

S.A No.1224/2018

Dr. Khalida Yasmeen

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary & 4 others.

Judgment/order

11.03.2020

Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney for the respondents present.

2. Arguments heard. File perused.

3. Appellant, allegedly appointed as Medical Officer on contract basis vide order dated 03.12.1995 got regularization of her service and her colleagues in the year 2005 under the Khyber Pakhtunkhwa Civil Servants (Amendment) Act 2005. Government of Khyber Pakhtunkhwa further amended Section-19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 vide Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 wherein it is provided that those appointed in the prescribed manner to a service or post on or after 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis. Ultimately vide Notification dated 17.10.2017 the services of the appellant were regularized w.e.f 01.07.2001. Not contended with the said Notification dated 17.10.2017, the appellant has filed the present service appeal for regularization of his service from initial date of appointment and consequential service benefits.


4. Learned counsel for the appellant conceded that identical nature service appeals have already been dismissed by this Tribunal vide common judgment dated 12.11.2019 passed in Service Appeal No.318/2018 filed by Dr. Akram Khan. Learned counsel for the appellant

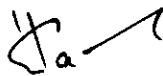
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however raised objection that during the course of arguments in the identical service appeals, he vehemently contested/agitated the case of Dr. Muhammad Iqbal however Para-11 of the common judgment speaks otherwise.

5. Objection raised by learned counsel for the appellant is found misconceived in as much as it is not mentioned in Para-11 of the common judgment that the learned counsel for the appellant has not contested/agitated the case of Dr. Muhammad Iqbal rather this Tribunal has given the findings that the case of Dr. Muhammad Iqbal was dealt with U/S 23 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and this fact was not contested by the learned counsel for the appellant. Copy of Notification No.SO(E)II-II/8-18/2006 dated 09.12.2006 annexed by the appellant, with the memo of appeal, reflects that the services of Dr. Muhammad Iqbal were regularized in exercise of powers U/S 23 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with President Order No.10 of 1969.

6. As a sequel to above the present service appeal is also rejected in terms of common judgment dated 12.11.2019 passed in Service Appeal No.318/2018 filed by Dr. Akram Khan. Parties are left to bear their own costs. File be consigned to the record room.


(Hussain Shah)
Member (E)


(Muhammad Hamid Mughal)
Member (J)

ANNOUNCED.

11.03.2020

28.02.2020


Learned Assistant Advocate General present. Due to rush of work, further proceedings in the case in hand could not be conducted. Adjourn. To come up for order on 11.03.2020 before D.B.



Member



Member



25.10.2019 Due to tour of the Hon'ble Members to Camp Court, Abbottabad. To come up for the same on 31.01.2020 before D.B.

Reader

31.01.2020 Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney present and stated that identical nature service appeals have already been dismissed vide common judgment dated 12.11.2019 passed in service appeal No.318/2018. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 24.02.2020 before D.B.


Member


Member

24.02.2020 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Dr. Salim Javid Litigation Officer present. Arguments heard. To come up for order on 28.02.2020 before D.B.


Member


Member

09.07.2019

Counsel for the appellant and Addl: AG alongwith Mr. Hazrat Shah, Supdt and Mr. Sajid, Supdt for respondents present.

Representative of the respondents states that the reply has been prepared but is yet to be signed by the respondents. He, therefore, requests for a short adjournment.

Adjourned to 18.07.2019 before S.B.


Chairman

18.07.2019

Counsel for the appellant, Mr. Muhammad Riaz Khan Paindakhel, Assistant A.G alongwith Hazrat Shah, Superintendent, Saleem Khan, Litigation Assistant and Sajid Superintendent for the respondents present.

The respondents failed to submit their respective written reply/comments despite on 12.06.2019 last opportunity was granted to them. The matter is, therefore, posted for arguments before the D.B on 10.10.2019.


Chairman

10.10.2019

Due to official tour of Hon'ble Members to Camp Court Swat, the instant matter is adjourned to ~~31.01.2020~~ for the same.


Reader

20.03.2019

Nemo for the appellant. Mr. Kabirullah Khattak learned Addl; AG for the respondents present. Learned Addl; AG requests for time to submit written reply/comments. ~~Due to general strike of the bar, the case~~ is adjourned. To come up for written reply/comments on 18.04.2019 before S.B.


(Hussain Shah)
Member

18.04.2019

Clerk to counsel for the appellant present. Written reply not submitted. M/S Rehmat Khan Superintendent and Jafar Shah Assistant for respondents No.4 & 5 present and requested for time to furnish written reply/comments. Amjad Ali Assistant and Saleem Khan Superintendent representatives of the respondents No.2 & 3 absent. They be summoned with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 12.06.2019 before S.B.


Member

12.06.2019

Mr. Riaz Akhtar, Advocate present on behalf of counsel for the appellant. Addl: AG alongwith Mr. Jafar Ali, Assistant for respondents present. Written reply not submitted. Requested for adjournment. Granted but as a last chance. Case to come up for written reply/comments on 09.07.2019 before S.B.


(Ahmad Hassan)
Member

03.01.2019

Clerk of the counsel for appellant present and requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for preliminary hearing on 23.01.2019 before S.B.


Muhammad Amin Khan Kundi
Member

23.01.2019 Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Women Medical Officer) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 with the prayer that the respondents may be directed to issue revised regularization order of the appellant w.e.f the initial date of appointment of the appellant.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit process fee and security within 10 days thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 06.02.2019 before S.B.

Appellant Deposited
Security & Process Fee


Member

06.2.2019

Clerk for counsel for the appellant and Addl. AG for the respondents present.

Learned AAG states that he has not been contacted by representative of respondents regarding preparation of requisite reply, therefore, requests for adjournment. Adjourned to 20.03.2019 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1224 /2018

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 05/10/2018 | <p>The appeal of Dr. Khalida Yasmeen presented today by Mr. Muhammad Ayub Shinwri 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 5/10/18</p> |
| 2- | 9-10-18 | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>15-11-2018</u></p> <p style="text-align: center;"><i>[Signature]</i> CHAIRMAN</p> <p><i>15-11-2018 Due to retirement of Honorable Chairman the Tribunal is non functional therefore the case is adjourned to come up the same on 3-1-2019</i></p> <p style="text-align: right;"><i>[Signature]</i> Recorder</p> |

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 1224 /2018

Dr Khalida Yasmeen

.....Appellant


Versus

Government of KPK through Chief Secretary & others

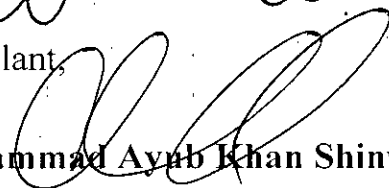
.....Respondents

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| 2. | Condonation application and affidavit | | | 7-8 |
| 3. | Copy of Appointment order of Appellant | | A | 9 |
| 4. | Copy of the Directives | 10-08-05 | B | 10-12 |
| 5. | Copy of the judgment | | C | 13-29 |
| 6. | Appointment and Regularization order of Dr M Iqbal | | D & E | 30-31 |
| 7. | Copy of Directives | 27-02-13 | F | 32-33 |
| 8. | Copy of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 | | G | 34-36 |
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| | | | | |


Appellant,

Through


Muhammad Ayub Khan Shinwari
Advocate Peshawar

Chamber:

7-A, Haroon Mansion,
Khyber Bazar, Peshawar.
Cell No 03219068514

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 1224 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1458

Dated 05-10-2018

Dr Khaida Yasmeen D/o Ali Hussain,
Distt Specialist, Gynaecology, W & C Hospital,
Rajjar, Charsadda

.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Department of Health, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
5. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

**Service Appeal Under Section 4 of Khyber
Pakhtunkhwa Service Tribunal Act, 1974 against
Notification dated 17-10-2017**

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

1. That the appellant was appointed as Medical Officers (BPS-17) in the respondent Department on contract basis by the competent authority in the prescribed manner after fulfilling all the codal formalities vide appointment order dated 03-12-1995. (Copy of the appointment order is filed herewith and attached as **Annex-A**)

2. That the said contract was extended from time to time. Meanwhile the Government of Khyber Pakhtunkhwa erstwhile NWFP promulgated NWFP Civil Servants (Amendment) Act (IX) 2005 whereby Section 19 of the NWFP (now Khyber Pakhtunkhwa) Civil Servant Act, 1973 was amended and the services of all the contract employees were regularized.

3. That thereafter respondent No 3 i.e., Secretary, Establishment and Administration Department, Regulation Wing, Khyber Pakhtunkhwa, Peshawar issued a directive dated 10-08-2005, wherein all the administrative Secretaries of the province were directed to the effect that all the

Filed to-day

Registrar

5/10/18

Government employees whose services are regularized under the NWFP (now Khyber Pakhtunkhwa) Civil Servant (Amendment) Act, 2005 shall be for all intents and purposes be Civil Servants except pension as laid down in NWFP (now Khyber Pakhtunkhwa) Civil Servant Act, 2005, meaning thereby that they are civil servants with effect from the date of appointment under Section 2(2) read with Section 19 of Khyber Pakhtunkhwa Civil Servant Act, 1973. (Copy of the directive is attached herewith as **Annex-B**)

4. That after the promulgation of the aforesaid NWFP Civil Servants (Amendment) Act (IX) 2005, the respondents were reluctant to regularize the services of the Appellant falling in the ambit of the aforesaid Act, the colleagues filed various Writ Petitions including Writ Petition No 1510/2007 before the Honorable Peshawar High Court, Peshawar which were allowed vide Judgment and order dated 18-11-2008 wherein an elaborate findings have been given on the prescribed manner of appointment for contract employees and other related issues falling in the ambit of NWFP Civil Servants (Amendment) Act, 1973. (Copy of the Judgment and Order is attached herewith as **Annex-C**)
5. That in pursuance of the aforesaid Judgment and Order of this Honorable Court in the said Writ Petitions, the Respondents regularized the services of the Appellant and his colleagues but with effect from the date of promulgation of NWFP Civil Servants (Amendment) Act (IX) 2005 i.e., 23-07-2005 whereas one of the colleagues of Petitioners namely Dr Muhammad Iqbal S/o Amir Waiz Khan who was much junior than the Appellant, was initially appointed on contract basis vide Office Order 08-07-1998 has been regularized with effect from the date of his contractual appointment. (Copy of Appointment and Regularization order of Dr M Iqbal are filed herewith and annexed as **Annex-D & E**)
6. That the Government of Khyber Pakhtunkhwa further amended the section 19 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 vide Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 wherein it is clearly mentioned that those who are appointed in the prescribed manner to a service or post on or after 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis and the respondent No 4 has also issued direction to implement it. (Copy of the directives and Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 are attached herewith as **Annex-F & G**)
7. That after the promulgation of the aforesaid Act, the Appellant was again under legitimate expectancy that his revised regularization order will be issued by the respondents under Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 with effect from initial date of appointment but all in vain.

8. That the Appellant approached the respondents several times for redressing his grievance, to issue their revised regularization order under Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 with effect from the initial date of appointment but all in vain. Hence, the colleagues of the appellant filed Writ Petition No 3960-P/2014 before the Peshawar High Court, Peshawar. The said Writ Petition was disposed off vide Judgment and Order dated 20-12-2016 with the following directions:

“Arguments were heard at length. It has been clearly mentioned in clause-5 of substituted Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 that in case any difficulty arises in giving effect to any of the provisions of this section, the secretary to Government, Establishment Department shall constitute a Committee comprising of Secretary to Government, Finance Department, Secretary to Government Law Department and Accountant General, Khyber Pakhtunkhwa for removal of the difficulty. When the learned AAG was confronted with the aforesaid clause of Act, he conceded the same.

In view of the concurrence of learned AAG, we direct the respondents to constitute a Committee in light of clause-5 of Act (Ibid) with fifteen (15) days. The Petitioners are directed to file their Departmental appeals before the said committee, who is directed to dispose of the same within next one month by giving explicit reason”

(Copy of the judgment is filed herewith and attached as **Annex-H**).

9. That in pursuance of the aforesaid Judgment, the respondents have issued the impugned Notification whereby the services of the Appellant have been regularized with effect from 01-07-2001. (Name of the appellant is at serial No 235 of the impugned Notification) (Copy of the impugned Notification is filed herewith and annexed as **Annex-I**)
10. That feeling aggrieved of the aforesaid Notification, the appellant filed Departmental Appeal which has not been decided yet and the statutory period for deciding the Departmental Appeal has lapsed. (Copy of the Departmental Appeal is filed herewith and annexed as **Annex-J**)

Hence, the instant Service Appeal on the following amongst other grounds:

Grounds:

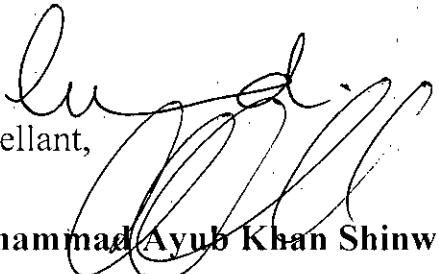
- a. That the impugned Notification of respondent Department is against the law, illegal, unlawful and without lawful authority.
- b. That the treatment met to the Appellant is against the fundamental rights of the Petitioners enshrined and protected under the Constitution of Islamic Republic of Pakistan, 1973.

- c. That both the NWFP Civil Servants (Amendment) Act (IX) 2005 and Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 are regularization laws whereby the services of the contract employees are regularized, both the Acts have not made *de novo* appointments or creating a new job on regular basis of contract employees. Both the Acts are promulgated for an uninterrupted continuation of the service of the previous contract employees till the completion of their normal tenure and making their employment status equal to their contemporaries appointed on regular basis and as such the respondents are duty bound to regularize the service of the Appellant with effect from initial date of appointment by issuing amended regularization Notification.
- d. That Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 is a beneficial legislation as it had regularized the services of all the contract employees falling in its ambit. The said Act has substituted Section 19 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 by a deeming clause and created a legal fiction by laying down that those who are appointed in the prescribed manner to a service or post on or after the 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis. It is a well settled principle of interpretation of statutes, that the interpretation of statute should be beneficial, and one which would advance the object of legislation, suppress the mischief and advance the remedy and not one which would lead to its frustration. In the instant case, the respondents are duty bound to implement the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 in its letter and spirit and issue revised regularization orders of the Appellant.
- e. That as per settled principles of interpretation of Statutes, the statute has to be read as a whole and its provisions cannot be read in isolation. In the instant case Section 2(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 and its other provisions read with its Section 19 amended by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 entitles the Appellant for regularization with effect from initial date of appointment.
- f. That under the rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, the service of the Appellant with effect from dates of appointment till date of regularization i.e., 03-12-1995 to 01-07-2001 shall be counted for pension or gratuity.
- g. That the treatment met to the Appellant is against the dictums of August Supreme Court of Pakistan and this Honorable Court.
- h. That the treatment met to the Appellant is not only based on discrimination but also the same is based on colorful exercise of powers which is not warranted under law.
- i. That the treatment met to the Appellant is not only against the principles of natural justice but also against the settled principles of administrative law.

- 5
- j. That the Appellant crave permission of this Honorable Tribunal to rely on other grounds at the time of arguments and produce any additional document if required in support of his Service Appeal.

It is, therefore, prayed that on acceptance of the title Service Appeal, the impugned Notification may kindly be set aside and the respondents may kindly be directed to issue revised regularization order of the Appellant with effect from initial date of appointment and also be granted graded pay and seniority and other pension benefits with effect from the initial date of appointment and making her employment status equal to his contemporaries appointed on regular basis.

Any other relief, deemed fit and appropriate by this Honorable Tribunal, in the circumstances of the service appeal which has not been prayed for, may graciously be granted.


Appellant,
Through
Muhammad Ayub Khan Shinwari
Advocate Peshawar.

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2018

Dr Khalida Yasmeen

.....Appellant

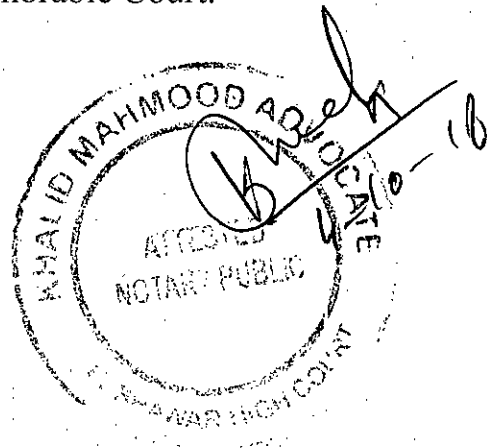
Versus

Government of KPK through Chief Secretary & others

.....Respondents

Affidavit

I, Dr Khlida Yasmeen D/o Ali Hussain, Distt Specialist, Gynaecology, W & C Hospital, Rajjar, Charsadda do hereby solemnly affirm and declare on oath that the contents of the accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



Khalida Yasmeen
Deponent

7

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No _____/2018
in

Service Appeal No _____/2018

Dr Khalida Yasmeen

.....Appellant

Versus

Government of KPK through Chief Secretary & others

.....Respondents

Application for condonation of delay

Respectfully Sheweth,

The appellatant submits as follows:

1. That the title Service Appeal is pending adjudication before this Honorable Tribunal, wherein no date of hearing is fixed yet.
2. That identical Service Appeals with the same facts and prayer against the impugned Notification are filed by the colleagues of the appellatant and are pending adjudication before this Honorable Court wherein notices are issued to the respondents, hence the title Service Appeal being against the same impugned Notification may kindly be admitted and clubbed with aforesaid service appeals and the delay in filing may kindly be condoned.
3. That the Appellant crave permission of this Honorable Tribunal to rely on other grounds at the time of arguments and produce any additional document if required in support of his Service Appeal.

It is, therefore, prayed on acceptance of the instant application the delay in filing the title service appeal may kindly be condoned and be decided on merits.



Appellant,

Through



Muhammad Ayub Khan Shinwari

Advocate Peshawar.

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No _____/2018
in

Service Appeal No _____/2018

Dr Khalida Yasmeen

.....Appellant

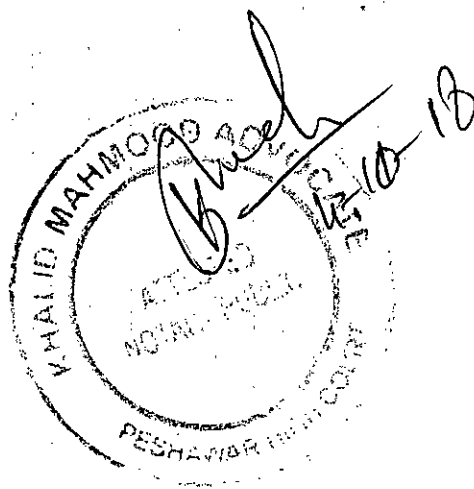
Versus

Government of KPK through Chief Secretary & others

.....Respondents

Affidavit

I, Dr Khlida Yasmeen D/o Ali Hussain, Distt Specialist, Gynaecology, W & C Hospital, Rajjar, Charsadda do hereby solemnly affirm and declare on oath that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



Deponent

Annex

9

DIRECTORATE GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

NO: _____/E-I,

DATE: _____/1995.

To,

Dr. Khalida Yasmin D/O Ali Hussain.

SUBJECT:- OFFER OF APPOINTMENT ON CONTRACT BASIS.

MEMORANDUM:-

Reference your application on the above subject for the post of Medical Officer/Women Medical Officer/Dental Surgeon.

1. The Competent authority is hereby appoint you as Medical Officer/Women Medical Officer/Dental Surgeon in the Health Department, Govt: of NWFP, on contract basis in B-17 for a period of one year or till the availability of Public Service Commission selectee/return of original incumbent from leave/deputation whichever is earlier, on the terms and conditions laid down in the attached Agreement Deed. You shall be posted to WMO SHS Kohat.
This contract appointment is not transferable.
2. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
3. If you accept the offer of appointment on contract basis as a Medical Officer/Women Medical Officer/Dental Surgeon, the attached Agreement Deed should be filled in duly signed by you and should report at your own expense.
4. If you fail to report for duty at the station specified in para-3 above, within Ten (10) days, the offer of appointment on contract basis will be deemed to have been withdrawn automatically and no further correspondence shall be entertained in this respect.

(DR. AZHAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

NO 31701-4 /E.I. DATED PESHAWAR THE 3 / 12 /1995.

Copy forwarded to the :-

1. Secretary to Govt: of NWFP, Health Deptt: Peshawar for information with reference to his lettee No. SO(H)IV/3-18/93, dated 16th Nov: 1995.
2. Medical Superintendent, _____ for information and n/action.
3. Divisional Director Health Services, Kohat.
4. District Health Officer/Agency Surgeon, Kohat.
5. Accountant General, NWFP Peshawar.
6. District/Agency Accounts Officer, Kohat.

for information and necessary action please.

Handwritten signature and date: 28/11/96

(DR. AZHAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

ATTACHED

ANNEX B 10

حکومت صوبہ سرحد

سٹیبلشمنٹ اینڈ ایڈمنسٹریشن ڈیپارٹمنٹ
(ریگولیشن ونگ)

کتابخانہ

موزی پشاور ۱۵ اگست ۲۰۰۵ء

نمبر افسرینڈ فو ایڈ ۶ (ای اینڈ اے ڈی) ۱-۱۳/۲۰۰۵ء

خدمت

- ۱- تمام انتظامی معتمدین حکومت صوبہ سرحد
- ۲- معتمد برائے گورنر صوبہ سرحد
- ۳- معتمد برائے وزیر اعلیٰ صوبہ سرحد
- ۴- معتمد صوبائی اسمبلی سکریٹریٹ
- ۴- تمام ڈسٹرکٹ ڈپٹی کمشنرز، صوبہ سرحد
- ۵- رجسٹرار پشاور ہائی کورٹ پشاور
- ۶- معتمد پیپک سرحدس کمیشن صوبہ سرحد
- ۷- رجسٹرار سرحدس ٹریڈ اینڈ پشاور
- ۸- اکاؤنٹنٹ جنرل صوبہ سرحد پشاور
- ۹- تمام سربراہان ملحقہ محکمہ جاہت صوبہ سرحد
- ۱۰- تمام سربراہان خوردقنار / نیم خوردقنار ادارہ جات صوبہ سرحد
- ۱۱- تمام سٹیبلشمنٹ رابٹل افسران رٹنار ان سیاسی صوبہ سرحد

شمال مغربی سرحدی صوبہ کی سول ملازمین ہجریہ ۱۹۷۳ء تا ۱۹۷۴ء میم ایکٹ ۲۰۰۵ء کا نفاذ عنوان :-

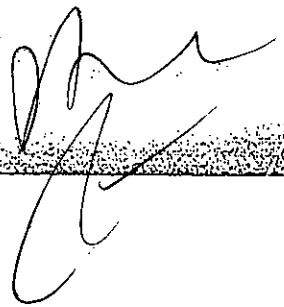
صوبائی کابینہ نے سال ۲۰۰۲ء کا بجٹ منظور کرتے ہوئے فیصلہ کیا کہ آئندہ تمام باقاعدہ آسامیوں پر تعیناتی بذریعہ کنٹریکٹ کی جائے گی۔ تاکہ پنشن کی مد میں بڑھتے اخراجات سے چھٹکارا پایا جائے۔ واضح رہے کہ پراجیکٹ پوسٹوں، تھوڑے عرصے والے آسامیوں اتقائی مضارف (Contigent paid staff) سے نکلنے والے افراد دوبارہ تعیناتی اور کمیشن کے ذریعے زیر التوا آسامیوں پر تعیناتی پہلے بھی بذریعہ کنٹریکٹ کی جاتی تھی اور آئندہ بھی جاری رہے گی۔ یکم جولائی ۲۰۰۵ء سے تیل سٹریٹ پر تعیناتی پیپک سرحدس کمیشن سے داخلہ اختیار نہیں تھی۔ پیپک سرحدس کمیشن سے درجہ میں ترمیم کے ذریعے انہیں یہ اختیار دیا گیا۔

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۲۔ منگہ خزانہ صوبہ سرحد نے بحوالہ مراسلہ نمبر FDI/(SOSR-II)12-1/2002 مورخہ ۲۶ اکتوبر ۲۰۰۲ء کو صوبائی حکومت میں تمام باقاعدہ آسامیوں کو پُر کرنے کیلئے کنٹریکٹ پالیسی جاری کیں۔ کنٹریکٹ پالیسی ہائیکلی جائزہ لی گئی۔ اور صوبائی کابینہ کی منظوری سے سول سرورٹ ایکٹ بحریہ ۱۹۷۳ء کی شق نمبر ۱۹ میں ترمیم کی منظوری دی۔ ترمیمی ایکٹ ۲۰۰۲ء کی منگہ ہے۔ مذکورہ ترمیم کے مطابق یکم جولائی ۲۰۰۲ء سے لیکر اس قانون کے نافذ ہونے تک مجوزہ طریقہ کار کے مطابق مجاز فورم کی سفارشات پر وہ تمام افراد جو باقاعدہ منظور شدہ آسامیوں پر تمام قانونی لوازمات پوری کرنے کے بعد کنٹریکٹ پر تعینات کیے گئے تھے سول سرورٹ قصور کیے جائیں گے۔ اور وہ تمام مراعات کے حقدار ہونگے جو کہ سول سرورٹ ایکٹ میں پہلے سے موجود ہیں ماسوائے پنشن کے۔ یہ افراد پنشن کی بجائے شراکتی کفایت شعاری فنڈ (CP FUND) کے حقدار ہونگے جس کے لیے متعلقہ ملازم اور حکومت دونوں بحساب دس فیصد ادائیگی کریں گے۔

۳۔ وہ تمام ملازمین جو باقاعدہ سول سرورٹ تعینات ہیں وہ بدستور پنشن کے حقدار ہونگے۔ وہ تمام کنٹریکٹ ملازمین جو کہ مجاز فورم کی سفارشات یا مجوزہ طریقہ کار کے مطابق بھرتی نہیں ہوئے یا پراجیکٹ پوسٹوں، عارضی آسامیوں یا اتفاقی منسٹرف سے کنسڈریشن پر تعینات افراد جو کنٹریکٹ کی بنیاد پر تعینات کیے گئے تھے وہ بدستور کنٹریکٹ ملازمین رہیں گے اور ان کی ملازمت کے شرائط و قواعد وہی ہونگے جنکی بنیاد پر انکی بھرتی کی گئی تھی۔ واضح رہے کہ مجاز فورم سے مراد صوبائی پبلک سروس کمیشن اور حکمانہ چناؤ کمیشیاں ہیں۔ جنکے ذریعے تعیناتی کی سفارشات کی جاتی ہیں۔ جو آسامیاں پبلک سروس کمیشن کے دائرہ اختیار میں آتی ہیں ان کے لیے پبلک سروس کمیشن ہی مجاز فورم ہے۔ اور جو آسامیاں پبلک سروس کمیشن کے دائرہ اختیار میں نہیں آتی ہیں ان کے لیے حکمانہ چناؤ کمیشیاں مجاز فورم ہیں۔ بشرطیکہ دیگر تمام لوازمات کو ملحوظ خاطر رکھا گیا ہو۔

۴۔ مندرجہ بالا قانون کے نفاذ کے بعد آئندہ تمام باقاعدہ منظور شدہ آسامیوں پر مجوزہ طریقہ کار کے مطابق اور مجاز فورم کی سفارشات پر باقاعدہ بھرتی بحیثیت سول سرورٹ کی جائیگی۔ تاہم پیشکش ملازمت (Offer of appointment) میں یہ واضح طور پر لکھا جائے گا کہ یہ افراد پنشن کی بجائے حکومت کے مقرر کردہ شراکتی کفایت شعاری فنڈ کے حقدار ہوں گے۔ لہذا تمام منگہ جات کو ہدایت کی جاتی ہے کہ یکم جولائی ۲۰۰۲ء سے لیکر مندرجہ بالا قانون کے نفاذ تک باقاعدہ آسامیوں پر مجاز فورم کی سفارشات اور مجوزہ طریقہ کار کے ذریعے بھرتی کئے گئے کنٹریکٹ ملازمین کی ریگولر ازمیشن کیلئے متعلقہ مجاز حکام سے منظوری حاصل کی جائے۔ نلصہ جات میں اس بات کی تصدیق کی جائے کہ مذکورہ آسامی ایک باقاعدہ آسامی ہے۔ اور اس پر بھرتی مجوزہ طریقہ کار اور مجاز فورم کی سفارشات پر تمام قانونی تقاضے پورے کرنے کے بعد لائی گئی تھی۔



مندرجہ بالا ہدایات پر سختی سے عمل درآمد کی درخواست کیجاتی ہے۔ اس خط کی موصولی کی تصدیق کی جائے۔

محمد بہاؤ الدین

(محمد ہمایون)

مستند خصوصی (ضوابط)

نقل برائے اطلاع:-

- ۱- حساب دار عمومی صوبہ سرحد
- ۲- تمام ضلعی ڈائریجنسی انسران حساب داری صوبہ سرحد
- ۳- ذاتی مستند برائے وزیر اعلیٰ صوبہ سرحد
- ۴- ذاتی مستند برائے گورنر صوبہ سرحد
- ۵- ذاتی مستند برائے مستند اعلیٰ صوبہ سرحد
- ۶- ذاتی مستند برائے سینئر ڈپٹی صوبہ سرحد
- ۷- تمام ذاتی مستند برائے صوبائی وزراء

حسین شاہ

(حسین شاہ)

نائب مستند (ضوابط)

تظہیر نمبر تاریخ التناہ:-

نقل برائے اطلاع:-

- ۱- تمام انسانی مستند برائے نائب مستند جگہ اسٹیبلشمنٹ اور ایڈمنسٹریشن صوبہ سرحد پشاور
- ۲- ناظم سٹاف ٹریننگ انسٹیٹیوٹ بینڈولیت فنڈ بلڈنگ پشاور صدر
- ۳- تمام سیکشن آنسران اسٹیٹ آنسرنگ اسٹیبلشمنٹ اور ایڈمنسٹریشن صوبہ سرحد پشاور۔
- ۴- ذاتی مستند برائے مستند جگہ اسٹیبلشمنٹ صوبہ سرحد پشاور
- ۵- اسٹنٹ، مستند بینڈولیت فنڈ اسٹیبلشمنٹ اور ایڈمنسٹریشن صوبہ سرحد پشاور
- ۶- مہتمم کتب خانہ جگہ اسٹیبلشمنٹ اور ایڈمنسٹریشن صوبہ سرحد پشاور

محمد رفیق

(ستارہ فقیر)

افسر صیغہ (ضوابط - ۶)

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Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No.1510 of 1997.

JUDGMENT.

Date of hearing.....18-11-2008.....

Petitioners (Dr. Rizwanullah and others) By Mr. Poshul Armin, Advocate

Respondents (Sonal, etc.) By M/s. Kaiser, Rasheed, Adil, A. S., Dr. Alam
Durr, M. T. Director Health & Budget, S.O. Health.

DOST MUHAMMAD KHAN, J.-

This single

judgment shall also decide the following connected writ petitions:-

- (i) Writ Petition No. 1509/07,
Dr. Aziz Khan and others
Versus -
Government of NWFP and others;
- (ii) Writ Petition No. 1059/07,
Mohammad Khalid and another
Versus
Province of NWFP through Secretary Zakat
and others;
- (iii) Writ Petition No. 1742/07,
Dr. Mumtaz Hussain and another
Versus
Government of NWFP and others;
- (iv) Writ Petition No. 739/08,
Dr. Mansoor Ahmand and others
Versus
Government of NWFP and others;

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Peshawar High Court

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Peshawar High Court

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(v) Writ Petition No. 1741/07,
Dr. Ali Muhammad and others
Versus
Government of NWFP and others;

(vi) Writ Petition No. 1721/07,
Dr. Tehmina Jalil
Versus
Government of NWFP and others;

(vii) Writ Petition No. 1677/07,
Dr. Mustafa and others
Versus
Government of NWFP and others;

(viii) Writ Petition No. 1842/07,
Dr. Muhammad Jawad
Versus
Government of NWFP and others;

(ix) Writ Petition No. 1846/07
Dr. Farkhanda Jabeen
Versus
Government of NWFP and others;

(x) Writ Petition No. 2088/07,
Dr. Hamidullah
Versus
Government of NWFP and others;

(xi) Writ Petition No. 1682/07
Dr. Shah Wali Khan
Versus
Government of NWFP and others;

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(xii) Writ Petition No. 27/2008,
Fida Muhammad Khan
Versus
Government of NWFP and others;

(xiii) Writ Petition No. 365/08,
Dr. Saleem Qasim and others
Versus
Government of NWFP and others;

(xiv) Writ Petition No. 460/08,
Abdur Rashid Pharmacist
Versus
Government of NWFP and others;

(xv) Writ Petition No. 908/08,
Dr. Aurangzeb
Versus
Government of NWFP and others;

(xvi) Writ Petition No. 2090/07,
Dr. Shahida Begum
Versus
Government of NWFP and others;

(xvii) Writ Petition No. 242/07
Dr. Abdul Qasim
Versus
Government of NWFP and others;

(xviii) Writ Petition No. 2002/07,
Tauseef Aman
Versus
Government of NWFP and others;

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because identical questions of law having decisive force are involved in all these petitions.

2. Before taking for discussion the law points involved herein, it is deemed proper to mention here that during hearing in the case of Dr. Farmanullah vs. Chief Secretary, Government of NWFP and others (Civil Appeal No. 504/2008) before the Honourable Supreme Court, the learned Additional Advocate General, NWFP made a statement that Writ Petition No. 1510/2007 (the present one) involving similar questions of law was pending before this Court, thus, made a prayer that as a rule of propriety, the above Civil Appeal No. 504/2008 shall be kept pending so that the ibid Writ Petition No. 1510/2007 (of the present petitioner) is disposed of and the Apex Court was pleased to order accordingly. The Registrar of this Court was directed to place the said Writ Petition No. 1510/2007 before the Honourable Chief Justice for expeditious disposal. After receipt of the said order, the Honourable Chief Justice directed listing of all these cases for early disposal.

3. Today preliminary arguments were heard and because 2 judgments of this Court delivered in the case of Miss Shagufta Sayed and others vs. Government of N.W.F.P. Writ Petition No. 1731/2006

ATTESTED decided on 11.9.2007 and the other given in the case of Mst. Naveed Yousaf, PST and 21 others vs. E.D.O. and others Writ Petition No. 1648/07 dated 24.9.2008 was cited at the Bar, therefore, this petition along with the above connected writ petitions were admitted to full

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hearing. The learned Additional Advocate General and the learned counsels representing the petitioners in the above petitions agreed that let all be decided today because of the directions given by the Apex Court and with the consent of the learned Additional Advocate General, the para-wise comments filed in this petition were treated as comments in all the above writ petitions because he did not want to add any thing to the already submitted comments in this case. The learned counsels were directed to address the Court after the break.

4. Arguments heard and available record/documents annexed with the said petitions were perused and the admitted position in all these cases on factual side is that all the petitioners in these petitions were initially appointed on contract basis by the departmental heads/departmental selection committees and their appointments were duly notified by the Government.

5. Some of the petitioners were appointed way back in 1995, others in 1999 and their contract period was duly renewed/extended from time to time through various notifications issued by the competent departmental authority. The last one in the series in some cases was issued in the year 2004 while in other cases, the last notifications were

issued in the year 2007. Thus the learned Additional Advocate General did not dispute that the present petitioners were holding posts in the Health and other departments as employees appointed on contract basis when the NWFP Civil Servants (Amendment) Act (IX) of 2005 came

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BY
MEMBER
Chairman High Court

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into force on 23rd July, 2005. He also did not controvert that after the notification of the Act in the extra ordinary gazette of N.W.F.P., some of the petitioners were still kept as contract employees by their respective departments, extending the tenure of their contract employment vide different notifications issued from time to time. Thus, it is an established fact that the petitioners in this writ petition and all those in the connected writ petitions, were contract employees working on their respective posts at the time when the NWFP Civil Servants (Amendment) Act (IX) 2005 came into effect.

6. The learned counsel for the petitioners, in all these petitions, raised the following points of law which, may be summed up as follows:-

- "(i) this Court in the case of Miss Shagufta Sayed and others vs. Government of N.W.F.P. and others, vide judgment given in Writ Petition No. 1731/2006 dated 11.9.2007 had conclusively decided all the law points involved herein. Thus a subsequent D.B. cannot hold a different opinion from the one already formed;
- (ii) that admittedly the petitioners in all these petitions were contract employees under the Government of NWFP and were serving in different departments when the Amendment Act (IX) of 2005 came into effect. Thus in view of the amendments introduced in S.19 of the NWFP Civil Servants Act XVIII of 1973 on the strength of sub-section (2) of Section 2 of the Amendment Act 2005, the contract services of all the petitioners ipso facto stood regularized but the respondents, putting unreasonable and irrational construction on the above provision of law, have refused to regularize their services which is, an act ab initio void and coram non iudice;

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Panchayat High Court

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OR

- (iii) that all these petitioners were duly selected and appointed in the prescribed manner on contract basis by the competent authority and all of them have successfully undergone written test/interview taken by the departmental selection committees/competent authorities; and
- (iv) The contract employment of the petitioners was extended from time to time till the date when they earned the benefit of the provision of the Amendment Act (IX) 2005 and because the Provincial Government has regularized similar contract employees in different Provincial Departments simply through executive orders/notifications but the petitioners herein, are given discriminatory treatment which has been forbidden by the constitutional command contained in Articles 4, 8 and 25 of the Constitution, 1973.

7. The learned Additional Advocate General, raised three-fold contentions with regard to the legal propositions involved herein, which are briefly cited below:-

- (i) that all the petitioners were appointed on contract basis under a written agreement as stopgap arrangement and they were supposed to quit the posts they were holding, on the arrival of the selectees of the NWFP Public Service Commission;
- (ii) that the petitioners are estopped by their conduct because even after the promulgation/coming into force of the Civil Servants (Amendment) Act (IX) 2005, they sat quiet and did not agitate their grievance with regard to non-regularization of their services. Thus they cannot avail any relief from this Court.
- (iii) that rule (4) of the N.W.F.P. Public Service Commission (Functions) Rules, 1983 amended vide Notification No. SOR-1(E&AD)1-99/73 dated 2.11.2002 has impliedly brought the selection of civil servant on contract for BPS-11 and above, within jurisdiction/powers of Public Service Commission, therefore, the petitioners herein were not appointed in the "prescribed manner". Hence, they are not entitled to avail the beneficial provision of subsection (2) of Section 2 of the Amended Act (IX) 2005 because they were selected/appointed by the departmental heads/Selection committees and not by the Provincial Public Service Commission.

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 Provincial High Court

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8. The learned Additional Advocate General has laid considerable stress on the amended rule (4) *ibid*, therefore, we have to take up the same for discussion in the first instance as it has incisive and decisive role in determining the eligibility of all the petitioners under the provision of subsection (2) of Section 2 of the Amendment Act (IX) 2005.

9. Under the provision to Section 2 (1) (b) of NWFP Civil Servants Act 1973 civil servant has been defined and under clause (ii), those employed on contract, or on work charged basis, or those paid from contingencies are excluded from the said definition. Similarly Section 25 of the N.W.F.P. Civil Servant Act (NWFP Act No. XVIII of 1973), has conferred powers on the Governor of the Province or any person authorized by him to appoint persons on contract basis. The same is reproduced below:-

"25. Appointment of persons on contract etc: The Governor or any person authorized by the Governor in that behalf may, on such terms and conditions as he may specify in each case, appoint persons on contract basis, or on work charged basis or who are paid out of contingencies:

Provided that all such employees who were working in any such capacity immediately before the commencement of this Act shall continue to be so employed on the same terms and conditions on which they were appointed."

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K. K. PALANIYANDI
Punjab High Court

10. The plea of the learned Additional Advocate General that due to amendment in rule-4 of the NWFP Public Service Commission

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(Functions) Rules 1983; in 2002, the appointments of persons on contract basis has also been brought within the fold of NWFP Public Service Commission is absolutely untenable in law because firstly the said rule contained a non obstante clause and it has clarified in clauses (i) to (iii) that certain posts shall be outside the purview of the Commission. Even if it is construed in the way, the learned Additional Advocate General desires, it would come in conflict with the clear and explicit provisions of subsection (2) of Section 2 and Section 25 of the N.W.F.P. Civil Servant Act 1973 wherein appointment of persons on contract basis has been taken out of the purview of Provincial Public Service Commission being not regular civil servants and the Governor or a person authorized by him in this behalf shall be the authority for appointment of persons on contract basis:

11. It is an ironclad principle with regard to the interpretation of Statute that when any rule/regulation or executive order made/passed by any authority under delegated powers of legislation comes in conflict with the Statute made by the legislature, then it shall be void to that extent and shall give way to the parent Statute which shall have overriding and superimposing effect. In the case of GATRON (INDUSTRIES) LIMITED VS. GOVERNMENT OF PAKISTAN

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and others (1999 SCMR 1072), it was held by the Apex Court that rights created by a Statute cannot be taken away through executive order of rule making authority. The object of delegation of rule making powers is always aimed at to carry out and achieve the objects and purposes of an

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Act of legislature. Thus a rule making authority cannot enact a rule to override or render the main Statute ineffective. Therefore, the view of the learned Additional Advocate General being based on misconception, cannot prevail. Amended rule (4) even if construed the other way as was suggested, is ultra vires being in direct clash/conflict with the main Statute. Section 26 of the NWFP Civil Servants Act 1973 also clearly explains the above position which admits of no doubt nor it suffers from any ambiguity to be debated upon.

12. Under the provision of Section 25 of the NWFP Civil Servants Act, 1973, the Provincial Government, through different notifications/orders/circulars has authorized the administrative secretaries/heads of the attached departments as competent authority for the appointment of persons on contract basis and the table given there under, was not contested by the learned counsel for the Government.

13. The posts which the petitioners are/were holding on contract basis, were duly advertised in the prescribed manner by the competent authority, the petitioners applied for the same, they appeared before the Selection Committees/Departmental Authority in due course and have successfully undergone the tests and interviews thus, were selected on merits but on contract basis. Their contractual services were consistently

renewed from time to time and they retained the said posts till the time when the NWFP Civil Servants (Amendment) Act (IX) 2005 came into force on 23rd July, 2005.

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High Court

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14. To understand the relevant provisions i.e. subsection (2) of Section 2 of the Amendment Act.(IX), the same is reproduced below:-

"Subsection (2). A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act but appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on a regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act shall, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the contributory provident fund, along with the contributions made by Government to his account in the said fund, in the prescribed manner."

15. The language of the above provision is plain and well conceivable, therefore, leave nothing in doubt with regard to the regularization of contractual services of the petitioners. The deeming phrase used therein has put a seal of endorsement on this view. Second part of the above provision has almost conclusively determined the matter in controversy because the two terms used therein i.e. "all such persons and the persons appointed on regular basis to a service or post in the prescribed manner" clearly lays down that the employees on contract basis now regularized and those appointed on regular basis (through Public Service Commission) for all intents and purposes be

civil servant except for the purposes of pension and gratuity. A clear line of demarcation has been drawn by the legislature between the two categories of civil servants, the one who are taken on contract basis but regularized through the above provision and those appointed on regular

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Himachal Pradesh High Court

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basis through the Public Service Commission both have been referred to with clear intents but for the purposes of pensionary benefits. If the legislature intention was that only those persons appointed on regular basis shall be deemed to be a civil servant, then it would have never employed the words all such persons which has direct nexus with the petitioners. Thus the view of the learned counsel for the Government is absolutely misplaced and untenable in law.

16. A bare look at the history of legislation on this subject in the past further reinforced the above view that the petitioners' services have been duly regularized by the legislature and nothing has been left for the executive to notify their names in the official gazette or to pass any executive order. In this regard, the NWFP Adhoc Civil Servants (Regularization of Services) Act-II of 1987 is much relevant wherein a proviso was added to Section 3 thereof to the following effect:-

"Provided that—

- (i) the services of such civil servants shall be deemed to have been regularized under this Act only on the publication of their names in the official Gazette;"

In the NWFP Employees on contract basis (Regularization of Services) Act VIII of 1989, S.4 is couched in the following words:-

"S.Regulation of services of certain Civil Servants: (I) Notwithstanding anything contained in any law for the time being in force, any Civil Servant, who is or has been

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19. The above discussion and the reproduction of different legislation made from time to time by the Provincial Assembly lead one to a definite conclusion which shall go without any fear of rebuttal that the petitioners' contractual services were duly regularized and the phrase "prescribed manner" so used in the former and for those who are regularly appointed (repeated) would lead to an inference that the Act (IX) has drawn a clear distinction between the petitioners and those who are appointed on regular basis otherwise there was no need to mention both the categories of employees tagged with the words "prescribed manner". Thus the impression given by the learned counsel for the Government is absolutely fallacious and does not stand to reason. As already discussed in the earlier para, the appointment of employees on contractual basis have been taken away from the purview and domain of NWFP Public Service Commission and for such appointments, the above statutory provision has authorized the Governor of the Province or those authorized/appointed by him to be the competent authorities for appointment of contract employees. Therefore, if the amended rule-4 of the NWFP Public Service Commission (Functions) Rules, 1983 is construed in the way adopted by the said counsel, then in that case the rule can be held to be ultra vires because it has been framed/issued by the Government under the delegated powers of legislation is for all intents and purposes must remain subordinate and subservient to the statutory law and the latest shall override the same for all purposes and intentions.

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Peshawar High Court

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20. The two categories of employees i.e. contract employees and regularly appointed employees are thus placed under the domain of two different authorities i.e. the Governor or persons authorized by him and the Provincial Public Service Commission. Thus the statutory law has provided two different channels for appointment of the above two categories of employees. Hence, the appointment of contract employees by the authorities/departmental heads/selection committees etc. authorized by the Governor is an appointment in the "prescribed manner" and similarly for regular appointment of civil servants through Public Service Commission to a post in civil service of the Province is another mode of appointment in the "prescribed manner". Both the matters/channels on no yardstick or legal basis can be intermingled for the purpose of holding the contrary view because both have been placed by the statutory law poles apart. Both the authorities i.e. the one authorized/appointed by the Provincial Government and the Provincial Public Service Commission, under the statutory law have domain over the appointment/selection of two different types/categories of employees. However, to be more clear the appointments of the petitioners were made by the above referred authorities in the "prescribed manner" by the departmental authorities/administrative secretaries in the manner prescribed by the statutory law i.e. in the "prescribed manner". Therefore, the petitioners on the strength of subsection (2) of Section 2 of the Act (IX) 2005 are undoubtedly entitled to regularization of their services and they have been duly regularized under the above provision of law and no executive authority

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within the Province has been left with any powers or authority to undo what is intended by the legislature. They have no role to play in the matter except to determine the inter se seniority of such contractual employees/the petitioners on the strength of length of their service.

21. The above discussion and findings would also answer the points raised by the learned Additional Advocate General shown as (i) and (ii) because it is a century old principle of law that no estoppel shall operate against a Statute which aspect is otherwise not established in view of the admitted facts on record. Government and the Authorities concerned can be held responsible in this regard for not complying with the requirements of the Amendment Act (IX) 2005 and the petitioners cannot be blamed for the inaction of the former.

22. This Bench cannot form a different opinion on the law point from the one which has already been enunciated by the former Division Bench of this Court in the earlier cited two cases as the Honourable Supreme Court has consistently held that a subsequent Division Bench cannot differ with the opinion of the earlier Bench on the same point of law and in case it wishes to do so, it may ask the Chief Justice to constitute a larger Bench or to leave the matter for the decision of the Honourable Supreme Court. On this point, the following case law of the Apex Court is relied upon:

- (a) The Province of East Pakistan vs. Dr. Azizul Islam
(PLD 1963 Supreme Court 296 at page-308);
- (b) The Province of East Pakistan vs. Sirajul Haq Patwari
(PLD 1966 Supreme Court 854 at page-920).

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Provincial High Court

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© Multiline Associates vs. Ardeshir Cowasjee and others
(1995 SCMR 423);

(d) Haji Ali Khan and Company, Abbottabad vs. M/s Allied Bank of Pakistan Limited
(PLD 1995 Supreme Court 362)

and the other view held by the Supreme Court of India in the case of Sidheswar Ganguly vs. State of West Bengal (PLD 1958 Supreme Court (India) 337).

23. During the course of hearing, the Court was informed that amongst the petitioners many have appeared in the screening test/interview held by the NWFP. Public Service commission for the same posts they are holding and have remained successful but could not be appointed either for insufficient zonal quota seats or other reason. This assertion was not controverted/disloged by the learned Additional Advocate General at the Bar.

24. The Court has gone through the comments and the other documents annexed therewith and there is nothing on record to show that the petitioners at any stage were found inefficient or were complained against by their superiors in office almost majority of the petitioners have rendered services in the field for 4 to 10 years continuously. Thus, in all probabilities the petitioners have acquired rich experience in the relevant field and may deliver significant services on this score. Therefore, they would be of much worth in their respective field as compared to the new entrants/selectees of the Provincial Public Service Commission not possessed of such long experience. Therefore,

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this factor is an additional ground, worth consideration in favour of the petitioners.

25. For what has been discussed above and in view of the conclusions drawn after interpreting all the provisions of law relevant to the subject, it is held that all the petitioners have been duly regularized in view of the provision of Section 2 subsection (2) of the NWFP Civil Servants (Amendment) Act (IX) 2005, all these petitions are allowed in the above terms and as a mere formality and for the purpose of preparing their service books/record, the appointing authorities/administrative secretaries of the petitioners may issue formal order/orders with regard to their inter se seniority and other relevant particulars required to be entered therein. The needful be done by all concerned by keeping in view the two dates i.e. terminus ad quem and terminus a quo, within a period of a month positively. The authorities/administrative Secretaries/departmental heads of the petitioners shall also create a contributory funds and gratuity funds as is required by the above provision of law and the petitioners shall be directed to contribute towards that besides the Government own share/liability of contribution towards the said fund.

All petitions are allowed.

sd: Dost Mohamed Khan — J
sd: Zia-ud-Din Khattak — J

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court Peshawar
Authorized Under Section 12 of the Act of 1973
17-10-09

ATTESTED

NO. 19530 /E-I,

DATED. 08/07 /1998.

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Annex D

Dr. Mohammad Iqbal S/O Amir Waiz Khan,
Vill: & P.O. Murar, Tehsil & Distt: Bannu.

SUBJECT:- OFFER OF APPOINTMENT ON CONTRACT BASIS.

MEMO:

Reference your application on the above subject for the post of ~~Medical Officer/Women Medical Officer/Dental Surgeon.~~

1. The Competent authority is hereby appoint you as Medical Officer/Women Medical Officer/Dental Surgeon in the Health Deptt: Govt: of NWFP. on contract basis in B-17 w.e.f. 01.7.1998 to 16.5.1999 or till the availability of Public Service Commission selectee/return of original incumbent from leave/deputation whichever is earlier, on the terms and conditions laid down in the attached Agreement Dood. You shall be posted to S/O, Gubral (District Headq)
This contract appointment is not transferable.
2. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
3. If you accept the offer of appointment on contract basis as a ~~Medical Officer/Women Medical Officer/Dental Surgeon~~, the attached Agreement Dood should be filled in duly signed by you and should report at your own expense.
4. If you fail to report for duty at the station specified in para-3 above, within Ten(10) days, the offer of appointment on contract basis will be deemed to have been withdrawn automatically and no further correspondence shall be entertained in this respect.

(DR. HAQ-DAD)
DIRECTOR GENERAL HEALTH,
SERVICES, NWFP, PESHAWAR.

NO. 19531-34 /E-I, DATED PESHAWAR THE 08 /07 /1998.

Copy forwarded to the :-

1. Secretary to Govt: of NWFP, Health Deptt: Peshawar, for information with reference to his letter No. SO(H)IV/3-18/93, dt:27.6.1998
2. Medical Superintendent, _____ for information and n/action
3. Divisional Director Health Services, Div: Saidu Sharif, Swat.
4. District Health Officer/Agency Surgeon, _____
5. Accountant General, NWFP, Peshawar.
6. District/Agency Accounts Officer, _____

for information and necessary action please.

(DR. HAQ-DAD.)
DIRECTOR GENERAL HEALTH,
SERVICES, NWFP, PESHAWAR.

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GOVERNMENT OF NWFP
HEALTH DEPARTMENT

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ANNEX

Dated: Peshawar, the 9th December, 2006.

NOTIFICATION.

No.SO(E)II-II/S-18/2006, In exercise of the powers under section 23 of the N.W.F.P Civil Servants Act, 1973 read with president order NO.10 of 1969, the Governor N.W.F.P is pleased to convert the contractual appointment of Dr.Muhammad Iqbal son of Amir Waiz Khan presently working as Medical Officer BS-17 BIU Mairagai District Swat on regular basis with effect from the date of his contractual appointment as such.

SECRETARY HEALTH.

Enclst. No. & date even.

Copy to the:-

1. Secretary to Governor N.W.F.P
2. Accountant General, N.W.F.P
3. Director General, Health Services, N.W.F.P
4. EDO (II) Swat.
5. PS to Chief Secretary N.W.F.P
6. PS to Secretary Health.
7. DAO Swat.
8. SO (Litigation) Health Department
9. Doctor concerned.

Section Officer-II.

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GOVERNMENT OF KHYBER PAKHTUNKHWAFINANCE DEPARTMENT
(REGULATION WING)No.SOSR-III/FD/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 Commissioner/ Political Agents/ District and Session Judge 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 15th January 2013 and assented to by the Governor of Khyber Pakhtunkhwa on 17th 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 1st 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 all 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 so declared G.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/ Subscribers 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.

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- f. Existing arrangements for deduction of C.P.Fund from employees of Autonomous Medical Institutions appointed under Medical and Health Institutions and Regulation of Health care Services Ordinance as amended in 2006 shall continue.

Note; The above guidelines/ instructions are not applicable to those employees who are not Civil Servants as defined in Section 2 (b) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, like those on deputation to the Provincial Government or working on contract/ work charge/ contingent basis.

Endst: 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) Sub 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 FMIU, Finance Department.
9. All Autonomous/ Semi Autonomous Bodies in Khyber Pakhtunkhwa.
10. District Comptroller of Accounts Peshawar, Mardan, Kohat, Bannu, D.I.Khan Abbottabad and Swat.
11. All District/ Agency Accounts Officers in Khyber Pakhtunkhwa/ FATA
12. Treasury Officer, Peshawar.

With reference to meeting held in Finance Deptt on 12.02.2013

(RAEES KHAN AFRIDI)
Deputy Secretary (Reg-I)

Endst 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 in Finance Department.
7. All the Section Officers/ Budget Officers in Finance Department.

(NAZMA SHAHEEN)
Section Officer (SR-III)

ATTACHED

Annex G 34
10/11/13



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)
No. SOR-VI/E&AD/1-13/ 2009
Dated Peshawar, the 13th February, 2013

To

1. Addl:Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Department.
2. Addl:Chief Secretary (FATA), FATA Secretariat Peshawar.
3. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
4. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
5. The Secretary to Governor, Khyber Pakhtunkhwa.
6. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.

Subject:- KHYBER PAKHTUNKHWA CIVIL SERVANTS (AMMENDMENT ACT, 2013 KHYBER PAKHTUNKHWA ACT, 2013)

Dir Sir,

I am directed to refer to the subject noted above and to enclosed herewith a copy of Gazette Notification bearing No. PA/ Khyber Pakhtunkhwa/ Bills/ 2013/ 2048 dated 22-01-2013 from Provincial Assembly Secretariat Khyber Pakhtunkhwa regarding Khyber Pakhtunkhwa Civil Servant, (Amendment) Act, 2013 (Khyber Pakhtunkhwa Act No. III of 2013) for information, necessary action and further dissemination among all concerned.

Yours faithfully,

naizam
(NAJ-MUS-SAHAR)
SECTION OFFICER (REG-VI)

Enclst. No. of even & date.

1. All Divisional Commissioners in Khyber Pakhtunkhwa.
2. All Heads of Attached Departments in Khyber Pakhtunkhwa.
3. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
4. All Deputy Commissioners Khyber Pakhtunkhwa and Political Agents in FATA.
5. The Registrar Peshawar High Court, Peshawar.
6. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
7. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
8. All Additional Secretaries, Deputy Secretaries and Section Officers in Establishment & Administration Department.

naizam
SECTION OFFICER (REG-VI)

Civil servants posted in FATA/PATA on deputation basis.

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REGISTERED NO. P.III
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 22ND JANUARY, 2013.

PROVINCIAL ASSEMBLY SECRETARIAT KHYBER
PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 22nd January 2013.

No. PA/Khyber Pakhtunkhwa/Bills/2013/2048.— The Khyber Pakhtunkhwa Civil Servants (Amendment) Bill, 2013 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 15th January, 2013 and assented to by the Governor of the Khyber Pakhtunkhwa on 17th January, 2013 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

**THE KHYBER PAKHTUNKHWA CIVIL SERVANTS
(AMENDMENT) ACT, 2013**

(KHYBER PAKHTUNKHWA ACT NO. III OF 2013)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa (Extraordinary), dated 22nd January, 2013).

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further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973.

Preamble. WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. **Short title and commencement**--- (1) This Act may be called the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013.
(2) It shall come into force at once and shall be deemed to have taken effect from 30th day of June, 2001.

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Civil servants posted in FATA/PATA on deputation basis.

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Annex H 37

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No 320/P/2014



1. Dr Yusaf Khan S/o Said Rehman, M.O, ATO, Mohmand Agency
2. Dr Alif Jan S/o Amir Jan, M.O, RHC Darra
3. Dr Rabnawaz S/o Haji Said Jan, M.O, Civil Hospital, Jamrod
4. Dr Akram Khan S/o Arbab Khan, M.O, LRH, Peshawar
5. Dr Rawesh S/o Ahmad Jan, M.O, SHS, Mohmand
6. Dr Munawar, M.O, THQ Bisham, Shangla
7. Dr Taj Muhammad S/o Jan Mohammad,
M.O, Distt Coordinator, National Program/LHW, Kohistan.
8. Dr Yusaf Khan S/o M Ibrahim, LRH, Peshawar
9. Dr Aurangzeb S/o Ghulam Hussain, M.O, Khyber Agency
10. Dr M Shafiq S/o Raza Khan,
M.O, Mian Rashid Hussain Shaheed Hospital, Pabbi
11. Dr Khan Akbar Afridi S/o Zafar Shah Afridi,
Medical Officer, Civil Dispensary, Peshawar
12. Dr Syed Ameen Shah S/o Abdullah Shah,
M.O, Hayatabad Medical Complex, Peshawar
13. Dr Wali Khan S/o Mamir Khan, M.O, LRH, Peshawar
14. Muhammad Hanif S/o Gul Sahib Khan, Dental Surgeon Karak
15. Dr Said Zaman Khattak S/o Sheikh Payo,
Dental Surgeon, E.D.O (H) Karak
16. Dr Mehboob Shah S/o Muhammad Taqi, Dental Surgeon, RHC
Shinkyari, Manshra
17. Dr Sultan un Nisa D/o Mohabbat Khan,
Women Medical Officer, DHQH Chitral

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EXAMINER
Peshawar High Court
24 DEC 2014

FILED TODAY
20 DEC 2014

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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

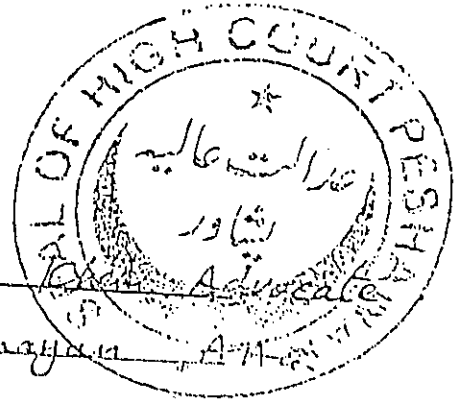
WP No. 3960-P/2014

JUDGMENT.

Date of hearing: 20.12.2016

Petitioner (s): by Mr. Muhammad Ayub

Respondent (s): by Mr. Mohyuddin Hameed



WAQAR AHMAD SETH, J:- Through this single

judgment, we propose to dispose of instant Writ Petition as well as connected Writ Petitions No. 2107-P, 1184-P/2015, 1345-P & 2005-P/2016 as common questions of law and facts are involved therein.

2. The petitioners, in all the Writ Petition, have sought the following common prayer:-

"It is, therefore, prayed that on acceptance of this Writ Petition an appropriate Writ may kindly be issued to direct the respondents to the effect.

- a. To implement Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 and NWFP Civil Servants (Amendment) Act (IX) 2005 in a uniform manner in its letter and spirits and
- b. To direct the respondents to issue revised regularization orders of the Petitioners under Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 with effect from initial date of appointment and also be granted graded pay and seniority and other pension benefits

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EXAMINER
Peshawar High Court

24 DEC 2016

with effect from the initial date of appointment and making their employment status equal to their contemporaries appointed on regular basis and

- c. *To direct the respondents to treat the Petitioners at par with Dr. Muhammad Iqbal and Dr. Farmanullah and similarly placed other employees whose services have been regularized with effect from initial date of appointment and*
- d. *Any other relief deemed appropriate by this Honorable Court in the circumstances of the case which has not been prayed for, may graciously be granted".*

3. Arguments were heard at length. It has been clearly mentioned in clause-5 of substituted Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 that in case any difficulty arises in giving effect to any of the provisions of this section, the Secretary to Government, Establishment Department shall constitute a Committee comprising of the Secretary to Government, Finance Department, Secretary to Government Law Department and Accountant General, Khyber Pakhtunkhwa for removal of the difficulty. When the learned AAG was confronted with the aforesaid clause of Act, he conceded the same.

4. In view of the concurrence of learned AAG, we direct the respondents to constitute a Committee in light of clause-5 of the Act (ibid) within fifteen (15) days. The petitioners are directed to file their departmental appeals

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 EXAMINER
 Peshawar High Court

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No. 12573
 Date of Presentation of Application: 21/12/16
 No of Pages: 12
 Copying fee: /
 Urgent fee: /
 Total: /
 Date of Preparation of Copy: 21/12/16
 Date Given For Delivery: 21/12/16
 Date of Delivery of Copy: 21/12/16
 Received By: (Signature)



CERTIFIED TO BE TRUE COPY
 Examiner, Peshwar
 Peshwar High Court, Peshwar
 Authorized Under Article 27 of
 the Criminal Procedure Code
 24 DEC 2016

Nawab Shah

ANNOUNCED
 Date: 29.12.2016
 Sd/- Magistrate (J) (Signature)
 801 G.M. (Signature)

above terms.
 5. All these Writ Petitions are disposed of in the same within next one month by giving explicit reason before the said Committee, who is directed to dispose of the

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| 234 | Muhammad Nawaz Khan | | |
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Annex 41



(GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 17th October, 2017

NOTIFICATION

NO. SO(E)H-III/3-18/2016: In pursuance of Judgment of Peshawar High Court Peshawar dated 18-11-2008 in Writ Petition No. 1510 of 2007 read with sub section 2 of Section 2 of the Khyber Pakhtunkhwa Civil Servant (Amendment) Act, 2005 (Khyber Pakhtunkhwa Act no. IX of 2005) and provision under sub section 4 of section 19 of Civil Servant (Amendment) Act 2013 coupled with the regularization order of appellants and similarly placed w-e-f 2005, the services of following doctors (appellants as well as similarly placed) are hereby regularized with effect from dates as mentioned against each:

| S. # | Name of Doctor | D.O.B / Domicile | Date of Initial Appointment or contract basis | Date of Regularization under Act 2005 |
|------|--|----------------------------|---|---------------------------------------|
| 1. | Dr. Bakht Zada S/O Gul Muhammad, MBBS | 01.01.1959 / Swat | 23.11.1995 | 01-07-2001 |
| 2. | Dr. Dawa Khan S/O Badshah Khan MBBS | 01.09.1951 / Swat | 23.11.1995 | 01-07-2001 |
| 3. | Dr. Haroon Nasir Khattak S/O Rab Nawaz MBBS | Karak/ 1.3.1966 | 23.11.1995 | 01-07-2001 |
| 4. | Dr. Yousaf Khan S/O Said Rehman MBBS | Mardan/ 14.3.1968 | 23.11.1995 | 01-07-2001 |
| 5. | Dr. Riaz Ahmed S/O Rehmatullah MBBS | Mohmand A15.8.1951 | 23.11.1995 | 01-07-2001 |
| 6. | Dr. Alamgir Khan S/O Darwesh Khan, MBBS | 16.04.1962 /Mohmand A | 23.11.1995 | 01-07-2001 |
| 7. | Dr. Muhammad Ajmal Khan S/O Zarin Khan MBBS | Mohmand ag 10.04.67 | 23.11.1995 | 01-07-2001 |
| 8. | Dr. Fazal Rehman S/O Muhammad Amir Khan, MBBS/ MPH | 28.04.1966 /Mohmand Agency | 23.11.1995 | 01-07-2001 |
| 9. | Dr. Mustafa S/O Behramand, MD | 01.03.1961 / Swat | 24.11.1995 | 01-07-2001 |

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Secretary
Health Department
Government of Khyber Pakhtunkhwa

Secretary Health Department,
Government of Khyber Pakhtunkhwa,
Peshawar

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Subject: Departmental Appeal against Notification Dated 17-10-2017 whereby the services of the appellant are regularized with effect from 01-07-2001 instead from initial date of appointment

Sir,

The applicant submits as follows:

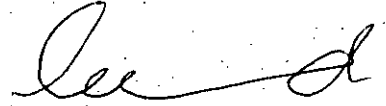
1. That I was appointed as Women Medical Officer (BPS-17) in the Health Department on contract basis by the competent authority in the prescribed manner in the year 1995.
2. That the said contract was extended from time to time. Meanwhile the Government of Khyber Pakhtunkhwa erstwhile NWFP promulgated NWFP Civil Servants (Amendment) Act (IX) 2005 wherein the services of all the contract employees were regularized.
3. That after the promulgation of the aforesaid Act, I have been regularized with effect from 01-07-2005.
4. That the Government of Khyber Pakhtunkhwa again amended the section 19 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 vide Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013.
5. That after the promulgation of the aforesaid Act, I was under legitimate expectancy that my revised regularization order will be issued with effect from initial date of appointment but in vain, my colleagues filed a Writ Petition No 3960-P/2014, 2107-P, 1184-P/2015, 1345-P & 2005-P/2016. In pursuance of which my services are regularized with effect from 01-07-2001 instead of initial date of appointment.
6. That my colleagues are regularized with effect from the initial date of appointment whereas I have been regularized w.e.f 01-07-2001 which is against the law, rules and policy.

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7. That the Notification dated 17-10-2017 is against the K.P Civil Servant Act, 1973, the rules framed there under and the dictums of the superior courts of Pakistan, hence needs rectification.

It is, therefore, requested that keeping in view the law, rules, policy and dictums of the superior courts of Pakistan, the Notification dated 17-10-2017 may kindly be amended to the effect that the services of the applicant be regularized with effect from the initial date of appointment i.e., 03-12-1995 with all back benefits.



Applicant,

15 Nov: 2017

Copy to:

1. Chief Secretary, Govt of Khyber Pakhtunkhwa, Peshawar
2. Director General, Health Services, KP, Peshawar

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IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No _____ /2020

In
Service Appeal No 1224 /2018

Dr M Iqbal vs Govt Versus Govt of KP through Chief Secty & others

Application for giving findings on para No 5 of the facts and ground (h) of the title Service appeal, as no findings and judgment is given on it in the judgment dated 12-11-2019 rendered by this Honorable Tribunal in identical service appeals

Respectfully Sheweth,

The appellant submits as follows:

1. That the title service appeal is pending adjudication before this Honorable Court, which is fixed for hearing today.
2. That identical service appeals have been dismissed by this Honorable Tribunal vide judgment dated 12-11-2019. In the Para No 11 of the said judgment, it has been mentioned that the case of Dr M Iqbal has not been contested by the learned counsel, which is wrong and incorrect. In fact the appointment order and regularization order of the Dr M Iqbal both have been annexed with service appeals, as the same has been referred in para No 5 and ground (h) of the title service appeal and the same was vehemently agitated at the bar during the course of arguments and in the instant service appeal, the appellant is pressing the same. Hence the same may kindly be considered and findings be given thereon. (Copy of the judgment is filed herewith and annexed as **Annex-CM/1**)

It is, therefore, prayed that the on acceptance of the instant application, this Honorable Tribunal may kindly be pleased to give findings on para No 5 of the facts and ground (h) of the title Service appeal, as no findings are given on it in the judgment dated 12-11-2019 passed by this Honorable Tribunal in identical service appeals.

Appellant,

Through

M Ayub Khan Shinwari
M Ayub Khan Shinwari
Advocate, Peshawar

[Signature]

Recd at Peshawar
Recd at Peshawar

[Signature]
20/12/2020

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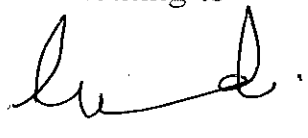
IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

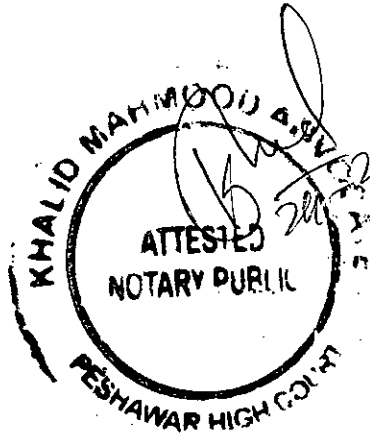
C.M No _____/2020
In
Service Appeal No _____/20

D/o: Khalida Yasmeen
Versus Govt of KP through Chief Secty & others

AFFIDAVIT

I D/o Khalida Yasmeen / ALI Yasmin do hereby solemnly affirm and state on oath that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing is kept concealed from this Honorable Tribunal.

Deponent 



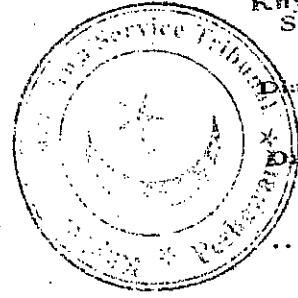
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Service Appeal No 318 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 325

Date 06-3-2018



Dr Akram Khan S/o Arbab Khan,
SMO, Nowshera

.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Department of Health, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
5. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

Service Appeal Under Section 4 of Khyber
Pakhtunkhwa Service Tribunal Act, 1974 against
Notification dated 17-10-2017

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

1. That the appellant was appointed as Medical Officers (BPS-17) in the respondent Department on contract basis by the competent authority in the prescribed manner after fulfilling all the codal formalities vide appointment order dated 27-11-1995. (Copy of the appointment order is filed herewith and attached as Annex-A)

Filed to-day

6/3/18

2. That the said contract was extended from time to time. Meanwhile the Government of Khyber Pakhtunkhwa erstwhile NWFP promulgated NWFP Civil Servants (Amendment) Act (IX) 2005 whereby Section 19 of the NWFP (now Khyber Pakhtunkhwa) Civil Servant Act, 1973 was amended and the services of all the contract employees were regularized.

3. That thereafter respondent No 3 i.e., Secretary, Establishment and Administration Department, Regulation Wing, Khyber Pakhtunkhwa, Peshawar issued a directive dated 10-08-2005, wherein all the administrative Secretaries of the province were directed to the effect that all the Government employees whose services are regularized under the NWFP

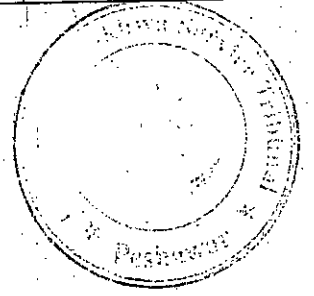
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 318/2018

Date of Institution ... 06.03.2018

Date of Decision ... 12.11.2019



Dr. Akram Khan S/O Arbab Khan, SMO, Nowshera. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and four others. ... (Respondents)

Present:

MR. MUHAMMAD AYUB KHAN SHINARI,
Advocate

--- For appellant.

ATTESTED

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

MR. ZIALLAH,
Deputy District Attorney

--- For respondents.

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

MR. AHMAD HASSAN,

--- MEMBER(Executive)

MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Judicial)

JUDGMENT:

AHMAD HASSAN, MEMBER:-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 317/2018 titled Dr. Alif Jan, no. 319/2018 titled Dr. Mamoon Elahi, no. 325/2018 titled Dr. Sheikh Muhammad Farooq Azam, no. 326/2018 titled Dr. Muhammad Hasham, no. 327/2018 titled Dr. Sultan-un-Nisa, no. 328/2018 titled Dr. Syeda Shahnaz Jabeen, no. 332/2018 titled Dr. Shahida Hussain Bukhari, no. 342/2018 titled Dr. Zafar Iqbal, no. 358/2018 titled Dr. Muhammad Zahid, no. 359/2018 titled Dr. Alamgeer Khan, no. 360/2018 titled Dr. Yousaf Khan, no. 361/2018 titled Abdur Rashid, no. 557/2018 titled Dr. Hafiz Zia-

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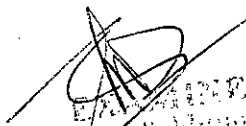
ul-Habib, no. 845/2018 titled Dr. Sajjad Ahmad, no. 846/2019 titled Dr. Qaisar Zaman and no. 847/2015 titled Dr. Muhammad Hamayun as similar question of law and facts are involved therein.

02. Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

03. Learned counsel for the appellant argued that he was appointed as Medical Officer in the Health Department on contract basis through notification dated 27.11.1995. That upon promulgation of Khyber Pakhtunkhwa civil servants (Amendments) Act (IX) 2005, where-under section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was amended and resultantly services of contract employees were regularized. Respondent no.3 (Secretary Establishment) through letter dated 10.08.2005 informed that as a sequel to Act of 2005, the employees for all intents and purposes would be deemed to be civil servants except pension. After the said enactment respondent no.3 was reluctant to regularize the services of the appellant and others which compelled them to file writ petition no. 1510/17 before Peshawar High Court, Peshawar, which was allowed vide judgment dated 18.11.2008. After receipt of above judgment services of the appellant/others were regularized w.e.f the date of promulgation of Act 2005 i.e 23.07.2005. However, services of a colleague of the petitioners namely Muhammad Iqbal son of Amir Waiz Khan, was appointed on 08.07.1998 were regularized from the date of contractual appointment vide notification dated 09.12.2006.

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

04. Learned counsel for the appellant further argued that subsequently the government of Khyber Pakhtunkhwa made further amendments in Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 through Act of 2013, where-under those employees appointed to a post in the prescribed manner on or after 01.07.2001 to 23.07.2005 on contract basis shall be deemed to have been appointed on regular basis. For implementation, the petitioners again approached the respondents but got a lukewarm response and again knocked the door of Peshawar high Court, Peshawar through writ petition no. 3960-P/2014, which was decided on 20.12.2016. The matter was referred to the respondents in the light of Section-5 of the Act of 2013 for appropriate decision. Thereafter, the respondents through impugned notification dated 17.10.2017 regularized the services of the appellant/others w.e.f 01.07.2001. Feeling aggrieved, the appellant filed departmental appeal on 11.11.2017, which remained unanswered, hence, the present service appeal. As there was no break in the service of the appellants, therefore, they were entitled for regularization from the date of initial appointment on contract basis. Act of 2013 was a beneficial legislation through which services of the employees were to be regularized from the date of initial appointment on contract basis. Reliance was placed on case law reported as 2012 PLC(C.S) 602, 2014 SCMR 1289, 2019 PLC (C.S) 103, 2009 PLC (CS) 389.

05. Learned Deputy District Attorney argued that there was hardly any confusion that services of the appellant/others were regularized w.e.f 01.07.2001 on the strength of Act of 2013. As the act did not allow regularization of contract appointment from the date of initial appointment i.e 27.11.1995 thus the action of the respondents was not suffering from any legal infirmity. Moreover, the Peshawar


ATTESTED

High Court, Peshawar, while deciding writ petition no. 3960-P/2014 on 20.12.2016 directed to constitute a committee in the light of Section-5 of the Act referred to above and the petitioners were directed to file department appeals. It was clear beyond any shadow of doubt that through the above judgment the Peshawar High Court, Peshawar had not regularized their services. However, if they were not satisfied from the relief granted by the august Court they were at liberty to assail the same before the august Supreme Court of Pakistan.

06. He further contended that present service appeal is hit by Rule-23 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 for the reason that the appellants were demanding the same relief through the present service appeal, as was sought in writ petition no. 3960-P/2014. This point has already been decided by the competent forum, therefore, the present service appeal was not maintainable. He further invited attention to regularization of Dr. Muhammad Iqbal notified on 09.12.2006. The said doctor was regularized on the basis of Section-23 of Khyber Pakhtunkhwa civil servants Act, 1973, thus parallel cannot be drawn between the two cases. It also settled the issue of discrimination agitated by the appellant. Reliance was placed on case law reported as 1990 MLD 1283, 2019 SCMR 349 and judgment of this Tribunal dated 25.04.1990 passed in service appeal no. 964/2016.

07. Learned Assistant Advocate General also invited attention of this Tribunal to the fact that the following doctors earlier appointed on contract basis were subsequently appointed on regular basis on the recommendations of Khyber Pakhtunkhwa Public Service Commission:-

1. Dr. Qaiser Zaman
2. Dr. Sajjad Ahmad

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 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

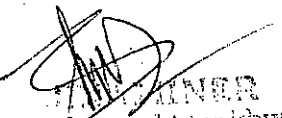
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3. Dr. M. Hamayun
 4. Dr. Syed Shahnaz Jabeen
 5. Dr. Shahid Hussain Bukhari
 6. Dr. Zafar Iqbal
 7. Dr. M. Hashim
 8. Dr. Sheikh M. Farroq Azam
 9. Dr. Sultan-un-Nisa.

These details were not divulged by the learned counsel for the appellant during arguments. How a civil servant, appointed through Public Service Commission could lay claim for regular appointment from the date of contractual appointment?

CONCLUSION:

08. Before dilating on the merits of the case, we deem it appropriate to flag the critical issue of appointment of Dr. Qaiser Zaman (date 19.10.2000), Dr. Sajjad Ahmad (date 15.09.1997), Dr. M. Hamayun (date 27.11.1998), Dr. Syed Shahnaz Jabeen (date 12.07.2004), Dr. Shahid Hussain Bukhari (date 08.02.2005), Dr. Zafar Iqbal (date 16.03.2005), Dr. M. Hashim (date 08.02.2005), Dr. Sheikh M. Farroq Azam (date 07.09.2007) and Dr. Sultan-un-Nisa (date 07.09.2007) on regular basis on the recommendations of Khyber Pakhtunkhwa Public Service Commission. The dates in the brackets indicate date of their regular appointment. It is pertinent to point out that though relevant notifications about their regular appointment have been annexed with the service appeals but their learned counsel kept mum over it for reasons best known to him. Strictly going by the rules seniority in such cases is assigned on the basis of merit list assigned by the Khyber Pakhtunkhwa Public Service Commission. Keeping in view the aforementioned position, it is not clear whether seniority was assigned to above petitioners from the date of regularization or appointment through Public Service Commission. As this issue was ^{not} properly raised/agitated by the learned counsel for the petitioners, so we would not like to address it.

ATTESTED


ATTENDING OFFICER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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09 Through thirteen separate service appeals the appellants assailed notification dated 17.10.2017, where-under their services were regularized w.e.f 01.07.2001 and made a request to allow them regularization from the date of initial appointment on contract basis on 23.11.1995/relevant date. The appellants were appointed as Medical Officer on contract basis vide order dated 27.11.1995/relevant date. After promulgation of Khyber Pakhtunkhwa Civil Servants (Amendments) Act (IX) 2005 amendments were brought in Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and services of contract employees were regularized. However, when respondents failed to act according to the above enactment, the appellants knocked the door of Peshawar High Court, Peshawar by way of filing writ petition no. 1510-P/2007 decided on 18.11.2008. Thereafter, their services were regularized from the date of enactment of Act of 2005 i.e 23.07.2005. Thereafter, Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended and those employees appointed in the prescribed manner to service or post on or after 1st July 2001 till 23.07.2005 on contract basis were deemed to have been appointed on regular basis. Again respondents were not ready to treat the appellants on the basis of amendment referred to above, which forced them to file another writ petition no. 3960-P/2014 before Peshawar High Court, Peshawar. The mechanism to redress anomalies in the said act was available in Section-5 of the Act referred to above, therefore, the Peshawar High Court, Peshawar through judgment dated 20.12.2016 remanded the case to respondents for decision after thorough deliberations and according to the spirit of above referred provision. It resulted in issuance of impugned notification dated 17.10.2017 but that too failed to redress the grievances of the appellants. They were adamant for regularization of service from the date of initial appointment on

APPEALED


JUDGE
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

contract basis. It is pertinent to point out that if the appellants were not satisfied from the judgment of Peshawar High Court, Peshawar dated 20.12.2016 the same could be easily assailed before the august Supreme Court of Pakistan by filing CPLA, however, the appellants remained silent for unknown reasons. Having attained finality, now it has become a story of the past and no relief can be claimed on the strength of the same.

10. We have carefully scrutinized the entire record specially amendments brought in Khyber Pakhtunkhwa Civil Servants Act, 1973 through separate enactments but were unable to lay hand on any legal lacuna. We observed that thousands of government servants benefited from the legislation referred to above, ~~had~~ had there been some legal infirmity, it could have been assailed by them in the competent court of law? Interpretation of statutes by the learned counsel for the appellant was beyond our comprehension. He was unable to produce any supporting material through which he could establish his claim. Had his claim carried any weight, it might be easily defended by quoting cases of similar nature from other departments, if given regularization demanded by the appellants from a particular date. Furthermore, attention of the learned counsel for the appellant was also invited to notification dated 17.10.2017, where-under services of 680 contract employees were regularized from various dates but none of them challenged this order except the appellants. However, learned counsel for the appellant was not in a position to give any convincing response/reply.

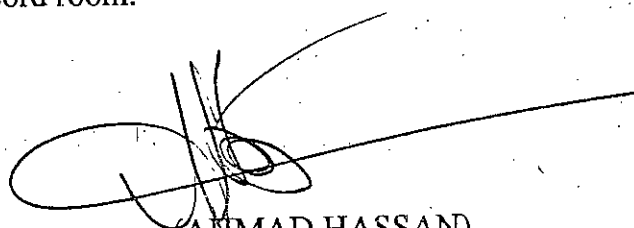
11. As regards regularization of services of Dr. Muhammad Iqbal are concerned that was dealt with under Section-23 of the Khyber Pakhtunkhwa Civil Servants

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Act, 1973 and this fact was not contested by the learned counsel for the appellant. Entire case record is quite clear that he did not avail the benefits of regularization Act referred to above. As such his case is not akin with that of the appellants and they cannot claim similar treatment by quoting it as a precedent.

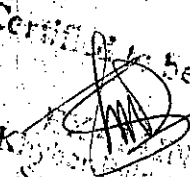
12. As a sequel to the above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

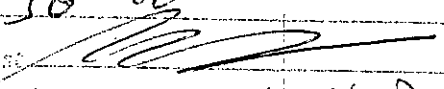


(AHMAD HASSAN)
MEMBER

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
12.11.2019

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 31-1-2020
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Copying Fee 34-00
Urgent 4-00
Total 38-00
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Date of Completion of Copy 31-01-2020
Date of Delivery of Copy 31-01-2020

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No _____ /2020

In
Service Appeal No 1224/2019

Dr M Iqbal Versus Govt of KP through Chief Secty & others

Application for giving findings on para No 5 of the facts and ground (h) of the title Service appeal, as no findings and judgment is given on it in the judgment dated 12-11-2019 rendered by this Honorable Tribunal in identical service appeals

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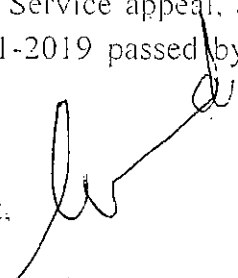
The appellatant submits as follows:

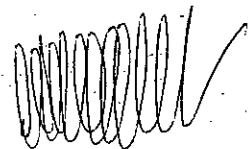
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It is, therefore, prayed that the on acceptance of the instant application, this Honorable Tribunal may kindly be pleased to give findings on para No 5 of the facts and ground (h) of the title Service appeal, as no findings are given on it in the judgment dated 12-11-2019 passed by this Honorable Tribunal in identical service appeals.

Appellant,

Through


M Ayub Khan Shinwari
Advocate, Peshawar



2

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No _____/2020
In
Service Appeal No _____/20

Dr: Khalida Yasmineen
Versus

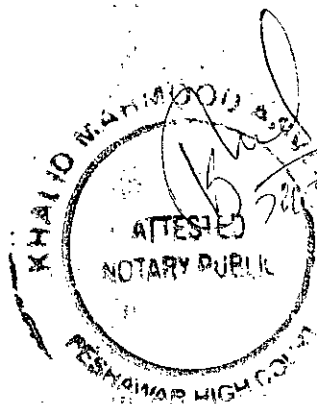
Govt of KP through Chief Secty & others

AFFIDAVIT

I Dr Khalida Yasmineen do hereby solemnly affirm and state on oath that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing is kept concealed from this Honorable Tribunal.

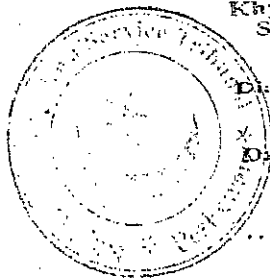
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Deponent



IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 318 /2018



Khyber Pakhtunkhwa Service Tribunal

Diary No. 325

Date 06-3-2018

Dr Akram Khan S/o Arbab Khan,
SMO, Nowshera

.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Department of Health, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
5. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

Service Appeal Under Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 against Notification dated 17-10-2017

ATTESTED

Attesting Officer
Khyber Pakhtunkhwa Service Tribunal
Peshawar

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

1. That the appellant was appointed as Medical Officers (BPS-17) in the respondent Department on contract basis by the competent authority in the prescribed manner after fulfilling all the codal formalities vide appointment order dated 27-11-1995. (Copy of the appointment order is filed herewith and attached as Annex-A)
2. That the said contract was extended from time to time. Meanwhile the Government of Khyber Pakhtunkhwa erstwhile NWFP promulgated NWFP Civil Servants (Amendment) Act (IX) 2005 whereby Section 19 of the NWFP (now Khyber Pakhtunkhwa) Civil Servant Act, 1973 was amended and the services of all the contract employees were regularized.
3. That thereafter respondent No 3 i.e., Secretary, Establishment and Administration Department, Regulation Wing, Khyber Pakhtunkhwa, Peshawar issued a directive dated 10-08-2005, wherein all the administrative Secretaries of the province were directed to the effect that all the Government employees whose services are regularized under the NWFP

Filed to-day

Registrar
6/3/18

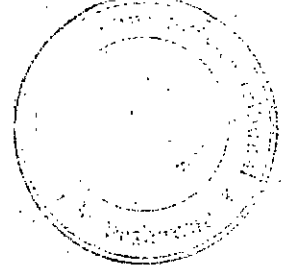
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 318/2018

Date of Institution ... 06.03.2018

Date of Decision ... 12.11.2019



Dr. Akram Khan S/O Arbab Khan, SMO, Nowshera. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and four others. ... (Respondents)

Present:

MR. MUHAMMAD AYUB KHAN SHINARI,
Advocate

--- For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

MR. ZIALLAH,
Deputy District Attorney

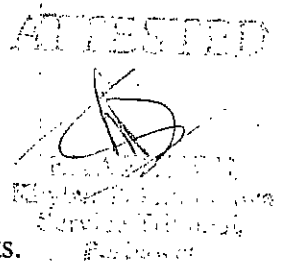
--- For respondents.

MR. AHMAD HASSAN,

--- MEMBER(Executive)

MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Judicial)



JUDGMENT:

AHMAD HASSAN, MEMBER:-


This judgment shall dispose of the instant service appeal as well as connected service appeal no. 317/2018 titled Dr. Alif Jan, no. 319/2018 titled Dr. Mamoon Elahi, no. 325/2018 titled Dr. Sheikh Muhammad Farooq Azam, no. 326/2018 titled Dr. Muhammad Hasham, no. 327/2018 titled Dr. Sultan-un-Nisa, no. 328/2018 titled Dr. Syeda Shahnaz Jabeen, no. 332/2018 titled Dr. Shahida-Hussain Bukhari, no. 342/2018 titled Dr. Zafar Iqbal, no. 358/2018 titled Dr. Muhammad Zahid, no. 359/2018 titled Dr. Alamgeer Khan, no. 360/2018 titled Dr. Yousaf Khan, no. 361/2018 titled Abdur Rashid, no. 557/2018 titled Dr. Hafiz Zia-

ul-Habib, no. 845/2018 titled Dr. Sajjad Ahmad, no. 846/2019 titled Dr. Qaisar Zaman and no. 847/2015 titled Dr. Muhammad Hamayun as similar question of law and facts are involved therein.

02. Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

03. Learned counsel for the appellant argued that he was appointed as Medical Officer in the Health Department on contract basis through notification dated 27.11.1995. That upon promulgation of Khyber Pakhtunkhwa civil servants (Amendments) Act (IX) 2005, where-under section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was amended and resultantly services of contract employees were regularized. Respondent no.3 (Secretary Establishment) through letter dated 10.08.2005 informed that as a sequel to Act of 2005, the employees for all intents and purposes would be deemed to be civil servants except pension. After the said enactment respondent no.3 was reluctant to regularize the services of the appellant and others which compelled them to file writ petition no. 1510/17 before Peshawar High Court, Peshawar, which was allowed vide judgment dated 18.11.2008. After receipt of above judgment services of the appellant/others were regularized w.e.f the date of promulgation of Act 2005 i.e 23.07.2005. However, services of a colleague of the petitioners namely Muhammad Iqbal son of Amir Waiz Khan, was appointed on 08.07.1998 were regularized from the date of contractual appointment vide notification dated 09.12.2006.

ATTESTED

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04. Learned counsel for the appellant further argued that subsequently the government of Khyber Pakhtunkhwa made further amendments in Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 through Act of 2013, where-under those employees appointed to a post in the prescribed manner on or after 01.07.2001 to 23.07.2005 on contract basis shall be deemed to have been appointed on regular basis. For implementation, the petitioners again approached the respondents but got a lukewarm response and again knocked the door of Peshawar high Court, Peshawar through writ petition no. 3960-P/2014, which was decided on 20.12.2016. The matter was referred to the respondents in the light of Section-5 of the Act of 2013 for appropriate decision. Thereafter, the respondents through impugned notification dated 17.10.2017 regularized the services of the appellant/others w.e.f 01.07.2001. Feeling aggrieved, the appellant filed departmental appeal on 11.11.2017, which remained unanswered, hence, the present service appeal. As there was no break in the service of the appellants, therefore, they were entitled for regularization from the date of initial appointment on contract basis. Act of 2013 was a beneficial legislation through which services of the employees were to be regularized from the date of initial appointment on contract basis. Reliance was placed on case law reported as 2012 PLC(C.S) 602, 2014 SCMR 1289, 2019 PLC (C.S) 103, 2009 PLC (CS) 389.

05. Learned Deputy District Attorney argued that there was hardly any confusion that services of the appellant/others were regularized w.e.f 01.07.2001 on the strength of Act of 2013. As the act did not allow regularization of contract appointment from the date of initial appointment i.e 27.11.1995 thus the action of the respondents was not suffering from any legal infirmity. Moreover, the Peshawar


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High Court, Peshawar, while deciding writ petition no. 3960-P/2014 on 20.12.2016 directed to constitute a committee in the light of Section-5 of the Act referred to above and the petitioners were directed to file department appeals. It was clear beyond any shadow of doubt that through the above judgment the Peshawar High Court, Peshawar had not regularized their services. However, if they were not satisfied from the relief granted by the august Court they were at liberty to assail the same before the august Supreme Court of Pakistan.

06. He further contended that present service appeal is hit by Rule-23 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 for the reason that the appellants were demanding the same relief through the present service appeal, as was sought in writ petition no. 3960-P/2014. This point has already been decided by the competent forum, therefore, the present service appeal was not maintainable. He further invited attention to regularization of Dr. Muhammad Iqbal notified on 09.12.2006. The said doctor was regularized on the basis of Section-23 of Khyber Pakhtunkhwa civil servants Act, 1973, thus parallel cannot be drawn between the two cases. It also settled the issue of discrimination agitated by the appellant. Reliance was placed on case law reported as 1990 MLD 1283, 2019 SCMR 349 and judgment of this Tribunal dated 25.04.1990 passed in service appeal no. 964/2016.

07. Learned Assistant Advocate General also invited attention of this Tribunal to the fact that the following doctors earlier appointed on contract basis were subsequently appointed on regular basis on the recommendations of Khyber Pakhtunkhwa Public Service Commission:-

1. Dr. Qaiser Zaman
2. Dr. Sajjad Ahmad


Khyber Pakhtunkhwa
Service Tribunal
Peshawar


- 8
3. Dr. M. Hamayun
 4. Dr. Syed Shahnaz Jabeen
 5. Dr. Shahid Hussain Bukhari
 6. Dr. Zafar Iqbal
 7. Dr. M. Hashim
 8. Dr. Sheikh M. Farroq Azam
 9. Dr. Sultan-un-Nisa.

These details were not divulged by the learned counsel for the appellant during arguments. How a civil servant, appointed through Public Service Commission could lay claim for regular appointment from the date of contractual appointment?

CONCLUSION:

08. Before dilating on the merits of the case, we deem it appropriate to flag the critical issue of appointment of Dr. Qaiser Zaman (date 19.10.2000), Dr. Sajjad Ahmad (date 15.09.1997), Dr. M. Hamayun (date 27.11.1998), Dr. Syed Shahnaz Jabeen (date 12.07.2004), Dr. Shahid Hussain Bukhari (date 08.02.2005), Dr. Zafar Iqbal (date 16.03.2005), Dr. M. Hashim (date 08.02.2005), Dr. Sheikh M. Farroq Azam (date 07.09.2007) and Dr. Sultan-un-Nisa (date 07.09.2007) on regular basis on the recommendations of Khyber Pakhtunkhwa Public Service Commission. The dates in the brackets indicate date of their regular appointment. It is pertinent to point out that though relevant notifications about their regular appointment have been annexed with the service appeals but their learned counsel kept mum over it for reasons best known to him. Strictly going by the rules seniority in such cases is assigned on the basis of merit list assigned by the Khyber Pakhtunkhwa Public Service Commission. Keeping in view the aforementioned position, it is not clear whether seniority was assigned to above petitioners from the date of regularization or appointment through Public Service Commission. As this issue was ^{not} properly raised/agitated by the learned counsel for the petitioners, so we would not like to address it.


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JUNIOR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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09. Through thirteen separate service appeals the appellants assailed notification dated 17.10.2017, where-under their services were regularized w.e.f 01.07.2001 and made a request to allow them regularization from the date of initial appointment on contract basis on 23.11.1995/relevant date. The appellants were appointed as Medical Officer on contract basis vide order dated 27.11.1995/relevant date. After promulgation of Khyber Pakhtunkhwa Civil Servants (Amendments) Act (IX) 2005 amendments were brought in Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and services of contract employees were regularized. However, when respondents failed to act according to the above enactment, the appellants knocked the door of Peshawar High Court, Peshawar by way of filing writ petition no. 1510-P/2007 decided on 18.11.2008. Thereafter, their services were regularized from the date of enactment of Act of 2005 i.e 23.07.2005. Thereafter, Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended and those employees appointed in the prescribed manner to service or post on or after 1st July 2001 till 23.07.2005 on contract basis were deemed to have been appointed on regular basis. Again respondents were not ready to treat the appellants on the basis of amendment referred to above, which forced them to file another writ petition no. 3960-P/2014 before Peshawar High Court, Peshawar. The mechanism to redress anomalies in the said act was available in Section-5 of the Act referred to above, therefore, the Peshawar High Court, Peshawar through judgment dated 20.12.2016 remanded the case to respondents for decision after thorough deliberations and according to the spirit of above referred provision. It resulted in issuance of impugned notification dated 17.10.2017 but that too failed to redress the grievances of the appellants. They were adamant for regularization of service from the date of initial appointment on

INTESTED



Khyber Pakhtunkhwa
Service Tribunal
Peshawar

contract basis. It is pertinent to point out that if the appellants were not satisfied from the judgment of Peshawar High Court, Peshawar dated 20.12.2016 the same could be easily assailed before the august Supreme Court of Pakistan by filing CPLA, however, the appellants remained silent for unknown reasons. Having attained finality, now it has become a story of the past and no relief can be claimed on the strength of the same.

10. We have carefully scrutinized the entire record specially amendments brought in Khyber Pakhtunkhwa Civil Servants Act, 1973 through separate enactments but were unable to lay hand on any legal lacuna. We observed that thousands of government servants benefited from the legislation referred to above. Had there been some legal infirmity, it could have been assailed by them in the competent court of law? Interpretation of statutes by the learned counsel for the appellant was beyond our comprehension. He was unable to produce any supporting material through which he could establish his claim. Had his claim carried any weight, it might be easily defended by quoting cases of similar nature from other departments, if given regularization demanded by the appellants from a particular date. Furthermore, attention of the learned counsel for the appellant was also invited to notification dated 17.10.2017, where-under services of 680 contract employees were regularized from various dates but none of them challenged this order except the appellants. However, learned counsel for the appellant was not in a position to give any convincing response/reply.

11. As regards regularization of services of Dr. Muhammad Iqbal are concerned that was dealt with under Section-23 of the Khyber Pakhtunkhwa Civil Servants

ATTESTED


JUDGE
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Act, 1973 and this fact was not contested by the learned counsel for the appellant. Entire case record is quite clear that he did not avail the benefits of regularization Act referred to above. As such his case is not akin with that of the appellants and they cannot claim similar treatment by quoting it as a precedent.

12. As a sequel to the above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(ARMAD HASSAN)
MEMBER

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
12.11.2019

Certified to be true copy
(Signature)
K. S. ...
Secretary
Peshawar

Date of Presentation of ... 31-1-2020
Number of Volumes 3200
Cupping Fee 3400
Urgent 400
Total 3800
Name of ...
Date of Completion of ... 31-01-2020
Date of Delivery of ... 31-01-2020

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No _____ /2020

In _____
Service Appeal No 1224/2019

Govt of KP through Chief Secy & others
Versus
Dr. Khudiy Hussain

Application for giving findings on para No 5 of the facts and ground (h) of the title Service appeal, as no findings and judgment is given on it in the judgment dated 12-11-2019 rendered by this Honorable Tribunal in identical service appeals

Respectfully Sheweth,

The appellant submits as follows:

1. That the title service appeal is pending adjudication before this Honorable Court, which is fixed for hearing today.

2. That identical service appeals have been dismissed by this Honorable Tribunal vide judgment dated 12-11-2019. In the Para No 11 of the said judgment, it has been mentioned that the case of Dr M Iqbal has not been contested by the learned counsel, which is wrong and incorrect. In fact the appointment order and regularization order of the Dr M Iqbal both have been annexed with service appeals, as the same has been referred in para No 5 and ground (h) of the title service appeal and the same was vehemently agitated at the bar during the course of arguments and in the instant service appeal. The appellant is pressing the same. Hence the same may kindly be considered and findings be given thereon. (Copy of the judgment is filed herewith and annexed as Annex-CM/1)

It is, therefore, prayed that the on acceptance of the instant application, this Honorable Tribunal may kindly be pleased to give findings on para No 5 of the facts and ground (h) of the title Service appeal, as no findings are given on it in the judgment dated 12-11-2019 passed by this Honorable Tribunal in identical service appeals.

Appellant,
M Ayub Khan Shinwari

Through

Advocate, Peshawar

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No _____/2020
In
Service Appeal No _____/20

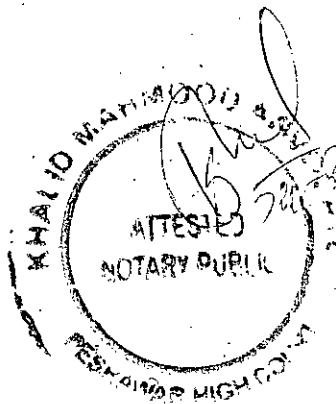
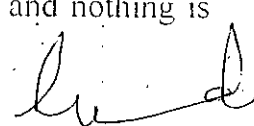
D/o: Khalida Yasmeen
Versus

Govt of KP through Chief Secty & others

AFFIDAVIT

I Dr. Khwaja Yasmin ALI do hereby solemnly affirm and state on oath that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing is kept concealed from this Honorable Tribunal.

Deponent



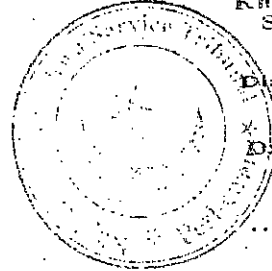
IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 318 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 325
Date 06-3-2018

Dr Akram Khan S/o Arbab Khan,
SMO, Nowshera



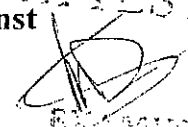
.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Department of Health, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
5. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

Service Appeal Under Section 4 of Khyber
Pakhtunkhwa Service Tribunal Act, 1974 against
Notification dated 17-10-2017

ATTESTED

Attesting Officer
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

1. That the appellant was appointed as Medical Officers (BPS-17) in the respondent Department on contract basis by the competent authority in the prescribed manner after fulfilling all the codal formalities vide appointment order dated 27-11-1995. (Copy of the appointment order is filed herewith and attached as Annex-A)
2. That the said contract was extended from time to time. Meanwhile the Government of Khyber Pakhtunkhwa erstwhile NWFP promulgated NWFP Civil Servants (Amendment) Act (LX) 2005 whereby Section 19 of the NWFP (now Khyber Pakhtunkhwa) Civil Servant Act, 1973 was amended and the services of all the contract employees were regularized.
3. That thereafter respondent No 3 i.e., Secretary, Establishment and Administration Department, Regulation Wing, Khyber Pakhtunkhwa, Peshawar issued a directive dated 10-08-2005, wherein all the administrative Secretaries of the province were directed to the effect that all the Government employees whose services are regularized under the NWFP

Filed to-day

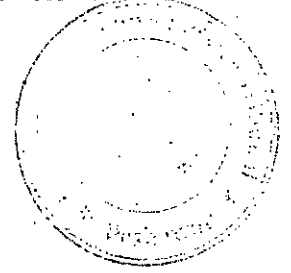
4/3/18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 318/2018

Date of Institution ... 06.03.2018

Date of Decision ... 12.11.2019



Dr. Akram Khan S/O Arbab Khan, SMO, Nowshera. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and four others. ... (Respondents)

Present:

MR. MUHAMMAD AYUB KHAN SHINARI,
Advocate

--- For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

MR. ZIALLAH,
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,

--- MEMBER (Executive)

MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER (Judicial)

ATTESTED

Khyber Pakhtunkhwa Service Tribunal
Peshawar

JUDGMENT:

AHMAD HASSAN, MEMBER:-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 317/2018 titled Dr. Alif Jan, no. 319/2018 titled Dr. Mamoon Elahi, no. 325/2018 titled Dr. Sheikh Muhammad Farooq Azam, no. 326/2018 titled Dr. Muhammad Hasham, no. 327/2018 titled Dr. Sultan-un-Nisa, no. 328/2018 titled Dr. Syeda Shahnaz Jabeen, no. 332/2018 titled Dr. Shahida Hussain Bukhari, no. 342/2018 titled Dr. Zafar Iqbal, no. 358/2018 titled Dr. Muhammad Zahid, no. 359/2018 titled Dr. Alamgeer Khan, no. 360/2018 titled Dr. Yousaf Khan, no. 361/2018 titled Abdur Rashid, no. 557/2018 titled Dr. Hafiz Zia-


ul-Habib, no. 845/2018 titled Dr. Sajjad Ahmad, no. 846/2019 titled Dr. Qaisar Zaman and no. 847/2015 titled Dr. Muhammad Hamayun as similar question of law and facts are involved therein.

02. Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

03. Learned counsel for the appellant argued that he was appointed as Medical Officer in the Health Department on contract basis through notification dated 27.11.1995. That upon promulgation of Khyber Pakhtunkhwa civil servants (Amendments) Act (IX) 2005, where-under section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was amended and resultantly services of contract employees were regularized. Respondent no.3 (Secretary Establishment) through letter dated 10.08.2005 informed that as a sequel to Act of 2005, the employees for all intents and purposes would be deemed to be civil servants except pension. After the said enactment respondent no.3 was reluctant to regularize the services of the appellant and others which compelled them to file writ petition no. 1510/17 before Peshawar High Court, Peshawar, which was allowed vide judgment dated 18.11.2008. After receipt of above judgment services of the appellant/others were regularized w.e.f the date of promulgation of Act 2005 i.e 23.07.2005. However, services of a colleague of the petitioners namely Muhammad Iqbal son of Amir Waiz Khan, was appointed on 08.07.1998 were regularized from the date of contractual appointment vide notification dated 09.12.2006.

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Peshawar

04. Learned counsel for the appellant further argued that subsequently the government of Khyber Pakhtunkhwa made further amendments in Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 through Act of 2013, where-under those employees appointed to a post in the prescribed manner on or after 01.07.2001 to 23.07.2005 on contract basis shall be deemed to have been appointed on regular basis. For implementation, the petitioners again approached the respondents but got a lukewarm response and again knocked the door of Peshawar high Court, Peshawar through writ petition no. 3960-P/2014, which was decided on 20.12.2016. The matter was referred to the respondents in the light of Section-5 of the Act of 2013 for appropriate decision. Thereafter, the respondents through impugned notification dated 17.10.2017 regularized the services of the appellant/others w.e.f 01.07.2001. Feeling aggrieved, the appellant filed departmental appeal on 11.11.2017, which remained unanswered, hence, the present service appeal. As there was no break in the service of the appellants, therefore, they were entitled for regularization from the date of initial appointment on contract basis. Act of 2013 was a beneficial legislation through which services of the employees were to be regularized from the date of initial appointment on contract basis. Reliance was placed on case law reported as 2012 PLC(C.S) 602, 2014 SCMR 1289, 2019 PLC (C.S) 103, 2009 PLC (CS) 389.

05. Learned Deputy District Attorney argued that there was hardly any confusion that services of the appellant/others were regularized w.e.f 01.07.2001 on the strength of Act of 2013. As the act did not allow regularization of contract appointment from the date of initial appointment i.e 27.11.1995 thus the action of the respondents was not suffering from any legal infirmity. Moreover, the Peshawar


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11/11/2017
PESHAWAR
HIGHER COURT

High Court, Peshawar, while deciding writ petition no. 3960-P/2014 on 20.12.2016 directed to constitute a committee in the light of Section-5 of the Act referred to above and the petitioners were directed to file department appeals. It was clear beyond any shadow of doubt that through the above judgment the Peshawar High Court, Peshawar had not regularized their services. However, if they were not satisfied from the relief granted by the august Court they were at liberty to assail the same before the august Supreme Court of Pakistan.

06. He further contended that present service appeal is hit by Rule-23 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 for the reason that the appellants were demanding the same relief through the present service appeal, as was sought in writ petition no. 3960-P/2014. This point has already been decided by the competent forum, therefore, the present service appeal was not maintainable. He further invited attention to regularization of Dr. Muhammad Iqbal notified on 09.12.2006. The said doctor was regularized on the basis of Section-23 of Khyber Pakhtunkhwa civil servants Act, 1973, thus parallel cannot be drawn between the two cases. It also settled the issue of discrimination agitated by the appellant. Reliance was placed on case law reported as 1990 MLD 1283, 2019 SCMR 349 and judgment of this Tribunal dated 25.04.1990 passed in service appeal no. 964/2016.

07. Learned Assistant Advocate General also invited attention of this Tribunal to the fact that the following doctors earlier appointed on contract basis were subsequently appointed on regular basis on the recommendations of Khyber Pakhtunkhwa Public Service Commission:-

1. Dr. Qaiser Zaman
2. Dr. Sajjad Ahmad


 Assistant Advocate General
 Peshawar


3. Dr. M. Hamayun
4. Dr. Syed Shahnaz Jabeen
5. Dr. Shahid Hussain Bukhari
6. Dr. Zafar Iqbal
7. Dr. M. Hashim
8. Dr. Sheikh M. Farroq Azam
9. Dr. Sultan-un-Nisa.

These details were not divulged by the learned counsel for the appellant during arguments. How a civil servant appointed through Public Service Commission could lay claim for regular appointment from the date of contractual appointment?

CONCLUSION:

08. Before dilating on the merits of the case, we deem it appropriate to flag the critical issue of appointment of Dr. Qaiser Zaman (date 19.10.2000), Dr. Sajjad Ahmad (date 15.09.1997), Dr. M. Hamayun (date 27.11.1998), Dr. Syed Shahnaz Jabeen(date 12.07.2004), Dr. Shahid Hussain Bukhari (date 08.02.2005), Dr. Zafar Iqbal (date 16.03.2005), Dr. M. Hashim (date 08.02.2005), Dr. Sheikh M. Farroq Azam (date 07.09.2007) and Dr. Sultan-un-Nisa (date 07.09.2007) on regular basis on the recommendations of Khyber Pakhtunkhwa Public Service Commission. The dates in the brackets indicate date of their regular appointment. It is pertinent to point out that though relevant notifications about their regular appointment have been annexed with the service appeals but their learned counsel kept mum over it for reasons best known to him. Strictly going by the rules seniority in such cases is assigned on the basis of merit list assigned by the Khyber Pakhtunkhwa Public Service Commission. Keeping in view the aforementioned position, it is not clear whether seniority was assigned to above petitioners from the date of regularization or appointment through Public Service Commission. As this issue was ^{not} properly raised/agitated by the learned counsel for the petitioners, so we would not like to address it.

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JUDGE
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

09. Through thirteen separate service appeals the appellants assailed notification dated 17.10.2017, where-under their services were regularized w.e.f 01.07.2001 and made a request to allow them regularization from the date of initial appointment on contract basis on 23.11.1995/relevant date. The appellants were appointed as Medical Officer on contract basis vide order dated 27.11.1995/relevant date. After promulgation of Khyber Pakhtunkhwa Civil Servants (Amendments) Act (IX) 2005 amendments were brought in Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and services of contract employees were regularized. However, when respondents failed to act according to the above enactment, the appellants knocked the door of Peshawar High Court, Peshawar by way of filing writ petition no. 1510-P/2007 decided on 18.11.2008. Thereafter, their services were regularized from the date of enactment of Act of 2005 i.e 23.07.2005. Thereafter, Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended and those employees appointed in the prescribed manner to service or post on or after 1st July 2001 till 23.07.2005 on contract basis were deemed to have been appointed on regular basis. Again respondents were not ready to treat the appellants on the basis of amendment referred to above, which forced them to file another writ petition no. 3960-P/2014 before Peshawar High Court, Peshawar. The mechanism to redress anomalies in the said act was available in Section-5 of the Act referred to above, therefore, the Peshawar High Court, Peshawar through judgment dated 20.12.2016 remanded the case to respondents for decision after thorough deliberations and according to the spirit of above referred provision. It resulted in issuance of impugned notification dated 17.10.2017 but that too failed to redress the grievances of the appellants. They were adamant for regularization of service from the date of initial appointment on


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[Signature]
Secretary
Service Tribunal,
Peshawar

contract basis. It is pertinent to point out that if the appellants were not satisfied from the judgment of Peshawar High Court, Peshawar dated 20.12.2016 the same could be easily assailed before the august Supreme Court of Pakistan by filing CPLA, however, the appellants remained silent for unknown reasons. Having attained finality, now it has become a story of the past and no relief can be claimed on the strength of the same.

10. We have carefully scrutinized the entire record specially amendments brought in Khyber Pakhtunkhwa Civil Servants Act, 1973 through separate enactments but were unable to lay hand on any legal lacuna. We observed that thousands of government servants benefited from the legislation referred to above. Had there been some legal infirmity, it could have been assailed by them in the competent court of law? Interpretation of statutes by the learned counsel for the appellant was beyond our comprehension. He was unable to produce any supporting material through which he could establish his claim. Had his claim carried any weight, it might be easily defended by quoting cases of similar nature from other departments, if given regularization demanded by the appellants from a particular date. Furthermore, attention of the learned counsel for the appellant was also invited to notification dated 17.10.2017, where-under services of 680 contract employees were regularized from various dates but none of them challenged this order except the appellants. However, learned counsel for the appellant was not in a position to give any convincing response/reply.

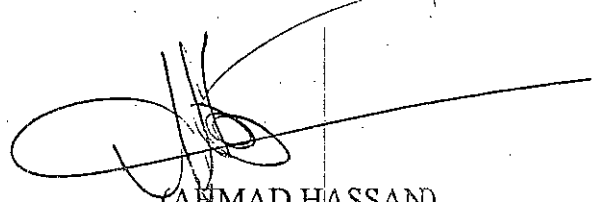
11. As regards regularization of services of Dr. Muhammad Iqbal are concerned that was dealt with under Section-23 of the Khyber Pakhtunkhwa Civil Servants

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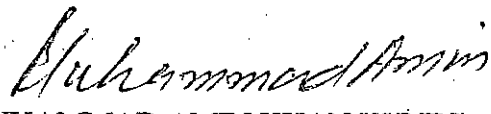

COUNSEL
Service Tribunal
Peshawar

Act, 1973 and this fact was not contested by the learned counsel for the appellant. Entire case record is quite clear that he did not avail the benefits of regularization Act referred to above. As such his case is not akin with that of the appellants and they cannot claim similar treatment by quoting it as a precedent.

12. As a sequel to the above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

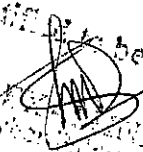


(AHMAD HASSAN)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
12.11.2019

Certificate to be filed copy

MEMBER
Khyber Pakhtunkhwa
Sessions Tribunal
Peshawar

Date of Presentation 31-1-2020
Number of Vials 2200
Copying Fee 34-00
Urgent 4-00
Total 38-00
Name of Copystaff
Date of Completion of Copy 31-01-2020
Date of Delivery of Copy 31-01-2020

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No _____/2020
In
Service Appeal No 1224/2018

Dr. Khalid Jamil Versus Govt of KP through Chief Secty & others

Application for giving findings on para No 5 of the facts and ground (h) of the title Service appeal, as no findings and judgment is given on it in the judgment dated 12-11-2019 rendered by this Honorable Tribunal in identical service appeals

Respectfully Sheweth,

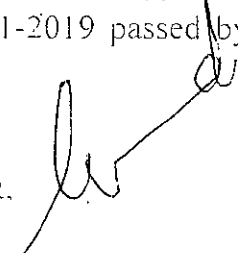
The appellant submits as follows:


1. That the title service appeal is pending adjudication before this Honorable Court, which is fixed for hearing today.
2. That identical service appeals have been dismissed by this Honorable Tribunal vide judgment dated 12-11-2019. In the Para No 11 of the said judgment, it has been mentioned that the case of Dr M Iqbal has not been contested by the learned counsel, which is wrong and incorrect. In fact the appointment order and regularization order of the Dr M Iqbal both have been annexed with service appeals, as the same has been referred in para No 5 and ground (h) of the title service appeal and the same was vehemently agitated at the bar during the course of arguments and in the instant service appeal, the appellant is pressing the same. Hence the same may kindly be considered and findings be given thereon. (Copy of the judgment is filed herewith and annexed as **Annex-CM/1**)

It is, therefore, prayed that the on acceptance of the instant application, this Honorable Tribunal may kindly be pleased to give findings on para No 5 of the facts and ground (h) of the title Service appeal, as no findings are given on it in the judgment dated 12-11-2019 passed by this Honorable Tribunal in identical service appeals.

Appellant,

Through


M Ayub Khan Shinwari
Advocate, Peshawar



IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

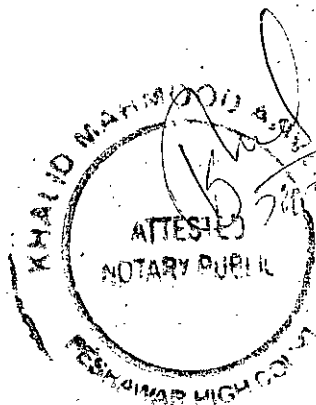
C.M No _____/2020
In
Service Appeal No _____/20

Dr: khalida yasmineen
Versus Govt of KP through Chief Secty & others

AFFIDAVIT

I Dr: Khalida Yasmeen (Dr: ALI Usman) do hereby solemnly affirm and state on oath that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing is kept concealed from this Honorable Tribunal.

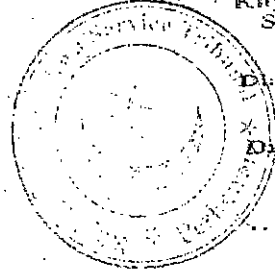
Deponent



IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 318 /2018

Khyber Pakhtunkhwa
Service Tribunal



Diary No. 325

Date 06-3-2018

Dr Akram Khan S/o Arbab Khan,
SMO, Nowshera

.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Department of Health, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
5. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

Service Appeal Under Section 4 of Khyber
Pakhtunkhwa Service Tribunal Act, 1974 against
Notification dated 17-10-2017

ATTESTED

REGISTRAR
Khyber P. S. Tribunal
Service Tribunal,
Peshawar

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

Filed to-day

REGISTRAR
6/3/18

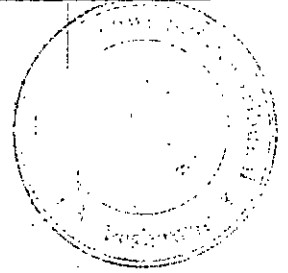
1. That the appellant was appointed as Medical Officers (BPS-17) in the respondent Department on contract basis by the competent authority in the prescribed manner after fulfilling all the codal formalities vide appointment order dated 27-11-1995. (Copy of the appointment order is filed herewith and attached as Annex-A).
2. That the said contract was extended from time to time. Meanwhile the Government of Khyber Pakhtunkhwa erstwhile NWFP promulgated NWFP Civil Servants (Amendment) Act (IX) 2005 whereby Section 19 of the NWFP (now Khyber Pakhtunkhwa) Civil Servant Act, 1973 was amended and the services of all the contract employees were regularized.
3. That thereafter respondent No 3 i.e., Secretary, Establishment and Administration Department, Regulation Wing, Khyber Pakhtunkhwa, Peshawar issued a directive dated 10-08-2005, wherein all the administrative Secretaries of the province were directed to the effect that all the Government employees whose services are regularized under the NWFP

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 318/2018

Date of Institution ... 06.03.2018

Date of Decision ... 12.11.2019



Dr. Akram Khan S/O. Arbab Khan, SMO, Nowshera. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and four others. ... (Respondents)

Present:

MR. MUHAMMAD AYUB KHAN SHINARI,
Advocate

--- For appellant.

ATTESTED

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

MR. ZIALLAH,
Deputy District Attorney

--- For respondents.

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

MR. AHMAD HASSAN,

--- MEMBER(Executive)

MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Judicial)

JUDGMENT:

AHMAD HASSAN, MEMBER:-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 317/2018 titled Dr. Alif Jan, no. 319/2018 titled Dr. Mamoon Elahi, no. 325/2018 titled Dr. Sheikh Muhammad Farooq Azam, no. 326/2018 titled Dr. Muhammad Hasham, no. 327/2018 titled Dr. Sultan-un-Nisa, no. 328/2018 titled Dr. Syeda Shahnaz Jabeen, no. 332/2018 titled Dr. Shahida Hussain Bukhari, no. 342/2018 titled Dr. Zafar Iqbal, no. 358/2018 titled Dr. Muhammad Zahid, no. 359/2018 titled Dr. Alamgeer Khan, no. 360/2018 titled Dr. Yousaf Khan, no. 361/2018 titled Abdur Rashid, no. 557/2018 titled Dr. Hafiz Zia-


ul-Habib, no. 845/2018 titled Dr. Sajjad Ahmad, no. 846/2019 titled Dr. Qaisar Zaman and no. 847/2015 titled Dr. Muhammad Hamayun as similar question of law and facts are involved therein.

02. Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

03. Learned counsel for the appellant argued that he was appointed as Medical Officer in the Health Department on contract basis through notification dated 27.11.1995. That upon promulgation of Khyber Pakhtunkhwa civil servants (Amendments) Act (IX) 2005, where-under section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was amended and resultantly services of contract employees were regularized. Respondent no.3 (Secretary Establishment) through letter dated 10.08.2005 informed that as a sequel to Act of 2005, the employees for all intents and purposes would be deemed to be civil servants except pension. After the said enactment respondent no.3 was reluctant to regularize the services of the appellant and others which compelled them to file writ petition no. 1510/17 before Peshawar High Court, Peshawar, which was allowed vide judgment dated 18.11.2008. After receipt of above judgment services of the appellant/others were regularized w.e.f the date of promulgation of Act 2005 i.e 23.07.2005. However, services of a colleague of the petitioners namely Muhammad Iqbal son of Amir Waiz Khan, was appointed on 08.07.1998 were regularized from the date of contractual appointment vide notification dated 09.12.2006.

ATTESTED


Khyber Pakhtunkhwa
Peshawar

04. Learned counsel for the appellant further argued that subsequently the government of Khyber Pakhtunkhwa made further amendments in Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 through Act of 2013, where-under those employees appointed to a post in the prescribed manner on or after 01.07.2001 to 23.07.2005 on contract basis shall be deemed to have been appointed on regular basis. For implementation, the petitioners again approached the respondents but got a lukewarm response and again knocked the door of Peshawar high Court, Peshawar through writ petition no. 3960-P/2014, which was decided on 20.12.2016. The matter was referred to the respondents in the light of Section-5 of the Act of 2013 for appropriate decision. Thereafter, the respondents through impugned notification dated 17.10.2017 regularized the services of the appellant/others w.e.f 01.07.2001. Feeling aggrieved, the appellant filed departmental appeal on 11.11.2017, which remained unanswered, hence, the present service appeal. As there was no break in the service of the appellants, therefore, they were entitled for regularization from the date of initial appointment on contract basis. Act of 2013 was a beneficial legislation through which services of the employees were to be regularized from the date of initial appointment on contract basis. Reliance was placed on case law reported as 2012 PLC(C.S) 602, 2014 SCMR 1289, 2019 PLC (C.S) 103, 2009 PLC (CS) 389.

05. Learned Deputy District Attorney argued that there was hardly any confusion that services of the appellant/others were regularized w.e.f 01.07.2001 on the strength of Act of 2013. As the act did not allow regularization of contract appointment from the date of initial appointment i.e 27.11.1995 thus the action of the respondents was not suffering from any legal infirmity. Moreover, the Peshawar


APPROVED


High Court, Peshawar, while deciding writ petition no. 3960-P/2014 on 20.12.2016 directed to constitute a committee in the light of Section-5 of the Act referred to above and the petitioners were directed to file department appeals. It was clear beyond any shadow of doubt that through the above judgment the Peshawar High Court, Peshawar had not regularized their services. However, if they were not satisfied from the relief granted by the august Court they were at liberty to assail the same before the august Supreme Court of Pakistan.

06. He further contended that present service appeal is hit by Rule-23 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 for the reason that the appellants were demanding the same relief through the present service appeal, as was sought in writ petition no. 3960-P/2014. This point has already been decided by the competent forum, therefore, the present service appeal was not maintainable. He further invited attention to regularization of Dr. Muhammad Iqbal notified on 09.12.2006. The said doctor was regularized on the basis of Section-23 of Khyber Pakhtunkhwa civil servants Act, 1973, thus parallel cannot be drawn between the two cases. It also settled the issue of discrimination agitated by the appellant. Reliance was placed on case law reported as 1990 MLD 1283, 2019 SCMR 349 and judgment of this Tribunal dated 25.04.1990 passed in service appeal no. 964/2016.

07. Learned Assistant Advocate General also invited attention of this Tribunal to the fact that the following doctors earlier appointed on contract basis were subsequently appointed on regular basis on the recommendations of Khyber Pakhtunkhwa Public Service Commission:-

1. Dr. Qaiser Zaman
2. Dr. Sajjad Ahmad


 Assistant Advocate General
 Peshawar


3. Dr. M. Hamayun
4. Dr. Syed Shahnaz Jabeen
5. Dr. Shahid Hussain Bukhari
6. Dr. Zafar Iqbal
7. Dr. M. Hashim
8. Dr. Sheikh M. Farroq Azam
9. Dr. Sultan-un-Nisa.

These details were not divulged by the learned counsel for the appellant during arguments. How a civil servant appointed through Public Service Commission could lay claim for regular appointment from the date of contractual appointment?

CONCLUSION:

08. Before dilating on the merits of the case, we deem it appropriate to flag the critical issue of appointment of Dr. Qaiser Zaman (date 19.10.2000), Dr. Sajjad Ahmad (date 15.09.1997), Dr. M. Hamayun (date 27.11.1998), Dr. Syed Shahnaz Jabeen(date 12.07.2004), Dr. Shahid Hussain Bukhari (date 08.02.2005), Dr. Zafar Iqbal (date 16.03.2005), Dr. M. Hashim (date 08.02.2005), Dr. Sheikh M. Farroq Azam (date 07.09.2007) and Dr. Sultan-un-Nisa (date 07.09.2007) on regular basis on the recommendations of Khyber Pakhtunkhwa Public Service Commission. The dates in the brackets indicate date of their regular appointment. It is pertinent to point out that though relevant notifications about their regular appointment have been annexed with the service appeals but their learned counsel kept mum over it for reasons best known to him. Strictly going by the rules seniority in such cases is assigned on the basis of merit list assigned by the Khyber Pakhtunkhwa Public Service Commission. Keeping in view the aforementioned position, it is not clear whether seniority was assigned to above petitioners from the date of regularization or appointment through Public Service Commission. As this issue was ^{not} properly raised/agitated by the learned counsel for the petitioners, so we would not like to address it.

ATTESTED


CHIEF
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

09. Through thirteen separate service appeals the appellants assailed notification dated 17.10.2017, where-under their services were regularized w.e.f 01.07.2001 and made a request to allow them regularization from the date of initial appointment on contract basis on 23.11.1995/relevant date. The appellants were appointed as Medical Officer on contract basis vide order dated 27.11.1995/relevant date. After promulgation of Khyber Pakhtunkhwa Civil Servants (Amendments) Act (IX) 2005 amendments were brought in Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and services of contract employees were regularized. However, when respondents failed to act according to the above enactment, the appellants knocked the door of Peshawar High Court, Peshawar by way of filing writ petition no. 1510-P/2007 decided on 18.11.2008. Thereafter, their services were regularized from the date of enactment of Act of 2005 i.e 23.07.2005. Thereafter, Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended and those employees appointed in the prescribed manner to service or post on or after 1st July 2001 till 23.07.2005 on contract basis were deemed to have been appointed on regular basis. Again respondents were not ready to treat the appellants on the basis of amendment referred to above, which forced them to file another writ petition no. 3960-P/2014 before Peshawar High Court, Peshawar. The mechanism to redress anomalies in the said act was available in Section-5 of the Act referred to above, therefore, the Peshawar High Court, Peshawar through judgment dated 20.12.2016 remanded the case to respondents for decision after thorough deliberations and according to the spirit of above referred provision. It resulted in issuance of impugned notification dated 17.10.2017 but that too failed to redress the grievances of the appellants. They were adamant for regularization of service from the date of initial appointment on


ATTESTED
[Signature]
Joint Secretary
Service Tribunal
Peshawar

contract basis. It is pertinent to point out that if the appellants were not satisfied from the judgment of Peshawar High Court, Peshawar dated 20.12.2016 the same could be easily assailed before the august Supreme Court of Pakistan by filing CPLA, however, the appellants remained silent for unknown reasons. Having attained finality, now it has become a story of the past and no relief can be claimed on the strength of the same.

10. We have carefully scrutinized the entire record specially amendments brought in Khyber Pakhtunkhwa Civil Servants Act, 1973 through separate enactments but were unable to lay hand on any legal lacuna. We observed that thousands of government servants benefited from the legislation referred to above. Had there been some legal infirmity, it could have been assailed by them in the competent court of law? Interpretation of statutes by the learned counsel for the appellant was beyond our comprehension. He was unable to produce any supporting material through which he could establish his claim. Had his claim carried any weight, it might be easily defended by quoting cases of similar nature from other departments, if given regularization demanded by the appellants from a particular date. Furthermore, attention of the learned counsel for the appellant was also invited to notification dated 17.10.2017, where-under services of 680 contract employees were regularized from various dates but none of them challenged this order except the appellants. However, learned counsel for the appellant was not in a position to give any convincing response/reply.

11. As regards regularization of services of Dr. Muhammad Iqbal are concerned that was dealt with under Section-23 of the Khyber Pakhtunkhwa Civil Servants

ATTESTED


SECRETARY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Act, 1973 and this fact was not contested by the learned counsel for the appellant. Entire case record is quite clear that he did not avail the benefits of regularization Act referred to above. As such his case is not akin with that of the appellants and they cannot claim similar treatment by quoting it as a precedent.

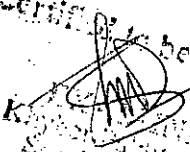
12. As a sequel to the above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

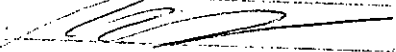


(AHMAD HASSAN)
MEMBER

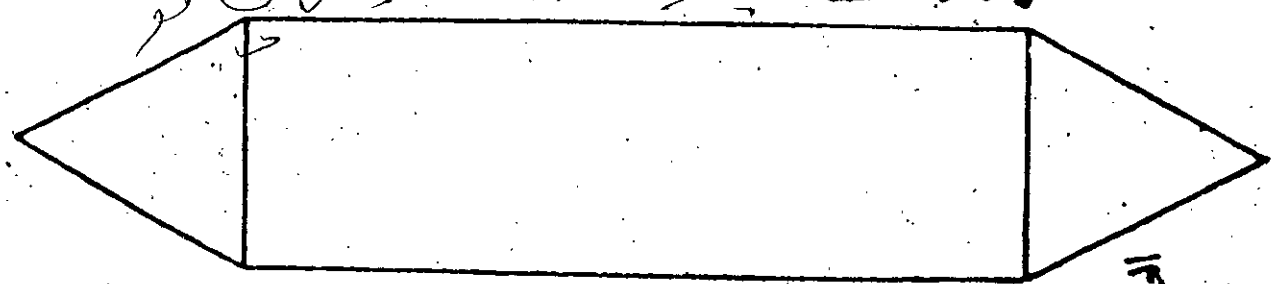
Muhammoud Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
12.11.2019

Certificate to be type copy

MEMBER
Khyber Pakhtunkhwa
Session Tribunal,
Peshawar

Date of Presentation 31-1-2020
Number of Volumes 3200
Copying Fee 34-00
Urgent 4-00
Total 38-00
Name of Copyist 
Date of Copying of Case 31-01-2020
Date of Delivery of Case 31-01-2020

بعدالت خلاہ روس ٹریڈنگ کمپنی



موزن
مقدمہ
دعویٰ
جرم

مخالفہ یا سمسون بنام حکومت
سر دوسرا اپیل
باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب وہی وکل
کارروائی متعلقہ آن مقام کے لئے محمد الہیہ جان مسواریہ الہیہ
مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوت کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز
دیکل صاحب کو کرنے راضی نامہ و تقررات و فیصلہ برحلف دیے جواب دیں اور اقبال دعویٰ اور
بصورت دگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
نہراہیں پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا دگری کیغرض یا اپیل کی برآمدگی اور سرفی
نیز دائر کرنے اپیل ٹکرانی و نگرانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور دیکل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تعزیر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جلد مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ
پرداختہ منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجاۃ التوائے مقدمہ کے سبب سے ہوگا۔
اسکے مستحق دیکل صاحب موصوت ہوں گے۔ نیز بقایا و خرچہ کی ذمہ داری کرنے کا بھی اختیار ہوگا۔ اگر
کوئی تاریخ پیشی مقام دورہ پے ہو یا حد سے باہر ہو تو دیکل صاحب پابند نہ ہوں گے۔ کہ پیروی
نہ کر دیں۔ لہذا ذکات نامہ لکھ دیا کہ سند رہے۔

المترجم
دکراؤتہ
د العبد

کے لئے منظور ہے۔

محمد الہیہ