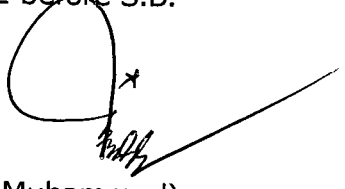


18.08.2022

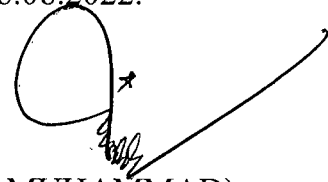
Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Rahat Shah, Deputy Director for the respondents present. Syed Noman Ali, Bukhari, Advocate for private respondents No. 6 to 13, 15, 17 to 22 present and requested for time to submit reply/comments. Representative of the respondent department stated at the Bar that the reply/parawise comments is under process and being submitted in the court on the next date. Last opportunity is, therefore, granted to both the parties to submit reply/comments. Adjourned. To come up for reply/comments on 12.09.2022 before S.B.


(Mian Muhammad)
Member (E)

14.07.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for official respondents present. Syed Noman Ali Bukhari, Advocate for the private respondents No. 6 to 13, 15, 17 to 22 which is placed on file.

Learned counsel for the appellant argued the case for grant for an interim relief. Reply/comments on behalf of official respondent as well as private respondents are not yet submitted. Office of the registrar is, therefore, directed to issue notices to official respondent as well as private respondents to submit their reply/parawise comments within 15 days positively. Adjourned. To come up for arguments before the S.B on 18.08.2022.



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

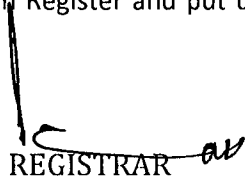


*Notice sent
for 18/08/22*

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 864/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	31/05/2022	<p>The appeal of Mr. Wakil Khan resubmitted today by Mr. Amanullah Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	14.6.22 Noted 17/05/2022	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>20.6.22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	20.06.2022	<p>Counsel for the appellant present. Preliminary arguments heard. Record perused.</p> <p>Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of reply/comments. To come up for reply/comments on 14.07.2022 before S.B.</p> <p style="text-align: right;"> (Fareeha Paul) Member(E)</p>

Rs-4,700/-
Appellant Deposited
Security & Process Fee
A. J. 28/6/22

VAKALATNAMA

NO. 864 /2022

IN THE COURT OF KP Service Tribunal Peshawar

Wakil Khan

Appellant
Petitioner
Plaintiff

VERSUS

Govt of KP

Respondent (s)
Defendants (s)

I/WE Respondent No: 6, 7, 8, 9, 10, 11, 12, 13, 17, 18, 19, 21, 22, 20

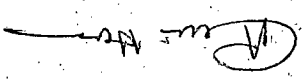
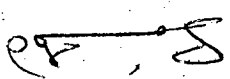
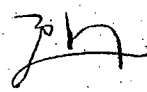
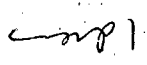
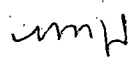


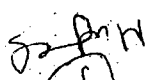
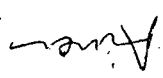
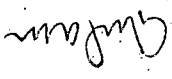
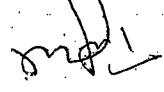
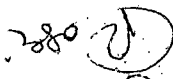
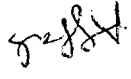
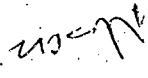
do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI Advocate High Court** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE 14/7/2022

[Signature]
Respondent No 6
(CLIENT)

ACCEPTED

[Signature]
SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT

- R-7 Amer Hassan - 
- R-8 Saad Mohamed 
- R-9 Wajid Ali 
- R-10 Mohamed Ezzes Ibrahim 
- R-11 Munt Ahmad 
- R-12 Wassamullah 
- R-13 Atta-UL-Haq  Saad Shah
- R-15 Saad Shah
- R-16 Mujib-ur-Rahman 
- R-17 Anwar Khan 
- R-18 Ghulam Bilal 
- R-19 Muhammad Iqbal 
- R-20 Kafeez ur-Rahman  (R-20)
- R-22 Akhtar Ahmad 
- R-23 Nisar Ahmad 

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. _____/2022

Wakil Khan. **APPELLANT**

VERSUS

Chief Secretary & others. **RESPONDENTS**

APPLICATION FOR EARLY FIXATION OF THE CASE

Respectfully Sheweth:

1. That the above titled ^{Lis} is pending adjudication before this Honorable Court in which no date of hearing has been fixed yet.

2. That officials respondents are holding PSB meeting for promotion on impugned seniority list in the first week of June. If private respondents are promoted on the impugned seniority list it will suffer loss to the appellant.

It is therefore, most humbly prayed that on acceptance of this application the above titled case may kindly be fixed as early as possible.


Applicant/ Appellant

Through


AMANULLAH MARWAT
Advocate High Court.

Dated: 31-5-22

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Wakil Khan. **Applicant/ Appellant**

VERSUS

Chief Secretary & others. **Respondent**

**APPLICATION TO PERMIT APPELLANT
TO SUBMIT EXTRA COPIES FOR
RESPONDENT AFTER ADMISSION OF
THE TITLED CASE.**

Respectfully Sheweth:

1. That the above titled service appeal being filed on behalf of the appellant which is yet to be fixed.
2. That there are more than 42 respondents, each filed contains more than two hundred pages, so appellant seeks permission to file extra copies for respondents after admission of titled case.

It is therefore respectfully prayed, that on acceptance of this application the appellant may please be exempted and be allowed to submit copies for respondents after admission of titled cases.

Through Applicant/ Appellant



AMANULLAH MARWAT
Advocate Supreme Court.


Dated: 31.05.2022

The appeal of Mr. Wakil Khan son of Rustam Khan District Officer, On Farm Water Management District Mohmand received today i.e. on 26.05.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Memorandum of appeal may be got signed by the appellant.
- 3- Appeal has not been flagged/marked with annexures marks.
- 4- The law under which appeal is filed is not mentioned.
- 5- Annexures of the appeal may be attested.
- 6- 42 more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1192/S.T,

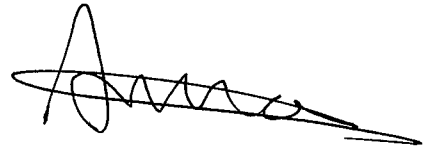
Dt. 27/5/2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Amanullah Marwat Adv. Pesh.

31-5-22

Objection raised has been removed. may please be fixed before 13end


31-5-22

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST

Case Title: Wahid Khan v/s chief secretary etc

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:	/	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	/	
3	Whether appeal is within time?	/	
4	Whether the enactment under which the appeal is filed mentioned?	/	
5	Whether the enactment under which the appeal is filed is correct?	/	
6	Whether affidavit is appended?	/	
7	Whether affidavit is duly attested by competent Oath Commissioner?	/	
8	Whether appeal/annexures are properly paged?	/	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	/	
10	Whether annexures are legible?	/	
11	Whether annexures are attested?	/	
12	Whether copies of annexures are readable/clear?	/	
13	Whether copy of appeal is delivered to AG/DAG?	/	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	/	
15	Whether numbers of referred cases given are correct?	/	
16	Whether appeal contains cutting/overwriting?	/	
17	Whether list of books has been provided at the end of the appeal?	/	
18	Whether case relate to this court?	/	
19	Whether requisite number of spare copies attached?	/	
20	Whether complete spare copy is filed in separate file cover?	/	
21	Whether addresses of parties given are complete?		/
22	Whether index filed?		/
23	Whether index is correct?		/
24	Whether Security and Process Fee deposited? On		/
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On		/
26	Whether copies of comments/reply/rejoinder submitted? On		/
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		/

Not required

Not required

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Imanullah

Signature: [Signature]

Dated: 26/5/2022

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 864 /2022

Wakil Khan. **APPELLANT**

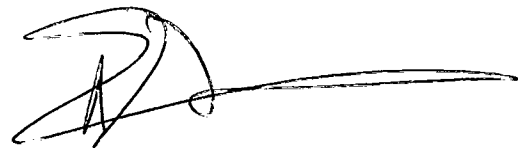
VERSUS

Chief Secretary & others. **RESPONDENTS**

I N D E X

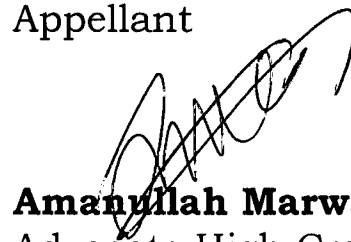
S.No.	Description of Documents	Annex	Pages
1.	Appeal		1-20
2.	Application for interim injunction		21-22
3.	Copy of Writ Petition No. 29/2009 and Order dated 21.01.2009	A	23-31
4.	Copy of the Review Petition No.68/2009 alongwith Order dated 01.12.2009	B	32-44
5.	Copy of the Judgment of Supreme Court dated 01.03.2011, Passed in C.As No.834 to 837 of 2010	C	45-49
6.	Copy of Regularization Order dated 07.06.2011	D	50-51
7.	Copy of the Seniority List dated 11.11.2014	E	52-55
8.	Copy of the Seniority List dated 02.09.2016	F	56-57
9.	Copy of the Writ Petition No.902-B/2016 alongwith Order dated 29.03.2017	G	58-63
10.	Copy of the Seniority List dated 02.03.2017	H	64-66
11.	Copy of the Judgment of Supreme Court dated 13.06.2013, Passed in Civil Petition No.302-P/2011 and other Connected Civil Petitions	I	67-73
12.	Copy of the Judgment of Supreme Court dated 24.02.2016, Passed in C.A.No.134-P/2013	J	74-102

13.	Copy of the Judgment of Service Tribunal dated 06.04.2018, Passed in Appeal No.1326/2017 and other Connected Appeals	K	103-110
14.	Copy of the Service Appeal No.842/2017	L	111-114
15.	Copy of the Service Appeal No.843/2017	M	115-118
16.	Copy of the Service Appeal No.1326/2017	N	119-125
17.	Copy of the Service Appeal No.1327/2017	O	126-132
18.	Copy of the C.A No.1170/2019 along with Decision of Supreme Court dated 01.07.2021	P	133-151
19.	Copy of the Seniority List dated 29.08.2018	Q	152-157
20.	Copy of Pay Slips	R	158-165
21.	Copy of the Application dated 07.07.2021 by the Petitioner along with Order dated 15.11.2021	S	166-167
22.	Copy of the Provisional Seniority List dated 09.11.2021	T	168-177
23.	Copy of Objection on Provisional Seniority List	U	178-179
24.	Final Seniority List dated: 14.02.2021	V	180-187
25.	Departmental Appeal dated: 16.02.2022 alongwith interim injunction application	W	188-209
26.	Copy of Regularization Act, 2005	X	210-211
27.	Copy of Regularization Act, 2009	Y	212-215
28.	Wakalatnama		216



Appellant

Through



Amanullah Marwat
Advocate High Court.

Dated: 20.05.2022

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

Inst. 23

Service Appeal No. 864 /2022Khyber Pakhtunkhwa
Service TribunalDiary No. 830Dated 26/5/2022

Wakil Khan S/o Rustam Khan

District Officer, On Farm Water Management,

District Mohmand. **APPELLANT**

VERSUS

1. Chief Secretary,
Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. Secretary Establishment,
Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
3. Secretary Law,
Civil Secretariat Peshawar.
4. Secretary,
Agriculture, Livestock & Cooperative Department,
Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
5. Director General,
On Farm Water Management,
Government of Khyber Pakhtunkhwa, Peshawar.

Filed to-day
in
Registrar
26/5/2022

Re-submitted to-day
and filed.

in
Registrar
31/5/2022

6. Zahid Khaliq,
Water Management Officer,
On Farm Water Management, District Charsadda.
7. Ameer Hussain,
Water Management Officer,
On Farm Water Management, District Swat.
8. Said Muhammad,
Water Management Officer,
On Farm Water Management, District Nowshera.
9. Wajid Ali,
Deputy Director Field Operations,
Directorate of On Farm Water Management,
District Peshawar.
10. Muhammad Idrees,
District Officer,
On Farm Water Management, District Khyber.
11. Munir Ahmad,
Monitoring & Evaluation Officer,
Gomal Zam Dam, D.I.Khan.
12. Waseemullah,
Water Management Officer,
On Farm Water Management, District Bannu.
13. Atta-ul-Haq,
Water Management Officer,

On Farm Water Management, District Nowshera.

14. Muhammad Farooq,
Water Management Officer,
Office of Director PIO PHLCEP Project, District Swabi.
15. Saeed Shah,
Water Management Officer,
On Farm Water Management, District Mardan.
16. Mujeeb-ur-Rehman,
District Officer,
On Farm Water Management, District Tank.
17. Aman Khan,
Water Management Officer,
On Farm Water Management, District Buner.
18. Ghulam Bilal,
Water Management Officer,
On Farm Water Management, District D.I.Khan.
19. Muhammad Tufail,
District Officer,
On Farm Water Management, District Karak.
20. Qiash Ahmad,
Water Management Officer,
On Farm Water Management, District Swabi.

21. Rafique ur Rehman,
District Officer,
On Farm Water Management, District Dir Upper.
22. Aftab Ahmad,
Water Management Officer,
On Farm Water Management, District D.I.Khan.
23. Nisar Ahmad,
Component Leader,
Gomal Zam Dam Project, District D.I.Khan.
24. Muhammad Nadeem,
District Officer,
On Farm Water Management, District South Waziristan.
25. Muhammad Shaoib,
Water Management Officer,
On Farm Water Management, District Abbottabad.
26. Ihsanullah,
District Officer,
On Farm Water Management, District Kurram.
27. Faisal Younas Khan,
District Officer,
On Farm Water Management, District Batagram.
28. Javed Akhtar,
Water Management Officer,
On Farm Water Management, District Tor Ghar.

29. Amjad Ali,
Water Management Officer,
On Farm Water Management, District Malakand.
30. Attaullah,
Water Management Officer,
On Farm Water Management, District Swat.
31. Khan Daraz,
Water Management Officer,
On Farm Water Management, District Mardan.
32. Shaheen Iqbal,
Water Management Officer,
On Farm Water Management, District Peshawar.
33. Qazi Shifa-ur-Rehman,
Assistant Director Planning,
Office of Director General,
On Farm Water Management, District Peshawar.
34. Fazle Sattar,
Water Management Officer,
On Farm Water Management, District Dir Upper.
35. Tahir Khan,
District Officer,
On Farm Water Management, District Shangla.
36. Muhammad Shahid Nawaz,
Water Management Officer,
On Farm Water Management, District Tank.

37. Ms. Asma Ahmad,
Water Management Officer,
Office of Director Merged Area,
On Farm Water Management, Peshawar.
38. Qayum Khan
District Officer,
On Farm Water Management, District Bannu.
39. Muhammad Karimullah,
District Officer,
On Farm Water Management, District Bajawar.
40. Amir Rabbani,
District Officer,
On Farm Water Management, District Tor Ghar.
41. Shahid Mehmood,
District Officer,
On Farm Water Management, Abbottabad.
42. Abdullah Khan,
District Director,
On Farm Water Management, District Malakand.
43. Farmanullah,
District Officer,
On Farm Water Management, District Kohat.
44. Rafique Ahmad Ghuncha,
District Officer,
On Farm Water Management, District Lakki Marwat.

45. Moin-ud-Din,
District Officer,
On Farm Water Management, District Dir Lower.

.....**Respondents**

under S-1 K.P. Service Tribunal Act 1974

APPEAL AGAINST THE ALLEGED
FINAL SENIORITY LIST DATED:
14.02.2022 ISSUED BY RESPONDENT
NO. 4, WHEREBY APPELLANT WAS
PLACED AT SERIAL NO. 33, IN UTTER
VIOLATION OF DECISION OF THE
LARGER BENCH DATED: 24.02.2016
PASSED IN C.A. NO. 134-P/2013
FOLLOWED BY DECISION OF SERVICE
TRIBUNAL DATED: 06.04.2018 IN
APPEAL NO. 1326/2017.

*P. 180 / Annex V.
missing in main file
Present in member's file.*

Respectfully Sheweth:

1. That the appellant was initially appointed in Project known as “**National Programme for Improvement of Water Courses in Pakistan (KP-Component)**” as a Water Management Officer (BPS-17) after fulfillment of all codal formalities by the then competent Authority vide order dated 24.11.2004.

2. That the appellant along with others filed Writ Petition No.29/2009 titled "**Wakil Khan etc. VS Government of Khyber Pakhtunkhwa etc.**" for regularization of their services which was allowed by the Hon'ble Peshawar High Court Peshawar in terms of the relief sought therein, vide order dated 21.01.2009.
3. That the then respondent (Government) did not challenge order dated 21.01.2009 before the Hon's Supreme Court of Pakistan. So for all intent and purposes, it has attained finality in the eyes of law, rather than preferred Review Petition No.68/2009 titled "Government of Khyber Pakhtunkhwa Vs. Wakil Khan etc." against the order dated 21.01.2009 passed by the Hon'ble High Court ibid Writ Petition No.29/2009, which was dismissed vide order dated 01.12.2009.
4. That against the order dated 01.12.2009, whereby Review Petition No.68/2009 was dismissed, Respondents (Government) filed CPLA No.835/2010 which came up for hearing alongwith other connected Civil Appeals:

- a. Abdullah Khan etc. (in CA No.834/2010)
- b. Wakil Khan etc. (in CA No.835/2010)
- c. Amir Rabani etc. (in CA No.836/2010)
- d. Atta-ul-Haq etc. (in CA No.837/2010)

The case of the respondents (Government) against the Review Petition No.68/2009 was dismissed along with other noted cases through single judgment dated 01.03.2011 passed by Apex Supreme Court of Pakistan.

It is pertinent to mention here the Apex Supreme Court of Pakistan in Para No.4 of the judgment categorically held that the appellant case squarely covered by the North West Frontier Province Civil Servant (Amendment) Act, 2005. The relevant Para for ready reference is reproduced herein below:-

"4. We have found that the case of the Respondents was in fact squarely covered by the provision of sub section (2) of section 19 of the North-West Frontier Province Civil Servant (Amendment) Act, 2005 because.....and also in directing the appellants to treat the Respondent as regular employees."

5. That in pursuance of the Judgment dated 01.03.2011 passed by Apex Supreme Court of Pakistan in Civil Appeal No.834-837 of 2010, The Competent authority was pleased to regularize the Services of the appellant in BPS-17 along with others (16 in Number) w.e.f 24.11.2004 vide notification dated 07.06.2011.
6. That thereafter, seniority list of the appellant along with others was prepared on the basis of merit, which was circulated and notified on 11.11.2014, without any objection on the part of any candidate, in which appellant was placed at S.No.26 out of total 40 candidates shown in merit list.
7. That the official respondents issued another seniority list, which was notified on 02.09.2016 , in which appellant with others (16) employees, were dropped from the seniority list without any rhyme and justified reason thereafter this action of respondent/Government was challenged by one of the employee before the Hon'ble Peshawar High

Court, Bannu Bench in Writ Petition No.902-B/2016 alongwith COC No.117-B/2017 and disposed of on 29.03.2017, in which the official respondents admitted mistake in seniority list and rectified the same on 02.03.2017.

8. That respondent rectified the seniority issued in 02.03.2017 and re-issued another seniority on the basis of merit wherein original seniority list was restored in which the appellant was shown at S.No.11 out of total 33, notified on 02.03.2017.
9. That Seniority List dated 02.03.2017 was challenged through different appeals before the Service Tribunal Khyber Pakhtunkhwa *viz:*
 - i. Appeal No.842/2017 "Rafique-ur-Rehman Vs. Govt. of Khyber Pakhtunkhwa"
 - ii. Appeal No.843/2017 "Faisal Younas Vs. Govt. of Khyber Pakhtunkhwa"
 - iii. Appeal No.1326/2017 "Qayum Vs. Govt. of Khyber Pakhtunkhwa"
 - iv. Appeal No.1327/2017 "Abdullah Vs. Govt. of Khyber Pakhtunkhwa"

The above noted appeals were decided through consolidated judgment dated 06.04.2018 passed in Appeal No.1326/2017 *ibid*.

10. That against the order dated 06.04.2018 passed by the Service Tribunal in the light of judgment of Larger Bench dated 24.02.2016 passed by Hon'ble Supreme Court of Pakistan in Civil Appeal No.234-P/2013 alongwith other connected appeals in case titled "Govt. of Khyber Pakhtunkhwa through Chief Secretary Vs. Adnanullah & others", the appellant alongwith other challenged the decision dated 06.04.2018 before the Apex Court through C.A No.1173/2019 alongwith other employees by filing different civil appeals which were decided through single judgment dated 01.07.2021 with the direction that Review Petition No.302/2016 has been filed and is pending adjudication before the Hon'ble Supreme Court of Pakistan and was disposed-off in the following terms:

"That the appeals may be disposed of with the observation that in case the judgment of this Court is reviewed, the appellants will have chance to resurrect these appeals by making of an appropriate application."

11. That the order dated 06.04.2018 passed by the Service Tribunal Khyber Pakhtunkhwa, the respondents No. 4 & 5 processed seniority list (impugned herein). The appellant submitted application through proper channel on 07.07.2021 with the request not to finalize the seniority list till the disposal of review petition pending before the Apex Court, which was responded by Establishment Department with the observation that seniority list be prepared in accordance with Regularization Act, 2009 and decision of Larger Bench.
12. That the respondents No. 4 & 5 prepared and issued first seniority list after decision of Service Tribunal, Khyber Pakhtunkhwa and also illegally promoted some employees on the basis of illegal seniority list, but name of the appellant was excluded from such seniority list and was placed in surplus pool, but actually he was performing duty as a District Officer Water Management, Hangu.
13. That respondents No.4 issued seniority list on 15.11.2021, whereby appellant was placed at Serial

No.33. Thereafter, appellant submitted objections on the seniority list through application on 18.11.2021 before respondent No.4 through proper channel, which was disposed of with the direction to prepare seniority list in accordance with in the judgment of larger bench Supreme Court of Pakistan dated: 24.02.2016 & Khyber Pakhtunkhwa Regularization Act, 2009.

14. That in pursuance of the said recommendations, the respondent No.4 prepared seniority list against decision of the Larger Bench of Apex Court and Regularization Act, 2009, in which the appellant was placed at Serial No.33 and forwarded the same for final approval to the respondent No. 2, 4 & 5, the such act of the respondents seriously deprived the appellant.
15. That respondent No. 4 issued impugned final seniority list dated: 14.02.2022, against which departmental representation was preferred by the appellant on 16.02.2022 but remained un-responded till date.

16. That after laps of statutory period of time provided under the law, appellant feeling aggrieved from the final seniority list dated: 14.02.2022 assails the same before this Honorable Court inter alia on the following grounds;

G R O U N D S:

- A. That the impugned seniority list dated 14.02.2022, whereby the appellant was placed at Serial No.33, is against law, facts and record of the case, thus, is liable to be modified.
- B. That august Supreme Court of Pakistan has categorically held in its judgment dated 01.03.2011 in C.A No.834 to 837 of 2019 at Para No.4 of the ibid judgment stated that, the case of the appellant is covered under the Regularization Act, 2005, consequently, the services of appellant were also regularized in the light of Regularization Act, 2005, which was neither challenged nor modified by Larger Bench of Apex Court in its judgment and still holds in field. Thus, the appellant case is not covered by Regularization Act, 2009 rather than Regularization Act, 2005.

- C. That respondents are under obligation to prepare seniority list under section 4 of Regularization Act, 2009, which is quoted as under:

"Determination of Seniority.- (1). The employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment."

Bare perusal of the ibid section, clearly reveals that the appellant will be, for all intent and purposes, will be senior from all the respondents, but, official respondent/ government has utterly violated the provisions of Regularization Act, 2009 coupled with decisions made by the Larger Bench of Apex Court, therefore, on this score alone, the seniority is not sustainable in the eyes of law.

- D. That the Regularization Act, 2009 is applicable on those employees, who are holding the post since 31.12.2008 till promulgation of the Act i.e. 24.12.2009. The appellant filed Writ Petition

No.29/2009 for regularization of his services before the Hon'ble Peshawar High Court, Peshawar which was allowed on 21.01.2009. The said order was not challenged by the respondents/ department before the august Supreme Court and attained finality, thus, Regularization Act, 2009 is not applicable rather Regularization Act, 2005, so, as per section 4 of the Regularization Act, 2009, the appellant is senior to all other respondents/employees, hence, the impugned seniority list prepared by the respondents, is misapplication and non-application of Regularization Act, 2009 as well as decision of the Larger Bench.

- E. That the respondents have not issued the seniority list in accordance with the Regularization Act, 2009 as is evident from the heading of the Notification dated 29.08.2018, which smacks malafide on the part of official respondents and thus, such act of the respondents is the result of colourful exercise of power, which has seriously prejudiced the valuable rights of the appellant, thus, warrants interference by this Hon'ble Court.

- F. That perusal of the seniority list apparently reveals that some of the respondents were shown seniors to juniors and vice versa, which reflects incompetency of the respondents, which is violative of the golden principle, no one should be prejudiced by the act of public functionaries.
- G. That some of the respondents, who were placed in Surplus Pool and they were also deemed to be junior but they were placed senior to the appellant, this act of the respondents is also against the law governing the subject matter.
- H. That appellant has submitted objection on provisional seniority list but that objections was not considered and issued impugned final seniority which makes malafide on the part of respondent No. 4 & 5 to promote their favoritities.
- I. That respondent No. 4 has issued sonority list dated: 14.02.2022 is against the decision of the Larger Bench dated: 01.03.2011 passed by august Supreme Court of Pakistan passed in C.A. No. 134-2013 alongiwth other connected appeals titled

“Government of Khyber Pakhtunkhwa & others Vs. Adnanullah & others” as well as Regularization Act, 2009, so the impugned seniority list is the result of misapplication and non-application of Regularization Act, 2009.

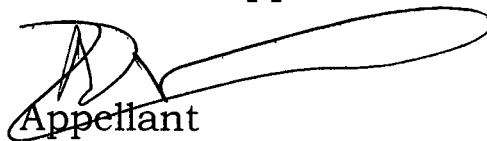
- J. That the respondents No.2, 4 & 5 is under obligation to prepare and issue seniority list under regularization act, 2009 which also deals seniority, according to section 4-A, this regularization as overriding effect or other laws (section-8A of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule 17 of the Khyber Pakhtunkhwa Civil Servant [appointment, promotion & transfer] Rules, 1989), for ready reference the relevant section is reproduce herein below;

“Notwithstanding anything to the contrary contained in any other law or rule for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rule to the extent of inconsistency to this Act shall cease to have effect”

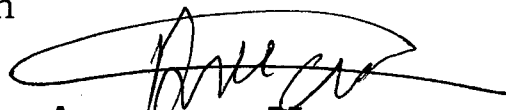
- I. That the appellant seeks leave of this Hon'ble Departmental Authority to raise any additional point/ground at the time of arguments.

It is therefore, respectfully prayed that on acceptance of this service appeal, the respondents may please be directed to;

- i. Set aside the impugned seniority list dated: 14.02.2022.
- ii. Hold and declare the appellant having being appointed under Regularization Act, 2005 is senior in terms of section 4 of Regularization Act, 2009 to all those employees, who were/ are regularized under Regularization Act ibid.
- iii. Prepare seniority list on the analogy of the seniority lists dated: 11.11.2014 & 02.03.2017 being legal and in line with judgment of the larger bench of Supreme Court dated: 24.02.2016 and regularization Act, 2009.
- iv. Any other relief, which is not specifically asked for but deems fit by this Hon'ble Court, may also be passed in favour of the appellant.


Appellant

Through


AMANULLAH MARWAT
Advocate High Court.

Dated: 20.05.2022

**BEFORE THE CHIEF SECRETARY, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. _____/2022

Wakil Khan. **APPLICANT**

VERSUS

Chief Secretary & others. **RESPONDENTS**

**APPLICATION FOR INTERIM INJUNCTION
BY RESTRAINING RESPONDENT NO. 2, 4
& 5 TO MAKE ANY PROMOTION ON THE
BASIS IMPUGNED FINAL SENIORITY LIST
DATED: 14.02.2022 TILL THE FINAL
DISPOSAL OF THE DEPARTMENTAL
APPEAL.**

Respectfully Sheweth:

1. That the above titled case is being submitted by the appellant along with application for grant of interim injunction.
2. That the appellant was appointed under Regularization Act, 2005 in the light of judgment of Supreme Court who is senior from all employees shown senior to him the impugned seniority list dated: 14.02.2022 in terms of the Section 4 Regularization Act, 2009. Further the facts and circumstances stated in the departmental

representation may please be read integral part of the main appeal.

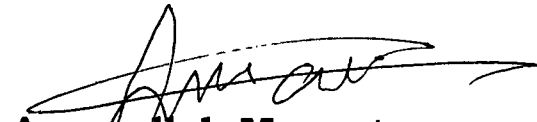
3. That balance of convenience also leans infavor of the appellant if operation impugned seniority list was not suspended, the appellant would suffer irreparable loss.

It is therefore, most respectfully prayed that operation of the impugned seniority list may please be suspended with the direction not to initiate promotion process on seniority list.



Applicant

Through

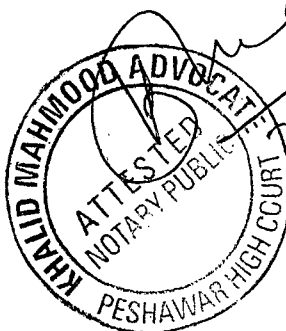


Amanullah Marwat
Advocate High Court.

Dated: 20.05.2022

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that the contents of the above application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.




DEPONENT

BEFORE THE SERVICE TRIBUNAL KP PESHAWAR

Appeal No. 864/2022

Wakil Khan.....VS.....Govt. of KPK & others

**APPLICATION FOR EXEMPTION TO
SUBMIT COPIES FOR EACH
RESPONDENTS AND BE ALLOWED
TO PROVIDE COPY TO THE
RESPONDENT WHEN REQUIRED/
DEMANDED AND BE ALLOWED TO
SERVE RESPONDENTS THROUGH
ADVERTISEMENT.**

Respectfully Sheweth:

1. That the above titled case is pending adjudication before this Honorable Tribunal which is fixed for submission of written reply by the respondent on 14.07.2022.
2. That applicant have already submitted requisite copies for official respondent but private respondents are more than 40, each consists of 220 pages which approximately cost Rs. 50,000/- which the applicant cannot afford on such meager salary in such prevailing inflation, hence request for consideration of this application.

It is therefore, most humbly prayed that on acceptance of this application, appellant/applicant may please be

exempted to submit each copy for respondent and be allowed to provide copy to the respondent at the expense of him when required and demanded by the respondent and also be allowed to serve respondents through advertisement.

Appellant/Applicant

Through

AMANULLAH MARWAT
Advocate High Court.

Dated: 02.07.2022

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that all the contents of the above application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

DEPONENT