

S.A No.731/2018 filed by Asar Khan

23.12.2019

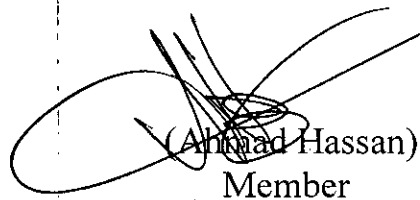
Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present.

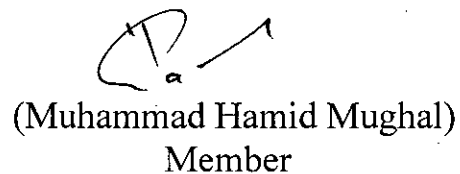
The appellant (Retired Chowkidar) has filed the present service appeal for the grant of pensionary/retirements benefits by also taking into account his service with effect from the date of his first appointment.

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


Member

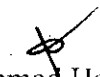
13.08.2018

Counsel for the appellant and Mr. Kabirullah Khattak AAG for the respondents present. Written reply not submitted. 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.

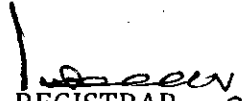


(Ahmad Hassan)
Member

Appellant Deposited
Security & Process Fee

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 742/2018

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 Mian Zareen 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. 731 /2018.

Asar Khan

VS

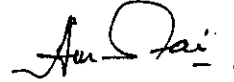
Secretary E&SE etc.

INDEX

S.NO	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal.	---	1 - 3
2	Copy of service book	A	4 - 10.
3	Copy of notification 29.1.08	B	11 -
4	PHC judgment in WP 3394/16	C	12 - 23
5	PHC judgment in WP 2246/16	D	24 - 31
6	Appeal.	E	32 - 33
7	Vakalat nama	---	34.

APPELLANT

THROUGH:



M. ASIF YOUSAFZAI
Advocate Supreme Court.

Taimur Ali Khan Advocate,
&
Numan Bukhari Advocate.

Room No. FR-8
4th Floor Bilour Plaza
Peshawar Cantt.

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. 731 /2018.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 995

Dated 28/05/2018

Asar Khan, Retd Chowkidar,
GGPS Gujaro Killi,
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 7-1-1993 at GGPS Gujaro Killi. 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 30.6.2012 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.

GROUNDS:

- 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

Asar Khan

Through:

M. Asif Yousafzai
M. ASIF YOUSAFZAI
Advocate Supreme Court.

Taimur Ali Khan Advocate,
&
Numan Bukhari Advocate.

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

A (2)
(4)

107-46-074899

1. Name ASAR KHAN

2. Race AFGHAN (Muslim)

3. Residence ~~At~~ village Gajaro Kale P/O and Teh. B. Banda
Distt. Dera upper

4. Father's name and residence
Dost Mohammad Khan

5. Date of birth by Christian era as nearly as can be ascertained
Nineteen Hundred Fifty two (1952) ✓

6. Exact height by measurement
5-3

7. Personal marks for indentification
A wound scar on Fore head ✓

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

Little Finger

Ring Finger

Middle Finger

Fore Finger

Thumb

9. Signature of Government Servant

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

Wakil

Dy: D: O
Ed: P: (M)
Dir Upper

ATTESTED

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent	If Officiating, state (i) Substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive Post	Additional Pay for officiating	Other emolument falling under the term "Pay"	Date of Appointment	Signature of Government Servant
Contract Chowkidar	10/11/43	Contract	-	-	1200/-	6/7/43	الفن
44ps Gejara/Kale	- do -	- do -	-	-	1500/-	7/97	الفن
- do -	- do -	- do -	-	-	1800/-	7/99	الفن
- do -	- do -	- do -	-	-	2000/-	7/2000	الفن
do	do	do	-	-	2500/-	9/2002	الفن
do	do	do	-	-	2800/-	7/2003	الفن
do	do	do	-	-	3100/-	12/2004	الفن
- do -	- do -	- do -	-	-	3500/-	07/2005	الفن
do	do	do	-	-	3500/-	12/05	الفن
do	do	do	-	-	4000/-	11/06	الفن
do	do	do	-	-	4000/-	12/07	الفن
do	do	do	-	-	4000/-	12/07	الفن

الفن

9 Signature and position of the head of the office or other attesting officer in columns 1 to 8	10 Date of termination of appoint- ment	11 Reason of termination (such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting Officer	13 Leave		14 Signature of the head of the office or other attesting Officer	15 Reference to recorded pun or censure, or or praise of Government
				Period	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		
Dy: D: O Ed: P: Y: I: (M) Dir Upper	30-6/97	pay increase	Dy: D: O Ed: P: Y: I: (M) Dir Upper		Appointed as contract chartered at G.P.S. Gujarakali Baranval vide Encl no 2525-27 dated 2/11/1993 30.6.97 to 1/8.98		
Dy: D: O Ed: P: Y: I: (M) Dir Upper	30-6/99	pay increase	Dy: D: O Ed: P: Y: I: (M) Dir Upper				
Dy: D: O Ed: P: Y: I: (M) Dir Upper	30-6/2000	pay increase	Dy: D: O Ed: P: Y: I: (M) Dir Upper				
Dy: D: O Ed: P: Y: I: (M) Dir Upper	31-8/2002	do	Dy: D: O Ed: P: Y: I: (M) Dir Upper				
Dy: D: O Ed: P: Y: I: (M) Dir Upper	30-6/2003	do	Dy: D: O Ed: P: Y: I: (M) Dir Upper		Service verified w.e.f 7/6/93 to 30/11/2001 from the office record		
Dy: D: O Ed: P: Y: I: (M) Dir Upper	30-11/2004	do	Dy: D: O Ed: P: Y: I: (M) Dir Upper				
Dy: D: O Ed: P: Y: I: (M) Dir Upper	30-06/2005	do	Dy: D: O Ed: P: Y: I: (M) Dir Upper		Service Verified W.e from 1/12/01 to... 30/11/2004 From The Office Record		
Dy: D: O Ed: P: Y: I: (M) Dir Upper	30-11/05	pay Fixed	Dy: D: O Ed: P: Y: I: (M) Dir Upper				
Dy: D: O Ed: P: Y: I: (M) Dir Upper	1-11/06	pay increased	Dy: D: O Ed: P: Y: I: (M) Dir Upper		Service verified w.e.f 01/12/2004 To 30-11/2005 from The Office Record.		
Dy: D: O Ed: P: Y: I: (M) Dir Upper	30-11/06	pay Fixed	Dy: D: O Ed: P: Y: I: (M) Dir Upper				
Dy: D: O Ed: P: Y: I: (M) Dir Upper	30-11/07	pay Fixed	Dy: D: O Ed: P: Y: I: (M) Dir Upper				
Dy: D: O Ed: P: Y: I: (M) Dir Upper	30-6/08	Allowed graded pay scale	Dy: D: O Ed: P: Y: I: (M) Dir Upper		Service Verified W.e from 1/12/05 to... 30/11/08 From The Office Record		

ATTESTED

Handwritten signature

1	2	3	4	5	6	7	8	
Name of post	Whether substantive or officiating and whether permanent or temporary	If Officiating, state: (i) Substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive Post	Additional Pay for officiating	Other emolument falling under the term "Pay"	Date of Appointment	Signature of Government Servant	
			Pay F 17/12/02 in BPS No 2 @ Rs 1245-35-2797					
			Pay on 2/6/1993 Rs. 1245					
			Pay on 1/2/1993 Rs. 1245					
			Remise Entry					
			Service Regularised in BPS No 1 from the date of 1st Appointment in Service vide Govt. of NWFP Finance Dept. NO B-01/1-22 FD 2007-08 dt/29-1-08 and revised vide NO FD) BC (DEC-11) 1-5) dt/23/4/08.					
			BPS No 1 (920-26-1310)					
			Pay on 07-6-1993 in B-1 Rs. 920					الفن
			Remise pay on 1-6-1994 in BPS No 1 (1245-35-2770)					
			Pay on 1-6-94 in B-1 Rs. 1245					
			Pay on 1-12-94 in B-1 Rs. 1280					الفن
			Pay on 1-12-95 in B-1 Rs. 1315					
			Pay on 1-12-96 in B-1 Rs. 1350					
			Pay on 1-12-97 in B-1 Rs. 1385					الفن
			Pay on 1-12-98 in B-1 Rs. 1420					
			Pay on 1-12-99 in B-1 Rs. 1455					
			Pay on 1-12-2000 in B-1 Rs. 1490					الفن
			Pay on 1-12-2001 in B-1 Rs. 1525					
			Remise pay on 1-12-2001 in BPS No 1 (1970-55-3520)					
			Pay on 1-12-2001 in B-1 Rs. 2310					الفن
			Pay on 1-12-2002 in B-1 Rs. 2365					
			Pay on 1-12-2003 in B-1 Rs. 2420					
			Pay on 1-12-2004 in B-1 Rs. 2475					الفن
			Remise pay on 1-7-05 in BPS No 1 (2150-60-4100)					
			Pay on 1-7-05 in B-1 Rs. 2865					الفن
			Pay on 1-12-05 in B-1 Rs. 2930					
			Pay on 1-12-06 in B-1 Rs. 2995					
			Remise pay on 1-7-2007 in BPS No 1 (2475-75-4725)					الفن
			Pay on 1-7-07 in B-1 Rs. 3450					
			Pay on 1-12-07 in B-1 Rs. 3525					الفن

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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 Secretary
<i>pay F.F. etc. in BPS NO 2 @ Rs. 1245-35-2797</i>							
<i>Pay on 7/6/1993 Rs. 1245/-</i>							
<i>pay on 1/12/1993 Rs. 1245/-</i>							
<i>Revised Entry</i>							
<i>Service Regularised in BPS NO 1 from the date of 1st Appointment Service wide Govt. of NWFP Finance Dept. NO B-01/1-22 FD 2007-08 dt/29-1-08 and revised vide NO FD/BO (DEC-11) 1-5/07-08 dt/23/4/08</i>							
<i>BPS NO 1 (920-26-1310)</i>							
<i>Pay on 07-6-1993 in B-T Rs. 920</i>							
<i>Revised pay on 1-6-1994 in BPS NO 1 (1245-35-2770)</i>							
<i>Pay on 1-6-94 in B-T Rs. 1245/-</i>							
<i>Pay on 1-12-94 in B-T Rs. 1280/-</i>							
<i>Pay on 1-12-95 in B-T Rs. 1315/-</i>							
<i>Pay on 1-12-96 in B-T Rs. 1350/-</i>							
<i>Pay on 1-12-97 in B-T Rs. 1385/-</i>							
<i>Pay on 1-12-98 in B-T Rs. 1420/-</i>							
<i>Pay on 1-12-99 in B-T Rs. 1455/-</i>							
<i>Pay on 1-12-2000 in B-T Rs. 1490/-</i>							
<i>Pay on 1-12-2001 in B-T Rs. 1525/-</i>							
<i>Revised pay on 1-12-2001 in BPS NO 1 (1970-55-3520)</i>							
<i>Pay on 1-12-2001 in B-T Rs. 2310/-</i>							
<i>Pay on 1-12-2002 in B-T Rs. 2365/-</i>							
<i>Pay on 1-12-2003 in B-T Rs. 2420/-</i>							
<i>Pay on 1-12-2004 in B-T Rs. 2475/-</i>							
<i>Revised pay on 1-7-05 in BPS NO 1 (2150-65-4100)</i>							
<i>Pay on 1-7-05 in B-T Rs. 2865/-</i>							
<i>Pay on 1-12-05 in B-T Rs. 2930/-</i>							
<i>Pay on 1-12-06 in B-T Rs. 2995/-</i>							
<i>Revised pay on 1-7-2007 in BPS NO 1 (2475-75-4725)</i>							
<i>Pay on 1-7-07 in B-T Rs. 3450/-</i>							
<i>Pay on 1-12-07 in B-T Rs. 3525/-</i>							

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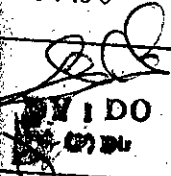
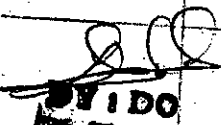
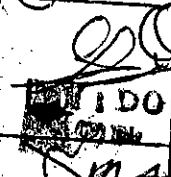
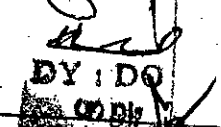
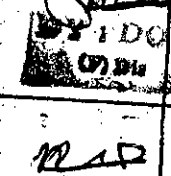

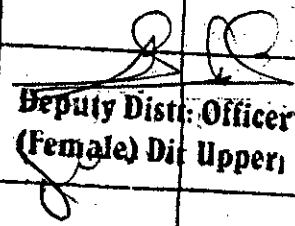
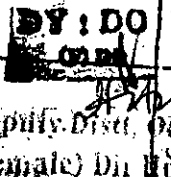
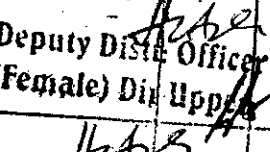
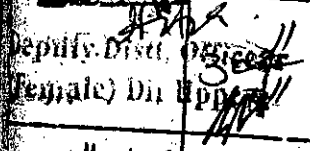
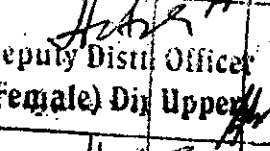
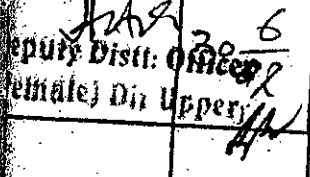
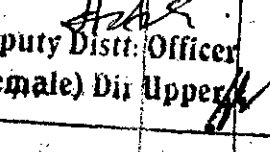
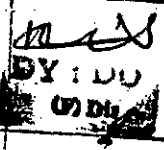
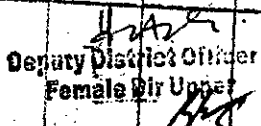
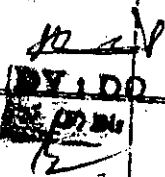
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9 Nature and position of the head of the office or other appointing officer in columns 1 to 8	10 Date of termination of appointment	11 Reason of termination (such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting Officer	13 Leave		14 Signature of the head of the office or other attesting Officer	15 Reference to recorded punishment or censure, or praise of Government
				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		
 BY: DO [Stamp]	11/30/08	Annual Quert	 BY: DO [Stamp]				
 BY: DO [Stamp]	30/11/09	Absent	 BY: DO [Stamp]	Service verified w.e.f 12/30/08 to 11/27/09 from the Service record.			
 BY: DO [Stamp]	30/11/08	A/mcl	 BY: DO [Stamp]			 Deputy Distt. Officer (Female) Dir Upper	
 BY: DO [Stamp]	30/06/01	physic Revision	 Deputy Distt. Officer (Female) Dir Upper				
 Deputy Distt. Officer (Female) Dir Upper		A/mc	 Deputy Distt. Officer (Female) Dir Upper		T75 dated 17/11/09		
 Deputy Distt. Officer (Female) Dir Upper	30/6/08	Retired	 Deputy Distt. Officer (Female) Dir Upper		Area amounting Rs. 7996/- paid through system w.e.f 1/7/08 to 31/12/08		
					Service verified w.e.f 1-12-2008 to 30-11-09 from the office record		
					Service Verified w.e.f 1-12-010 to 30-6-012 from the office record	 BY: DO [Stamp]	
			 Deputy District Officer Female Dir Upper		Service verified from 01-12-09 to 30-11-2010 from office Record.		
						 BY: DO [Stamp]	

ATTESTED

9 Signature and position of the head of the office or other attesting officer in columns 1 to 8	10 Date of termination of appoint- ment	11 Reason of termination (such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting Officer	13 Nature and dura- tion of leave taken	Leave Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government	14 Signature of the head of the office or other attesting Officer	15 Reference t recorded pun or censure, or or praise of Government
					Period: Government to which debitable Retirement Sanction vide EDO/ESSE/B&A/Ends/NO 3709-11 dated 4-9-2012		

[Signature]
 Deputy Dist. Officer
 (Female) In Upper

ATTESTED

حکومت صوبہ سرحد
حکومت خزانہ

مراسلہ نمبر ۱۱۰۸-۲۰۰۷-۲۰۰۷-۲۰۰۷-ای
موزوں ۲۰۹ جنوری ۲۰۰۷ء

خدمت

- ۱- تمام نظامی عہدہ دار حکومت صوبہ سرحد۔
- ۲- معتدراہلے گورنر، پشاور۔
- ۳- پرنسپل طاف آفیسر برائے وزیر اعلیٰ صوبہ سرحد۔
- ۴- تمام سربراہان ہما تحت نگر جات صوبہ سرحد۔
- ۵- تمام ضلعی ملازمین ان صوبہ سرحد۔
- ۶- رجسٹرار پشاور، ہائی کورٹ، پشاور۔
- ۷- رجسٹرار، حیدرآباد، صوبہ سرحد، پشاور۔
- ۸- سیکرٹری صوبائی، پبلک سروس کمیشن، صوبہ سرحد، پشاور۔
- ۹- سیکرٹری پورٹل آف رولز اینڈ ضوابط، صوبہ سرحد۔

عنوان:- بجٹ تقریر ۰۸-۰۷-۲۰۰۷ میں درجہ چہارم کے مقررہ تنخواہ ہانے والے (Fixed pay) ملازمین کے لیے جی پی فنڈ کا اعلان

جناب عاز:

مجھے ہدایت کی گئی ہے کہ مندرجہ بالا کا حوالہ دیتے ہوئے عرض کر دوں 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 سکالہ (BPS-1) دینے کی منظوری دی ہے۔

۲- مذکورہ ملازمین کی تنجیوں کا تین (Fixation of pay) ان کی بھرتی کے تاریخ (Date of Appointment) سے کیا جائے گا تاہم یہ ملازمین تنجیوں یا الائنس وغیرہ کی حد میں کسی قسم کی بقایا جات (arrears) کے حقدار نہیں ہونگے۔

۳- اس سلسلے میں پہلے سے جاری شدہ تمام پائیس ہدایات یکم جولائی ۲۰۰۸ء سے منسوخ تصور ہونگے۔

پہرہ نمائش
(شرافت خان زبانی)
ناٹیکل سیکرٹری (میزانیہ-۳)
(جاری ہے)

ATTESTED

تظہیر نمبر و تاریخ الضامہ:

- نقل برائے اطلاع:
- (۱) اکاؤنٹنٹ جنرل، صوبہ سرحد بمعہ 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 اضامی معتمدین و نائب معتمدین محکمہ خزانہ، صوبہ سرحد۔
 - (۳) جملہ برکٹ آفیسرز ریکشن آفیسرز محکمہ خزانہ، صوبہ سرحد۔
 - (۴) ڈائریکٹر، FMIU محکمہ خزانہ صوبہ سرحد۔
 - (۵) سنی معتمد برائے فنانس سیکرٹری صوبہ سرحد۔

میرزا نیا افسر (۱) محکمہ خزانہ

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

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Writ Petition No.3394-P/2016

Date of hearing:- 22.06.2017

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

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



JUDGMENT

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

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

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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.

looked at

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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

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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.

Conclusion

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.

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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

For the sake of

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

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

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

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

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

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

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

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

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

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

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

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

Justice Saif

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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 5th July 2005 and

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assented by the Governor of the Province on 12th 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 1st 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 1st July, 2001 till 23rd 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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11/11/2017

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
Siroj Afridi P.S.

Mr Rashid Amir vs
Mr Qalander Ali vs
Mr Syed Mahmood Akhtar vs

Lookman
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

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.

LED TODAY
puty Registrar
09 JUN 2016

WP2246P2016-GROUNDS

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EXAMINER
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

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

Rizwan Ullah

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Peshawar High Court
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
 Muhaminad 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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ATTESTED
 EXAMINER
 Peshawar High Court
 11 SEP 2017

ATTESTED

27

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

ATTESTED
EXAMINER
Peshawar High Court
21/SEP/2017

hooked on

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

ATTESTED

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.

Looked at

ATTESTED
EXAMINER
Peshawar High Court
21 SEP 2017

WP2246P2016-Judgements

ATTESTED

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

ATTESTED
EXAMINER
Punjab High Court
21 SEP 2017

WP2246P2016-Judgements

ATTESTED

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

looked Sam

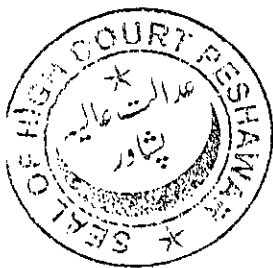
ATTESTED
EXAMINER
Peshawar High Court
21 SEP 2017

ATTESTED

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
Siroj Afridi P.S.

Handwritten signatures:
Sd/- Roshan Ahmad
Sd/- Abdul Karim Khan
Sd/- Syed Muhammad Aslam

Handwritten signatures and stamps:
JUDGE
JUDGE
JUDGE

VERIFIED TO BE TRUE COPY
Sd/- Registrar, Peshawar
Article 87 of
The Constitution of Pakistan Order 1994
21 SEP 2017

WP2246P2016-Judgements

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 7-01-1993, at GGPS Gojaro Kili.

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 30.6.2012 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.

Since the appellant is also a similarly placed person and under the judgment reported as 2009 SCMR-1, the appellant also deserves the same

ATTESTED

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

Asar Khan, Retd Chowkidar

SS PS. Sugar Kili, Dir Upper.

Through:

M. Asif Yousafzai

M. ASIF YOUSAFZAI

Advocate Supreme Court

Room NO.1, 4th Floor

Bilour Plaza, Peshawar Cantt:

Cell No. 0333 9103240.

ATTESTED

VAKALAT NAMA

NO. _____/2018

IN THE COURT OF Service Tribunal Peshawar.

Asar Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Education Dept., (Respondent)
(Defendant)

I/We, Asar Khan (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

Asar Khan
(CLIENT)

ACCEPTED

M. Asif Yousafzai

M. ASIF YOUSAFZAI
Advocate Supreme Court
Peshawar.

Taimur Ali Khan
Advocate High Court

Syed Nauman Ali Bukhari
Advocate

OFFICE:

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

BEFORE THE SERVICE TRIBUNAL PESHAWAR

SA No.731/2018

Mr. Asar Ali retired Chawkider GGPS Gujaro Kali.....Appellant

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 731/2018

Mr. Asar Khan retired Chawkidar GGPS Gujaro Kali Dir 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 No 1 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 Appeal is bad due to the non joinder of necessary and misjoinder of unnecessary parties.
5. That the honourable Tribunal has no jurisdiction to adjudicate the matter.
6. That the honourable Tribunal has no jurisdiction to adjudicate the matter.

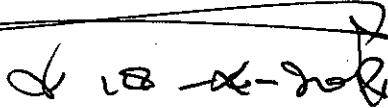
OBJECTIONS ON FACTS

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 1st July 2008 without arrears.
3. Correct to the extent of the retirement of the appellant and regularization of services w.e.f 1st 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 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.

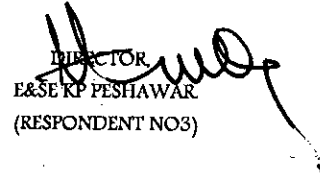
5. Correct to the extent of Appeal and the rest of the para is denied as the respondent No1 has issued Notification/ letter to the Director and District Education Officers in Khyber Pakhtunkhwa mentioned in para No 3 above.
6. No comments.

OBJECTIONS ON Grounds.

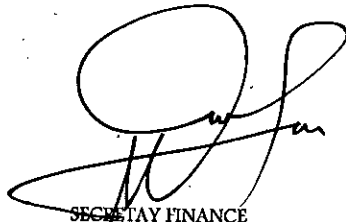
- A. Incorrect. There were no such guide lines/instructions to count the adhoc/contract period of the employees towards the pension but now the respondent no 1 has issued orders to count the adhoc/contract period of the employees towards the pension.
- B. Incorrect, As per paras above..
- C. The Appellant 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.



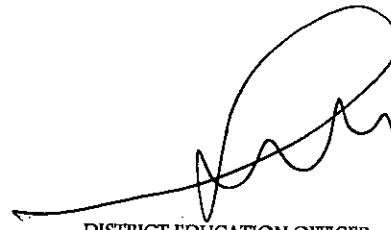
SECRETARY EDUCATION,
E&SE KP PESHAWAR.
(RESPONDENT NO 1)



DIRECTOR,
E&SE KP PESHAWAR
(RESPONDENT NO3)



SECRETARY FINANCE
KHYBER PAKHTINKHWA
PESHAWAR
RESPONDAENT NO 2



DISTRICT EDUCATION OFFICER
FEMALE DIR UPPER
② Respondent No 4

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.

AKK

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
 Asstt. District Officer
 (E&SE) Dir Upper

Section officer (Lit-I)

ADD (Lit-I)
 Do the needful
 29/5/18

366
 29/5/18

ADA
 file
 31/5

BEFORE THE SERVICE TRIBUNAL PESHAWAR

SA No.731/2018

Mr. Asar Ali retired Chawkider GGPS Gujaro Kali.....Appellant

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. 07 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 731/2018

Mr. Asar Khan retired Chawkidar GGPS Gujaro-Kali Dir 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 No 1 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 Appeal is bad due to the non joinder of necessary and misjoinder of unnecessary parties.
5. That the honourable Tribunal has no jurisdiction to adjudicate the matter.
6. That the honourable Tribunal has no jurisdiction to adjudicate the matter.

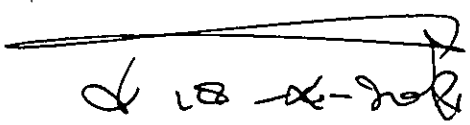
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3. Correct to the extent of the retirement of the appellant and regularization of services w.e.f 1st July 2008 but the rest of the para is denied because there were no instructions/orders to count the adhoc/contract Period of the employee for the purpose 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 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.

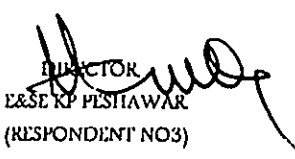
5. Correct to the extent of Appeal and the rest of the para is denied as the respondent No1 has issued Notification/ letter to the Director and District Education Officers in Khyber Pakhtunkhwa mentioned in para No 3 above.
6. No comments.

OBJECTIONS ON Grounds.

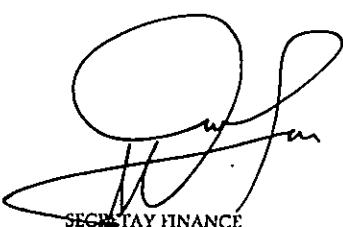
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- B. Incorrect. As per paras above..
- C. The Appellant has not claimed pension after the issuance of the above mentioned letter of the respondent No.1 in which adhoc/contract period is countable towards pension.
- D. Incorrect the applicant is not 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.



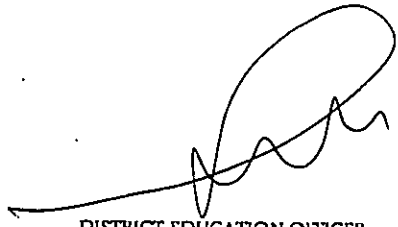
SECRETARY EDUCATION,
E&SE KP PESHAWAR
(RESPONDENT NO 1)



DIRECTOR,
E&SE KP PESHAWAR
(RESPONDENT NO3)



SECRETARY FINANCE
KHYBER PAKHTUNKHWA
PESHAWAR
RESPONDENT NO 2



DISTRICT EDUCATION OFFICER
FEMALE DIR UPPER
Respondent No 4

F.No 90

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

To

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

Annex A

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.

ADK
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).

Attest
[Signature]
Asstt: District Officer
(E&SE) Dir Upper
Section officer (Lit-I)

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

ADA
file
[Signature]
31/5

846
29/5/18

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 731 /2018

Asar Ikhon

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 appelliant. 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 appelliant. Moreover, the deptt is well aware of the fact that the appelliant 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

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 731 /2018

Asar Ikhon

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

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 731 /2018

Asar Ishaq

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

R. No. 6
731/2018

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.

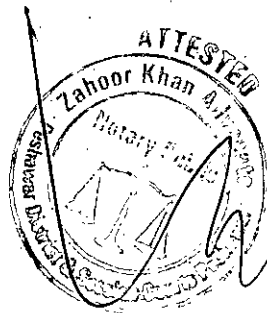
It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

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