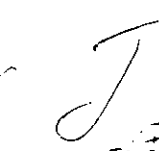



72

PESHAWAR HIGH COURT, PESHAWAR

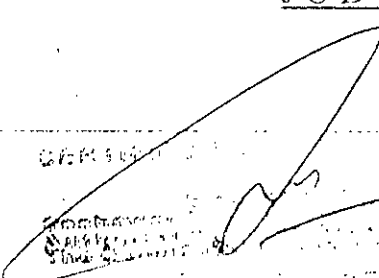
FORM OF ORDER SHEET

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
10.06.2015	<p><u>C.M.No.826-P/2015 in W.P.No.1730-P/2014</u></p> <p>Present: Mr. Javed Iqbal Gulbela, Advocate for petitioners.</p> <p>Mr. Rab Nawaz Khan, AAG for respondents alongwith Masood Khan Orakzai, D.G.</p> <p style="text-align: center;">—</p> <p>Applicants have filed this C.M. with the grievance that after acceptance of W.P.No.1730-P/2014 vide order dated 26.6.2014, the respondents were directed to retain the petitioners on their posts subject to the fate of CP No.344-P/2012 as well as any appeal filed by respondents against ibid order dated 26.6.2014 but despite that, they have advertised the same posts. Let notice be issued to respondents, which is accepted by Mr. Rab Nawaz Khan, AAG and Masood Khan Orakzai on behalf of respondents and seek time to file reply. Allowed. May do so within a week. Till then, operation of impugned advertisement dated 04.01.2015 shall remain suspended.</p> <p style="text-align: right;"> <i>sd/- Nisob Hassan Khan</i>  <i>sd/- M. Dawood Khan</i> </p> <p style="text-align: right;">   <b>JUDGE</b> </p> <p style="text-align: right;">   <b>JUDGE</b> </p>

office  
11/06/15

ATTES

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**JUDGE**

(73) ~~(73)~~ (72)

**PESHAWAR HIGH COURT, PESHAWAR.**

**ORDER SHEET**

Date of Order or Proceedings.	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary.
1	2
14.7.2015	<p><u>C.M NO. 826-P/2015 in COC NO-479-P/2014 in W.P NO-1730-P/2014.</u></p> <p><u>Present:</u> Nemo for petitioner.</p> <p style="text-align: center;">* * *</p> <p>Adjourned for want of service of learned counsel for petitioners for a date to be fixed by the office.</p> <p><i>sd/- Yahya Ahsidi</i> J</p> <p><i>sd/- Ghoshal Daisez</i> J</p> <p style="text-align: right;">JUDGE</p> <p style="text-align: right;">JUDGE</p> <p style="text-align: right;">CERTIFIED TO BE TRUE COPY</p> <p style="text-align: right;">Examiner Peshawar High Court, Peshawar Authorized Under Article 87 The Qanun-e-Shahadat Order 1988</p> <p style="text-align: right;">15/DEC 2015</p>

(K.AII)

**ATTESTED**

**ATTESTED**

# PESHAWAR HIGH COURT, PESHAWAR

## FORM OF ORDER SHEET

Court of.....  
 Case No.....of.....

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2	3
	14.10.2015	<p><u>C.M.No.1309-P/2015 in W.P.No.1730-P/2014.</u></p> <p>Present: Mr. Javed Iqbal Gulbela, Advocate, for the petitioners.</p> <p>Mr. Qaiser Ali Shah, Addl. AG, for the officials of Provincial Govt:</p> <p style="text-align: center;">*****</p> <p>Notice of this C.M. be issued to all the respondents for 29<sup>th</sup> instant.</p> <p style="text-align: right;"><b>CHIEF JUSTICE</b></p> <p style="text-align: right;"><b>JUDGE</b></p> <p><i>sd/ Maghiz Khan</i> <i>sd/ JB Shad Qureshi</i></p> <p style="text-align: right;">CERTIFIED TO BE TRUE COPY</p> <p style="text-align: right;">Examined Peshawar High Court, Peshawar &amp; returned to the District Judge The District Court, Peshawar, on 17/10/2015</p> <p style="text-align: right;">16 DEC 2015</p>

(Fayaz)

**ATTESTED**

**ATTESTED**

(7) 24 3

# PESHAWAR HIGH COURT, PESHAWAR

## FORM OF ORDER SHEET

Court of.....

Case No.....of.....

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2	3
1	29.10.2015	<p><u>C.M.No.1309-P/2015 in W.P.No.1730-P/2014</u></p> <p>Present: Agent of counsel for the petitioners.  Mr. Mujahid Ali Khan, Addl. AG, for the officials of Provincial Govt.</p> <p style="text-align: center;">*****</p> <p>Former states that the learned counsel for the petitioners due to some emergency cannot appear today. Seeks adjournment. Allowed. Adjourn to a short date in office.</p> <p style="text-align: right;"><b>CHIEF JUSTICE</b></p> <p style="text-align: right;"><b>JUDGE</b></p> <p style="text-align: right;"><i>sd/ Maghaz Khan - J sd/ Musabbat Hilali - J</i></p>

(Fayaz)

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*Alme 2/10*

PESHAWAR HIGH COURT PESHAWAR

ORDER SHEET

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
1	2	3
	07.12.2015	<p><u>C.O.C No. 479-P/2015.</u></p> <p>Present:</p> <p>M/S Arif Ullah &amp; Javed Iqbal Gulbela, Advocates for applicants.</p> <p>Mr. Kab Nawaz Khan, AAG for respondents.</p> <p>*****</p> <p><u>ROOH-UL-AMIN KHAN, J:-</u> The instant COC has been filed for imitating contempt of Court proceedings against the respondents for non compliance of the judgment of this Court dated 26.6.2014 in Writ Petition No. 1730-P/2014, para 8 and 9 of which are reproduced below.</p> <p>“8. Learned counsel for 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 of Pakistan 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 of Pakistan.</p>

*[Handwritten signature]*

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ATTESTED  
 REGISTRAR  
 Peshawar High Court  
 15 DEC 2015

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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 Khyber Pakhtunkhwa, this writ petition is allowed in the terms that the petitioners shall remain on the posts subject to the fate of CP No. 344-P/2012 as identical proposition of facts and law is involved therein.

2. Notice was issued to respondents with directions to file their reply which was submitted accordingly.

3. The learned counsel for petitioner emphasized that the petitioner approached the respondents and produced the judgment of this Court to them for its implementation, however, they paid no heed to the matter by giving a deaf ear; that the respondents are willfully and deliberately flouting the judgment of this Court, thus have exposed themselves to the rigors of contempt of Court. Earlier the petitioner had approached this Court through COC No. 333-P/2014 which was disposed of by this Court vide order dated 27.10.2014 in the terms that the parent judgment wherein this Court had allowed

*Lawyer*

**ATTESTED**

**ATTESTED**

*[Signature]*

15 DEC 2015

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regularization of the project employees, had been suspended by the august Apex Court. The successive application for initiating contempt of Court proceedings against respondents have been filed for implementation of the judgment dated 26.6.2014 in litter spirit.

4. having heard learned counsel for petitioners and learned AAG, perusal of record would reveal that no doubt the writ petition of petitioner was allowed in terms of decision of this Court in *Fazla Aziz's* case ( Writ Petition No. 2131-P/2013), but the august Supreme Court of Pakistan while hearing various cases regarding employees of projects was pleased to grant leave to appeal and the matter was placed before the Chief Justice of Pakistan for constitution of a larger Bench. Subsequently, in civil petition No. 93-P/2013 filed against the judgment dated 5.12.2012, passed in writ petition No. 3087/2011, by this Court, the august Supreme Court of Pakistan granted leave to appeal while CM No. 140-P/2013 was allowed by suspending the impugned judgment, vide order dated 12.3.2015. Petitioner seeks implementation of the judgment dated 26.6.2014

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passed in Writ Petition No. 1730, which has been  
assailed by the respondent-department before the  
august Supreme Court of Pakistan, through  
CPLA, wherein the apex Court was pleased to  
pass the following order:-

“Learned Additional Advocate  
General, Khyber Pakhtunkhwa has  
brought to our notice the order dated  
13.6.2013 passed in CP No. 302-P/2011  
and other connected petitions to show  
that the controversy involved in the  
present Appeals/petitions is already  
subject matter of adjudication in the  
said cases where leave has been granted  
on the legal points as formulated in  
paragraph-7 of the order. He has  
further referred to paragraph-9 of the  
same order to show that for hearing of  
these cases a Reference has been made  
to the Hon’ble Chief Justice of Pakistan  
for constitution of a larger Bench. This  
being the position, hearing of these  
appeals/petitions is adjourned. Office is  
directed to fix these appeals/petitions  
for hearing along with the appeals  
arising out of the order dated 13.6.2013.  
Interim order passed earlier, if any  
shall remain operative in the  
meantime.”

5. Bare reading of the above quoted  
order of august Supreme Court of Pakistan,  
would make it abundantly clear that the  
judgment dated 26.6.2014 passed by this Court  
has been suspended by the august Supreme  
Court of Pakistan and at this stage it would not  
be appropriate to proceed further or to direct the  
respondents for implementation of the same.

  
**ATTESTED**  
**ATTESTED**

**ATTESTED**  
EXAMINER  
Cashewari High Court  
15 DEC 2015



(80) (80) (50)

6. In views of the above, the instant  
COC has become infructuous, thus lost its  
efficacy, which is dismissed accordingly. The  
notices issued to respondents are hereby recalled.

*sd/-* *Rohul Amin Khan* *Sami*  
JUDGE  
*sd/-* *Musabbat H. Siddiqi*  
JUDGE

Announced on;  
7<sup>th</sup> of December, 2015.

CERTIFIED TO BE TRUE COPY

*[Signature]*

No. 12759  
Date of Presentation of Application 14/12/10  
No of Pages 19P  
Copying fee \_\_\_\_\_  
Urgent fee \_\_\_\_\_  
Total 28100  
Date of ~~Registration~~ 15/12/10  
Date Given For Delivery 15/12/10  
Date of Delivery of Copy 15/12/10  
Received By [Signature]

ATTESTED

ATTESTED

IN THE HON'BLE PESHAWAR HIGH COURT PESHAWAR

In Re COC No// 186-P / 2016

In W.P No. 1730-P/2014

Muhammad Nadeem Jan S/o Ayub Khan R/o FWA Male,  
District Peshawar and others.

*Petitioners*

VERSUS

1. Fazal Nabi, Secretary to Govt of Khyber Pakhtunkhwa, Population Welfare Deptt, K.P.K House No. 125/III, Street No. 7, Defense Officer's Colony Peshawar.
2. Masood Khan, The Director General, Population Welfare Deptt, F.C Plaza, Sunehri Masjid Road, Peshawar.

*Respondents*

APPLICATION FOR INITIATING  
CONTEMPT OF COURT PROCEEDINGS  
AGAINST THE RESPONDENTS FOR  
FLOUTING THE ORDERS OF THIS  
AUGUST COURT IN W.P# 1730-P/2014  
DATED 26/06/2014.

RESPECTFULLY SHEWETH,

1. That the petitioners had filed a W.P # 1730-P/2014, which was allowed vide judgment and order dated 26/06/2014 by this August Court.

(Copies of W.P # 1730-P/2014 and order dated

**ATTESTED**

**ATTESTED**

26/06/2014 are annexed herewith as annexure –  
“A & B”, respectively).

2. That as the respondents were reluctant in implementing the judgment of this August Court, so the petitioners were constrained to file COC No # 479-P/2014 for implementation of the judgment dated 26/06/2014. (Copies of COC# 479-P/2014 is annexed as annexure – “C”).

3. That it was during the pendency of COC# 479-P/2014 that the respondents in utter violation to judgment and order of this August Court made advertisement for fresh recruitments. This illegal move of the respondents constrained the petitioners to file C.M# 826/2015 for suspension of the recruitment process and after being halted by this August Court, once again made advertisement vide daily “Ma’shriq” dated 22/09/2015 and daily “Aaj” dated 18/09/2015. Now again the petitioners moved another C.M for suspension. (Copies of C.M # 826/2015 and of

**ATTESTED**



(33) (5) (7#)

the thenceforth C.M are annexed as annexure -  
"D & E", respectively).

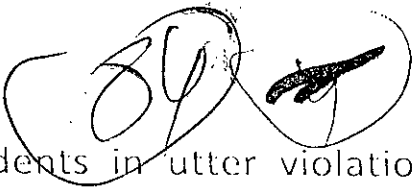
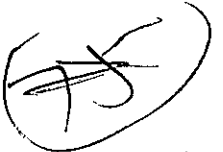
4. That in the meanwhile the Apex Court suspended the operation of the judgment and order dated 26/06/2014 of this August Court & in the light of the same the proceedings in light of COCH 479-P/2014 were declared as being in fractious and thus the COC was dismissed vide judgment and order dated 07/12/2015. (Copies of order dated 07/12/2015 is annexed as annexure "E").

5. That the Apex Court dismissed the C.P.L.A # 496-P/2014 of the Respondents, which had been moved against judgment and order 26/06/2015 of this August Court, vide judgment and order dated 24/02/2016. (Copies of judgment and order dated 24/02/2016 of the Supreme Court of Pakistan is annexed as Ann - "I").

~~ATTACHED~~

6. That inspite of dismissal of the C.P.L.A -- 496-P/2014 by the Apex Court and instead of regularizing the services of the petitioners, the

~~ATTACHED~~

   
respondents in utter violation to the reverend  
judgment and order of this August Court has  
once again made advertisement vide daily  
"Mashriq" dated 07/04/2016 for fresh  
recruitment. (Copy of the advertisement is  
annexed as annexure "G").

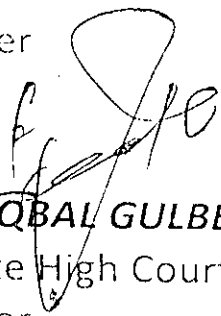
7. That this act of repeated abusing the process of  
court and flouting the orders of this August Court  
the respondents have thus envisaged themselves  
to be proceeded against for contempt of court.

It is, therefore, most humbly prayed that on  
acceptance of the instant petition, the contempt of  
court proceedings may very graciously be initiated  
against the respondents and be punished  
accordingly. It is further prayed that respondents be  
directed to implement the judgment and order  
dated 26/06/2014 in W.P # 1730-P/2014 of this  
August Court in its true letter and spirit.

Dated: - 13-04-2016

Petitioner

Through

  
**JAVED IQBAL GULBELA**  
Advocate High Court  
Peshawar

  
ATTESTED

  
ATTESTED

35

~~Amir~~

PESHAWAR HIGH COURT, PESHAWAR

FORM 'A'  
FORM OF ORDER SHEET

(Signature)

Date of order.	Order or other proceedings with the order of the Judge
3.8.2016	<p><u>COC 186-P of 2016 in W.P. 1730-P of 2014.</u></p> <p>Present: Mr. Javed Iqbal Gurbela, advocate for petitioner.</p> <p>Mr. Rab Nawaz Khan, AAG along with Mr. Sagheer Musharaf, Assistant Director Population Welfare Department for respondents.</p> <p style="text-align: center;">-----</p> <p><u>MUSARRAT HILALI, J.-</u> Through this petition, the petitioners seek initiation of contempt of court proceedings against the respondents for not implementing the judgment of this court in W.P. 1730-P of 2014 dated 26.6.2014, which has attained finality as the C.P.L.A. filed thereagainst has also been dismissed by the apex court on 24.2.2016.</p> <p>2. Respondents were put on notice, who filed reply, which is placed on file. As per contents of reply, the respondents do not qualify to be granted the desired relief and prayed for dismissal of this petition.</p> <p>3. However, when the case was called, the learned AAG along with representative of respondent-department turned up and stated that they may be</p>

ATTESTED

EXAMINER  
Peshawar High Court  
06 AUG 2016

(Signature)

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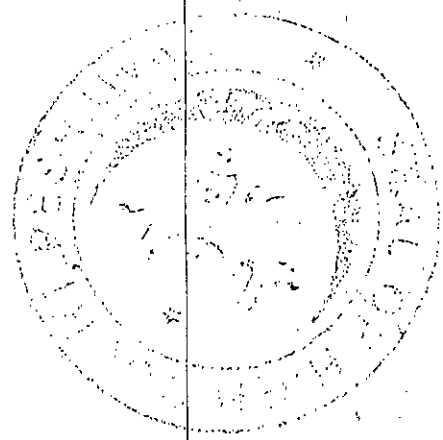
given some time to implement the judgment of this court. As such the respondents are given 20 days to positively comply with the judgment of this court in the aforesaid writ petition and appoint the petitioners against the posts they have applied for. No deviation shall be made from the statement rendered at the bar on behalf of respondents.

Petition disposed of in the above terms.

*Sd/- Musabek A. Sadi*  
*Sd/- Alexander M. M. M. M.*  
 JUDGE JUDGE

CERTIFIED TO BE TRUE COPY

Examiner  
 Postmaster High Court, Hyderabad  
 Authorized Under Article 67 of  
 The Companies Act, 1956  
 06 AUG 2016



1682  
 06-08-16  
 06-08-16  
 06-08-16  
 06-08-16  
 Madam

REGISTERED

REGISTERED

*Agm 2/3/16*

*(Handwritten mark)*

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(82) (P) Am-J

IN THE HON'BLE PESHAWAR HIGH COURT PESHAWAR

In Re COC No. 395-P/2016

In COC No.186-P/2016

In W.P No.1730-P/2014

Muhammad Nadeem Jan S/o Ayub Khan R/o FWA Male,  
District Peshawar and others:

*Petitioners*

**VERSUS**

Fazal Nabi, Secretary to Govt of Khyber Pakhtunkhwa,  
Population Welfare Deptt, K.P.K House No. 125/III, Street  
No. 7, Defense Officer's Colony Peshawar.

*Respondent*

APPLICATION FOR INITIATING  
CONTEMPT OF COURT PROCEEDINGS  
AGAINST THE RESPONDENT FOR  
FLOUTING THE ORDERS OF THIS AUGUST  
COURT IN W.P# 1730-P/2014 DATED  
26/06/2014 & ORDER DATED  
03/08/2016 IN COC NO.186-P/2016

*Respectfully Sheweth,*

1. That the petitioners had filed a W.P # 1730-P/2014, which was allowed vide judgment and order dated 26/06/2014 by this August Court. (Copy of Order dated 26/06/2014 is annexed herewith as annexure "A")

**ATTESTED**



- (28) (7)
2. That as the respondents were reluctant in implementing the judgment of this August Court, so the petitioners were constrained to file COC No # 479-P/2014 for implementation of the judgment dated 26/06/2014. (Copies of COC# 479-P/2014 is annexed as annexure "B").
  3. That it was during the pendency of COC# 479-P/2014 that the respondents in utter violation to judgment and order of this August Court made advertisement for fresh recruitments. This illegal move of the respondents constrained the petitioners to file C.M# 826/2015 for suspension of the recruitment process and after being halted by this August Court, once again made advertisement vide daily "Mashriq" dated 22/09/2015 and daily "Aaj" dated 18/09/2015. Now again the petitioners moved another C.M for suspension. (Copies of C.M # 826/2015 and of the thenceforth C.M are annexed as annexure – "C & D", respectively).
  4. That in the meanwhile the Apex Court suspended the operation of the judgment and order dated 26/06/2014 of this August Court & in the light of the same the proceedings in light of COC# 479-P/2014 were declared as being infructuous and thus the COC was dismissed vide judgment and

**ATTESTED**

(8) [3]

order dated 07/12/2015. (Copies of order dated 07/12/2015 is annexed as annexure "E").

5. That the Apex Court dismissed the C.P.L.A # 496-P/2014 of the Respondents, which had been moved against judgment and order 26/06/2015 of this August Court, vide judgment and order dated 24/02/2016. (Copies of judgment and order dated 24/02/2016 of the Supreme Court of Pakistan is annexed as Ann – "F").
6. That inspite of dismissal of the C.P.L.A – 496-P/2014 by the Apex Court and instead of regularizing the services of the petitioners, the respondents in utter violation to the reverend judgment and order of this August Court has once again made advertisement vide daily "Mashriq" dated 07/04/2016 for fresh recruitment. (Copy of the advertisement is annexed as annexure "G").
7. That again another COC No.186-P/2016 was moved which was deposed off by this August Court vide judgment and order dated 03/08/2016 with direction to respondent to implement the judgment dated 26/06/2014 in W.P.No.1730-P/2014, within a period of 20 days, but inspite of clear cut directions the respondent is lingering on the implementation on one or the other

**ATTESTED**

30 (4)  
pretention (Copies of COC No.186-P/2014 and  
order dated 03/08/2016 are annexed as  
Annexure "H" & "J", respectively)

8. That this act of repeated abusing the process of  
court and flouting the orders of this August Court  
the respondents has thus envisaged himself to be  
proceeded against for contempt of court

It is, therefore, most humbly prayed that on  
acceptance of the instant petition, the contempt of  
court proceedings may very graciously be initiated  
against the respondent and be punished  
accordingly. It is further prayed that respondent be  
directed to implement the judgment and order  
dated 26/06/2014 in W.P # 1730-P/2014 of this  
August Court in its true letter and spirit.

Dated: - 02/09/2016

Petitioners

Through

  
JAVED IQBAL GULBELA,

&

AMIR NAWAZ KHAN,  
Advocates High Court  
Peshawar

  
ATTESTED

FROM :

FAX NO. : 9223622

05 Oct. 2016 04:06PM P1



**GOVERNMENT OF KHYBER PAKHTUNKHWA,  
POPULATION WELFARE DEPARTMENT**

02<sup>nd</sup> Floor, Abdul Wali Khan Multiplex, Civil Secretariat, Peshawar

Dated Peshawar the 05<sup>th</sup> October, 2016

**OFFICE ORDER**

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

SECRETARY

GOVT. OF KHYBER PAKHTUNKHWA  
POPULATION WELFARE DEPARTMENT

Endst: No. SOE (PWD) 4-9/7/2014/HC/

Dated Peshawar the 05<sup>th</sup> Oct: 2016

Copy for information & necessary action to the:-

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

SECTION OFFICER (ESTT)  
PHONE: NO. 091-9223623

**ATTESTED**

To,

The Chief Secretary,  
Khyber Pakhtunkhwa,  
Peshawar

Subject: **DEPARTMENTAL APPEAL**

Respected Sir,

With profound respect the undersigned submit as under:

- 1) That the undersigned along with others have been re-instated in service with immediate effects vide order dated 05.10.2016.
- 2) That the undersigned and other officials were regularized by the honourable High Court, Peshawar vide judgment / order dated 26.06.2014 whereby it was stated that petitioner shall remain in service.
- 3) That against the said judgment an appeal was preferred to the honourable Supreme Court but the Govt. appeals were dismissed by the larger bench of Supreme Court vide judgment dated 24.02.2016.
- 4) That now the applicant is entitle for all back benefits and the seniority is also require to be reckoned from the date of regularization of project instead of immediate effect.

**ATTESTED**

- 73
- 5) That the said principle has been discussed in detail in the judgment of august Supreme Court vide order dated 24.02.2016 whereby it was held that appellants are reinstated in service from the date of termination and are entitle for all back benefits.
  - 6) That said principles are also require to be follow in the present case in the light of 2009 SCMR 01.

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

Yours Obediently,



---

**Muhammad Riaz  
Chowkidar  
Population Welfare Department  
Peshawar  
Office of District Population  
Welfare Officer, Ali House,  
Qafila Road, Tehkal Payan,  
Peshawar**

Dated: 20.10.2016

**ATTESTED**

(54)

A-M  
2

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT:

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

CIVIL APPEAL NO.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

ATTESTED

*[Signature]*  
Court Associate  
Supreme Court of Pakistan  
Islamabad

dates in the month of September, 2007, upon the recommendations of the Departmental Selection Committee (DPC) 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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Court Associate  
Supreme Court of Pakistan  
Islamabad



Pakhtunkhwa Agriculture, Live Stock and Cooperative Department through its Secretary and others vs. Ahmad Din and another (Civil Appeal No.687/2014 decided on 24.6.2014), by distinguishing the cases of Government of NWFP vs. Abdullah Khan (2011 SCMR 989) and Government of NWFP (now KPK) vs. Kaleem Shah (2011 SCMR 1004) has categorically held so. The concluding para 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, the impugned judgment is set aside and writ petition filed by the respondents stands dismissed."

7. In view of the above, the petitioners cannot seek regularization being project employees, which have been expressly excluded from purview of the Regularization Act. Thus, the instant Writ Petition being devoid of merit is hereby dismissed.

4. The Appellants filed Civil Petition for leave to Appeal No.1090 of 2015 in which leave was granted by this Court on 01.07.2015. Hence this Appeal.

5. 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 in Civil Appeals No.134-P of 2013 etc. is that the project in which the present Appellants were appointed was taken over by the KPK Government in the year 2011 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  
Supreme Court of Pakistan  
Islamabad

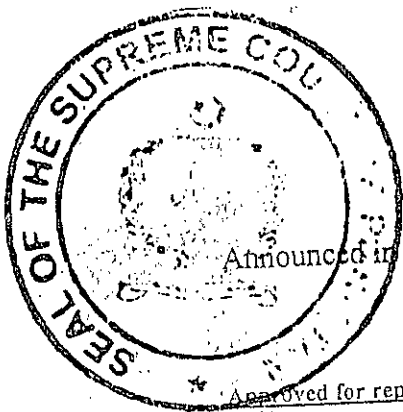
time to time up to 30.06.2011, when the project was taken over by the KPK Government. It appears that the Appellants were not allowed to continue after the change of hands of the project. Instead, the Government by cherry picking, had appointed different persons in place of the Appellants. The case of the present Appellants is covered by the principles laid down by this Court in the case of Civil Appeals No.134-P of 2013 etc. (Government of KPK through Secretary, Agriculture vs. Adnanullah and others), as the Appellants were discriminated against and were also similarly placed project employees.

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7. We, for the aforesaid reasons, allow this Appeal and set aside the impugned judgment. The Appellants 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 Appellants for the intervening period i.e. from the date of their termination till the date of their reinstatement shall be computed towards their pensionary benefits.

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

Certified to be True Copy



Announced in open Court on

*[Signature]*

*[Signature]*  
Court Associate  
Supreme Court of Pakistan  
Islamabad

Approved for reporting

30.5.16

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*[Signature]* M. S. Khattar, AOR

# وکالت نامہ

بعدالت: \_\_\_\_\_  
 محمد عیسیٰ بنام \_\_\_\_\_  
 منجانب \_\_\_\_\_ دعویٰ \_\_\_\_\_  
 تاریخ \_\_\_\_\_

بعث تحریر آنکہ مقدمہ مندرجہ بالا عنوان اپنی طرف سے واسطے پیروی و جوابدہی بمقام \_\_\_\_\_ کیلئے جاوید اقبال گل بیلہ ایڈووکیٹ ہائی کورٹ کو بدین شرط وکیل مقرر کیا ہے۔ کہ میں ہر پیشی کا خود یا بزرگیہ مختار خاص رو برو عدالت حاضر ہوتا ہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا، اگر پیشی پر من مظر حاضر نہ ہوں اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کی کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کوکل ساختہ پر داختہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کے روپیہ وصول کرنے اور رسیدینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپروٹا لشی و راضی نامہ فیصلہ برخلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختار نہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے ہر امر دہی اور ویسے ہی اختیارات حاصل ہوں گے جیسے کے صاحب موصوف کو حاصل ہیں۔ اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا کہ سند ہے۔ مورخہ (20/12/2012) مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

\_\_\_\_\_

محمد عیسیٰ (ایڈووکیٹ)

**IN THE HONOURABLE SERVICE TRIBUNAL, PESHAWAR**

In Service Appeal No. 484/2017

Muhammad Riaz ..... (Appellant)

V/S

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

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DEPONENT

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**IN THE HONOURABLE SERVICE TRIBUNAL, PESHAWAR.**

**In Service Appeal No.484/2017.**

Muhammad Riaz .....

(Appellant)

VS

The Govt. of Khyber Pakhtunkhwa and others.....

(Respondents)

**Joint Para-wise reply/comments on behalf of the Respondents No.4, 5 & 7.**

Respectfully Sheweth,

**Preliminary Objections**

1. That the appellant has got no locus standi to file the instant appeal.
2. That no discrimination /injustice has been done to the appellant.
3. That the instant appeal is bad in the eye of law.
4. The appeal is based on distortion of facts.
5. That re-view petition is pending before The Supreme Court of Pakistan, Islamabad.

**On Facts.**

1. Incorrect. That the appellant was initially appointed on project post as Chowkidar in BPS-01 on contract basis till completion of project life i.e. 30/6/2014 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. 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 30/6/2014, 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 or 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. Incorrect. Verbatim based on distortion of facts. The actual position of the case is that after completion of the project the incumbents were terminated from their post according to the project policy and no appointments made against these project posts. Therefore the appellant alongwith other filed a writ petition before the Honorable Peshawar High Court, Peshawar.

6. Correct to the extent that the Honorable Court allowed the subject writ petition on 26/6/2014 in the terms that the petitioners shall remain on the post subject to the fate of C.P No.344-P/2012 as identical proposition of facts and law is involved therein. and the services of the employees neither regularized by the court nor by the competent forum.
7. 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 service period during the project life was 3 months to 2 years & 2 months.
8. No comments.
9. No comments.
10. Correct. But a re-view petition No.312-P/2016 has been filed by this Department against the judgment dated:24/2/2016 of the larger bench of Supreme Court of Pakistan on the grounds that this case was not argued as it was clubbed with the cases of other Department having longer period of services Which is still pending before the Supreme Court of Pakistan.
11. 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 perform their duties.
12. 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.
13. 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 in 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 30/6/2014 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:26/6/2014 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 24/2/2016 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.4

Director General  
Population Welfare Department  
Peshawar  
Respondent No.5

District Population Welfare Officer  
District Peshawar  
Respondent No.7

**IN THE HONOURABLE SERVICE TRIBUNAL, PESHAWAR**

**In Service Appeal No. 484/2017**

Muhammad Riaz

(Appellant)

V/S

The Govt. of Khyber Pakhtunkhwa and others.....

(Respondents)

**Counter Affidavit**

I, Mr. Sagheer Musharraf, Assistant Director (Litigation), Directorate General Population Welfare, 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 Hon'able Tribunal.



**DEPONENT**

CNIC No. 17301-1642774-9