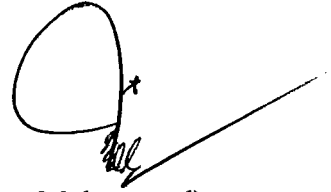


18.07.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Reply/comments on behalf of respondents not submitted. Learned Additional Advocate General seeks time to contact the respondents for submission of reply/comments. Adjourned. To come up for reply/comments on 19.09.2022 before S.B.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long, sweeping horizontal line that extends to the right.

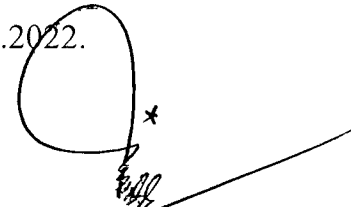
(Mian Muhammad)
Member (E)

19.05.2022

Learned counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant argued the case at the stage of preliminary hearing and contended that the appellant was initially appointed as Doctor on contract basis on 27.11.1995 and he took over the charge as MO at BHU Sheikh Baba Mohmand Agency on 29.11.1995 His services were regularized under the Khyber Pakhtunkhwa Civil Servants (Amendment) Act 2005 w.e.f. 01.07.2001 vide notification dated 17.10.2017. He also referred to the various litigation cases for pay protection of 6 years (29.11.1995 to 30.06.2001). His departmental appeal for counting of previous contract service submitted on 10.06.2021 was not responded within the statutory period whereafter the service appeal in hand was instituted in the Service Tribunal on 29.11.2021. On the question of limitation for one month and 20 days, learned counsel for the appellant argued that being a recurring cause and involvement of emoluments, limitation does not run against in such cases under orders of the august Supreme Court of Pakistan. He also referred to service appeal No. 7590/2021 titled Dr. S.M Taimoor, service appeal No. 7591/2021 titled Dr. Amjad Ali Shah & service appeal No. 7592/2021 titled Dr. Syed Luqman Ali Shoaib to have been admitted and are fixed for regular hearing before the D.B on 22.06.2022.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments. To come up for reply/comments before the S.B on 18.07.2022.


(Mian Muhammad)
Member (E)

Rs-600/-
Appellant Deposited
Security & Process Fee





Amjad Ali Shah
24/5/22

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 7799/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/11/2021	<p>The appeal of Dr. Muhammad Ali presented today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	14.01.2022	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>08/02/22</u></p> <p> CHAIRMAN</p>
	23.02.2022	<p>Learned counsel for the appellant present.</p> <p>Being Chairman of Departmental Selection Committee, I am busy in Administrative work regarding recruitment, therefore, to come up for preliminary hearing on 23.02.2022 before the S.B.</p> <p> (Salah-Ud-Din) Member (J)</p>
		<p>Due to retirement of the Hon'able Chairman, the case is adjourned to 19.05.2022 for the same before D.B.</p> <p> Reader</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 7799/2021

Dr. Muhammad Ali Khan **Appellant.**

V E R S U S

Govt. & others..... **Respondents**

I N D E X

S. No	Description of documents	Annexure	Pages
1.	Service Appeal with affidavit		1-4
2.	Application for condonation of delay with affidavit		5
3.	Copy of Appointment order & Judgment	A, & B	6-27
4.	Copy of Judgment dated 09-02-2017, Notification dated 17-10-2017 & Order dated 26-09-2019	C, D & E	28-36
5.	Copy of Departmental Appeal	F	37-39
6.	Copy of Judgment dated 01-03-2018 passed in Writ Petition No 3221-P/2013, Judgment dated 03-02-2016 passed in Civil Petition No 1536/2013 and Judgment dated 01-08-2011 passed in Service Appeal No 38/2011	G	40-52
7.	Wakalat Nama		53

Dated:-06-10-2021

M. Ali
Appellant

Through

Fazal Shah Mohmand
FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.

&

RABIA MUZAFFAR
ADVOCATE,
HIGH COURT, PESHAWAR.

OFFICE:-
Cantonment Plaza Flat# 3/B
Khyber Bazar Peshawar.
Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

-1-

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. _____/2021

Dr. Muhammad Ali Khan S/OHaji badshah Gul, District Specialist
(PAEDS) THQ Hospital, Bara District Khyber

.....Appellant.

V E R S U S

1. Govt. of Khyber Pakhtunkhwa through Secretary, Health Department Peshawar.
2. Director, General Health Services Khyber Pakhtunkhwa Peshawar.
3. Govt. of Khyber Pakhtunkhwa through Secretary, Finance Department Peshawar.
4. Chief Secretary, Govt. of Khyber Pakhtunkhwa Peshawar.

.....Respondents

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT
1974 AGAINST THE NON-COUNTING OF THE PERVIOUS
CONTRACT SERVICE OF THE APPELLANT W.E.F 29-11-
1995 TO 31-06-2001 AND AGAINST WHICH
DEPARTMENTAL APPEAL OF THE APPELANT HAS NOT
BEEN RESPONDED SO FAR DESPITE THE LAPSE OF
MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.**

PRAYER:-

On acceptance of this appeal the respondents may kindly be directed to count the previous contract service of the appellant w.e.f 29-11-1995 to 31-06-2001 rendered by him for the purpose of pay protection and pension etc. with all back benefits.

Respectfully Submitted:-

1. That the appellant was appointed after the posts were duly advertised, the appellant passed through the recruitment process and finally upon the recommendation of Departmental Selection Committee, was appointed as Medical Officer (BPS-17) in Health Department KP vide Order dated 29-11-1995, on contract basis which contract was extended from time to time till the KP Civil Servants Act was amended on 23-07-2005, after which the services of the appellant stood regularized however the appellant was not extended the benefits, after which the

appellant along with others was forced to approach the honorable Peshawar High Court Peshawar by filing Writ Petition No 1510-P/2007 which was allowed vide Judgment dated 18-11-2008. **(Copy of Appointment order & Judgment is enclosed as Annexure A & B).**

2. That respondents even then were not ready to regularize the services of the appellant, so they again approached the Peshawar High Court by filing Writ Petition No 1647-P/2013 which was disposed of on 09-02-2017 remitting the case to the Committee for consideration and finally the services of the appellant along with others were regularized vide Notification dated 17-10-2017 w.e.f 01-07-2001 instead from the date of their initial appointment, against which the appellant along with others again filed Writ Petition No 851-P/2018 which was dismissed on 26-09-2019, and against which the appellant has approached the Apex Court. **(Copy of Judgment dated 09-02-2017, Notification dated 17-10-2017 & Order dated 26-09-2019 is enclosed as Annexure C, D & E).**
3. That the appellant is entitled to be given the benefit of previous service for the purpose of Pay Protection & Pension and for which purpose the appellant along with other approached the Peshawar High Court by filing Writ petition No 3337-P/2020 but as the matter related to the terms and conditions of service so the same was withdrawn on 27-05-2021.
4. That the department is reluctant to count the contract service of the appellant for the purpose of pay protection and pension etc. which is violation of the law, rules and numerous Judgments of this honorable tribunal, honorable High Court as well as the Apex Court of the Country. Even the appellant filed departmental appeal for the purpose which was duly forwarded however the same has not been responded so far despite the lapse of more than ninety days. **(Copy of Departmental Appeal is enclosed as Annexure F).**
5. That this action of the department of not counting the contract service of the appellant w.e.f 29-11-1995 to 31-06-2001 for the purpose of pay protection and pension etc. is against the law, facts and principles of justice on grounds inter-alia as follows:-

GROUND:-

- A. That the omissions and commissions of the respondents are illegal and void ab initio.
- B. That mandatory provisions of law are badly violated by the respondents who are not ready to treat the appellant

-3-

according to law and rules being his fundamental right guaranteed in the Article 4 and 25 of the Constitution of Pakistan.

- C. That the Pension Rules 1963 as well as the Civil Service Regulations are very much clear on the point which gives protection to such contract service for the purpose of pay protection and pension etc.
- D. That the appellant is entitled to be given the benefit of previous contract service rendered by the appellant as per the CSR-371-A and pension rules.
- E. That in the recent Judgment dated 08-02-2021 passed in Civil Petition No 1641-L/2018 it has been held by the Apex Court that regularization is a step up and must provide better terms of service and cannot make the employee worse. Even the law and rules are very much clear on the subject which also allows such benefits. A number of Judgments rendered by this honorable Tribunal, honorable Peshawar High Court as well as the Apex Court of the Country have also given protection to such service to be counted for the purpose of pay protection and pension. **(Copy of Judgment dated 01-03-2018 passed in Writ Petition No 3221-P/2013, Judgment dated 03-02-2016 passed in Civil Petition No 1536/2013 and Judgment dated 01-08-2011 passed in Service Appeal No 38/2011 is enclosed as Annexure G).**
- F. That even otherwise not giving the appellant the benefit of service rendered by him amounts to exploitation in violation of the Constitution and law of the land.
- G. That the Appellant has been deprived of his due rights without any omission or commission on his part in violation of the principles of natural justice.
- H. That accrued rights of the appellant has been snatched sane without any fault on his part.
- I. That the appellant has more than 25 years of service career with unblemished service record.
- J. That the appellant seeks the permission of this honorable Court for additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Any other relief deemed appropriate and not asked for may also be granted in favour of the appellant.

Dated: -26-11-2021


Appellant

Through


FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.

&

RABIA MUZAFFAR
ADVOCATE,
HIGH COURT, PESHAWAR.

LIST OF BOOKS

1. Constitution 1973
2. Service laws.
3. Other Books as per need

CERTIFICATE

Certified that as per instructions of my clients, no appeal on the same subject and between the same parties has been filed previously or concurrently before this honorable Court.


ADVOCATE

AFFIDAVIT

I, Dr. Muhammad Ali Khan S/OHaji badshah Gul, District Specialist (PAEDS) THQ Hospital, Bara District Khyber, do hereby solemnly affirm and declare on oath that the contents of this Appeal, are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.


DEPONENT

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. _____/2021

Dr. Muhammad Ali Khan.....Appellant.

V E R S U S

Govt. & others.....Respondents

Application for condonation of delay if any

Respectfully Submitted:-

- 1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
- 2. That the grounds of appeal may be considered as integral Part of this application.
- 3. That the subject issue is of the Counting of service for the purpose of pay protection and pension, and as such every month fresh cause of action accrues to the appellant, being recurring cause of action.
- 4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit.

It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.

Dated: -10-2021

M. Ali
Appellant

Through

Fazal Shah

**Fazal Shah Mohmand
Advocate Supreme Court.
&**

**Rabia Muzaffar
Advocate, Peshawar.**

A F F I D A V I T

I, Dr. Muhammad Ali Khan S/OHaji badshah Gul, District Specialist (PAEDS) THQ Hospital, Bara District Khyber, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

M. Ali
DEPONENT

Signature: *[Handwritten Signature]*
 Designation: *[Handwritten Designation]*

noon of the 29.11.1995

The charge of the Office of *[Handwritten Name]* was transferred from Mr. *[Handwritten Name]* to Mr. *[Handwritten Name]* on the 29.11.1995.

1. The Accountant-General, N.W.F.P., Keshavnagar.
2. The Director General Health Services, (in addition) The Provincial Director of Health Services, Keshavnagar.
3. The Agency Accounts Officer, Mohamad Chelliammal.
4. The Agency Accounts Officer, Mohamad Chelliammal.
5. For information & necessary action please.

To: *[Handwritten Name]*
 From: The Agency Accounts Officer, Mohamad Chelliammal

[Large Handwritten Signature]

Encl. No. 2668-71 dated 13.12.95

Signature of Government Servant receiving Charge: *[Handwritten Signature]*
 Designation: M.O.

Date: 29/11/1995
 29.11.1995 (K)

Signature of relieved Government Servant: *[Handwritten Signature]*
 Designation: *[Handwritten Designation]*
 Station: *[Handwritten Station]*

Particulars of Cash and Impertant/Secret/Confidential Documents handed over/taken over are noted on the reverse.

Transferring Mr. *[Handwritten Name]* with reference to the Order of the N.W.F.P. Government dated 22.11.1995.

CERTIFICATE OF TRANSFER OF CHARGE
 GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE
 DR. MOHAMMAD ALI HAJI, Officer

"A" - 6 -



**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

All communications should be addressed to The Director General Health Services
Peshawar and not to any official by name

Office No. P-01 - 92102695, P-02 - 9210167, P-03 - 9210196, P-04 - 9210210

No. 166 /B-1

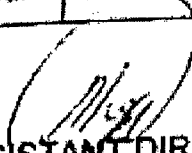
Dated 26 /01/2014

SERVICE EXPERIENCE CERTIFICATE

It is certified that Dr. Muhammad Ali Khan s/o Haji Badshah Gul has joined the Provincial Health Department as Medical Officer (BS-17) on 29.11.1995/07.09.2007 on contract/regular basis respectively.

His history of service is as under:

S No	APPOINTMENT HELD	FROM	TO
1.	MO BHU Shelkh Baba Mohmand Agency.	29/11/1995	30/06/2003
2.	MO THQ: Hospital Sumar Bagh Lower Dir.	31/06/2003	11/02/2006
3.	MO AHQ: Hospital Bajour.	12/02/2006	24/04/2011
4.	TMO PGMI HMC Peshawar	30/04/2011	Till date


ASSISTANT DIRECTOR (P-I)
DIRECTORATE GENERAL HEALTH
SERVICES KHYBER PAKHTUNKHWA PESHAWAR

26/1/14

-8- "B"

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

Writ Petition No. 1510 /2007.

1. Dr. Rizwanullah S/O Amanullah Khan MO BHU Hussainabad Peshawar.
2. Dr. Sharifullah S/O Muhammad Zaman Khan Medical Officer Khyber Teaching Hospital, Peshawar.
3. Dr. Rozat Shah S/O Syed Mursaleen Shah MO CD Din Bahar Colony Peshawar
4. Dr. Zafar Ali Shah S/O Syed Badshah MO BHU Dalazak Peshawar.
5. Dr. Tasneem Fauma D/O M Aslam Malik WMO Police/services Hospital Peshawar.
6. Dr. S.M. Taimur Shah S/O Pir Feroz Shah MO BHU Umar Maina Peshawar.
7. Dr. Muhammad Zahid Shah S/O Qaiser Ahmad MO Govt. ID Children Hospital Peshawar.
8. Dr. Zafar Ali S/O Mir Ghawas MO MMC Mardan
9. Dr. Muhammad Jaseem S/O Muhammad Quresh MO DHQH Swabi.
10. Dr. Ajmal Khan S/O Zulqadar Khan MO BHU Saurai Jadced Swabi.
11. Dr. Muhammad Quresh S/O Mehraban Shah MO DHQH Swabi.
12. Dr. Muhammad Ali S/O Khair Muhammad MO BHU Adina Swabi.
13. Dr. Riaz Ali S/O Sher Bahadar MO BHU Yaqoobi Swabi.
14. Dr. Bakht Zaman S/O Wali Dad MO DHQH Swabi
15. Dr. Noor Muhammad Khan S/O Shahmat Khan MO RHC Munda Lower Dir.
16. Dr. Khandad Khan S/O Shaista Khan MO CH B. North Waziristan Agency
17. Dr. Khalid Mahmood S/O Rehmatullah MO DHQH Banu.
18. Dr. Ibrahim Iqbal S/O Saleh Khan MO DHQH Lakk.
19. Dr. Gulab Khan S/O Inayatullah Khan MO DHQH DI Khan.
20. Dr. Saïd Muhammad S/O Ali Bat Khan MO RHC Pahar Pur DI Khan.
21. Dr. Wali Muhammad S/O Gul Ghanir Khan Coordinator EDO (H)T.
22. Dr. S. Riazuddin S/O S. Zaman Shah MO BHU Kotla Allahdad Tank
23. Dr. S. Luqman Shuaib S/O M. Shuaib MO BHU Nawar Kili Mojanand Agency



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BEFORE THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 1510/2007.

1. Dr Rizwanullot S/O Amanullah Khan MO BIO
Hussainabad Peshawar
2. Dr Shanfullah S/O Muhammad Zaman Khan Medical
Officer Khyber Teaching Hospital Peshawar
3. Dr Rozat Shah S/O Syed Mursaleen Shah MO CD
Din Bahar Colony Peshawar
4. Dr Za Ali Shah S/O Syed Badshah MO BHU
Dalazak Peshawar
5. Dr Tasneem Fatima DIO M Aslam Malik WMO
Police/services Hospital Peshawar
6. Dr S.M. Taumur ShaH S/O Pir Feroz Shah, MO BHU
Urmar Miana Peshawar
7. Dr Muhammad Zahid Shah S/O Qaiser Ahmad MO
Govt. ID Children Hospital Peshawar
8. Dr Zafar Ali S/O Mir Ghawas MO MMC Mardan.
9. Dr Muhammad Jaseem SIO Muhammad Quresh MO
DHQH Swabi
10. Dr Ajmal Khan S/O Zulqadar Khan MO BHU Sadrai
Jadeed Swabi
11. Dr Muhammad Quresh S/O Mehraban Shah. MO
DHQH Swabi
12. Dr Muhammad Ali S/O Khair Muhaminad MO BHU
Adina Swabi
13. Dr Riaz Al S/O Sher Bahadar MO BHU Yaqoobi
Swabi
14. Dr Bakht Zaman S/O Wali Dad MO DHQH Swabi
15. Dr Noor Muhammad Khan S/O Shahmut Kia MO
RHC Munda Lower Din
16. Dr Khandad Khan S/O Shaista Khan MO CH
North Wazistan Agency
17. Dr Khalid Mehmood S/O Rehmatullah MO DHQH
Bannu
18. Dr. Ibrahim Tybal S/O Saleh Khan MO DHQH Lakki.
19. DR Gulab Klun S/O Inayatullah Khan MO DHQH
DI Khan
20. Dr Said Mohammad S/O Ali Bat Khan MO RHC
Pahar Pur Di Khan
21. Dr Wali Muhammad S/O Gul Ghanir Khan
Coordinator EDO (II)
22. Dr S Riazuddin S/O Sher Zaman Shah MO BHU
Kolla Allahdad Tank
23. Dr. S Luqman Shuaib S/o M. Shuaib MO BHU
Nawan Kili Mohmand Agency

- 24. Dr Muhammad Ayub Khair S/O Badshah Gul MO SHS Mohmand Agency.
- 25. Dr Fazal Subhan S/O Ghulam Nabi MO THQH Samar Bagh Lower Dir.
- 26. Dr Muhammad Shahi Rawan S/O Muhammad Alamzeb AHQH Khar Bajaur Agency.
- 27. Dr Muhammad Tariq S/O Wazir Jang MO SHS Bajaur.
- 28. Dr Noor Muhammad S/O Ajmad Saced MOAHQH Bajaur.
- 29. Dr Muhammad Karim S/O Saadullah Khan MO AHQH Bajaur.
- 30. Dr Aziz ur Rehman S/O Shah Tareen MO AHQH Bajaur Agency.
- 31. Dr Gul Rashid S/O Muhammad Gul MO BHU Nitasi North Wqzirstan Agency.
- 32. Dr Naik Amal S/O Milawar Khan MO BHU Bora Khel North Waziristan Agency.
- 33. Dr Khursheed Alam S/O Jan Akbar MO AHQH Miran Shah.
- 34. Dr Pir Muhammad Khair S/O Malik Hazrat MO SHS Miran Shah.
- 35. Dr Badshah Jan S/O Muhammad Jan MO SHS Miran Shah.
- 36. Dr Muhammad Jaffar S/O Sakhi Sardar MO AHQH Miran Shahi.
- 37. Dr Mir Qadir S/O Amin Gul MO AHQH Miran Shah.
- 38. Dr Kaleem Ghulam S/O Faqeer Ghulam MO SHS Miran Shah.
- 39. Dr Alif Khan S/O Sajjan Khan MO CH Kalaya Orakzai.
- 40. Dr Jehanzeb Khan S/O Inayatullah MO CH Sainana Orakzai.
- 41. Dr Soorat Khan S/O Mardan Shah MO BHU Kasha Orakzai.
- 42. Dr Yousaf Jan S/O Kanran Khan MO SHS Miran Shah.
- 43. Dr Izzat Khan S/O Rasool Khan MO BHU Kotki Chammang Bajaur.

.....Petitioners

VERSUS

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

.....Respondents

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-10-
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. Roshul Amin, Advocate

Respondents (Soul et al.)

By M/s. S. S. S. Rashid, Adv. A-E, Dr. Alam
Dor, Asstt. Director Health & Bughdaya S.O. Health

DOST MUHAMMAD KHAN, J.-

This single

S.O. Health

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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- (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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REGISTRAR
Khyber Pakhtunkhwa High Court

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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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EXAMINER
Peshawar High Court

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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 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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EXAMINER
Peshawar High Court

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 anything 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

ATTESTED
EXAMINED
Peshawar 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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- (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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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."

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 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

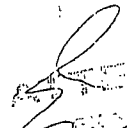
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Act of legislature. Thus a rule making authority cannot enact a rule to override or render the main Statute ineffective. Therefore, the view of the learned Additional Advocate General being based on misconception, cannot prevail. Amended rule (4) even 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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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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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 coched 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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appointed or deemed to have been appointed against any post in any Government Department under Section 3 of this Act shall be deemed to have been regularly appointed from the date of his continuous officiation, subject to eligibility, according to the service rules applicable to the post, verified by the administrative Secretary of the department concerned."

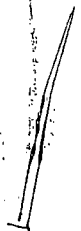
17. Again the same language was used in Section 4 of the N.W.F.P. Employees on contract basis (Regularization of Services) (Amendment) Act-II of 1990.

18. The relevant provision of the Act (IX), 2005 has been worded almost in a totally different language wherein nothing has been left for the administrative secretaries or the heads of the attached department/competent authorities to issue notification with regard to the regularization of services of contract employees because the object has been clearly accomplished through the plainly understandable words used in S.2 (2) of the Act (IX) 2005. On this analogy all the petitioners stood regularized on coming into force of the Act under discussion and issuance of notification/executive order in this regard would be only a formality for the departmental heads/administrative secretaries. Thus authorities were under statutory obligation to do what is required by the law to do and the petitioners were not required under the said provision to approach them for issuance of such order/notification.

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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.

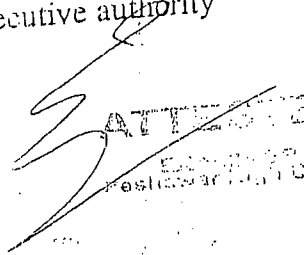


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0. The two categories of employees i.e. contract employees and regularly appointed employees are thus placed under the domain of two different authorities i.e. the Governor or persons authorized by him and the Provincial Public Service Commission. 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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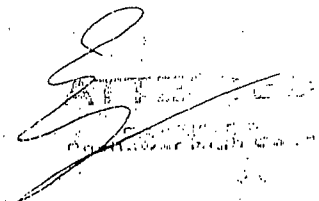
© Multiline Associates vs. Ardeshir Cowasjee and others
(1995 SCMR 423);

(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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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.

JUDGE

Announced:
18-11-2008

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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.

JUDGE

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18-11-2008

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No.1647-P/2013 with LR

JUDGMENT



Date of hearing: 09.02.2017

Petitioner: (Dr. Syed Luqman Shoaib, etc) By Mian Muhibullah Kakakhel, Advocate

Respondent(s): (Govt. of KPK, etc) By Syed Qasim Ali Shah, A.A.G.

MUSARRAT HILALI, J.- By way of this single judgment recorded in Writ Petition No.1647-P/2013, we intend to also dispose of identical connected Contempt Petition No.242-P/2015 in WP No.1647-P/2013, Writ Petition No.1673-P/2016 and Contempt Petition No.471-P/2014 in WP No.1986-P/2009 because similar questions of law and facts are involved therein.

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2. Compendium of facts leading to filing of all these petitions is as under:-

WP No.1647-P/2013:-

Petitioners in this writ petition seek issuance of an appropriate writ directing the respondents to

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02 MAR 2017

regularize their services from the date of their initial appointments with all back benefits of seniority, etc.

COC No.242-P/2015 in WP No.1647-P/2013:-

Petitioners seek therein initiation of contempt proceedings against the respondents for violation and disobedience of the interim status-quo order of this court dated 24.6.2013 passed in WP No.1647-P/2013.

Writ Petition No.1673-P/2016:-

Petitioner in this case seeks issuance of an appropriate writ directing the respondents to allow him similar treatment by regularizing his service w.e.f. 4.9.2002 in terms of KPK Civil Servants (Amendment Act) 2013 and to place his name at his correct position in the upcoming final seniority list.

COC No.471-P/2014 in WP No.1986-P/2009:-

This contempt petition is directed against the respondents for non-compliance of order of this court dated 28.10.2009 passed in WP No.1986-P/2009.

3. During course of arguments, learned A.A.G produced a copy of unreported judgment of this Court dated 20.12.2016 passed in WP No.3960-P/2014, wherein, similar nature cases have been

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disposed of with the direction that respondents shall constitute a Committee in light of clause-5 of the Substituted Section 19 of KPK Civil Servants Act, 1973 within fifteen days with further direction to petitioners to file their departmental appeals before the said Committee for resolution of their grievances and the Committee shall dispose of their appeals within next one month by giving explicit reasons.

4. Learned counsel for petitioners after going through the aforesaid judgment, conceded that let these petitions be sent to the Committee constituted for the said purpose. However, learned counsel for the petitioners in WP No.1647-P/2013 submitted that his case be sent to the Committee to decide the same, particularly, in light of unreported judgment of this Court dated 18.11.2008 passed in WP No.1510 of 1997 and the dictum laid down by the august Supreme Court in case titled Muhammad Aslam Awan, Advocate Supreme Court Versus Federation of Pakistan and others, reported as 2014 SCMR 1289.

4. In view of this new development in the matter, we without touching other legal and factual aspects of the case, direct the respondents to constitute a Committee, if not already constituted in

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Peshawar High Court
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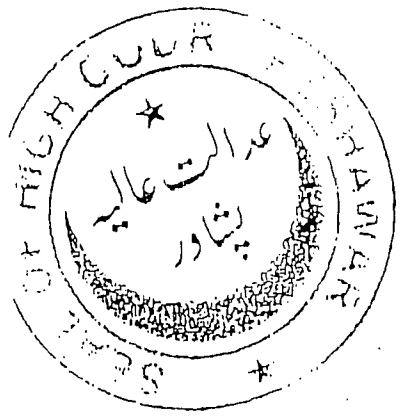
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light of direction given by this court in WP No.3960-P/2014 referred hereinabove, in light of Clause-5 of the Substituted Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 within fifteen days and except COC No.242-P/2015, all these petitions be placed before the said Committee, who shall consider the same as appeals of the petitioners and decide the same in light of aforementioned un-reported judgments of this court as well as judgment of august Supreme Court within next one month by giving explicit reasons. Office is directed to retain copies of these petitions for record. Accordingly, these petitions are disposed of in the above terms.

5. So far as COC No.242-P/2015 is concerned, suffice it to say, that it is directed against an interim status-quo order passed in WP No.1647-P/2013. Since the main writ petition has been disposed of, as such, this petition having become

redundant stands dismissed.

Announced.
Dated: 09.02.2017



Syed Us. Mushtaq Ali Rizvi
Syed Us. Mushtaq Ali Rizvi

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 17th October, 2017

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NOTIFICATION

NO. SO(E)H-III/3-1B/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-l 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 on 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 / 15.8.1951	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 Rahman 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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Peshawar

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62.	Dr. Akram Khan S/O Arbab Khan, MBBS	01.05.1961 / Khy. Agy	28.11.1995	01-07-2001
63.	Dr. Abdul Rehman S/O Mir Gul Khan	03.03.1966 /FR Peshawar	28.11.1995	01-07-2001
64.	Dr. Ijaz Akbar S/O Mir Akbar	03.03.1962 /Swabi	28.11.1995	01-07-2001
65.	Dr. Abdul Jalil S/O Mohibullah	08.08.1964 / Nowshera	28.11.1995	01-07-2001
66.	Dr. Awal Sher S/O Khan Sher MBBS	Swabi/ 04.02.1957	28.11.1995	01-07-2001
67.	Dr. Muhammad Iqbal S/O Muhammad Fahim	19.06.1963 / Peshawar	28.11.1995	01-07-2001
68.	Dr. Shah-e-Rome S/O Hussain Badshah	Swabi	28.11.1995	01-07-2001
69.	Dr. Muhammad Iqbal S/O Muhammad Fahim	19.06.1963 / Peshawar	28.11.1995	01-07-2001
70.	Dr. Muhammad Hanif S/O Yar Baz Khan	Hangu	29.11.1995	01-07-2001
71.	Dr. Abbas Khan S/O Alab Khan, MBBS	01.03.1963 DIKhan	29.11.1995	01-07-2001
72.	Dr. Umarzada S/O Zar Noor MBBS	Bajaur/ 25.04.1960	29.11.1995	01-07-2001
73.	Dr. Muhammad Ali Khan S/O Haji Badshah Gul	01.01.1969 / Bajaur Agy	29.11.1995	01-07-2001
74.	Dr. Izzat Khan S/O Rasool Khan, MBBS	01.01.1964 /Bajaur Agy	29.11.1995	01-07-2001
75.	Dr. Fida Hussain S/O Haji Kifayat Hussain	03.04.1968 / Kurr Agy	29.11.1995	01-07-2001
76.	Dr. Sahib Noor S/O Muhammad Amin, MBBS	12.08.1958 /Kurram Agy	29.11.1995	01-07-2001
77.	Dr. Habibullah Jan S/O Mir Abdullah Jan, MBBS.	08.04.1964 / Kurram Agy	29.11.1995	01-07-2001
78.	Dr. Yousaf Jan s/o Karam Khan, MBBS	1.2.1958/ NW Agy	29.11.1995	01-07-2001
79.	Dr. Mir Qadir S/O Amin Gul, MBBS	11.8.1963/ NW Agency	29.11.1995	01-07-2001
80.	Dr. Muhammad Gul S/O	02.01.1969 Bajaur Agy	29.11.1995	01-07-2001

Section Officer-II,
Govt. of Khyber Pakhtunkhwa
Health Department.

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Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

JUDGMENT



COC No. 421-P/2017 in COC No. 242-P/2015 in W.P. No. 1647-P/2013.

Date of hearing 26.09.2019.

Dr. Syed Luqman Shoaib versus Abid Saeed.

Petitioner by Mr. Mian Mohib ullah khalid khalid - Advocate.
Respondents by Mr. Syed Qasim Ali ullah DDU.

WAQAR AHMAD SETH CJ:- Through this consolidated judgment this Court will disposed of COC 421-P/2017 in COC No. 242-P/2015 in W.P. No. 1647-P/2013 titled Dr. Syed Luqman Shoaib versus Abid as well as W.P. No. 851-P/2018 titled Dr. Syed Luqman Shoaib versus Government of Khyber Pakhtunkhwa, being out come of the same matter/reasons.

a. This instant contempt petition under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have made a prayer that:-

"On acceptance of this application, this Honourable Court may initiate contempt of Court proceedings against the above mentioned contemnors and he be punished severely in accordance with law.

This Honourable Court may also initiate contempt of Court proceedings against any other person found involved in committing contempt of the orders of this Honourable Court.

Any other order deemed appropriate in the circumstances of the case, may also be passed. The petitioner may be allowed put forward any other arguments/document at the time of hearing of this application."

b. On acceptance of this writ petition this Honourable Court may direct that the services of the petitioners shall be

(DB), Hon'ble Mr. Justice Waqar Ahmad Seth, Chief Justice and Mr. Justice Muhammad Naeem Anwar, JJ.
Amir Bashir Awan, Senior Court-Secretary.

ATTESTED
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regularized from the year 1995 with all back benefits of seniority, pay and privileges.

Any other order deemed appropriate in the circumstances of the case may also be passed. The petitioners may be allowed to put forward any other argument/document at the time of hearing of this writ petition.

2. Brief but relevant facts of the instant contempt petition are that in first round of litigation, petitioners alongwith other writ petitions have also filed **W.P. No. 1510/2007** titled **Dr. Rizwanullah and other versus Government of N-W.F.P through Chief Secretary, Peshawar**, for their regularization. In due course of process all the writ petitions were allowed vide **consolidated judgment dated 18.11.2008**. Thereafter petitioners approached the respondents for its implementation, but failed to get any premium in their favour. Thus they filed contempt petition **No. 242-P/2015**, wherein they questioned the very act of the respondents. In due course of process this Court granted interim status quo vide **order dated 24.06.2013**. Consequently **W.P. No. 1647-P/2013**, with I.R, was **decided on 09.02.2017**, with the "remarks" that "So far as **COC No. 242-P/2015**, is concerned, suffice it to say, that it is directed against an interim status-quo order passed in **W.P. No. 1647-P/2013**. Since the main writ petition has been disposed of, as such, this petition having become redundant stands dismissed."

3. It is pertinent to mention that vide above referred order dated 09.02.2017, time frame was given to the contemnors, but, they failed to comply with the instructions of this Court. Hence the instant contempt petition.

4. Arguments heard and record perused anxiously.

5. Perusal of record reveals that petitioners joined the service with the respondents/departments as **Medical Officer in 1995**, on contract basis through Departmental Selection Committee. It is pertinent to mention that it was stopgap arrangement. There services were renewed time to time till the promulgation of **Khyber Pakhtunkhwa Civil Servants**

(DB), Hon'ble Mr. Justice Waqar Ahmad Seth, Chief Justice and Mr. Justice Muhammad Naeem Anwar, JJ.
Amir Bashir Awan, Senior Court Secretary.

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(Amendment), Act, 2005, (N-W.F.P Act No IX of 2005).

Thereafter, relevant law with regard to appointments on contract basis was adopted throughout the Province; however, after the commencement of *ibid* law, the law of appointment on regular basis was restored w.e.f. 23.07.2005. Thereafter several non-regularized employees approached the Court of competent jurisdiction by filing W.P. No. 1510/2007, titled, Dr. Rizwanullah and others versus Government and others, which in due course of process was allowed and ultimately, services of the petitioners were regularized accordingly w.e.f. 23.07.2005 i.e. from the date of commencement of *ibid* act.

6. Record further suggests that earlier contempt petition No. 242-P/2015, was declared redundant vide this Court order dated 09.02.2017 in W.P. No. 1647-P/2013.

7. Thus what has been discussed above, contempt petition in hand is disposed of accordingly being not maintainable as the earlier contempt petition has already been declared redundant.

8. NOW coming to connected W.P. No. 851/2018 titled Dr. Syed Luqman Shoaib versus Government of Khyber Pakhtunkhwa and others, it is significant to note with great concern that petitioner of the instant constitutional petition has already filed another writ petition followed by contempt petition, then, why petitioner questioned the same set of agonies/same cause of action through another instant petition which amount to res-judicata.

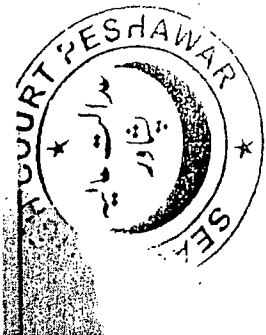
9. In this view of the matter W.P. No. 851-P/2018 is hereby dismissed with cost of Rs. 10,000/-

[Signature]
CHIEF JUSTICE

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CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorised Under Article 8, 7 01
The Qanun-u-Shahadat Order 1984
26/09/2019

ANNOUNCED.
26.09.2019

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Peshawar High Court
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"F" -37-

BEFORE THE CHIEF MINISTER KHYBER PAKHTUNKHWA
PESHAWAR

Subject:- Departmental appeal for counting the previous contract service rendered by the appellant for the purpose of Pay Protection and Pension.

Respectfully Submitted:-

1. That the appellant was appointed after the posts were duly advertised, the appellant passed through the recruitment process and finally upon the recommendation of Departmental Selection Committee, the appellant was appointed as Medical Officer (BPS-17) in Health Department KP vide Order dated 26-11-1995, which contract was extended from time to time till the KP Civil Servants Act was amended on 23-07-2005, after which the services of the appellant stood regularized however the appellant was not extended the benefits, after which the appellant along with others was forced to approach the honorable Peshawar High Court Peshawar by filing Writ Petition No 1510-P/2007 which was allowed vide Judgment dated 18-11-2008. **(Copy of Appointment Order & Judgment is enclosed as Annexure A & B).**
2. That respondents even then were not ready to regularize the appellant, so they again approached the Peshawar High Court by filing Writ Petition No 1647-P/2013 which was disposed of on 09-02-2017 remitting the case to the Committee for consideration and finally the services of the appellant along with others were regularized vide Notification dated 17-10-2017 w.e.f 01-07-2001 instead from the date of their initial appointment, against which the appellant along with others again filed Writ Petition No 851-P/2018 which was dismissed on 26-09-2019, and against which the appellant has approached the Apex Court. **(Copy of Judgment dated 09-02-2017, Notification dated 17-10-2017 & Order dated 26-09-2019 is enclosed as Annexure C, D & E).**

3. That the appellant is entitled to be given the benefit of previous service for the purpose of Pay Protection & Pension and for which purpose the appellant along with other approached the Peshawar High Court by filing Writ petition No 3337-P/2020 but as the matter related to the terms and conditions of service so the same was withdrawn on 27-05-2021. **(Copy of Order dated 27-05-2021 is enclosed as Annexure F).**
4. That the appellant is entitled to be given the benefit of previous service for the purpose of Pay Protection & Pension however he is kept deprived of the same in violation of law, rules and principles of justice, on grounds inter-alia as follows:

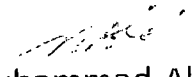
GROUND S:-

- A. That the appellant is entitled to be given the benefit of previous contract service rendered by the appellant as per the CSR-371-A and pension rules.
- B. That the Apex Court, the Peshawar High Court Peshawar and even the honorable KP Service Tribunal, Peshawar has allowed the like cases and the appellant as such too is entitled to be given such benefit and should not be discriminated.
- C. That in the recent Judgment dated 08-02-2021 passed in Civil Petition No 1641-L/2018 it has been held by the Apex Court that regularization is a step up and must provide better terms of service and cannot make the employee worse. Even the law and rules are very much clear on the subject which also allows such benefits.
- D. That even otherwise not giving the appellant the benefit of service rendered by him amounts to exploitation in violation of the Constitution and law of the land.

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It is therefore prayed that on acceptance of this appeal, the previous service rendered by the appellant on contract w.e.f. 27-11-1995 to 31-06-2001 may kindly be given protection for the purpose of pay, pension and seniority with all back benefits.

Dated:- 10 -06-2021


Dr. Muhammad Ali Khan
District Specialist (P.S.O.)
THQ Hospital
Bara District Khyber

Cell #0331-9292308

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BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

WRIT PETITION NO. 3221-P 2013.



"9"

- 1 Sultan Muhammad, Principal,
Bajaur Public School Bajaur Agency.
- 2 Khalid Ahmed, SET,
Bajaur Public School Bajaur Agency.
- 3 Syed Jehanzeb, SET,
Bajaur Public School Bajaur Agency.
- 4 Liaqat Ali Khan, SET,
Bajaur Public School Bajaur Agency.
- 5 Nasrurn Minallah, SET,
Bajaur Public School Bajaur Agency.
- 6 Muhammad Rahim Jan, SET,
Bajaur Public School Bajaur Agency.
- 7 M. Ashfaq Hassan, SET,
Bajaur Public School Bajaur Agency.
- 8 Ubaidur Rehman, SET,
Bajaur Public School Bajaur Agency.
- 9 Bahadur Khan, SET,
Bajaur Public School Bajaur Agency.
- 10 Muhammad Dawood, SET,
Bajaur Public School Bajaur Agency.
- 11 Purdil Khan, SET,
Bajaur Public School Bajaur Agency.
- 12 Raiz Hussain, CT,

FILED TODAY
Deputy Registrar
28 NOV 2013

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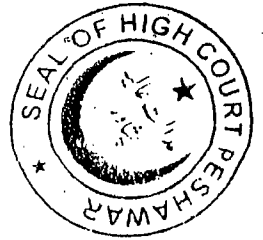
~~EXAMINER~~
Peshawar High Court

WP3221P2013GROUND

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**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT**

Writ Petition No.3221-P/2013



JUDGMENT

Date of hearing: 01.03.2018

Petitioner(s): By Muhammad Asif Jodhrai Advocate

Respondent(s): By Ahsanullah Khan Narsoran
FWS AGS.

IKRAMULLAH KHAN, J.- Petitioners have filed instant Constitutional petition for issuance of an appropriate writ with the following prayer:-

"On acceptance of this writ petition the non-counting of previous service of the petitioners towards pay protection and pensionary benefits by the respondents may be declared as illegal, unconstitutional, arbitrary and exploitation of the past good service of the petitioners. The respondents may further please be directed to give full pay protection with pensionary benefits of the past service rendered by the petitioners to meet the ends of justice and principles of equity. Any other remedy which this august court deems fit and not specifically prayed for that may also be awarded in favour of petitioners."

2. In essence, petitioners were appointed in the year 1990 and onwards by the Political Agent, Bajaur

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Agency as Principal, Teachers, Ministerial Staff and Class-IV employees, in the Bajaur Public School and College with the condition that they would be allowed pay scales and other allowances admissible to a Civil Servant in Bajaur Agency. Later on, the Bajaur Public School and College was taken into supervision and control by the Federal Government and services of all the employees appointed by the Political Agent, Bajaur Agency on contract basis were made regularized vide Notification issued by the Governor's Secretariat, Khyber Pakhtunkhwa, Peshawar on March 28, 2013. In para-4 of the Notification, it has been held that all the eligible incumbent teaching and non-teaching staff will be adjusted against the regular sanctioned posts on merit cum seniority in service in the respective scales and categories. As the petitioners were eligible to be regularized, as such, they were adjusted on regular newly created posts with immediate effect vide order dated 20.5.2013, however, the previous services rendered by the petitioners were not counted towards their pay and pension by the respondents, hence, the instant writ petition.

3. Learned counsel for petitioners contended that though the services of petitioners were regularized since 2013 but the respondents have denied

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Peshawar High Court

the benefit of protection of pay and pensionary benefits to the petitioners on the sole ground that the previous services rendered by them were on contract basis, as such, it could not be counted towards the length of their service, which act of respondents is against law.

4. On the other hand, learned counsel for respondents contended that the services of petitioners were not either on contract or adhoc basis, but they were appointed by the Political Agent, therefore, the period of services rendered by the petitioners in the concerned School could not be counted towards their pay and pension, etc.

5. We have heard learned counsel for the parties in light of law and available record.

6. The first appointment orders of the petitioners reveal that though they were appointed by the Political Agent, Bajaur Agency but on the condition that the petitioners will receive all the benefits and allowances admissible under the rules to a Civil Servant. The Notification issued by the worthy Governor, Khyber Pakhtunkhwa itself reveals rather admitted therein that petitioners were on contract basis and their services were regularized. Rule 2.1 of Chapter-II (Service Qualifying for Pension) of Civil

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Peshawar High Court

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Servants Act, 1973, prescribes conditions of qualifications for pension, which read as:-

Rule 2.1. Conditions of Qualifications.-The service of a Government Servant does not qualify for pension unless it conforms to the following three conditions:-

First:- The Service must be under Government.

Second:- The Service must not be non-pensionable.

Third:- The service must be paid by Government from the Provincial Consolidated Fund.

Note- (1) For the previous service of displaced Government Servants which qualifies for pension see Chapter-VII.

Note- (2) Service rendered after retirement on superannuation pension / retiring pension shall not count for pension or gratuity.

7. The abovementioned rule admittedly shall be applied to the case of petitioners as they were appointed on the conditions applicable to the Civil Servants. This court in Writ Petition No.1188-P/2014 titled "Baghi Shah Versus The Govt. of KPK through Secretary Finance, Peshawar and two others, decided on 9.9.2014 has held that :-

"The Courts, being the custodian, are to safeguard the inalienable rights of the citizens as enshrined in

ATTESTED

EXAMINER
Peshawar High Court

the constitution. Whenever any such infringement of rights is brought to the notice of the court that is to be struck down. Here in the instant case, since respondents have not denied discrimination as averred in the petition, so their act of depriving the petitioner of his pensionary benefits is not condonable and is liable to be struck down."

8. Similarly, this court while resolving the identical proposition of law in case titled "Muhammad Arif Versus The Secretary to Government of KPK, Transport Department, Peshawar and other" decided on 24.11.2014 has held : "that the period served by a Government Servant on contract basis shall be counted towards his pensionary benefits, after regulation, in accordance with Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963."

9. Likewise, in case titled "Muhammad Farooq Versus Engineer in Chief, ENC Branch, General Headquarters (GHQ), Rawalpindi reported as (2012 CLJ 343), the Honourable Lahore High Court has held as follows:-

"Government Servant continuously remaining in service without break would after his regularization have

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Peshawar High Court

the right that the period of his service before regularization be counted towards his pay, pension and promotion."



10. This Court has decided a number of Writ Petitions through its consolidated judgment dated 22.6.2017 delivered in WP No.3394-P/2016 has held: "that the person selected for appointment on contract basis and thereafter his regularization, the period served as a contract employee shall be counted towards his pension, pay and promotion, etc."

11. The facts as well as the legal proposition involved in this case is similar to the one already decided by this court in the above mentioned cases, therefore, this court could not take a different view, therefore, this writ petition is disposed of in the term that the services rendered by the petitioners as contract employees shall be considered towards their pay and pension.

Announced.
Dated: 01.03.2018

JUDGE

JUDGE

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EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 174 of
the Qanun-e-Shahadat Order 1984

17 JUL 2020

No. 1944
Date of Presentation of Application 16/7/22
No of Pages 7 + 6
Copying fee 28 + 26 = 54
Total 54
Date of Preparation of Copy 17/7/22
Date of Delivery of Copy 17/7/22
Received By *[Signature]*

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BEFORE THE KHYBERPAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Appeal No 38/2011

Date of institution - 07.01.2011
Date of decision - 01.08.2011

Arshad Alam, Additional Government Pleader, Law Department, Khyber Pakhtunkhwa, Peshawar. Presently Assistant Director (Legal), Anti Narcotics Force, Peshawar (on deputation)..... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Law, Parliamentary Affairs & Human Rights Department Civil Secretariat, Peshawar.
2. Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.....
3. Secretary, Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar..... (Respondent)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR ISSUING APPROPRIATE DIRECTIONS TO THE RESPONDENTS TO COUNT THE SERVICE OF THE APPELLANT RENDERED IN PAKISTAN AIR FORCE TOWARDS THE PRESENT SERVICE AT LAW DEPARTMENT FOR THE PURPOSES OF PAY, PENSION/C.P FUND, GRATUITY AND OTHER ATTACHED SERVICE BENEFITS FOR WHICH APPELLANT FILED DEPARTMENTAL TO THE COMPETENT AUTHORITY ON 14.05.2010 BUT THE SAME WAS REJECTED AND COMMUNICATED TO APPELLANT VIDE LETTER DATED 08.12.2010.

Mr. Khalid Rehman Advocate..... For appellant.
Mr. Sheraz Khan Khattak, A.A.G..... For respondents.

SYED MANZOOR ALI SHAH..... MEMBER.
MR. KHALID HUSSAIN..... MEMBER.

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER: This appeal has been filed by the appellant for issuing directions to the respondents to count his service rendered in

Pakistan Air Force towards the present service at Law Department for the purposes of pay, pension, C.P Fund, Gratuity and other attached service benefits.

Brief facts of the case are that the appellant joined the service of Law Department as Additional Government Pleader on adhoc basis on 1.12.2008.

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For the Appellant
Arshad Alam
Additional Government Pleader
Law Department
Peshawar

ATTESTED
For the Respondents
Mr. Khalid Hussain
A.A.G.

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Subsequently he was regularly appointed as such on 30.5.2009. He has served in Pakistan Air Force as Commissioned Officer (BPS-17) w.e.f. 28.7.2003 and retired on 30.9.2008. Under the law, the appellant is entitled for counting of his service performed in the Pakistan Air Force towards the present service in Law Department for service benefits. Therefore, the appellant preferred a departmental appeal but the same was rejected vide letter dated 8.12.2010. Hence, the instant appeal.

3. Arguments heard and file perused.

4. The learned counsel for the appellant argued that the respondents have not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully refused to count the previous service of appellant rendered in the Pakistan Air Force for the purpose of service benefits towards the present service in the Law Department, which is unjust, unfair and hence not sustainable in the eye of Law. Before joining the Law Department, the Pakistan Air Force had issued proper NOC to the appellant which was received by the Law Department, therefore, legally Respondents were required to count the Air Force service towards the service in Law Department but the Respondents have unlawfully refused to extend the benefits of the PAF service which has adversely affected the service career of appellant. Under Article 356 (a) of Civil Service Regulations (C.S.R), service so rendered by a person is to be considered for the purposes of Pay, Pension/C.P. Fund and Gratuity after joining the new service of the Government but the respondents have unlawfully refused the same, which cannot be sustained under the law. In support of his arguments he relied on 2008-PLC- (C.S) 482.

5. The A.A.G argued that the appellant was appointed on as-hoc basis vide order dated 01-12-2008 and later on was recommended by Khyber Pakhtunkhwa Public Service Commission vide Notification dated 30.05.2009. The appellant retired from Air Force and after retirement appointed on adhoc/contract basis as Audd. Government Pleader on 01-12-2008. The law provides continuity of service for reckoning the previous service for the purpose of financial benefits. Since appointment of the appellant lacks continuity, therefore he is not entitled to take advantage of his previous service.

EX-AMINER
Khyber Pakhtunkhwa
Public Service Commission

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6. Keeping in view the facts and circumstances of the case the Tribunal while agreeing with the arguments put forth by the learned counsel for the appellant, accepts the appeal, sets aside the impugned order and directs the respondent department to count his PAF service with present service from 28.7.2003 for the purpose of pay, pension and other attached retirement benefits in light of Civil Service Regulation (C.S.R) No. 420 (h), 422 and 365 (a). The appellant will remit the amount of gratuity to the PAF, if received. The two months will be considered as leave without pay. The parties are, however, left to bear their own costs. File be consigned to the record.

ANNOUNCED
01.08.2011.

(KHAALID HUSSAIN)
MEMBER.

(SYED MANZOOR ALI SHAH)
MEMBER.

Certified to be true copy.

Khaalid Hussain
Secretary
Tribunal,
Peshawar

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ANNEXURE
15

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Mushir Alam
Mr. Justice Maqbool Baqar

Civil Appeal No. 1536 of 2013
Against Judgment dated 09.5.2013 of
Islamabad High Court, Islamabad, passed in
Writ Petition No. 39 of 2013.

Ministry of Communication & another

Appellant(s)

VERSUS

Muhammad Waseem Khan & another

Respondent(s)

For the Appellant (s):

Mr. Abdul Rashid Awan, DAG
Maik Shakeel Ur Rehman, ASC

For Respondent No. 1:

In person

For Respondent No. 2:

Ex. Parte

Date of Hearing:

03.02.2016

JUDGMENT

Mushir Alam, J.- Through this appeal, the appellants have impugned the judgment dated 09.05.2013 passed by a learned Single Judge in Chambers in the High Court, whereby Writ Petition No. 39 of 2013 filed by respondent No. 1 Muhammad Waseem Khan was accepted to the extent that "the period spent on duty in any capacity with the respondent be counted for the purpose of pension".

2. The respondent Muhammad Waseem Khan while working as an Assistant Enumerator (BS-5) in National Transport Research Centre, Planning & Development Division, Government of Pakistan, Islamabad, alongwith others was sent on forced leave without pay by the department for delay in release of funds by NHA, vide letter dated 26.12.1993. Some of them were later on adjusted by the appellants in one way or the other, however, the respondent despite his request was not

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Court Associate
Supreme Court of Pakistan

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Mushir Alata
Mr. Justice Maqbool Baqa'

Civil Apperl No.1536 of 2013

Against Judgment dated 09.5.2013 of Islamabad High Court, Islamabad, passed in Writ Petition No.39 of 2013.

Ministry of Communication & another
VERSUS
Muhammad Waseem Khan & another

Appellant(s)
Respondent(s)

For the Appellent (s): Mr. Abdul Rashid Awan, DAG
Malik Shakeel Ur Rehman, ASC

For Respondent No.1: In person

For Respondent No.2: Ex. Parte

Date of Hearing: 03.02.2016

JUDGMENT

Mushir Alata J. Through this appeal, the appellants have impugned the judgment dated 09.05.2013 passed by a learned Single Judge in Chambers in the High Court, whereby Writ Petition No.39 of 2013 filed by respondent No.1 Muhammad Waseem Khan was accepted to the extent that "*the period spent on duty in any capacity with the respondent be counted for the purpose of pension*".

2. The respondent Muhammad Waseem Khan while working as an Assistant Enumerator (BS-5) in National Transport Research Centre, Planning & Development Division, Government of Pakistan, Islamabad, alongwith others was sent on forced leave without pay by the department for delay in release of funds by NHA, vide letter dated 26.12.1993. Some of them were later on adjusted by the appellants in one way or the other, however, the respondent despite his request was not

He moved the learned High Court through Writ Petition No.3448 of 2011 and a learned Single Judge in chambers in the High Court accepting his Writ Petition directed the appellants to consider him for appointment in the light of letter dated 11.8.2008, whereby certain officials were directed to be reinstated into service in view of a judgment of this Court. In compliance of the said order of the High Court, the appellants issued letter dated 26.12.2012 appointing him afresh on regular basis as an Assistant Enumerator (BS-5), however, with certain terms and conditions. The respondent feeling dissatisfied with clause (g) of the letter of appointment, dated 26.12.2012, which provided that "the period spent on contract by you if any will not count for any purpose like promotion, pension and seniority etc" again moved the High Court through Writ Petition No.39 of 2013, which was accepted to the extent that "the period spent on duty in any capacity with the respondent be counted for the purpose of pension" vide impugned judgment dated 9.05.2013. Hence, this Appeal with leave of the Court.

3. We have heard the learned Law Officer as well as respondent No.1 in person. We find that offer of appointment was made pursuant to an order of the High Court, passed in Writ Petition No.3448 of 2011, dated 12.11.2012, which does not provide for any term or condition injurious to the interest of the respondent and clause (g) of the appointment letter, referred to above, *prima facie* seems to be repugnant one. The learned High Court did not commit any illegality or infirmity while observing that "the period spent on duty in any capacity with the respondent be counted for the purpose of pension" and instead it was in consideration of Article 371-A of Civil Servants Regulations, which *inter alia* provides that "any government servant borne on temporary and officiating service followed by confirmation which does not qualify for pension under the rules in this section shall also count for pension or gratuity subject to the exclusion of the broken periods of temporary or official service, if any". We see that the learned Single Judge did not allow the entire relief as claimed by the respondent through his prayer clauses, but only to the extent of "the period spent on duty in

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 Court Associate
 Supreme Court of Pakistan
 Islamabad

accommodated. He moved the learned High Court through Writ Petition No.3448 of 2011 and a learned Single Judge in Chambers in the High Court accepting his Writ Petition directed the appellants to consider him for appointment in the light of letter dated 11.8.2008, whereby certain officials were directed to be reinstated into service in view of a judgment of this Court. In compliance of the said order of the High Court, the appellants issued letter dated 26.12.2012 appointing him afresh on regular basis as an Assistant Enumerator (BS-5), however, with certain terms and conditions. The respondent feeling dissatisfied with clause (s) of the letter of appointment, dated 26.12.2012, which provided that the period spent on contract by you if any will not count for any purpose like promotion, pension and seniority etc" again moved the High Court through Writ Petition No.39 of 2013, which was accepted to the extent that "the period spent on duty in any capacity with the respondent be counted for the purpose of pension" vide impugned judgment dated 9.05.2013. Hence, this Appeal with leave of the Court.

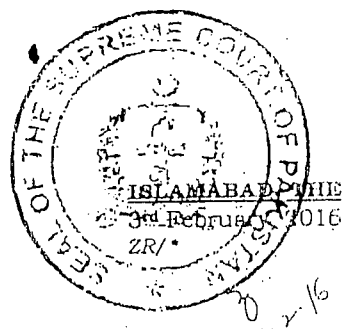
3. We have heard the learned Law Officer as well as respondent No.1 in person. We find that offer of appointment was made pursuant to an order of the High Court, passed in Writ Petition No.3448 of 2011, dated 12.11.2012, which does not provide for any term or condition injurious to the interest of the respondent and clause (g) of the appointment letter, referred to above, prima facie seems to be repugnant one. The learned High Court did not commit any illegality or infirmity while observing that the period spent on duty in any capacity with the respondent be counted for the purpose of pension and instead it was in consideration of Article 371-A of Civil Servants Regulations, which inter alia provides that "any government servant borne on temporary and officiating service followed by confirmation which does not qualify for pension under the rules in this section shall also count for pension or gratuity subject to the exclusion of the broken periods of temporary or official service, if any". We see that the learned Single Judge did not allow the entire relief as claimed by the respondent through his prayer clauses, but only to the extent of the period spent on duty in

removed the
o.3448 of 2011
in the... any capacity with the respondent be counted for the purpose of
units to cons... pension* which does not call for any interference by this Court.

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4. Furthermore, no substantial question of law of public importance within the meaning of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973 has been raised. Accordingly, the appeal lacking in merits stands dismissed.

Sd/- Mushir Alam, J
Sd/- Maqbool Baqar, J.
Certified to be True Copy

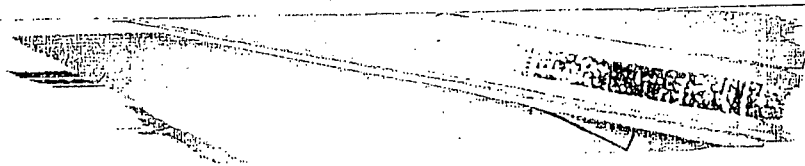


[Handwritten Signature]
12-2-16
Court Associate
Supreme Court of Pakistan
Islamabad

2652/16

GR No: _____
Date of Presentation: 11.2.16
No. of Pages: 900
No. of Exhibits: 8
Required Court Fee: 5000
Copy Fee: _____
Court Fee Waived: 10.2.16
Date of Completion of Copy: 11.2.16
Date of delivery of Copy: 11.2.16
Compared by/freight: [Signature]
Received by: [Signature]

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TRUE COPY



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any capacity with the respondent be counted for the purpose of pension which does not call for any interference by this Court.

4. Furthermore, no substantial question of law public importance within the meaning of Article 212(3) of the of Constitution of Islamic Republic of Pakistan, 1973 has been raised. Accordingly, the appeal lacking in merits stands dismissed.

Sd/ - Mushir Alam, J.
Sd/- Maqbool Baqar, J.

ISLAMABAD THE
3rd February, 2016

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR



S. A. No. 7799 /2021

Dr Muhammad AliApplicant/Appellant.

VERSUS

Govt. of KP and othersRespondents.

APPLICATION FOR EARLY HEARING OF THE TITLED SERVICE APPEAL.

Respectfully Sheweth;

Put up to the worthy chairman with appeal.

Readn

Fix for PH on 14-01-2022

1. That the above titled service appeal is filed before this August Tribunal and is fixed for preliminary hearing on 08-02-2022.

2. That case of the appellant is an old issue and the date fixed for hearing is too far.

3. That, appellant is at the verge of retirement and by fixing the hearing in a too far date would definitely effect the nature of the case

4. That fixing an early date is in interest of justice and there is no hurdle in fixing an early date in the above titled appeal, besides if any early date is not fixed in the titled appeal, the service appeal would lose its purpose and would become infructuous.

It is therefore, prayed, that on acceptance of this application, the above titled service appeal may kindly be fixed for an early date.

DATED: 11.01.2022

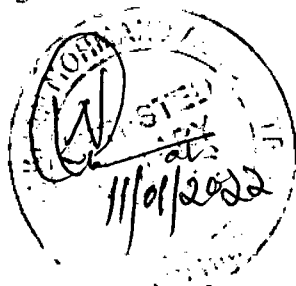
Muhammad Ali
APPLICANT/ APPELLANT

THROUGH:

Fazal Shah Mohmand
**FAZAL SHAH MOHMAND
ADVOCATE SUPREME COURT**

AFFIDIVAT

I, **Dr. Muhammad Ali (applicant/ appellant)**, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



Muhammad Ali
DEPONENT

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

S. A. No. 7799 /2021

Dr Muhammad AliApplicant/Appellant.

VERSUS

Govt. of KP and othersRespondents.

APPLICATION FOR EARLY HEARING OF THE TITLED SERVICE APPEAL.

Respectfully Sheweth;

1. That the above titled service appeal is filed before this August Tribunal and is fixed for preliminary hearing on 08-02-2022.
2. That case of the appellant is an old issue and the date fixed for hearing is too far.
3. That, appellant is at the verge of retirement and by fixing the hearing in a too far date would definitely effect the nature of the case
4. That fixing an early date is in interest of justice and there is no hurdle in fixing an early date in the above titled appeal, besides if any early date is not fixed in the titled appeal, the service appeal would lose its purpose and would become infructuous.

It is therefore, prayed, that on acceptance of this application, the above titled service appeal may kindly be fixed for an early date.

DATED: 11.01.2022

M. Ali
APPLICANT/ APPELLANT

THROUGH:

Fazal Shah Mohmand
**FAZAL SHAH MOHMAND
ADVOCATE SUPREME COURT**

AFFIDIVAT

I, **Dr. Muhammad Ali (applicant/ appellant)**, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



M. Ali
DEPONENT

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

S. A. No. _____/2021

Dr Muhammad AliApplicant/Appellant.

VERSUS

Govt. of KP and othersRespondents.

APPLICATION FOR EARLY HEARING OF THE TITLED SERVICE APPEAL.

Respectfully Sheweth;

1. That the above titled service appeal is filed before this August Tribunal and is fixed for preliminary hearing on 08-02-2022.
2. That case of the appellant is an old issue and the date fixed for hearing is too far.
3. That, appellant is at the verge of retirement and by fixing the hearing in a too far date would definitely effect the nature of the case
4. That fixing an early date is in interest of justice and there is no hurdle in fixing an early date in the above titled appeal, besides if any early date is not fixed in the titled appeal, the service appeal would lose its purpose and would become infructuous.

It is therefore, prayed, that on acceptance of this application, the above titled service appeal may kindly be fixed for an early date.

DATED: 11.01.2022

M. Ali
APPLICANT/ APPELLANT

THROUGH:

Fazal Shah Mohmand
**FAZAL SHAH MOHMAND
ADVOCATE SUPREME COURT**

AFFIDIVAT

I, **Dr. Muhammad Ali (applicant/ appellant)**, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



M. Ali
DEPONENT

VAKALATNAMA - 53-
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. _____/2021

Dr. Muhammad Ali KhanAppellant

VERSUS

Govt. of KP & othersRespondent(s)

I, the undersigned, do hereby appoint and constitute,

Fazal Shah Mohmand Advocate Supreme Court & **Rabia Muzaffar** Advocate. To act, appear and plead in the above-mentioned matter and to withdraw or compromise the said matter or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said matter and to receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said matter.

1. To draft and sign files at necessary pleadings, applications, objections, affidavits or other documents as shall be deemed necessary and advisable for the prosecution of the said matter at all its stages.
2. To employ any other Legal Practitioner, authorizing him to exercise the power as conferred on the undersigned Advocate, wherever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the above matter. I also hereby agree not to hold the Advocate or his substitute responsible for the result of the said matter in consequence of his absence from the Court when the said matter is called up for hearing. I further hereby agree that in the event for the whole or any part of the fee to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the above matter. Received by me on 25.11.21

CLIENT(s)

M. Ali
ڈاکٹر محمد علی خان

ACCEPTED BY:


FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.

&

ACCEPTED BY:


RABIA MUZAFFAR
ADVOCATE PESHAWAR

OFFICE: Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
(Clerk) Cell# 03339214136

Email: - fazalshahmohmand@gmail.com.