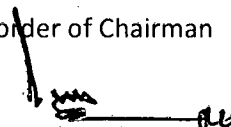


Form- A

## FORM OF ORDER SHEET

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

Case No.- \_\_\_\_\_ 1350/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/09/2022	<p>The appeal of Mr. Noor Rehman presented today by Muhammad Anwar Khan Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

**BEFORE THE KPK SERVICES TRIBUNAL, PESHAWAR**

Service Appeal No. 1350 /2022

Mr. Noor Rahman

..... Appellant

**V E R S U S**

Government of KPK through Chief Secretary & Others

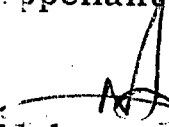
..... Respondents

**I N D E X**

S.No	Description of Documents	Annex	Pages
1.	Grounds of Service Appeal		1-4
2.	Affidavit		5
3.	Addresses of Parties		6
4.	Copy of contract appointment orders	A	7-8
5.	Copy of regular appointment order	B	9-11
6.	Copy of Application/ Appeal	C	12
7.	Copy of Supreme Court Judgments	D	13-15
8.	Copy of Service tribunal	E	16-18
9.	Copy of pension rules for qualifying service	F	19
10.	Wakalat Nama		

  
Appellant

Through

  
**Muhammad Anwar Khan**  
(Pashton Ghari)  
Advocate High Court,  
Peshawar

Date: 26/8/2022

(1)

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

Service Appeal No. 1350/2022

Mr. Noor Rahman S/o Abdul Qayom, Belt No 2134,  
R/o post office Kalkot, Laman, Tehsil Sherengal, District Upper Dir.

.....**Appellant**

**V E R S U S**

1. Govt of Khyber Pakhtunkhwa, Through Chief Secretary Khyber Pakhtunkhwa, Civil Secreteriate Peshawar.
2. Secretary Finance Department, Khyber Pakhtunkhwa, Civil Secreteriate Peshawar.
3. The Provincial Police Officer Khyber Pakhtunkhwa, Civil Secreteriate Peshawar.
4. The Deputy Inspector General of Police Malakand Region Malakand.

.....**Respondents**

Appeal u/s 4 of the Khyber Pakhtun Khwa Service Tribunal Act, 1974 against the order dated 1-3-2020 of The Respondents No. 3, whereby Appellant service has been Regularized from contract Service. The Regulization order dated 1-3-2020 may be considered w.e.f, 01-08-2009 instead of 1-03-2020.

---

**Prayer in Appeal**

*On Acceptance of the instant appeal, The Respondents may be directed to count the Temporary Services of Appellant with effect from his initial recruitment dated 01-08-2009 toward his regular service for the purpose of grant of*

pension and he may be allowed pension and other back benefits.

2

**Respectfully Sheweth:**

**The appellant submits as under:**

1. That the Appellant has been appointed as SPO (Special Police Officer) in Police Department on fixed Pay Rs. 15000/- PM in the Year 2009 in prescribe manner. **(Copy of contract Order is attached as Annexure A)**
2. That the August supreme court of Pakistan also Regularized the contract service as a regular service and also counted the contract service for seniority as per Supreme Court judgment published in Supreme Court monthly review.2014 SCMR. 1289 and judgment of Punjab service tribunal Reported in 219 PLC (CS) 103.
3. That the Appellant has been Regularized by the Respondents w.e.f 1/03/2020 instead of date of initial appointment of the Appellant. **(Copy of regular appointment order is attached as Annexure B)**
4. That the Appellant requested to the Respondents for counting the contract service into Regular service with all back benefits but all in vain. **(Copy of application/ Appeal is attached As Annexure C).**
5. That the August supreme court of Pakistan also Regularized the contract service as a regular service and

3

also counted the contract service for seniority as per Supreme Court judgment published in Supreme Court monthly review.2014 SCMR 1289 and judgment of Punjab service tribunal Reported in 2019 PLC (CS) 103. **(Copies of judgment of supreme court and service tribunal are attached respectively as Annexures D and E ).**

**GROUND S:**

A) *That the Petitioner has not been treated in accordance with law and his rights secured and guaranteed under the law have been badly violated.*

B) *That the same is against the natural justice also.*

C) That the Appellant remained temporary employee of the Respondents, since 2009, the Appellant was regularized on 1-3-2020 thus in view of the provision contained in Article 371-A of the CSR the Appellant is also entitled that his contract services be counted for the purpose of pension.

D) That there are a number of Judgments in identical cases. Therefore, Respondents are bound to follow the same and should have acted in accordance with law & judgment of August Supreme Court of Pakistan reported in 1996 SCMR 1185.

E) That the Temporary service followed by confirmation/ regular appointment gave the Appellant a right that his

4

service be considered as regular service. (Copy of rules 2.1 is attach as annexure 3.).

F). That the Respondents are using different yard stick and are violating the provision of their own Law/ rules/ calendar and the constitution of Islamic Republic of Pakistan 1973.


G). That the Appellant may kindly be allowed to advance additional arguments at the time of hearing the instant Service Appeal.

It is, therefore, most humbly prayed that on acceptance of the instant service appeal, the impugned regularization order dated 01.03.2020 may very graciously be consider w e.f his initial appointment i.e. 21/07/2009 instead of 01-03-2020 with all back benefits.

Any other remedy which is deemed fit by this Honorable Tribunal in the interest of justice, may also be granted in favour of appellant.

نور دین  
Appellant

Through

  
Muhammad Anwar Khan  
(Pashton Ghari)  
Advocate High Court

Date: 26/8/2022

5

BEFORE THE KPK SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. \_\_\_\_\_/2022

Mr. Noor Rahman

.....Appellant

**V E R S U S**

Government of KPK through Chief Secretary & Others

.....Respondents

AFFIDAVIT

I, Mr. Noor Rahman S/o Abdul Qayom, Belt No 2134,  
Employee of the Provincial Police Officer Khyber PakhtunKhwa,  
Peshawar, do hereby solemnly affirm and declare on oath that  
the contents of the accompanying **Service Appeal** are true  
and correct to the best of my knowledge and belief and nothing  
has been concealed from this Tribunal.

*Handwritten signature and date: 16-9-22*

*لو، رحمان*  
DEPONENT

6

**BEFORE THE KPK SERVICES TRIBUNAL, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2022

Mr. Noor Rahman

.....Appellant

**V E R S U S**

Government of KPK through Chief Secretary & Others

.....Respondents

**ADDRESSES OF PARTIES**

**APPELLANT**

Mr. Noor Rahman S/o Abdul Qayom, Belt No 2134,  
R/o post office Kalkot, Laman, Tehsil Sherengal, District Upper Dir.

**RESPONDENTS**

1. Govt of Khyber Pakhtun Khwa, Through Chief Secretary Khyber Pakhtun Khwa, Civil Secreteriate Peshawar.
2. Secretary Finance Department, Khyber Pakhtun Khwa, Civil Secreteriate Peshawar.
3. The Provincial Police Officer Khyber Pakhtun Khwa, Civil Secreteriate Peshawar.
4. The Deputy Inspector General of Police Malakand Region Malakand.

  
Appellant

Through

  
Muhammad Anwar Khan  
(Pashton Ghari)  
Advocate High Court

Date: 25/8/2022



**OFFICE ORDER**

Ammer A  
7-5

Consequent upon their selection by Joint team consisting of Officers, Civil Administration, Special Branch, Police and Army Authority have been pleased to approve the following candidates as Special Police force in Dir Upper District on the following term and condition with effect from 01.08.2009.

S.No	Name	F/ Name	Residence	Union Council	No
1.	Ajmal	Shujamat Khan	Duryal	Akhagram	SPO-1
2.	Toti Rehman	Gul Sherawan	Akhagram	Akhagram	SPO-2
3.	Ikram	Asfandyar	Akhagram	Akhagram	SPO-3
4.	Bakht Rehman	Gujar	Karkabanj	Akhagram	SPO-4
5.	Usman Ali Shah	Gul Bacha	Akhagram	Akhagram	SPO-5
6.	Hamid Gul	Sarzamin	Akhagram	Akhagram	SPO-6
7.	Bacha Rehman	Shad Muhammad	Bagh Manzai	Akhagram	SPO-7
8.	Amjad Khan	Abdur Rehman	Akhagram	Akhagram	SPO-8
9.	Akbar Ali Shah	Haji Qadar	Kumira	Akhagram	SPO-9
10.	Imran	Muzafar	Kumira	Akhagram	SPO-10
11.	Jan Badshah	Khaista Bacha	Shinkarai	Akhagram	SPO-11
12.	Rab Nawaz	Shah Tamaz	Akhagram	Akhagram	SPO-12
13.	Zahid Nawaz	Shah Tamaz	Akhagram	Akhagram	SPO-13
14.	Amjad Ali	Muhammad Khan	Akhagram	Akhagram	SPO-14
15.	Farooq	Qadir Khan	Akhagram	Akhagram	SPO-15
16.	Sher Bacha	Asfandyar	Akhagram	Akhagram	SPO-16
17.	Fazal Islam	Khair Muhammad	Durayal	Akhagram	SPO-17
18.	Tahir Zeb	Umar Zeb	Shinkarai	Akhagram	SPO-18
19.	Muhammad Jamil	Salarzay	Akhagram	Akhagram	SPO-19
20.	Muhammad Farooq	Muhammad Sa	Duryal	Akhagram	SPO-20
21.	Muhammad Alam	Muhammad Khan	Kumira	Akhagram	SPO-21
22.	Ijaz Ullah	Gul Bar Zama	Kumira	Akhagram	SPO-22
23.	Saeed Ullah	Mir Aslam	Khunanu tangay	Akhagram	SPO-23
24.	Muhammad Nazir	Akbar Zada	Khunanu Tangay	Akhagram	SPO-24
25.	Nasib Ullah	Rahim Ullah	Khunanu Tangay	Akhagram	SPO-25
26.	Islara Amin	Mokamin	Zaku	Akhagram	SPO-26
27.	Khan Badshah	Muhammad Yasaf	Kumira	Akhagram	SPO-27
28.	Zakir Ullah	Muhammad Amin	Shinkarai	Akhagram	SPO-28
29.	Noor Zaman	Muhammad Said Khan	Bagh Pashta	Pashta	SPO-29
30.	Ali Muhammad	Sher Muhammad	Gal	Pashta	SPO-30
31.	Mushtaq Ahmad	Muhammad Younas	Gal	Pashta	SPO-31
32.	Asghar Khan	Sultan	Pashta	Pashta	SPO-32
33.	Sultan Zeb	Habib Zar	Pashta	Pashta	SPO-33
34.	Hayat Muhammad	Rozi Muhammad	Gal	Pashta	SPO-34
35.	Hazrat Ullah	Davaish	Pashta	Pashta	SPO-35
36.	Hussain Ahmad	Ali Rehman	Mitroora	Pashta	SPO-36
37.	Muhammad Ayaz	Ghulam Muhammad	Gal	Pashta	SPO-37
38.	Salar	Pas Muhammad	Maluk Banda	Wari	SPO-38
39.	Farman Aii	Kabir	Dskor	Wari	SPO-39
40.	Gul Wahab	Muhammad Zarit	Wari Payeen	Wari	SPO-40
41.	Wiqar Ahmad	Muhammad Alan	Wari Payeen	Wari	SPO-41
42.	Gul Rehman	Fida Rehman	Tangai	Wari	SPO-42
43.	Hanif ur Rehman	Aziz ur Rehman	Maluk Banda	Wari	SPO-43
44.	Wajid Khan	Gul Dar Khan	Daskur	Wari	SPO-44
45.	Murad	Ghulam Muhd:	Daskur	Wari	SPO-45
46.	Hayat Khan	Pas Muhammad	Tangai	Wari	SPO-46
47.	Imran	Wilayat Khan	Wari	Wari	SPO-47
48.	Imtyaz Ahmad	Niaz Muhammad	Kakad	Wari	SPO-48
49.	Shah Zaman	Muhammad Rasul	Shahibagh	Wari	SPO-49

08 (8)

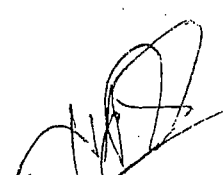
586	Muhammad Nabi	Hazrat Umar	Thall	Kalkot	SPO-586
587	Abdul Shakur	Said Faqir	Thall	Kalkot	SPO-587
588	Aziz Ullah	Aman Ullah	Lamotai	Kalkot	SPO-588
589	Jamshid	Sajad Khan	Lamotai	Kalkot	SPO-589
590	Muht: Nawab	Mirza Khan	Lamotai	Kalkot	SPO-590
591	Noor Rehman	Abdul Qayum	Lamotai	Kalkot	SPO-591
592	Rahim Ullah	Mahab Ullah	Lamotai	Kalkot	SPO-592
593	Izzat Faqir	Umar Faqir	Lamotai	Kalkot	SPO-593
594	Saif ur Rehman	Muhammad Ayn	Lamotai	Kalkot	SPO-594
595	Wazir Muht:	Taza Khan	Lamotai	Kalkot	SPO-595
596	Habib Khan	Ajim Khan	Lamotai	Kalkot	SPO-596
597	Muhammad Afzal	Teor Bacha	Lamotai	Kalkot	SPO-597
598	Aman Ullah	Mahabat Khan	Thall	Kalkot	SPO-598
599	Sami Ullah	Abdullah	Lamotai	Kalkot	SPO-599
600	Sultan Zarin	Juna Faqir	Thall	Kalkot	SPO-600

### TERM AND CONDITION

- The appointees will be on contract for 2 years in service and on adhoc Basis for not more than 2 year in a stretch with no pension gratuity benefits and that the competent Authority may terminate from service as Special Police Officer with out showing any reason and notice.
- The appointees shall not demand or mark and excuse for only emolument of Rs, 10,000/- rupees per month.
- The appointees shall wear the uniform issued by the department and responsible for maintenance and safety of weapon issued by the department.
- The appointees shall be responsible before any senior Police Officer for any act of cowardice or irregularity, indiscipline or misconduct.
- The appointees shall not leave the job with out a prior notice of 2 month as per rule.
- The appointees shall not involve in any political or criminal activities.
- The appointees shall undergo the basic training fixed by the superior Officer.
- The appointees shall not try to change or convert the mater of duty.

OB No 483

Dt: 23-8 /2009.

  
District Police Officer,  
Dir Upper.

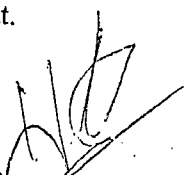
/2009.


No

/EB, Dated Dir Upper, the

Copy of above is submitted for information to the:-

1. Provincial Police Officer N.W.F.P, Peshawar.
2. Deputy Inspector General of Police Region III Saidu Sharif Swat.

  
District Police Officer,  
Dir Upper

AHesta  


9

Annex B 9-11



Government of Khyber Pakhtunkhwa  
Home & Tribal Affairs Department  
Dated Peshawar the April 8<sup>th</sup>, 2020

10

**NOTIFICATION**

No. SO/Budget/ET/15-29/2016 Vol-I: In pursuance of the provisions contained in Section 5 read with Section 5 of the Khyber Pakhtunkhwa Special Police Officers (Regularization of Services) Act, 2019 (Khyber Pakhtunkhwa Act No. XXVII of 2019) and on the recommendation of Provincial Police Officer, Khyber Pakhtunkhwa and approval of the Provincial Cabinet, the Home and Tribal Affairs Department is pleased to notify herewith regularization of the following Special Police Officers (SPOs) working in District Dir Upper under DDO Code DA4015- Law & Order District Upper Dir Constables (BPS-07) with effect from 01-03-2020:

S.No	Name	Father Name	Belt No.
1	Mohammad Rahim Khan	Toti Rahman	1
2	Toti Rahman	Gul Sher Rahman	2
3	Saba Gul LSPF	Shamsher	3
4	Habib Ullah	Abdul Latif Khan	4
5	Badshah Rahman	Shad Mohammad Khan	7
6	Akber Ali Shah	Haji Bahadar	9
7	Saz Bahadar	Mohammad	10
8	Ibrar Hussain	Gul Nawaz Khan	11
9	Rasool Wali	Said Hazrat	13
10	Ali Akbar	Bazir Khan	14
11	Anwar Zada	Anwar Khan	15
12	Sher Badshah	Asfandyar Khan	16
13	Badshah Rawan	Sher Zada	18
14	Darvish Khan	Pinda Mand Khan	19
15	Sadam Hussain	Itbar Said	20
16	Muzafar Khan	Mohammad Khalig	21
17	Gulab Gul	Amir Khan (Husband)	22
18	Khalid Khan	Mohammad Khan	23
19	Mohd Nazir	Akbar Zada	24
20	Nasib Ullah Khan	Rahim Ullah Jatt	25
21	Khan Bacha	Mohammad Yousaf	27
22	Zakir Ullah	Mohammad Amin Khan	28
23	Abdur Rahman	Jehan Badshah	29
24	Ali Muhd Khan	Sher Mohammad Khan	30
25	Zarshed Khan	Jamsheed Khan	31
26	Asghar Khan	Sultan	32
27	Aziz ur Rahman	Aman Ullah	33
28	Hazrat Ali	Wazif Ullah	34

Accepted  
ASD

524	Patas Khan	Sadat Khan	578
525	Tasir Ullah	Abdur Rashid	579
526	Sher Bahadar	Mistry Khan	580
527	Muhd; Famin	Umar Faqir	581
528	Muhd Faqir	Muhammad Noor Alam	582
529	Muhd; Riaz	Ghulam Mohammad Khan	583
530	Awrang Zaib	Ghulam Haider	584
531	Irfan ud Din	Mohammad Rasool	585
532	Mohammad Nabi	Hazrat Umar	586
533	Abdul Shakar	Shid Faqir	587
534	Aziz Ullah	Aman Ullah	588
535	Jamshed Khan	Sajad Khan	589
536	Mund Nawab	Mirza Khan	590
537	Noor Rahman	Abdul Qayam	591
538	Rahim Ullah	Muhib Ullah	592
539	Anwar Hayat Khan	Mohammad Zewar Khan	593
540	Saif Ur Rahman	Mohammad Ayub	594
541	Bakht Seema	with Das shai	595
542	Lal Khan	Mohammad Jan	596
543	Muhd Ahsan Khan	Toor Pasha	597
544	Wahab Jan Khan	Masood	598
545	Sami Ullah	Abdulla	599
546	Gulam Sami	Juna Faqir	600
547	Amin Khan	Tamra Ali	601
548	Noor Zaib	Muht Ullah	602
549	Muhd Zaib	Haider Khan	603
550	Bilal Gul LSPF	Abdur Razaq (Husband)	606
551	Najeesh Ullah	Hussain Khan	607
552	Uzair Ali Khan	Shah Ehsan	608
553	Sybil	Gul Bar Khan	609
554	Shagufta Begum LSPF	Noham Ead Khan	610
555	Sardar Khan	Shah Khan	611
556	Ijaz Ahmad	Sherin Mohammad	612
557	Naveed Khan	Gul Bar Khan	613
558	Zarhamme	Gul Farana Khan	614
559	Rahman ul Haq	Mohammad Zaoun ul Haq	616
560	Khaista Basha	Asfandyar	618
561	Zomira Ebi LSPF	Haider	619
562	Mohammad	Ghulam Rashid	620
563	Akhtar Ali	Sultan Mohammad	622
564	Wafi Khan	Iza Khan	624
565	Ali Zaib	Driver Khan	626

10

A. West

A

11

566	Mati Ullah	Sami Ur Rahman	627
567	Khan Zamin	Gul Zamin	628
568	Badshah Zada	Mohammad Nazir Khan	629
569	Inayat ul Haq	Sher Afzal Khan	630
570	Gul Mohd Zeb	Aurang Zeb	631
571	Layaq Zada	Fazal Haider	632
572	Saeed Ullah	Fazal Rahman	633
573	Khesro	Muhammad Zahir Shah	634
574	Ubaid Ali Khan	Tali Mand Khan	635
575	Farid Khan	Bakht Jehan Khan	636
576	Shafi Ullah	Razi Khan	637
577	Muht. Rahman	Abdur Rahir	638
578	Muht. Umar	Barkat Jan	639
579	Ali Rahman	Mohammad Faza Khan	640
580	Sahib Zada	Akbar Zada	641
581	Zia Ullah	Abdul Hamid	642
582	Said Romullah	Bahadar Kha	644
583	Husan ul Haq	Gul Azim Khan	646
584	Khyal Muhammad	Mazz Ullah Khan	647
585	Amjad Khan	Aziz Jan	648
586	Irshad Ahmad	Sherin Zada	649
587	Arshad Iqba	Bashir	650
588	Kamran Hasan	Zahir Shah	145
589	Digwar Khan	Fazal Qayum	254
590	Abdul Karim	Bashir Ahmad	483
591	Imad Akbar	Missal Khan	564

Secretary to Govt. of Khyber Pakhtunkhwa  
 Director, Tribal Affairs, Department

Under No. 228

Copy forwarded for information to:

1. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The Provincial Police Officer, Khyber Pakhtunkhwa.
4. The Regional Police Officer, Malakand.
5. The District Police Officer, Dir Upper.
6. The District Accounts Officer, Dir Upper.
7. PS to Home Secretary, Khyber Pakhtunkhwa.

*OB/EC/0488/17*

*[Signature]*  
 SECTION OFFICER (BUDGET)

*OB No 228*  
*22-09-2017*

*Attested*  
*[Signature]*

Annexure (1)

محضوړ جناب آئی جی پی ص حب خیبر پختونخواہ پشاور

Annexure (12)

درخواست براد عطا یگی Back Benefit از 2009ء و

شامل فرنی Contract Back Service

Period برائے پشون

جناب عالی! سائل حسب ذیل عرض رساں ہے۔

1- یہ کہ سائل 2009ء میں SPO بھرتی ہوئے تھے اور پشاور ہائی کورٹ نے 2017ء میں

مستقل کرنے کا فیصلہ فرمایا تھا۔

2- یہ کہ محکمہ پولیس نے یکم مارچ 2020ء مستقل کرنے کا آرڈر فرمایا ہے۔

لہذا استدعا ہے کہ سائل کو بمطابق قانون بھرتی کی تاریخ سے Regular

کرنے کا حکم صادر فرمایا جاوے۔

ارض

131-612022

نو رحمن

آدر اہلن ولد عبدالرحمن ولد علیہ 234 سٹریٹ مستقل دلہراہ

0349 8408427

Annex D  
13-15

Annex

Complete Case Judgment

<http://www.pakbeta.com/LawOnline/law/content/21.asp?Ca=ed...>

R.L.D 2016 Supreme Court 534

Present: Anwar Zaheer Jamali, C.J.; Mian Saqib Nisar; Amir Hani Muslim, Iqbal Hameedur  
Rahman and Khilji Arif Hussain, JJ

Civil Appeal No. 1072/2005

CHAIRMAN, PAKISTAN RAILWAY, GOVERNMENT OF PAKISTAN, ISLAMABAD and  
others--Appellants

Versus

SHAH JEHAN SHAH--Respondent

(On appeal against the judgment dated 29-12-2003 passed by the Federal Service Tribunal, Islamabad in  
Appeal No: 6(P)/CS/2003)

Civil Appeal No. 686/2012

Mst. ROBINA SHAHEEN--Appellant

Versus

DIRECTOR EDUCATION (E&SC) KHYBER PAKHTUNKHWA and others--Respondent

(On appeal against the judgment dated 9-4-2012 passed by the FPK Service Tribunal, Peshawar, in  
Appeal No: 1539/2009).

Civil Appeals Nos. 1072 of 2005 and 686 of 2012, decided on 14th April, 2016.

(a) Interpretation of statutes ---

---When a word had not been defined in the statute, its ordinary dictionary meaning was to be looked at.

(b) Words and phrases ---

---"Count"---Definition.

Chambers 21st Dictionary and Oxford Advanced Learner's Dictionary of Current English 7th Edn. ref.

(c) Civil Service Regulations (CSR)---

---Art. 371-A---Pensionary benefits---Government servants rendering temporary service in a temporary  
establishment for more than five years---Entitlement to grant of pensionary benefits within the meaning of  
Art. 371-A of the Civil Service Regulations (CSR)---Scope---Article 371-A of the Civil Service  
Regulations (CSR) would not ipso facto or simpliciter allow government servants rendering temporary  
service in a temporary establishment for more than five years to be entitled to grant of pension, rather  
such period would only be counted towards such government servants' pension if otherwise entitled to  
pension. Mir Ahmad Khan v. Secretary to Government and others (2007 SCMR 1477) declared to be per  
incuriam]

Service rendered for more than five years as contemplated by Article 371-A of the Civil Service  
Regulations (CSR) would only be added, included, or taken into account for the purposes of pensionary  
benefits, and not make such government servant qualify for pension per se. Article 371-A of Civil Service

Attested  
[Signature]  
[Signature]  
11/6/2016

14

~~33~~

Complete Case Judgment

<http://www.pplsbeta.com/LawOnline/law/content21.asp?Cascd...>

in any way fall within the meaning and purview of "temporary establishment". Thus the respondent could not rely upon Article 371-A of the CSR. Besides, if hypothetically speaking Pakistan Locomotive Factory Risalpur was a temporary establishment, even then the respondent would not be able to take the benefit of Article 371-A (supra) as he otherwise does not qualify for pensionary benefits having not been subsequently taken into permanent employment, which is sine qua non for the grant thereof.

8. Adverting to the law laid down in the case of Mir Ahmad Khan (supra) wherein it was held:-

"Admittedly the appellant put in more than ten years' temporary service before his services were terminated he was, therefore, entitled to pensionary benefits under Regulation 371-A(i) of Civil Service Regulations."

In light of the discussion in paragraph No.6, the judgment delivered in Mir Ahmad Khan's case (supra) is declared to be per incuriam.

9. In view of the foregoing, we find that the respondent was not entitled to the grant of pensionary benefits in terms of Article 371-A of the CSR, and the learned Service Tribunal had erroneously allowed him pension by wrongly relying upon the case of Mir Ahmad Khan (supra) which is declared to be per incuriam.

10. The above are the detailed reasons for our short order of even date whereby the appellants' appeal was accepted and the impugned judgment was set aside, which reads as follows:-

"We have heard the arguments of learned ASCs for the parties. For the reasons to be recorded later, this appeal is allowed, the impugned judgment of the Federal Service Tribunal dated 29.12.2003 is set aside and the service appeal preferred by the respondent is dismissed."

Civil Appeal No.696/2012:

11. The brief facts of the instant appeal are that the appellant was a Professional Teaching Certification (PTC) Teacher in the Commissionerate for Afghan Refugees, Peshawar (Commissionerate), from 28.2.1987 to 17.1.2005, i.e. approximately 18 years. During her employment at the Commissionerate, she applied for two months leave on 20.1.2004, after which she was appointed as a PTC Teacher in the Schools and Literacy Department, Government of Khyber Pakhtunkhwa (department) and she assumed charge of her post on 25.11.2004 and tendered her resignation with the Commissionerate on 10.1.2005. Thereafter she filed a departmental appeal to respondent No.1 claiming that her 18 years' service with the Commissionerate be counted for the purposes of her pension, which (departmental appeal) was accepted vide order dated 24.6.2008. However, the said order stated that her 10 years' service be counted towards calculation of her pension, as opposed to 18 years, which the appellant was dissatisfied with thus she filed a corrigendum application for correction of the said mistake. However, in response, the department on 20.7.2009 informed the appellant that her prior service with the Commissionerate could not be counted towards her pension. Aggrieved, the appellant filed an appeal before the learned Khyber Pakhtunkhwa Service Tribunal which was dismissed vide the impugned judgment dated 9.4.2012 whereafter she approached this Court. Leave was granted on 5.7.2013 in the following terms:-

"..... Prima facie, it is difficult to understand that admittedly when the petitioner had served for a period of about 18 years in the Commissionerate and thereafter joined the Education Department and initially the Education Department had also accepted her claim allowing computing of her previous service for the purpose of pension then what prevailed with the department subsequently in disallowing continuity. In view of the judgment cited by the learned counsel in the case of Zafar Shah (2003 SCMR 686) in such like circumstances, continuity for the purpose of extending the benefit of pension is permissible.

3. Inter alia, to examine this aspect of the case, leave to appeal is granted in this case.

Attorney


*[Signature]*

Attorney

*[Signature]*

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Complete Case Judgment

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Subsequently on 19.9.2013, it was decided that this case was to be heard along with Civil Appeal No.1072/2005 before the larger bench as they both involved similar questions of law.

12. Learned counsel for the appellant primarily submitted that the time spent at the Commissionerate is to be counted towards her pension in terms of Article 371-A of the CSR.

13. On the other hand, learned counsel for the respondents stated that due to the special facts and circumstances prevalent at that time, the decision rendered in the case of Mir Ahmad Khan (supra) is good law, however in the instant matter, the appellant is not entitled to inclusion of the period she spent as an employee of the Commissionerate for the purposes of pensionary benefits for the reason that she was in fact a project employee of a non-governmental organisation called Basic Education for Afghan Refugees (BEFARé), and not an employee of the Federal Government, and that she had resigned from the Commissionerate on 10.1.2005 after which she joined the department.

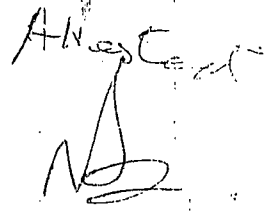
14. Learned Additional Advocate General, KPK adopted the arguments of Mr. Hafiz S. A. Rehman, learned counsel for the appellants in Civil Appeal No.1072/2005.

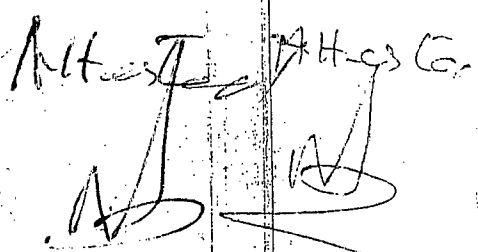
15. Heard: The appellant's main grievance is that the eighteen years she spent at the Commissionerate be counted towards her service at the department for the purposes of the grant of pensionary benefits as per Article 371-A of the CSR, suffice it to say that the Commissionerate for Afghan Refugees does not in any way fall within the meaning of "temporary establishment" as defined in Civil Appeal No.1072/2005 above to mean an organisation or institution which is not permanent, either effective for a certain period only as described. Even otherwise, the appellant's service with the department was temporary and on a contract basis, and there is nothing on the record which suggests that she was subsequently confirmed or made permanent within the department. Therefore keeping in view the interpretation of Article 371-A of the CSR explained above with regard to Civil Appeal No.1072/2005 in that the said article would not ipso facto allow government servants rendering temporary service in a temporary establishment for more than five years to be entitled to grant of pension, rather such period would only be counted towards such government servants' pension if otherwise entitled to pension, we are of the opinion that the appellant is not entitled to pensionary benefits as claimed by her.

16. In light of the above, we find no infirmity in the impugned judgment warranting interference by this Court, therefore this appeal is dismissed as being devoid of merit.

MWA/C-6/S

Appeal dismissed.





Ammed E

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19 F I C (C.S.) 103

[Punjab Service Tribunal]

Before Justice (R) Abdul Sami Khan, Chairman

FAREEHA REHMAN and others

Versus

PROVINCE OF PUNJAB through Secretary Higher Education and others

Service Appeals Nos. 2730 to 2742, 2946 to 2978 and 4058 to 4065 of 2016, decided on 19th July 2018.

Punjab Service Tribunal Act (IX of 1974)---

---S. 4---Constitution of Pakistan, Art.25---Regularization in service---Back benefits---Discrimination---Appellants were lecturers appointed on contract basis for a period of 3 years---Grievance of appellants was that similarly placed other lecturers had been regularized---Validity---Appellants were appointed as female lecturers through departmental selection committee on contract basis for a period of 3 years---Contract services of appellants were extended from time to time without any break for about 15 years---Appellants were met with discriminatory treatment as same was established from facts and documentary evidence relied upon by appellants that other employees of Government of Punjab through different orders/notification were regularized---Claim of appellants that their employments should have been regularized from date of initial appointments was refused which showed that they had been dealt with discrimination---Service Tribunal set aside orders passed by authorities as appellants were entitled for regularization from date of initial appointment as lecturers---Appeal was allowed in circumstances.

Muhammad Aslam Awan, Advocate Supreme Court v. Federation of Pakistan and others" reported as 2014 SCMR 1289 rel.

Muhammad Sajid Khan Tanoli for Appellant (in Appeals Nos. 2730 to 2742 of 2016 and 2946 to 2978 of 2016).

Rizwana Anjum Mufti for Appellant (in Appeals Nos.4058 to 4065 of 2016).

Muhammad Arshad Naseer District Attorney.

**ORDER**

**JUSTICE (R) ABDUL SAMI KHAN, CHAIRMAN.**---Since common questions of law and facts are involved in the following appeals which are being disposed of through this single judgment:-

- I) Fareeha Rehman v. Province of the Punjab through Secretary Higher Education Department and others (Service Appeal No.2730/2016).
- II) Raheela Ghafoor v. Province of the Punjab through Secretary Higher Education Department and others (Service Appeal No.2731/2016).
- III) Zomra Ilyas v. Province of the Punjab through Secretary Higher Education Department and others (Service Appeal No.2732/2016).
- IV) Andleeb Iqbal v. Province of the Punjab through Secretary Higher Education Department and others (Service Appeal No.2733/ 2016).
- V) Noreen Akhtar v. Province of the Punjab through Secretary Higher Education Department and others (Service Appeal No.2734/ 2016).
- VI) Anjum Iqbal v. Province of the Punjab through Secretary Higher Education Department and others (Service Appeal No.2735/ 2016).
- VII) Huma Khanum v. Province of the Punjab through Secretary Higher Education Department and others (Service Appeal No.2736/ 2016).

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Shazia Jabeen v. Province of the Punjab through Secretary Higher Education Department and others (Service Appeal No.4061/ 2016).

LI) Rizwana Nazir v. Province of the Punjab through Secretary Higher Education Department and others (Service Appeal No.4062/ 2016).

LII) Farzana Khan v. Province of the Punjab through Secretary Higher Education Department and others (Service Appeal No.4063/ 2016).

LIII) Uzma Tariq v. Province of the Punjab through Secretary Higher Education Department and others (Service Appeal No.4064/ 2016).

LIV) Ghazala Naz v. Province of the Punjab through Secretary Higher Education Department and others (Service Appeal No.4065/ 2016).

2. Appellants filed instant appeals under section 4 of the Punjab Service Tribunal Act, 1974 praying that the appellants may be regularized in their services w.f. their date of initial appointments with all back pensionary and other benefits and their previous length of service about 15 years be considered as a regular employee and seniority may also be fixed from the date of original appointments and the probation period may also be considered a regular service by way of setting aside the impugned order dated 9.5.2016.

3. Briefly, the departmental authorities established eight colleges during the period from 1998-1999 and the Director of Education (Colleges), Rawalpindi recruited 70 female lecturers along with other staff on contract basis through Departmental Selection Committee for a period of three years with the approval of the competent authority. The Higher Education Department extended their contract services from time to time but they were not regularized despite rendering long service without break. It is also mentioned that the services of other lecturers recruitment by the respondent department during this period were regularized gradually.

Appellants along with other female lecturers filed Writ Petitions Nos.2713/2009 and 2722/2009 in the Lahore High Court, Rawalpindi Bench, Rawalpindi for regularization of their services. The said writ petitions were accepted vide orders dated 4.4.2012 with the following direction:-

"For the reasons supra, both the writ petition are accepted and the respondents are directed to regularize the petitioners with immediate effect within a period of two months".

Thereafter, the respondent department filed I.C.A. No.155/2012 assailing the judgment dated 4.4.2012 which was dismissed vide order dated 16.5.2013, hence the judgment of the Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi has attained finality.


In compliance of the order of the Hon'ble Lahore High Court Rawalpindi Bench, Rawalpindi, appellants along with other lecturers who were on the strength of Higher Education Department on 4.12.2014 were regularized into government service with immediate effect vide Notification No.SO(CE-III)61-2/2009 dated 4.12.2014 and not from the date of their initial appointments.

Aggrieved of the notification dated 4.12.2014, appellant preferred departmental appeals which were not decided and later on, appellants filed Service Appeals Nos. 1788, 1790 to 1800 of 2015 and 2050 to 2090 of 2015 which were decided by this Tribunal vide order dated 18.2.2016 with direction to the Secretary, Higher Education Department, Government of the Punjab, Lahore to decide the pending representations/departmental appeals of the appellants within a period of 30 days.

In deference to the same, the Secretary, Higher Education Department, Government of the Punjab, Lahore vide order dated 9.5.2016 decided the representations/ departmental appeals of the appellants and refused the claim of the appellants as prayed. Hence these appeal.

4. I have considered the arguments of both parties and perused the record.

5. It is established from the record that the appellants were appointed as female lecturers through

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Departmental Selection Committee in the year, 1998-99 on contract basis for a period of three years. The contract services of the appellants were extended from time to time without any break for about 15 years.

6. It has been noticed that the appellants were met with discriminatory treatment which is established from the facts and documentary evidence relied upon by the learned Counsel for the appellants that the other employees of the Government of the Punjab through different orders, notifications were regularized but the claim of the appellants that their employment may be regularized from the date of initial appointments was refused which shows that they have been dealt with discrimination by the Higher Education Department, Government of the Punjab.


In this regard I may observe here that it has been settled by the Hon'ble Supreme Court of Pakistan that seniority of a civil servant was to be reckoned from the date of initial appointment and not from the date of conformation or regularization.

7. In this regard reliance can easily be placed on the judgment of the Full Bench of the Hon'ble Supreme Court of Pakistan titled as "Muhammad Aslam Awan, Advocate Supreme Court v. Federation of Pakistan and others" reported as 2014 SCMR 1289 held as under:-

"civil servant---Seniority of---Reckoned from date of initial appointment---In service matters, while considering the seniority of civil servants, the seniority was reckoned from the date of initial appointment and not from the date of confirmation or regularization".

8. For what has been discussed above, I came to the conclusion that the appellants were entitled for regularization from the date of their initial appointments as Lecturers, hence these appeals are allowed by setting the impugned orders.

MH/2/PST  
Appeal allowed.

Att. Gen. /  


Annex E

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### SERVICE QUALIFYING FOR PENSION

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. Rule 2.1.

### SERVICE RENDERED AFTER RETIREMENT ON SUPERANNUATION PENSION.

Service rendered after retirement on superannuation pension/retiring pension shall not count for pension or gratuity. Note below Rule - 2.1

3. **Beginning of Service:** Subject to any special rules, the service of Civil servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.  
Rule 2.2.

4. **Temporary and officiating service:** Temporary and officiating service shall count for pension as indicated below:-

- i) Civil servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and
- ii) temporary and officiating service followed by confirmation shall also count for pension or gratuity. Rule 2.3.

### CLARIFICATION OF PHRASE - QUALIFYING SERVICE

Temporary and officiating service followed by confirmation or temporary/officiating service exceeding five years qualifies for pension.

Some confusion seems to exist in some quarters as to how condonation of interruptions between two spells of temporary/officiating service may be regulated under rule 2.12(1) of the West Pakistan Civil Services Pension Rules. According to Rule 2.3 ibid temporary and officiating service followed by confirmation or temporary/officiating service of more than five years counts for pension/gratuity. The provisions of Rules 2.12(1) take cognizance of only those cases where the Government servant had prior to the interruption rendered periods of qualifying service and it is considered fit to permit him to count certain past qualifying service towards pension/gratuity. The condonation of interruptions in service with a view to allowing past Non-qualifying temporary/officiating service to qualify for pension/gratuity under Rule 2.3 is not permissible. In other words condonation of interruptions for pension/gratuity in temporary/officiating service is permissible only where the broken period of temporary/officiating service is qualifying i.e. it exceeds five years or is followed by confirmation. Where neither condition is fulfilled, condonation of interruption is not permissible. To make it more clear the following illustrations are given:-

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