 09.9.2014 and prayed that in view of the principle enunciated by their Lordships in the above-referred judgment, the instant writ petition be allowed as prayed for, as the case of present petitioners is at par with that of Baghi Shah.

5. The learned A.A.G. appearing on behalf of the official respondents vehemently opposed the submissions made by the learned counsel for petitioners and argued that facts and circumstances of Baghi Shah case are altogether different and are not attracted to the instant case and supported the assertions narrated in the comments.

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6. Arguments heard and record perused.

7. From the perusal of record it reveals that petitioners after from date of their initial appointment were not regularized due to one reason or other and later admittedly were regularized. So, in view of Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963 and the principle laid down in the Baghi Shah's case entitle petitioners for pensionary benefits.

8. Thus, in light of above discussion and principle settled by their Lordships in the above referred case of Baghi Shah, petitioners are similarly placed persons like Baghi Shah, thus, the instant writ petition is accepted and the respondents are directed to finalize the pension cases of petitioners within two months positively.

Announced.
Dr: 10.5.2016

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JUDGE

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JUDGE

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2012 P L C (C.S.) 696

[Islamabad High Court]

Before Shaukat Aziz Siddiqui and Muhammad Anwar Khan Kasi, JJ

CHAIRMAN, PAKISTAN INTERNATIONAL AIRLINES CORPORATION (PIAC), KARACHI
and 3 others

Versus

TAYYABA HASNAIN and another

Intra-Court Appeal No.59 of 2008 in Writ Petition No.11 of 2008, decided on 2nd February, 2012.

Civil service---

---Conversion of contract employment into regular one---When any employee on contract was absorbed, into regular employment and there was no break in his/her service, then period of contract employment had to be considered for counting length of service for pensionary benefits---Employee, in the present case, was employed on 29-8-1995 on contract basis for a period of one year, but she continued performing her duties without any restraining order or fresh contract and she was permanently absorbed on 4-2-2000---Rules of Employer (P.I.A.) being non-statutory, its employees would be governed by the principle of "Master and Servant"---Employee having accepted her regularization of service on 4-9-2000, she could not take different stand by stating that she had been a regular employee from the very beginning (date of her appointment on 29-8-1995)---Period starting from 4-2-2000/date of regularization of her service was less than 10 years---Service Rules of Employer (P.I.A.) had clearly mentioned that 10 years' "regular service" would entitle the employee for pensionary benefits---Apart from the dispute about calculation of service period, the fact remained that writ could not be issued against a corporation in favour of an employee, where the service rules had not been framed with the prior approval of the Federal Government and was non-statutory.

PIAC v. Samina Masood PLD 2005 SC 831; PIAC v. Jamahur Rehman Durrani v. Secretary to Government and others PLD 1990 SC 719 and PIAC v. Tanweer-ur-Rehman (PLD 2010 SC 676 distinguished.

2002 PLC (C.S.) 225; 1996 SCMR 1185 and 1993 SCMR 609 rel.

Atta Ullah Hakim Kundi for Appellant.

Sh. Riaz-ul-Haq for Respondents.

Date of hearing: 21st December, 2011.

JUDGMENT

SHAUKAT AZIZ SIDDIQUI, J.--- Through instant, Intra-Court Appeal, appellants (PIAC) challenged the order dated 18-3-2008, passed by learned single Judge, in Writ Petition No.11 of 2008.

Pension 29

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2. Brief facts, gleaned out from the pleadings of the parties are that, respondent No.1 (Layyaba Hasnain) joined PIAC being Airhostess on 29-8-1995, as contract employee for a period of one year, which ended on 28-8-1996 but she continued performing her duties without any restraining order or fresh contract. She got married in September, 2004 and availed 18(eighteen) months leave without pay. During this period she was blessed with two children due to which, to remain in job became difficult for her, therefore, vide application dated 25-4-2007 she applied for early retirement w.e.f. 1-6-2007. The authorities (PIAC) turned down her request on the ground that period of 10 years had not been completed, due to availing of two years leave without pay, authorities further informed that her continued length of service was 9-1/2 years. She, without dragging herself into any controversy, continued performing her duties. On completion of requisite period she again applied for retirement on 23-1-2008, but this time, her request was declined with observation that period of service has to be counted w.e.f. 4-2-2000, the date on which she was permanently absorbed.

3. Feeling aggrieved she invoked the constitutional jurisdiction of this court by filing Writ Petition, which was allowed vide impugned order, operative paras of which are reproduced herein below:--

"In view of the foregoing, it appears that there is no dispute as to the initial induction of the petitioner, and the contract for one year. The issue arises what was the position after the one year contract, whether the petitioner was converted into regular employment or not. This contention is supported by the respondents' letter dated 10-5-2007, in which the actual service was confirmed to be 9 and half years and a further 06 months would indicate completion of 10 years of actual continuous service w.e.f. 23-11-1995. The petitioner has 10 years continuous service and is entitled to get retirement benefits. There has also been violation of Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 in that to enjoy the protection of law and discrimination based on sex alone.

In view of the above the Writ Petition is accepted with the direction to the respondents that the request of the petitioner for early retirement be accepted. The parties to bear their own costs"

4. Learned counsel for appellants vehemently argued and raised following points:---

- * Writ Petition against PIAC, is not maintainable for the reason that its Rules are non-statutory.
- * Impugned order could not have been passed for want of territorial jurisdiction.
- * Learned single Judge failed to appreciate the contents of letter dated 14-5-2007, through which letter dated 10-5-2007 was superseded and petitioner was not justified to make any claim from the mistake of facts recorded by the appellants.
- * Period of contract employment, which is more than four years, could not have been counted towards regular service for the purpose of retirement and pecuniary benefits, there under.
- * The impugned order is without jurisdiction, result of non-adherence to provisions of law and judgments of court of apex.

Learned counsel placed reliance on cases of; PIAC v. Samina Masood (PLD 2005 SC 831), PIAC v. Jamalur Rehman Durrani v. Secretary to Government and others (PLD 1990 SC 719) and PIAC v. Tanweer-ur-Rehman (PLD 2010 SC 676).

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Conversely, learned counsel for respondent No.1 submits that appellants are estopped by their words and conduct. Exclusion of service spread over more than four years was tainted with mala fide, ulterior motives and to malign lady employee. Learned counsel further submits that as per policy all those employees were offered to take early retirement, who had rendered continued service for period of 10 years or more. From day one of service till applying for retirement, respondent No.1 remained on the Pay Roll, so much so, after completing first year, no fresh contract was signed, which for all practical intent and purposes presumed to be regular employment. Learned counsel adds that element of mala fide has always been looked by superior courts, above technicalities, therefore, Writ was maintainable and impugned order is just, lawful and speaking one. At the end learned counsel prayed for the rejection of appeal and implementation of the order.

6. We have heard the learned counsel for the parties, perused the record and gone through the impugned order.

7. This is an admitted fact that respondent No.1 remained in continuous service from the date of her joining i.e. 29-8-1995, till she applied for premature/early retirement. This is also an admitted position that on expiry of contract employment on 28-8-1996, no fresh contract was offered by the employer and accepted by the employee, and that, date of her absorption is 4-2-2000. Respondent No.1 moved an application dated 25-4-2007 for early retirement in accord with optional "Early Retirement Policy" (for permanent female cabin crew), circulated vide Circular No.29/2006, dated 28-4-2006. Appellant (PIAC) declined her request vide letter Ref. No.HRM/(FS)/P54559/2007, dated 10-5-2007, contents of same are reproduced herein below:---

"REQUEST FOR EARLY RETIREMENT:

Reference your application dated 25-4-2007 for early retirement with effect from 1-6-2007.

You were appointed on 23-11-1995 and you have completed 11-1/2 years of service.

During this period you have availed two (2) years leave without pay as such your actual service comes to 9-1/2 years. (Emphasis underlined)

Since you have not completed 10 years of actual service, therefore, as per rules your request for early retirement cannot be considered."

This letter was followed by letter Ref. No.HRM/(FS)/P54559/2007, contents of which read as under:---

"Reference our letter No.1-HRM (FS)/P-54559/2007, dated 10-5-2007 on the above subject.

On scrutiny of your personal file it has revealed that you were appointed on 23-11-1995 on contract and permanently been absorbed with effect from 4-2-2000, therefore, your seniority will reckon with effect from 4-2-2000 as such you have completed only 5 years and 6 months service (excluding LWP of 1 year and 9 months).

In view of the above your request for early retirement cannot be considered."

8. It is important to note that despite issuance of letter dated 14-5-2007, letter dated 10-5-2007 was never withdrawn and even, it is nowhere recorded that latter was issued in supersession of earlier.

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9. On the principle of locus potentiae, it was submitted by the counsel for respondent that valuable right was accrued in her favour which could not have been taken away through arbitrary and colourable exercise of the Authority. It is the case of appellant itself that contract employment was convertible into regular and this benefit was extended to respondent No.1 by way of her absorption on 4-2-2000. It is well settled law, with the mandate of dictums of the Court of apex that, when any employee on contract is absorbed into regular employment, and there is no break in his/her service, then period on contract employment has to be considered for counting length of service for pensionary benefits etc. In this regard, guidance has been sought from the cases reported as 2002 PLC (C.S.) 225, 1996 SCMR 1185 and 1993 SCMR 609.

10. On the point of contract employment the learned counsel for appellants relied on the case of Jamalur Rehman Durrani (PLD 1990 SC 719). With utmost reverence, it is being observed that facts and circumstances of said case are quite different to the case in hand, moreover careful perusal of judgment in above case shows that observations recorded therein support the case of respondent No.1 instead of appellants. Similarly, judgment, in case of PIAC v. Samina Masood (PLD 2005 SC 831) does not support the contentions of the learned counsel. As per, dictum laid down in case of PIAC v. Tanveer-ur-Rahman (PLD 2010 SC 676) is concerned, honourable Supreme Court, declared that:--

(iii) PIAC is performing its functions in connection with the affairs of the Federation.

(iv) But, since services of employees were governed by the contract executed between both the parties and not by Statutory Rules framed under section 30 of PIAC, Act 1956, with prior approval of Federal Government therefore, they would be governed by the principle of "Master and Servant".

11. Admittedly, rules of PIA are non-statutory and, therefore, the employees of the PIAC would be governed by the principle of Master and Servant. The dispute between the parties is regarding terms and conditions of service. The appellant calculated her service as less than 10 years which is not a pensionable service, on the other hand respondent emphasizes that she had completed more than 10 years' service and is entitled for the pensionary benefits. Worth mentioning point over here is that her services were regularized on 4-2-2000 which was accepted by her without objection at that time and therefore at this stage, the respondent cannot take a different stand by stating that she had been a regular employee from the very beginning. This period starting from 4-2-2000 is less than 10 years.

The rules of PIA clearly mention that 10 years regular service entitles the employee for pensionary benefits, but apart from the dispute about calculation of service period, the fact remains that writ cannot be issued against a Corporation in favour of an employee where the service rules have not been framed with the prior approval of the Federal Govt. and are non-statutory.

Keeping in view the above, the appeal is accepted and order dated 18-3-2008 passed on Petition No.11, is set aside, leaving the parties to bear their own costs.

H.B.T/43/1sl.

Appeal accepted.

2012 P L C (C.S.) 1335

[Lahore High Court]

Before Rauf Ahmad Sheikh, J

MUHAMMAD FAROOQ

Versus

ENGINEER-IN-CHIEF ENC BRANCH, (GHQ), RAWALPINDI and another

Writ Petition No.2636 of 2010, decided on 30th January, 2012.

(a) Constitution of Pakistan---

---Arts. 199, 25 & 212---Constitutional petition---Maintainability---Civil service---Petitioner sought direction of the High court to the effect that the Authorities consider service rendered by him before his regularization towards his pay and pension---Validity---Government servant, if he remains continuously in service without break, had the right that the same period be counted towards pay, pension and promotion, but not seniority---Contention of the authorities that the Constitutional petition was barred under Art.212 of the Constitution was not correct as the petitioner was not treated equally with another employee who was placed under similar circumstances, and his right to equal treatment under Art.25 of the Constitution stood infringed and, therefore, he could invoke the Constitutional jurisdiction of the High Court---High Court directed the authorities to count the service rendered by the petitioner prior to regularization and benefits thereof be given to him--- Constitutional petition was allowed, accordingly.

2005 SCMR 100 and 2002 SCMR 574 rel.

(b) Civil Procedure Code (V of 1908)---

---O. I, R.9---Constitution of Pakistan, Art.199---Constitutional petition---Misjoinder/non-joinder of necessary parties---Effect---Civil service---Petition for misjoinder and non-joinder of parties as provided under O.I, R.9 of the C.P.C. was not bad---Petitioner who otherwise proved that he had been treated with discrimination and had been illegally deprived of benefit which was due to him for his continuous government service should not be non-suited and his petition should not be knocked down for technical reasons.

2003 SCMR 318 ref.

(c) Administration of justice---

---Technicalities should not hamper the course of justice and may not be used to create hurdles in the way of administration of substantial justice. [p. 1338] D

Muhammad Ramzan Khan for Petitioner.

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ORDER

RAUF AHMAD SHEIKH, J.--- The petitioner has prayed that inaction on part of respondents to consider the service rendered by him w.e.f. 17-2-1979 to 8-5-1987 towards his pay and pension be declared as illegal and they be directed to consider the same for the above mentioned purposes. It was stated that the petitioner was appointed as Casual Labourer under the respondents on 17-2-1979 and throughout his service worked as Oil Engine Driver and his service was up to the mark and satisfaction of his superiors. He was given appointment letter on 27-4-1987 but his previous service was not counted towards pay and pension so he made repeated requests from time to time but the respondents did not accept his genuine demand without giving any response and passing any order. It was contended that Sher Zaman and Musaddaq Khalid, whose services were also regularized like the services of the petitioner, were given the benefit of addition of the service rendered prior to regularization towards pay and pension but in his case the said benefit has been withheld and as such he has not been treated equally with the said employees so his fundamental right as guaranteed under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 has been infringed. With these averments an order as stated above has been prayed for.

2. The respondents contended that the petition was not maintainable in its present form; that the same was bad for non joinder of necessary parties; that the same is not maintainable under Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973; that petitioner was appointed as casual labourer (RTE) in 1987 so his salary and pension would be determined from the date of joining the service; that his previous appointment w.e.f. 17-2-1979 was purely of casual nature so the same cannot be counted towards pension and pay as the same is not verified from the Audit and pay bills; that the petitioner was informed through letter dated 20-7-2009 that his request cannot be acceded to and other points mentioned by him were also repelled; that the case of the persons mentioned in the petition was different from that of the petitioner, who was casual labourer appointed on a project and that under the rules, he could have not been given the benefit prayed for.

3. The learned counsel for the petitioner has reiterated the above contentions and vehemently contended that the petition had continuous service to his credit w.e.f. 17-2-1979; that there was no break in his service and he has performed the duties satisfactorily through out his career; that no doubt the seniority cannot be given to him w.e.f. 17-2-1979 but he is entitled to pay and pension benefit for the period prior to his regularization as was given to other employees, who also started career as casual labourers but their services were subsequently regularized. In support of the contentions raised reliance is placed on 2005 SCMR 100 and 2002 SCMR 574.

4. In the comments the respondents have contended that the petition is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973; that the petition is not in proper form and the Federal Government could have been impleaded only through Secretary to the Government of Pakistan Ministry of Defence; that the petitioner cannot take benefit of the services rendered as casual labourer on a project; that Sher Zaman etc. were working against Permanent posts so after regularization they were given the benefit of the previous service and that the petitioner was a daily wager prior to regularization of his service so can claim benefit for the said period.

5. At the outset the learned Standing Counsel has conceded that the service of the petitioner is governed by the Civil Servants Act as was clearly mentioned in his appointment letter Annexure "11" but contended that he had performed his duties as casual labourer before regularization of his service

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He cannot take benefit of the service rendered as C.L. The appointment letter does show that his service would be governed by the Civil Servants Act, 1973 and rules made there-under so the petition is not barred under Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973. It is an admitted fact that he has been performing duties regularly w.e.f. 17-2-1979. This fact is fortified from the employment certificate Annexure "E" and certificate Annexure "D". It is not denied that he has been regularly and continuously working w.e.f. 17-2-1979. Sher Zaman son of Gul Zaman, who was also working as casual labourer (RTE) was regularized w.e.f. March, 1987 and admittedly he has been given benefit of his previous service rendered prior to regularization. If the Government Servant without break continuously remains in service then after regularization he has the right that the same be counted towards pay, pension and promotion but not for seniority. In this respect reliance is placed on 2002 SCMR 574. The learned Standing Counsel has vehemently contended that under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 the writ petition is not maintainable and the petitioner should seek remedy before the Federal Service Tribunal. It is proved on record that the petitioner was not treated equally with Sher Zaman, who was placed under similar circumstances so his right of equal treatment as provided under Article 25 of the Constitution stands infringed and he can invoke the constitutional jurisdiction of this Court. It is not denied that respondents are the authority and appellate authority of the petitioner. According to him he has been making requests time and again but they have shelved the application without passing any order although this contention appears to be ill-founded in view of letter dated 20-7-2009 but even on rejection of this request, he has cause of action. No petition is bad for mis-joinder and non-joinder of parties as provided under Order I, Rule 9 C.P.C. The concerned authorities, who were competent to pass appropriate order in accordance with law, had failed to perform their duties so the petitioner rightly opted to file a petition against them. It is true that under section 79 of C.P.C., the Federal Government can sue and be sued as Federal Government of Pakistan through Secretary of the Government but in this case the petitioner has confined his grievance against respondents Nos.1 and 2 i.e. the authority and appellate authority in his case. It is an established law that the technicalities should not hamper the course of justice and may not be used to create hurdles in way of administration of substantial justice. The petitioner, who has otherwise proved that he has been treated with discrimination and has illegally been deprived of the benefit, which is due to him for spotless and continuous service of 8 years prior to his regularization should not be non-suited and his petition should not be knocked down for technical reason i.e. form of the petition. In this aspect reliance is placed on 2003 SCMR 318. For the foregoing reasons, the petition is accepted and respondents are directed to count the service rendered by the petitioner prior to his regularization as has been done in case of Sher Zaman etc. and all benefits be given to him in the like manner.

K.M.Z/M-110/L

Petition allowed.

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(36)

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

Writ Petition No.2246-P/2016

Date of hearing:- 22.06.2017

Petitioner(s):- Rizwanullah by Mr. Khalid Rehman, Advocate.

Respondent (s):-By Syed Qaisar Ali Shah AAG.

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through this common judgment, we, propose to decide the following writ petitions as identical questions of law and facts are involved therein:-

Writ Petition No.2246-P/2016

Rizwan Ullah Vs Govt

Writ Petition No.290/2016

Haq Nawaz Vs Govt

Writ Petition No.3061-P/2015

Mehrab Gul Vs Govt

Writ Petition No.1084-P/2017

Saadullah Khan Vs Govt

Writ Petition No.1281-P/2016

Naimatullah Vs Govt.

Writ Petition No.1626-P/2015

Shafiq ur Rehman Vs Govt

Writ Petition No.1861-P/2016

Siyal Khan Vs Govt

Writ Petition No.2177-P/2016

Hamidullah Khan Vs Govt

Writ Petition No.3373-P/2016

Anderaf Gul Vs Govt

Writ Petition No.286-P/2016

Basir Azam Vs Govt

Writ Petition No.2868-P/2016

Gulistan Khan Vs Govt

Writ Petition No.3226-P/2016

Ashiq Ali Vs Govt

Writ Petition No.4623-P/2016

Said Mali Khan Vs Govt

Writ Petition No.4924-P/2016

Malik Wali ur Rehman Vs Govt

Writ Petition No.457-P/2016

Liaq Shah Vs Govt

Rizwanullah

Qaisar

(37)

Writ Petition No.4923-P/2016

Gul Zarin Vs Govt

Writ Petition No.4086-P/2016

Hayat Hussain Vs Govt

Writ Petition No.3203-P/2016

Muhammad Rehman Vs Govt

Writ Petition No.4179-P/2015

Mian Asfandyar Vs Govt

Writ Petition No.181-D/2017

Parveen Begum Vs Govt.

Writ Petition No.2876-P/2014

Sher Ali Vs Govt

Writ Petition No.501-P/2016

Fazal Khan Vs Govt

Writ Petition No.2064-P/2016

Rahim Shah Vs Govt

Writ Petition No.4683-P/2016

Abdul Qadeer Vs Govt

Writ Petition No.3451-P/2016

Nisar Bacha Vs Govt

Writ Petition No.3071-D/2016

Shah Jehan etc Vs Govt.

Writ Petition No.3368-P/2016

Abdul Ghaffar Vs Govt

Writ Petition No.3639-P/2016

Nadar Khan Vs Govt

Writ Petition No.3367-P/2016

Syed Muzarab Shah Vs Govt

Writ Petition No.3369-P/2016

Muhammad Faiq Vs Govt

Writ Petition No.3370-P/2016

Syed Man Shah Vs Govt

Writ Petition No.590-P/2017

Rab Nawaz Khan Vs Govt

Writ Petition No.204-P/2017

Zahir Shah Vs Govt

Writ Petition No.1072-P/2017

Noor Zada Vs Govt

Writ Petition No.337-D/2014

Ali Man Shah Vs Govt

Writ Petition No.724-D/2016

Ghulam Shabir Vs Govt

Writ Petition No.651-D/2016

Syeda Allah Wasaye Vs Govt

Writ Petition No.515-D/2016

Rab Nawaz Vs Govt

Writ Petition No.2-D/2015

Muhammad Jaffar Vs Govt

Writ Petition No.278-D/2017

Rashid Ahmad Vs Gomal University

Writ Petition No.31-D/2017

Mehmood ul Hassan Vs Govt

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Writ Petition No.880-D/2016
 Abdul Rashid Vs Govt
Writ Petition No.94-D/2016
 Rab Nawaz Vs Govt
Writ Petition No.399-D/2014
 Bibi Amna Vs Govt
Writ Petition No.410-D/2016
 Rehmatullah Vs Mst. Azra Bibi
Writ Petition No.1397-P/2014
 Azam Khan Vs Govt
Writ Petition No.1396-P/2014
 Roshan Din Vs Govt
Writ Petition No.620-P/2015
 Saleem Khan Vs Govt
Writ Petition No.376-P/2015
 Muhammad Ramzan Vs Govt
Writ Petition No.843-P/2015
 Lachi Khan Vs Govt
Writ Petition No.4538-P/2015
 Raham Khan Vs Govt
Writ Petition No.176-P/2016
 Shah Nawaz Vs Govt
Writ Petition No.1167-P/2016
 Muhammad Shoaib Vs Govt
Writ Petition No.599-P/2016
 Abdur Rehman Vs Govt
Writ Petition No.2044-P/2016
 Muhammad Aslam Khan Vs Govt
Writ Petition No.4798-P/2016
 Dilfaraz Vs Govt
Writ Petition No.4799-P/2016
 Muhammad Iqbal Vs Govt
Writ Petition No.3506-P/2016
 Noor Muhammad Shah Vs Govt
Writ Petition No.588-P/2017
 Mumtaz Khan Vs Govt
Writ Petition No.4800-P/2016
 Sherullah Jan Shah Vs Govt
Writ Petition No.4801-P/2016
 Muhammad Azam Khan Vs Govt
Writ Petition No.4802-P/2016
 Zinda Khan Vs Govt
Writ Petition No.842-P/2015
 Wakeel Khan Vs Govt
Writ Petition No.4131-P/2016
 George Masih Vs Govt

2. Facts in brief forming the background of the above writ petitions are that petitioners are Class-IV employees. They were initially recruited/appointed on

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contract/adhoc/temporary/ fixed pay basis in various departments of the Government of Khyber Pakhtunkhwa. By virtue of the Khyber Pakhtunkhwa Regulation Acts, their service was, later on, regularized. After their retirements, the petitioners have been refused pension by the respondents-departments on the ground of lack of prescribed length of their regular service. Grievance of the petitioner is that the respondents-departments by excluding the period of their temporary/adhoc/ contract/ fixed pay service towards their regular service, have illegally deprived them from pension as under the law and rules their temporary service was to be calculated/counted with regular service, hence, these writ petitions.

3. On day before yesterday i.e. 20.06.2017, these writ petitions along with connected writ petitions in respect of family pension of deceased civil servants, were fixed for hearing. The moment, these writ petitions were taken up for hearing, learned A.A.G. raised a preliminary objection qua maintainability of the instant writ petitions on the ground that since the petitioners are retired civil servants and they claiming their right conferred upon them by section 19 of the Khyber Pakhtunkhwa Civil Servant Acts, 1973, which pertains to the terms and conditions of a civil servant, therefore, the jurisdiction of this Court is barred under Article 212 of the Constitution as the same exclusively falls in the domain of the Service Tribunal.

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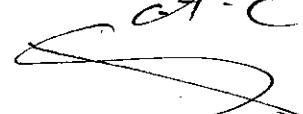
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4. When confronted with the preliminary objection, learned counsel for the petitioners sought time to assist the Court, hence, the cases were posted for today.

5. Today, learned counsel for petitioners tried their level best to wriggle out of the situation by submitting that petitioners are no more civil servants as they have already been retired from service, hence, under section 4 of Service Tribunals Act, 1973, their appeals before the Service Tribunal would be incompetent. The next limb of their arguments was that since the petitioners have been discriminated, therefore, under Article 25 of the Constitution, this Court is vested with the powers to quash the illegal action and inaction of the respondents. Some of learned counsel for the petitioners straightaway conceded the bar on the jurisdiction of this Court in the matter of pension under Article 212 of the Constitution and requested for treating the instant petitions as Departmental Appeals and sending the same to the competent authority for onward proceeding.

6. We are not in consonance with the first argument of learned counsel for the petitioners because under section 2 (a) of the Service Tribunal Act, 1973, "civil servant" means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973. Petitioners are retired civil servants. Admittedly, dispute regarding pension of a civil servant squarely falls in terms and conditions of service of a civil servant, hence, Service Tribunal is vested

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with exclusive jurisdiction in such like matter. It has persistently been held by this Court as well as by the august Supreme Court of Pakistan that a civil servant, if aggrieved by a final order, whether original or appellate, passed by the departmental authority with regard of his/her terms and conditions of service, the only remedy available to him/her would be filing of appeal before the Service Tribunal even if the case involves vires of particular Rule or notification.

7. So far as the argument of learned counsel for petitioner with regard to discriminatory treatment and violation of Article 25 of the Constitution is concerned, we deem it necessary to clarify that a civil servant cannot bypass the jurisdiction of Service Tribunal by taking shelter under Article 25 of the Constitution in such like matter. The Service Tribunal shall have the exclusive jurisdiction in a case which is founded on the terms and conditions of service, even if it involves the question of violation of fundamental rights because the Service Tribunals constituted under Article 212 of the Constitution are the outcome of the constitutional provisions and vested with the powers to deal with the grievances of civil servants arising out from original or appellate order of the department.

8. As regards the submission of learned counsel for petitioners to treat the instant writ petitions and send the same to the concerned authority for consideration/decision, the same has weight. In this regard we are fortified by the

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judgment of the august apex Court in case titled, "I.A. Sherwani and others v Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041).

9: In view of the above, it is held that all these writ petitions are not maintainable, however, in the interest of justice, we instead of dismissing the same, transmit to the concerned Secretaries to the Government of Khyber Pakhtunkhwa to treat them as departmental appeals and decide strictly in accordance with Civil Servants Pension Rules, 1963.

10. Before parting with the judgment, we, deem it appropriate to mention here that the concerned Secretaries while deciding the departmental appeals, may take guidance from the judgment of this Court rendered in Writ Petition No.3394-P/2016, titled, "Amir Zeb Vs District Account Officer Nowshera etc" dated 22.06.2017, wherein guideline has been provided for eligibility of a civil servant for the pension who had served on adhoc/contract and fixed pay basis.

Announced:
22.06.2017
Siraj Afridi P.S.

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JUDGE

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(43) Annexure
"E" (2)
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**BEFORE THE PESHAWAR HIGH COURT (MINGORA BENCH
AT SWAT.**

W.P. No. 224/2017:

1. Hazrat Ghulam S/o Mandrai
R/O Village Gulono Bowray Chagharzay, Bunir.
2. Raham Gul S/o Karam Gul
R/o Village Chalandray Chagharzay, Bunir.....(Petitioners)

VERSUS

1. District Education Officer(male) Bunir.
2. District Account Officer, Bunir.
3. Accountant General Khyber Pakhtunkhwa, Peshawar.
4. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.....(Respondents)

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

Respectfully Sheweth:

Brief facts giving rise to the instant Writ Petition are as under:

FACTS:

1. That the petitioners served as Class-IV Employees in the Education Department Bunir and such got their retirement on the said post. (Copies of Appointment letters are annexure "A").
2. That keeping in view the agonies and the financial constrains of the family of the low grade retiring employees, the provincial government was pleased to regularized the services/Posts of the petitioners in the year 2008 and as such they were declared civil servants and further the said order was confirmed according to "Regularization Act,2010" and as such the petitioners

FILED TODAY

11 JAN 2017

Additional Registrar

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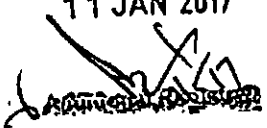
performed their duties as permanent employees of Education Department in Bunir, till date of their retirement. (Copy of Regularization Notifications and retirement letter are annexure-B)

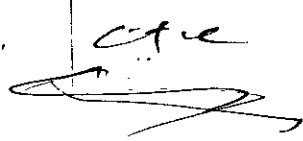
3. That the petitioners keeping in view of the above circulation were hopeful to get pension benefits after their retirement and as such waited for the same when they were taken by surprise when the Respondents No.1 informed the petitioners, that they are not qualifying for pension benefits and others benefits after retirement.
4. That the petitioners wrote applications to the concerned quarters but no heed was paid to their requests and one way or the others, the respondents adopted the delaying tactics and finally the petitioners were informed that they have no right of pension and other benefits after retirement. (Copies of Applications is annexure-C)
That being aggrieved the petitioners prefer this petition on the following grounds amongst others inter-alia.

GROUND:

- A. That actions and inactions of the respondents are violative of the constitution and the relevant laws laid down for the purpose, hence needs interference of this august Court.
- B. That the petitioners have poor financial background and served the department for long considerable period with the hopes of further benefits after retirement but the respondents did not observe the prescribed rules, regulations and denied the benefits in shape of pension to the petitioners.
- C. That the issue in hand has now already been decided by this august court through Writ petition No.123-M/2015

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(45) (12) (3)

dated: 10.05.2016 hence the petitioners deserve for the same treatment. (Copies of judgments are annexure-D)

D. That any other ground may be adduced during the course of argument, with the kind permission of this Hon'ble Court.

It is, therefore, humbly prayed that on acceptance of this Writ Petition the respondents may kindly be directed to grant after retirement benefits to the petitioners in shape of pension and others for which the petitioners deserves.

Or

Any other relief which this august Court deems appropriate may kindly be awarded to meet the ends of justice.

Interim relief:

By way of interim relief the respondents may kindly be directed to finalize the pension cases of the petitioners.

Petitioners

Through



Shams ul Hadi

Advocate, Peshawar.

Dated: 10/01/2017

CERTIFICATE:


Certified on instructions of my client that petitioners have not previously moved this Hon'ble Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 regarding the instant matter.


ADVOCATE

LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan, 1973.
2. Pension laws.
3. Any other law books according to need.



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11 JAN 2017

Additional Registrar

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

W.P No. 22-M/2017
With Interim Relief

Hazrat Ghulam and 01 other (Petitioners)

Versus

District Education Officer (Male), Buner and 03 others.
(Respondents)

Present: *Mr. Shams-ul-Hadi, Advocate for the petitioners.*

W.P No. 218-M/2017
With Interim Relief

Sher Afzal and 02 others (Petitioners)

Versus

*Executive Engineer Public Health Engineering Division,
Dir Lower at Timergara and 03 others.*
(Respondents)

Present: *Mr. Shams-ul-Hadi, Advocate for the petitioners.*

W.P No. 618-M/2017
With Interim Relief

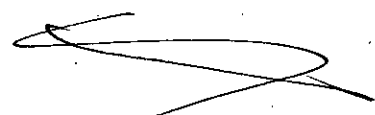
Gul Zamin Khan and 22 others (Petitioners)

Versus

District Education Officer (Male), Buner and 04 others.
(Respondents)

Present: *Mr. Shams-ul-Hadi, Advocate for the petitioners.*

Date of hearing: **04.10.2017**

etc


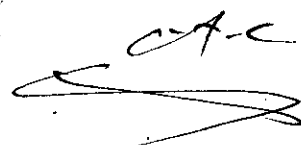
JUDGMENT

ISHTIAQ IBRAHIM, J.- Through this single judgment, we intend to decide this petition bearing W.P No. 22-M/2017 as well as the connected W.P Nos: 218-M & 618-M of 2017 as common questions of law and facts are involved in all these petitions.

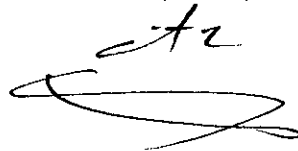
2. Petitioners through these petitions crave the indulgence of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 with the following prayer:

“It is, therefore, humbly prayed that on acceptance of this writ petition, the respondents may kindly be directed to grant after retirement benefits to the petitioners in shape of pension and others for which the petitioners deserve. Any other relief which this august Court deems appropriate may kindly be awarded to meet the ends of justice”.

3. Most of the petitioners in W.P No. 22-M/ 2017 and 618-M/2017 have served as Class-IV employees in Education Department Buner and got retirement on their



respective posts except Petitioners No. 21 & 22 in W.P No. 618-M/2017 who are the widows of deceased employees namely Miraj Muhammad and Bakhtawar Shah respectively. Likewise, petitioners in W.P No. 218-M/2017 have also performed their duties as Class-IV employees till their retirement in Public Health and Engineering Department, Dir Lower. As per contentions of the petitioners, their services were regularized in 2008 and the order was further confirmed in view of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 whereafter the petitioners performed their duties as regular employees till their retirement. The petitioners were hopeful that they will get pension benefits after their retirement but astonishingly they were informed by the concerned departments that the petitioners were not qualified for pension as well as other benefits after retirement. The petitioners submitted applications before the concerned authorities for redressal of their



grievances but in vain, hence, these writ petitions.

4. Learned counsel for the petitioners, *inter alia*, contended that family pension of the petitioners has been denied by respondents without any legal justification and the same action and inaction, if not set aside, would cause serious miscarriage of justice to petitioners and LRs of the deceased employees. Further contended that the same issue has already been resolved by this Court through various judgments even a larger bench of this Court has delivered a judgment on the questions involved in these writ petitions whereby several contract employees have been awarded the benefit of family pension on their regularization. Learned counsel concluded that the petitioners, being at par with those employees, are also entitled to the same relief.

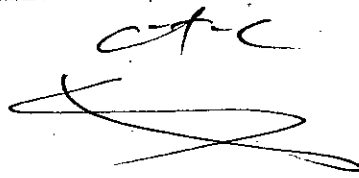
5. Learned Assistant Advocate General, present in Court in connection with

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some other cases, was put on notice of these writ petitions and he was confronted with the judgments of this Court especially the judgment passed by the larger bench at the principal seat of this Court. Learned A.A.G. opposed the contention of petitioners and submitted that the petitioners are not entitled to the benefit of family pension under the relevant rules.

6. Respondent No.1 in W.P No. 22-M/2017 and 218-M/2017 filed their Para-wise comments whereby they denied the claim of petitioners and contended that the petitioners were serving on fixed pay besides, they have not served as regular employees for the period prescribed under the relevant rules, therefore, they are not entitled to get the benefits they have prayed for.

7. We have considered the submissions of learned counsel for the petitioners as well as of the learned A.A.G. and have gone through the available record.



8. No doubt, the petitioners as well as predecessor of some of the petitioners had been appointed as Class-IV employees in the Education Department and Public Health and Engineering Department on contract basis and were retired on attaining the age of superannuation but it is also an admitted fact that services of contract/adhoc employees have been regularized in view of Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009 and a proper notification has been issued by the Provincial Government to this effect. The question for resolution before this Court is whether the petitioners and LRs of the deceased employees are entitled to family pension in view of the Act *ibid* or not, this question has been resolved by the larger bench vide judgments dated 22.06.2017 in W.P No. 3394-P/2016 and W.P No. 2246-P/2016 however, a preliminary objection regarding maintainability of the writ petitions was raised by learned A.A.G before the said bench. It is noteworthy, that there were two sets of petitioners i.e the retired

employees who moved the petitions in personal capacity which were decided by the larger Bench vide judgment dated 22.06.2017 in W.P No. 2246-P/2016 whereas the remaining petitioners were legal heirs of the deceased employees who sought the benefit of family pension on the strength of regular service performed by their respective predecessors whose writ petitions were decided vide judgment dated 22.06.2017 in W.P No. 3394-P/2016.

9. Whether the writ petitions filed by retired employees/civil servants in personal capacity are maintainable before this Court or not, this question was adjudged by the larger bench in judgment dated 22.06.2017 in W.P No. 2246-P/2016. The relevant part of the judgment is reproduced herein below:-


“We are not in consonance with the first argument of learned counsel for the petitioners because under Section 2(a) of the Service Tribunal Act, 1973, “civil servant” means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973: Petitioners are retired civil servants. Admittedly, dispute regarding pension of a civil

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servants squarely falls in terms and conditions of service of a civil servant, hence, Service Tribunal is vested with exclusive jurisdiction in such like matter. It has persistently been held by this Court as well as by the august Supreme Court of Pakistan that a civil servant, if aggrieved by a final order, whether original or appellate, passed by the departmental authority with regard of his/her terms and conditions of service, the only remedy available to him/her would be filing of appeal before the Service Tribunal even if the case involves vires of particular Rule or notification”.

The larger bench in the above referred judgment also discussed the point of alleged discrimination and violation of Article 25 of the Constitution and held that:-

“We deem it necessary to clarify that a civil servant cannot bypass the jurisdiction of Service Tribunal by taking shelter under Article 25 of the Constitution in such like matter. The Service Tribunal shall have the exclusive jurisdiction in a case which is founded on the terms and conditions of service, even if it involves the question of violation of fundamental rights because the Service Tribunals constituted under Article 212 of the Constitution are the outcome of the constitutional provisions and vested with the powers to deal with the grievances of civil

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servants arising out from original or appellate order of the department".

In light of the above observations of the larger bench, the writ petitions filed by retired civil servants in personal capacity are not maintainable before this Court in view of the bar under Article 212 of the Constitution and we have no other option except to transmit such writ petitions to the concerned quarters to treat the same as departmental appeals.

10. Adverting to the maintainability of writ petitions to the extent of legal heirs of the deceased civil servants, in this regard too we rely on another judgment of the same date i.e 22.06.2017 rendered by the larger bench in W.P No. 3394-P/2016 wherein it was observed that:-

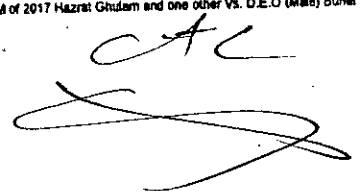
"11. Going through the law on the subject and deriving wisdom from the principles laid down by the Hon'ble apex Court in the judgments (supra), we are firm in our view that petitioners/legal heirs of the deceased employees have locus standi to file these petitions because the pensionary benefits are inheritable which

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under section 19(2) of the Khyber Pakhtunkhwa Civil Servants Act, on the demise of a civil servant, 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".

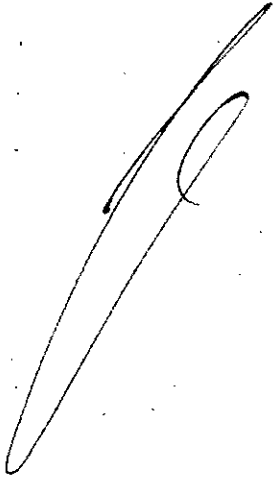
In light of the above observations recorded by the larger bench, W.P No. 618-M/2017 to the extent of Petitioners No.21 & 22, being legal heirs of the deceased civil servants, is maintainable before this Court in exercise of its powers under Article 199 of the Constitution.

II. Now advertng to merits of W.P No. 618-M/2017 to the extent of legal heirs of the deceased civil servants, while referring to Rules 2.2 and 2.3 of the West Pakistan Civil Services Pensions Rules, 1963 the larger

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bench in its judgment dated 22.06.2017 in
W.P No. 3394-P/2016 held that:-

“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 into service was temporary or regular. It is also clear from sub-rule (i) that continuous 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”.

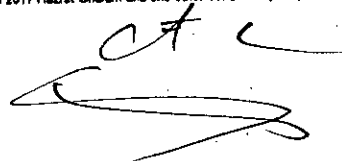


As per contention of the petitioners/LRs, the respondents have refused their family pension on the ground that their predecessors have not completed the prescribed length of service after regularization. This point has also been discussed by the larger bench in the afore referred judgment in the light of Section 19 of the NWFP Civil Servant (Amendment) Act, 2005 and Khyber Pakhtunkwa Civil Servants (Amendment) Act, 2013 and it was held that:-

“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 employees 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”.

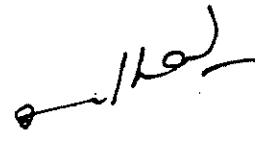
The similar relief sought by legal heirs of deceased civil servants through W.P No. 618-M/2017, has been granted by the larger bench to similarly placed persons, therefore, Petitioners No. 21 & 22 in W.P No. 618-M/2017 are also entitled to the same relief on the ground of parity.


12. In the backdrop of the above, this writ petition i.e W.P No. 22-M/2017, W.P No. 618-M/2017 to the extent of Petitioners No. 1 to 20 & 23 as well as the connected W.P No. 218-M/2017, being not maintainable before this Court, are transmitted to the concerned Secretaries to the Government of Khyber Pakhtunkhwa to treat them as




departmental appeals and decide strictly in accordance with Civil Servants Pension Rules, 1963. The concerned Secretaries while deciding the departmental appeals, may take guidance from the judgment of the larger bench referred to above. W.P No. 618-M/2017 is admitted and partially allowed to the extent of Petitioners No. 21 & 22 in the light of judgment dated 22.06.2017 in W.P No. 3394-P/2017. The respondents are directed to pay pension of the deceased employees to their legal heirs. Respondents are further directed to do the needful within two months positively after receipt of this judgment.

Announced
04.10.2017


Mohammad Ibrahim Khan
JUDGE


Ishfaq Ibrahim
JUDGE

Office
11/10



بخدمت جناب سیکریٹری ایجوکیشن خیبر پختون خوا
بوساطت ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ / زنانہ) بونیر

(59)

جناب عالی!

۱۔ گزارش ہے کہ سائیکل نے محکمہ ایجوکیشن میں ڈیوٹی سرانجام دے کر مدت ملازمت مکمل کر کے ریٹائرمنٹ حاصل کی۔
۲۔ یہ کہ بغد میں سائیکل کو پنشن کا نقد انہیں ٹھرایا گیا بدیں وجہ سائیکل نے پشاور ہائی کورٹ بینگورہ بیچ میں رٹ پیشین
نمبر 2017 / 618 دائر کی۔ جسکو سائیکل کے حق فیصلہ کر کے
آپ صاحبان کو ہدایت دی گئی ہیں۔ کہ سائیکل
کو پنشن جاری کیا جائے۔ اور تمام کارروائی عرصہ 2 ماہ میں مکمل کی جائے۔

لہذا آپ صاحبان سے گزارش ہے کہ ہائی کورٹ کی فیصلے مورخہ 04 / 10 / 2017 کی روشنی میں
مناسب احکامات جاری کرنے پنشن سائیکل کا حکم
عطا فرمائیں۔ تو بندہ شکر گزار ہوگا۔

سائل = حضرت علامہ

حضرت غلام ولہ عسکری

شناختی کارڈ نمبر: 33176625 / 15151
پوسٹ : چوکیدار گورنمنٹ ہائی اسکول
محکمہ : تعلیم بیلہ

موبائل نمبر: 9675732 : 0342

مورخہ: 18 / 10 / 2017

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بعدالت سروس لٹریبونل شاہور علیہ شخصو خواہ

کورت فیس	قیمت ایک روپیہ
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18 جنوری 18۲۰ منجانب
صورت نلام بنام گوگنٹ ویر ۵

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکے

مقدمہ مندرجہ بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن مقام سروس لٹریبونل کے شخصہ رلیہ دکا اریڈو کورٹ کو مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل احتیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زراس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ ڈائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ بصورت ضرورت مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برواختہ منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب سے ہاگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا ک سند ہے

المرقوم 18 ماہ جنوری 18۲۰

العبد گواہ شہادہ العبد
بمقام

کے لئے منظور ہے

سروس لٹریبونل

Attested and accepted by Shams-ul-Huda