04.08.2022 Petitioner present in person. Mr. Kabir Ullah Khattak. Additional Advocate General present.

Implementation report not submitted. Let Director General Health Services, Khyber Pakhtunkhwa, Peshawar and District Health Officer, District Dir Lower be put on notice to appear in person alongwith implementation report. To come up for implementation report on 06.09.2022 before S.B.

(Fareeha Paul)
Member (E)

21.06.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Safiullah Focal Person for the respondents present.

It is pathetic to observe that the Service Tribunal delivered judgement on 13.12.2018 in service appeal No. 639/2017, has not been implemented so far. This Bench has no option except to initiate punitive action against the respondents at fault. As a result thereof, salary of the respondents is attached. Registrar of the Tribunal is directed to communicate copy of the order sheet to Accountant General Khyber Pakhtunkhwa, Peshawar as well as District Accounts Officer, District Dir Lower for immediate action thereon. Adjourned. To come up for implementation report on 04.08.2022 before S.B.

(Mian Muhammad)
Member (E)

31.05.2022 Counsel for the petitioner present. Mr. Muhammad Adeel Butt Addl. AG for the respondents present.

Judgment of this Tribunal has not been implemented so far. The respondents are directed to implement the judgment of this Tribunal and submit implementation report on the next date. To come up for implementation report on 21.06.2022 before S.B.

Chairman

17.02.2021 The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 30.03.2021.

Reader

30.03.2021 Counsel for petitioner and Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Implementation report submitted and case for creation of post has already been submitted to the Finance Department. To come up for fully implementation report on 07.07.2021 before S.B.

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

17.11.2020 Counsel for the petitioner and Addl. AG alongwith Saleemur Rahman, DMS for the respondents present.

The D.M.S DHQ Hospital Timergara has provided copy of memo. dated 23.10.2020, whereby, the creation of new posts of 16 Ward Attendants BPS-04 is sought. He states that the matter has been further forwarded to Finance Department and the outcome would take some more time.

It is appropriate in the circumstances to allow more time to the respondents. Adjourned to 05.01.2021 before S.B.

Chairman

05.01.2021 Counsel for the petitioner and Mr. Noor Zaman, DDA alongwith Saleem Javed, Litigation Officer for the respondents present.

The representative of respondents states that the case has been completed and sent to the Secretary, Health Department, Government of Khyber Pakhtunkhwa Peshawar for onward proceedings at the Finance Department.

On the previous date request for adjournment was made on similar ground, therefore, learned counsel for the petitioner strongly objects to the request.

It is in the interest of justice to have the judgment under implementation executed in letter & spirit. Another opportunity for the purpose is, therefore, granted to the respondents. Adjourned to 17.02.2021 before S.B. On the adjourned date the needful shall be positively done by the respondents, failing which action in accordance with law will be initiated against the delinquent official(s).

Chairman

25.09.2020

Mr. Noor Muhammad Khattak, Advocate, learned counsel for the appellant is present. Mr. Kabirullah Khattak, Addl: Advocate General alongwith Dr. Saleem Ur Rehman, DMS for respondent No.4, Dr. Iqtidar, Medical Officer for respondent No.3 and Mr. Ahmad Jan, Junior Clerk for respondents present as per directions recorded in order sheet dated 20.08.2020.

Representative of respondent No.4 produced letter bearing No. 7219 dated 23.09.2020 indicating therein that their cases are being followed vigorously for creation of the posts through SNEs. On the other hand learned AAG requested for reasonable adjournment so as to have time to implement the judgement of Services Tribunal. Learned counsel for the petitioner did not object. Moreover, DMS Timergara having been posted for the last five years and mainly related to the instant execution petition, would make it sure to get the required Class-IV posts sanctioned from the concerned department/quarter. For that reason he is nominated by name to make the implementation of the instant execution petition and come up with conclusive and final implementation report on next date.

The case is adjourned to 17.11.2020 for Implementation report before S.B.

(Mian Muhammad)
Member (E)

20.08.2020

Counsel for the appellant present. Addl: AG alongwith Mr. Saleem, Javaid, Assistant Litigation for respondents present.

Implementation report not submitted. Record reveals that the instant execution petition is pending adjudication since 2019 but till date no implementation report has been submitted by the respondents. Respondents have time and again sought so many adjournments which clearly manifests that they are not interested to implement the judgment of this Tribunal. Respondents No. 2,3 and 4 are directed to attend this Tribunal personally with implementation report positively on the next date failing which the law will take its own course.

Adjourned to 25.09.2020 before S.B.

(Mian Muhammad)
Member(E)

16.04.2020 Due to COVID19, the case is adjourned to 20.07.2020 for the same as before.

Reader

20.07.2020 Mr. Shahzullah, Advocate learned counsel for the appellant is present. Mr. Kabirullah Khattak, Additional AG for the respondents is also present.

Learned counsel for the petitioner invited attention of the Bench to the proceedings recorded in this execution petition in the previous order sheet and submitted that respondents are not taking any serious interest in the implementation and giving effect to the judgment of this hon'ble Tribunal. In this regard he further submitted that the execution petition/proceeding pertains only to Director General Health Services Department, Khyber Pakhtunkhwa, and Medical Superintendent DHQ Hospital, Timergara, to whom notice be issued to appear in person for explaining the real position of the instant execution petition. Learned Additional AG opposed the contention raised by the learned counsel for the petitioner and submitted letter No. SOH(Lit-II)13-4153/2020 dated 14.07.2020 whereby the department concerned has directed all the officials including Director General Health Services, Khyber Pakhtunkhwa, for giving effect to the judgment of this Tribunal and in the last remarked that being a court matter it may be treated as most urgent. Let the respondent-department be provided fair opportunity of giving effect to the judgment of this Service Tribunal, therefore, instead of appearing of the officers at this stage respondents are directed to implement the judgment of this Tribunal in its letter and spirit simultaneously fully complying the directions contained in the previous order sheet. To come up for meaningful execution on 20.08.2020 before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER

04.02.2020 Petitioner in person present. Addl: AG alongwith Mr. Saleem ur Rehman, DMS, Timergara and Dr. Sikandar Hayat, Coordinator, DHO, Dir Lower for respondents present. Representative of the respondents submitted reply with is placed on file. Adjourned. To come up for further proceedings on 18.03.2020 before S.B.

Member

18.03.2020 Counsel for the petitioner present. Mr. Kabirullah Khattak learned Addl. AG alongwith M/S Ahmed Jan Junior Clerk for respondent No.3 and Saleem DMS for respondent No.4 present. Counsel for the petitioner submitted detail of vacant post at DHO Dir (Lower) office and M.S DHQ Timergara which is placed on file. Respondents are directed to produce the record of appointment made against the vacant post/posts available to adjust the appellant after the judgment. Moreover may also produce before the Tribunal the correspondence made between the district level offices and the higher authority regarding creation of new posts and the outcome of such correspondence. Adjourned. To come up for further proceedings on 16.04.2020 before S.B.

(Hussain Shah)
Member

16.10.2019 Counsel for the petitioner and Addl. AG alongwith Saleemur Rahman, DMS for the respondents present.

The representative of respondents requests for further time to submit the implementation report. The respondents shall do so on next date of hearing positively.

Adjourned to 18.11.2019 before S.B.

Chairman

18.11.2019 Counsel for the petitioner and Addl. AG for the respondents present.

Mr. Saleemur Rahman, DMS present before the Tribunal in connection with other cases states that the implementation in the instant matter is within the competence of respondent No. 3. The District Health Officer, Dir Lower/respondent No. 3 shall be issued notice for submission of implementation report on 18.12.2019.

Adjourned.

Chairman

18.12.2019 Counsel for the petitioner and Addl. AG alongwith Dr. Jamal, District Coordinator for the respondents present.

On behalf of DHO Dir Lower an implementation report has been submitted wherein it is noted that at present vacant position of Class-IV (BPS-04) is not available with the office of respondent No. 3. That, the judgment will be implemented as soon as posts are created by the department. Placed on record.

To come up for further proceedings on 04.02.2020 before S.B.

Chairman

Form- A

FORM OF ORDER SHEET

Court of_____

Execution Petition No. 315/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	27.08.2019	The execution petition of Mr. Shamsul Islam submitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR
2-		This execution petition be put up before S. Bench on 20/09/19. CHAIRMAN
	20.09.2019	Petitioner alongwith counsel present. Notices be issued to the respondents for submission of implementation report on 16.10.2019 before S.B. Chairman

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation petition No. 315 /2019

In appeal No. 653/2017

SHAMS UL ISLAM VS HEALTH DEPTT:

INDEX

PETITIONER

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation petition No. 315 /2019

In appeal No. 653/2017

Mr. Shams-Ul-Islam, Muslim Sweeper (BPS-1),
DHQ Hospital, Taimergara, District Dir Lower.
.....**Petitioner**

VERSUS

1- The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
2- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
3- The District Health Officer, District Dir Lower.
4- The Medical Superintendant DHQ Hospital Taimergara, District Dir Lower.

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENT DEPARTMENT TO IMPLEMENT THE JUDGMENT DATED 13.12.2018 IN APPEAL NO.639/2017 IN LETTER AND SPIRIT

R/SHEWETH:

1- That the above mentioned appeal has been decided by this august Service Tribunal vide judgment dated 13-12-2018 in favor of the Petitioner. Copy of the judgment is attached as annexure.....**A.**

2- That the Petitioner filed the above mentioned appeal against the impugned Notification dated 16.02.2017 whereby the petitioner has been ignored/excluded from promotion/adjustment against any other class-iv post.

3-That after final arguments this august Service Tribunal decided the appeal in favor of the Petitioner with the directions that:-

"impugned order dated 16.02.2017 has the effect of depriving the appellant from his adjustment against other class-iv post just for the reason that he was appointed as muslim sweeper after 12.7.2006. This Tribunal is therefore, of the opinion that discriminatory treatment was met out to the appellant. Resultantly this Tribunal holds that the cut off date i.e. 12.07.2006 as mentioned in the impugned order dated

16.02.2017 shall be treated as expunged. The present service appeal alongwith connected service appeals as mentioned in Para-2 of this judgment are accepted in the above terms".

4- That Petitioner after obtaining attested copy of the judgment 13.12.2018 submitted before the respondents alongwith application which was properly forwarded vide letter dated 29.03.2019 but the respondents are not willing to implement the judgment passed by this august Service Tribunal. Copy of the application alongwith other record are attached as annexure.....**B.**

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may be directed to implement the above mentioned judgment passed by this august Service Tribunal in letter and spirit.

Dated: 25.06.2019.

PETITIONER

SHAMS UL ISLAM

THROUGH:
NOOR MOHAMMAD KHATTAK
&
MIR ZAMAN SAFI
ADVOCATES

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation petition No._____/2019

In appeal No. 653/2017

SHAMS UL ISLAM VS HEALTH DEPTT:

AFFIDAVIT

I Noor Mohammad Khattak Advocate on the instruction and on behalf of my client do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

ATTESTED

Bar Advocate NOTARY PUBLIC Peshawar

NOOR MOHAMMAD KHATTAK
ADVOCATE

A - (4)
B - (5)

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
		BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL Service Appeal No. 639/2017 Date of Institution ..... 16.06.2017 Date of Decision ..... 13.12.2018 Mr. Luft-E-Hakeem, Muslim Sweeper (BPS-01) DHQ Hospital timer Garra, District Dir Lower. Appellant Versus 1. The Secretary Government of Khyber Pakhtunkhwa through Secretary Health Department Khyber Pakhtunkhwa Peshawar. 2. Director General Health Department Khyber Pakhtunkhwa Peshawar. 3. The District Health Officer, District Dir Lower. 4. The Medical Superintendent DHQ Hospital Timergara, District Dir Lower. Respondents
	13.12.2018	Mr. Muhammad Hamid Mughal----------Member (J) Mr. Ahmad Hassan----------Member (E) JUDGMENT MUHAMMAD HAMID MUGHAL, MEMBER: - Mr. Noor Muhammad, learned counsel for appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present. 2. This single judgment in the above captioned appeal, shall also dispose of appeals (1). bearing No.640/2017 filed by Rab Nawaz

ATTESTED
Khyber Pakhtunkhwa Service Tribunal, Peshawar

(2). bearing No.641/2017 filed by Sahib Ullah (3). bearing No. 642/2017 filed by Akhtar Rasool (4). bearing No.643/2017 filed by Dilawar Khan (5). bearing No. 644/2017 filed by Hamid ur Rehman (6). bearing No.645/2017 filed by Khyal Muhammad (7). bearing No.646/2017 filed by Siraj ud Din (8). bearing No.647/2017 filed by Bakht Shah Zeb (9). bearing No. 648/2017 filed by Bakhtiar Khan (10). bearing No.649/2017 filed by Gul Saeed Khan (11). bearing No.650/2017 filed by Kifayat Ullah (12). bearing No.651/2017 filed by Sadiq Muhammad (13). bearing No. 652/2017 filed by Said Rehman (14). bearing No.653/2017 filed by Shams ul Islam (15). bearing No.654/2017 filed by Aftab ud Din (16). bearing No. 655/2017 filed by Muhammad Haq (17). bearing No.656/2017 filed by Abdur Rehman (18). bearing No. 724/2017 filed by Ismail Shah (19). bearing No.725/2017 filed by Rehmat Ali Shah (20). bearing No. 726/2017 filed by Gohar Rehman (21). bearing No.727/2017 filed by Miraj ud Din (22). bearing No. 728/2017 filed by Habib Ullah (23). bearing No.729/2017 filed by Umar Hakim (24). bearing No.730/2017 filed by Shahid Hussain (25). bearing No.731/2017 filed by Shah Khalid being identical in nature, having arisen from the same law, facts and circumstances

3. The appellant, who was appointed as Sweeper (Muslim) at DHQ Hospital Timergra District Dir Lower in the year 2009 has filed the present service appeal u/s 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 16.02.2017 of the respondent No.1 whereby the respondent department accepted the

Khyber Pakhtunkhwa Service Tribunal, Peshawar

right of Muslim Sweepers appointed before 12.07.2006 for their adjustment against the post of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts on seniority basis and thereby deprived the Muslim Sweepers appointed after 12.07.2006 to be adjusted as such. Learned counsel for the appellant mainly argued that the impugned order is a sheer example of discriminatory treatment to Muslim Sweepers appointed as such after 12.07.2006.

4. On the other hand learned Additional Advocate General defended the impugned order on the ground that the appellant himself was appointed as Muslim Sweeper in violation of policy decision dated 12.07.2006.

5. Arguments heard. File perused.

6. The respondent department vide its policy decision dated 12.07.2006 decided that all the Health Institutions should promote the Muslim Sweepers against the existing vacancies of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts, on seniority basis and not to appoint Muslim Sweeper against the post of Sweeper in future.

7. It was due to the violation of policy decision dated 12.07.2006 that many Muslim Sweepers had to knock the door of Hon'ble Peshawar High Court. The violation of policy decision led the respondent department to the issuance of fresh order dated 16.02.2017 made partially impugned in the present service appeal.

8. Upon the examination of the impugned order dated 16.02.2017, this Tribunal came to the conclusion that the same is

Khyber Pakhtunkhwa Service Tribunal Peshawar

also in violation of policy decision dated 12.07.2006 in as much as according to the policy decision dated 12.07.2006 gradually all the Muslim Sweepers would have to be adjusted against other Class-IV posts.

9. Impugned order dated 16.02.2017 has the effect of depriving the appellant from his adjustment against other Class-IV post just for the reason that he was appointed as Muslim Sweeper after 12.07.2006. This Tribunal is therefore of the considered opinion that discriminatory treatment was met out to the appellant.

10. Resultantly this Tribunal holds that the cut off date i.e. 12.07.2006 as mentioned in the impugned order dated 16.02.2017 shall be treated as expunged. The present service appeal alongwith connected service appeals as mentioned in para-2 of this judgment are accepted in the above terms. The respondent department is directed to take strict disciplinary action against those responsible for inducting Muslim Sweepers in violation of the policy decision dated 12.07.2006. Parties are left to bear their own costs. File be consigned to the record room.

(Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

ANNOUNCED
13.12.2018

Date of Presentation of Application 31-1-19
Number of Words 1600
Copying Fee 10
Urgent 2
Total 12
Name of Copyist
Date of Completion of Copy 31-1-19
Date of Delivery of Copy 31-1-19

B (8)

بحضور جناب میڈیکل سپرنٹنڈنٹ صاحب ڈی۔ ایچ۔ کیو ہسپتال تیمرگرہ دیر لوئر

عنوان:- مسلم سویپرز کا عدالتی فیصلہ کلاس فور پوسٹوں پر ایڈجسٹ کرنا۔

جناب عالی!

خودبانہ گذارش ہے ڈی ایچ کیو ہسپتال تیمرگرہ کی مسلم سویپرز نے سال 2014 میں پشاور ہائی کورٹ بنچ دارالقضاء خیبر پختونخوا سوات میں کیس دائر کیا۔ آخر کار 13/12/2018 کو سروس ٹیبونل میں مسلم سویپرز کے حق میں فیصلہ ہوا ہے۔ یہ مسلم سویپرز کو N/A یا N/A کلاس فور پوسٹوں پر ایڈجسٹ کرنا ہے۔ ایڈمنسٹریشن کی طرف سے جب کوئی آفیسر عدالت میں پیش ہوتا ہے۔ تو وہ عدالت کو یہ جواب دیتا ہیں۔ کہ ہمارے پاس خالی آسامیاں موجود ہیں۔ ڈاکٹر انور زادہ صاحب ایم ایس ڈی۔ ایچ۔ کیو ہسپتال نے عدالت کو یہ جواب دیا ہے کہ ہمارے پاس خالی آسامیاں موجود ہیں۔ صوبائی حکومت کی پوسٹنگ اور ٹرانسفر پر پابندی کے باوجود غیر قانونی بھرتی کیا ہے۔ موجودہ غیر قانونی بھرتی کرنے والے مسلم سویپرز کیلئے خالی آسامیاں نہیں چھوڑا۔ اس سلسلے میں صاحب نے غیر قانونی افراد کے خلاف انکوائری کی ہے انکوائری رپورٹ موجود ہے۔ سوات میں ڈی۔ جی صاحب نے غیر قانونی بھرتی شدہ 34 افراد کو محکمہ صحت کے سروس سے برطرف کر دیا ہے۔ یہ عدالتی فیصلے کو مدنظر رکھ کر تمام سابقہ مسلم سویپرز کو کلاس فور پوسٹوں پر ایڈجسٹ کیا جائے۔ تو عین نوازش ہوگی۔

There are no vaccant posts of class IV. I will follow court decision and will convert/upgrade Muslim sweeper to N/A/ when by the time these positions are become available.

Medical Superintendent
DHQ Hospital
Timergara

بعورضہ 13/12/018

دستخط

عرض حکیم
P.T.O

ایڈمنسٹریٹر جملہ مسلم سویپرز ڈی ایچ۔ کیو ہسپتال تیمرگرہ دیر لوئر

Continue Page-7-

9

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHWA PESHAWAR

E-Mail Address: nwfpdghs@yahoo.com office Ph# 091-9210269 ☎ Exchange# 091-9210187, 9210196 Fax # 091-9210230

OFFICE ORDER

Dr. Shoukat DHO Dir Lower is hereby nominated as Enquiry Officer to conduct the enquiry and submit the detailed report as mentioned in the joint application of Muslim Sweepers attached to DHQ Hospital Timergara.

The enquiry report must be submitted within 07-days positively.

Sd/xxxxxxxxx
DIRECTOR GENERAL HEALTH SERVICES, Khyber Pakhtunkhwa, PESHAWAR.

No. 3151-52 /Personnel

Dated 29 /03/2019.

Copy forwarded to the:-

1. Dr. Shoukat DHO Dir Lower.
2. P.A to DGHS KP Peshawar.

For information and necessary action.

DIRECTOR (HRM)
DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR

29/03/19

(-) for S.No.01

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

_____ OF 2019

Shams-Ul-Islam _____ (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

Health Department _____ (RESPONDENT) (DEFENDANT)

I/We Shams-Ul-Islam

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, 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 cost. 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.

Dated._____/_____/2019

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI
&
MIR ZAMAN SAFI
ADVOCATES

OFFICE:
Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Mobile No.0345-9383141

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

S.A NO. 311-329 /2019 in 639-656 /2017

Mr. Lutf e Hakim & Others

MR. GUL SAEED KHAN & 2 OTHERS SWEEPER BPS-03 CATEGORY D HOSIPTAL ZIARAT TALASH DIR LOWER

VERSUS.

1. Secretary Health Department Khyber Pakhtunkhwa Peshawar.
2. Director General Health services Khyber Pakhtunkhwa Peshawar.
3. District Health Officer Dir Lower.
4. Medical Superintendent DHQ Hospital Timergara Dir Lower.

IMPLEMENTATION REPORT

In the pursuance of the judgment honorable Service Tribunal Peshawar, it is submitted that 03 appellants are working under the control of office of the undersigned and the undersigned has no authority to create the post of Class-IV (BPS-04), for the adjustment of Muslim sweepers.

As this office is unable to entertain the instant appeal due to non-availability of vacant position of Class-IV, It is therefore requested that the decision of the honorable court will be implemented, as soon as posts are created by the Department, for which request has already been sent to the quarter concerned.

All the Enclosures Attached,

District Health Officer
Dir Lower.

District Health Officer
Distt Dir Lower

REGISTERED

OFFICE OF THE
DISTRICT HEALTH OFFICER
DIR LOWER.

No. 2558/ Cy-case **/Dated.** 18/04 **/2019.**

Phone No. 0945-9250098.

To,

The Director General Health Services
Khyber Pakhtunkhwa Peshawar

Subject: **SERVICE APPEAL NO. 639 TO 656/2017 – LUTF E HAKIM AND 17 OTHERS VERSUS GOVT. OF KHYBER PAKHTUNKHWA AND OTHERS.**

Memo:-

With reference to your office letter No. 909-14/AD (Lit) dated 27-02-2019, received in this office on 21-03-2019 on the subject cited above, and in continuation to this office letter No. 1992, dated 28-03-2019 submitted to your good vide Dairy No. 12750/Lit dated 03-04-2019.

- Respectfully, it is submitted for your kind information that the petitioner Mr. Lutf e Hakim Muslim Sweeper BS-01 etc/DHQ Hospital Timergara Dir Lower approached the Khyber Pakhtunkhwa Service Tribunal Peshawar via appeal No. 639-656 of 2017 with the plea that vide Notification dated 25-07-2006 the Health Department including autonomous institutions have unanimously decided that all the Health Institutions should promote the Muslim Sweepers against the existing vacancies of Ward Orderly, Chowkidar, Mali, Dai, Aya.
- The appellant also challenge the Department office order No. SO (Litigation-1)/1-1/2017 (Gen: Misc) dated 16-02-2016, which is stating that those Sweeper who were appointed as Muslim Sweeper before 12-07-2006 are entitled for adjustment against the aforementioned posts without disturbing the quota reserved under the rules for appointment of Class-IV Govt: Servants and children of retiring/incapacitated/deceased civil servant etc. They took the plea that this impugned Notification is voilative of the article 38 (e) of the constitution of Pakistan 1973.
- The Services Tribunal vide its judgment announced on 13-12-2018 expressed that "this tribunal holds that the cutoff date i.e. 12-07-2006 as mentioned in the impugned order dated 16-02-2017 shall be treated as expunged.
- The appellant are 17 in number of whom 3 belongs to the DHO prerogative and others are under the control of MS DHQ Hospital Timergara. Since there are no vacant posts of Class-IV available for adjustment of these Sweepers so these will bear a magnificent financial implication to the Govt: of Khyber Pakhtunkhwa.

It is therefore, requested that the said appeal may be taken up to Supreme Court of Pakistan to fix the issue.

In case of otherwise, this office may kindly be advised to process the SNE for the said posts to adjust them accordingly, please.

Encl: All the relevant record attached.

Attested

District Health Officer,
Dir Lower.

No. 2559-61 /

Copy for information to:-

1. Secretary to Govt: of Khyber Pakhtunkhwa Health Department Peshawar.
2. Additional Advocate General Khyber Pakhtunkhwa Service Tribunal Peshawar
3. Additional Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.

District Health Officer,
Dir Lower

OFFICE OF THE
DISTRICT HEALTH OFFICER
DIR LOWER.

Submitted.

No. 1992 **/Dated.** 28/03/**2019.**

Phone No. 0945-9250098.

12750/42
03/4/19

To,

The Director General Health Services
Khyber Pakhtunkhwa Peshawar

3/4/19

Subject: **SERVICE APPEAL NO. 639 TO 656/2017 – LUTF E HAKIM AND 17 OTHERS VERSUS GOVT. OF KHYBER PAKHTUNKHWA AND OTHERS.**

Memo:-

With reference to your office letter No. 909-14/AD (Lit) dated 27-02-2019, received in this office on 21-03-2019 on the subject cited above,.

Respectfully, it is submitted for your kind information that before the subject citied appeal; the Petitioners filed Writ Petition No. 510/14 before the Peshawar High Court Bench Darul Qaza Swat, where-in the Petitioners taken the plea that they were belonging to Muslims and have been appointed as Sweeper in Health Department, and are entitled to be promoted to the next cadre post i.e. Ward Orderly, Chowkidar, Mali, Aya and other equaillant posts in light of the instant Writ Petition. This Writ Petition was referred to your office for appropriate necessary action. The office of Health Department vide his letter No. SOH-(Lit) 12 (1) 1289/2017 dated 7th March, 2017, decided as under:

"It was decided that all the Health Institutions should promote the Muslim Sweepers against existing vacancies of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts, on seniority basis and not to appoint Muslim Sweeper against the post of Sweepers in future" *(Attached as Annex-I)*

However vide Para-6, it was decided that these Muslim Sweepers who had been appointed before 12-07-2006 are entitled for adjustment against the aforementioned posts and as such who were appointed after 12-07-2006 are not entitled. Aggrieved from the said Notification, the appellant filed appeal No. 639-656/17 before the Honourable Service Tribunal Peshawar in the concluding Para. The Honourable Court has declared the said Notification Null and void.

It is further clarified that either an appeal should be filed against the said judgment or should be complied in letter in spirit.

The same is forwarded to your advice please.

District Health Officer,
Dir Lower.

Attested

No. 1993 – 95 /Litigation

Copy for information to:-

1. Secretary to Govt: of Khyber Pakhtunkhwa Health Department Peshawar.
2. Additional Advocate General Khyber Pakhtunkhwa Service Tribunal Peshawar.
3. Additional Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.

District Health Officer.

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT.

No.SOH-(Lit-I) 1-1/2017 (Gen. Misc)
Dated Peshawar the 16th February, 2017

ANNEXURE D - (19)

ORDER.

1. WHEREAS attention is invited to the minutes of the meeting dated 12.07.2006 held under the Chairmanship of Secretary Health Khyber Pakhtunkhwa circulated vide Govt of Khyber Pakhtunkhwa Health Department letter No. SOH-III/1-179/06 (Class-IV) dated 25.07.2006. Extract of the decision taken in the meeting is reproduced below:-

Digest:

"It was decided that all the Health Institutions should promote the Muslim Sweepers against existing vacancies of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts, on seniority basis and not to appoint Muslim Sweepers against the post of Sweepers in future.

2. AND WHEREAS the above decision was also affirmed by the Hon'ble Peshawar High Court Peshawar vide judgment dated 27.09.2013 in Writ Petition No.293-P/2013 Titled "Noor ul Qamar S/O Shams-ul Qamar Muslim Sweeper THQ Hospital Shabqadar, District Charsadda & 9 others versus Govt of Khyber Pakhtunkhwa Health Department & others.

3. NOW THEREFORE in pursuance of the above decision taken/judgment of the Hon'ble Court, it is sufficiently clear that those who were appointed as Muslim Sweepers before 12.07.2006 are entitled for adjustment against the aforementioned posts without disturbing the quotas reserved under the Rules for appointment of Class-IV Govt. Servants and children of Retiring/incapacitated/deceased civil servants etc. However, those who were appointed as Muslim Sweeper after 12.07.2006 in violation of the above decision/judgment are not covered under the policy.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT.

Endst No. & Date even.
Copy of the above is forwarded to the:-

1. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
2. The Director Health Services, FATA.
3. All District Health Officers in Khyber Pakhtunkhwa.
4. All Medical Superintendent of Hospitals in Khyber Pakhtunkhwa.
5. All Medical Directors/Hospital Directors of MTIs in Khyber Pakhtunkhwa.
6. PS to Senior Minister Health, Khyber Pakhtunkhwa.
7. PS to Secretary Health, Khyber Pakhtunkhwa.
8. Provincial President Paramedical Class-IV Employees Association, LRH Peshawar.

(Bakhtiar Ali)
Section Officer (Lit-I)

DIRECTORATE OF HEALTH SERVICES FATA, PESHAWAR

No.L/5255-56 /DHS/FATA/Admn Date: 28 /3/2017

Copy is forwarded to the:-

1. All Agency Surgeons in FATA/FRs.
2. All Medical Superintendents in FATA.

For information and further necessary action.

ATTESTED

Director Health Services
FATA Peshawar.

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

S.A NO. 311-329 /2019 in 639-656 /2017

Mr. Lutf e Hakim & Others

MR. GUL SAEED KHAN & 2 OTHERS SWEEPER BPS-03 CATEGORY D HOSIPTAL ZIARAT TALASH DIR LOWER

VERSUS.

1. Secretary Health Department Khyber Pakhtunkhwa Peshawar.
2. Director General Health services Khyber Pakhtunkhwa Peshawar.
3. District Health Officer Dir Lower.
4. Medical Superintendent DHQ Hospital Timergara Dir Lower.

IMPLEMENTATION REPORT

In the pursuance of the judgment honorable Service Tribunal Peshawar, it is submitted that 03 appellants are working under the control of office of the undersigned and the undersigned has no authority to create the post of Class-IV (BPS-04), for the adjustment of Muslim sweepers.

As this office is unable to entertain the instant appeal due to non-availability of vacant position of Class-IV, It is therefore requested that the decision of the honorable court will be implemented, as soon as posts are created by the Department, for which request has already been sent to the quarter concerned.

All the Enclosures Attached

District Health Officer
Dir Lower.

District Health Officer
Distt Dir Lower

REGISTERED

OFFICE OF THE
DISTRICT HEALTH OFFICER
DIR LOWER.

No. 2558/ Cy-case /Dated. 18/04/2019.

Phone No. 0945-9250098.

To,

The Director General Health Services
Khyber Pakhtunkhwa Peshawar

Subject: **SERVICE APPEAL NO. 639 TO 656/2017 – LUTF E HAKIM AND 17 OTHERS VERSUS GOVT. OF KHYBER PAKHTUNKHWA AND OTHERS.**

Memo:-

With reference to your office letter No. 909-14/AD (Lit) dated 27-02-2019, received in this office on 21-03-2019 on the subject cited above, and in continuation to this office letter No. 1992, dated 28-03-2019 submitted to your good vide Dairy No. 12750/Lit dated 03-04-2019.

- Respectfully, it is submitted for your kind information that the petitioner Mr. Lutf e Hakim Muslim Sweeper BS-01 etc/DHQ Hospital Timergara Dir Lower approached the Khyber Pakhtunkhwa Service Tribunal Peshawar via appeal No. 639-656 of 2017 with the plea that vide Notification dated 25-07-2006 the Health Department including autonomous institutions have unanimously decided that all the Health Institutions should promote the Muslim Sweepers against the existing vacancies of Ward Orderly, Chowkidar, Mali, Dai, Aya.
- The appellant also challenge the Department office order No. SO (Litigation-1)/1-1/2017 (Gen: Misc) dated 16-02-2016, which is stating that those Sweeper who were appointed as Muslim Sweeper before 12-07-2006 are entitled for adjustment against the aforementioned posts without disturbing the quota reserved under the rules for appointment of Class-IV Govt: Servants and children of retiring/incapacitated/deceased civil servant etc. They took the plea that this impugned Notification is voilative of the article 38 (e) of the constitution of Pakistan 1973.
- The Services Tribunal vide its judgment announced on 13-12-2018 expressed that "this tribunal holds that the cutoff date i.e. 12-07-2006 as mentioned in the impugned order dated 16-02-2017 shall be treated as expunged.
- The appellant are 17 in number of whom 3 belongs to the DHO prerogative and others are under the control of MS DHQ Hospital Timergara. Since there are no vacant posts of Class-IV available for adjustment of these Sweepers so these will bear a magnificent financial implication to the Govt: of Khyber Pakhtunkhwa.

It is therefore, requested that the said appeal may be taken up to Supreme Court of Pakistan to fix the issue.

In case of otherwise, this office may kindly be advised to process the SNE for the said posts to adjust them accordingly, please.

Encl: All the relevant record attached.

District Health Officer,
Dir Lower.

No. 2559 - 61 /

Copy for information to:-

1. Secretary to Govt: of Khyber Pakhtunkhwa Health Department Peshawar.
2. Additional Advocate General Khyber Pakhtunkhwa Service Tribunal Peshawar.
3. Additional Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.

District Health Officer,
Dir Lower

OFFICE OF THE
DISTRICT HEALTH OFFICER
DIR LOWER.

Submitted

No. 1992 /Dated. 28/03/2019.

Phone No. 0945-9250098.

12750/43
03/4/19

To,

The Director General Health Services
Khyber Pakhtunkhwa Peshawar

3/4/19

Subject: **SERVICE APPEAL NO. 639 TO 656/2017 – LUTF E HAKIM AND 17 OTHERS VERSUS GOVT. OF KHYBER PAKHTUNKHWA AND OTHERS.**

Memo:-

With reference to your office letter No. 909-14/AD (Lit) dated 27-02-2019, received in this office on 21-03-2019 on the subject cited above,.

Respectfully, it is submitted for your kind information that before the subject citied appeal; the Petitioners filed Writ Petition No. 510/14 before the Peshawar High Court Bench Darul Qaza Swat, where-in the Petitioners taken the plea that they were belonging to Muslims and have been appointed as Sweeper in Health Department, and are entitled to be promoted to the next cadre post i.e. Ward Orderly, Chowkidar, Mali, Aya and other equaillant posts in light of the instant Writ Petition. This Writ Petition was referred to your office for appropriate necessary action. The office of Health Department vide his letter No. SOH-(Lit) 12 (1) 1289/2017 dated 7th March, 2017, decided as under:

"It was decided that all the Health Institutions should promote the Muslim Sweepers against existing vacancies of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts, on seniority basis and not to appoint Muslim Sweeper against the post of Sweepers in future" *(Attached as Annex-I)*

However vide Para-6, it was decided that these Muslim Sweepers who had been appointed before 12-07-2006 are entitled for adjustment against the aforementioned posts and as such who were appointed after 12-07-2006 are not entitled. Aggrieved from the said Notification, the appellant filed appeal No. 639-656/17 before the Honourable Service Tribunal Peshawar in the concluding Para. The Honourable Court has declared the said Notification Null and void.

It is further clarified that either an appeal should be filed against the said judgment or should be complied in letter in spirit.

The same is forwarded to your advice please.

District Health Officer,
Dir Lower.

No. 1993 – 95 /Litigation

Copy for information to:-

1. Secretary to Govt: of Khyber Pakhtunkhwa Health Department Peshawar.
2. Additional Advocate General Khyber Pakhtunkhwa Service Tribunal Peshawar.
3. Additional Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.

District Health Officer.

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT.

No.SOH-(Lit-4) 1-1/2017 (Genr Misc)
Dated Peshawar the 16th February, 2017

ANNEXURE D - (19)

ORDER.

1. WHEREAS attention is invited to the minutes of the meeting dated 12.07.2006 held under the Chairmanship of Secretary Health Khyber Pakhtunkhwa circulated vide Govt of Khyber Pakhtunkhwa Health Department letter No. SOH-III/1-179/06 (Class-IV) dated 25.07.2006. Extract of the decision taken in the meeting is reproduced below:-

Decisions:

"It was decided that all the Health Institutions should promote the Muslim Sweepers against existing vacancies of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts, on seniority basis and not to appoint Muslim Sweepers against the post of Sweepers in future.

2. AND WHEREAS the above decision was also affirmed by the Hon'ble Peshawar High Court Peshawar vide judgment dated 27.09.2013 in Writ Petition No.293-P/2013 titled "Noor ul Qamar S/O Shams-ul Qamar Muslim Sweeper THQ Hospital Shabqadar, District Charsadda & 9 others versus Govt of Khyber Pakhtunkhwa Health Department & others.

3. NOW THEREFORE in pursuance of the above decision taken/judgment of the Hon'ble Court, it is sufficiently clear that those who were appointed as Muslim Sweepers before 12.07.2006 are entitled for adjustment against the aforementioned posts without disturbing the quotas reserved under the Rules for appointment of Class-IV Govt. Servants and children of Retired/incapacitated/deceased civil servants etc. However, those who were appointed as Muslim Sweeper after 12.07.2006 in violation of the above decision/judgment are not covered under the policy.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT.

Endst No. & Date even.
Copy of the above is forwarded to the:-

1. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
2. The Director Health Services, FATA.
3. All District Health Officers in Khyber Pakhtunkhwa.
4. All Medical Superintendent of Hospitals in Khyber Pakhtunkhwa.
5. All Medical Directors/Hospital Directors of MTIs in Khyber Pakhtunkhwa.
6. PS to Senior Minister Health, Khyber Pakhtunkhwa.
7. PS to Secretary Health, Khyber Pakhtunkhwa.
8. Provincial President Paramedical Class-IV Employees Association, LRH Peshawar

(Bakhtiar Ali)
Section Officer (Lit-I)

DIRECTORATE OF HEALTH SERVICES FATA, PESHAWAR
No. 1/SC-5-26 /DHS/FATA/Admn Date: 28 /3/2017

ATTESTED

Copy is forwarded to the:-

1. All Agency Surgeons in FATA/FRs.
2. All Medical Superintendents in FATA.

For information and further necessary action.

Director Health Services
FATA Peshawar.

GS&PD.KP-2558/4-RST-20,000 Forms-09.07.2018/P4(Z)/F=PHC Jobs/Form A&B Ser. Tribunal

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

S.18

No.

Appeal No. Implementation Petition 315/2019 of 20

Mr. Shams-ul-Islam *Appellant/Petitioner*

Versus

the Secy Health Peshawar *Respondent*

Regd

Respondent No. 3

Notice to: — the Distt: Health Officer, Distt Dir Lower.

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 18/12/2019 at 8.00 A.M. If you wish to urge anything against the appellant/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 Implementation 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 20th

Day of Nov 2019

(for Implementation Report)

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.