ORDER

04.10.2022 1. Counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

2. Arguments were heard at great length. Learned counsel for the appellant submitted that in view of the judgment of august Supreme Court of Pakistan dated 24.02.2016, the appellant was entitled for all back benefits and seniority from the date of regularization of project whereas the impugned order of reinstatement dated 05.10.2016 has given immediate effect to the reinstatement of the appellant. Learned counsel for the appellant was referred to Para-5 of the representation, wherein the appellant himself had submitted that he was reinstated from the date of termination and was thus entitled for all back benefits whereas, in the referred judgement apparently there is no such fact stated. When the learned counsel was confronted with the situation that the impugned order was passed in compliance with the judgment of the Hon'ble Peshawar High Court decided on 26.06.2014 and appeal/CP decided by the august Supreme Court of Pakistan by way of judgment dated 24.02.2016, therefore, the desired relief if granted by the Tribunal would be either a matter directly concerning the terms of the above referred two judgments of the august Hon'ble Peshawar High Court and august Supreme Court of Pakistan or that would, at least, not coming under the ambit of jurisdiction of this Tribunal to which learned counsel for the appellant and learned Additional AG for respondents were unanimous to agree that as review petitions against the judgment of the august Supreme Court of Pakistan dated 24.02.2016, were still pending before the august Supreme Court of Pakistan and any judgment of this Tribunal in respect of the impugned order may not be in conflict with the same. Therefore, it would be appropriate that this appeal be adjourned sine-die, leaving the parties at liberty to get it restored and decided after decision of the review petitions by the august Supreme Court of Pakistan. Order accordingly. Parties or any of them may get the appeal restored and decided either in accordance with terms of the judgment in review petitions or merits, as the case may be. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of October, 2022.*

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

05.09.2022 Clerk of learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of lawyers. Adjourned. To come up for arguments on 03.10.2022 before the D.B at Camp Court Swat.

(Mian Muhammad)
Member (Executive)
Camp Court Swat

(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat

03.10.2022 Appellant in person present. Mr. Muhammad Jan, District Attorney for the respondents present.

In view of order dated 03.10.2022 recorded in service Appeal No. 705/2017, the appeal in hand may be placed before the worthy Chairman Khyber Pakhtunkhwa Service Tribunal for further appropriate order. The appellant as well as his counsel shall appear before the worthy Chairman Khyber Pakhtunkhwa Service Tribunal Peshawar on 04.10.2022 at 10:00 A.M at Principal Seat Peshawar.

(Rozina Rehman)
Member (Judicial)
Camp Court Swat

(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat

09.06.2022 Clerk of learned counsel for the appellant present. Mr. Kabirullah Khattak, learned Additional Advocate General for the respondents present.

Counsel are on strike. Adjourned. To come up for arguments on 06.07.2022 before D.B at camp court Swat.

(Mian Muhammad)
Member (E)
Camp Court Swat

(Kalim Arshad Khan)
Chairman
Camp Court Swat

06.07.2022 Appellant present through counsel.

Noor Zaman Khattak, learned District Attorney alongwith Fazal Ghaffar SC for respondents present.

File to come up alongwith connected Service Appeal No.705/2017 titled "Khalil Ullah Vs. Government of Khyber Pakhtunkhwa" on 05.09.2022 before D.B at Camp Court, Swat.

(Fareeha Paul)
Member (E)
Camp Court, Swat

(Rozina Rehman)
Member (J)
Camp Court, Swat

07.03.2022 Due to retirement of the Hon'ble Chairman, the case is adjourned to 09.05.2022 for the same as before.

Reader

09.05.2022 Due to non-availability of the Bench, the case is adjourned to 11.05.2022 for the same as before.

Reader

11.05.2022 Counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 09.06.2022 before D.B at camp court Swat.

(Mian Muhammad)
Member(E)

(Salah Ud Din)
Member(J)
Camp Court Swat

06/04/2021 Due to COVID-19, the case is adjourned to 08/06/2021 for the same.

READER

08.10.2021 Appellant present through counsel.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General alongwith Ahmad Yar Assistant Director (Litigation) for respondents present.

File to come up alongwith connected Service Appeal No.705/2017 on 09.12.2021 before D.B at Camp Court, Swat.

(Atiq ur Rehman Wazir)
Member(E)
Camp Court, Swat

(Rozina Rehman)
Member(J)
Camp Court, Swat

09.12.2021 Counsel for appellant present.

Muhammad Rasheed learned Deputy District Attorney for respondents present.

File to come up alongwith connected Service Appeal No.705/2018, on 07.03.2022 before D.B at Camp Court, Swat.

(Atiq ur Rehman Wazir)
Member (E)
Camp Court, Swat.

(Rozina Rehman)
Member (J)
Camp Court, Swat

02.02.2021 Appellant present through counsel.

Muhammad Raiz Khan Paindakheil learned Assistant Advocate General for respondents present.

Former made a request for adjournment; granted. To come up for arguments on 06.04.2021 before D.B at Camp Court, Swat. Respondents be put on notice for the date fixed.

(Mian Muhammad)
Member (E)
Camp Court, Swat

(Rozina Rehman)
Member (J)
Camp Court, Swat

07.07.2020 Bench is incomplete. Therefore, the case is adjourned. To come up for the same on 08.09.2020, at camp court Swat.

Reader

08.09.2020 Junior counsel present on behalf of appellant.

Mr. Muhammad Jan learned Deputy District Attorney alongiwth Mr. Ahmed Yar Assistant Director for the respondents present.

Former requests for adjournment as senior counsel is busy before Darul-Qaza; adjourned. To come up for arguments on 07.12.2020 before D.B at Camp Court, Swat.

(Attiq-ur-Rehman)
Member
Camp Court, Swat

(Rozina Rehman)
Member
Camp Court, Swat

8/12/20 Due to COVID-19 case is adjourned to 02-02-2021

Reader

03.03.2020 Khalilullah appellant in connected service appeal present. Mr. Usman Ghani learned District Attorney for the respondents present. Appellant requested for adjournment on the ground that learned counsel is not available today. Adjourn. To come up for arguments on 04.05.2020 before D.B. at Camp Court Swat.

Member

Member
Camp Court Swat

Due to coronavirus tour to camp court swat has been cancelled. To come up for the same on 02/06/2020

Reader.

02.06.2020 Due to Covid-19, the case is adjourned. To come up for the same on 07.07.2020, at camp court Swat.

Reader

04.12.2019 Clerk to counsel for the appellant present. Mr. M. Riaz Khan, Paindakhel, Assistant Advocate General alongwith Mr. Fazal Ghaffar, Senior Clerk for respondents present. Clerk to counsel for the appellant seeks adjournment due to strike of District Bar Association, Malakand Division. Adjourned. To come up for arguments on 06.01.2020 before D.B at camp court Swat.

Member

Member
Camp Court Swat

06.01.2020 Appellant in person and Mr. Usman Ghani, District Attorney present. Appellant submitted application for adjournment on the ground that his counsel has gone to principal seat Peshawar High Court, Peshawar and cannot attend the Tribunal today. Application is placed on record. Case to come up for arguments on 03.02.2020 before D.B at Camp Court Swat.

(Hussain Shah)
Member
Camp Court Swat

(M. Amin Khan Kundi)
Member
Camp Court Swat

3.02.2020 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for the appellant requested for adjournment. Adjourn. To come up for arguments on 03.03.2020 before D.B at Camp Court, Swat.

Member

Member
Camp Court, Swat.

02.09.2019 Counsel for the appellant present. Mian Amir Qadir, DDA for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 08.10.2019 on before D.B at camp court Swat.

Member

Member
Camp Court Swat

08.10.2019 Appellant in person and Mian Amir Qadir, Deputy District Attorney for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned to 06.11.2019 for arguments before D.B at Camp Court Swat.

(Hussain Shah)
Member
Camp Court Swat

(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

06.11.2019 Appellant in person and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Appellant submitted application for adjournment on the ground that his counsel has gone to Hon'ble Peshawar High Court, Peshawar and cannot attend the Tribunal today. Application is placed in connected Service Appeal No. 709/2017. Adjourned to 04.12.2019 for arguments before D.B at Camp Court Swat.

(Hussain Shah)
Member
Camp Court Swat

(M. Amin Khan Kundi)
Member
Camp Court Swat

02.07.2019 Clerk to counsel for the appellant present. Mian Amir Qadir, DDA for respondents present. Arguments could not be heard due to general strike of the Bar. Adjourn. Case to come up for arguments on 02.09.2019 before D.B at camp court Swat.

Member

Member
Camp Court Swat

07.02.2019 Learned counsel for the appellant and Mian Amir Qadar learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 07.03.2019 before D.B at Camp Court Swat.

Member Member
Camp Court Swat.

07.03.2019 Clerk to counsel for the appellant and Mian Amir Qadir, District Attorney for the respondents present.

In view of order dated 02.10.2018 instant appeal is adjourned to 07.05.2019 before the D.B at camp court Swat, in order to avail the outcome of appeals involving similar question and pending for hearing at Principal Seat.

Chairman
Member Camp Court, Swat

07.05.2019 Learned counsel for the appellant and Mr. Mian Amir Qadir learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 02.07.2019 before D.B at Camp Court, Swat.

Member Member
Camp Court, Swat.

07.08.2018 Clerk to counsel for the appellant present. Due to summer vacation the case is adjourned to 02.10.2018 for the same at camp court Swat.

Reader

02.10.2018 Counsel for the appellant Mr. Shamsul Hadi, Advocate present. Mr, Usman Ghani District Attorney for the respondents present.

Learned counsel for the appellant made a request for adjournment and brought to the notice of this Tribunal as well that similar appeals in large are fixed before the D.B at Principal Seat at Peshawar and so this appeal and other connected appeals involving similar question be fixed after the decision of those appeals at principal seat. Request is genuine, hence allowed. Office is directed to club all the similar appeals and be fixed after the decision of connected appeals at principal seat. Case to come up for arguments on 05.12.2018 before the D.B at camp court, Swat.

Member

Chairman
Camp Court Swat

05.12.2018 Appellant absent. Mr. Usman Ghani learned District Attorney present. Case called but none appeared on behalf of appellant. Adjourn. To come up for arguments on 07.02.2019 before D.B at Camp Court Swat.

Member

Member
Camp Court, Swat

03.04.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Israr, Tehsil Population Welfare Officer for the respondents present. Written reply by respondents No. 1, 3 & 4 submitted. Learned District Attorney relies on the written reply submitted by respondents No. 1, 3 & 4 on behalf of respondent No. 2. To come up for rejoinder, if any, and arguments on 05.06.2018 before D.B at camp court, Swat.

Chairman
Camp court, Swat

05.06.2018

Mr. Imdadullah, advocate put attendance on behalf of Mr. Shamsul Hadi advocate, learned counsel for the appellant. Mr. Usman Ghani, District Attorney for respondents present.

To come up for further proceedings/arguments alongwith connected appeal No. 709/2017 on 07.08.2018 before D.B at camp court, Swat.

Member

Chairman
Camp Court, Swat

07.08.2018

Clerk to counsel for the appellant present. Due to summer vacation the case is adjourned to 02.10.2018 for the same at camp court Swat.

Reader

05.12.2017 Counsel for the appellant and Addl. AG for the respondents present. Learned AAG seeks adjournment. To come up for written reply/comments on 03.01.2018 before S.B at camp court, Swat.

Chairman
Camp court, Swat

03.01.2018 Learned counsel for the appellant present. Mr. Kabir Ullah Khattak, Learned Additional AG for the respondents present and seeks adjournment for filing written reply/comments. Adjourned. To come up for written reply/comments on 31.01.2018 before S.B at Camp Court, Swat.

CHAIRMAN
Camp Court, Swat

31.01.2018 Clerk of the counsel for appellant present and Addl: AG for respondents present. Written reply not submitted. Learned Addl: AG requested for further time adjournment. Adjourned. Last opportunity is granted. To come up for written reply/comments on 07.03.2018 before S.B at Camp Court Swat.

Chairman
Camp Court, Swat

07.03.2018 Clerk to counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for further adjournment. Another last opportunity granted. Adjourned. To come up for written reply on 03.04.2018 before the S.B at camp court, Swat.

Chairman
Camp court, Swat

6/10.2017

Counsel for the appellant present and preliminary arguments heard. The learned counsel for the appellant argued that the appellant being project employee was regularized and reinstated vide order dated 05.10.2016. That in the said order there is no mention of seniority and back benefits. Aggrieved from omission of this portion in the order, the appellant filed departmental appeal on 20.02.2017, which was not responded to and hence the present appeal on 09.06.2017.

Appellant Deposited Security & Process Fee

The learned counsel for the appellant further argued that since the matter involved seniority and financial benefits, no limitation shall run in the present appeal

The points raised need consideration. The appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents. To come up for written reply/comments on 05.12.2017 before S.B at camp court, Swat.

Chairman
Camp Court, Swat.

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 708/2017

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge
1	2	3
1	06/07/2017	The appeal of Mr. Hussain Khan resubmitted today by Mr. Shamsul Hadi Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR 6/7/17
2-	11-07-2017	This case is entrusted to Touring S. Bench at swat for preliminary hearing to be put up there on 07-09-2017 CHAIRMAN
07.09.2017		Appellant in person present and seeks adjournment due to general strike of the Bar. Adjourned. To come up for preliminary hearing on 06.10.2017 before S.B at camp court, Swat. Member Camp court, Swat.

The appeal of Mr. Hussain Khan Chowkidar Population Welfare Department Dir Lower received today on 09.06.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Annexures of the appeal may be attested.
2- One copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1502 /S.T,

Dt. 12/6/2017

REGISTRAR 12/6/17
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Shamsul Hadi Adv. Swat.

Resubmitted

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 708 /2017.

Hussain Khan.....Appellant

V E R S U S

Director General Population Welfare,
Khyber Pakhtunkhwa, Peshawar and others....Respondents

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2.	Addresses of the Parties		6
3.	Copies of W.P No.1730/2014, judgment dated:26.06.2014 and office termination order dated:13.06.2014	A	7-17
4.	Copy of Judgment dated:24.02.2016.	B	18-45
5.	Copy of impugned office order dated:05.10.2016.	C	46
6.	Copy of Departmental Appeal	D	47-48
7.	Wakalat Nama		49

Appellant

Through

Shams ul Hadi
Advocate, Peshawar.
Office: H/ No.6 Near Al-Falah Mosque, Hayat Abad Mingora
Cell No. 0347-4773440.

Dated: 30/05/2017.

BEFORE THE KHYBER PAKHTOON KHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 708 /2017.

Hussain Khan (Chowkedar)
Presently Posted at Population Welfare Department
Tamergara Dir Lower..... .....Appellant

V E R S U S

1. Director General Population Welfare, Khyber Pakhtunkhwa, Peshawar.
2. Govt of Khyber Pakhtunkhwa through Chief Secretary at Peshawar.
3. Secretary to Govt of Khyber Pakhtunkhwa, Population Welfare Department , Peshawar.
4. District Population Welfare Officer Dir Lower.....Respondents

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APPEAL UNDER SECTION 4 OF KHYBER PUKHTUNKHWA SERVICES TRIBUNAL ACT 1974. AGAINST THE IMPUGNED OFFICE ORDERS DATED:05.10.2016 THROUGH WHICH THE APPELLANT ALONG WITH OTHERS WERE RE-INSTATED BUT SERVICE BACK BENEFITS AND SENIORITY WERE NOT EXTENTED THROUGH IMPUGNED ORDER.

PRAYER IN APPEAL:

On acceptance of this appeal, impugned re-instatement/regularization Order dated:05.10.2016 may kindly be declare illegal and against the relevant rules and judgments passed in the instant matter by superior courts to the extent of non-extending service back benefits and seniority and further the respondents be directed to extend service back benefits and seniority to appellant from the date of initial appointment or from the date regularization.

Respectfully Sheweth:

1. That initially in the year 2012, consequent upon recommendations of Departmental selection committee, the appellant was appointed on the subject post in the project namely "Provision of Population Welfare Programme" on contract basis.

2. That latter on, the appellant along with others approached Peshawar High Court through Writ Petition No.1730/2014 for regularization of their services and as such the same was allowed vide judgment dated:26.06.2014 by regularizing the services of the appellant and others, with all back benefits and seniority. But during pendency of the writ petition, services of the appellant was terminated from 30.06.2014 vide office order dated:13.06.2014 (Copies of W.P No.1730/2014, judgment dated:26.06.2014 and office termination order dated:13.06.2014 are annexure-A)

3. That against the judgment of High court, the respondent filed Civil Petition No.496-P/2014 before the apex supreme court and as such vide judgment dated:24.02.2016 the same was dismissed and as such the judgment of High court in favour of appellant got finality.(Copy of Judgment dated:24.02.2016 are annexure-B)

4. That thereafter, the appellant along with others were re-instated in his services after a long struggle, but again the respondents due to nourishing grudges with appellant and others, has not implemented the judgments of superior courts in letter in spirit and as such rather to regularize the services of the appellant and others from their initial appointment, with ill intention they were just re-instated "with immediate effect" vide impugned office order dated:05.10.2016 and as such back benefits and seniority was not extended to the appellant.(Copy of impugned office order dated:05.10.2016 are annexure-C)

5. That against non-extending of back benefits and seniority of service, the appellant time and again approached the respondents through departmental appeal but the same was not decided within statutory period.(Copy of departmental appeal is annexure-D)

That being aggrieved from the impugned order, the appellant approached this Hon'ble Tribunal on the following grounds amongst other inter alia:

GROUNDS:

A. That the impugned order dated:05.10.2016 is against the law and judgments of superior courts, passed in the instant matter hence untenable being unjust and unfair.

B. That according to the judgments of superior courts passed in earlier round of litigation in the instant matter, the appellant is entitle for the back benefits and seniority from the date of initial appointment or from the date of regularization of service i-e 26.06.2014 when the august High court regularized the services of the appellant and others.

C. That according to relevant laws and judgments of superior courts now it is a vested right of the appellant and he is fully entitle for the service back benefits and seniority.

D. That any other ground may be adduced during the course of argument, with the kind permission of this Hon'ble Court.

It is, therefore, most humbly prayed, On acceptance of this appeal, impugned re-instatement/regularization Order dated:05.10.2016 may kindly be declare illegal and against the relevant rules and judgments passed in the instant matter by superior courts to the extent of non-extending service back benefits and seniority and further the respondents be directed to extend service back benefits and seniority to appellant from the date of initial appointment or from the date regularization.

Appellant

Hussain Khan

Through

Shams ul Hadi
Advocate, Peshawar.

Dated: 30/05/2017

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2017.

Hussain Khan.....Appellant

V E R S U S

Director General Population Welfare,
Khyber Pakhtunkhwa, Peshawar and others....Respondents

AFFIDAVIT

I, **Shams ul Hadi**, Advocate, Peshawar do hereby as per information convoyed to me by my client solemnly affirm and declare that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

A D V O C A T E

KHALID MAHMOOD ADVOCATE AT NOTARY PUBLIC PESHAWAR HIGH COURT

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2017.

Hussain Khan.....Appellant

V E R S U S

Director General Population Welfare,
Khyber Pakhtunkhwa, Peshawar and others....Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Hussain Khan (Chowkedar)
Presently Posted at Population Welfare Department
Tamergara Dir Lower

RESPONDENTS:

1. Director General Population Welfare, Khyber Pakhtunkhwa, Peshawar.
2. Govt of Khyber Pakhtunkhwa through Chief Secretary at Peshawar.
3. Secretary to Govt of Khyber Pakhtunkhwa, Population Welfare Department Peshawar.
4. District Population Welfare Officer, Dir Lower.

Appellant

Through

Shams ul Hadi

Dated: 30/05/2017

Advocate, Peshawar.

(6-A)

IN THE PESHAWAR HIGH COURT PESHAWAR

W. P No. 1730-P /2014

1. Muhammad Nadeem Jan s/o Ayub Khan FWA Male District Peshawar.
2. Muhammad Imran s/o Aftab Ahmad FWA Male District Peshawar.
3. Jehanzaib s/o Taj Akbar FWA Male District Peshawar.
4. Sajida Parveen d/o Bad Shah Khan FWW Female District Peshawar.
5. Abida Bibi D/O Hanif Shah FWW Female District Peshawar.
6. Bibi Amina d/o Fazali Ghani FWW female District Peshawar.
7. Tasawar Iqbal d/o Iqbal Khan FWA Female District Peshawar.
8. Zeba Gul w/o Karim Jan FAW Female District Peshawar.
9. Neelofar Munif.w/o Inamullah FAW Female District Peshawar.
10. Muhammad Riaz s/o Taj Muhammad Chowkidar District Peshawar.
11. Ibrahim Khalil s/o Ghulam Sarwar Chowkidar District Peshawar.
12. Miss Qaseeda Bibi w/o Nadir Muhammad FWA Female District Peshawar.
13. Miss Naila Usman D/O Syed Usman Shah FWW District Peshawar.
14. Miss Tania W/O Wajid Ali Helper District Peshawar.
15. Mr. Sajid Nawab S/O Nawab Khan Chowkidar District Peshawar.
16. Shah Khalik s/o Zahir Shah Chowkidar Disrict Peshawar.
17. Muhammad Naveed s/o Abdul Majid Chowkidar District Peshawar.
18. Muhammad Ikram s/o Muhammad Sadeeq Chowkidar District Peshawar.
19. Tariq Rahim s/o Gul Rehman FWA male District Peshawar.
20. Noor Elahi s/o Waris Khan FWA Male District Peshawar.
21. Muhammad Naeem s/o Fazal Karim FWA Male District Peshawar.
22. Miss Sarwat Jehan d/o Durrani Shah FWA Female District Peshawar.
23. Inam Ullah s/o Usman Shah Family Welfare Assistant Male District Nowshehra.
24. Mr. Khalid Khan s/o Fazli Subhan Family Welfare Assistant Male District Nowshehra.
25. Mr. Muhammad Zakria s/o Ashrafuddin Family Welfare Assistant Male District Nowshehra.
26. Mr. Kashif S/O Safdar Khan Chowkidar District Nowshehra.
27. Mr. Shahid Ali s/o Safdar Khan Chowkidar District Nowshehra.
28. Mr. Ghulam Haider s/o Snobar Khan Chowkidar District Nowshehra.
29. Mr. Somia Ishfaq Hussain D/O Ishfaq hussain FWW Female District Nowshehra.
30. Mrs. Gul Mina Talib D/O Talab Ali FWA Female District Nowshehra.

2907/14

FILED TODAY
Deputy Registrar
31 MAY 2014

(6-B)

31.Mrs. Farah Saddique D/O Ghulam Saddique FWA Female District Nowshehra.
32.Mrs. Salma D/O Muhammad Yasir Aya/Helper District Nowshehra.
33.Mrs. Shahbasa W/O Nazar Shah Aya/Helper District Nowshehra.
34.Mrs. Mehrunissa D/O Mohabat Shah Aya/Helper District Nowshehra.
35.Mr. Attaullah s/o Yousaf Khan FWA Male District Nowshehra.
36.Shahida bibi D/O Kalu Shahzad Nouman FWW Female District Mansehra.
37.Khalida Bibi D/O Syed Dilawar Shah FWW Female District Mansehra.
38.Faizan Ahmad s/o Muhammad Haqdad FWA Male District Mansehra.
39.Syed Shahid Ali Shah s/o Abdul Haleem Shah FWA male District Mansehra.
40.Alam Zaib s/o Aurangzeb FWA Male District Mansehra.
41.Mehnaz Bibi d/o Muhammad Yousaf FWA Female District Mansehra.
42.Imran Khan s/o Muhabbat Khan Chowkidar District Mansehra.
43.Salma Naz d/o Waqar Ahmad Helper District Mansehra.
44.Riffat Shaheen d/o Ghulam Sarwar Helper District Mansehra.
45.Sumaira Yousaf d/o Muhammad Yousaf Helper District Mansehra.
46.Mr. Ziaullah s/o Fazli Mula FWA Male District Charsadda.
47.Mr. Bilal Mahmood s/o Said Mahmood FWA Male District Charsadda.
48.Mr. Mehdi Khan s/o Qurban Ali FWA Male District Charsadda.
49.Mr. Tasbeeh Ullah s/o Inayat Ullah FWA Male District Charsadda.
50.Walayat Muhammad s/o Ihsanullah FWA Male District Charsadda.
51.Mr. Jan Nisar s/o Jehangir Bacha Chowkidar District Charsadda.
52.AFtab Ahmad s/o Banghistan Khan Chowkidar District Charsadda.
53.Izaz Ali s/o Fahad Ali Chowkidar District Charsadda.
54.Mrs. Shazia Begum W/O Shah Afzal FWW Female District Charsadda.
55.Mrs. Bus Naz D/O Fazal Muhammad FWW Female District Charsadda.
56.Mrs. Rainaz D/O Muhammad Khan FWW Female District Charsadda.
57.Mrs. Wakeela Aziz d/o Aziz Khan FWW Female District Charsadda.
58.Mrs. Sobia Nayab Durrani w/o M. Asad FWA Female District Charsadda.
59.Mrs. Hina Gul d/o Latifur Rehman fAW Female District Charsadda.
60.Mrs. Ramim Zakir d/o Zakirullah FAW Female District Charsadda.
61.Mrs. Seema andaleeb d/o shahi Khan FAW Female District Charsadda.
62.Mrs. Fouzia Begum w/o Tahir Jan Aya/Helper District Charsadda.
63.Mrs.Naheed Akhtar d/o Bakht Rawan Aya/Helper District Charsadda.

FILED TODAY
Deputy Registrar
31 MAY 2014

(6-2)

64.Mrs. Sahida d/o S.Mahmood Jan Aya/Helper District Charsadda.
65.Mrs. Sumira D/O Zakirullah Aya/Helper District Charsadda.
66.Mrs. Aalia Nasir w/o Nasir Khan FAW Female District Charsadda.
67.Mr. Saweed Khan s/o Namar Khan Chowkidar District Charsadda.
68.Mr. Zeenat ul Islam s/o Shams Ur Rehman FWA Male District Dir Lower.
69.Khalil Ullah s/o Fateh ul Mulk FWA Male District Dir Lower.
70.Fawad Khan s/o Muzamil Khan FWA District Dir Lower.
71.Gul wali s/o Gul Karim Chokidar District Dir Lower.
72.Ajmal Khan s/o Sharafat Khan Chowkidar District Dir Lower.
73.Hussain Khan s/o Sultanat Khan Chowkidar District Dir Lower.
74.Shamim Ara W/O Abdul Hanan Helper District Dir Lower.
75.M. Shahriyar s/o Sultani Rome FWA Male District Malakand Batkhela.
76.Mr. Shahriyar s/o Amir Khan FWA Male District Malakand Batkhela.
77.Miss Sarwat Begum d/o Mutabar Khan FWA Female District Malakand Batkhela.
78.Mr. Shamshir Ali Khan s/o Shahadat Khan Chowkidar District Malakand Batkhela.
79.Mr. Maazullah s/o Salam Ullah Chowkidar District Malakand Batkhela.
80.Nazia Khan W/O Yousaf Khan Aya/Helper District Malakand Batkhela.
81.Tabassum Bibi d/o Amir Badshah FWW Female District Malakand Batkhela.
82.Miss Uzma Begum s/o Dost Muhammad FWA Female District Malakand Batkhela.
83.Bushra Gul d/o Zahir Ali FWW female District Mardan.
84.Saira Shah d/o Qaibat Shah FWW Female District Mardan.
85.Asma Mir D/O Amir Shah FWW Female District Mardan.
86.Naeem ur Rehman s/o Mohib ur Rehman FWA Male District Mardan.
87.Muhamamd Aslam s/o Faqir Muhammad FWA Male District Mardan.
88.Syed Junaid Shah s/o Syed Anwar Shah FWA Male District Mardan.
89.Muhammad Rashid s/o Muhammad Darwaish FWA Male District Mardan.
90.Farhad Khan s/o Zahidullah FWAMale District Mardan.
91.Ibrar Uddin s/o Shah Jehan FWA Male District Mardan.
92.Qasim Ali s/o Khan Bahadur FWA Male District Mardan.
93.Sharafat d/o Musa Khan FWA Female District Mardan.
94.Samina Aslam d/o Muhammad Aslam FWA Female District Mardan.
95.Riffat Jehangir w/o Jehangir FWA Female District Mardan.
96.Noor Begum d/o Sher Bahadur Khan fWA Female District Mardan.
97.Samina Jalil d/o Abdul Jalil FWA Female District Mardan.
98.Roveeda Begum d/o Payo Khan FWA Female District Mardan.
99.Nasra Bibi d/o Muzamil Khan FWA Female District Mardan.

(6-D)

100. Musarrat w/o Taj Wali FWA Female District Mardan.
101. Imtiaz Ali s/o Akhtar Gul Chowkidar District Mardan.
102. Khairul Abrar s/o Abdul Jamil Chowkidar District Mardan.
103. Arshid Ali s/o Khwaja Muhammad Chowkidar District Mardan.
104. Yousaf Khan s/o Sabzali Khan Chowkidar District Mardan.
105. Muhammad Naeem s/o Sayal Mir Chowkidar District Mardan.
106. Zia Muhammad s/o Salih Muhammad Chowkidar District Mardan.
107. Amreen Bibi d/o Misal Khan Aya/Dai District Mardan.
108. Gulshan Zari w/o Waris Khan Aya/Dai District Mardan.
109. Nageen Begum w/o Ismail Aya/Dai District Mardan.
110. Safia Naz w/o Sher Ali Khan Aya/Dai District Mardan.
111. Bastia Begum d/o Anwar Khan Aya/Dai District Mardan.
112. Reshma d/o Bad Shah Khan Aya/Dai District Mardan.
113. Tahira Naz d/o Muhammad Tariq FWW Female District Mardan.
114. Khalida Anjum W/O Sher Azam Khan FWW female District Swabi.
115. Imran Khan s/o Amir Sultan FWA Male District Swabi.
116. Azad Zaman s/o Farukh Siyar FWA Male District Swabi.
117. Faiza Bano D/O Abdul Sattar Khan FWW Female District Swabi.
118. Radia Kausar D/O Razaullah FWA Female District Swabi.
119. Irfan Ali s/o Muhammad Yousaf Chowkidar District Swabi.
120. Muhammad Khalid s/o Noor Wahab Chowkidar District Swabi.
121. Rafaqat Anjum D/O Qiabat Shah FWW Female District Swabi.
122. Hina D/O Taj Bahadar Aya District Swabi.
123. Parveen D/o Shafi ur Rehman Aya District Swabi.
124. Anjum D/O Sher Muhammad FWA Female District Swabi.
125. Tariq Muhammad s/o Nisar Muhammad FWA Male District Swabi.
126. Taimur Khan s/o Mamoor Khan Chowkidar District Swabi.
127. Ibne Amin s/o Gohar Rehman FWA male District Swabi.
128. Manhar w/o Farid Khan Aya District Swabi.
129. Faiza Nargas D/O Mukhtiar Khan FWA Female District Swabi.
130. Arifa Samreen D/O Riaz Ahmad FWA Female District Swabi.
131. Miss Saeeda Begum D/O Abdullah Khan FWW Female District D.I Khan.
132. Tahira Bibi D/O Allah Baksh FWW Female District D.I Khan.
133. Miss Kashmala Anam d/o Abdul Ghaffar Khan FWW Female District D.I Khan.
134. Miss Sidra Benazir d/o Najeeb ullah FWW Female District D.I Khan.

(6-E)

135. Malik Muhammad Suleman s/o Ghulam Fareed FWA male District D.I Khan.
136. Jamal Uddin s/o Ghazi Khan FWA Male District D.I Khan.
137. Bilquis Begum d/o Muhammad Ashiq Helper District D.I Khan.
138. Muhmmad Anser s/o Muhammad Akram Chowkidar District D.I Khan.
139. Nazakat Ali s/o Allah Ditta Chowkidar District D.I Khan.
140. Zubida Bibi d/o Bilal Helper District D.I Khan.
141. Kaniz Bibi d/o Ghulam Raza Helper District D.I Khan.
142. Abdul Hameed s/o Ghulam Siddique Chowkidar District D.I Khan.
143. Bushra Andaleeb d/o Mushtaq Ahmad FWA Female District D.I Khan.
144. Robina Naz d/o Muhammad Ramzan FWA Female District D.I Khan.
145. Sajida Masroor s/o Muhammad Yaseen FWW District Tank.

(Petitioners)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa Population Welfare Department, Khyber Pakhtunkhwa House No. 125/111, Street NO. 7 Defence Officer's Colony, Khyber Road Peshawar.
3. Director General Population Welfare Department Khyber Pakhtunkhwa F.C Plaza, Sunehri Masjid Road Peshawar.
4. District Population Welfare Officer House NO. 4501, Street No. 3 Sikandar Town Peshawar.
5. District Population Welfare Officer District Charsadda Islamabad NO.2 Near P.T.C.L Office Nowshera Road Charsadda.
6. District Population Welfare Officer Nowshera.
7. District Population Welfare Officer Mardan.
8. District Population Welfare Officer Swabi.
9. District Population Welfare Officer Malakand Batkhela.
10. District Population Welfare Officer Mansehra.
11. District Population Welfare Officer Dir lower.
12. District Population Welfare Officer D.I Khan.
13. District Population Welfare Officer Tank.

(Respondents)

(6-F)

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

Prayer in Writ Petition:

On acceptance of this Writ Petition an appropriate Writ may please be issued declaring that Petitioners to have been validly appointed on the posts correctly mentioned against their names in the Scheme namely "Provision for Population Welfare Programme" they are working against the said posts with no complaint whatsoever, due to their hard work and efforts the scheme against which the petitioners was appointed has been brought on regular budget, the posts against which the petitioners are working have become regular/ permanent posts hence Petitioners are also entitled to be regularized in line with the regularization of other staff in similar projects, the reluctance on the part of the respondents in regularizing the service of the Petitioners and claiming to relieve them on the completion of the project i.e 30.6.2014 is malafide in law and fraud upon their legal rights, the Petitioners may please be declared as regular civil servant for all intent and purposes or any other remedy deemed proper may also be allowed.

Interim Relief

The Petitioners may please be allowed to continue on their posts which is being regularized and brought on regular budget and be paid their salaries after 30.6.2014 till the decision of writ petition.

FILED TODAY
Deputy Registrar
31 MAY 2014

Respectfully Submitted:

1. That provincial Govt Health department has approved a scheme namely Provision for Population Welfare Programme" for a period of 5 year 2010-2015, this integral scheme aims were:
   i. To strengthen the family through encouraging responsible parenthood, promoting practice of reproductive health &

(7) Annex 'A'

Annex-I

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No. 1730 of 2014
With CM 559-P/14 and CM 660 and 661/14

JUDGMENT

Date of hearing 26/06/2014

Appellant Petitioners/Nadeem Iqbal etc by Mr. Idrees Anwar Advocate

Respondent Govt etc by Qazi Anis-ul-Haq Shah AAG.

****

NISAR HUSSAIN KHAN, J.- By way of instant writ petition, petitioners seek issuance of an appropriate writ for declaration to the effect that they have been validly appointed on the posts under the Scheme "Provision of Population Welfare Programme" which has been brought on regular budget and the posts on which the petitioners are working have become regular/permanent posts, hence petitioners are entitled to be regularized in line with the Regularization of other staff in similar projects and reluctance to this effect on the part of respondents in

ATTESTED
(Arif Ullah)
Advocate

regularization of the petitioners is illegal, malafide and fraud upon their legal rights and as a consequence petitioners be declared as regular civil servants for all intent and purposes.

2. Case of the petitioners is that the Provincial Government Health Department approved a scheme namely Provision for Population Welfare Programme for a period of five years from 2010 to 2015 for socio-economic well being of the downtrodden citizens and improving the basic health structure; that they have been performing their duties to the best of their ability with zeal and zest which made the project and scheme successful and result oriented which constrained the Government to convert it from ADP to current budget. Since whole scheme has been brought on the regular side, so the employees of the scheme were also to be absorbed. On the same analogy, some of the staff members have been regularized whereas the petitioners have been discriminated who are entitled to alike treatment.

3. Some of the applicants/interveners namely Ajmal and 76 others have filed C.M.No. 600-P/2014 and another alike C.M.No.605-P/2014 by Anwar Khan and 12 others have prayed for their impleadment in the writ petition with the contention that they are all serving in the same Scheme/Project namely Provision for Population Welfare Programme for the last five years . It is contended by the applicants that they have exactly the same case as averred in the main writ petition, so they be impleaded in the main writ petition as they seek same relief against same respondents. Learned AAG present in court was put on notice who has got no objection on acceptance of the applications and impleadment of the applicants/ interveners in the main petition and rightly so when all the applicants are the employees of the same Project and have got same grievance. Thus instead of forcing them to file separate petitions and ask for comments, it would be just and proper that their fate be decided once for all through the same writ petition as they stand on the same legal plane. As such both the Civil Misc. applications are allowed

and the applicants shall be treated as petitioners in the main petition who would be entitled to the same treatment.

4. Comments of respondents were called which were accordingly filed in which respondents have admitted that the Project has been converted into Regular/Current side of the budget for the year 2014-15 and all the posts have come under the ambit of Civil servants Act, 1973 and Appointment, Promotion and Transfer Rules, 1989. However, they contended that the posts will be advertised afresh under the procedure laid down for which the petitioners would be free to compete alongwith others. However, their age factor shall be considered under the relaxation of upper age limit rules.

5. We have heard learned counsel for the petitioners and the learned Additional Advocate General and have also gone through the record with their valuable assistance.

6. It is apparent from the record that the posts held by the petitioners were advertised in the Newspaper on the basis of which all the petitioners applied and they had undergone due process of test and interview and thereafter they were appointed on the respective posts of Family Welfare Assistant (male & female), Family Welfare Worker (F), Chowkidar/Watchman, Helper/Maid , upon recommendation of the Departmental Selection Committee, though on contract basis in the Project of Provision for Population Welfare Programme, on different dates i.e. 1.1.2012, 3.1.2012, 10.3.2012, 29.2.2012, 27.6.2012 , 3.3.2012 and 27.3.2012 etc. All the petitioners were recruited/appointed in a prescribed manner after due adherence to all the codal formalities and since their appointments, they have been performing their duties to the best of their ability and capability. There is no complaint against them of any slackness in performance of their duty. It was the consumption of their blood and sweat which made the project successful, that is why the Provincial Government converted it from Developmental to

non-developmental side and brought the scheme on the current budget.

7. We are mindful of the fact that their case does not come within the ambit of NWFP Employees (Regularization of Services) Act 2009, but at the same time we cannot lose sight of the fact that it were the devoted services of the petitioners which made the Government realize to convert the scheme on regular budget, so it would be highly unjustified that the seed sown and nourished by the petitioners is plucked by someone else when grown in full bloom. Particularly when it is manifest from record that pursuant to the conversion of other projects form developmental to non-development side, their employees were regularized. There are regularization orders of the employees of other alike ADP Schemes which were brought to the regular budget; few instances of which are: Welfare Home for Destitute Children District Charsadda, Welfare Home for Orphan Nowshera and Establishment of Mentally Retarded and Physically Handicapped Centre for Special Children Nowshera,

Industrial Training Centre Khaishgi Bala Nowshera, Dar ul Aman Mardan, Rehabilitation Centre for Drug Addicts Peshawar and Swat and Industrial Training Centre Dagai Qadeem District Nowshera. These were the projects brought to the Revenue side by converting from the ADP to current budget and their employees were regularized. While the petitioners are going to be treated with different yardstick which is height of discrimination. The employees of all the aforesaid projects were regularised, but petitioners are being asked to go through fresh process of test and interview after advertisement and compete with others and their age factor shall be considered in accordance with rules. The petitioners who have spent best blood of their life in the project shall be thrown out if do not qualify their criteria. We have noticed with pain and anguish that every now and then we are confronted with numerous such like cases in which projects are launched, youth searching for jobs are recruited and after few years they are kicked out and thrown astray. The courts also cannot help them, being contract employees of the project

& they are meted out the treatment of Master and Servant. Having been put in a situation of uncertainty, they more often than not, fall prey to the foul hands. The policy makers should keep all aspects of the society in mind.

8. Learned counsel for the petitioners produced a copy of order of this court passed in W.P.No.2131/2013 dated 30.1.2014 whereby project employee's petition was allowed subject to the final decision of the august Supreme Court in C.P.No.344-P/2012 and requested that this petition be given alike treatment. The learned AAG conceded to the proposition that let fate of the petitioners be decided by the august Supreme Court.

9. In view of the concurrence of the learned counsel for the petitioners and the learned Additional Advocate General and following the ratio of order passed in W.P. No. 2131/2013, dated 30.1.2014 titled Mst.Fozia Aziz Vs. Government of KPK, this writ petition is allowed in the terms that the petitioners shall remain on the posts

ATTESTED
Examiner
Peshawar

(15)

subject to the fate of CP No.344-P/2012 as identical proposition of facts and law is involved therein.

Announced on
26th June, 2014.

Sd/- Nisar Hussain Khan - J
Sd/- Asadullah Khan Chamkani J

3/7/14
12/07/14

PESHAWAR HIGH COURT

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Qanun-e-Shahadat Order 1984
12 JUL 2014

No. 51
Date of Presentation ... 01-7-2014
No of Pages ... 3 1/2
Copying ...
Urgent Fee ...
Total ... 62-00
Date of Completion ... 12/7/2014
Date of Delivery ... 12/7/2014
12/7/2014
Muhammad Ayaz

(16)

OFFICE OF THE
DISTRICT POPULATION WLEFARE OFFICER
DIR LOWER

F.No.2(2)/Admn:-2013-14 **Dated, Timergara the 13/06/2014**

To

Mr: Hussain Khan.
Mr. Khan Ullah
Family Welfare Assistant (Male),
District Dir Lower.

Subject:- **COMPLETION OF ADP PROJECT i.e. PROVISION FOR POPULATION WELFARE DEPARTMENT, KHYBER PAKHTUNKHWA.**

Memo:-

The subject project is going to be completed on 30/06/2014. Therefore, the enclosed office order No.4(35)/2013-14/Admn dated 13/06/2014 may be treated as fifteen days notice in advance for the termination of your services as on 30/06/204(A.N).

Distt: Population Welfare Officer
Dir Lower

Copy to:-

1. Accountant (Local) for necessary action.
2. P/F of the official concerned.

Distt: Population Welfare Officer
Dir Lower

(17)

Government of Khyber Pakhtunkhwa,
Directorate General Population Welfare
Post Box No. 235

PC Trust Building Sunehri Masjid Road, Peshawar Cantt: Ph: 091-9211536-38

Dated Peshawar the 13/6/2014.

OFFICE ORDER

F.No.4(25)/2013-14/Admn:- On completion of the ADP Project No. 903-821-790/110622 under the scheme provision of Population Welfare Programme Khyber Pakhtunkhwa. The services of the following ADP Project employees stands terminated w.e.f. 30.06.2014 as per detail below:-

S.No.	Name	Designation	District /Institution
1	Fouzia Anjum	FWW	Dir (Lower)
2	Saeeda Naz	FWW	Dir (Lower)
3	Mumlikat Bibi	FWW	Dir (Lower)
4	Nadia Bibi	FWW	Dir (Lower)
5	Farad khan	FWA (M)	Dir (Lower)
6	Khalil Ullah	FWA (M)	Dir (Lower)
7	Zesnatul Islam	FWA (M)	Dir (Lower)
8	Saeeda Begum	FWA (F)	Dir (Lower)
9	Sumir Karim	FWA (F)	Dir (Lower)
10	Fazilat	FWA (F)	Dir (Lower)
11	Yasmin	FWA (F)	Dir (Lower)
12	Shamim Ara	Aya / Helper	Dir (Lower)
13	Sabar Taj	Aya / Helper	Dir (Lower)
14	Nasreen Begum	Aya / Helper	Dir (Lower)
15	Gul Wali	Chowkidar	Dir (Lower)
16	Ajab Khan	Chowkidar	Dir (Lower)
17	Ajmal Khan	Chowkidar	Dir (Lower)
18	Hussain Khan	Chowkidar	Dir (Lower)

All pending liabilities of ADP Project employees must be cleared before 30.06.2014 positively under intimation to this office.

Sd/-
(Project Director)

Dated Peshawar the 13/6/2014.

F.No.4(25)/2013-14/Admn

Copy forwarded to the:-

1. Director Technical, PWD, Peshawar.
2. District Population Welfare Officer, Dir (Lower).
3. District Accounts Officer, Dir (Lower).
4. Chief Health P&D Department, Khyber Pakhtunkhwa.
5. PS to Advisor to Chief Minister for Population Welfare, Khyber Pakhtunkhwa.
6. PS to Secretary to Govt: of Khyber Pakhtunkhwa, Finance Department, Peshawar.
7. PS to Secretary to Govt: of Khyber Pakhtunkhwa, Population Welfare Department, Peshawar.
8. PS to Director General, PWD, Peshawar.
9. Officials concerned.
10. Master File.

Assistant Director (Admn)

(18) Annex "B"

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE IQBAL HAMEEDUR RAHMAN
MR. JUSTICE KHILJI ARIF HUSSAIN

CIVIL APPEAL NO.134-P OF 2013
(On appeal against the judgment dated 24-03-2011 passed by the Peshawar High Court, Peshawar, in Review Petition No.103/2009 in WP. No.59/2009)

Govt. of KPK thr. Secy. Agriculture and others Vs. Adnanullah

CIVIL APPEAL NO.135-P OF 2013
(On appeal against the judgment dated 22-09-2011 passed by the Peshawar High Court, Peshawar, in Writ Petition No.2170/2011)

Chief Secy. Govt. of KPK & others Vs. Amir Hussain and others

CIVIL APPEAL NO.136-P OF 2013
(On appeal against the judgment dated 07-03-2012 passed by the Peshawar High Court, Peshawar, in Writ Petition No.1897/2011)

Govt. of KPK and others Vs. Muhammad Younas and others

CIVIL APPEAL NO.137-P OF 2013
(On appeal against the judgment dated 13-03-2012 passed by the Peshawar High Court, Abbottabad Bench, in Writ Petition No.200-A/2012)

Govt. of KPK and others Vs. Attaullah Khan and others

CIVIL APPEAL NO.138-P OF 2013
(On appeal against the judgment dated 20-06-2012 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in W.P. No.189-M/2012)

Govt. of KPK thr. Secy. Agriculture Livestock Peshawar and others Vs. Muhammad Ayub Khan

CIVIL APPEAL NO.52-P OF 2015
(On appeal against the judgment dated 5-12-2012 passed by the Peshawar High Court, Peshawar in Writ Petition No.3087/2011)

Govt. of KPK thr. Chief Secretary and others Vs. Qalbe Abbas and another

CIVIL APPEAL NO.1-P/2013
(On appeal against the judgment dated 10-05-2012 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Writ Petition No.2474/2011)

District Officer Community Development Department (Social Welfare) and others Vs. Ghani Rehman and others

CIVIL APPEAL NO.133-P OF 2013
(On appeal against the judgment dated 17-05-2012 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, in Writ Petition No.2001/2009)

Govt. of KPK thr. Secretary Vs. Iftikhar Hussain and others

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

Livestock and others

CIVIL APPEAL NO.113-P OF 2013
(On appeal against the judgment dated 17-05-2012 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza) Swat, in Writ Petition No.2380/2009)

Govt. of KPK thr. Secretary I.T, Peshawar and others Vs. Muhammad Azhar and others

CIVIL APPEAL NO.231 OF 2015
(On appeal against the judgment dated 24-04-2014 passed by the Peshawar High Court, D.I.Khan Bench, in Writ Petition No.37-D/2013)

Govt. of KPK thr. Secy. Agriculture, Livestock, Peshawar and another Vs. Safdar Zaman and others

CIVIL APPEAL NO.232 OF 2015
(On appeal against the judgment dated 24-04-2014 passed by the Peshawar High Court, D.I.Khan Bench, in Writ Petition No.97-D/2013)

Govt. of KPK thr. Secy. Agriculture, Livestock, Peshawar and another Vs. Innayatullah and others

CIVIL PETITION NO.600-P OF 2013
(On appeal against the judgment dated 06-06-2012 passed by the Peshawar High Court, Peshawar, in Writ Petition No.1818/2011)

Govt. of KPK thr. Chief Secy. and others Vs. Noman Adil and others

CIVIL PETITION NO.496-P OF 2014
(On appeal against the judgment dated 26-06-2014 passed by the Peshawar High Court, Peshawar, in Writ Petition No.1730-P/2014)

Govt. of KPK thr. Chief Secretary Peshawar and others Vs. Muhammad Nadeem Jan and others

CIVIL PETITION NO.34-P OF 2015
(On appeal against the judgment dated 23-09-2014 passed by the Peshawar High Court, Peshawar, in Writ Petition No.141-P/2014)

Dean, Pakistan Institute of Community Ophthalmology (PICO), HMC and another Vs. Muhammad Imran and others

CIVIL PETITION NO.526-P OF 2013
(On appeal against the judgment dated 12.3.2013 passed by the Peshawar High Court Peshawar, in Writ Petition No.376-P/12)

Govt. of KPK through Chief Secretary Peshawar and others Vs. Mst. Safia

CIVIL PETITION NO.527-P OF 2013
(On appeal against the judgment dated 12.3.2013 passed by the Peshawar High Court Peshawar, in Writ Petition No.377-P/2012)

Govt. of KPK through Chief Secy. Peshawar and others Vs. Mst. Rehab Khattak

CIVIL PETITION NO.528-P OF 2013
(On appeal against the judgment dated 12-03-2013 passed by the Peshawar High Court Peshawar, in Writ Petition No.378-P/2012)

Govt. of KPK through Chief Secy. Peshawar and others Vs. Faisal Khan

CIVIL PETITION NO.28-P OF 2014
(On appeal against the judgment dated 19-09-2013 passed by the Peshawar

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

(20)

High Court, Mingora Bench (Dar-ul-Qaza) Swat, in Writ Petition No.4335-P/2010)

Govt. of KPK through Chief Secy. Peshawar and others Vs. Rahimullah and others

CIVIL PETITION NO.214-P OF 2014
(On appeal against the judgment dated 30-01-2014 passed by the Peshawar High Court Peshawar, in Writ Petition No.2131-P/2013)

Govt. of KPK through Chief Secy. Peshawar and others Vs. Mst. Fauzia Aziz

CIVIL PETITION NO.621-P OF 2015
(On appeal against the judgment dated 08-10-2015 passed by the Peshawar High Court, Abbottabad Bench, in Writ Petition No.55-A/2015)

Govt. of KPK through Chief Secy. Peshawar and others Vs. Mst. Malika Hijab Chishti

CIVIL PETITION NO.368-P OF 2014
(On appeal against the judgment dated 01-04-2014 passed by the Peshawar High Court Peshawar, in Writ Petition No.351-P/2013)

Govt. of KPK through Chief Secy. Peshawar and others Vs. Imtiaz Khan

CIVIL PETITION NO.369-P OF 2014
(On appeal against the judgment dated 01-04-2014 passed by the Peshawar High Court Peshawar, in Writ Petition No.352-P/2013)

Govt. of KPK through Chief Secy. Peshawar and others Vs. Waqar Ahmed

CIVIL PETITION NO.370-P OF 2014
(On appeal against the judgment dated 01-04-2014 passed by the Peshawar High Court Peshawar, in Writ Petition No.353-P/2013)

Govt. of KPK through Chief Secy. Peshawar and others Vs. Mst. Nafeesa Bibi

CIVIL PETITION NO.371-P OF 2014
(On appeal against the judgment dated 01-04-2014 passed by the Peshawar High Court Peshawar, in Writ Petition No.2454-P/2013)

Govt. of KPK through Chief Secy. Peshawar and others Vs. Mst. Naima

CIVIL PETITION NO.619-P OF 2014
(On appeal against the judgment dated 18-09-2014 passed by the Peshawar High Court Peshawar, in Writ Petition No.2428-P/2013)

Govt. of KPK through Chief Secy. Peshawar and others Vs. Muhammad Azam and others

CA.134-P/2013
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK
Syed Masood Shah, SO Litigation.
Hafiz Attaul Memeen, SO. Litigation (Fin)
Muhammad Khalid, AD (Litigation)
Abdul Hadi, SO (Litigation)

For the Respondent(s) : Mr. Imtiaz Ali, ASC

(Res. No.186, 188, 191) : Mr. Ghulam Nabi Khan, ASC

(CMA.496-P/13) : Mr. [illegible] ASC

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

(21)

CA.135-P/2013
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For the Respondent(s) : Hafiz S. A. Rehman, Sr. ASC
Mr. Imtiaz Ali, ASC

CA.136-P/2013
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For the Respondent(s) : Hafiz S. A. Rehman, Sr. ASC
Mr. Imtiaz Ali, ASC

CA.137-P/2013
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For Respondents (2 to 6) : Mr. Ijaz Anwar, ASC

CA.138-P/2013
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For the Respondent(s) : Not represented.

CA.52-P/2013
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For Respondent No.1 : In person (Absent)

For Respondent No.2 : Not represented.

CA.1-P/2013
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For Respondents (1-4, 7, 8, & 10-13) : Mr. Ghulam Nabi Khan, ASC
Mr. Khushdil Khan, ASC

CA.133-P/2013
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For Respondents (1-3, 5 & 7) : Mr. Ghulam Nabi Khan, ASC

For respondents (4,8,9 & 10) : Not represented.

CA.113-P/2013
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For the Respondent(s) : Ghulam Nabi Khan, ASC

CA.231-P/2015
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For Respondents (1-3) : Mr. Shoaib Shaheen, ASC

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CA.232-P/2015
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For Respondent No.1 : Mr. Shoaib Shaheen, ASC

CP.600-P/2014
For the Petitioner(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For the Respondent(s) : Mst. Sadia Rehim (in person)

CP.496-P/2014
For the Petitioner(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK
Noor Afzal, Director, Population Welfare Department.

For the Respondent(s) : Mr. Khushdil Khan, ASC

CP.34-P/2014
For the Petitioner(s) : Mr. Shakeel Ahmed, ASC

For the Respondent(s) : Syed Rifaqat Hussain Shah, AOR

CPs.526 to 528-P/2013
For the Petitioner(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For the Respondent(s) : Mr. Ijaz Anwar, ASC

CP.28-P/2014
For the Petitioner(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For the Respondent(s) : Mr. Ghulam Nabi Khan, ASC
Mr. Khushdil Khan, ASC

CPs.214-P/2014, 368-371-P/2014 and 619-P/2014 & 621-P/2015,
For the Petitioner(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For the Respondent(s) : Not represented.

Date of hearing : 24-02-2016

JUDGMENT

AMIR HANI MUSLIM, J.- Through this common judgment, we intend to decide the titled Appeals/Petitions, as common questions of law and facts are involved therein.

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CA.134-P/2013
On Farm Water Management Project, KPK.

2. On 27.10.2004, various posts in the "On Farm Water Management Project" were advertised. In response to the advertisement, the Respondent, Adnanullah, applied for the post of Accountant (BPS-11) for which he was selected and appointed for with effect from 31.12.2004. This appointment was initially for a period of one year and later was consistently extended from time to time on recommendation of the Petitioner. In the year 2006, a proposal was moved for creation of 302 regular vacancies to accommodate the contract employees working in different Projects. The Chief Minister KPK approved the proposal of 275 regular posts for this purpose with effect from 1.7.2007. During the interregnum, the Government of NWFP (now KPK) promulgated Amendment Act IX of 2009, thereby amending Section 19(2) of the NWFP Civil Servants Act, 1973 and NWFP Employees (Regularization of Services) Act, 2009. However, the newly created regular posts did not include the Respondent's post. Feeling aggrieved, he filed a Writ Petition which was allowed (on the conceding statement of Addl. Advocate General) with the direction that if the Respondent was eligible, his services should be regularized, subject to verification of his domicile. The Review Petition filed by the Govt. of KPK was dismissed being time barred. Thereafter, leave was granted in the Petition filed by the Government of KPK before this Court.

CA.No.135-P/2013 & Civil Petition No.600-P of 2013
On Farm Water Management Project, KPK

3. On 23.06.2004, the Secretary, Agriculture, got published an advertisement in the press, inviting Applications for filling up the posts of Water Management Officers (Engineering) and Water Management

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Officers (Agriculture) in BS-17, in the NWFP for the "On Farm Water Management Project" on contract basis. The Respondents applied for the said posts and in November, 2004 and February 2005 respectively, they were appointed for the aforementioned posts on contract basis, initially for a period of one year and later extendable to the remaining Project period, subject to their satisfactory performance and on the recommendations of the Departmental Promotion Committee after completion of requisite one month pre-service training. In the year 2006, a proposal for restructuring and establishment of Regular Offices for the "On Farm Water Management Department at District level was made. A summary was prepared for the Chief Minister, KPK, for creation of 302 regular vacancies with the recommendation that eligible temporary/contract employees working on different Projects may be accommodated against regular posts on the basis of their seniority. The Chief Minister approved the summary and accordingly, 275 regular posts were created in the "On Farm Water Management Department" at District level w.e.f 01.07.2007. During the interregnum, the Government of NWFP (now KPK) promulgated Amendment Act IX of 2009, thereby amending Section 19(2) of the NWFP Civil Servants Act, 1973 and NWFP Employees (Regularization of Services) Act, 2009. However, the services of the Respondents were not regularized. Feeling aggrieved, they filed Writ Petitions before the Peshawar High Court, praying that employees placed in similar posts had been granted relief, vide judgment dated 22.12.2008, therefore, they were also entitled to the same treatment. The Writ Petitions were disposed of, vide impugned orders dated 22.09.2011 and 06.06.2012, with the direction to consider the case of the Respondents in the light of the judgment dated

22.12.2008 and 03.12.2009. The Appellants filed Petition for leave to Appeal before this Court in which leave was granted; hence this Appeal and Petition.

C.A.No.136-P of 2013 to 138-P of 2013
On Farm Water Management Project, KPK

4. In the years 2004-2005, the Respondents were appointed on various posts on contract basis, for an initial period of one year and extendable for the remaining Project period subject to their satisfactory performance. In the year 2006, a proposal for restructuring and establishment of Regular Offices of "On Farm Water Management Department" was made at District level. A summary was prepared for the Chief Minister, KPK, for creation of 302 regular vacancies, recommending that eligible temporary/contract employees who, at that time, were working on different Projects may be accommodated against regular posts on the basis of seniority. The Chief Minister approved the proposed summary and accordingly 275 regular posts were created in the "On Farm Water Management Department" at District level w.e.f 01.07.2007. During the interregnum, the Government of NWFP (now KPK) promulgated Amendment Act IX of 2009, thereby amending Section 19(2) of the NWFP Civil Servants Act, 1973 and NWFP Employees (Regularization of Services) Act, 2009. However, the services of the Respondents were not regularized. Feeling aggrieved, they filed Writ Petitions before the Peshawar High Court, praying therein that employees placed in similar posts had been granted relief, vide judgment dated 22.12.2008, therefore, they were also entitled to the same treatment. The Writ Petitions were disposed of, vide impugned orders dated 07.03.2012, 13.03.2012 and

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20.06.2012, with the direction to consider the case of the Respondents in the light of the judgment dated 22.12.2008 and 03.12.2009. The Appellants filed Petition for leave to Appeal before this Court in which leave was granted; hence these Appeals.

Civil Petition No.619-P/2014
Establishment of Database Development Based on Electronic Tools (Project)

5. In the year 2010 and 2011, in pursuance of an advertisement, upon the recommendations of the Project Selection Committee, the Respondents were appointed as Data Base Developer, Web Designer and Naib Qasid, in the Project namely "Establishment of Data Base Development Based on Electronic Tools" including "MIS, Social Welfare and Women Development Department", on contract basis, initially for one year, which period was extended from time to time. However, the services of the Respondents were terminated, vide order dated 04.07.2013, irrespective of the fact that the Project life was extended and the posts were brought under the regular Provincial Budget. The Respondents impugned their termination order by filing Writ Petition No.2428 of 2013, before the Peshawar High Court, which was disposed of by the impugned judgment dated 18.09.2014, holding that the Respondents would be treated at par, if they were found similarly placed, as held in judgments dated 30.01.2014 and 01.04.2014 passed in Writ Petitions No.2131 of 2013 and 353-P of 2013. The Appellants challenged the judgment of the learned High Court before this Court by filing Petition for leave to Appeal.

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Civil Petitions No.368-P of 2014 to 371-P of 2014
Industrial Training Centre Garhi Shehsdad and Industrial Training Centre Garha Tajak, Peshawar

6. In the year 2008, upon the recommendations of the Departmental Selection Committee, after fulfilling all the codal formalities, the Respondents were appointed on contract basis on various posts in Industrial Training Centre Garhi Shehsdad and Industrial Training Centre Garha Tajak, Peshawar. Their period of contract was extended from time to time. On 04.09.2012, the Scheme in which the Respondents were working was brought under the regular Provincial Budget, but the services of the Respondents despite regularization of the Scheme were terminated vide order dated 19.06.2012. The Respondents filed Writ Petitions No.351-P, 352, 353 and 2454-P of 2013, against the order or termination and for regularization of their services on the ground that the posts against which they were appointed stood regularized and had been converted to the regular Provincial Budget, with the approval of the Competent Authority. The learned Peshawar High Court, vide common judgment dated 01.04.2014, allowed the Writ Petitions, reinstating the Respondents in Service from the date of their termination with all consequential benefits. Hence these Petitions by the Petitioners.

Civil Petition No.214-P of 2014
Welfare Home for Destitute Children, Charsadda.

7. On 17.03.2009, a post of Superintendent BS-17 was advertised for "Welfare Home for Destitute Children", Charsadda. The Respondent applied for the same and upon recommendations of the Departmental Selection Committee, she was appointed at the said post on 30.04.2010, on contractual basis till 30.06.2011, beyond which period her contract was extended from time to time. The post against which the

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Respondent was serving was brought under the regular Provincial Budget w.e.f 01.07.2012. However, the services of the Respondent were terminated, vide order dated 14.06.2012. Feeling aggrieved, the Respondent filed Writ Petition No.2131 of 2013, which was allowed, vide impugned judgment dated 30.01.2014, whereby it was held that the Respondent would be appointed on conditional basis subject to final decision of this apex Court in Civil Petition No.344-P of 2012. Hence this Petition by the Govt. of KPK.

Civil Petition No.621-P of 2015
Daar-ul-Aman Haripur

8. On 17.03.2009, a post of Superintendent BS-17 was advertisement for "Darul Aman", Haripur. The Respondent applied for the said post and upon recommendations of the Departmental Selection Committee she was appointed w.e.f. 30.04.2010, initially on contract basis till 30.06.2011, beyond which her period of contract was extended from time to time. The post against which the Respondent was serving was brought under the regular Provincial Budget w.e.f 01.07.2012. However, the services of the Respondent were terminated, vide order dated 14.06.2012. Feeling aggrieved, the Respondent filed Writ Petition No.55-A of 2015, which was allowed, vide impugned judgment dated 08.10.2015, holding that "*we accept this writ Petition and pass same order as has already been passed by this Court in W.P.No2131-P of 2013 decided on 30.01.2014 and direct the respondents to appoint the Petitioner on conditional basis subject to final decision of the Apex Court in Civil Petition No.344-P of 2012.*" Hence this Petition by the Govt. of KPK.

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Civil Petition No.28-P of 2014
Darul Kafala, Swat.

9. In the year 2005, the Government of KPK decided to establish Darul Kafalas in different districts of the Province between 01.07.2005 to 30.06.2010. An advertisement was published to fill in various posts in Darul Kafala, Swat. Upon recommendations of the Departmental Selection Committee, the Respondents were appointed on various posts on contract basis for a period of one year w.e.f 01.07.2007 to 30.06.2008, which period was extended from time to time. After expiry of the period of the Project in the year 2010, the Government of KPK has regularized the Project with the approval of the Chief Minister. However, the services of the Respondents were terminated, vide order dated 23.11.2010, with effect from 31.12.2010. The Respondents challenged the aforesaid order before the Peshawar High Court, *inter alia,* on the ground that the employees working in other Darul Kafalas have been regularized except the employees working in Darul Kafala, Swat. The Respondents contended before the Peshawar High Court that the posts of the Project were brought under the regular Provincial Budget, therefore, they were also entitled to be treated at par with the other employees who were regularized by the Government. The Writ Petition of the Respondents was allowed, vide impugned judgment dated 19.09.2013, with the direction to the Petitioners to regularize the services of the Respondents with effect from the date of their termination.

Civil Petitions No.526 to 528-P of 2013
Centre for Mentally Retarded & Physically Handicapped (MR&PH), Nowshera, and Welfare Home for Orphan Female Children Nowshera

10. The Respondents in these Petitions were appointed on contract basis on various posts upon the recommendations of the

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Departmental Selection Committee in the Schemes titled "Centre for Mentally Retarded & Physically Handicapped (MR&HP)" and "Welfare Home for Orphan Female Children", Nowshera, vide order dated 23.08.2006 and 29.08.2006, respectively. Their initial period of contractual appointment was for one year till 30.06.2007, which was extended from time to time till 30.06.2011. By notification dated 08.01.2011, the above-titled Schemes were brought under the regular Provincial Budget of the N.W.F.P. (now KPK) with the approval of the Competent Authority. However, the services of the Respondents were terminated w.e.f 01.07.2011. Feeling aggrieved, the Respondents filed Writ Petitions No.376, 377 and 378-P of 2012, contending that their services were illegally dispensed with and that they were entitled to be regularized in view of the KPK Employees (Regularization of Services Act), 2009, whereby the services of the Project employees working on contract basis had been regularized. The learned High Court, while relying upon the judgment dated 22.03.2012, passed by this Court in Civil Petitions No.562-P to 578-P, 588-P to 589-P, 605-P to 608-P of 2011 and 55-P, 56-P and 60-P of 2012, allowed the Writ Petitions of the Respondents, directing the Petitioners to reinstate the Respondents in service from the date of their termination and regularize them from the date of their appointments. Hence these Petitions.

Civil Appeal No.52-P of 2015

11. On 23.06.2004, the Secretary, Agriculture, published an advertisement in the press, inviting Applications for filling up the posts of Water Management Officers (Engineering) and Water Management Officers (Agriculture), BS-17, in the NWFP, for the "On Farm Water

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Management Project" on contract basis. The Respondent applied for the said post and was appointed as such on contract basis, on the recommendations of the Departmental Promotion Committee after completion of a requisite one month pre-service training, for an initial period of one year, extendable till completion of the Project, subject to his satisfactory performance. In the year 2006, a proposal for restructuring and establishment of Regular Offices of the "On Farm Water Management Department" at District level was made. A summary was prepared for the Chief Minister, KPK, for creation of 302 regular vacancies, recommending that eligible temporary/contract employees working on different Projects may be accommodated against regular posts on the basis of their seniority. The Chief Minister approved the summary and accordingly, 275 regular posts were created in the "On Farm Water Management Department" at District level w.e.f 01.07.2007. During the interregnum, the Government of NWFP (now KPK) promulgated Amendment Act IX of 2009, thereby amending Section 19(2) of the NWFP Civil Servants Act, 1973 and enacted the NWFP Employees (Regularization of Services) Act, 2009. However, the services of the Respondent were not regularized. Feeling aggrieved, he filed Writ Petition No.3087 of 2011 before the Peshawar High Court, praying that employees on similar posts had been granted relief, vide judgment dated 22.12.2008, therefore, he was also entitled to the same treatment. The Writ Petition was allowed, vide impugned order dated 05.12.2012, with the direction to the Appellants to regularize the services of the Respondent. The Appellants filed Petition for leave to Appeal before this Court in which leave was granted; hence this Appeal.

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Civil Appeal No.01-P of 2013
Welfare Home for Female Children, Malakand at Batkhela and Industrial Training Centre at Garhi Usman Khel, Dargai.

12. In response to an advertisement, the Respondents applied for different positions in the "Welfare Home for Female Children", Malakand at Batkhela and "Female Industrial Training Centre" at Garhi Usman Khel. Upon the recommendations of the Departmental Selection Committee, the Respondents were appointed on different posts on different dates in the year 2006, initially on contract basis for a period of one year, which period was extended from time to time. However, the services of the Respondents were terminated, vide order dated 09.07.2011, against which the Respondents filed Writ Petition No.2474 of 2011, *inter alia,* on the ground that the posts against which they were appointed had been converted to the budgeted posts, therefore, they were entitled to be regularized alongwith the similarly placed and positioned employees. The learned High Court, vide impugned order dated 10.05.2012, allowed the Writ Petition of the Respondents, directing the Appellants to consider the case of regularization of the Respondents. Hence this Appea. by the Appellants.

Civil Appeals No.133-P
Establishment and Upgradation of Veterinary Outlets (Phase-III)-ADP

13. Consequent upon recommendations of the Departmental Selection Committee, the Respondents were appointed on different posts in the Scheme "Establishment and Up-gradation of Veterinary Outlets (Phase-III)ADP", on contract basis for the entire duration of the Project, vide orders dated 4.4.2007, 13.4.2007. 17.4.2007 and 19.6.2007, respectively. The contract period was extended from time to time when on 05.06.2009, a

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notice was served upon them, intimating them that their services were no longer required after 30.06.2009. The Respondents invoked the constitutional jurisdiction of the Peshawar High Court, by filing Writ Petition No.2001 of 2009, against the order dated 05.06.2009. The Writ Petition of the Respondents was disposed of, by judgment dated 17.05.2012, directing the Appellants to treat the Respondents as regular employees from the date of their termination. Hence this Appeal by the Appellants.

Civil Appeal No.113-P of 2013
Establishment of One Science and One Computer Lab in Schools/Colleges of NWFP

14. On 26.09.2006 upon the recommendations of the Departmental Selection Committee, the Respondents were appointed on different posts in the Scheme "Establishment of One Science and One Computer Lab in School/Colleges of NWFP", on contract basis. Their terms of contractual appointments were extended from time to time when on 06.06.2009, they were served with a notice that their services were not required any more. The Respondents filed Writ Petition No.2380 of 2009, which was allowed on the analogy of judgment rendered in Writ Petition No.2001 of 2009 passed on 17.05.2012. Hence this Appeal by the Appellants.

Civil Appeals No.231 and 232-P of 2015
National Program for Improvement of Water Courses in Pakistan

15. Upon the recommendations of the Departmental Selection Committee, the Respondents in both the Appeals were appointed on different posts in "National Program for Improvement of Water Courses in Pakistan", on 17th January 2005 and 19th November 2005, respectively, initially on contract basis for a period of one year, which was extended

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from time to time. The Appellants terminated the service of the Respondents w.e.f 01.07.2011, therefore, the Respondents approached the Peshawar High Court, mainly on the ground that the employees placed in similar posts had approached the High Court through W.Ps.No.43/2009, 84/2009 and 21/2009, which Petitions were allowed by judgment dated 21.01.2009 and 04.03.2009. The Appellants filed Review Petitions before the Peshawar High Court, which were disposed of but still disqualified the Appellants filed Civil Petitions No.85, 86, 87 and 91 of 2010 before this Court and Appeals No.834 to 837/2010 arising out of said Petitions were eventually dismissed on 01.03.2011. The learned High Court allowed the Writ Petitions of the Respondents with the direction to treat the Respondents as regular employees. Hence these Appeals by the Appellants.

Civil Petition No.496-P of 2014.
Provision of Population Welfare Programme

16. In the year 2012, consequent upon the recommendations of the Departmental Selection Committee, the Respondents were appointed on various posts in the project namely "Provision of Population Welfare Programme" on contract basis for the entire duration of the Project. On 08.01.2012, the Project was brought under the regular Provincial Budget. The Respondents applied for their regularization on the touchstone of the judgments already passed by the learned High Court and this Court on the subject. The Appellants contended that the posts of the Respondents did not fall under the scope of the intended regularization, therefore, they preferred Writ Petition No.1730 of 2014, which was disposed of, in view of the judgment of the learned High Court dated 30.01.2014 passed in Writ

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Petition No.2131 of 2013 and judgment of this Court in Civil Petition No.344-P of 2012. Hence these Appeals by the Appellants.

Civil Petition No.34-P of 2015
Pakistan Institute of Community Ophthalmology Hayatabad Medical Complex, Peshawar

17. The Respondents were appointed on various posts in the "Pakistan Institute of Community Ophthalmology Hayatabad Medical Complex", Peshawar, in the years 2001, 2002 and from 2007 to 2012, on contract basis. Through advertisement dated 10.01.2014, the said Medical Complex sought fresh Applications through advertisement against the posts held by them. Therefore, the Respondents filed Writ Petition No.141 of 2004, which was disposed of more or less in the terms as state above. Hence this Petition.

18. Mr. Waqar Ahmed Khan, Addl. Advocate General, KPK, appeared on behalf of Govt. of KPK and submitted that the employees in these Appeals/ Petitions were appointed on different dates since 1980. In order to regularize their services, 302 new posts were created. According to him, under the scheme the Project employees were to be appointed stage wise on these posts. Subsequently, a number of Project employees filed Writ Petitions and the learned High Court directed for issuance of orders for the regularization of the Project employees. He further submitted that the concessional statement made by the then Addl. Advocate General, KPK, before the learned High Court to "adjust/regularize the petitioners on the vacant post or posts whenever falling vacant in future but in order of seniority/eligibility." was not in accordance with law. The employees were appointed on Projects and their appointments on these Projects were to be terminated on the expiry of the Project as it was stipulated that they will not

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claim any right of absorption in the Department against regular posts as per existing Project policy. He also referred to the office order dated 31.12.2004 regarding appointment of Mr. Adnanullah (Respondent in CA. No.134-P/2013) and submitted that he was appointed on contract basis for a period of one year and the above mentioned office order clearly indicates that he was neither entitled to pension nor GP Fund and furthermore, had no right of seniority and or regular appointment. His main contention was that the nature of appointment of these Project employees was evident from the advertisement, office order and their appointment letters. All these reflected that they were not entitled to regularization as per the terms of their appointments.

19. In the month of November 2006, a proposal was floated for restructuring and establishment of Regular Offices of "On Farm Water Management Department" at District level in NWFP (now KPK) which was approved by the then Chief Minister KPK; who agreed to create 302 posts of different categories and the expenditure involved was to be met out of the budgetary allocation. The employees already working in the Projects were to be appointed on seniority basis on these newly created posts. Some of the employees working since 1980 had preferential rights for their regularization. In this regard, he also referred to various Notifications since 1980, whereby the Governor KPK was pleased to appoint the candidates upon the recommendations of the KPK Public Service Commission on different Projects on temporary basis and they were to be governed by the KPK Civil Servants Act 1973 and the Rules framed thereunder. 302 posts were created in pursuance of the summary of 2006, out of which 254 posts

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were filled on seniority basis, 10 through promotion and 38 by way of Court orders passed by this Court and or the learned Peshawar High Court. He referred to the case of *Govt. of NWFP vs. Abdullah Khan* (2011 SCMR 898) whereby, the contention of the Appellants (Govt. of NWFP) that the Respondents were Project employees appointed on contractual basis were not entitled to be regularized, was not accepted and it was observed by this Court that definition of "Contract appointment" contained in Section 2(1)(aa) of the NWFP Employees (Regularization of Services) Act, 2009, was not attracted in the cases of the Respondent employees. Thereafter, in the case of *Government of NWFP vs. Kaleem Shah* (2011 SCMR 1004), this Court followed the judgment of *Govt. of NWFP vs. Abdullah Khan (ibid)*. The judgment, however, was wrongly decided. He further contended that KPK Civil Servants (Amendment) Act 2005, (whereby Section 19 of the KPK Civil Servants Act 1973, was substituted), was not applicable to Project employees. Section 5 of the KPK Civil Servants Act 1973, states that the appointment to a civil service of the Province or to a civil post in connection with the affairs of the Province shall be made in the prescribed manner by the Governor or by a person authorized by the Governor in that behalf. But in the cases in hand, the Project employees were appointed by the Project Director, therefore, they could not claim any right to regularization under the aforesaid provision of law. Furthermore, he contended that the judgment passed by the learned Peshawar High Court is liable to be set aside as it is solely based on the facts that the Respondents who were originally appointed in 1980 had been regularized. He submitted that the High Court erred in regularizing the employees on the touchstone of Article 25 of the Constitution of the Islamic Republic of Pakistan as the

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employees appointed in 2005 and those in 1980 were not similarly placed and, therefore, there was no question of discrimination. According to him, they will have to come through fresh inductions to relevant posts if they wish to fall under the scheme of regularization. He further contended that any wrongful action that may have taken place previously, could not justify the commission of another wrong on the basis of such plea. The cases where the orders were passed by DCO without lawful authority could not be said to have been made in accordance with law. Therefore, even if some of the employees had been regularized due to previous wrongful action, others could not take plea of being treated in the same manner. In this regard, he has relied upon the case of *Government of Punjab vs. Zafar Iqbal Dogar* (2011 SCMR 1239) and *Abdul Wahid vs. Chairman CBR* (1998 SCMR 882).

20. Mr. Ghulam Nabi Khan, learned ASC, appeared on behalf of Respondent(s) in C.As.134-P/2013, 1-P/2013 and C.P.28-P/2014 and submitted that all of his clients were clerks and appointed on non-commissioned posts. He further submitted that the issue before this Court had already been decided by four different benches of this Court from time to time and one review petition in this regard had also been dismissed. He contended that fifteen Hon'ble Judges of this Court had already given their view in favour of the Respondents and the matter should not have been referred to this Bench for review. He further contended that no employee was regularized until and unless the Project on which he was working was not put under the regular Provincial Budget as such no regular posts were created. The process of regularization was started by the Government itself

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without intervention of this Court and without any Act or Statute of the Government. Many of the decisions of the Peshawar High Court were available, wherein the directions for regularization were issued on the basis of discrimination. All the present cases before this Court are related to the category in which the Project became part of the regular Provincial Budget and the posts were created. Thousands of employees were appointed against these posts. He referred to the case of *Zulfiqar Ali Bhutto Vs. The State* (PLD 1979 SC 741) and submitted that a review was not justifiable, notwithstanding error being apparent on face of record, if judgment or finding, although suffering from an erroneous assumption of facts, was sustainable on other grounds available on record.

21. Hafiz S. A. Rehman, Sr. ASC, appeared on behalf of Respondent(s) in Civil Appeal Nos. 135-136-P/2013 and on behalf of all 174 persons who were issued notice vide leave granting order dated 13.06.2013. He submitted that various Regularization Acts i.e. KPK Adhoc Civil Servants (Regularization of Services) Act, 1987, KPK Adhoc Civil Servants (Regularization of Services) Act, 1988, KPK Employees on Contract Basis (Regularization of Services) Act, 1989, KPK Employees on Contract Basis (Regularization of Services) (Amendment) Act, 1990, KPK Civil Servants (Amendment) Act, 2005, KPK Employees (Regularization of Services) Act, 2009, were promulgated to regularize the services of contractual employees. The Respondents, including 174 to whom he was representing, were appointed during the year 2003/2004 and the services of all the contractual employees were regularized through an Act of legislature i.e. KPK Civil Servants (Amendment) Act, 2005 and the KPK Employees

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(Regularization of Services) Act, 2009, was not applicable to present Respondents. He referred to Section 19(2) of the KPK Civil Servants Act 1973, which was substituted vide KPK Civil Servants (Amendment) Act, 2005, provides that *"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 appointment on contact basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis"* Furthermore, vide Notification dated 11.10.1989 issued by the Government of NWFP, the Governor of KPK was pleased to declare the "On Farm Water Management Directorate" as an attached Department of Food, Agriculture, Livestock and Cooperation Department, Govt. of NWFP. Moreover, it was also evident from the Notification dated 03.07.2013 that 115 employees were regularized under section 19 (2) of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 and Regularization Act, 2009 from the date of their initial appointment. Therefore, it was a past and closed transaction. Regarding summaries submitted to the Chief Minister for creation of posts, he clarified that it was not one summary (as stated by the learned Addl. Advocate General KPK) but three summaries submitted on 11.06.2006, 04.01.2012 and 20.06.2012, respectively, whereby total 734 different posts of various categories were created for these employees from the regular budgetary allocation. Even through the third summary, the posts were created to regularize the employees in order to implement the judgments of Hon'ble Peshawar High Court dated 15.09.2011, 8.12.2011 and Supreme Court of Pakistan dated 22.3.2012. Approximately 20-30% employees were

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recruited through KPK Public Service Commission and the Public Service Commission is only meant to recommend the candidates on regular posts.

22. Mr. Imtiaz Ali, learned ASC, appearing on behalf of the Respondent in CA No.134-P/2013, submitted that there was one post of Accountant which had been created and that the Respondent, Adnanullah, was the only Accountant who was working there. He contented that, even otherwise, judgment dated 21.9.2009 in Writ Petition No.59/2009, was not questioned before this Court and the same had attained finality. He further submitted that his Writ Petition was allowed on the strength of Writ Petition No. 356/2008 and that no Appeal has been filed against it.

23. Mr. Ayub Khan, learned ASC, appeared in C.M.A 496-P/2013 on behalf of employees whose services might be affected (to whom notices were issued by this Court vide leave granting order dated 13.06.2013) and adopted the arguments advanced by the senior learned counsels including Hafiz S. A. Rehman.

24. Mr. Ijaz Anwar, learned ASC, appeared in C.A 137-P/2013 for Respondents No. 2 to 6, CPs.526-P to 528-P/2013 for Respondents and for Appellant in Civil Appeal No.605-P/2015 (JR) and submitted that the Regularization Act of 2005, is applicable to his case and if benefit is given to some employees then in light of the judgment of this Court titled *Government of Punjab Vs. Samina Perveen* (2009 SCMR 1), wherein it was observed that if some point of law is decided by Court relating to the terms and conditions of a Civil Servant who litigated and there were other who had not taken any legal proceedings, in such a case the dictates of justice

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and rules of good governance demand that the benefit of the said decision be extended to others also who may not be parties to that litigation. Furthermore, the judgment of Peshawar High Court which included Project employees as defined under Section 19(2) of the KPK Civil Servants Act 1973 which was substituted vide KPK Civil Servants (Amendment) Act, 2005, was not challenged. In the NWFP Employees (Regularization of Services) Act, 2009, the Project employees have been excluded but in presence of the judgment delivered by this Court, in the cases of *Govt. of NWFP vs. Abdullah Khan (ibid)* and *Govt. of NWFP vs. Kaleem Shah (ibid)*, the Peshawar High Court had observed that the similarly placed persons should be considered for regularization.

25. While arguing Civil Appeal No. 605-P/2015, he submitted that in this case the Appellants/ Petitioners were appointed on contract basis for a period of one year vide order dated 18.11.2007, which was subsequently extended from time to time. Thereafter, the services of the Appellants were terminated vide notice dated 30.05.2011. The learned Bench of the Peshawar High Court refused relief to the employees and observed that they were expressly excluded from the purview of Section 2(1)(b) of KPK (Regularization of Services) Act, 2009. He further contended that the Project against which they were appointed had become part of regular Provincial Budget. Thereafter, some of the employees were regularized while others were denied, which made out a clear case of discrimination. Two groups of persons similarly placed could not be treated differently, in this regard he relied on the judgments of *Abdul Samad vs.*

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Federation of Pakistan (2002 SCMR 71) and *Engineer Nariandas vs. Federation of Pakistan* (2002 SCMR 82).

26. We have heard the learned Law Officer as well as the learned ASCs, representing the parties and have gone through the relevant record with their able assistance. The controversy in these cases pivots around the issue as to whether the Respondents are governed by the provisions of the North West Frontier Province (now KPK) Employees (Regularization of Services) Act, 2009, (hereinafter referred to as the Act). It would be relevant to reproduce Section 3 of the Act:

> *"3. Regularization of Services of certain employees.—All employees including recommendees of the High Court appointed on contract or adhoc basis and holding 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."*

27. The aforesaid Section of the Act reproduced hereinabove clearly provides for the regularization of the employees appointed either on contract basis or adhoc basis and were holding contract appointments on 31st December, 2008 or till the commencement of this Act. Admittedly, the Respondents were appointed on one year contract basis, which period of their appointments was extended from time to time and were holding their respective posts on the cut-of date provided in Section 3 (*ibid*).

28. Moreover, the Act contains a non-obstante clause in Section 4A which reads as under:

> *"4A. Overriding effect.—Notwithstanding any thing to the contrary contained in any other law or*

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rule for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rule to the extent of inconsistency to this Act shall cease to have effect."

29. The above Section expressly excludes the application of any other law and declares that the provisions of the Act will have overriding effect, being a special enactment. In this background, the cases of the Respondents squarely fall within the ambit of the Act and their services were mandated to be regulated by the provisions of the Act.

30. It is also an admitted fact that the Respondents were appointed on contract basis on Project posts but the Projects, as conceded by the learned Additional Advocate General, were funded by the Provincial Government by allocating regular Provincial Budget prior to the promulgation of the Act. Almost all the Projects were brought under the regular Provincial Budget Schemes by the Government of KPK and summaries were approved by the Chief Minster of the KPK for operating the Projects on permanent basis. The "On Farm Water Management Project" was brought on the regular side in the year 2006 and the Project was declared as an attached Department of the Food, Agriculture, Livestock and Co-operative Department. Likewise, other Projects were also brought under the regular Provincial Budget Scheme. Therefore, services of the Respondents would not be affected by the language of Section 2(aa) and (b) of the Act, which could only be attracted if the Projects were abolished on the completion of their prescribed tenure. In the cases in hand, the Projects initially were introduced for a specified time whereafter they were transferred on permanent basis by attaching them with Provincial

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Government departments. The employees of the same Project were adjusted against the posts created by the Provincial Government in this behalf.

31. The record further reveals that the Respondents were appointed on contract basis and were in employment/service for several years and Projects on which they were appointed have also been taken on the regular Budget of the Government, therefore, their status as Project employees has ended once their services were transferred to the different attached Government Departments, in terms of Section 3 of the Act. The Government of KPK was also obliged to treat the Respondents at par, as it cannot adopt a policy of cherry picking to regularize the employees of certain Projects while terminating the services of other similarly placed employees.

32. The above are the reasons of our short order dated 24.2.2016, which reads as under:-

> "Arguments heard. For the reasons to be recorded separately, these Appeals, except Civil Appeal No.605 of 2015, are dismissed. Judgment in Civil Appeal No.605 of 2015 is reserved"

Sd/- Anwar Zaheer Jamali,HCJ
Sd/- Mian Saqib Nisar,J
Sd/- Amir Hani Muslim,J
Sd/- Iqbal Hameedur Rahman,J
Sd/- Khilji Arif Hussain,J

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad

Islamabad the,
24-02-2016
Approved for reporting.

30.5.2016

11565/16 Civil/Criminal
Date of Presentation: 2-6-16
No of Words: 540
No of Folios: 54
Requisition: 5.-
Copy Fee in: 52-08
Court Fee Stamps: 52.-

(46) Annex "C"

GOVERNMENT OF KHYBER PAKHTUNKHWA,
POPULATION WELFARE DEPARTMENT
02nd Floor, Abdul Wali Khan Multiplex, Civil Secretariat, Peshawar

Dated Peshawar the 05th October, 2016

OFFICE ORDER

No. SOE (PWD) 4-9/7/2014/IIC:- In compliance with the judgments of the Hon'able Peshawar High Court, Peshawar dated 26-06-2014 in W.P No. 1730-P/2014 and August Supreme Court of Pakistan dated 24-02-2016 passed in Civil Petition No. 496-P/2014, the ex-ADP employees, of ADP Scheme titled "Provision for Population Welfare Programme in Khyber Pakhtunkhwa (2011-14)" are hereby reinstated against the sanctioned regular posts, with immediate effect, subject to the fate of Review Petition pending in the August Supreme Court of Pakistan.

SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT

Endst: No. SOE (PWD) 4-9/7/2014/IIC/ Dated Peshawar the 05th Oct: 2016

Copy for information & necessary action to the: -

1. Accountant General, Khyber Pakhtunkhwa.
2. Director General, Population Welfare, Khyber Pakhtunkhwa, Peshawar.
3. District Population Welfare Officers in Khyber Pakhtunkhwa.
4. District Accounts officers in Khyber Pakhtunkhwa.
5. Officials Concerned.
6. PS to Advisor to the CM for PWD, Khyber Pakhtunkhwa, Peshawar
7. PS to Secretary, PWD, Khyber Pakhtunkhwa, Peshawar.
8. Registrar, Supreme Court of Pakistan, Islamabad.
9. Registrar Peshawar High Court, Peshawar.
10. Master file

SECTION OFFICER (ESTT)
PHONE NO. 091 9223623

(47) Annex "D"

To,

The Chief Secretary
Khyber Pakhtunkhwa
Peshawar.

Subject: **DEPARTMENTAL APPEAL**

Respected Sir,

With profound respect the undersigned submit as under:

1) That the undersigned along with others have been re-instated in service with immediate effects vide order dated 05.10.2016.

2) That the undersigned and other officials were regularized by the honourable High Court, Peshawar vide judgment / order dated 26.06.2014 whereby it was stated that petitioner shall remain in service.

3) That against the said judgment an appeal was preferred to the honourable Supreme Court but the Govt. appeals were dismissed by the larger bench of Supreme Court vide judgment dated 24.02.2016.

4) That now the applicant is entitle for all back benefits and the seniority is also require to be reckoned from the date of regularization of project instead of immediate effect.

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5) That the said principle has been discussed in detail in the judgment of august Supreme Court vide order dated 24.02.2016 whereby it was held that appellants are reinstated in service from the date of termination and are entitle for all back benefits.

6) That said principles are also require to be follow in the present case in the light of 2009 SCMR 01.

It is, therefore, humbly prayed that on acceptance of this appeal the applicant / petitioner may graciously be allowed all back benefits and his seniority be reckoned from the date of regularization of project instead of immediate effect.

Yours Obediently,

Hussain khan
Chawkedar
Population Welfare Department
Dir Lower Timergara

Dated: 20/02/2017

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بعدالت سروس ٹریبونل پشاور

کورٹ فیس | قیمت ایک روپیہ

مورخہ ۳۰ مئی ۲۰۱۷ء منجانب

مقدمہ

دعویٰ حسن خان بنام حکومت وغیرہ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن مقام سروس ٹریبونل کیلئے کمیل اللہ دی ایڈووکیٹ مقرر کرکے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ وتقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زراس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برامد ہوگی اور منسوخ ڈائر کرنے اپیل نگرانی و نظرثانی و پیروی کرنے کا اختیار ہوگا۔ بصورت ضرورت مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برواختہ منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ وہر جانہ التوائے مقدمہ کے سبب سے ہا گا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا وخرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکورلہٰذا وکالت نامہ لکھ دیا ک سندرہے

المرقوم ۳۰ ماہ مئی ۲۰۱۷ء

العبد گواہ شدہ العبد

بمقام Shams-ul-Hadi Advocate. کے لئے منظور ہے

IN THE HONOURABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

In Appeal No.708/2017.

Hussain Khan FWA(M) ..... (Appellant)

VS

The Govt. of Khyber Pakhtunkhwa and others..... (Respondents)

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Mushtaq

DEPONENT

IN THE HONORABLE SERVICE TRIBUANL, KHYBER PAKHTUNKHWA PESHAWAR

In Service Appeal No. 708/2017

Hussain Khan FWA (M) ..... **(Appellant)**

V/S

Govt of Khyber Pakhtunkhwa & Others ..... **(Respondents)**

Joint para-wise reply/comments on behalf of the respondents No. 1, 3 & 4

Respectfully Sheweth,

Preliminary Objection:-

1. The appellant has got no locus standi to file the instant appeal.
2. That no discrimination / injustice has been done to the appellant.
3. That the instant appeal is bad in the eye of law.
4. That the appellants has not come to the Tribunal with clean hands.
5. That re-view petition no. 312-P/2016 is pending before The Supreme Court of Pakistan, Islamabad.
6. That the appeal is bad for non-joinder & mis-joinder of unnecessary parties.
7. That the Tribunal has no jurisdiction to adjudicate the matters.

On Facts:-

1. Correct to the extent, that the appellant was initially appointed on project post as Family Welfare Assistant (Male) in BPS-05 on contract basis till completion of project life i.e. 30/06/2014 under the ADP scheme Titled" Provision for Population Welfare Program in Khyber Pakthunkhwa (2011-14)".

2. Incorrect. Verbatim based on distortion of facts. The actual position of the case is that after completion of the project the incumbents were terminated from their posts according to the project policy. Therefore the appellant alongwith other filed a writ petition before the Honorable Peshawar High Court, Peshawar, the Honorable Court allowed the subject writ petition on 26/06/2014 in the terms that the petitioners shall remain on the post subject to the fate of C.P No. 344-P/2012 as identical proposition of facts and law is involved therein. And the services of the employees neither regularized by the Court nor by the competent authority.

3. Correct. But a re-view petition No. 312-P/2016 has been filed by this Department against the judgment dated 24/02/2016 of the larger bench of Supreme Court of Pakistan on the grounds that this case was not argued as it was clubbed with the cases of other Department having longer period of services. Which is still pending before the Supreme Court of Pakistan.

4. Incorrect, that the appellant alongwith 560 incumbents of the project were reinstated against the sanctioned regular posts, with immediate effect, subject to the fate of re-view petition no. 312-P/2016 pending in the August Supreme Court of Pakistan. During the period under reference they have neither reported for nor did perform their duties.

5. Correct to the extent that a re-view petition is pending before the Apex Court and appropriate action will be taken in light of the decision of the Supreme Court of Pakistan.

ON GROUNDS:-

A. Incorrect. The appellant alongwith other incumbents reinstated against the sanctioned regular posts, with immediate effect, subject to the fate of re-view petition no 312-P/2016 pending the August Supreme Court of Pakistan.

B. As explained Para 2 of the fact above it is further added that the employees entitled for the period they have worked with the project but in the instant case they have not worked with the project after 30/06/2014 till the implementation of the judgment. Anyhow the Department will wait till decision of re-view petition no 312-P/2016 pending in the Supreme Court of Pakistan.

C. As explained in Ground B above.

D. The respondents may also be allowed to raise further grounds at the time of arguments.

Keeping in view the above, it is prayed that the instant appeal may kindly be dismissed in the interest of merit as a re-view petition no 312-P/2016 is still pending before the Supreme Court of Pakistan.

Director General
Population Welfare Department Peshawar
Respondent No. 1

Secretary to Govt. of Khyber Pakhtunkhwa
Population Welfare Department Peshawar
Respondent No.3

District Population Welfare Officer
District Dir-Lower
Respondent No. 4

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IN THE HONOURABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

In Appeal No.708/2017

Hussain Khan FWA(M) .....(Appellant)

VS

The Govt. of Khyber Pakhtunkhwa and others..... (Respondents)

Affidavit

I Mr. Sagheer Musharraf, Assistant Director (Litigation) Directorate General of Population Welfare,- do solemnly affirm and declare on oath that the contents of Para-wise comments on behalf of respondents are true and correct to the best of my knowledge and belief nothing has been concealed from this Honorable Tribunal.

Musharaf

DEPONENT

CNIC:17301-1642774-9