

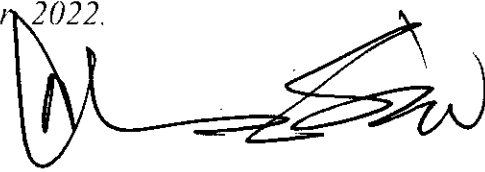
ORDER

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.*


(Farzana Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

03.10.2022

Junior to counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

Junior to counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today. Last chance is given, failing which the case will be decided on available record without the arguments. To come up for arguments on 04.10.2022 before D.B.



(Farceha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

28.03.2022

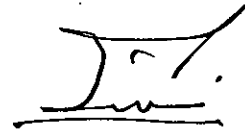
Learned counsel for the appellant present.

Mr. Ahmadyar Khan Assistant Director (Litigation) alongwith Mr. Kabir Ullah Khattak Additional Advocate General for the respondents present.

File to come up alongwith connected Service Appeal No.695/2017 titled Rubina Naz Vs. Government of Khyber Pakhtunkhwa on 23.06/2022 before the D.B.



(Rozina Rehman)
Member (J)

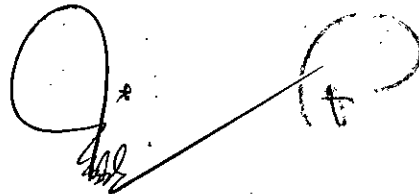


(Salah-Ud-Din)
Member (J)

23.06.2022

Learned counsel for the appellant present. Mr. Ahmad Yar Khan, Assistant Director (Litigation) alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

File to come up alongwith connected Service Appeal No. 695/2017 titled Rubina Naz Vs. Government of Khyber Pakhtunkhwa on 03.10.2022 before D.B.



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)


11.03.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General alongwith Ahmadyar Khan A.D for respondents present.

File to come up alongwith connected appeal No.695/2017 titled Robinaz Vs. Government of Khyber Pakhtunkhwa, on 01.07.2021 before D.B.


(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member (J)

01.07.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

File to come up alongwith connected Service Appeal No.695/2017 titled Rubina Naz Vs. Government of Khyber Pakhtunkhwa, on ~~29.11~~ 01.07.2021 before D.B.


(Rozina Rehman)
Member(J)

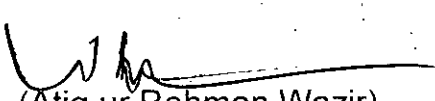

Chairman


29.11.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General alongwith Ahmad Yar A.D for respondents present.

File to come up alongwith connected Service Appeal No.695/2017 titled Rubina Naz Vs. Government of Khyber Pakhtunkhwa, on 28.03.2022 before D.B.


(Atiq ur Rehman Wazir)
Member (E)

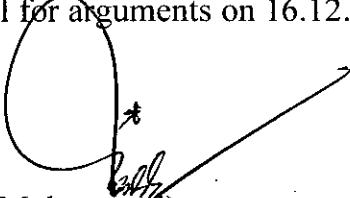

(Rozina Rehman)
Member (J)


29.09.2020

Appellant present through counsel.

Mr. Kabirullah, Khattak, Additional Advocate General alongwith Mr. Ahmad Yar Khan, AD for respondents present.

An application seeking adjournment was filed in connected case titled Anees Afzal Vs. Government on the ground that his counsel is not available. Almost 250 connected appeals are fixed for hearing for today and the parties have engaged different counsel. Some of the counsel are busy before august High Court while some are not available. It was also reported that a review petition in respect of the subject matter is also pending in the august Supreme Court of Pakistan, therefore, case is adjourned on the request of counsel for arguments on 16.12.2020 before D.B.


(Mian Muhammad)
Member (E)

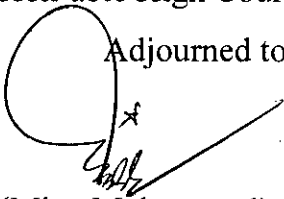

(Rozina Rehman)
Member (J)

16.12.2020

Junior to counsel for the appellant present. Additional: AG alongwith Mr. Ahmad Yar Khan, AD(Litigation) for respondents present.

Former requests for adjournment as learned senior counsel for the appellant is engaged today before the Hon'able High Court, Peshawar in different cases.

Adjourned to 11.03.2020 for arguments before D.B.


(Mian Muhammad)
Member (E)


Chairman

25.02.2020

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 03.04.2020 before D.B.


Member


Member

02.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 30.06.2020 before D.B.


Reader

30.06.2020

Due to Covid-19, the case is adjourned. To come up for the same on 29.09.2020 before D.B.


Reader

31.07.2019

Learned counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General alongwith Sagheer Musharraf AD present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 09.10.2019 before D.B.


Member


Member

19.12.2019

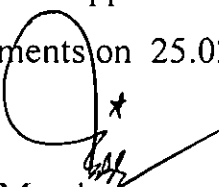
Lawyers are on strike as per the decision of Peshawar Bar Association. Adjourn. To come up for further proceedings/arguments on 21.02.2020 before D.B. Appellant be put on notice for the date fixed.


Member


Member

21.02.2020

Appellant absent. Learned counsel for the appellant absent. Mr. Ziaullah, DDA for respondents present. Notices be issued to the appellant and his counsel. Adjourned. To come up for arguments on 25.02.2020 before D.B.


Member


Member

01.01.2019

Nemo for appellant. Addl. AG alongwith M/S Saghir Musharaf, A.D and Zakiullah, Senior Auditor for the respondents present.

Instant matter was adjourned on the strength of Reader Note on the previous date. Let the appellant/counsel be issued fresh notices for the next date.

Adjourned to 11.03.2019 for arguments before the D.B.



Member



Chairman

11.03.2019

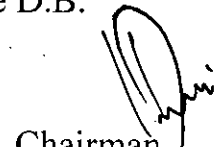
Mr. Asghar Abbas, Advocate for appellant and Asstt. AG alongwith Saghir Musharaf, AD for the respondents present.

Request for adjournment is made on the ground that learned senior counsel for the appellant is engaged before Bannu Bench of Honourable Peshawar High Court.

Adjourned to 28.05.2019 before the D.B.



Member



Chairman

28.05.2019

None for the appellant present. Mr. Muhammad Jan, DDA for respondents present. Notices be issued to the appellant and his counsel. Adjourned. Case to come up for arguments on 31.07.2019.




Member



Member

23.05.2018

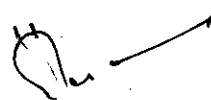
Counsel for the appellant and Mr. Ziaullah, DDA alongwith Mr. Salim, Senior Auditor for respondents present. Rejoinder submitted which is placed on-file. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 02.08.2018 before D.B.


(Muhammad Amin Kundi)
Member

02.08.2018


Clerk to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Clerk to counsel for the appellant seeks adjournment as learned counsel is not in attendance. Adjourned. To come up for arguments on 26.09.2018 before D.B.



(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

26.09.2018

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Counsel for the appellant seeks adjournment. Granted. Case to come up for arguments on 13.11.2018 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

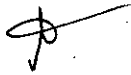
13.11.2018

Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 01.01.2019 before D.B.


Reader

29.01.2018

Appellant in person and Asst: AG alongwith Mr. Sagheer Musharraf, AD, Mr. Zakiullah, Senior Auditor and Mr. Farmanullah, AAO for respondents present. Written reply on behalf of respondents no. 2,3 and 6 submitted while respondent no.1 rely on the same. Representative of respondent no. 4 and 5 seeks time to file written reply. To come up for written reply of respondents no. 4 and 5 on 12.02.2018 before S.B.


(Ahmad Hassan)
Member(E)


12.02.2018

Appellant in person present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Farmanullah, Superintendent for respondent No. 5 also present. Written reply on behalf of respondent No. 5 submitted. Written reply on behalf of respondent No. 1 to 3 & 6 already submitted. None present on behalf of respondent No. 4 therefore, notice be issued to respondent No. 4 with the direction to direct the representative to attend the court and submit written reply on the next date positively. Adjourned. To come up for written reply/comments on behalf of respondent No. 4 on 15.03.2018 before S.B.

15.03.2018

Clerk of the counsel for the appellant present.
(Muhammad Amin Khan Kundi)
Member (J)

Mr. Kabir Ullah Khattak, Additional alongwith Mr. Sagheer Musharraf, AD & Mr. Zaki Ullah, Senior Auditor for the respondents present. Written reply already submitted on behalf of respondent No. 1 to 3 & 5 & 6. Written reply submitted on behalf of respondent No. 4. To come up for rejoinder and arguments on ^{23.05}17.03.2018 before D.B.


(Muhammad Hamid Mughal)
Member

07.12.2017

Learned counsel for the appellant present.

Preliminary arguments heard and case file perused.

Learned counsel for the appellant argued that the appellant was initially appointed as Chowkidar (PWC) on contract basis in the District Population Welfare Office, Hangu vide order dated 08.03.2014. That instead of regularizing the services of the appellant, the respondents terminated him w.e.f 30.06.2014 vide the impugned office order dated 13.06.2014 alongwith other project employees of the same ADP Scheme (2011-14). That the project was brought on current side. That most of the employees filed identical Writ Petitions before Peshawar High Court Peshawar, which were decided in their favour vide order/judgment dated 26.06.2014. That all these project employees are now on regular post, but with immediate effect as per order dated 05.10.2016 instead of termination date. That the appellant preferred departmental appeal on 20.05.2016, which is not decided within the stipulated period. That the appellant preferred the instant appeal dated 13.10.2017 for giving retrospective effect to the appointment order dated 05.10.2016. Learned counsel for the appellant relied on 2009-SCMR-Page 1 and stated that similar natured case has already been admitted for regular hearing under Appeal No. 929/2017.




Points raised need consideration. Admitted for regular hearing subject to all legal objections including limitation. The appellant is directed to deposit security and process ^{fee} within (10) days, whereafter notice be issued to the respondents department for written reply/comments on 29.01.2018 before S.B.

Appellant Deposited
Security & Process Fee


(Gul Zeb Khan)
Member

Form-A
FORM OF ORDERSHEET

Court of _____
Case No. 1166/2017


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	19/10/2017	<p>The appeal of Mr. Ihtishamul Huq resubmitted today by Mr. Athar Abbas Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 19/10/17</p>
2-	23/10/17	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>08/11/17</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	08.11.2017	<p>Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 07.12.2017 before S.B.</p> <p style="text-align: right;"> (AHMAD HASSAN) MEMBER</p>

The appeal of Mr. Ihtisham Ul Haq son of Khan Zada r/o Mohalla Ghari Bazar Hangu received today i.e. on 13.10.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- ① Annexures D, E and G of the appeal are illegible which may be replaced by legible/better one.
- 2- One more copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2234 /S.T,

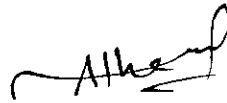
Dt. 16/10/2017


REGISTRAR 16/10/17
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Athar Abbas Adv. Pesh.

Re-submitted:

I Mr. Athar Abbas Advocate Re-Submitted this appeal and also provide another set of appeal along with all annexures.


19/10/07

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR.**

In Ref. S.A 1166/2017

**IHTISHAM UL HAQ
Versus
GOVT: OF KP & OTHERS**

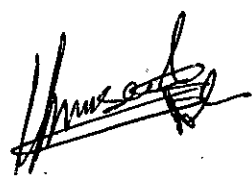
INDEX

S.No.	Description of Document	Annex	Pages
1	Grounds of Appeal		1-5
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3	Affidavit		8
4	Memo Of Addresses		9
5	Copy of Appointment order	A	10
6	Copy of termination order	B	11
7	Copy of W.P No.1730-P/2014 & order dated: 26/06/2014	C	12-21
8	Copy of CPLA No.496-P/2014	D	22-54
9	Copy of re-instatement order Dated:05/10/2016	E	55-56
10	Copy of Departmental Appeal	F	57-58
11	Copy of CPLA 605/2015	G	59-62
	Wakalatnama		

Dated:


APPELLANT

Through


**Athar Abbas
Assad Ullah Khan
Advocates Peshawar High Court
Peshawar.**

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

In Ref. S.A 1166/2017

Khyber Pakhtukhwa Service Tribunal

Ihtisham Ul Haq S/O Khan Zada
R/O Mohallah Ghari Bazar Hangu.

Diary No. 1181

Dated 13-10-2017

.....APPELLANT

VERSUS

1. Govt: of Khyber Pakhtunkhwa Through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.
3. Director General, Population Welfare, Plot No.18, Sector E-8, Phase-VII, Hayatabad, Peshawar.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. District Account Officer, Account Office, District Hangu.
6. District Population Welfare officer Hangu.

.....RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT 1973 FOR GIVING RETROSPECTIVE EFFECT TO THE APPOINTMENT ORDER DATED: 05/10/2016 IN ORDER TO INCLUDE PERIOD SPENT SINCE BRINGING THE PROJECT IN QUESTION ON CURRANT SIDE W.E.F 01/07/2014 TILL THE APPOINTMENT ORDER DATED:05/10/2016 WITH ALL BACK BENEFITS, IN TERMS OF ARREARS, PROMOTIONS AND SENIORITY, IN THE LIGHT OF JUDGMENT AND ORDER DATED: 24/02/2016 RENDERED BY HON'BLE SUPREME COURT OF PAKISTAN IN CPLA 605 OF 2015.

RESPECTFULLY SHEWETH:

The appellant most humbly submit as under: -

Filed to-day

Re-submitted to -day and filed.

Registrar
13/10/17

Registrar
19/10/17

2

1. That the appellant was initially appointed as Chowkidar (FWC) (Fixed Pay) on contract basis in the District Population Welfare Office, Hangu vide order No.F.No.1(1)/2011-12/Admn dated: 8/03/2014.

(Copy of the appointment order is annexed as "A").

2. That it is pertinent to mention here that in the initial appointment order the appointment was although made on contract basis and till project life, but no project was mentioned therein in the appointment order. However the services of the appellant alongwith hundreds of other employees were carried and confined to the project "Provisions for population Welfare Program in Khyber Pakhtunkhwa (2011-14)".
3. That later on, the project in question was brought from developmental side to current and regular side vide Notification in the year 2014 and the life of the project in question was declared to be culminated on 14/06/2014.
4. That instead of regularizing the services of the appellant, the appellant was terminated vide the impugned office order No.F.No.4(35)/2013-14/Admn dated: 13/06/2014 and the service of the appellant was terminated w.e.f 30/06/2014. Alongwith the present appellant the services of other project employees of the same ADP Scheme were also terminated and the project was brought on current side.

(Copy of completion of project is annexed as "B").

5. That feeling aggrieved from such termination of the project employees most of the employees filed identical writ petitions before Peshawar High Court Peshawar and before Bannu bench W.P No.1730-P/2014 and W.P No.293-B/2014 respectively which were allowed in the favour of the petitioners vide order/judgment dated:26/06/2014 writ petition 1730-P/2014 all project employees of the ADP scheme remained on regular post of the said scheme as brought on regular side.

(Copy of W.P and order are annexed as "C").

6. That the respondents impugned the same before the Hon'ble Apex Court of the country in CPLA No.496-P/2014, but here again good fortune of the employees prevailed and the CPLA was dismissed vide judgment and order dated:24/02/2016.

(Copy of CPLA is annexed as "D").

7. That all the ex-employees of the ADP Scheme were re-instated in the light of the judgments of the High Court and Supreme Court of Pakistan and a partial impugned order No.SOE(PWD)4-9/7/2014/HC dated: 05/10/2016 was issued, but with immediate effect instead w.e.f 01/02/2012 i.e. initial appointment or at least 01/07/2014 i.e. date of regularization of the project in question as laid down in the judgment of the August Supreme Court of Pakistan.

(Copy of the impugned office re-instatement order is annexed as "E").

8. That feeling aggrieved the appellant prepared a departmental appeal, but inspite of laps of statutory period no findings were made upon the same, but the appellant time and again visited to inquire about the department appeal but the fate of departmental appeal was not decided till yet and mare assurance was given to the appellant that the same may be decided in favour of the appellant in light of the Judgment of the apex Court and the appellant still wait for the decision of the appellate authority, which caused delay in filing the instant appeal before this Hon'ble Tribunal and on the other hand the department appeal was also either not decided or the decision is not communicated or intimated to the appellant.

(Copy of the appeal is annexed as "F").

9. That feeling aggrieved the appellant prefers the instant appeal for giving retrospective effect to the appointment order dated 05/10/2016, upon the following ground inter alia:

GROUND:

A. That the impugned appointment order dated 05/10/2016 to the extent of giving "immediate effect" is illegal, unwarranted and is liable to modified to that extent.

B. That in another CPLA No.605 of 2015 the Apex Court held that not only the effected employee is to be re-instated into service but also give them all back banefits etc, that is

"the appellant shall be reinstated in service from the date of their termination and are also held entitled to the back benefits for the period they have worked with the project or the KPK government. The service of the appellant for the intervening period i.e. from the date of their termination till the date of their reinstatement shall be computed towards their pensioner benefits"

vide judgment and order dated: 24/02/2016. It is pertinent to mention here that this CPLA No.605 of 2015 had been decided alongwith CPLA of 496 of 2014 of the Appellant on the same date.

(Copy of CPLA No.605 of 2015 is annexed as "G")

C. That thus by virtue of 2009 SCMR page 01 the appellant is entitled for equal treatment and is thus fully entitled for back benefits for the period, the appellant worked in the project or with the Government of KPK.

D. That were the posts of the appellant went on regular side, then from not reckoning the benefits from that day to the appellant is not only illegal and void, but is illogical as well.

- E. That where the termination was declared as illegal and the appellant was declared to be re-instated into service vide judgment and order dated: 26-06-2014, then how the appellant can be reinstated on 05/10/2016 and that too with immediate effect.
- F. That attitude of the respondents compelled the appellant and his colleagues to knock the doors of the Hon'ble High Court again and again and were even out to appoint blue eyed ones to fill the posts of the appellant and at last when strict directions were issued by Hon'ble court, the Respondents vent out their spleen by giving immediate effect to the reinstatement order of the appellant, which approach under the law is illegal.
- G. That were the appellant has worked, regularly and punctually and thereafter got regularized then under rule 2.3 of the pension Rules 1963, the appellant is entitled for back benefits as well.
- H. That from every angle the appellant is fully entitled for the back benefits for the period that the appellant worked in the subject project or with the Government of KPK, by giving retrospective effect to the re-instatement order dated: 05/10/2016.
- I. That any other ground not raised here may graciously be allowed to be raised at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of the instant appeal the partial impugned reinstatement order no. SOE(PWD)4-9/7/2014/HC, dated 05/10/2016 may graciously be modified to the extent of "immediate effect" and the reinstatement of the appellant be given effect w.e.f 01/07/2014 date of regularization of the project in question and converting the post of the appellant from developmental to non-developmental/regular side, with all back benefits in terms of arrears, seniority and promotion as accorded vide CPLA 605 of 2015 order dated: 24/02/2016.

Any other relief not specifically asked for may also graciously be awarded in favour of the appellant in the circumstances of the case.

(5)

Signature

Dated:

APPELLANT

Through

**Athar Abbas
Assad Ullah Khan
Advocates Peshawar High Court
Peshawar.**

Signature

NOTE:

No such like appeal for same appellant, upon the same subject matter has been filed by me, prior to the instant one, before this Hon'ble Tribunal.

Signature
Advocate

⑥

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR.**

In Ref. S.A _____/2017

IHTISHAM UL HAQ

Versus

GOVT: OF KP & OTHERS

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

1. That the Petitioner/Appellant is filing the accompanying Service Appeal, the contents of which may graciously be considered as integral part of the instant petition.
2. That delay in filing the accompanying appeal was never deliberate, but due to reason for beyond control of the petitioner.
3. That after filing departmental appeal on 20/05/2016, the appellant with rest of their colleagues regularly attended the Departmental Appellate Authority and every time was extended positive gestures by the worthy departmental Authority for disposal of the departmental appeal, but in spite of lapse of statutory rating period, and period thereafter till filing the accompanying service appeal before this Hon'ble Tribunal, the same were never decided or if decided not intimated to the petitioner.
4. That besides the above as the accompanying Services appeal is about the back benefits and arrears and being a financial matters, therefore the financial questions are involved which affect the

7

current salary package regularly etc of the appellant, so is having a repeatedly reckoning cause of action as well.

5. That besides the above, law always favour adjudication on merits and technicalities must always be eschewed in doing justice and deciding cases on merits.

It is therefore, most humbly prayed that the acceptance of the instant petition, the delay in filing of the accompanying service appeal may graciously be condoned and the accompanying service appeal may very graciously be decided on merits.

Dated:12/10/2017



APPELLANT

Through

**Athar Abbas
Assad Ullah Khan
Advocates Peshawar High Court
Peshawar.**



8

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR.**

In Ref. S.A _____/2017

IHTISHAM UL HAQ
Versus
GOVT: OF KP & OTHERS

AFFIDAVIT

I, Mr. Ihtisham Ul Haq, Chowkidar (BPS-03) Office Of The District Population Welfare Officer Hangu, do hereby solemnly affirm and declare that all the contents of the accompanied appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.


DEPONENT

ATTESTED,

12 OCT 2017



Identified by:

Ather Abbas
Advocate High Court Peshawar.

(9)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR.**

In Ref. S.A _____/2017

IHTISHAM UL HAQ

Versus

GOVT: OF KP & OTHERS

MEMO OF ADDRESSES

APPELLANT:

Ihtisham Ul Haq S/O Khan Zada
R/O Mohallah Ghari Bazar Hangu.

RESPONDENTS:

1. Govt: of Khyber Pakhtunkhwa Through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.
3. Director General, Population Welfare, Plot No.18, Sector E-8, Phase-VII, Hayatabad, Peshawar.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. District Account Officer, Account Office, District Hangu.
6. District Population Welfare officer Hangu.

Dated:



APPELLANT

Through

Athar Abbas
Assad Ullah Khan
Advocates Peshawar High Court
Peshawar.



(10)
OFFICE OF THE
DISTRICT POPULATION WELFARE OFFICER,
HANGU

Annex "A"

F.No.1 (1)/2011-12/Admn:

Dated Hangu the 8/3/2014.

OFFICE ORDER.


In pursuance of Assistant Director (Admn), Directorate of Population Welfare, Khyber Pakhtunkhwa, Peshawar offer of appointment letter F.No.4 (35)/2013-14/Admn/FWW/Adv dated 4/3/2013 and subsequent submission of arrival report for duty by Mr. Iftikhar-ul-Flag, Chowkidar (Fixed Pay) at District Population Welfare Office, Hangu on 7/3/2014(FN).


He is hereby taken on staff strength of this district as chowkidar (ADP) on 7/3/2014(FN). He is directed to report I/C FWC-Dallan for his duties.

(IFTIKHAR AHMAD)
DPWO HANGU

Copy to:-

1. P.S to Director General, Population Welfare Department, Peshawar for information please.
2. Assistant Director (Admn), Population Welfare Department, Peshawar for information please.
3. Accounts Assistant (local) for information & n/action.
4. Storekeeper (local) for information.
5. FWW, I/C FWC-Dallan for information.
- ✓ 6. Official concerned for information.
7. Personal file.


DPWO HANGU
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Annex-B
13

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(35)/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	Hasina Qazi	FWW	Hangu
2	Tahira Yasmeen	FWW	Hangu
3	Shabnam Begum	FWA (F)	Hangu
4	Janbil Noor	FWA (M)	Hangu
5	Ihtisham-ul-Haq	Chowkidar	Hangu
6	Bibi Asia	Aya / Helper	Hangu

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


Sd/-
(Project Director)

F.No.4 (35)/2013-14/Admn

Dated Peshawar the 13/6/2014.

Copy forwarded to the:-

1. Director Technical, PWD, Peshawar.
2. District Population Welfare Officer, Hangu.
3. District Accounts Officer, Hangu.
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.


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Assistant Director (Admn)

Government of Khyber Pakhtunkhwa
 Directorate General Population Welfare
 Post Box No. 232
 Peshawar

Dated Peshawar the 13/6/2014

OFFICE ORDER

On completion of the ADP project No. 903-821-7501/10225 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	Muzammar Qazi	PWA	Hangu
2	Tamara Yasmeen	PWA	Hangu
3	Saharun Begum	PWA (S)	Hangu
4	Saharun Begum	PWA (M)	Hangu
5	Muzammar Qazi	Coordinator	Hangu
6	Muzammar Qazi	Asst. PWA	Hangu

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

201-
(Project Director)

Dated Peshawar the 13/6/2014

F.No.4 (321/2013-14)Admin

Copy forwarded to the:-

1. Director Technical, PWD, Peshawar
2. District Population Welfare Officer, Hangu
3. District Accounts Officer, Hangu
4. Chief Health PBD Department, Khyber Pakhtunkhwa
5. P2 to Advisor to Chief Minister for Population Welfare, Khyber Pakhtunkhwa
6. P2 to Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department, Peshawar
7. P2 to Secretary to Govt. of Khyber Pakhtunkhwa, Population Welfare Department, Peshawar
8. P2 to Director General, PWD, Peshawar
9. Officer's concerned.
10. Master File.

Assistant Director (Admin)

13/6/2014

12



Annex "C"

IN THE PESHAWAR HIGH COURT PESHAWAR

W. P No. 1730-P /2014

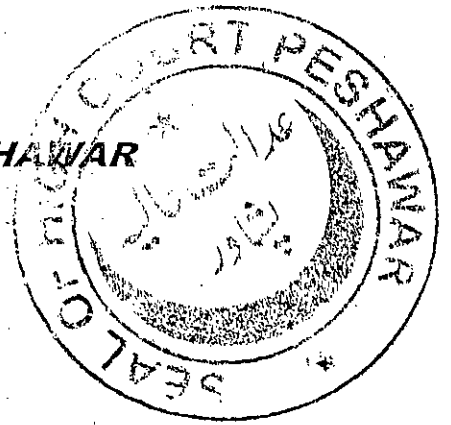
1. Muhammad Nadeem Jan s/o Ayub Khan FWA Male District Peshawar.
2. Muhammad Imran s/o Aftab Ahmad FWA Male District Peshawar.
3. Jehanzaib s/o Taj Akbar FWA Male District Peshawar.
4. Sajida Parveen d/o Bad Shah Khan FWW Female District Peshawar.
5. Abida Bibi D/O Hanif Shah FWW Female District Peshawar.
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 Manif 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. Wajid Nawab S/O Nawab Khan Chowkidar District Peshawar.
16. Shah Khalik s/o Zahir Shah Chowkidar District 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.

FILED TODAY
Deputy Registrar
3/1 MAY 2014

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EXAMINED
Peshawar High Court
12 JUL 2014

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



W.P. No. 1730 of 2014
with CM 559-P/14 and CM 605 and 605/14

JUDGMENT

Date of hearing 26/06/2014

Appellant Muhammad Nadeem Jinnah by Mr.
IEB3 Anwar Advocate.

Respondent Govt etc by Qasim Ali
Shah AAG.

NISAR HUSSAIN KHAN, J.- By way of instant

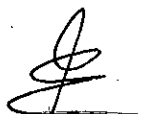
writ petition, petitioners seek issuance of an appropriate writ for declaration to the effect that they have been validly appointed on the posts under the Scheme "Provision of Population Welfare Programme" which has been brought on regular budget and the posts on which the petitioners are working have 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

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Peshawar High Court
12 JUL 2014

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

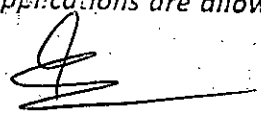
2. Case of the petitioners is that the Provincial Government Health Department approved a scheme namely Provision for Population Welfare Programme for a period of five years from 2010 to 2015 for socio-economic well being of the downtrodden citizens and improving the basic health structure; that they 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.

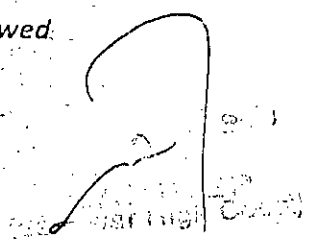

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3. Some of the applicants/interveners namely Ajmal and 76 others have filed C.M.No. 600-P/2014 and another alike C.M.No.605-P/2014 by Anwar Khan and 12 others have prayed for their impleadment in the writ petition with the contention that they are 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.


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 9 JUL 2014

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.



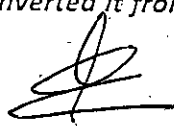
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5. It is apparent from the record that the posts held by the petitioners were advertised in the Newspaper on the basis of which all the petitioners applied and they had undergone due process of test and interview and thereafter they were appointed 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


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EXAMINER
Peshawar High Court
1-2 JUL 2014

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 from 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,



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EXAMINER
Peshawar High Court,
12 JUL 2014

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



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 EXAMINER
 Peshawar High Court
 12 JUL 2014

& 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, th's writ petition is allowed in the terms that the petitioners shall remain on the posts.

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Prothonotary Court.

12 JUL 2014

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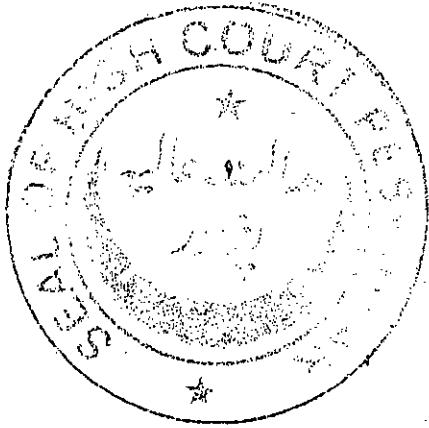
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subject to the fate of CP No.344-P/2012 as identical proposition of facts and law is involved therein.

Announced on 26th June, 2014.

Justice Nisar Hussain Khan - C
Justice Asadullah Khan - Channalla - J

Office
12/07/14



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Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan Order 1984

12 JUL 2014

51

Date of Presentation of Application 01/7/2014

No of Pages 31

Copying fee /

Agent Fee /

Total 62-00

Date of Payment 12/7/2014

Date of Receipt 12/7/2014

Date of Discharge 12/7/2014

Muhammad Ayaz

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Annex-D

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE ANWAR ZAHEED HANFEE, J.C.
MR. JUSTICE NIAZI SAQIB NISAR
MR. JUSTICE AFTAB HAMEED UR RAHMAN
MR. JUSTICE ISMAIL HAMEED UR RAHMAN
MR. JUSTICE KIBRI AKHTAR 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 Writ Petition No. 105/2009 in WP. No. 5972009)
Govt. of KPK thr. Secy. Agriculture vs. Adnanullah and others

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 Humayun 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. 1892/2011)
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. 300-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-Qad), Swat in W.P. No. 189-A/2012)
Govt. of KPK thr. Secy. Agriculture vs. Muhammad Ayub Khan and others
Livestock Peshawar and others

CIVIL APPEAL NO. 52-P OF 2013
(On appeal against the judgment dated 5-12-2012 passed by the Peshawar High Court, Peshawar in Writ Petition No. 3027/2011)
Govt. of KPK thr. Chief Secretary vs. Qalbe Abbas and another and others

CIVIL APPEAL NO. 1-P OF 2013
(On appeal against the judgment dated 10-05-2012 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qad), 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 15-05-2012 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qad), Swat, in Writ Petition No. 2001/2009)
Govt. of KPK thr. Secretary vs. Iqbal Hussain and others

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Court Associate
Supreme Court of Pakistan
Islamabad


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Livestock and others

CIVIL APPEAL NO. 113-P OF 2013

(On appeal against the judgment dated 17-05-2013 passed by the Peshawar High Court, Mingora Bench (Dae-ul-Qura) Dept. In Writ Petition No. 2302/2009)

Govt. of KPK thr. Secretary I.T. 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/2015)

Govt. of KPK thr. Secy. Agriculture, Vs. Saffdar 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/2015)

Govt. of KPK thr. Secy. Agriculture, Vs. Inayatullah and others

CIVIL PETITION NO. 600-P OF 2013

(On appeal against the judgment dated 05-06-2012 passed by the Peshawar High Court, Peshawar, in Writ Petition No. 189 S/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 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 Idraaq and others

CIVIL PETITION NO. 526-P OF 2013

(On appeal against the judgment dated 12-2-2013 passed by the Peshawar High Court Peshawar, in Writ Petition No. 376-P/13)

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 12-02-2013 passed by the Peshawar High Court Peshawar, in Writ Petition No. 377-P/2013)

Govt. of KPK through Chief Secy. Vs. Mst. Rehab Khattak

CIVIL PETITION NO. 528-P OF 2013

(On appeal against the judgment dated 12-02-2013 passed by the Peshawar High Court Peshawar, in Writ Petition No. 378-P/2013)

Govt. of KPK through Chief Secy. Vs. Faisal Khan

CIVIL PETITION NO. 28-P OF 2014

(On appeal against the judgment dated 19-07-2014 passed by the Peshawar High Court Peshawar, in Writ Petition No. 141-P/2014)

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[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

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Case No. 134-P/2015

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High Court, Alameda Bench (Dumuk Qera) Swat, in Writ Petition No. 425-P/2010)
Govt. of KPK through Chief Secy. Vs. Rahimullah and others
Peshawar 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. 213-P/2013)
Govt. of KPK through Chief Secy. Vs. Mst. Farida Aziz
Peshawar and others

CIVIL PETITION NO. 621-P OF 2015
(On appeal against the judgment dated 08-10-2015 passed by the Peshawar High Court, Alameda Bench, in Writ Petition No. 55-A/2015)
Govt. of KPK through Chief Secy. Vs. Mst. Mukund Iqbal Ghishti
Peshawar and others

CIVIL PETITION NO. 305-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. Vs. Imtiaz Khan
Peshawar and others

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. Vs. Waqar Ahmed
Peshawar and others

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. Vs. Mst. Nafessa Bibi
Peshawar and others

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. 245-P/2013)
Govt. of KPK through Chief Secy. Vs. Mst. Naima
Peshawar and others

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. Vs. Muhammad Azam and others
Peshawar and others

CA. 134-P/2015
For the appellant(s)

Mr. Waqar Ahmed Khan, Addl. AG KPK
Syed Masood Shah, SO Litigation
Hatiz Altaul Mameen, SO, Litigation (Fin)
Muhammad Khalid, AD (Litigation)
Abdul Hadi, SO (Litigation)

For the Respondent(s)

(Res. No. 136, 183, 191)

(CMA 496-P/13)

Mr. Imtiaz Ali, ASC

Mr. Ghulam Nadi Khan, ASC

Mr. Ayub Khan, ASC

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Court Associate
Supreme Court of Pakistan
Islamabad

P.15
P.1

23
95
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747

CA 135-P/2013
For the appellant(s)

Mr. Waqar Ahmed Khan, Addl. AG KPK
Halizel A. Rehman, Sr. ASC
Mr. Imtiaz Ali, ASC

For the Respondent(s)

CA 136-P/2013
For the appellant(s)

Mr. Waqar Ahmed Khan, Addl. AG KPK
Halizel A. Rehman, Sr. ASC
Mr. Imtiaz Ali, ASC

For the Respondent(s)

CA 137-P/2013
For the appellant(s)

Mr. Waqar Ahmed Khan, Addl. AG KPK
Mr. Ijaz Anwar, ASC

For Respondents (2 to 6)

CA 138-P/2013
For the appellant(s)

Mr. Waqar Ahmed Khan, Addl. AG KPK
Not represented.

For the Respondent(s)

CA 52-P/2013
For the appellant(s)

Mr. Waqar Ahmed Khan, Addl. AG KPK
In person (Absent)

For Respondent No. 1

For Respondent No. 2

CA 1-P/2013
For the appellant(s)

Mr. Waqar Ahmed Khan, Addl. AG KPK
Mr. Ghulam Nabi Khan, ASC
Mr. Khushdil Khan, ASC

For Respondents (1-4, 7, 8, & 10-13)

CA 133-P/2013
For the appellant(s)

Mr. Waqar Ahmed Khan, Addl. AG KPK
Mr. Ghulam Nabi Khan, ASC

For Respondents (1-3, 5 & 7)

For respondents (4, 8, 9 & 10)

CA 113-P/2013
For the appellant(s)

Not represented.

For the Respondent(s)


CA 231-P/2015
For the appellant(s)

Mr. Waqar Ahmed Khan, Addl. AG KPK
Ghulam Nabi Khan, ASC

For Respondents (1-5)

Mr. Waqar Ahmed Khan, Addl. AG KPK
Mr. Shoaib Shaheer, ASC

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CA.252-P/2015
For the appellant(s)

For Respondent No. 1

CP.600-P/2014
For the Petitioner(s)

For the Respondent(s)

CP.496-P/2014
For the Petitioner(s)

For the Respondent(s)

CP.34-P/2014
For the Petitioner(s)

For the Respondent(s)

CPs.525 to 528-PC.913
For the Petitioner(s)

For the Respondent(s)

CP.23-P/2014
For the Petitioner(s)

For the Respondent(s)

CPs.214-P/2014, 368-
371-P/2014 and 619-
P/2014 & 621-P/2014
For the Petitioner(s)

For the Respondent(s)

Date of hearing

Mr. Waqar Ahmed Khan, Addl. AG KPK

Mr. Shoaib Shaheen, ASC

Mr. Waqar Ahmed Khan, Addl. AG KPK

Ms. Sultia Rehman (in person)

Mr. Waqar Ahmed Khan, Addl. AG KPK,
Noor Ahsan, Director, Population Welfare
Department.

Mr. Khushdil Khan, ASC

Mr. Shakeel Ahmed, ASC

Syed Rifaqat Hussain Shah, AOK

Mr. Waqar Ahmed Khan, Addl. AG KPK

Mr. Ijaz Anwar, ASC

Mr. Waqar Ahmed Khan, Addl. AG KPK

Mr. Ghulam Nabi Khan, ASC
Mr. Khushdil Khan, ASC

Mr. Waqar Ahmed Khan, Addl. AG KPK

Not represented:

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, Ananullah, applied for the post of Accountant (BPS-1) 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 subject 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 regularization 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

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22.12.2008 and 03.12.2009. The Appellants filed Petition No. 15, 16 & 17 Appeal before this Court in which leave was granted; hence this Appeal and Petition

C.A No. 336-P of 2010 to 135-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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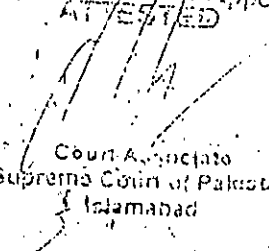
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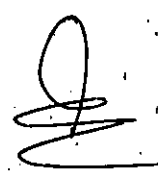
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20.06.2017, with the direction to consider the case of the respondents in the light of the judgments dated 22.12.2008 and 03.11.2009. The Appellants filed Petition for leave to Appeal before this Court in which leave was granted; hence these Appeals.

Civil Petition No. 519-P/2014
Establishment of Database Development Based on Electronic Tools (Project)

3. 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 as 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 Petition No. 352-P of 2013
Industrial Training Centre Garhi Shehsdad and Industrial Training Centre Garhi Tajak,
Peshawar

6. In the year 2008, upon the recommendations of the Departmental Selection Committee, after fulfilling all the usual formalities, the Respondents were appointed on contract basis on various posts in Industrial Training Centre Garhi Shehsdad and Industrial Training Centre Garhi 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 19.07.2012. The Respondents filed Writ Petitions No 351-P, 352, 353 and 2454-P of 2013, against the order of 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 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
Darul-Aman Haripur

8. On 17.03.2009, a post of Superintendent BS-17 was advertised 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, a bond 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 some order as has already been passed by this Court in W.P. No. 2131-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. 24-P of 2010
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 Committees in the Schemes titled "Centre for Mentally Retarded & Physically Handicapped (MR&HP)" and "Welfare Home for Orphan Female Children", Islamabad, vide order dated 23.08.2000 and 29.05.2000, 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 KFE 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 Petition No.562-P to 578-P, 584-P to 589-P, 605-P to 608-P of 2011 and 55-P, 56-P and 59-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. 82-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 in the "On Farm Water

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Management Project" on contract basis. The Respondent applied for the said post and was appointed on such on contract basis on the recommendation of the Departmental Promotion Committee after completion of a requisite and more 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, 302 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 2013 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 Battikhela and Female Industrial Training Centre, at
Gandi Usman, Khat, Dargal.

12. In response to an advertisement, the Respondents applied for different positions in the "Welfare Home for Female Children", Malakand at Battikhela and "Female Industrial Training Centre" at Gandi Usman, Khat. 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 along with 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 Appeal by the Appellants.

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

13. Subsequent 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.

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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. 1061 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. 23 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. 224-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 2013. Hence these Appeals by the Appellants.

Civil Petition No. 344-P of 2013
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. M. 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 31 by way of Court orders passed by this Court and of the learned Peshawar High Court. He referred to the case of Govt. of NWFP v. 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 v. Kaleem Shah (2011-SCMR 1004), this Court followed the judgment of Govt. of NWFP v. Abdullah Khan (*ibid*). The judgment, however, was wrongly decided. The finding that the 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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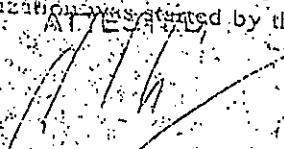
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employees appointed in 2005 and those in 1980 were not similarly placed and, therefore, there was no question of discrimination. According to him, they will have to come through fresh inductions to relevant posts if they wish to fall under the scheme 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 one 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 Dorar (2011 SCMR 1239) and Abdul Wahid vs. Chairman CBR (1998 SCMR 882).

20. Mr. Chulam 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 honorable 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 Zulfqar 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. 135-136-1/2013 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 Adhcc Civil Servants (Regularization of Services) Act, 1987, KPK Adhcc 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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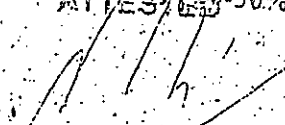
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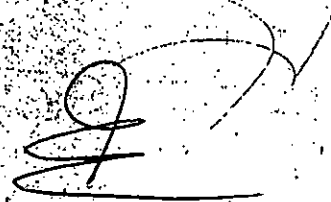
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(Regularization of Services) Act, 2009, was not applicable to the Respondents. He referred to Section 19(2) of the KPK Civil Servants Act, 1973, which was substituted vide KPK Civil Servants (Amendment) Act, 2005, provides that "a person though selected 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 contract 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 03.07.2012 that 115 employees were regularized under section 19 (2) of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 and Regularization Act, 2005 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


 Court Associate
 Supreme Court of Pakistan
 Islamabad

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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.

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22. Mr. Iqbal Ali, learned ASC, appearing on behalf of the Respondent in C.A. 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 contended 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. 355/008 and that no Appeal has been filed against it.

23. Mr. Ayub Khan, learned ASC, appeared in C.M.A. 499-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 counsel including Hafiz S. A. Rehman.

24. Mr. Ijaz Anwar, learned ASC, appeared in C.A. 137-P/2013 for Respondents No. 1 to 5, 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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Islamabad

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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. Abduloh Khan (ibid) and Govt. of NWFP vs. Kaleem Saad (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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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 Services) Act, 2005, (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, 2005, 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, 2005 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-off 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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Islamabad

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...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 with 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 Minister 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(a) 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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Supreme Court of Pakistan
Islamabad

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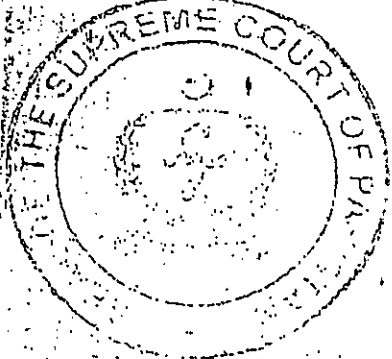
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Government departments. The employees of the same Project were adjusted against the posts created by the Provincial Government in this behalf.

31. The record further reveals that the Respondents were appointed on contract basis and were in employment/service for several years and Projects of which they were appointed have also been taken out of the regular Budget of the Government, therefore, their status as Project employees are ended once their services were transferred to the different attached Government Departments; in terms of Section 3 of the Act. The Government of K.P.K. 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 herein, these Appeals, except Civil Appeal No.605 of 2015, are dismissed. Judgment in Civil Appeal No.605 of 2015 reserved"



Islamabad the,
24-02-2016
Approved for reporting

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

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Supreme Court of Pakistan
Islamabad

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11565/16 Civil/Criminal

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Date of delivery of Copy: 09.06.16

Compared by/Prepared by: 62/16

Received by: 62/16

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PRESENT:
MR. JUSTICE ANWAR ZAFER JAMALI, H.C.J.
MR. JUSTICE ANWAR SAQIB NISAR
MR. JUSTICE AMIR HAMEED MUSLIM
MR. JUSTICE TOBAK HAMEEDUR RAHMAN
MR. JUSTICE ICHHA ABU HUSSAIN

CIVIL APPEAL NO. 134-P OF 2013

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

CIVIL APPEAL NO. 135-P OF 2013

Chief Secy. Govt. of KPK & others - Vs. Asim Hussain and others.

CIVIL APPEAL NO. 136-P OF 2013

Govt. of KPK and others - Vs. Mohammad Yousaf and others.

CIVIL APPEAL NO. 137-P OF 2013

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

CIVIL APPEAL NO. 138-P OF 2013

Govt. of KPK thr. Secy. Agriculture - Vs. Mohammad Asif Khan and others.

CIVIL APPEAL NO. 52-P OF 2015

Govt. of KPK thr. Chief Secretary - Vs. Qalbe Ahsan and another.

CIVIL APPEAL NO. 1-P/2013

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

CIVIL APPEAL NO. 133-P OF 2013

Govt. of KPK thr. Secretary Livestock and others - Vs. Hafthar Hussain and others.

CIVIL APPEAL NO. 113-P OF 2013

Govt. of KPK thr. Secretary Livestock and others - Vs. Muhammad Azhar and others.

CIVIL APPEAL NO. 605 OF 2015

Rizwan Javed and others - Vs. Secy. Agriculture Livestock and Corporation Department Y.P. Peshawar and others.

CIVIL APPEAL NO. 231 OF 2015

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

Justice (Punjab)
Supreme Court of Pakistan
Islamabad

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P. 37

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CA 113-P/2015
For the appellant(s)

For Respondents
(1, 3, 5 & 7)

For Respondents
(4, 6, 9 & 16)

CA 113-P/2015
For the appellant(s)

For the Respondent(s)

CA 605-P/2015
For the appellant(s)

For Respondents (4-7)

CA 231-P/2015
For the appellant(s)

For Respondents (1-3)

CA 232-P/2015
For the appellant(s)

For Respondent No. 1

CP 500-P/2014
For the Petitioner(s)

For the Respondent(s)

CP 496-P/2014
For the Petitioner(s)

For the Respondent(s)

CP 34-P/2014
For the Petitioner(s)

For the Respondent(s)

CP 526 & 528-P/2013
For the Petitioner(s)

For the Respondent(s)

CP 28-P/2014
For the Petitioner(s)

For the Respondent(s)

Mr. Waqar Ahmed Khan, Addl. AG KPK
Mr. Ghulam Nabi Khan, ASC

Not represented

Mr. Waqar Ahmed Khan, Addl. AG KPK
Ghulam Nabi Khan, ASC

Mr. Ejaz Anwar, ASC
Mr. M. S. Khattak, AOR

Mr. Waqar Ahmed Khan, Addl. AG KPK

Mr. Waqar Ahmed Khan, Addl. AG KPK
Mr. Ghulam Nabi Khan, ASC

Mr. Waqar Ahmed Khan, Addl. AG KPK
Mr. Shoaib Shahzad, ASC

Mr. Waqar Ahmed Khan, Addl. AG KPK
Mr. Shoaib Shahzad, ASC

Mr. Waqar Ahmed Khan, Addl. AG KPK
Mr. Saad Rehman (in person)

Mr. Waqar Ahmed Khan, Addl. AG KPK
Mr. Ahsan, Director, Land Revenue Welfare
Department

Mr. Khushali Khan, ASC

Mr. Shakel Ahmed, ASC

Syed Rifqat Hussain Shah, AOR

Mr. Waqar Ahmed Khan, Addl. AG KPK
Mr. Ejaz Anwar, ASC

Mr. Waqar Ahmed Khan, Addl. AG KPK
Mr. Ghulam Nabi Khan, ASC
Mr. Khushali Khan, ASC

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Deputy Registrar
Sessions Court of Peshawar

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GOVERNMENT OF PUNJAB
 Chief Secretary
 Government of Punjab
 Civil Service (Punjab) Department
 Government of Punjab
 Chief Secretary
 Government of Punjab

- For the Respondent No. 1
 Mr. Waqar Ahmed Khan, Addl. AG KPK
- For the Respondent No. 2
 Rafiz S. A. Rehman, Sr. ASC
 Mr. Inqaz Ali, ASC
 In person
- For the Respondent No. 3
 Mr. Waqar Ahmed Khan, Addl. AG KPK
- For the Respondent No. 4
 Rafiz S. A. Rehman, Sr. ASC
 Mr. Inqaz Ali, ASC
- For the Respondent No. 5
 Mr. Waqar Ahmed Khan, Addl. AG KPK
- For the Respondent No. 6
 Mr. Inqaz Ali, ASC
- For the Respondent No. 7
 Mr. Waqar Ahmed Khan, Addl. AG KPK
- For the Respondent No. 8
 Not represented.
- For Respondent No. 9
 Mr. Waqar Ahmed Khan, Addl. AG KPK
- For Respondent No. 10
 In person
- For the appellant(s)
 Not represented.
- For Respondents (1-4, 7, 8, & 10-13)
 Mr. Waqar Ahmed Khan, Addl. AG KPK
- For Respondent(s) 5, 6, 9, 11, 12 & 14
 Mr. Inqaz Ali, Sr. ASC
 In person (person)

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CIVIL APPEAL NO. 232 OF 2013
Govt. of KPK thr. Secy Agriculture, Livestock, Peshawar and another
Vs. Muhammad Ishaq and others

CIVIL PETITION NO. 600-P OF 2013
Govt. of KPK thr. Chief Secy. and others
Vs. Noman Zaidi and others

CIVIL PETITION NO. 496-P OF 2013
Govt. of KPK thr. Chief Secretary Peshawar and others
Vs. Muhammad Nazeem Jan and others

CIVIL PETITION NO. 34-P OF 2015
Dean, Pakistan Institute of Community Ophthalmology (PICO), FSC and another
Vs. Muhammad Ishaq and others

CIVIL PETITION NO. 526-P OF 2013
Govt. of KPK through Chief Secretary Peshawar and others
Vs. Mst. Safia

CIVIL PETITION NO. 527-P OF 2013
Govt. of KPK through Chief Secy. Peshawar and others
Vs. Mst. Rehab Khattak

CIVIL PETITION NO. 528-P OF 2013
Govt. of KPK through Chief Secy. Peshawar and others
Vs. Faisal Khan

CIVIL PETITION NO. 28-P OF 2014
Govt. of KPK through Chief Secy. Peshawar and others
Vs. Ramallah and others

CIVIL PETITION NO. 214-P OF 2014
Govt. of KPK through Chief Secy. Peshawar and others
Vs. Mst. Farwa

CIVIL PETITION NO. 621-P OF 2015
Govt. of KPK through Chief Secy. Peshawar and others
Vs. Mst. Marika Hajar Chughtai

CIVIL PETITION NO. 368-P OF 2014
Govt. of KPK through Chief Secy. Peshawar and others
Vs. Imtiaz Khan

CIVIL PETITION NO. 369-P OF 2014
Govt. of KPK through Chief Secy. Peshawar and others
Vs. Waqar Ahmed

CIVIL PETITION NO. 370-P OF 2014
Govt. of KPK through Chief Secy. Peshawar and others
Vs. Mst. Nafesa

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Peshawar

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(52) (53) (54)

Case No. 214-172015, 368;
271-172015 and 312;
2201-43-621-172015
For the Petitioner(s)

Mr. Waqar Ahmed Khan, Advocate

For the Respondent(s)
Date of hearing

Not represented
24-02-2016

ORDER

ANWAR ZAHED JAMALI, CIVIL - 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. 501 of 2015
is res...



Islamabad, Sd/-
24-02-2016
Not approved for reporting

- Sd/- Anwar Zaheer Jamali, HCD
- Sd/- Mina Saqib Nisar
- Sd/- Amir Hamid Muslim
- Sd/- Iqbal Hameed Rabbani
- Sd/- Khilji Aftab Hussain, J

Chief Justice of the Supreme Court
Islamabad

Date of Filing
Date of Judgment
Court Fee
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OFFICE OF THE
DISTRICT POPULATION WELFARE OFFICER,
HANGU

F.No.2(1)/2011-16/Admn:

Dated Hangu the 08/10/2016.

OFFICER ORDER.

Mr.Ihtisham ul Haq,Chowkidar,BPS-3(Ex-ADP employee) reinstated against the sanctioned regular post vide this office letter F.No.1(1)2014-15/Admn dated 7/10/2016 is hereby posted at FW-Centre Torawari against the vacant post of Chowkidar with immediate effect till further order.


/

(IFTIKHAR AHAMD)
DPWO HANGU

Copy to:-

1. I/C FWC-Torawari for information.
2. Accts:Asstt./Store keeper(Local) for information.
3. Official concerned for information & compliance.
4. Personal file.


DPWO HANGU


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To

The Chief Secretary,
Govt: of Khyber Pakhtunkhwa,
Peshawar.

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Annex-F

Subject: **DEPARTMENTAL APPEAL**

Respected Sir,

With due respect the undersigned submits as under:

1. That the undersigned alongwith others have been reinstated in service with immediate effects vide order dated: 05/10/2016.
2. That the undersigned and other officials were regularized by the Hon'ble 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 Hon'ble 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.
5. That the said principle has been discussed in detail in the judgment of August Supreme Court of Pakistan vide order dated: 24/02/2016 where 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 required to be follow in the present light of 2009 SCMR 01.

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Date:

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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.

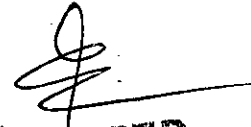
Dated: 20/05/2016

Yours Sincerely,



Ihtisham Ul Haq
Chowkidar

Population Welfare Department
Peshawar
Office of District Welfare
Officer Hangu



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Annex-G

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCU
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE IQBAL HAMEED UR RAHMAN
MR. JUSTICE CHILJI ARIF HUSSAIN

CIVIL APPEAL NO. 605 OF 2015

(On appeal against the judgment dated 18.2.2015
Passed by the Peshawar High Court Peshawar, in
Writ Petition No: 1961/2011)

Rizwan Javed and others

Appellants

VERSUS

Secretary Agriculture Livestock etc

Respondents

For the Appellant

Mr. Ijaz Anwar, ASC
Mr. M. S. Khattak, AOR

For the Respondents

Mr. Waqar Ahmed Khan, Addl. AG KPK

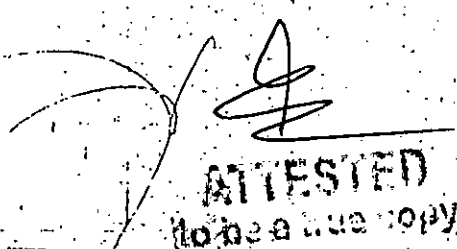
Date of hearing

24-02-2016

ORDER

AMIR HANI MUSLIM, J. - This Appeal by leave of the Court is directed against the judgment dated 18.2.2015 passed by the Peshawar High Court, Peshawar, whereby the Writ Petition filed by the Appellants was dismissed.

2. The facts necessary for the present proceedings are that on 25-5-2007, the Agriculture Department, KPK got an advertisement published in the press, inviting applications against the posts mentioned in the advertisement to be filled on contract basis in the Provincial Agri-Business Coordination Cell (hereinafter referred to as 'the Cell'). The Appellants alongwith others applied against the various posts. On various


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Secretary
Supreme Court of Pakistan

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dates in the month of September, 2007, upon the recommendations of the Departmental Selection Committee (DSC) and the approval of the Competent Authority, the Appellants were appointed against various posts in the Cell, initially on contract basis for a period of one year, extendable subject to satisfactory performance in the Cell. On 6.10.2008, through an Office Order the Appellants were granted extension in their contracts for the next one year. In the year 2009, the Appellants' contract was again extended for another term of one year. On 26.7.2010, the Contractual term of the Appellants was further extended for one more year, in view of the Policy of the Government of KPK, Establishment and Administration Department (Regulation Wing). On 12.2.2011, the Cell was converted to the regular side of the budget and the Finance Department, Govt. of KPK agreed to create the existing posts on regular side. However, the Project Manager of the Cell, vide order dated 30.5.2011, ordered the termination of services of the Appellants with effect from 30.6.2011.

3. The Appellants invoked the constitutional jurisdiction of the learned Peshawar High Court, Peshawar, by filing Writ Petition No.196/2011 against the order of their termination, mainly on the ground that many other employees working in different projects of the KPK have been regularized through different judgments of the Peshawar High Court and this Court. The learned Peshawar High Court dismissed the Writ Petition of the Appellants holding as under :

"6. While coming to the case of the petitioners, it would reflect that no doubt, they were contract employees and were also in the field on the above said cut of date but they were project employees, thus, were not entitled for regularization of their services as explained above. The august Supreme Court of Pakistan in the case of Government of Khyber

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Supreme Court of Pakistan
Islamabad

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The Appellate Bench in Government of Punjab vs. Punjab
Employees Union (Punjab) (2011 SCMR 989) and
SCMR 1004) has categorically held so. The concluding part
of the said judgment would require reproduction, which
reads as under:

In view of the clear statutory provisions the respondents cannot seek regularization as they were admittedly project employees and thus have been expressly excluded from purview of the Regularization Act. The appeal is therefore allowed and the impugned judgment is set aside and writ petition filed by the respondents stands dismissed.

In view of the above the petitioners cannot seek regularization being project employees which have been expressly excluded from purview of the Regularization Act and hence their writ petition being devoid of merit is hereby dismissed.

The Appellants filed Civil Petition for leave to Appeal No. 090 of 2015 in which leave was granted by this Court on 01/07/2015. Hence this appeal.

We have heard the learned Counsel for the Appellants and the learned Additional Advocate General KPK. The only distinction between the case of the present Appellants and the case of the respondents is Civil Appellants No. 111-E of 2015. It is that the projects in which the present Appellants were appointed as workers by the KPK Government in the year 2007 whereas most of the projects in which the aforesaid respondents were appointed were regularized before the cut-off date provided in North West Frontier Province (now KPK) Employees (Regularization of Services) Act, 2009. The present Appellants were appointed in the year 2007 on contract basis in the project and after completion of all the requisite codal formalities, the period of their contract appointments was extended from

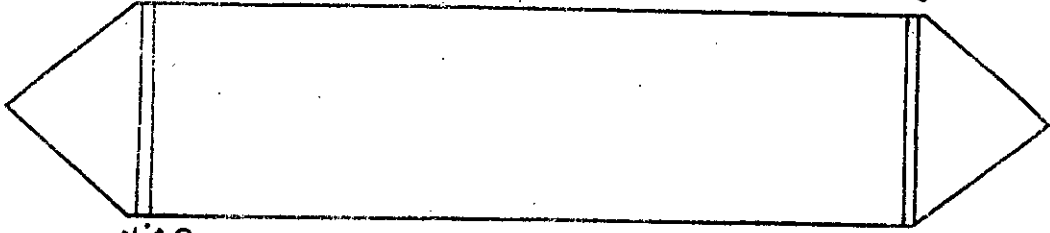
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Court Associate
1st Principal Court of Pakistan
Islamabad

بعدالت Service Tribunal



2ء مخانب

اضمنام الموقو بنام

Service Appeal

موزخه

مقدمه

دعوى

جرم

باعث تحریر آ نك

مقدمه مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
 آن مقام سید اور کیلئے الطبع مسکن اینڈ اسٹورس فنان
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
 بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضعی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
 کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائنہ التوائے مقدمہ کے سبب سے ہوگا۔
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
 مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم 13/10/2012 باہ اکتوبر 2012

گواہ العبد

کے لئے منظور ہے۔

بمقام

Accepted by
 Appell

IN THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR.

In Appeal No.1166/2017.

Ihtisham-ul-Haq, Chowkidar (BPS-01).....

(Appellant)

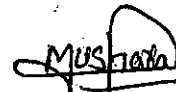
VS

Govt. of Khyber Pakhtunkhwa and others

(Respondents)

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Deponent

Sagheer Musharraf
Assistant Director (Lit)

IN THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR.

In Appeal No.1166/2017.

Ihtisham-ul-Haq, Chowkidar (BPS-01).....

(Appellant)

VS

Govt. of Khyber Pakhtunkhwa and others

(Respondents)

Joint para-wise reply/comments on behalf of the respondents No.2, 3 & 6.

Respectfully Sheweth,

Preliminary Objections.

1. That the appellant has got not 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 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. Incorrect. That the appellant was initially appointed on project post as ^{Chowkidar}~~Aya/Helper~~ in BPS-01 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 Pakhtunkhwa (2011-14)”. It is also pertinent to mention that during the period under reference, there was no other such project in / under in Population Welfare Department with nomenclature of posts as ^{Chowkidar}~~Aya/Helper~~. Therefore name of the project was not mentioned in the offer of appointment.
2. Incorrect. As explained in para-1 above.
3. Incorrect. The project in question was completed on 30/06/2014, the project posts were abolished and the employees were terminated. According to project policy of Govt. of Khyber Pakhtunkhwa on completion of scheme, the employees were to be terminated which is reproduced as under: “On completion of the projects the services of the project employees shall stand terminated. However, they shall be re-appointed on need basis, if the project is extended over any new phase of phases. In case the project posts are converted into regular budgetary posts, the posts shall be filled in according to the rules, prescribed for the post through Public Service Commission or The Departmental Selection Committee, as the case may be: Ex-Project employees shall have no right of adjustment against the regular posts. However, if eligible, they may also apply and compete for the post with other candidates. However keeping in view requirement of the Department, 560 posts were created on current side for applying to which the project employees had experience marks which were to be awarded to them.
4. Correct to the extent that after completion of the project the appellant alongwith other incumbents were terminated from their services as explained in para-3 above.
5. Correct to the extent that the Honorable Court allowed the subject writ petitions on 26/06/2014 & 16/12/2014 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 no by the competent forum.
6. Correct to the extent that the CPLA No.496-P/2014 was dismissed but the Department is of the view that this case was not discussed in the Supreme Court of Pakistan as the case


was clubbed with the case of Social Welfare Department, Water Management Department, Live Stock etc. in the case of Social Welfare Department, Water Management Department, Live Stock etc. the employees were continuously for the last 10 to 20 years while in the case of Population Welfare Department their services period during the project life was 3 months to 2 years & 2 months.


7. Correct to the extent 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 pending in the August Supreme Court of Pakistan. During the period under reference they have neither reported for nor did perform their duties.
8. 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.
9. No comments.

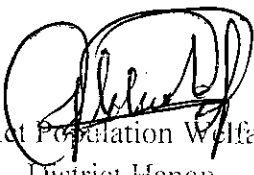
On Grounds.

- A. Incorrect. The appellant alongwith other incumbents reinstated against the sanctioned regular posts, with immediate effect, subject to the fate of re-view petition pending the August Supreme Court of Pakistan.
- B. Correct to the extent 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 pending in the Supreme Court of Pakistan.
- C. As explained in para-7 of the grounds above.
- D. Incorrect. The Department is bound to act as per Law, Rules & Regulation.
- E. Incorrect. After the judgment dated:26/06/2014 of PHC, Peshawar this Department filed Civil Petition No.496/2014 in the Apex Court of Pakistan. Which was decided by the larger bench of Supreme Court of Pakistan where dismissed all the civil petitions filed by the Govt. of Khyber Pakhtunkhwa on 24/02/2016 and now the Govt. of Khyber Pakhtunkhwa filed a re-view petitions in the Apex Court of Pakistan against the decision referred above. Which is still pending. The appellant alongwith other incumbents reinstated against the sanctioned regular posts, with immediate effect, subject to the fate of re-view petition pending in the August Supreme Court of Pakistan.
- F. Incorrect. Verbatim based on distortion of facts. As explained in Ground-E above.
- G. Incorrect. They have worked against the project post and the services of the employees neither regularized by the court nor by the competent forum hence nullifies the truthfulness of their statement.
- H. Incorrect. The appellant alongwith other incumbents have taken all the benefits for the period, they worked in the project as per project policy.
- I. 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 is still pending before the Supreme Court of Pakistan.


Secretary to Govt. of Khyber Pakhtunkhwa
Population Welfare, Peshawar.
Respondent No.2


Director General
Population Welfare Department
Peshawar
Respondent No.3


District Population Welfare Officer
District Hangu
Respondent No.6

IN THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

In Appeal No.1166/2017.

Ihtisham-ul-Haq, Chowkidar (BPS-01).....

(Appellant)

VS

Govt. of Khyber Pakhtunkhwa and others

(Respondents)

Counter Affidavit

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



Deponent

Sagheer Musharraf
Assistant Director (Lit)

TO

THE REGISTRAR

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

Subject: Appeal No. F166 of 2017 Mr Ihtisham Ul Haq verses Govt of KPK through Chief Secretary.

Please refer to the subject cited above, It is stated that the case in hand is totally administrative nature. Hence respondent No. 5 are in better position to satisfy the grievances of the appellant Besides the appellant has raised no grievance against this office.

Keeping in view the above mention facts it is therefore humbly requested that the appeal in hand have no merit and may be dismissed against this office please.



District Accounts Officer

Hangu

NO. Admn/DAO/H9/2017-18/32

dated 9/2/20

TO

THE REGISTRAR


KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.

PESHAWAR.

Subject: Appeal No.1160 of 2017 Mr. Ihtisham Ul Haq verses Govt of KPK through Chief Secretary.

Please refer to the subject cited above. It is stated that the case in hand is totally administrative nature. Hence respondent no. 5 are in better position to satisfy the grievances of the appellant Besides the appellant has raised no grievance against this office.

Keeping in view the above mention facts it is therefore humbly requested that the appeal in hand have no merit and may be dismissed against this office please.


District Accounts Officer

Hangu

Before the Khyber Pakhtunkhwa Services Tribunal Peshawar

Appeal No.1166/2017

Ihtisham Ul Haq.....Appellant.

V/S

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

(Reply on behalf of respondent No.4)

Preliminary Objections.


- 1). That the appellant has got no cause of action.
- 2). That the appellant has no locus standi.
- 3). That the appeal in hand is time barred.
- 4). That the instant appeal is not maintainable.

Respectfully Sheweth:-

Para No. 1 to 9:-

That the matter is totally administrative in nature and relates to respondent No.1,2,3 & 6 and they are in better position to satisfy the grievances of the appellant. Besides, the appellant has raised no grievances against respondent No. 4.

Keeping in view the above mentioned facts, it is therefore humbly prayed that the respondent No.4, may kindly be excluded from the list of respondent.


A.A.A. ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR.**

In Ref. S.A 1166 /2017

IHTISHAM UL HAQ
Versus
GOVT: OF KP & OTHERS

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Dated: 23/05/2018

APPELLANT

Through



Athar Abbas
Advocate Peshawar High Court
Peshawar.

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR.**

In Ref. S.A 1166 /2017

**IHTISHAM UL HAQ
Versus
GOVT: OF KP & OTHERS**

**REJOINDER ON BEHALF OF THE APPELLANT TO THE COMMENTS FILED BY THE
RESPONDENT NO.2, 3, & 6**

Respectfully Sheweth:

Reply to Preliminary Objections:-

1. Incorrect and Denied. The appellant has got a good cause of action.
2. Incorrect and expressly denied.
3. Incorrect and expressly denied.
4. Incorrect and expressly denied.
5. Subject to proof. However mere filing of review petition before the Hon'ble Apex court or pendency of the same before the Hon'ble Apex court does not constitute an automatic stay of proceedings before this Hon'ble Tribunal, unless there has been an express order of the Hon'ble Apex court in this regard.
6. Incorrect and expressly denied.
7. Incorrect and expressly denied.

Reply on facts:

1. Incorrect and hypocritical. The appellant was appointed on contract basis and has been regularized later on and is now entitled for the relief sought, while true picture is detailed in the main appeal.
2. Incorrect. True and detailed picture is given in the corresponding paras of the main appeal.
3. Incorrect and denied. Detail reply is given in the Para-4 of the rejoinder.
4. Incorrect and denied. Detail reply is given in the Para-4 of the rejoinder.

5. Incorrect and misleading. The appellant with the other colleagues were appointed on contract basis initially and thereafter, they were regularized by the Hon'ble High court as well as Apex Supreme court. Detail facts and figures are evidently mentioned in the main appeal. In compliance of the order/judgment of the apex courts the respondent issued the partial impugned re-instatement order dated: 05/10/2016 but in such impugned order, the respondents ignored the back benefits of the appellant with mala-fide intention and deprived him from his legal and constitutional right, hence, infringed the terms and condition of the appellant.
6. Incorrect and denied. Record is evident and the regularization of the appellant is not subject to any condition. Respondent department has mala-fidly moved a review petition No.3012/2016 in the Hon'ble apex court and now has taken the pretention of its being pendency before the Hon'ble Apex court just to have a miserable feign to evade the just rights and demands of the appellant and their colleagues, which under no canon of law is allowed or warranted nor such plea can be allowed to defeat the ends of justice.
7. Incorrect and denied. Detail picture is given above and as well as in the main appeal.
8. Incorrect and denied. Reply is already given above.
9. No comments.

Reply of Grounds:

- A. Hypocratic and malicious. True picture is given in the main appeal.
- B. Incorrect. The appellant and rest of their colleagues are fully entitled for the relief; they have sought from this Hon'ble Tribunal.
- C. Reply is same as in Para-7.
- D. Correct to the extent that the department is bound to act as per law, Rules and Regulations but it does not.
- E. Correct to the extent of judgment dated: 26/06/2014,24/02/2016 and moving CPLA, while the rest is misleading.
- F. Incorrect and denied.
- G. Incorrect and denied. The respondents admitted the regularization of the appellant in the proceeding paras of their comments, so their statement is hit by the principle of estopple.

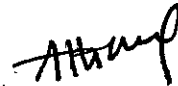
- H. Incorrect and denied. The appellant and all their colleagues have validly and legally been regularized and now are entitled for the relief sought for.
- I. No comments.

It is therefore, most humbly prayed that on acceptance of instant rejoinder, the appeal of the appellant may graciously be allowed, as prayed for therein.

Dated: 23/05/2018

APPELLANT

Through



Athar Abbas

**Advocate Peshawar High Court
Peshawar.**

CNIC: 14202-1648007-7

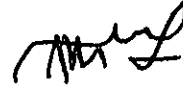
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In Ref. S.A 1166 /2017

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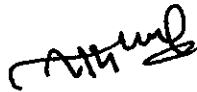
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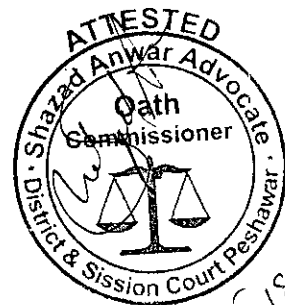
Deponent

CNIC NO. 14202-1648007-7

IDENTIFIED BY:



Athar Abbas
Advocate
Peshawar High Court Peshawar.



23-05-18

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR.

In Ref. S.A. 1166 /2017

IHTISHAM UL HAQ

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GOVT: OF KP & OTHERS

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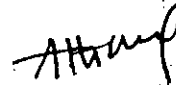
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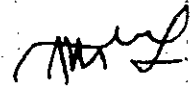
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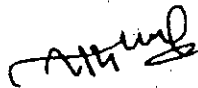
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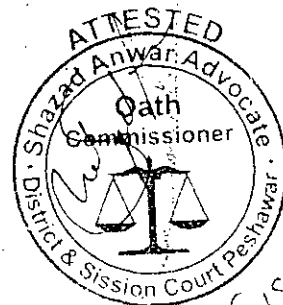
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23.05.18