

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

**SERVICE APPEAL NO. 413/2018**

Date of institution ... 26.03.2018

Date of judgment ... 14.01.2019

Muhammad Afzal S/o Haider Khan,  
Ex-Chowkidar Government Girls Primary School Aziz Abad Hangu,  
R/o Mohallah Aziz Abad, Village Shinawari, P/o Zargari, Tehsil, Tall,  
District Hangu.

... (Appellant)

**VERSUS**

1. The District Account Officer, District Hangu.
2. The District Education Officer (Female), District Hangu.
3. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
5. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
6. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.

... (Respondents)

*M. Amin*  
*14.1.2019*

APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT, 1974  
AGAINST THE IMPUGNED ORDER NO. 1138/42 DATED 14.07.2017  
PASSED BY RESPONDENT NO. 2 WHEREBY THE APPELLANT WAS  
NOT GRANTED HIS PENSION GRATUITY AND OTHER BENEFITS  
ON HIS RETIREMENT AT THE AGE OF SUPERANNUATION I.E 60  
YEARS, WHICH IS ILLEGAL, UNLAWFUL, AGAINST THE LAW AND  
RELEVANT RULES.

Mr. Muhammad Ilyas Orakzai, Advocate.

.. For appellant.

Mr. Muhammad Jan, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER:- Counsel for the  
appellant present. Mr. Raheem-ud-Din, ADO alongwith Mr. Muhammad Jan,

*M. Amin*

*SD*

Deputy District Attorney for the respondents present. Arguments heard and record peruse.

2. Brief facts of the case as per present service appeal are that the appellant was appointed as Chowkidar on contract basis by the competent authority vide order dated 09.05.1998. He was regularized with effect from 01.07.2008 and on superannuation age of 60 years, he was retired from service vide order dated 14.07.2017 but pensionary benefits was not granted to him therefore, he filed departmental appeal on 04.12.2017 but the same was not responded hence, the present service appeal on 26.03.2018.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was appointed as Chowkidar on contract basis in Education Department. It was further contended that later on the service of the appellant was regularized with effect from 01.07.2008 and on superannuation age of 60 years, he was retired from service vide order dated 14.07.2017 but benefits of pension etc were not extended to the appellants on the ground that length of regular service of the appellants was less then qualifying service. It was further contended that the appellant filed departmental appeal for issuance of pension, gratuity and other benefits but the same was not responded. It was further contended that according to Rule 2.2 of West Pakistan Civil Services Pension Rules, 1963 the service of the government servant begin to qualify for pension when he takes over charge of the post to which he is first appointed. It was further contended that according to Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963 temporary and officiating service shall count for pension if he has rendered more than five years continuous temporary service for the purpose of pension or gratuity and temporary and officiating service followed by confirmation shall also count for

*M. Amin*  
*14.1.2019*

pension or gratuity. Therefore, it was contended that the service of the appellant will be considered from the date of appointment and the same will be counted for pension and gratuity etc. The learned counsel for the appellant also relied unreported judgments of the Worthy Peshawar High Court in Writ Petition No. 1188 of 2014 decided on 09.09.2014 titled Baghi Shah-Versus-The State etc, Writ Petition No. 1590 of 2014 decided on 11.09.2014 titled Mst. Wajihat W/o Nisar Muhammad-Versus-Senior District Accounts Officer & others, Writ Petition No. 1659-P/2014 decided on 27.11.2014 titled Yaqoob Khan S/o Abdul Manan-Versus-Government of Khyber Pakhtunkhwa etc and Writ Petition No. 3394-P/2016 decided on 22.06.2017 titled Amir Zeb-Versus-The District Account Officer, District Nowshera etc. It was further contended that in the present service appeal the departmental appeal was filed after some delay but since the service appeal pertains to the matter of pay, pension and other emolument therefore, the limitation does not foreclosed the right of the appellant accrued to him and in such like matter the limitation does not run and relied in this regard on 2018 SCMR page 64 and 2002 PLC (C.S) page 1388 Punjab Service Tribunal and prayed that the appeals may be accepted and the department may be directed to consider the length of service of the appellant from the date of his appointment and pay pensionary benefits to the appellant.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellants was appointed as Chowkidar on contract basis and he was regularized with effect from 01.07.2008. It was further contended that the appellant was retired from service on 14.07.2017 and the appellant served as regular employees for less than 10 years hence, they <sup>are</sup> not entitled for pensionary benefits and prayed for dismissal of appeal.

*M. Amin*  
14.1.2019

6. We have heard the arguments and gone through the record available on file.

7. Perusal of the record reveals that the appellant was appointed as Chowkidar on contract basis. The record further reveals that the service of the appellant was regularized with effect from 01.07.2008. The record further reveals that the appellant was retired from service but pension and gratuity was not extended to the appellants.

8. Regarding the question of entitlement of the appellant to the pension, we, would like to reproduce the relevant rules of the West Pakistan Civil Services Pensions Rules, 1963 below, as these would be 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.

9. 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

*M. Anwar*  
14.1.2019

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 conformation shall be counted for pension and gratuity. In this regard reliance is also placed on SCMR 1994 page 1653 titled Government of N.W.F.P through Secretary, Law, Peshawar Versus Muhammad Aslam Khan Assistant Advocate General, N.W.F.P Abbottabad where in it was held

**Constitution of Pakistan (1973)**

---Art. 212 (3)--- Service

Tribunal while accepting civil servant's appeal had allowed his previous service for specified period to be counted for determining his gratuity and pensionary benefits---Appellants could not advance any arguments for taking a different view in the matter---Service Tribunal finding being correct and supported by precedent of Supreme Court on the subject, called for no interference--- Leave to appeal was refused in circumstances.

*M. Aslam*  
*14.1.2019*

10. We deem it appropriate to mention here that question of interpretation and true import to 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.”

11. 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.

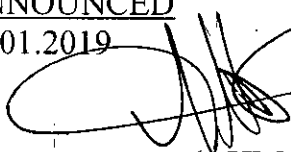
12. In the present case the appellant was initially appointed as Chowkidar on contract basis followed by regularization with effect from 01.07.2008. The appellant has rendered temporary service for a continuous period of more than 5 years service and later on regularized and was retired. Record reveals that as a whole he has more than 10 years services at his credit. By virtue of rule 2.3 as well as Chapter-IV rule 4.4 of the West Pakistan Civil Services Pensions Rules, 1963, he has qualified the prescribed service for pensionary benefits, therefore, the objections raised by the respondents is not tenable and not supported by any rule or regulation. Judgment of hon’ble Peshawar High Court in Mst. Wajihat

M. Ammar  
14.1.2019

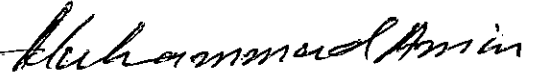
case (Writ Petition No. 1590-P/2014), Baghi Shah's case (Writ Petition No. 1188-P/2014, Yaqoob Khan case's (Writ Petition No. 1659-P/2014) and in Amir Zeb case's (Writ Petition No. 3394-P/2016) may be quoted as a reference.

13. In the light of the above discussion we are constrained to accept the appeal and direct the respondent-department to finalize the pension case of the appellants and grant pensionary benefits to him. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
14.01.2019



(AHMAD HASSAN)  
MEMBER



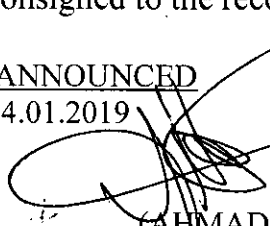
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

14.01.2019

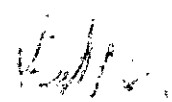
Counsel for the appellant present. Mr. Raheem-ud-Din, ADO  
alongwith Mr. Muhammad Jan, Deputy, District Attorney for the  
respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of seven pages placed  
on file, we are constrained to accept the appeal and direct the respondent-  
department to finalize the pension case of the appellants and grant  
pensionary benefits to him. Parties are left to bear their own costs. File be  
consigned to the record room.

ANNOUNCED  
14.01.2019

  
(AHMAD HASSAN)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER





30.08.2018

Learned Counsel for the appellant and Mr. Kabirullah Khattak, AAG for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 15.10.2018 before S.B.



(Muhammad Amin Kundi)  
Member

15.10.2018

Appellant in person present. Mr. Raheem Ud Din, ADO(F) alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply on behalf of the respondents submitted which is placed on file. Case to come up for rejoinder and arguments on 22.11.2018 before D.B.



(Ahmad Hassan)  
Member

22.11.2018

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney alongwith Mr. Raheem ud Din ADO for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Granted. To come up for arguments on 14.01.2019 before D.B.



Member



Member

09/04/2018

Learned counsel for the appellant preliminary arguments heard.

Appellant (Retired Chowkidar) has filed the present service appeal u/s 4 of Khyber Pakhtunkwa Service Tribunal Act, 1974 for the grant of pensionary benefits.

Grounds agitated in the memo of appeal need consideration. The present appeal is admitted to regular hearing subject all just/legal objections. The appellant is directed to deposit security and process within 10 days thereafter notice be issued to respondents for written reply/comments. To come up for written reply/comments on 31.05.2018 before S.B

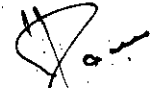
Appellant Deposited  
Security & Process Fee



Member

31.05.2018

Learned counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General present. Learned AAG seeks time to file written reply/comments. Granted. To come up for written reply/comments on 10.07.2018 before S.B



Member

10.07.2018

Neither appellant nor his counsel present. Mr. Ibrahim Khan, ADO (Lit) alongwith Mr. Usman Ghani, Sr. GP for the respondents present. Written reply not submitted. Requested for adjournment. Granted. To come up for written reply/comments on 30.08.2018 before S.B.



Chairman

Form-A  
FORM OF ORDERSHEET

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

Case No. 413/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26/03/2018	<p>The appeal of Mr. Muhammad Afzal presented today by Mr. Muhammad Ilyas Orakzai 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;"><i>[Signature]</i> REGISTRAR 26/3/18</p>
2	27/03/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>09/04/18.</u></p> <p style="text-align: right;"><i>[Signature]</i> MEMBER.</p>

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

Service Appeal No:- 415 /2018

Muhammad Afzal

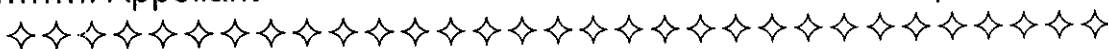
**Versus**

The District Account Officer,

District Hangu & others

..... Appellant

..... Respondents



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4.	<i>Copy of service books</i>	"B"	10-23
5.	<i>Copy of retirement order</i>	"C"	24
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Dated:- 22/03/2018

Appellant



Through:-

Muhammad Ilyas Orakzai  
Advocate High Court,  
Peshawar.

&

Muhammad Shabir Khalil  
Advocate High Court,  
Peshawar.



PENSION GRATUITY AND OTHER BENEFITS ON HIS  
RETIREMENT AT THE AGE OF SUPERANNUATION I.E. 60  
YEARS, WHICH IS ILLEGAL, UNLAWFUL, AGAINST THE  
LAW AND RELEVANT RULES.

***Prayer in Appeal:***

On acceptance of this appeal, the appellant may kindly be declared entitled for the pension , gratuity and other benefits and direct the respondents to issue pension, gratuity and other benefits immediately, with such other relief as may deem fit in the circumstances of the case.

***Respectfully Sheweth:-***

*Appellant submits as under:-*

1. *That the appellant was appointed as class-IV Chowkidar on pay of Rs. 1500/- per month on contract basis on dated 09/05/1998 vide order No 1988-98. (Copy of the order is attached as annexure "A").*
2. *That later on the service of the appellant was regularized as BPs-02 on 01/07/2008. (Copy of service books is attached as annexure "B").*

③

3. *That the appellant has been retired from service on 14/07/2017 vide order No 1138-42. (Copy of order is attached as annexure "C").*
4. *That the appellant used to visit every day the office of the respondents for issuance of pension alongwith other benefits to the appellant.*
5. *That the respondents used to delay the matter for one or the other reason with out any reasonable justification.*
6. *That finally the respondent No 2 orally refused to issue order of pension alongwith other benefits to the appellant.*
7. *That after refusal of respondent No 2 the appellant filed a Departmental Appeal to the respondent No 4 on dated 05/12/2017 vide DD No 1774, which is un-responded till date. (Copy of departmental appeal is attached as annexure "D").*
8. *That aggrieved with, the appellant has come before this Honourable Tribunal on the following grounds amongst others:-*

**Grounds:-**

- A. *That the act of the respondents of not issuing pension, gratuity and other benefits to the appellant is against the law, facts, hence untenable in law.*
- B. *That the appellant has served in education department for the period of almost 19 years, therefore, according to law and rules, the appellant is entitled for the pension, gratuity and other benefits.*
- C. *That the Honourable Peshawar High Court, Peshawar passed a judgment in favour of all contract, adhoc, fixed pay employees pertains to their pension, gratuity and other benefits in WP No 3394-P/2016 titled "Amir Zeb...Versus...District Accounts Officer District Nowshera & others" dated 22/06/2017 & WP no 2876-P/2014 titled "Sher Ali...Versus...Senior District Accounts Officer, Nowshera & others" on dated 22/06/2017. (Copies of Writ Petitions are attached as annexure "E" & "F").*
- D. *That the respondents failed to appreciate the real points involved in the case in its perspective, hence has arrived at an incorrect conclusion.*



5

- E. *That by not awarding/issuing the pension to the appellant, respondents are violating the terms and conditions of law and justice.*
- F. *That by no issuing the pension benefits to the appellant, respondents are violating the fundamental rights of the appellant, because there is no source of income of petitioner, except this pension etc.*
- G. *That the respondents by not issuing the pension to the appellant are exercising the powers not vested to them under the law.*
- H. *That the refusal by the respondents perverse and against the settled principles of law and natural justice.*
- I. *That any other ground, which has not specifically taken in the instant Service Appeal, may be argued at the time of arguments with permission of this Honourable Tribunal.*

6

*It is, therefore, humbly prayed that on acceptance of this appeal, the appellant may kindly be declared entitled for the pension , gratuity and other benefits and direct the respondents to issue pension, gratuity and other benefits immediately, with such other relief as may deem fit in the circumstances of the case.*

Dated:- 22/03/2018



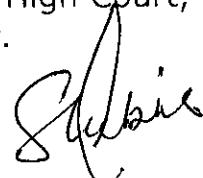
Appellant

Through:-



Muhammad Ilyas Orakzai  
Advocate High Court,  
Peshawar.

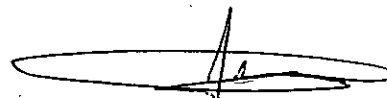
&



Muhammad Shabir Khalil  
Advocate High Court,  
Peshawar.

**Note:-**

*As per instruction of my client, no such like Service Appeal has earlier been filed by the Appellant in this Honourable Tribunal.*



Advocate.

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

Service Appeal No:- \_\_\_\_\_/2018

Muhammad Afzal

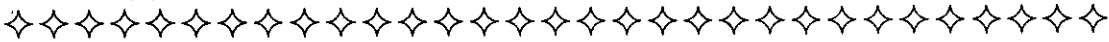
**Versus**

The District Account Officer,

District Hangu & others

..... Appellant

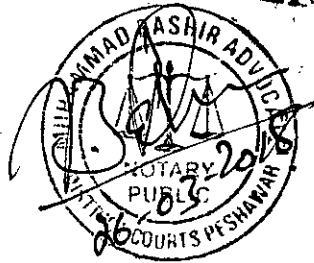
..... Respondents



**AFFIDAVIT**

I, Muhammad Afzal S/o Haider Khan, Ex-Chowkidar Government Girls Primary School Aziz Abad Hangu, R/o Mohallah Aziz Abad, Village Shinwari, P/o Zargari, Tehsil Tall, District Hangu, do hereby solemnly affirm and declare on oath that the contents of this accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

**ATTESTED**



DEPONENT

CNIC NO:- 14101-3753001-5

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

Service Appeal No:- \_\_\_\_\_/2018

Muhammad Afzal

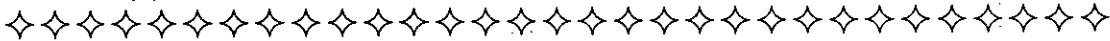
**Versus**

The District Account Officer,

District Hangu & others

..... Appellant

..... Respondents



**ADDRESSES OF PARTIES**

**PETITIONER**

Muhammad Afzal S/o Haider Khan, Ex- Chowkidar  
Government Girls Primary School Aziz Abad Hangu,  
R/o Mohallah Aziz Abad, Village Shinwari, P/o Zargari,  
Tehsil Tall, District Hangu.

**RESPONDENTS**

1. The District Account Officer, District Hangu.
2. The District Education Officer (Female), District Hangu.
3. The Accountant General, Khyber Pakhtunkhwa,  
Peshawar.
4. The Director Elementary & Secondary Education  
Department, Khyber Pakhtunkhwa, Peshawar.
5. The Secretary to Government of Khyber Pakhtunkhwa,  
Finance Department, Peshawar.

Dated:- 22/03/2018



Appellant

Through:-

Muhammad Ilyas Orakzai  
Advocate High Court,  
Peshawar.

&

Muhammad Shabir Khalil  
Advocate High Court,  
Peshawar.

9	10	11	12	13	14	15
Signature and designation of the Head of the office or other attesting officer attestation of column 1 to 2	Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature and designation of the officer or other attesting officer	Signature and designation of the officer or other attesting officer	Duration of period of absence (not to exceed 120 days) to which leave is attributable to another Government	Reference to any record or account or record of the Government concerned
دستخط افسر مجاز	تاریخ انقضاء ملازمت	وجوہات تخلیہ ملازمت ترقی چارہ ذبحہ منی	دستخط افسر مجاز	رخصت کی ذمیت وسیلہ	چار ماہ تک کی رخصت سے نے اوسط تنخواہ کا تیسرا Government to which is attributable گورنمنٹ سے	دستخط افسر مجاز سزا یا جزا فیر منہ کارڈوں کا ریکارڈ
Mehra / Sir D.B.O. (F) / SEAL				<p>رہنما لیا جی</p> <p>Appointed as Contract Chowk against monthly contract of last vide SDPO (F) Ukat Eudat No. 1988-98 dt 9.5.98</p> <p>M. T. G. S. D. S. District Education Officer (General) Khetol</p>		

(10) Annex - "B"

1. Name (نام) Mr. Muhammad Ali Khan
2. Nationality and Religion Indian Muslim
3. Residence (قیمت اور مذہب) Village: Malhotra, District: Ludhiana
4. Father's name and residence (نام اور قیمت) Mr. G. S. Malhotra, Agency: Ludhiana
5. Date of birth by Christian era as nearly as can be ascertained (تاریخ پیدائش مطابق سن عیسوی) 1-7-9 1956  
11 September
6. Exact height by measurement (قد قامت) 5' 2"
7. Personal mark of identification (نشان شناخت) Scar on left leg.

AN/10:147-56-101773

8. Left hand, right hand thumb and finger-impressions of (Non-gazetted officer)

(مردان صورت میں بائیں اور صورت کی صورت میں دائیں ہاتھ کی انگلیوں کے نشانات)

Little Finger (پہلی انگلی)      Ring Finger (انگلی کے ساتھ کی انگلی)      Middle Finger (انگلی کے ساتھ کی انگلی)

Fore Finger (انگلی کے ساتھ کی انگلی)      Thumb (انگلی)

9. Signature of Govt. Servant (سرکاری ملازم کے دستخط)

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

(تصدیق کنندہ سر کے دستخط)

*(Handwritten signature)*  
Head of the Office  
(Signature)

Note: Entries in this page should be renewed or re-attested at least every five years and the signatures in lines 9 and 10 should be dated. Finger prints need not be taken after every 5 years under this rule.

اس صفحے کے مندرجہ کردہ کچھ سال بعد تصدیق ہونا ضروری ہے اور ۹ اور ۱۰ میں دستخطوں سے نیچے تاریخ تجدید نہیں  
انگلیوں کے نشانات کے لئے ہر پانچ سال سے بعد تصدیق کی ضرورت نہیں

*(Handwritten signature)*

1	2	3	4	5	6	7	8	9
Name of Post	Whether Substantive or officiating and whether permanent or temporary	Officiating status - substantive appointment or whether service counts for pension under rule 3-20 of C.S.R. (Pb.) Volume I	Pay in substantive position	Additional pay for officiating	Other amount falling under the term pay	Date of appointment	Signature of Government servant	Signature and designation of the Head of office or officiating in attestation column 1
درجہ ملازمت	عارضی مستقل یا قائم مقام	اگر عارضی ہے تو یہ وہ ہون کے مطابق پیش کیا مستحق ہے	تعینہ عارضی ملازمت	زائد تعینہ بطور قائم مقام	سوائے تعینہ دیگر اڈوں	تاریخ تقرری	دستخط سرکاری ملازم	دستخط سر مجاز
			Rs. Ps.	Rs. Ps.				
						10 5 / 98		
						1 7 / 2000		
						10 5 / 98		
						1 12 / 98		
						1 12 / 99		
						1 12 / 2000		
						1 12 / 2001		

Re-1300/PM Ce 14/10/98

Pay increased on 1-7-2001

Rs. 2000/- PM

Regular Pay increased on 1-7-2001

BPS-T (1245-35-1770)

Rs. 1245/- PM

Rs. 1280/- PM

Rs. 1315/- PM

Rs. 350/- PM

Rs. 1385/- PM

Pay increased on 1-7-2001

BPS-I (1510-55-1770)

12

1	2	3	4	5	6	7	8
No. 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 rule 3-20 of C.S.R. (Pb.) Volume II	Pay in substantive position	Additional pay for officiating	Other allowances falling under the term pay	Date of appointment	Signature of Government servant
درجہ ملازمت	عارضی مستقل یا قائم مقام	اگر عارضی ہے تو کیا وہ رول کے مطابق پیش کیا گیا ہے؟	عارضی ملازمت	زائد تنخواہ بطور قائم مقام	دیگر تنخواہ	تاریخ تقرری	دستخط سرکاری ملازم
			Rs. Ps.	Rs. Ps.	اونس		
9915			Rs. 1500/- Pm			10/5/98	
do			Rs. 2000/- Pm			7/2000	
do			Rs. 1245/- Pm			10/5/98	
do			Rs. 1280/- Pm			12/98	
do			Rs. 1350/- Pm			12/99	
do			Rs. 1350/- Pm			12/2000	
do			Rs. 1395/- Pm			12/2001	
			Revised Pay scale 1-1-2001				
			BPS-1 (1870-55-3520)				



10	11	12	13	14	15		
Signature and designation of the Head of the office or other attesting officer in illustration of column 1 to 8	Date of termination or appointment	reason of termination (such as promotion, transfer, dismissal etc.)	Signature of the head of the office or other Attesting officer	Nature and duration of leave taken	Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debit to another Government	Signature of the Head of the office or other attesting Officer	Reference to any recorded punishment or censure, or reward or praised of the Government servants
دستخط افسر مجاز	تاریخ انتقال ملازمت	وجوہات انتقال ملازمت ترقی تبادلہ یا برطرفی	دستخط افسر مجاز	رخصت کی نوعیت دیرپا	چار ماہ تک کی رخصت کے لئے اوسط تنخواہ کا تعین Period Government to which debitable گورنمنٹ نے	دستخط افسر مجاز	سزایا جرایم غیر منب کارکردگی کا ریکارڈ
	30/6/2000	Pay increase		رم ادا ہوئی	Appointed as Contract Chowki guard monthly contract post vide SDP (F) Unkat Euldt No. 1908-98 dt 9.5.98		
	30/6/2001	Transfer/Devel: Hangu.			M. G. S. Singh Deputy Officer (General) Kotla		
	30/11/98	A/Incl			10-5-1998		
	30/11/99	A/Incl					
	30/11/2000	A/Incl			12-99		
	30/11/2001	A/Incl			30-11-2000		
	30/11/2001	A/Incl			30-11-99		
	30/11/2001	A/Incl			30-11-2001		
	30/11/2001	A/Incl			30-11-02		
	30/11/2001	A/Incl			30-11-02		
	30/11/2001	A/Incl			30-11-02		

1 Name of Post درجہ عازمت	2 Whether Substantive or officiating and whether permanent or temporary عارضی مستقل یا قائم مقام	3 If officiating state- (i) substantive appointment or (ii) whether service counts for pension under rule 3-20 of C.S.R. (Pb.) Volume II درجہ عازمت کے لئے مقرر کیا گیا ہے اور اسے پنشن کے لئے گنتی دینا ہے	4 Pay in substantive position تنخواہ بطور عارضی عازمت Rs. Ps.	5 Additional pay for officiating زائدہ تنخواہ بطور قائم مقام R. Ps.	6 Other emoluments falling under the term pay دیگر تنخواہ اور فائدے	7 Date of appointment تاریخ تقرری	8 Signature of Government servant سرکاری ملازم
		BPS-1 (1870-55-3520)	Rs. 2145/PM			1/12/02	
SGS							
do			Rs. 2200/PM			1/12/03	
do			Rs. 2255/PM			1/12/04	
		Revised pay scale 1-7-2005					
		BPS-1 (150-65-4000)	Rs. 2605/PM			1/7/05	
do							
do			Rs. 2670/PM			1/12/05	
do			Rs. 2735/PM			1/12/05	
		Revised pay scale 1-7-2007					
		BPS-2 (2530-85-5030)	Rs. 3210/PM			1/7/07	
do							
do			Rs. 3295/PM			1/12/07	

9 Signature and designation of the head of the office or other attesting officer in attestation of column 1 to 3	10 Date of termination or appointment	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 duration of leave taken	13 Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debitabale to another Government چار ماہ تک کی رخصت کے لئے اوسط تنخواہ کا تعین	14 Signature of the head of the office or other attesting Officer	15 Reference to any recorded punishment or censure, or reward or praised of the Government servants سزا یا جزا یا غیر مناسب کارکردگی کا ریکارڈ
					Period دور	Government to which debitabale حکومت جسے	
	30/11/03	وجہات تفصیلاً عازمت ترقی جارد یا وطنی		رخصت کی نوبت و بھاری			
	30/11/04	A/3rd			30-11-04		1-12-2002
	30/11/04	A/3rd					
	6/11/05	S/Review			30-11-06		1-12-2004
	30/11/05	A/3rd					
	11/05	A/3rd			30-11-07		1-12-2006
	6/11/07	S/Review UP Grant BB-7			30-11-08		1-12-2007
	11/07	A/3rd					
	30/08	S/R					01-12-09

Service verified by S.T. on 3-11-09 from [unclear] and other offices [unclear]

1	2	3	4		5		6	7	8
Name of Post درجہ ملازمت	Whether Substantive or officiating and whether permanent or temporary عارضی مستقل یا قائم مقام	If officiating state- (i) substantive appointment or (ii) whether service counts for pension under rule 3-20 of C.S.R. (Pb.) Volume II اگر عارضی ہے تو رول کے مطابق پیش کیا جاسکتا ہے؟	Pay in substantive position متنوع بطور عارضی ملازمت	Rs.	Ps.	Additional pay for officiating زائد تنخواہ بطور قائم مقام	Other emoluments falling under the term pay متنوع تنخواہ	Date of appointment تاریخ تقرری	Signature of Government servant دستخط سرکاری ملازم
		Revised Pay Scale 1-7-2							
		BPS-2 (3035-100-6035)							
Chowkidar C.G.P.S 35 Abad			Rs. 3935/- PM ✓					7/08	
			Rs. 4035/- PM ✓					12/08	
			Rs. 4135/-					12/09	
			Rs. 4235/- PM					12/10	
		Remission of arrears due to one S.P.A. increment with 10% BPS-02 (2530-85-5030)							
			Rs. 3210/-					7/07	
			Rs. 3295/-					9/07	

Signature and position of the person to whom the leave is granted	10 Date of termination or appointment	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 duration of leave	13 Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debitible to another Government	14 Signature of the Head of the office or other attesting Officer	15 Reference to any recorded punishment or censure, or reward or praised of the Government servants
	تاریخ انتقال ملازمت	وجہ بہت تقدیم ملازمت ترقی حثیت یا برطرفی	رہنما السربراہ	رہنمائی ملازمت دواماً	پارہ ماہ تک کی رخصت کے لئے اوسط تنخواہ کا تین Government to which debitible کارکن نے	دستخط نام	سزایا جزا یا نہیں ملا کارکن کی ریکارڈ

Service Record is in SAP  
 and other office record.

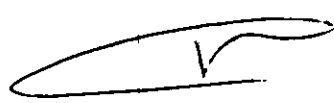
E.T.O.  
 (FBI)  
 Hangu

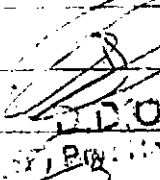
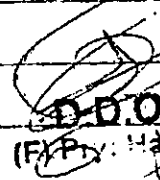
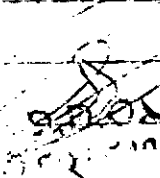

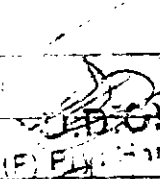
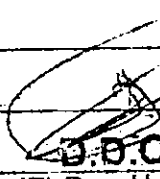
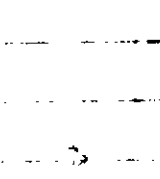
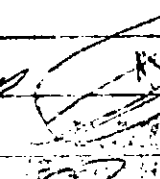
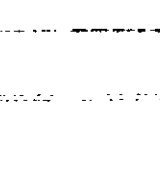
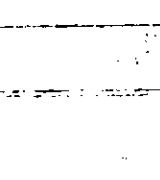
E.T.O.  
 (FBI)  
 Hangu

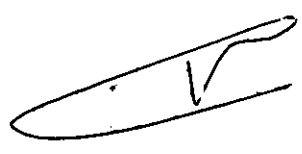
Service Record in SAP  
 Acquired Role  
 and other office record.

[Handwritten Signature]

1 Name of Post درجہ ملازمت	2 Whether Substantive or officiating and whether permanent or temporary عارضی مستقل یا قائم مقام	3 of officiating state- (i) substantive appointment or (ii) whether counts towards pension under rule 3-20 of C.S.R. (Pt. Volume I) عارضی عارضی ہی تو رہے گا اس کا مطلب ہے کہ مستحق ہے یا	4 Pay in substantive position تخواری بطور عارضی ملازمت	5 Additional pay for officiating زائدہ تخواری بطور قائم مقام	6 Other emoluments falling under the term pay as usual تخواری دیگر الا انگری	7 Date of appointment تاریخ تقرری	8 Signature of Government servant دستخط سرکاری ملازم
		Rs. Ps.		Rs. Ps.			
			Rs. 2500	Rs. 2500			
			Rs. 3380/-	Rs. 3380/-		12/27	



9	10	11	12	13	13	14	15
Signature and designation of the head of the office or other attesting officer (column 1 to 8)	Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other Attesting officer	Nature and duration of leave taken	Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debit to another Government	Signature of the Head of the office or other Attesting Officer	Reference to any recorded punishment or censure, or reward or praised of the Government servants
					Period	Government to which debit to	
	30/08/11	وجوبت تقاعد مازمت ترقی تیار یا برطرف	 D.D.O. (F) Pr. Hangu	رخصت کی نوعیت دیسوار	چار ماہ تک کی رخصت کے لئے اوسط تنخواہ کا تین	رجسٹر ڈی	سزا یا جزا یا تعمیر یا کارکردگی کا ریکارڈ
	30/08/11	A/A	 D.D.O. (F) Pr. Hangu				
	30/08/11	A/A	 D.D.O. (F) Pr. Hangu				
	30/08/11	A/A	 D.D.O. (F) Pr. Hangu				
	3/11/11	A/A	 D.D.O. (F) Pr. Hangu				



1 Name of Post درجہ ملازمت	2 Whether Substantive or officiating and whether permanent or temporary عارضی مستحق قائم مقام	3 if officiating state- (i) substantive appointment or (ii) whether service counts for pension under rule 3-20 of C.S.R. (Pb.) Volume II اگر عارضی ہے تو رول کے مطابق پینشن کا مستحق ہے؟	4 Pay in substantive position تنخواہ بطور عارضی ملازمت		5 Additional pay for officiating زائد تنخواہ بطور قائم مقام		6 Other emoluments falling under the term, ps تنخواہ دیگر ادا کس	7 Date of appointment تاریخ تقرری	8 Signature of Government servant دستخط سرکاری ملازم
			Rs.	Ps.	Rs.	Ps.			
		Revised pay scale BPS-02 (4950-1700-15000)						17/2011	
								17/2011	
								12/2011	
								12/2012	
								12/2013	
								7/2014	
								12/2014	
		Revised BPS-02 6335-2200-12335						17/2015	
								17/2015	

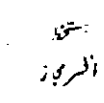


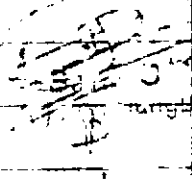
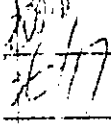
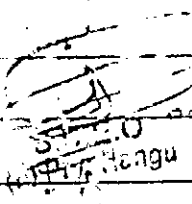
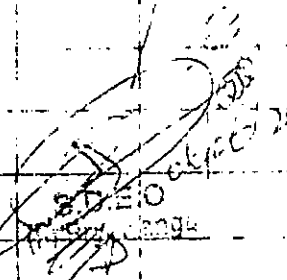


9 Signature and designation of the Head of the office or other attesting officer in attestation of column 1 to 8 رستخدا اسر حجاز	10 Date of termination or appointment تاریخ انتقال ملازمت	11 reason of termination (such as promotion, transfer, dismissal, etc.) وجوہات تقلع ملازمت ترقی تارار بار طری	12 Signature of the head of the office or other Attesting officer رستخدا اسر حجاز	13 Nature and duration of leave taken رخصت کی نوعیت دیسار	13 Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debitable to another Government چار ماہ تک کی رخصت کے لئے اوسط تنخواہ کا تعین Period مہر Government to which debitable گورنمنٹ سے	14 Signature of the head of the office or other attesting Officer رستخدا اسر حجاز	15 Reference to any recorded punishment or censure, or reward or praised of the Government servants سزایا جڑ غیر مناسب کارکردگی کا ریکارڈ	
<p>S.D.E.O Fry Hangu</p> <p>30/11/2011 A/Amr</p>					<p>S.D.E.O Fry Hangu</p> <p>30/11/2011</p>			<p>Office of the Accountant General Khyber Pakhtunkhwa Peshawar Pay Fixed in the Revised Basic Pay Scale R.S.F.S. B Pay Fixed @ Rs. 3075 w.e.f. 01-07-2009 3075 1000 635 B Pay Fixed @ Rs. 4900 w.e.f. 01-07-2009 4900 1250 1000 B Pay Fixed @ Rs. 7100 w.e.f. 01-07-2011 Date of Next Increment is on 01-12-2011</p>
<p>30/11/2012 A/Amr</p>					<p>30/11/2012</p>			<p>Office of the Accountant General Khyber Pakhtunkhwa Peshawar Pay Fixed in The R.S.F.S. 2015 Of Rs. 6335 w.e.f. 01-07-2015 6335 2200 12935 B At Rs. 10292 w.e.f. 01-07-2015 With Next Increment On 01-12-2015</p>
<p>30/06/2014 A/Amr Provided on previous print</p>					<p>30/06/2014</p>			<p>Office of the Accountant General Khyber Pakhtunkhwa Peshawar Pay Fixed in The R.S.F.S. 2015 Of Rs. 6335 w.e.f. 01-07-2015 6335 2200 12935 B At Rs. 10292 w.e.f. 01-07-2015 With Next Increment On 01-12-2015</p>
<p>30/06/2015 A/Amr Pay scale decision</p>					<p>30/06/2015</p>			<p>Office of the Accountant General Khyber Pakhtunkhwa Peshawar Pay Fixed in The R.S.F.S. 2015 Of Rs. 6335 w.e.f. 01-07-2015 6335 2200 12935 B At Rs. 10292 w.e.f. 01-07-2015 With Next Increment On 01-12-2015</p>
<p>S.D.E.O Fry Hangu</p> <p>30/11/2015 A/Amr</p>					<p>S.D.E.O Fry Hangu</p> <p>30/11/2015</p>			<p>Office of the Accountant General Khyber Pakhtunkhwa Peshawar Pay Fixed in The R.S.F.S. 2015 Of Rs. 6335 w.e.f. 01-07-2015 6335 2200 12935 B At Rs. 10292 w.e.f. 01-07-2015 With Next Increment On 01-12-2015</p>

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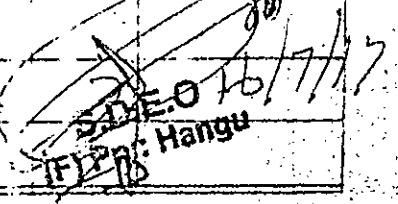
1 Name of Post درجہ ملازمت	2 Whether Substantive or officiating and whether permanent or temporary عارضی مستقل تمام ستام	3 If officiating state- (i) substantive appointment or (ii) whether service counts for pension under rule 3-20 of C.S.R. (Pb.) Volume II اگر عارضی ہے تو رول کے مطابق پیش کیا سکتا ہے؟	4 Pay in substantive position تنخواہ بطور عارضی ملازمت		5 Additional pay for officiating زاہدہ تنخواہ بطور قائم مقام		6 Other emoluments or the term pay دیگر تنخواہ اور دیگر	7 Date of appointment تقرری تاریخ	8 Signature of Government servant دستخط سرکاری ملازم
			Rs.	Ps.	Rs.	Ps.			
BDS 204	6730-300-15730		10510					12/1/2015	
			10630		300				
					10930			12/1/2015	
Revised BDS 204	8280-370-15730		10630		300			12/1/2016	
					13460			7/2016	

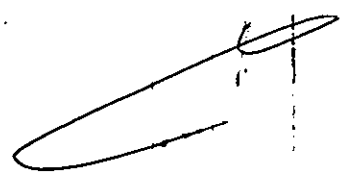
*[Handwritten signature]*

9 Signature and designation of the Head of the office or other attesting officer by attestation of column 1 to 8	10 Date of termination or appointment	11 reason of termination (such as promotion, transfer, dismissal etc.)	12 Signature of the head of the office or other Attesting officer	Nature and duration of leave taken	13 Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debitable to another Government یا در صورتی کہ نسبت کے لئے اور یا کسی اور حکومت کے لئے	14 Signature of the Head of the office or other attesting Officer	15 Reference to any recorded punishment or censure, or reward or praised of the Government servants سزا یا جزا یا غیر مناسب کارکردگی کا ریکارڈ
					Period		
					Government to which debitable		
	تاریخ 4/1/2016	رجوع بہ تعلق عارضی و باہر وطن		رجوع بہ عارضی			
	30/6/2016	Retired BPS					
	17/7/2017	Retired from Service after 60 years of age					

Sent to Retirement order.

Sent to be duly recorded to the great of Retirement for 17-9-2016 (A.H) 60 years of age vide DEO Hangu No 1138-42 dated 14-07-2017.

  
S.A.E.O Hangu  
16/7/17



(24) Ant - "C"

OFFICE OF THE DISTRICT EDUCATION OFFICER, (FEMALE) HANGU.

RETIREMENT ORDER/NOTIFICATION.

Mr, Muhammad Afzal S/O Haider Khan GGPS Aziz Abad Appointed on contract basis is hereby retired from Govt: Service 17-09-2016 (A.N) on superannuation of 60 Years of age subject to the entitlement of Final Payment of General Provident Fund Vide Notification issued by the Govt: of NWFP Finance Department followed by No. BO-1/FD/1-22/2008-09 dated 30-07-2008 and Accountant General Khyber Pakhtunkhwa Peshawar No. H-24/ Fixed Employees/2013-14/2011-12 dated 26-09-2013.

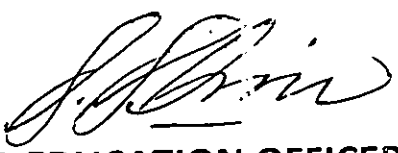
DISTRICT EDUCATION OFFICER  
(FEMALE) HANGU

Endstt: No 1138-421

Dated Hangu the 14/07 /2017.

Copy for information to the:-

- 1- Sub Divisional Education Officer (Female) Primary Hangu.
- 2- District Accounts Officer Hangu.
- 3- Official Concerned.
- 4-Office Copy.

  
DISTRICT EDUCATION OFFICER  
(FEMALE) HANGU



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25

To,

The Director,  
Secondary and Elementary Education  
Khyber Pakhtunkhwa  
Peshawar

Subject: - DEPARTMENTAL APPEAL FOR THE RELEASE OF PENSION/  
GRATUITY AND OTHER BENEFITS TO THE APPELLANT

Respected Sir,

With profound regards and great veneration, the Appellant submits the instant representation before your honour on the following facts and grounds.

- 1) That the Appellant was appointed as Class-IV (Chowkidar) on pay of Rs 1,500/- per month on contract basis on dated 09-05-1998.
- 2) That later on the services of the Appellant was regularized as BPS-2 on 01-07-2008. (Copy of the service book is attached herewith).
- 3) That the Appellant has been retired from service on 14<sup>th</sup> July, 2017 vide order No 1138-42. (Copy of the retirement order is attached herewith).
- 4) That after retirement, the Appellant use to visit every day to the Office of District Education Officer Hangu for release of his pension/gratuity and other benefits in the light of judgment of the Honourable Peshawar High Court, Peshawar in writ petition No 3394-P/2016 titled as "Amir

  
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Zeb...Vs...District Account Officer District Nowshera" dated 22-06-2017. (Copy of the judgment is attached herewith).

- 5) That the District Education Officer, Hangu use to delay the matter for one or the other reason without any reasonable justification.
- 6) That finally the District Education Officer, Hangu orally refused to release the pension/gratuity alongwith other benefits to the Appellant.
- 7) That aggrieved with, the Appellant has came before your worthy appellate authority in this departmental appeal.

It is, therefore, humbly requested that on acceptance of this Departmental Appeal, the pension/gratuity and other benefits may graciously be released to the Appellant in the light of judgment of Honourable Peshawar High Court.

Yours sincerely,

(MUHAMMAD AFZAL)  
S/O Haider Khan  
R/O Mohallah Aziz Abad  
Village Shinawari, P.O Zargari  
Tehsil Tall District Hangu  
CNIC # 14101-3753001-5  
Cell # 0306-8014142

Dated: -04-12-2017

D.D NO. 1774

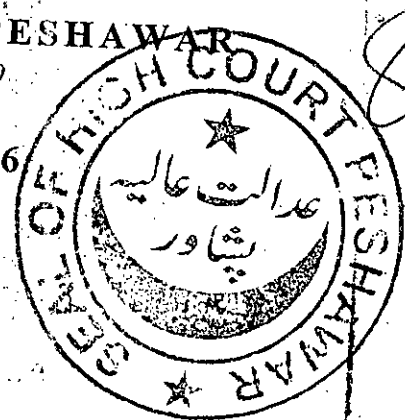
Dated = 05/12/2017

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IN THE PESHAWAR HIGH COURT PESHAWAR

3394-A  
WRIT PETITION No. \_\_\_\_\_ /2016



Amir Zeb,  
Widower of Asiya Shafi,  
R/o Fazal Ganj, Siace Mandi,  
Risalpur, District Nowshera.....Petitioner

Versus

1. The District Account Officer,  
District Nowshera.
2. The Accountant General,  
Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female),  
District Nowshera.
4. The Director,  
Elementary & Secondary Education Department,  
Khyber Pakhtunkhwa, Peshawar.
5. The Secretary,  
Govt: of Khyber Pakhtunkhwa,  
Elementary & Secondary Education Department,  
Peshawar.
6. The Secretary,  
Govt: of Khyber Pakhtunkhwa,  
Finance Department, Peshawar.....Respondents

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

Respectfully Sheweth,

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EXAMINER  
Peshawar High Court  
26 AUG 2016

FILED TODAY  
03 SEP 2016

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

**Writ Petition No.3394-P/2016**

Date of hearing:- 22.06.2017

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

Respondent (s):-The District Account Officer, Nowshera & 05  
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).

*Amir Zeb*

**ATTESTED**  
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26 AUG 2017



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.

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EXAMINER  
Peshawar High Court  
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4. Muhammad Shah Zaib and Muhammadi 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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Feshwar High Court  
26 AUG 2017

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

*Law Officer*

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EXAMINER  
Peshawar High Court  
26 AUG 2017

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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EXAMINER  
Peshawar High Court  
26 AUG 2017

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 Saad*

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EXAMINER  
Khyber Pakhtunkhwa

26 AUG 2017

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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 be advantageous in resolving the controversy:-

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

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

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

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

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EXAMINER  
Peshawar High Court

26 AUG 2017

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

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

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

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

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EXAMINER  
Peshawar High Court  
26 AUG 2017



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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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Peshawar High Court  
26 AUG 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  
Sra) Afridi P.S.

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JUDGE  
*[Signature]*  
JUDGE

*[Signature]*  
JUDGE

*M. Rameez Amir*  
*M. Qalandar Ali*  
*M. S. M. Ali*

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Peshawar Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
The Qanun-e-Shahadat Order 1984  
26 AUG 2017

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Date of Presentation of Application *29/8/17*  
No of Pages *13*  
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Date of Preparation of Copy *26/8/17*  
Date Given For Delivery *26.8.17*  
Date of Delivery of Copy *26/8/17*  
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BEFORE PESHAWAR HIGH COURT, PESHAWAR.

W.P.No. 2876-P /2014



Sher Ali son of Ibad Gul  
R/o Mohallah Nasoo Khail, Inzari, Tehsil and District Nowshera

Petitioner

VERSUS

- 1) Senior District Accounts officer Nowshera.
- 2) ✓ Executive District Officer Nowshera.
- 3) ✓ Sub Divisional Education Officer (Female) District Nowshera.
- 4) ✓ District Education Officer (Female) Primary District Nowshera.
- 5) ✓ Principal Primary Girls School Nizampur, Distt: Nowshera.
- 6) ✓ Director of Education (Female) Dabgari Garden, Peshawar.
- 7) Govt. of KPK through Secretary Education, Civil Secretariat, Peshawar.
- 8) Govt. of KPK through Secretary Finance, Civil Secretariat, Peshawar.
- 9) ✓ Accountant General, Accountant General Office, Govt. of KPK, Peshawar..... Respondents

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

M/No  
3185/17

Pr. er:

On acceptance of this writ petition, the petitioner may kindly be declared entitled for the pension, gratuity and other benefits and direct the respondents to issue pension, gratuity and other benefits immediately.

*Respectfully Sheweth;*  
Petitioner humbly submits as under:

- 1) That the petitioner was appointed as Class-IV Chowkidar on pay of Rs.1200/- per month on adhoc relief (fixed) on dated 01.08.1997 vide order No.3435. (Copy of the order is Annexed as Annexure "A").

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EXAMINER  
Peshawar High Court

12 AUG 2017

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- 2) That later on the services of the appellant was regularized, as BPS-02 on 01.09.2007. (Copy of service book is Annexure "B").
  - 3) That the petitioner has been retired from service on 30.06.2014 vide order No.4410-12. (Copy of the order is Annexure "C").
  - 4) That petitioner used to visit every day the office of respondents for issuance of pension along with other benefits to the petitioner.
  - 5) That respondents used to delay the matter for one or the other reason without any reasonable justification.
  - 6) That finally the respondents orally refused to issue order of pension along with other benefits to petitioner.
  - 7) That aggrieved with, petitioner has come before this Hon'ble Court in this constitutional petition on the following grounds amongst the others.

**GROUND:**

- a. That the act of respondents of not issuing pension, gratuity and other benefits to the petitioner is against law, facts and untenable in law.
- b. That the petitioner has served in the education department for a period of almost 17 years, therefore, according to law and rules the petitioner is entitled for the pension, gratuity and other benefits.
- c. That the respondents failed to appreciate the real point involved in the case in its perspective. Hence has arrived at an incorrect conclusion.
- d. That by not awarding / issuing the pension to the petitioner, respondents are violating the terms and conditions of law and justice.
- e. That by not issuing the pension benefits to the petitioner, respondents are violating the fundamental rights of the petitioner because there is no source of income of petitioner except this pension etc.

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EXAMINER  
Peshawar High Court.  
12 AUG 2017

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- f. That the respondents by not issuing the pension to the petitioner are exercising the powers not vested to them under the law.
- g. That the refusal by the respondents regarding pension and other benefits is perversant and against the settled principle of law and justice.

It is, therefore, requested that on acceptance of this writ petition, the petitioner may kindly be declared entitled for the pension, gratuity and other benefits and direct the respondents to issue pension, gratuity and other benefits immediately.

Any other relief which this Hon'ble Court deems appropriate in the circumstances of the case and not specifically asked for may kindly also be granted.

Petitioner  
 Through IFTIKHAR ALI  
 & ZAFAR ALI KHAN  
 Advocates High Court Peshawar

**CERTIFICATE:**

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

**LIST OF BOOKS**

- 1) Constitution of Islamic Republic of Pakistan, 1973.
- 2) Law books as per need.

Advocate

ATTESTED  
 EXAMINER  
 Peshawar High Court  
 12 AUG 2017

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**IN THE PESHAWAR HIGH COURT, PESHAWAR,**  
**JUDICIAL DEPARTMENT.**

**Writ Petition No. 2876-P/2014**

Date of hearing.....22.06.2017

Petitioner(s) by...Mr. Zafar Ali Khan, advocate

Respondent(s) by. Syed Qaiser Ali Shah, AAG.

**JUDGMENT**

**ROOH-UL-AMIN KHAN, J:-** Vide our common judgement of even date, placed in connected Writ Petition No. 2246-P/2016, titled "Rizwan Ullah Vs Government of Khyber Pakhtunkhwa etc", this writ petition is transmitted to the concerned Secretary to Government of Khyber Pakhtunkhwa to treat the same as Departmental Appeal and decide it strictly in accordance with the Civil Servants Pension Rules, 1963 and in light of the guidelines provided by this court in judgement passed in Writ Petition No.3394-P/2016 titled "Amir Zeb VS District Accounts Officer, Nowshera etc".

*[Signature]*  
JUDGE

*[Signature]*  
JUDGE

*[Signature]*  
JUDGE

*[Circular Stamp]*

Announced on;  
22<sup>nd</sup> of June, 2017  
\*Amir Khan\*

CERTIFIED TO BE TRUE COPY

Examiner  
Peshawar High Court, Peshawar  
Authorised Under Article 87 of  
The Qanun-e-Shahadat Order 1984

12 AUG 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

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EXAMINER  
Peshawar High Court

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- Writ Petition No.4923-P/2016  
Gul Zarin Vs Govt  
Writ Petition No.4086-P/2016  
Hayat Hussain Vs Govt  
Writ Petition No.3203-P/2016  
Muhammad Rehman Vs Govt  
Writ Petition No.4179-P/2015  
Mian Asfandyar Vs Govt  
Writ Petition No.181-D/2017  
Parveen Begum Vs Govt.  
Writ Petition No.2876-P/2014  
Sher Ali Vs Govt  
Writ Petition No.501-P/2016  
Fazal Khan Vs Govt  
Writ Petition No.2064-P/2016  
Rahim Shah Vs Govt  
Writ Petition No.4683-P/2016  
Abdul Qadeer Vs Govt  
Writ Petition No.3451-P/2016  
Nisar Bacha Vs Govt  
Writ Petition No.3071-D/2016  
Shah Jehan etc Vs Govt.  
Writ Petition No.3368-P/2016  
Abdul Ghaffar Vs Govt  
Writ Petition No.3639-P/2016  
Nadar Khan Vs Govt  
Writ Petition No.3367-P/2016  
Syed Muzarab Shah Vs Govt  
Writ Petition No.3369-P/2016  
Muhammad Faiq Vs Govt  
Writ Petition No.3370-P/2016  
Syed Man Shah Vs Govt.  
Writ Petition No.590-P/2017  
Rab Nawaz Khan Vs Govt  
Writ Petition No.204-P/2017  
Zahir Shah Vs Govt  
Writ Petition No.1072-P/2017  
Noor Zada Vs Govt  
Writ Petition No.337-D/2014  
Ali Man Shah Vs Govt  
Writ Petition No.724-D/2016  
Ghulam Shabir Vs Govt  
Writ Petition No.651-D/2016  
Syeda Allah Wasaye Vs Govt  
Writ Petition No.515-D/2016  
Rab Nawaz Vs Govt  
Writ Petition No.2-D/2015  
Muhammad Jaffar Vs Govt  
Writ Petition No.278-D/2017  
Rashid Ahmad Vs Gomal University  
Writ Petition No.31-D/2017  
Mehmood ul Hassan Vs Govt

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EXAMINER  
Peshawar High Court  
12 AUG 2017



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

ATTACHED

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

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

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

*Loob Sar*

*AT*

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

*Looked into*

**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

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12 AUG 2017

7 (50)

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  
Sraja Afridi P.S.

*Handwritten signatures and notes:*  
at Royal Prison  
at Islamabad  
M. S. A. R. S. M. S. M. S.

JUDGE

JUDGE

JUDGE

ATTACHED

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No. \_\_\_\_\_

Date of Presentation of Application \_\_\_\_\_

No of Pages \_\_\_\_\_

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Total \_\_\_\_\_

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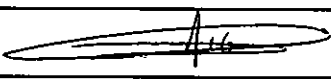
Date Given For Delivery \_\_\_\_\_

Date of Delivery of Copy \_\_\_\_\_

WP2246P2016-Judgements

CERTIFIED TO BE TRUE COPY  
Examiner  
Peshawar High Court, Peshawar  
Authorised Under Article  
175 of the Constitution of Pakistan  
10 AUG 2017

51

10		96954
	ایڈووکیٹ:	
بار کونسل ایسوسی ایشن نمبر: bc-10-3471		
رابطہ نمبر: 0333-9191892		
پشاور بار ایسوسی ایشن، خیبر پختونخواہ		

بعدالت جناب: سر جسٹس فیصل صابر بھٹو چیف جج ایس ایچ جج

منجانب: ایڈووکیٹ	دعویٰ: اپیل
محمد افضل ولد عبدالرحمن خان سکسٹھ بینک	علت نمبر:
بنام	موضوع:
ڈسٹرکٹ انکوائری آفیسر، سکسٹھ بینک ڈویژن	جرم:
	تھانہ:


### باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ  
 آن مقام کے لیے محمد اسلم احمد کوڈی اور محمد شہباز خلیل کو وکیل مقرر  
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو  
 راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق  
 تفریس پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری بکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز  
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب  
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخست منظور و قبول ہوگا  
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے  
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

SHAWAR BAR ASSOCIATION  
 26 FEBRUARY 2018

مقام پشاور کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

Accepted  
 ATTESTED  


68780

29-6-2016  
17-1-2017  
17-8-2017  
17-5-2017

0333-9682884

مركز الدراسات والبحوث  
البيئية والريفي

0300-9038962  
0331-9232324

**BEFORE THE SERVICE TRIBUNAL KHYBER**  
**PAKHTUNKHWA PESHAWAR**  
**SERVICE APPEAL NO. 413/2018**

**Muhammad Afzal . . . . . Petitioner**


**Versus**

1. District Education Officer (F) Hangu & Others . . . . . **Respondents**

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<b>S.No</b>	<b>Description of Documents</b>	<b>Annex</b>	<b>Pages</b>
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2	Affidavit		03
3	A letter issued by Finance Deptt: KP Peshawar		04
4	Finance Deptt: Regularization Notification		05----06
5	A letter issued by Accountant General KP		07
6	Service Appeal No		08----09

**Respondent No : 02**

  
**District Education Officer**  
**& Female Hangu**



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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUN KHWA  
PESHAWAR  
SERVICE APPEAL NO: 413/2018

Muhammad Afzal ..... Petitioner

VERSUS

1. District Education Officer (Female) Hangu & Other..... Respondents

**Parawise Comments on behalf of respondent no: 2, 4, & 5**

**Preliminary Objections:-**

1. That the present petition is beyond the jurisdiction of this Honourable court
2. That the petitioner has got no locus standi
3. That the petitioner has concealed material facts from the Honourable Tribunal
4. That the petitioner has not come to this Tribunal with clean hands
5. That the instant petition is not maintainable in the eyes of law.

**Respectfully sheweth**

1. Correct that the petitioner took over charge on 09.05.1998 as Chowkidar.
2. Incorrect, the services of petitioner were regularized on 01-07-2008 through Finance Deptt Notification No. BO-1/11-22/2011-08 dated: 29-01-2008 and the Govt. of KP Finance Department further clarified vide his office notification No. SO(SR)-III/FD/12-1/2005 dated: 27-02-2013, the K.P Civil servants (amendments) act 2013 that all civil servants appointed to a service or post on or after 1<sup>st</sup> July 2001 should be deemed to have been appointed on regular basis and will be eligible for pension and petitioner was appointed before 01-07-2001, as illustrated in the said act in concluded Para that those employee who are not Civil Servant as defined in Section 2(b) of the KP Civil servant Act 1973, (Copy attached as annexure "A")  
Moreover in response to AG KP Peshawar queries, the FD once again notified vide notification BO1/FD/1-2/2008 dated: 30-07-2008 that all the class-IV fixed pay employees have been regular in BPS-1, given the status of civil servant w.e.f. 01-07-2008 (copy of FD notification alongwith AG KP Peshawar letter attached as annexure "B & C" respectively, the services of petitioner was mandatory to be reckoned to pension from the date of regularization i.e. 01-07-2008.
3. In correct as stated that petitioner retired on <sup>17/09/2016</sup>~~14-07-2017~~ (A/N) on superannuation period and his total regular service is less then 10 years, hence no pension benefit can be granted to him accordingly to rules.
4. As in Para 3
5. As stated in Para No: 3 above

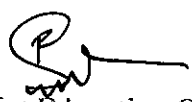


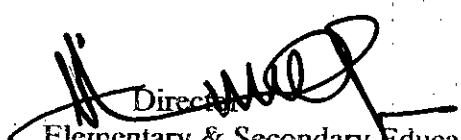
- 6. As stated in Para No: 2 & 3 above
- 7. No comments the appellant has not right to dictate as there is a crystal clear Rules that contract employee are not entitled for any pension benefit.

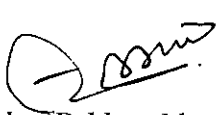
**GROUNDS:-**

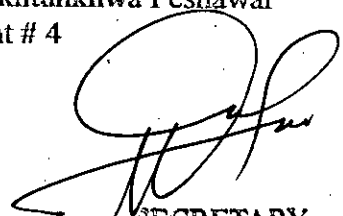
- A. Not correct as stated that the retirement order dated 14.07.2017 is legal & according to rules & policy of the Government
- B. Not correct as stated in para 2 above
- C. Not correct as stated in para 2
- D. Incorrect, Rules 2.3 of West Pakistan Civil Servants Rules 1963 not attracted towards the case of Petitioner. Temporary service is totally different from work charge or fixed pay/contingent paid employees as petitioner is fixed pay employee neither civil servant prior to 01-07-2008, nor cover under section (2) of Civil servants Act 1973.(Annexure D)
- E. The CPLA vide No. 603/P-2015 against the said identical WP has been filed in Apex Supreme Courts of Pakistan which is lying pending for adjudication.
- F. Incorrect as stated vide para 2 above
- G. Incorrect there is a no provision in the rules/ regulations to grant Pensionary benefit to contract employees as the contract employee are not a civil servant under the civil servant act 1973 Section 2(b)
- H. Incorrect as stated vide para 7 above
- I. That some other grounds may be adduced at the time of hearing.

6. It is therefore humbly prayed before this learned Tribunal to dismiss the present appeal, which is baseless and based upon malicious / vexatious and frivolous grounds and any other legal remedy which may be deemed proper in the interest of justice may also kindly be granted to the respondents.

  
 District Education Officer  
 (Female) Hangu  
 Respondent # 2

  
 Director  
 Elementary & Secondary Education  
 Khyber Pakhtunkhwa Peshawar  
 Respondent # 4

  
 Secretary  
 Govt. of Khyber Pakhtunkhwa Peshawar  
 Elementary & Secondary Education Deptt  
 Peshawar  
 Respondent # 5

  
 SECRETARY  
 Govt. of Khyber Pakhtunkhwa  
 Finance Deptt:

3

**BEFORE THE SERVICE TRIBUNAL KHYBER**  
**PAKHTUNKHWA PESHAWAR**  
**SERVICE APPEAL NO. 413/2018**

**Muhammad Afzal** ..... **Petitioner**

**Versus**

1. District Education Officer (F) Hangu & Others ..... **Respondents**

**AFFIDAVIT**

I, Mr. Raheem Ud Din S/O Miraj Ud Din Assistant District Education Officer, (Establishment) O/O DEO (F) District Hangu (on behalf of the respondent No. 02), do hereby solemnly affirm and declare on oath that the contents of the accompanying **Comments** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

**Respondent No : 02**



**Raheem Ud Din**  
**Assistant District Education**  
**Officer, (Establishment)**  
**O/O DEO (F) District Hangu**

(4)

ذات کو صحت سے بہتر دیکھو  
منہ مکملہ خزانہ



مراسلہ نمبر: پی۔ او۔ ارا۔ ۲۲/۰۸۔ ۲۰۰۷۔ ۲۰۰۷ ایف۔ ڈی  
مورخہ ۲۹ جنوری، ۲۰۰۸ء

- ۱۔ تمام انتظامی معتمدین حکومت صوبہ سرحد۔
- ۲۔ معتمد برائے گورنر صوبہ سرحد، پشاور۔
- ۳۔ پرنسپل سٹاف آفیسر برائے وزیر اعلیٰ صوبہ سرحد۔
- ۳۔ تمام سزبرہاں ماتحت محکمہ جات صوبہ سرحد۔
- ۵۔ تمام ضلعی رابطہ انسٹان صوبہ سرحد۔
- ۶۔ رجسٹرار پشاور ہائی کورٹ، پشاور۔
- ۷۔ رجسٹرار، سرحدس ٹریبونل، صوبہ سرحد، پشاور۔
- ۸۔ سیکرٹری، صوبائی پبلک سرحدس کمیشن، صوبہ سرحد، پشاور۔
- ۹۔ سیکرٹری بورڈ آف ریویونیو، صوبہ سرحد۔

بجٹ تقریر ۲۰۰۷-۰۸ میں درجہ پنہارم کے مقررہ تنخواہ ماننے والے (Fixed pay) ملازمین کے لئے سی۔ پی۔ فنڈ کا اعلان۔

بجٹ ہدایت کی گئی ہے کہ عنوان بالا کا حوالہ دیتے ہوئے عرض کر دیں کہ صوبائی حکومت نے تمام درجہ پنہارم (مقررہ تنخواہ Fixed pay) پر ملازمین کو یکم جولائی ۲۰۰۸ء سے این۔ ڈبلیو۔ ایف۔ پی۔ سول میں ایک سے ۱۹ء کے تحت سول ملازمین کا درجہ دیکر بنیادی سکیل (BPS-1) دینے کی منظوری دی ہے۔

مذکورہ ملازمین کی تنخواہوں کا تعین (Fixation of pay) ان کی بھرتی کے تاریخ (Date of Appointment) سے کیا جائے گا۔ تاہم یہ ملازمین تنخواہوں اور ان کے سزاؤں وغیرہ کی مد میں کسی قسم کی بقایا (arrears) کے حقدار نہیں ہوں گے۔

اس سلسلے میں پہلے سے جاری شدہ تمام باقی رہا ہدایات یکم جولائی ۲۰۰۸ء سے منسوخ تھیں۔

آپ کا خاص  
مسما (شرافت خان ربالی)  
ایس۔ پی۔ او۔ ارا۔ (۳)

Hestel  
M. M. Lechi

نقل برائے اطلاع:

- (۱) اکاؤنٹنٹ جنرل، صوبہ سرحد، جمعہ گزارش، کہ مندرجہ بالا اقدامات کی نافذ العمل کو یقینی بنایا جائے۔
- (۲) جملہ ایگزیکٹو ڈسٹرکٹ آفیسرز، فنانس اینڈ پلاننگ، صوبہ سرحد۔
- (۳) جملہ ضلعی آفیسران حساب داری، صوبہ سرحد۔

فد محمد لکھنوی  
میزانیہ انسٹر (۱) محکمہ خزانہ

نظم نمبر و تاریخ النفاذ:

نقل برائے اطلاع:

- (۱) نجی مستند برائے چیف سیکرٹری صوبہ سرحد۔
- (۲) جملہ اضافی مستدین و نائب مستدین محکمہ خزانہ، صوبہ سرحد۔
- (۳) جملہ بچت آفیسرز، فنانس اینڈ پلاننگ، صوبہ سرحد۔
- (۴) ڈائریکٹر، FMIU محکمہ خزانہ، صوبہ سرحد۔
- (۵) نجی مستند برائے فنانس سیکرٹری صوبہ سرحد۔

فد محمد لکھنوی  
میزانیہ انسٹر (۱) محکمہ خزانہ

ایم ایم سید

9210455

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*[Handwritten marks]*

16



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)

No. SOSR-11/FPD/12-1/2005  
Dated Peshawar, the 27/02/2013

1. All the Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. All the Divisional Commissioners in Khyber Pakhtunkhwa.
7. All the Head of attached Departments in Khyber Pakhtunkhwa.
8. The Registrar, Khyber Pakhtunkhwa, Public Service Commission.
9. The Registrar, Khyber Pakhtunkhwa, Service Tribunal, Peshawar.
10. The Registrar, Peshawar High Court Peshawar.
11. All the Deputy Commissioners/Political Agents/District and Sessions Judges in Khyber Pakhtunkhwa.

Subject: DEDUCTION OF GENERAL PROVIDENT FUND FROM THE PROVINCIAL CIVIL SERVANTS REGULARIZED UNDER KHYBER PAKHTUNKHWA CIVIL SERVANTS (AMENDMENT) ACT-2013.

Dear Sir,

The Khyber Pakhtunkhwa Civil Servants (Amendment) Bill 2013 - passed by the Provincial Assembly on 13<sup>th</sup> January 2013 and assented to by the Governor of Khyber Pakhtunkhwa on 17<sup>th</sup> January 2013 - has been published as an Act of the Provincial Assembly of Khyber Pakhtunkhwa. Under the said Act, all Civil Servants appointed to a service or post on or after 1<sup>st</sup> July 2001 shall be deemed to have been appointed on regular basis and will be eligible for pension/ deduction of G.P. Fund. Accordingly the following instructions/ guidelines are issued for compliance of concerned Departments/Organizations.

- a) Deductions on account of General Provident Fund at prescribed rates from all the Civil Servants, who have become eligible for pension under the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 should be started forthwith.
- b) All deductions/subscription in respect of Contributory Provident Fund made before the commencement of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 from such Civil Servants, excluding Government counterpart share, shall immediately be transferred to their respective General Provident Fund Accounts. However, such Civil Servants will be entitled to markup on the declared C.P. Fund as announced on yearly basis from the date the C.P. Fund deductions / subscriptions were made.
- c) Markup on prescribed rates, as notified by the Provincial Government from time to time, may be added to the General Provident Fund Accounts of concerned Civil Servants/Subscriber as per prescribed mechanism for maintenance of such accounts.
- d) CNIC/Personal Numbers allotted to the subscribers will be used as General Provident Fund Account Numbers for such subscribers.
- e) Similar action / treatment may be afforded to all those Provincial Civil servants posted in FATA/PATA on deputation basis.

*[Handwritten initials]*

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KH

Note: The above guidelines for staff are not applicable to employees who are not Civil Servants as defined in Section 2 of the Khyber Pakhtunkhwa Civil Servants Act 1973 like those who are attached to the Provincial Government or working on contract/ temporary/ contingent basis.

*(Signature)*  
(MUHAMMAD ISHTIAQ KHAN)  
Additional Secretary (Budget)

Encls: No. & date even.

Copy is forwarded for information and necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Director Finance, Lady Reading Hospital, Peshawar.
3. Director Finance, Khyber Teaching Hospital, Peshawar
4. Accountant General (PR) S-1 office, Peshawar.
5. Director, Local Fund Audit Department, Khyber Pakhtunkhwa, Peshawar.
6. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
7. Director General, Provincial Disaster Management Authority, Khyber Pakhtunkhwa, Peshawar.
8. Director, PMU, Finance Department.
9. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa
10. District Comptroller of Accounts Peshawar, Mardan, Kohat, Parana, Ujjan, Abbottabad and Swat.
11. All the District/Agency Accounts Officers in Khyber Pakhtunkhwa of PAOs.
12. Treasury Officer, Peshawar.

With reference to meeting held in Finance Dept on 12/02/2013.

*(Signature)*  
(RAEES KHAN AFRIDI)  
Deputy Secretary (Bgg-1)

Encls: No. & date even.

Copy is forwarded for information and necessary action to the:-

1. P.S to Minister for Finance, Khyber Pakhtunkhwa.
2. P.S to Chief Secretary, Khyber Pakhtunkhwa.
3. P.S to Additional Chief Secretary, Khyber Pakhtunkhwa.
4. P.S to Finance Secretary Khyber Pakhtunkhwa.
5. P.A to Special Secretary Finance Khyber Pakhtunkhwa.
6. P.As to all Additional Secretaries and Deputy Secretaries of Finance Department.
7. All the Section Officers/Budget Officers in Finance Department.

*(Signature)*

(NAZMA SHAMEEN)  
Section Officer (S-11)

*(Signature)*  
Sub: Divisional  
Edu: Officer (Male)  
Lectd  
*(Signature)*

To

The Accountant General,  
NWFP, Peshawar.

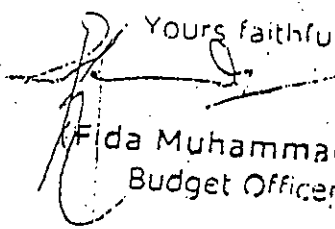
Subject:-

BUDGET SREECH 2007-08 CONVERSION OF FIXED PAY CLASS-IV  
INTO REGULAR BPS-1 CP FUND SCHEME.

Dear Sir,

I am directed to refer to your letter No.H.24(85)/Kohistan/Vol-11/851 dated 18/6/2008 on the subject noted above and to clarify that all the Class-IV Fixed Pay Employees have been regularized in BPS-1 giving them the status of Civil Servant, with effect from 1<sup>st</sup> July, 2008 (but not from the date of their appointments) as per provision of Section 19 of the Civil Servant Act 1973 (read with Civil Servants(Amendment) Act, 2005). Under the Act ibid, these employees are entitled for Contributory Provident Fund (C.P. Fund) instead of Pension/Gratuity and G.P. Fund. Since length of service of the employees was at variance, therefore, in order to meet the demand of natural justice, fixation of pay has been allowed to them with effect from the dates of appointment bringing their salaries at par with the respective length of service. However, they shall not be entitled for arrears of pay and allowances as clarified in the instructions. So, it is confirmed that they are entitled for CP Fund instead of Pension/Gratuity and GP Fund, unless otherwise provided in the relevant Rules/Regulations.

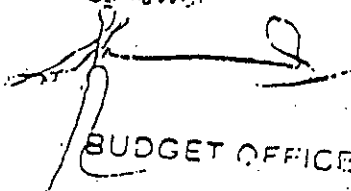
Yours faithfully,

  
Fida Muhammad  
Budget Officer-I

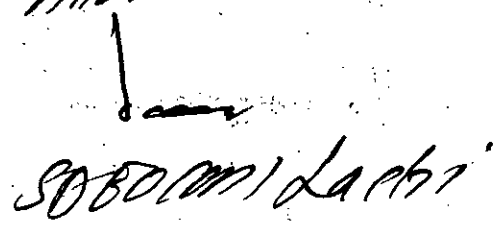
Endst No. & Date even:

Copy is forwarded w/r to Finance Dept's circular letter No. BO1/1-22/2007-08/FD dated 29/1/2008, for information & necessary action to:-

- 1) All Administrative Secretaries to Government of NWFP
- 2) Secretary to Governor, NWFP, Peshawar
- 3) Principal Secretary to Chief Minister, NWFP, Peshawar
- 4) All District Coordination Officers in NWFP
- 5) All Heads of Attached Departments in NWFP
- 6) The Registrar, Peshawar High Court, Peshawar
- 7) The Registrar, NWFP Service Tribunal, Peshawar
- 8) The Secretary Provincial Assembly, NWFP, Peshawar
- 9) The Secretary, Board of Revenue, NWFP, Peshawar
- 10) All District Accounts Officers in NWFP
- 11) All Budget/Section Officers in Finance Department, Peshawar

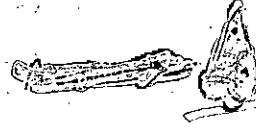
  
BUDGET OFFICER-I

  
Ahsan

  
SOBOM Lachi



7



Office of the  
**Accountant General**  
Khyber Pakhtunkhwa Peshawar  
Phone: 091 9211 50-53

No.H-24/Fixed Employee/2013-14/2011-12 Dated: 06.09.2013  
To,

All Distt:Accounts Officers / AAOS  
in Khyber Pakhtunkhwa,

Subject: FAMILY PENSION CASE OF LATE MUHAMMAD JAMIL  
CHOWKIDAR GGPS KASHMARI BANDA KARAK.

Please refer to the Distt:Accounts Officer Karak memo  
No.DAO/KK/Pen-audit/2012-13/620-21 dated 06.06.2013 on the above  
subject.

2. In light of Finance Deptt: letter No.B.O-1/10/1.22/2008-09/  
dated 30.7.2008, all the class-IV fixed pay employees have been  
regularized giving them the status of civil servant w.e.f.1.7.2008 (but not  
from the date of appointment), therefore their pension cases may be  
decided w.e.f the date of their regularization.

*[Signature]*  
ACCOUNTS OFFICER (HEAD)

Copy to:-

1. The Distt:Accounts Officer Karak, with reference his memo mentioned above.
2. The Budget Officer-1 Govt: of Khyber Pakhtunkhwa, Finance Deptt: Peshawar with reference to your letter mentioned above, for information.
3. The Accounts Officer (Pay Fixation party) for information.

*[Handwritten circle containing:]*  
LH  
9-10-2013

*[Handwritten:]* 870 on file

ACCOUNTS OFFICER (HEAD)

*[Handwritten:]* All papers to  
2-27

*[Handwritten signature:]* Mustafiz

*[Handwritten:]* DSD (M) Lachri  
K.I.

Comments received in this Dept.

Today on 25.5.18.

X  
25/5

**Before the Khyber Pakhtunkhwa Service Tribunal Peshawar**

**Appeal No. 413/2018**

**Muhammad Afzal.....Appellant.**

**V/S**

**District Accounts Officer,  
Hangu and Others.....Respondents.**

**(Para wise reply on behalf of Respondent No.1&3)**

**Preliminary Objections.**

- 1). That the Appellant has no cause of action.
- 2). That the Appellant has no locus standi.
- 3). That the Appeal in hand is not maintainable.
- 4). That the instant Appeal is time barred.
- 5). That the identical case Writ Petition No. 1224-P/2015 Habib-Ur-Rehman V/S Provincial Government of KPK, has already been dismissed by the Peshawar High Court Peshawar (Annex-A).

**Respectfully Sheweth:-**

- Para 1:- Proved by record, however liable to be proved by the Appellant.
- Para 2:- Proved by record, however liable to be proved by the Appellant.
- Para 3:- Proved by record, however liable to be proved by the Appellant..
- Para 4:- Incorrect.
- Para 5:- Incorrect, That the Appellant was regularized with effect from 1<sup>st</sup> July, 2008 (but not from the date of his appointment) in light of Finance Department Peshawar notification No.BOI/FD/1-22/2008-09, dated 30.07.2008. Hence he had not completed the qualifying Service for pension that is 10 years (Annex-B).

a 6:- Relates to respondent No.2, hence no comments.

Para 7:- Relates to respondent No.4, hence no comments.

Para 8:- No comments.

**GROUNDS:-**

A:- That the Respondents No.1 & 3 are bound to follow the rules and instructions issued by the Provincial Govt. of Khyber Pakhtunkhwa from time to time.

B&C:- Incorrect, that in light of Finance Department Peshawar vide letter No. BO/FD/1-22/2008-09, dated 30.07.2008 the appellant was regularized with effect from 01.07.2008. Hence the Appellant did not complete the qualifying service for pension and not entitled for any pension under the rule.

D:- That the identical case Writ Petition No. 1224-P/2015 Habib-Ur-Rehman V/S Provincial Government of KPK, has already been dismissed by the Peshawar High Court Peshawar (Annex-A).

E:- That Respondent No.1 & 3, is bound to follow the rules and instructions issued by the Provincial Government of Khyber Pakhtunkhwa from time to time.

F&G:- As mentioned in para "E" Above. Respondents No. 1&3 have not violated any rules and law.

H:- As mentioned in Para "B&C" above.

I:- No comments.

Keeping in view the above mentioned facts, it is humbly prayed that the appeal in hand, having no merits, may be dismissed with cost.

  
21/9/18  
**DISTRICT ACCOUNTS OFFICER  
HANGU**

**ACCOUNTANT GENERAL  
KHYBER PAKHTUNKHWA**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No 413/2018

Muhammad Afzal.....(Appellant)

VERSUS

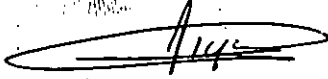
The District Account Officer District Hangu and  
others.....(Respondents)

I N D E X

S NO	DESCRIPTION OF DOCUMENTS	ANNEX	PAGE
1.	Reply rejoinder	-	01 - 04
2.	Affidavit	-	05

Appellant

Through:

  
(MUHAMMAD ILYAS ORAKZAI)  
Advocate,  
High Court, Peshawar  
Cell # 0333-9191892

Dated: -22-11-2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No 413/2018

Muhammad Afzal.....(Appellant)

V E R S U S

The District Account Officer District Hangu and  
others.....(Respondents)

REJOINDER TO COMMENTS ON BEHALF OF APPELLANT

Respectfully Sheweth:-

OBJECTION TO PRELIMINARY OBJECTIONS:-

- A) All the preliminary objections from 1 to 5 are illegal, misconceived and misleading.

OBJECTION TO FACTUAL OBJECTIONS:-

- 1) Needs no rejoinder.
- 2) Incorrect. The plea of the Respondents was already resolved by the Honourable Peshawar High Court Peshawar in W.P No 3394-P/2016 in his judgment titled "Amir Zeb.....Vs.....The District Account Officer Nowshera and others dated 22-06-2017 in para No 14 are reproduced below:-

"From bare reading of Section 19 of Amendment Act 2005 and 2013 respectively" it is manifest that the person 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 lengthy of service as their services towards pension shall be counted from the first day of their appointment and not from the date of regularization of their services”.

The august Supreme Court of Pakistan has interpreted the word/term pension in reported judgment (PLD 1973 Supreme Court of Pakistan Page-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”.

- 3) Incorrect, misleading the retirement order No 1138-42 dated 14-07-2017 was handed over and passed on the above date not on 17-09-2016, rest of the para already explained in detail in para No 2.

- 4) Incorrect, hence denied.
- 5) Incorrect, misconceived.
- 6) Incorrect.
- 7) Incorrect, the Appellant has the right and entitled for all his pensionary and others benefits in the light of the Honourable Peshawar High Court Peshawar judgment in W.P 3394/2016 titled as "Amir Zeb...Vs....District Account Officer Nowshera and other dated 22-06-2017.

OBJECTION TO REPLY ON GROUNDS:-

- A) Incorrect, negligence was/is on the post of Respondents, the retirement order No 1138-42 dated 14-07-2017 was signed, comminuted and handed over to the Appellant on the above date, before this no retirement order was issued/comminuted to the Appellant, so the above act of the Respondents is against the law and rules and void one.
- B) Incorrect, the detail as stated in para 2 of factual objections.
- C) Incorrect.
- D) Incorrect. The Appellant was appointed on contract basis and time to time increased his pay by the Respondents and regularized his service on 01-07-2008, so the Appellant has fully entitled for his pensionary and other benefits.
- E) No comments, proved by the Appellant.

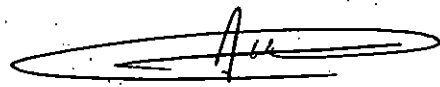


- F) Incorrect, detail answer as stated in para 2 of factual objection.
- G) Incorrect, the ground taken in appeal is correct, whereas that of Respondents is incorrect.
- H) Incorrect.
- I) That the Appellant with prior leave of this Honourable Tribunal seeks permission to take other grounds as well at the time of arguments.

In the light of above facts, it is very humbly prayed for the acceptance of appeal of the Appellant with any other relief deemed fit in the circumstances of the case and the reply of the Respondents may be ignored.

Appellant  
(Muhammad Afzal)

Through:

  
(MUHAMMAD ILYAS ORAKZAI)  
Advocate,  
High Court, Peshawar

Dated: -22-11-2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No 413/2018

Muhammad Afzal.....(Appellant)

V E R S U S

The District Account Officer District Hangu and  
others.....(Respondents)

\_\_\_\_\_  
A F F I D A V I T

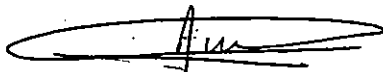
I, Muhammad Afzal, do hereby solemnly affirm and declare on oath that all the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court willfully or deliberately.

  
DEPONENT

*Muhammad Afzal*

CNIC # 14101-3753001-5

Identified by:-



(MUHAMMAD ILYAS ORAKZAI)  
Advocate  
High Court, Peshawar

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 181 /ST

Dated 30 / 1 / 2019

To


The District Education Officer Female,  
Government of Khyber Pakhtunkhwa,  
District Hangu.

Subject: -

JUDGMENT IN APPEAL NO. 413/2018, MR. MUHAMMAD AFZAL.

I am directed to forward herewith a certified copy of Judgement dated 14.01.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.