10.06.2022 Appellant present through representative.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General alongwith Zewar Khan S.I (Legal) for respondents present.

File to come up alongwith connected Service Appeal No.3081/2021 titled Hazrat Bilal Vs. Government of Khyber Pakhtunkhwa on 14.07.2022 before S.B.

(Rozina Rehman)
Member (J)

14.07.2022 Junior of learned counsel for the appellant present. Mr. Muhammad Adeel Butt. Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for preliminary hearing on 12.09.2022 before S.B.

(MIAN MUHAMMAD)
MEMBER (E)

12.09.2022 The worthy Chairman is on leave, therefore, the case is adjourned to 24.10.2022 for the same.

Reader

17.11.2021 Counsel for the appellant present.

Learned counsel for the appellant seeks adjournment. Adjourned. To come up for preliminary hearing on 27.01.2022 before S.B.

(Mian Muhammad)
Member(E)

27.01.2022 Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Zarshad Ali, SI for respondents present.

Learned AAG requested for a short adjournment and stated at the bar that reply/parawise comments is under process and will be submitted well before the next date of hearing. Request is acceded to. To come up for reply/preliminary hearing on 29.03.2022 before S.B.

(Mian Muhammad)
Member(E)

29.03.2022 Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Written reply/comments on behalf of respondents not submitted. Fresh Notices be issued to the respondents for submission of written reply/comments. Adjourned. To come up for written reply/preliminary hearing on 10.06.2022 before S.B.

(MIAN MUHAMMAD)
MEMBER(E)

10.06.2022 Appellant present through representative

Mr. Ria[illegible] Raindak[illegible] learned Assistant [illegible] Counsel [illegible] for respondents present.

Reply on behalf of respondents was submitted. Copy thereof was handed over to the representative of appellant. To come up for rebuttal, if any, and hearing on 11.07.2022 before D.B.

(Rozina Rehman)
Member (J)

01.09.2021 Learned counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant agitated and assailed the impugned order dated 08.04.2020 where-under the services of Special Police Officer (SPO's) working in District Swat were regularized w.e.f 01.03.2020. He contended that the regularization of services of the appellant was required w.e.f 26.06.2009 instead of 01.03.2020. In support of his arguments he referred to judgement of the Peshawar High Court, Peshawar in writ petition No.2013-P/2016 dated 24.10.2017 as well as Section-3 of the Khyber Pakhtunkhwa Employees (regularization of service) Act, 2009. The appellant submitted his departmental appeal on 10.09.2020 and the instant appeal was instituted in the service Tribunal on 01.03.2021. As the question of limitation is involved, let pre-admission notice be issued to the respondents to assist the Tribunal on the point. To come up for preliminary hearing before the S.B on 13.10.2021.

(Mian Muhammad)
Member(E)

13.10.2021 Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation of arguments. Adjourned. To come up for preliminary hearing before the S.B on 17.11.2021.

(MIAN MUHAMMAD)
MEMBER (E)

Form-A

FORMOF ORDERSHEET

Court of _____

Case No. 3430 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	05/03/2021	As per direction of the Worthy Chairman this case is submitted to the S.B for decision on office objection. To be put up there on 19/05/21. REGISTRAR
19.05.2021		Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 01.09.2021 for the same as before. Reader

The appeal of Mr. Shafa-ud-Din Belt no. 2089 Police Department received today i.e. on 01/03/2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Copy of appointment order mentioned in para-1 of the memo of appeal is not attached with the appeal which may be placed on it.
2- Copy of regularization of service order of the appellant mentioned in para-4 of the memo of appeal is not attached with the appeal which may be placed on it.

No. 420 /S.T,

Dt. 02/03 /2021

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Anwar Khan Adv. Pesh.

Para No 1 is explained by High court Judgement Page No 8-19 and Regular Pay slip issued by AG. Page No 23 to 25

Resubmitted.

5/3/2021

M. Anwar Khan Pashtunghar
Adv

BEFORE THE KPK SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 3430 /2021

Mr. Shafa Ud Din .....**Appellant**

VERSUS

Government of KPK through Chief Secretary & Others
.....Respondents

INDEX

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4.	Copy of Contract recruitment selection committee	A	7
5.	Copy of Judgment dated 24/10/2017	B	8-19
6.	Copy of Reply in Writ Petition 1980/2016	C	20-22
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9.	Copy of Pension rules for qualifying Service	F	26
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شفاء الدین
Appellant

Through

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

Date: 8/12/2021

BEFORE THE KHYBER PAKHTUNKHWA TRIBUNAL
PESHAWAR

Service Appeal No._____/2021

Mr.

.....Applicant/**Appellant**

V E R S U S

Government of KPK through Chief Secretary & Others

.....Respondents

APPLICATION FOR CONDONATION OF DELAY If Any

Respectfully Sheweth:

1. That the applicant is filling accompanying appeal in this Honorable Service Tribunal.

2. That the applicant has requested for the Back Service & Back benefits but till date no action has been taken on her appeals.

3. That departmental appeal has not been rejected on the ground of limitation.

4. That time and again the applicant submitted applications / appeals for Back Service and Back benefits but no reply has been given.

5. That for the reasons above, the delay, if any ought to be condoned.

It is, therefore, requested that the delay if any, infilling the departmental appeal / the instant appeal be graciously condoned and the appeal be decided on merits.

Applicant

Through

Muhammad Anwar khan
(Pashtun Ghari)
Advocate High Court,
Peshawar

Date: 8/01/2021

Affidavit:

I Mr. Son of Belt NO
, R/o Tehsil
, District ,applicant do here by solemnly affirm and declare on oath that the contents of the above applicant are true and correct to the best of my knowledge and belief and nothing has concealed from this Honorable Tribunal.

Date: 8/01/2021

Deponent

0344990934

/

BEFORE THE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No._____/2021

Mr. Shafa Ud Din S/o Sultan Shah, Belt No 2089,
R/o Partak Tehsil Sherengal, District Upper Dir

.....**Appellant**

VERSUS

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 Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 1-3-2020 of The Respondents No. 3, whereby Appellant service has been regulized from contract Service. The Regulization order of 2020 may be considered w.e.f, 2009 instead of 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 26-06-

2009 toward his regular service for the purpose of grant of pension and he may be allowed pension and other benefits.

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 by selection committee. **(copy of contract recruitment by selection committee is attached as Annexure A)**

2. That the Respondents admitted the contract service of appellant w.e.f 2009 in reply in writ petition No 1980/2016 latter on along with other Similar Special Police force regulizared by Peshawar High Court Peshawar in writ Petition No 1980/2016 w.e.f 24/10/2017. The appellant is at serial No 33.**(Copy of Judgment is attached as Annexure B)**

3. That the Respondents admitted the contract service of appellant w.e.f 2009 in reply in writ petition No 1980/2016 **(Copy of Reply is attached as Annexure C).**

4. That the Appellanent has been regularized by the Respondents in 2020 instead of date of initial appointment of the Appellant. **(Copy of regular Pay slip of is attached as Annexure D)**

5. That the Appellant requested to the Respondents for issuance copies of contract as well as Regular Appointment Order but all in vain. The Appellant also requested for Contract and regular appointment order through Right to information Act 2013. **(Copy of application is attached As Annexure E).**

GROUNDS:

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 as per Judgment of Supreme Court of Pakistan in Civil Appeal No.1072/2005 decided on 04.04.2016 the larger bench of August Supreme Court of Pakistan has specifically held that the Temporary Service followed by the conformation of regular service counted for the purpose of pension thus the Appellant is entitled for the grant of monthly pension by counting his service w.e.f the date of his initial appointment.

E) That there are a number of Judgments in identical cases. Therefore, Respondents are bound to follow the same and

should have acted inaccodance with law & judgment of August Supreme Court of Pakistan reported in 1996 SCMR 1185.

F) That the Temporary service followed by confirmation/ regular appointment gave the Appellant a right that his service be considered as regular service.

G) *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.*

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

It is, therefore, most humbly prayed that on acceptance of the instant service appeal, the impugned regularization order 2020 may very graciously be consider w.e.f his initial appointment i.e. 2009 instead of 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.

شفاح الدین

Appellant

Through

Muhammad Anwar Khan
(Pashton Ghari)
Advocate High Court

Date: 8/2/2021

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BEFORE THE KPK SERVICES TRIBUNAL, PESHAWAR

Service Appeal No._____/2021

Mr. Shafa Ud Din

.....**Appellant**

V E R S U S

Government of KPK through Chief Secretary & Others

.....Respondents

AFFIDAVIT

I, Mr. Shafa Ud Din S/o Sultan Shah, Belt No 2089, R/o Partak Tehsil Sherengal, District Upper Dir, 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.

DEPONENT

0344 8968 39

6

BEFORE THE KPK SERVICES TRIBUNAL, PESHAWAR

Service Appeal No._____/2021

Mr. Shafa Ud Din

.....**Appellant**

V E R S U S

Government of KPK through Chief Secretary & Others

.....Respondents

ADDRESSES OF PARTIES

APPELLANT

Mr. Shafa Ud Din S/o Sultan Shah, Belt No 2089,
R/o Partak Tehsil Sherengal, District Upper Dir

RESPONDENTS

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.

Appellant

Through

Muhammad Anwar Khan
(Pashton Ghari)
Advocate High Court

Date: 22/2/2021

Annex A 7

ORDER

A recruitment Committee consisting of the following Police officers is hereby constituted under the supervision of the undersigned for recruitment of Special Police Officer on 22/06/2009 to 26/06/2009 at Police Lines Timergara Dir Lower.

1. Mr. Falak Naz Khan Superintendent of Police Investigation.
2. Mr. Purdil Khan Deputy Superintendent of Police Legal.
3. Mr. Khan Raziq Khan SDPO-Timergara
4. Mr. Shah Wazir Khan Deputy Superintendent of Police H.Qrs.
5. SI Bashir Khan Lines Officer
6. OHC

The recruitment Committee will ensure that the selection of the Special Police Officers will be totally fair, transparent and pure on merit basis according to Provincial Police Officer Memo: No. 15392/E-II dated 20/06/2009.

(Mumtaz Zarin)
T:Sh: QPM
District Police Officer,
Dir Lower at Timergara.

(Karim)

No. 9632-40 /OHC dated Timergara the 20/6 /2009

Copy forwarded for information to the :-

1. Provincial Police Officer, N.W.F.P Peshawar.
2. Deputy Inspector General of Police Malakand Region-III Swat.
3. Mr. Falak Naz Khan Superintendent of Police Investigation.
4. Mr. Purdil Khan Deputy Superintendent of Police Legal.
5. Mr. Khan Raziq Khan SDPO-Timergara
6. Mr. Shah Wazir Khan Deputy Superintendent of Police H.Qrs.
7. SI Bashir Khan Lines Officer
8. OHC

AHayat Cof

AHayat Cof

Annex B
8-19

27) *Muhammad Islam Son of Muhammad Belt No.89.*
28) *Ali Haidar Son of Said Faqir Belt No.575.*
29) *Saf ul Islam Son of Bahadar Khan Belt No.560.*
30) *Kifayat Ullah Son of Dilaram Khan Belt No.545 Commander No.1.*
31) *Aqal Zamin Son of Hashim Khan Belt No.489.*
32) *Shafi Ullah Son of Zameen Khan Belt No.538.*
33) *Sheaf ud Din Son of Sultan Shah Belt No.543.*
34) *Muhammad Zaib Son of Muhammad Essa Belt No.540.*
35) *Muzaffar Khan Son of Muhammad Khaliq Belt No.21*
36) *Badshah Zada Son of Muhammad Nageen Khan Belt No.629.*
37) *Shafi Ullah Son of Rozi Khan Belt No.637.*
38) *Khan Zameen Son of Gul Zameen Belt No.628.*
39) *Juma Khan Son of Dilbar Shah Belt No.559.*
40) *Sherin Nabi Son of Muhammad Said Khan Belt No.536.*
41) *Muhammad Shah Khan Son of Abdul Haleem Belt No.482.*
42) *Shajat Ali Son of Ajdar Khan Khan Belt No.403.*
43) *Ihsan Ullah Son of Dilaram Khan Belt No.544.*
44) *Ijaz Ahmad Son of Sherin Muhammad Belt No.612.*
45) *Muhammad Khan Son of Amin Khan Belt No.537.*
46) *Riaz Son of Said Ghulam Belt No.539.*
47) *Abdul Salam Son of Shams ur Rehman Belt No.541.*
48) *Farhad Ali Son of Ashraf Khan Belt No.374.*
49) *Fazal Hadi Son of Sultan Zareen Belt No.486.*
50) *Bakht bo Din Son of Rehman Anwar Belt No.385.*
51) *Sardaraz Khan Son of Muhammad Shah Khan Belt No.611.*
52) *Muhammad Khan Son of Muqrab Khan Belt No.381.*
53) *Mukhtiar Ahmad Son of Sultan Yousaf Belt No.546.*
54) *Zahoor ul Haq Son of Abdul Haq Belt No.535*
55) *Sher Bahdar Son of Misri Khan Belt No.580*

PESHAWAR HIGH COURT
Deputy Registrar
19 MAY 2016

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Advocate
Peshawar High Court
10 NOV 2017

87) *Zafar Ali Son of Daud Khan Belt No.3026.*
88) *Lal Muhammad Son of Rustam Gul Belt No.3232*
89) *Bakth Zaman Son of Razi Khan Belt No.3316.*
90) *Syed Zafar Ali Son of Mian Gul Belt No.3273.*
91) *Syed Irshad Ahmad Son of Khursheed Ahmad Belt No.3079.*
92) *Abdul Majeed Son of Shar Makhai Belt No.3216.*
93) *Noor Haider Son of Ali Haidar Belt No.3017.*
94) *Hakim Said Son of Sultan Pervez Belt No.3051.*
95) *Ibrahim Son of Abdul Ghafoor Belt No.3081.*
96) *Alamzeb Son of Mujtaba Belt No.3259.*
97) *Khial Muhammad Son of Rustam Gul Belt No.3177.*
98) *Sami Ullah Son of Mian Pir Bacha Belt No.3181.*
99) *Mian Said Ali Son of Mian Said Muhammad Belt No.3325.*
100) *Nowsher Son of Naseer Belt No.3136*

All Residents of Deputy Inspector General Malakand Region, Malakand.

..... **Petitioners**

VERSUS

1- *Secretary Home Department Civil Secretariat, Khyber Pakhtunkhwa Peshawar.*
2- *Secretary Finance Department Civil Secretariat, Khyber Pakhtunkhwa Peshawar.*
3- *The Provincial Police Officer, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.*
4- *The Deputy Inspector General of Police Malakand Region Malakand.*

..... **Respondents**

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

Respectfully Sheweth:

The petitioners submits as under:

1- *That the petitioners are the citizen of Khyber Pakhtunkhwa an enrolled as Constables in Special Police Force by respondent No.3.*

FILED TODAY
Registrar
2016

WP1980P2016GROUND

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Peshawar High Court
10 NOV 2017

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IN THE PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'

FORM OF ORDER SHEET

Date of Order	Order or other proceedings with signature of the Hon'ble Judge(s)
1	2
24.10.2017	W.P.No.1980-P/2016 with I.R. Present: Mr. Muhammad Anwar Khan, Advocate, for the petitioners. Malik Akhtar Hussain Awan, AAG, for the Provincial Government. *** IJAZ ANWAR, J.- Same order as in the connected writ petition No.2013-P/2016. CHIEF JUSTICE JUDGE

23/11/2017

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Qanun-e-Shahadat Order
10 NOV 2017

T.Shah PS.

Hon'ble Mr. Justice Yahya Afridi, HCJ and Hon'ble Mr. Justice Ijaz Anwar, J

11

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT

W.P No. 2013-P/2016.

JUDGMENT

Date of hearing:..... 24.10.2017

Petitioner (s) Ahmad Khan and 99 others by Muhammad Anwar Khan Pashton Ghari, Advocate.

Respondent (s) Secretary Home Department Khyber Pakhtunkhwa and others by Malik Akhter Hussain Awan,AAG.

IJAZ ANWAR, J.- The petitioners Ahmad Khan and 99 others in the instant writ petition No. 2013-P/2016 as well as the petitioners in the connected writ petitions No. 1980 of 2016, 2109 of 2016, 2146-P of 2016, 2182 of 2016, 2183-P of 2016, 2231-P of 2016, 2330-P of 2016,2437-P of 2016,2481-P of 2016 2538-P of 2016 and 3197 of 2016, have asked for issuance of an appropriate writ directing the respondents to give them benefit under the provisions of the Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009, whereby services of all ad-hoc and contract employees have been regularized.

2. As in all the writ petitions, one and same point is raised for determination, therefore, we propose to dispose of all the writ petitions through this single judgment in W.P. No.2013 of 2016.

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3. Precise facts of the instant writ petition and the connected writ petitions are that the petitioners in all the writ petitioners, after fulfilling the selection process as provided in letter No. 523-29 PA (OPS & Trg) dated 26.6.2009, were enrolled in Special Police Force in the year, 2009, on two years contract basis. The contract of petitioners was extended from time to time. The Provincial Assembly passed Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009, whereby all the contract employees holding a post on 31.12.2008 or till the commencement of the Act, were declared as regular civil servants. On the strength of the above said policy, services of other employees were regularized, however, the petitioners were deprived from the benefit of it, therefore, they approached the respondents for regularization of their services on the strength of the above said policy but in vain, hence, the above referred writ petitions.

4. Respondents submitted their comments, wherein they stated that in view of ongoing operation against militants in the province, the persons from the Internally Displaced persons (IDPs) were ordered to be appointed in the Special Police Force on contract basis, therefore, the policy of the year, 2009, referred to ibid, is not applicable to the case of the petitioners.

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Peshawar High Court
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5. Learned counsel for the petitioners argued that the petitioners were appointed in Special Police Force since the year, 2009-2010 and they are performing their duties till date with the same terms and conditions. They argued that the petitioners have rendered almost ten years service, but they have not been given service protection. They referred to the Khyber Pakhtunkhwa, Employees (Regularization of Services) Act, 2009 and argued that employees working in different departments have been regularized except the petitioners despite the fact that the job of the petitioner is exactly the same with those employees, who are performing their duties in regular police force, therefore, the act and action of the respondents is discriminatory.

6. Conversely, learned AAG argued that while appointing the petitioners, there was no specific criteria to be adopted and it was, in fact, for the encouragement and compensation of the Internally Displaced Persons, such recruitment was made. He argued that there is great difference in the criteria of Special Police and Regular Police, therefore, the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 is not applicable to the case of petitioners.

7. We have heard arguments of the learned counsel for the parties and have also perused the record.

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EXAMINER
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8. Perusal of the record reveals that, initially, it was decided for the recruitment of 6725 personnel in Swat, Buner, Shangla, Dir Upper and Dir Lower Districts on contract basis as Special Police Force, thereafter, such appointments were also made in other Districts of the province of Khyber Pakhtunkhwa. Initially, there was no set criteria for such recruitment as the same was to be made from the Internally Displaced persons (IDPs), however, even for such appointments, there was a Recruitment committee to be headed by District Police Officer that was required to observe the age, physical fitness, i.e., height, chest etc. After advent of time, the issuance of advertisement for the filling of such posts was also made mandatory. Vide notification dated 24.10.2009, the Provincial Assembly has promulgated Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009. The relevant section 3 of the said Act is reproduced for ready reference.

> Section (3)
> Regularization of service of certain employees. **All employees including recommendees of the High Court appointed on contract or adhoc basis and hold that post on 31st December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for the regular post:**

According to the above section, there are three conditions for regularization of service of the employees

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10 NOV 2017

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employees, namely, (i) employees must have been appointed on contract or adhoc basis, (ii) they were holding the said post on 31.12.2008 or till the commencement of this Act, i.e, 24.10.2009, and (iii) having the pre-requisite qualification and experience required for a regular post.

Similarly, section 2 of the Act says that:-

> **Section (2).**
> **a)----**
> **aa) "Contract appointment" means of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment.**
> **b)"employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shirt/night shift but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies**

9. It is pertinent to mention here that earlier the Provincial Government, vide Khyber Pakhtunkhwa, Civil Servants (Amendment) Act, 2005, amended section 19 of the Khyber Pakhtunkhwa Civil Servant Act, 1973. The Provincial Government regularized the services of contract employees throughout the province but benefit of Section 19(2) was not extended to some of the employees on the ground that they have not been appointed in the prescribed manner. The controversy came up before this Court in a case of <u>Dr. Rizwanullah and 42 others vs. Government of</u>

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Peshawar High Court
11 MAY 2017

Attested

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N.-W.F.P through Chief Secretary, NWFP, Peshawar and 4 others (2009 PLC (CS) 389) wherein it was held that:-

16. A bare look at the history of legislation on this subject in the past further reinforced the above view that the petitioners' service 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 N.-W.F.P Ad hoc 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 N.-W.F.P Employees on Contract Basis (Regularization of Services) Act, VIII of 1989, Section 4 is couched in the following words;-

> "S. Regulation of services of certain Civil Servants.-- - (1) Notwithstanding anything contained in any law for the time being in force, any Civil Servant, who is or has been 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 afficiation, 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

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Peshawar High Court
2017

Attested

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with regard to the regularization of service of contract employees because the object has been clearly accomplished through the plainly understandable words used in section 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."

10. In the present case, the petitioners have been appointed by the Departmental Selection Committee and faced the process of selection regarding physical fitness, height, chest etc. They are performing their duties since year, 2009. Different documents were placed on file, according to which, number of Special Police Force employees were proceeded under the Khyber Pakhtunkhwa, Police Rules, 1975. It has also not been denied that the petitioners are performing exactly the same duties as performed by the members of the regular police. Therefore, we found that the case of the petitioners squarely come within the purview of the provisions of the Regularization Act, 2009, referred to ibid, because they have been appointed on contract basis in a manner prescribed by the Government at that time and that they have also been appointed between the period which was

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Peshawar High Court
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given by the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 (**ACT No. XVI OF 2009**).

11. It is pertinent to mention here that the special Police Force is performing duty side by side with the regular police. They encounter terrorists and embraces "Shahadat". Their cases for grant of "Shuhada Package" were, initially, regretted by the Provincial Government, however, this Court in a judgment and order dated 19.5.2015 in W.P No. 2502/2015, held their families to avail the said benefit, announced by the Provincial Government.

12. There is yet another very important aspect of the case that is the definition given to the contract employees is clear enough to bring the case of the petitioner within the purview of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009, because as objected by the respondents the appointments of the petitioners on contract basis was made otherwise than the method prescribed under the recruitment Rules. In fact, the intention of the legislature while promulgating the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009, was to regularize all those contract employees, who were appointed not in accordance with the prescribed

Attested

ATTESTED
EXAMINER
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10 NOV 2017

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procedure and who were holding post on 31.12.2008 or uptill 24.10.2009.

13. When analyzing the case of the petitioners on the touchstone of the Act of 2009, we leave no doubt in our mind that the petitioners stood regularized by operation of law on the promulgation of the Act, ibid.

14. For the stated reasons, this and the connected writ petitions are allowed and it is declared that those petitioners who are holding the post of constable/Special Police Force on 31.12.2008 or till the commencement of the Act, 2009, ibid, i.e., 24.10.2009 shall be deemed to be regularized.

Sd/- Yahya Afridi

CHIEF JUSTICE

Sd/- Ijaz Anwar

JUDGE

Announced.
Dt.24.10.2017

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order, 1984
03 NOV 2017

(M Zafral P.S)

(DB of Hon'able Mr. Justice Yahya Afridi, HCJ, and Hon'able Mr. Justice Ijaz Anwar.)

Attested

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BEFORE THE HONORABLE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 1980-P/2016

Muhammad Anwar and others.....(Petitioners)

Versus

Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs, Peshawar and others..... (Respondents)

Subject:- COMMENTS ON BEHALF OF RESPONDENTS

Preliminary Objections:-

a) The petition has not been based on facts.
b) The petition is not maintainable in the present form.
c) The petition is bad for non-joinder and mis-joinder of necessary parties.
d) The petitioners are estopped to file the petition.
e) The petitioners have got no cause of action to file the petition.
f) The petition is barred by law and limitation.
g) The petitioners have not come to the Honorable Court with clean hands.

FACTS:-

1. Correct to the extent that in view of insurgency of militancy in Khyber Pakhtunkhwa, ongoing operation against militants at Malakand Region, to encourage community policing and to compensate the Internally Displaced Persons (IDPs), the government sanctioned funds for recruitment of Special Police on contract basis for assistance of the regular Police.

2. Correct to the extent that petitioners and others were recruited on contract basis however, there is great difference in the criteria prescribed for special Police and regular Police.

3. Correct to the extent that petitioners were initially recruited on contract basis for two years and the contract was extend from time to time.

4. Correct to the extent that Special Police assisted the regular Police in discharge of their functions but they were untrained and inexperienced fellows.

5. Incorrect, the selection process of the Special Police were different than prescribed for regular Police.

Attested

Annex
-21

6. Correct, to the extent that Special Police assisted regular Police and governmen had chalked out proper Policy for grant of "Shaheed" package to legal heirs of Special Police "Shuhada".

7. Incorrect, NWFP (KP) employees (Regularization of Service) Act, 2009, is not applicable to petitioners. According to Section 2 (f) of the Act, "Post" means a post under government or in connection with affairs of government to be filled in on the recommendation of commission and the post of constable does not fall within the category of commission posts. Again appointment, seniority & promotion of Police department is governed by Special law i.e. Police order and Police Rules.

8. Incorrect, the petitioners prayer for regularization was without any force and substance. As explained in reply to Para-7 that NWFP (KP) employee (Regularization of Service) Act, 2009 is not applicable to the petitioner. There was great difference in physical, age, educational, criteria prescribed for special Police and regular Police. Again the members of special Police were the recommended by the notables of the village and not by selection committee constituted for recruitment of regular Police.

9. Incorrect, the petitioners were appointed on contract basis and most of them were already overage as age limit for special Police was 45 years as against 25 years age limit for regular Police. The petition of petitioner is not sustainable on the given grounds.

GROUNDS:-

a) Incorrect, petitioners were employed on contract basis and their case is not covered under NWFP (KP) Employee (Regularization of Service) Act, 2009.

b) Incorrect, members of Special Police are allowed to participate in the examination of recruitment of regular Police subject to fulfilling the prescribed qualifications. Also additional 03 marks are allotted to such candidates on qualifying the examination.

c) Incorrect, petitioners voluntarily joined special Police on contract basis and they were well in picture of the fate of the contract service.

d) Incorrect, contract service is no ground for regularization and there is no rule or law which may allow regularization of petitioners.

e) That respondents may also seek permission of raising additional grounds during arguments of the case.

Attested

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It is therefore, prayed that the petition of petitioners may be dismissed with costs.

Secretary to Gov: of Khyber
Pakhtunkhwa Home & TAs department
Peshawar.
(Respondent No.1)

Home Secretary
Khyber Pakhtunkhwa

Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No.3)

Provincial Police Officer
Khyber Pukhtunkhwa

Attested

Annex D 23

Attested

Annex E

24-25

بحضور جناب آئی جی پی صاحب خیبر پختونخواہ پشاور

درخواست بمراد عطائیگی Back Benefit از 2009ء و
شامل فرمانے Contract Back Service
برائے پنشن Period

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 کو مستقل کرنے کا آرڈر فرمایا ہے۔

لہٰذا استدعا ہے کہ سائل کو بمطابق قانون بھرتی کی تاریخ سے Regular کرنے کا حکم صادر فرمایا جاوے۔

العارض

شفاء الدین

03494900934

شفاء الدین والد سلطان مشاہ ببلٹ نمبر 2089 تھانہ تھل ایردیر

Attested

No 1436 For ... RGL52654348 Rs. Ps.

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Initials of Receiving Officer

If insured. Insured for Rs. (in figures) _____ (in words) _____

Insurance fee Rs. _____ Ps. _____ (in words) Weight Kilo Grams

Name and address of sender _____

24A

25

To,

Inspector General of Police,
Khyber Pakhtun Khwa,
Peshawar

Subject: **"Issuance of Regular & Contract Order of Special Police Force"**

Respected SIR,

With due respect, it is stated that please issue me Copy of my regular & Contract order.

It is my humbly request to provide me a copy of regular & Contract Order as soon as possible; I will be thankful to you.

you're sincerely,

شفاء الدین

Belt No:

2084

Dated: 21/2/2020

Attested

Annex F

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5

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 poension.retiring pension shall not count for pension or gratuity. **Note below Rule - 2.1**

3. **Begining 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.

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 endered periods of qualifying service and it is considreed fit to permit him to count certain past qualifying service towards pension/gratuity. The condonation of interruptions n service with a view to allowing past Non-qualifying temporary officiating service to qualify for pension/gratuity under Rule 2.3 is not perhissible. In other words condonation f interruptions for pension/gratuity in temporary/officiating service is permissible only here the broken period of temporary officiating service is qualifying i.e. it exceeds five ars or is followed by confirmation. Where neither condition is fulfilled, condonation of s[illegible] is not permissible. To take it more clear the following illustrations are

Attested

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WAKALAT NAMA

IN THE COURT OF KP Service Tribunal Peshawar

Hanif ud Din ..... VERSUS Govt of KPK through Chief Secretary & other

Accused/ Petitioner/ Appellant/ Plaintiff. ✓

Respondent/ Defendant/ ✓ Complainant

FIR No..... Dated: ..... Police Station: .....
Charge U/s.....

KNOW ALL to whom these presents shall come that I the undersigned appoint:

Muhammad Anwar Khan,(Pushton Ghari), Advocate, High Court, Peshawar (herein after called the advocate) to be the Advocate for the Appellant/Petitioner in the above mentioned case, to do all the following acts, deeds and things or any of them ,that is to say :

1) To act and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or execution or in any other stage of its progress until its final decision.
2) To sign, verify and present pleadings, appeals, cross - objections ,petitions for execution, review , revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of said case in all its stages.
3) To withdraw or compromise in the said case or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
4) 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 case.
5) To engage any other Legal practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the promises.
AND I hereby agree not to hold the Advocate or its substitute responsible for the result of the said case and in consequence of his absence from the court when the said case is called up for hearing
AND I hereby that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid.. He shall be entitled to withdraw from the prosecution of the said case until the same is paid.
IN WITNESS WHEREOF I hereunto set my hand to these presents the contents of which have been explained to and understood by me. this 8 day of 2 2014

ثناء الدین

Signature/ thumb impression of party / parties.

Accepted

Muhammad Anwar Khan,(Pushton Ghari)
Advocate High Court, Peshawar
Cell No:- 0333-9262374

Office Address:- Law Chamber No 127, New Bar Room, Judicial Complex, Peshawar

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.**3430/2021**

Shafa Uddin FC Dir Upper..... Appellant.

VERSUS.

1) Chief Secretary, Khyber Pakhtunkhawa Peshawar.
2) Secretary Finance Khyber Pakhtunkhawa Peshawar.
3) Provincial Police Officer Khyber Pakhtunkhawar Peshawar.
4) Deputy Inspector General of Police Malakand Range.....Respondents.

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2	Power of Attorney& affidavit	-	3.4

DSP Legal,
Dir Upper.

BEFORE TH E SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.**3430/2021**

Mr. Shafa ud Din of Dir Upper..... Appellant.

VERSUS.

1) Chief Secretary, Khyber Pakhtunkhawa Peshawar.
2) Secretary Finance Khyber Pakhtunkhawa Peshawar.
3) Provincial Police Officer Khyber Pakhtunkhawar Peshawar.
4) Deputy Inspector General of Police Malakand Range.....Respondents.

PARA WISE REPLY ON BEHALF OF RESPONDENT NO. 3 AND 04.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

1) That the present service appeal is not maintainable in its present forum.
2) That the appellant has not come to this August Tribunal with clean hands.
3) That the present service appeal is badly time barred.
4) That to entertain such appeal is tantamount to kill the valuable and precise time to the honorable Service Tribunal.
5) That the appellant has suppressed and concealed the material facts from this Honorable Tribunal.

ON FACTS:

1. Pertains to record, hence needs no comments.
2. Incorrect, the appellant and other Special Police Officers were enlisted in Police department purely on contract basis with fixed pay of Rs. 10000/- to assist regular Police and later on the services of the appellant and others were regularized through Khyber Pakhtunkhawa Special Police Officers (Regularization of Services) Act 2019. But contract service was not included in regular services.
3. Pertains to record, hence needs no comments.
4. The services of the appellant along with his colleagues were regularized after promulgation of the Khyber Pakhtunkhawa Special Police Officers (Regularization of Services) act 2019.
5. Incorrect, the appellant and others services were regularized under the ibid act 2019 and contract period was not included by the government in the regular service thus appellant is not entitled under the law/rules.

GROUNDS.

A. Incorrect, the appellant has been treated in accordance with law and no rights of the appellant whatsoever have been violated by the respondents.
B. Incorrect, action of the respondents did not fall in the ambit of violation of the principle of natural justice.
C. Incorrect, the contract period as SPO has not included in the regularization act, therefore he is not entitled for any benefit under the law/ rules.
D. Every case has its own facts and merits; therefore the referred judgment is not applicable to the case in hand.
E. The reply has already been given in the preceding Para.
F. Incorrect, the appellant was initially recruited on contract basis and then his services were regularized after promulgation of the Khyber Pakhtunkhawa Special Police Officers (Regularization of Services) act 2019.
G. Incorrect, all the actions of the respondents are in accordance with law/rules Policy of government.
H. The respondents will also adduce further grounds at the time of arguments after leave of this honorable Service Tribunal.

PRAYER:

It is therefore humbly prayed that on acceptance of this para-wise reply, the service appeal may graciously be dismissed with cost.

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.

Regional Police Officer,
Malakand at Saidu Sharif Swat.

Regional Police Officer
Malakand Region,
Saidu Sharif, Swat.

(3)

BEFORE TH E SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.**3430/2021**

Shafa Uddin FC Dir Upper..... Appellant.

VERSUS.

1) Chief Secretary, Khyber Pakhtunkhawa Peshawar.
2) Secretary Finance Khyber Pakhtunkhawa Peshawar.
3) Provincial Police Officer Khyber Pakhtunkhawar Peshawar.
4) Deputy Inspector General of Police Malakand Range.....Respondents.

Power Of Attorney.

We the undersigned do hereby authorize Zewar Khan DSP Legal to appear on my behalf before the honourable service tribunal on each and every date.

He is also authorized to file para wise comments, and also submit all relevant documents before the court.

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

Regional Police Officer,
Malakand Region,
Saidu Sharif, Swat.

(G)

BEFORE TH E SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.**3430/2021**

Shafa Uddin Dir Upper..... Appellant.

VERSUS.

1) Chief Secretary, Khyber Pakhtunkhawa Peshawar.
2) Secretary Finance Khyber Pakhtunkhawa Peshawar.
3) Provincial Police Officer Khyber Pakhtunkhawar Peshawar.
4) Deputy Inspector General of Police Malakand Range.....Respondents.

Affidavit

I, the undersigned do hereby solemnly affirm and declared that the contents of parawise reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT
Zewar Khan, DSP Legal
Upper Dir.

ATTESTED
Zahoor Khan Advocate
Notary Public
Peshawar District & Session Courts Peshawar