

S.A No.729/2018 filed Syed Ali Shah

23.12.2019

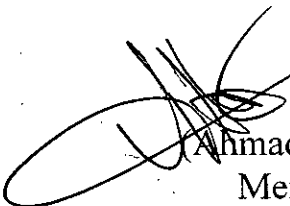
Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present.

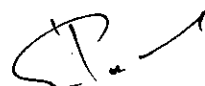
The appellant (Retired Chowkidar) has filed the present service appeal for the grant of pensionary/retirements benefits by also taking into account his service with effect from the date of his first appointment.

Learned Deputy District Attorney did not resist the present service appeal in view of Notification No.FD(SOSR-II)4-36/2017 Dated 22.05.2019 issued by the Finance Department Government of Khyber Pakhtunkhwa.

Admittedly Notification No.FD(SOSR-II)4-36/2017 Dated 22.05.2019 has been issued by the Finance Department Government of Khyber Pakhtunkhwa whereby sanction was accorded for regularization of fixed pay Class-IV employees by extending them the status of civil servant from the date of first appointment instead of the date of their regularization w.e.f 01.07.2008.

As a sequel to above noted development, the present service appeal has become infructuous and is disposed of in the light of Notification No.FD(SOSR-II)4-36/2017 Dated 22.05.2019 mentioned above. The appellant may seek remedy under the law if his case for pensionary benefits is not honored as per Notification mentioned above. No order as to costs. File be consigned to the record room.

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member

ANNOUNCED.  
23.12.2019

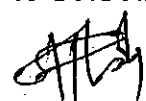
13.05.2019

Nemo for the appellant. Mr. Zia Ullah Learned Deputy District Attorney for the respondents present. Due to leave of the worthy Chairman, the case is adjourned to 23.07.2019 for arguments before D.B.

  
(Hussain Shah)  
Member

23.07.2019

Syed Noman Ali Bukhari, learned counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 10.10.2019 for arguments before D.B.

  
(HUSSAIN SHAH)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

10.10.2019

Due to official tour of Hon'ble Members to Camp Court Swat, instant appeal is adjourned to 23.12.2019 for the same.

  
Reader

06.11.2018

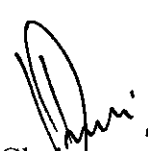
Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 24.12.2018. Written reply not received.

  
READER

24.12.2018

Mr. Muhammad Asif Yousafzai, Advocate for appellant and Addl. AG alongwith Sardaraz Khan, ADO for the respondents present.


Written reply on behalf of the respondents has been filed. To come up for arguments before the D.B-1 on 25.02.2019. The appellant may submit rejoinder within a fortnight, if so advised.

  
Chairman

25.02.2019

Syed Numan Ali Bukhari, Advocate for appellant and Mr. Muhammad Jan, DDA for the respondents present.

Rejoinder on behalf of appellant submitted which is placed on record. To come up for arguments on 13.05.2018 before the D.B.

  
Member

  
Chairman

04.06.2018

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Retired Chowkidar) has filed the present appeal for the grant of pensionary/retirement benefits by taking into consideration his first date of appointment.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process within 10 days, thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 13.08.2018 before S.B

Appellant Deposited  
Security & Process Fee

  
Member

13.08.2018

Counsel for the appellant and Mr. Kabirullah Khattak AAG for respondents present. Learned AAG seeks time to file written reply/comments. Granted. To come up for written reply/comments on 15.10.2018 before SB.

  
(Muhammad Amin Khan Kundi)  
Member

15.10.2018

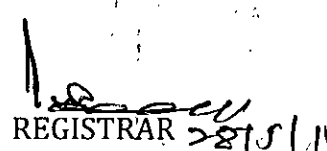

Clerk to counsel for the appellant present. Mr. Nadar Khan, Supdt alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply on behalf of the respondents not submitted. Learned AAG seeks adjournment. Granted. Case to come up for written reply/comments on 06.11.2018 before S.B.

  
(Ahmad Hassan)  
Member

Form-A  
FORM OF ORDERSHEET

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

Case No. 729/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	28/05/2018	<p>The appeal of Saif Ali Shah presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 28/5/18</p>
2	29/05/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>04/06/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.**

APPEAL NO. 729 /2018.

Said Ali Shah

VS

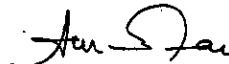
Secretary E&SE etc.

**INDEX**

S.NO	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal.	---	1 - 3
2	Copy of service book	A	4 - 8
3	Copy of notification 29.2.08	B	9
4	PHC judgment in WP 3394/16	C	10 - 21
5	PHC judgment in WP 2246/16	D	22 - 29
6	Appeal.	E	30 - 31
7	Vakalat nama	---	32

APPELLANT

THROUGH:

  
M. ASIF YOUSAFZAI  
Advocate Supreme Court.

Taimur Ali Khan Advocate,  
&  
Numan Bukhari Advocate.

Room No. FR-8  
4<sup>th</sup> Floor Bilour Plaza  
Peshawar Cantt:

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. 729 /2018.

Khyber Pakhtunkhwa  
Service Tribunal

Duty No. 997

Dated 28/05/2018

Said Ali Shah, Retd Chowkidar,  
G.G.P.S Lakero Chinarno,  
Dir Upper.

Appellant.

**VERSUS**

1. The Secretary Education (E&SE), KPK Civil Secretariat Peshawar.
2. The Secretary Finance, KPK Civil Secretariat, Peshawar.
3. The Director of Education (E&SE), KPK Peshawar.
4. The Distt: Education Officer (E&SE) Dir Upper.

Respondents.

**APPEAL UNDER SECTION 4 OF THE KPK  
SERVICE TRIBUNALS ACT 1974 FOR  
DIRECTING THE RESPONDENTS TO COUNT  
THE FIXED PAY/ CONTRACT PERIOD OF  
SERVICE OF APPELLANT TOWARDS  
RETIREMENT/ PENSIONARY BENEFITS IN  
LIGHT OF LARGER BENCH JUDGMENT OF  
THE AUGUST PESHAWAR HIGH COURT  
DATED. 22.06.2017 PASSED IN W.P NO.  
3394/16 AND 2246/2016 AND AGAINST NOT  
TAKING ANY ACTION ON THE APPEAL OF  
APPELLANT WITHIN STATUTORY PERIOD.**

Filed to-day

Registrar

28/5/18

**R.SHEWETH.**

**FACTS:**

1. That the appellant was appointed as Chowkidar on fixed pay/ contract basis on 18.7.1995 at G.G.P.S Lakero Chinarno The appellant

performed his duty with full devotion and without any complaint against him. The dates are record in service book copy of which is attached as Annexure – A.

2. That on 29.01.2008, the Govt: has issued a notification whereby all the fixed pay /contract Class- IV employees were regularized and as result of which the appellant was also regularized from that date. It was clearly provided in the said notification that the pay and allowances will be fixed from the date of first appointment but without arrears. Copy of notification is attached as Annexure – B.
3. That the appellant was retired from service on 29.6.2012 but his previous service rendered on fixed pay/contract basis was not counted towards pension fixation/ pensionary benefits, which caused a huge financial loss to the appellant and kept him deprive from his right of proper fixation of pension.
4. That the same issue was raised before the Peshawar High Court Larger Bench in writ petition nos. 3394/2016 & 2246/2016 which were decided on 22.6.2017. The august Court has held that the service rendered on fixed pay/contract basis is countable towards pension fixation and retirement benefits and vide same judgments the writ petitions were sent to the Secretaries of the Deptts: to treat the same as departmental appeal and decide the same keeping in view pension rules and law o the point settled by the superior courts. Copies of the judgments are attached as Annexure C & D.
5. That as the appellant was also deprived from the service benefits towards pensionary benefits rendered as fixed pay/ contract, therefore he also filed an appeal before the respondent No. 1, keeping in view the High Court judgments but no action has been taken on that appeal within statutory period. Copy of appeal is attached as Annexure – E.
6. That now the appellant comes to this august Tribunal on the following rounds amongst the others.

**GROUND:**

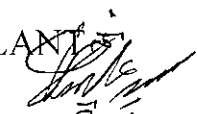
- A. That not counting the previous service rendered by appellant as fixed pay/contract employee towards his pension fixation and pensionary benefits and not taking any action on the appeal of appellant is against the law, rules, norms of justice and material on record.
- B. That even the appellant is entitled to the benefits of his previous service and counting the same towards his pension fixation and retirement benefits as per notification dated. 29.01.2008 under which the appellant has been stood regularized.




- C. That the appellant is also entitled to his claim under the pension Rules which provides that temporary service followed by the confirmation/regularization is countable towards pay and pension fixation.
- D. That even under 370 & 371 CSR the appellant is entitled to his claim and his previous service should have been counted towards his pension fixation and retirement benefits and the same view was also upheld by the august Supreme Court of Pakistan in a judgment reported as 2016 PLD(SC)-534 .
- E. That the appellant has not been dealt in accordance with law and rules and has been deprived from his proper fixation of pension and payment of pensionary benefits in an arbitrary and fanciful manner.
- F. That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

*It is therefore, most humbly prayed that on acceptance of this appeal the respondents may be directed to count the previous service rendered by appellant on fixed pay/contract basis in light of Larger Bench's judgments of august Peshawar High Court dated. 22.6.2017, CSR Provisions and Pension Rules. The respondents may further please be directed to properly fix the pension / retirement benefits by taking into considerations the first date of appointment of appellant with all back and consequential benefits along with payment of arrears if any. Any other remedy deems fit and not specifically prayed for that may also be awarded in favour of appellant.*

APPELLANT

  
Said Ali Shah

Through:

  
M. ASIF YOUSAFZAI  
Advocate Supreme Court.

Taimur Ali Khan Advocate,  
&  
Numan Bukhari Advocate.

Note:-- The entries in this page should be  
i. verified or re-attested at least every five year and the signature to  
ii. and 10 should be dated.

A 3

A  
4

1. Name Mr; Saïd Ali Shah  
2. Race <sup>Battakli</sup> muslim / pakistani  
3. Residence Mohallah Rehankot (P) village to P.O  
Dir Distt; Dir upper.






4. Father's name and residence Mr, Ghulam Ali  
as above

5. Date of birth by Christian era as nearly as can be ascertained 30-6-1952  
30th June AH 1552

6. Exact height by measurement 5-6"

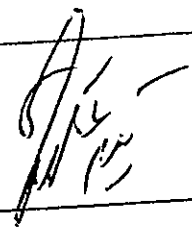
7. Personal marks for identification A black mole on right hands.

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

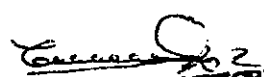
Little Finger.  Ring Finger.   
Middle Finger.  Fore Finger.   
Thumb. 

ATTESTED

9. Signature of Government Servant



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

  
DEPUTY DISTRICT OFFICER  
(B&I) (Punjab) Dir

5




1 Name of post	2 Whether substantive or officiating and whether permanent or temporary	3 If Officiating, state (i) Substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	4 Pay in substantive Post	5 Additional Pay for officiating	6 Other emolument falling under the term "Pay"	7 Date of Appointment	8 Signature of Government Seal
Contract Chankidaz G.P.S. Labaro Chintano				1200/- pm (Fixed)		19 $\frac{7}{95}$	
— do —				1500/- "		1 $\frac{7}{97}$	
— do —				1800/- "		1 $\frac{7}{99}$	
— do —				2000/- "		1 $\frac{7}{2000}$	
— do —				2500/- "		1 $\frac{7}{2002}$	
— do —				2800/- "		1 $\frac{7}{2003}$	
— do —				3100/-		1 $\frac{12}{2004}$	
— do —				3500/-		1 $\frac{7}{05}$	
— do —				3500/-		1 $\frac{12}{05}$	
— do —				4000/-		1 $\frac{11}{06}$	
— do —				4000/-		1 $\frac{12}{06}$	

ATTESTED

10	11	12	13		14	15
			Leave			
			Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitale to another Government		
Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting Officer	Period	Government to which debitale	Signature of the head of the office or other attesting Officer	Reference to recorded punish or censure, or rt or praise of Government Se
30/6/99	-do-	<i>[Signature]</i> DY:DO (F) Dir				
30/6/2000	-do-	<i>[Signature]</i> DY:DO (F) Dir				
31/8/2002	-do-	<i>[Signature]</i> DY:DO (F) Dir				
30/6/2003	-do-	<i>[Signature]</i> DY:DO (F) Dir				Services verified w.e.f 19/7/95 to 30/11/2001 from the office record.
30/11/2004	-do-	<i>[Signature]</i> DY:DO (F) Dir				
30/6/15	-do-	<i>[Signature]</i> DY:DO (F) Dir				Service Verified W.e from 1/12/01 to 30/11/2004 From The Office Record
30/11/05	pay Fined	<i>[Signature]</i> DY:DO (F) Dir				
1/11/06	pay increased	<i>[Signature]</i> DY:DO (F) Dir				
30/11/06	pay Fined	<i>[Signature]</i> DY:DO (F) Dir				1/12/06 30/11/2005
30/6/08	Alloc-1 made BP3N02 u.c.6.1-7-08	<i>[Signature]</i> DY:DO (F) Dir				
						Service Verified W.e from 1-12-2005 to 30-11-2005 From The Office Record

ATTESTED

*[Signature]*  
DY:DO  
(F) Dir

10	11	12	13		14	15
			Nature and duration of leave taken	Leave		
				Allocation of period of leave on average pay upto four months for which leave salary is debitabile to another Government		
Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting Officer	Period	Government to which debitabile	Signature of the head of the office or other attesting Officer	Reference to recorded punish or censure, or pr or praise of Government Se
					<p>Service Termed To from  1/12/06 to 30/11/07  From The Office of</p>  	
					<p>Allowed graded BPS No. I  vide letter nos  BO1/1-22-2007-09/FD/  Dated Dosh: the 29-01-2008  from The Finance Dept.</p> 	

ATTESTED

10	11	12	13		14	15
			Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		
<p>Deputy District Officer (Female) B-30 Upper</p> <p><i>H.A.S.</i></p>	<p>Alm</p>	<p>Deputy District Officer (Female) B-30 Upper</p> <p><i>H.A.S.</i></p>	<p>Upper</p>	<p>Service verified from 01/12/08 to 30/11/2009 from office Record</p>	<p><i>H.A.S.</i></p> <p>Deputy District Officer (Female) B-30 Upper</p>	<p>Reference to recorded punish or censure, or rt or praise of Government Se</p>
<p>Deputy District Officer (Female) B-30 Upper</p> <p><i>H.A.S.</i></p>	<p>Retired</p>	<p>Deputy District Officer (Female) B-30 Upper</p> <p><i>H.A.S.</i></p>	<p>Upper</p>	<p>Service verified from 01/12/08 to 30/11/2009 from office Record</p>	<p><i>H.A.S.</i></p> <p>Deputy District Officer (Female) B-30 Upper</p>	<p>Reference to recorded punish or censure, or rt or praise of Government Se</p>
<p>OFFICE OF THE...</p> <p>2990-90-3670</p> <p>4050/...</p> <p>1-12-2008</p> <p>1-12-2008</p> <p>With Next Increment on...</p> <p><i>H.A.S.</i></p>				<p>Service verified from 01-12-2009</p> <p>30-6-012 from the office record</p>	<p><i>H.A.S.</i></p> <p>Deputy District Officer (Female) B-30 Upper</p>	
<p>1917/1995 to 28/16/2012</p> <p>verified from this office record for the purpose of pension</p> <p><i>H.A.S.</i></p>				<p>Retired with effect from 29/6/2012 vide Endost: No. 3569-71 Dated 29/2/11 LEDO/ERS/BSA</p>		
<p>S.D.E.O (F) UPPER</p> <p>29/6/2012</p> <p>Retirement</p> <p><i>H.A.S.</i></p>				<p>Pay scale up awarded the post from BPS 02 to BPS 07 w.e.f 01-07-2007 with one special allowance w.e.f 01-9-2007 vide The Finance Department notification BO-1/ED/1-22/2008-9 dated 07/03/2013 (pay w.e.f 01-7/2008)</p>		
					<p><i>H.A.S.</i></p> <p>S.D.E.O (F)</p> <p>DIR UPPER</p>	

ATTESTE

حکومت صوبہ سرحد  
حکومت خزانہ

مرسلہ نمبر ۱۱۰۸-۲۰۰۷ ایف-۱  
تاریخ ۲۹ جنوری ۲۰۰۷ء

خدمت:

- ۱- تمام نظامی عقیدہ دار حکومت صوبہ سرحد
- ۲- معتمد اعلیٰ گورنمنٹ، پشاور
- ۳- پرنسپل سٹاف آفیسر، ڈیپو، وزیر اعلیٰ صوبہ سرحد
- ۴- تمام سرپرستانہ حالت میں سرحد
- ۵- تمام ضلعی اراکین خزانہ صوبہ سرحد
- ۶- رجسٹرار پشاور، پشاور
- ۷- رجسٹرار، حیدرآباد، صوبہ سرحد، پشاور
- ۸- سیکرٹری صوبائی ایگزیکٹو سروس کمیشن، صوبہ سرحد، پشاور
- ۹- سیکرٹری پورٹ آف آفس، پشاور، صوبہ سرحد

عنوان:- بجٹ تقریر ۰۸-۲۰۰۷ء میں درجہ چہارم کے مقررہ تنخواہ ہانے والے (Fixed pay) ملازمین کے لئے جی پی فنڈ کا اعلان

جناب عالی!

مجھے ہدایت کی گئی ہے کہ ملازمین کا حوالہ دیتے ہوئے نوسٹ کروں کہ صوبائی حکومت نے تمام درجہ چہارم (مقررہ تنخواہ Fixed pay) ہانے والے ملازمین کو یکم جولائی ۲۰۰۸ء سے این ڈبلیو ایف پی سول ملازمین ایکٹ ۱۹۷۳ء کے تحت سول ملازمین کا درجہ دیکر بنیادی سکیل (BPS-۱) دینے کی منظوری دی ہے۔

۱- مذکورہ ملازمین کی تنخواہوں کا تین (Fixation of pay) ان کی بھرتی کے تاریخ (Date of Appointment) سے کیا جائے گا تاہم یہ ملازمین تین یا اولاد وغیرہ کی حد میں کسی قسم کی بقایا جات (arrears) کے حقدار نہیں ہوں گے۔

۲- اس سلسلے میں پہلے سے جاری شدہ تمام پالیسی ہدایات یکم جولائی ۲۰۰۸ء سے منسوخ تصور ہوں گے۔

پہنچائیں  
(مشرافت خان زبانی)  
ناظمیہ سیکرٹری (میرٹھ) (جاری ہے)

ATTESTED

تظہیر نمبر و تاریخ الضامہ:

- نقل برائے اطلاع:
- (۱) اکاؤنٹس جنرل، صوبہ سرحد بمطالعہ گزارش، کہ مندرجہ بالا اقدامات کی نافذ العمل کو یقینی بنایا جائے۔
  - (۲) جملہ اینگزیکٹو ڈسٹرکٹ آفیسرز، فنانس اینڈ پلاننگ، صوبہ سرحد۔
  - (۳) جملہ ضلعی آفیسران حساب داری، صوبہ سرحد۔

میرزا نیا افسر (۱) محکمہ خزانہ

تظہیر نمبر و تاریخ الضامہ:

- نقل برائے اطلاع:
- (۱) سنی معتمد برائے چیف سیکرٹری صوبہ سرحد۔
  - (۲) جملہ اضافی معتمدین و نائب معتمدین محکمہ خزانہ، صوبہ سرحد۔
  - (۳) جملہ برکٹ آفیسرز سیکشن آفیسرز محکمہ خزانہ، صوبہ سرحد۔
  - (۴) ڈائریکٹر، FMAIU محکمہ خزانہ صوبہ سرحد۔
  - (۵) سنی معتمد برائے فنانس سیکرٹری صوبہ سرحد۔

میرزا نیا افسر (۱) محکمہ خزانہ

10/11/2017



197  
1  
10

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

Writ Petition No.3394-P/2016

Date of hearing:- 22.06.2017

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

Respondent (s):- The District Account Officer, Nowshera  
others by Syed Qaisar Ali Shah, A.G.



**JUDGMENT**

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

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

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

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

*Amir Zeb*

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

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

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

*Chowkidar*

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

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

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

*For the*

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

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

*Law Officer*

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

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

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

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

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

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

*for his son*

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

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

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

*Rakhshinda Habib*

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

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

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

*Prokles*

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

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

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

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

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

*Justice Sarwar*

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

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

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

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

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

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

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

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

Announced:  
22.06.2017  
Sraji Afridi P.S.

M. Rashid Ahmad vs  
M. Qalander Ali vs  
S.P. Syed Mahmood vs etc etc

Booked in  
JUDGE  
JUDGE  
JUDGE



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Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
The Qanun-e-shahadat Order 1984  
20 JUL 2017

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IN THE PESHAWAR HIGH COURT PESHAWAR

22

WRIT PETITION No. 2246 P/2016

Rizwanullah

s/o Muhammad Ali Khan

R/o Village Nasatta, Tehsil and District Charsadda



Versus

1. The Govt. of Khyber Pakhtunkhwa  
through Secretary Health,  
Civil Secretariat, Peshawar.
2. The Secretary  
Govt. of Khyber Pakhtunkhwa  
Finance Department,  
Civil Secretariat, Peshawar.
3. The District Accounts Officer,  
District Charsadda.
4. The District Health Officer,  
District Charsadda.....*Respondents*

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

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That petitioner was appointed as Class-IV employee/Baheshti by Respondent No.4 way back on 09.03.1995 in the Health Department and in pursuance of the appointment order he submitted Charge Report and since then had been performing his duties to the entire satisfaction of the high-ups till his retirement. (Extracts from the Service Book *Annex:-A*).
2. That petitioner served the Department in that capacity for a period of more than 20 years and stood retired on attaining the age of superannuation vide Office order dated 07.07.2015 (*Annex:-B*) while being posted at BHU Nasatta District Charsadda.

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Peshawar High Court  
21 SEP 2017

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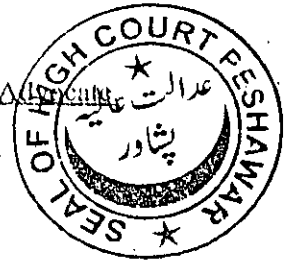
**IN THE PESHAWAR HIGH COURT,  
PESHAWAR,  
[Judicial Department].**

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**

Andera 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*

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21 SEP 2017

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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

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 Peshawar High Court  
 21/SEP/2017

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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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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EXAMINER  
Punjab High Court  
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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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21 SEP 2017

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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.*

*Mr. Roshan Ahmad*  
*Mr. Abdul Karim Khan*  
*Mr. Syed Muhammad Raza*

JUDGE  
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WP2246P2016-Judgements

High Court of Peshawar  
Article 87 of  
The Constitution of Pakistan Order 1934

21 SEP 2017

**ATTESTED**

To

The Secretary Education,  
(E&SE), Civil Secretariat,  
Peshawar.

APPEAL FOR ALLOWING PROPER FIXATION &  
PAYMENT OF PENSIONARY BENEFITS FROM THE  
FIRST DATE OF APPOINTMENT BY COUNTING  
FIXED/CONTRACT SERVICE TOWARDS PENSION  
FIXATION IN LIGHT OF PESHAWAR HIGH COURT  
LARGER BENCH JUDGMENTS DATED. 22.06.2017  
PASSED IN WRIT PETITION NO. 3394/2016 AND  
2246/2016.

SIR,

It is submitted that the appellant was appointed as Chowkidar on contract/ fixed pay on 18.7.95, at G.G.P.S. Ickero Chinarao Dir (u).

The Govt: vide notification dated. 29.1.2008, regularized all the fixed pay contract class-IV employees and resultantly the appellant was also regularized as such. In the said Notification it was clearly provided that the pay would be fixed from the first date of appointment but without arrears.

The appellant was retired from service on 29.6.2012 as Chowkidar ( Class-IV) but his service rendered on fixed pay/contract basis was not counted towards pension fixation which caused huge financial loss, to the appellant and as such he has been deprived from his right payment & fixation of pensionary benefits.

Recently many writ petitions were filed in the Peshawar High Court Peshawar for counting fixed pay/ contract service towards pension. The august High Court Larger Bench decided the issue in two writ petitions NO. 3394/2016 AND 2246/2016. and it was directed to count the fixed pay/contract service of the petitioners towards retirement/pensionary benefits and the writ petitions were sent to your good self for treating the same as departmental appeal and decide the same as per law.

**ATTESTED**

(31)

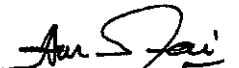
treatment. Therefore, it is humbly requested that the appellant's fixed pay/contract service period may be counted towards retirement/ pensionary benefits and the appellant may very kindly be allowed the same benefits in his pension after proper fixation of pension by taking his first date of appointment for such purposes.

Dated. 23.02.2018.

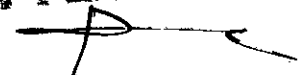
APPELLANT

Said Ati Shah Reld Chowkidar,  
G.S.P.S. Lakero Chirano, Dir Upper.

Through:

  
M. ASIF YOUSAFZAI  
Advocate Supreme Court  
Room NO.1, 4<sup>th</sup> Floor  
Bilour Plaza, Peshawar Cantt:  
Cell No. 0333 9103240.

**ATTESTED**



32

**VAKALAT NAMA**

NO. \_\_\_\_\_/2018

IN THE COURT OF Service Tribunal Peshawar.

Said Ali Shah (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Education Dept. (Respondent)  
(Defendant)

I/We, Said Ali Shah (Appellant)

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_/20

  
(CLIENT)

ACCEPTED



**M. ASIF YOUSAFZAI**  
*Advocate Supreme Court*  
*Peshawar.*

**Taimur Ali Khan**  
Advocate High Court

**Syed Nauman Ali Bukhari**  
Advocate

**OFFICE:**

Room # FR-8, 4<sup>th</sup> Floor,  
Bilour Plaza, Peshawar,  
Cantt: Peshawar  
Cell: (0333-9103240)

“B”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.  
JUDICIAL COMPLEX (OLD), KHYBER ROAD,  
PESHAWAR.

No.

Appeal No. 729, 730, 731, 732, 733, 734, 735, 736,  
737, 738, 739, 740, 741, 742, 743, 744, 745, 746 <sup>of 2018</sup> (747)

Appellant/Petitioner

Versus

Secretary, Police (P2SE), KP/K... Respondent

Respondent No. 4

Notice to:

- District Registration Officer  
(P2SE) Dera Ismael Khan

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 12-8-2018 at 8.00 A.M. If you wish to urge anything against the appellants/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. .... dated .....

Given under my hand and the seal of this Court, at Peshawar this 12th Day of June, 2018.

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.



**BEFORE THE SERVICE TRIBUNAL PESHAWAR**

SA No.729/2018

Said Ali Shah retired chawkidar GGPS Lakaro Chinarano Dir Upper.....Petitioners.


Versus

Govt: of KPK and others -----Respondents.

**AFFIDAVIT.**

I, Mr; Nadar khan superintendent BPS -17 Male Dir Upper, do hereby solemnly affirm and declare on oath that the contents of the joint written reply submitted by respondents No.4 are true and correct to the best of my knowledge and belief as per office record and that nothing has been concealed from this Hon: Court.

Deponent



**NADAR KHAN**

**SUPRINTENDENT OFFICE OF THE  
DISTRICT EDUCATION OFFICER MALE  
DIR UPPER.**

CNIC. NO.15701-1204308-1

# BEFORE THE HONOURABLE SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL No ..... 729/2018

Mr. Said Ali Shah retired Chawkidar GGPS Lakaro ChinaranoDir Upper.

.....Appellant

## Versus.

- 1 The Govt. of Khyber Pakhtunkhwa through Secretary E&SE KP Peshawar .
- 2 The Secretary Finance Khyber Pakhtunkhwa Civil Secretariat Peshawar.
- 3 The Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- 4 The District Education Officer Female Upper Dir. ----- Respondents.

## Para wise comments on the behalf of Respondent No1 to 4

Respectfully Sheweth.

## PRELIMINARY OBJECTIONS.

1. That the Appellant has not come to the Tribunal with clean hands.
2. That the Appellant has no cause of action /Locus standi.
3. The Appeal is badly time barred.
4. That the Appellant has been estopped by his own conduct to file the instant Appeal .
5. That the Appeal is bad due to the non joinder of necessary and misjoinder of unnecessary parties.
6. That the honourable Tribunal has no jurisdiction to adjudicate the matter.

## OBJECTIONS ON FACTS

1. Para No.1 pertains to the personal information of the appellant and hence needs no comments.
2. Correct to the extent that the Govt. regularized the adhoc/contract class IV employees w.e.f 1<sup>st</sup> July 2008 without arrears.
3. Correct to the extent of the retirement of the appellant and regularization of services w.e.f 1<sup>st</sup> July 2008 but the rest of the para is denied because there were no instructions/orders to count the adhoc/contract Period of the employee for the purpose of pension, as per prevailing policy the services rendered by the appellant after regularization were less than the required as per rules which was 25 years in normal cases and 10 years in case of death or invalidation of services. But now the department has issued a letter bearing No. SO(LIT-1) /E&SE/1-1/2012 dated 17-6-2018 to the Director & all the District Education Officers (M/F) in Khyber Pakhtunkhwa to disposed off all such cases in the light of para No.13 of the judgment of PHC dated 22/06/2017 and stated that all such cases may be examined in the light of prevailing pension rules and the employees who have rendered services under contract/ adhoc etc. shall be counted towards pension, provide such official were regularized at later stage and pension was denied to them on the ground of not

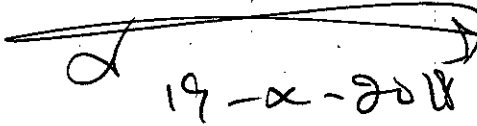
2-18/19


fulfilling criteria of minimum service as regular employee. (Copy of the letter is attached as Annexure A)

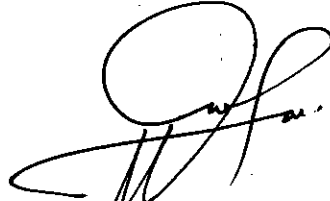
4. Pertains to record, however the appellant is not entitled for counting his fixed pay service for pensionary benefits.
5. Correct to the extent of Appeal and the rest of the para is denied as the respondent No 1 has issued Notification/ letter to the Director and District Education Officers in Khyber Pakhtunkhwa mentioned in para No 3 above.
6. No comments.

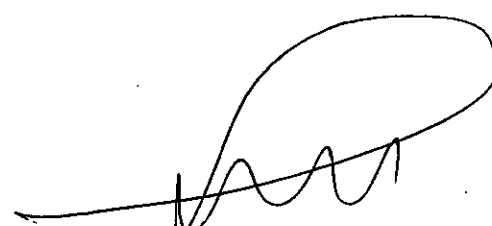
### Grounds.

- A. Incorrect. There were no such guide lines/instructions to count the adhoc/contract period of the employees towards the pension but now the respondent no 1 has issued orders to count the adhoc/contract period of the employees towards the pension.
- B. Incorrect, As per paras above..
- C. The Appellant has not claimed pension after the issuance of the above mentioned letter of the respondent No.1 in which adhoc/contract period is countable towards pension.
- D. Incorrect the applicant is not entitled for the counting of adhoc/fixed pay period for pension.
- E. Incorrect. The appellant has been dealt in accordance with law and rules prevailing at the time of his retirement.
- F. No Comments.

  
SECRETARY EDUCATION,  
E&SE KP PESHAWAR  
(RESPONDENT NO 1)

  
DIRECTOR  
E&SE KP PESHAWAR  
(RESPONDENT NO3)

  
SECRETARY FINANCE  
KHYBER PAKHTINKHWA  
PESHAWAR  
RESPONDAENT NO 2

  
DISTRICT EDUCATION OFFICER  
FEMALE DIR UPPER  
Respondent No 4

F.No 40

# GOVERNMENT OF KHYBER PAKHTUNKHWA

Elementary and Secondary Education Department

Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar

NO.S.O (LIT-I)/E&SE/1-1/2012/

Dated Peshawar the 17-5 -2018

Annex A

To

1. Director,  
Elementary & Secondary Education,  
Khyber Pakhtunkhwa Peshawar
2. All District Education officers(M/F)  
Khyber Pakhtunkhwa.

*Dir Upper*

**SUBJECT: IMPLEMENTATION OF PESHAWAR HIGH COURT JUDGEMENTS REGARDING GRANT PENSIONARY BENEFITS TO CLASS IV EX FIXED PAY EMPLOYEES**

I am directed to refer to the subject noted above and to state that all the subject cases may be disposed off in light of para 13 of the judgement of Peshawar High Court dated 22-6-2017(copy enclosed). It is further stated that all such cases may be examined in light of prevailing pension rules and the employees who have rendered minimum length of service, which is 25 years in normal cases and ten years in special /family pension cases. Service rendered by officials under contract, adhoc etc shall be counted towards pension provide such officials were regularized at later stage and pension was denied to them on the ground of not fulfilling criteria of minimum time as regular employee.

However, this Department may be kept informed of the day to day proceedings.

*AKR*

Section officer (Lit-I)

Endst.NO & date as above.

Copy to:-

1. Advocate General KPK
2. Addl Registrar Peshawar High Court.
3. P.A to Spl: Secretary (Legal).

*Attested*  
*[Signature]*

Asst: District Officer  
(E&SE) Dir Upper

Section officer (Lit-I)

*ADD (Lit-I)*  
*Do the needful*  
*[Signature]*  
*29/5/18*

*866*  
*29/5/18*

*ADA*  
*file*  
*ML*  
*31/5*

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

Service Appeal No. 799 /2018

Said Ali shah

VS

Govt of KPK

**REJOINDER ON BEHALF OF APPELLANT**

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

(1-6) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

**FACTS:**

1. Admitted correct as service record is already in the custody of respondent deptt..
2. Half portion of the para-2 of the appeal is admitted correct by the respondent department. While rest of the para-2 of the appeal is also admitted correct by the respondent as not denied by the respondent.
3. Half portion of the para-3 of the appeal is admitted correct by the respondent department. While rest of the para-3 of the comments is incorrect and misconceived. While para-3 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, according to pension rules, the temporary service followed by the confirmation is entitled to counted towards the pensionary benefits.
4. Incorrect and misconceived. While para-4 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, the deptt is well aware of the fact that the appellant is entitled for the pension.
5. Half portion of the para-5 of the appeal is admitted correct by the respondent department. While rest of the para-5 of the reply is contradictory with other paras. Moreover para-5 of

the appeal is correct as mentioned in the main appeal of the appellant

6 Needs no comment.


**GROUND:**

- A) Incorrect. While para-A of the appeal is correct as mentioned in the main appeal of the appellant..
- B) Incorrect. While para-B of the appeal is correct as mentioned in the main appeal of the appellant.
- C) Incorrect. While para-C of the appeal is correct as mentioned in the main appeal of the appellant.
- D) Incorrect. While para-D of the appeal is correct as mentioned in the main appeal of the appellant.
- E) Incorrect. While para-E of the appeal is correct as mentioned in the main appeal of the appellant.
- F) Legal.

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

**APPELLANT**

Through:

  
**(M. ASIF YOUSAFZAI)**  
Advocate Supreme Court.

  
**(SYED NOMAN ALI BUKHARI)**  
Advocate High Court

**AFFIDAVIT**

It is affirmed and declared that the contents of appeal and rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able tribunal.

  
**DEPONENT**