ORDER

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

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

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

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

03.10.2022

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

File to come up alongwith connected Service Appeal No. 908/2017 titled "Safia Jabeen Vs. Government of Khyber Pakhtunkhwa, Population Department" on 04.10.2022 before D.B.

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
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)

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 Junior of learned counsel for the appellant present. Mr. Ahmad Yar Khan, Assistant Director (Litigation) alongwith Mr. Muhammad Adeel Butt, 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 03.10.2022 before D.B.

(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

16.12.2020 Mr. Atar Abbas, Advocate on behalf of the appellant present. Additional: AG alongwith Mr. Ahmad Yar Khan, AD(Litigation) for respondents present.

Learned counsel 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

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.

Muhammad Adeel Butt, 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 29.11.2021 before D.B.

(Rozina Rehman)
Member(J)

Chairman

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

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)

11.12.2019 Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 25.02.2020 before D.B.

Member Member

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 on 03.04.2020 before D.B.

Member Member

03.04.2020 Due to public holiday on account of COVID-19, the case is adjourned for the same on 30.06.2020 before D.B.

Reader

03.07.2019 Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Zakiullah, Senior Auditor for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 29.08.2019 for arguments before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

Junior to

29.08.2019 Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Zaki Ullah Senior Auditor present. Junior to Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 26.09.2019 before D.B.

Member

Member

26.09.2019 Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellate is busy before the Hon'ble Peshawar High Court and cannot attend the Tribunal today. Adjourned to 11.12.2019 for arguments before D.B.

(HUSSAIN SHAH)
MEMBER

(M. AMIN KHAN KUNDI)
MEMBER

03.07.2019 Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Zakiullah, Senior Auditor for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 29.08.2019 for arguments before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

29.08.2019 Junior to Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Zaki Ullah Senior Auditor present. Junior to Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 26.09.2019 before D.B.

Member

Member

26.09.2019 Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellate is busy before the Hon'ble Peshawar High Court and cannot attend the Tribunal today. Adjourned to 11.12.2019 for arguments before D.B.

(HUSSAIN SHAH)
MEMBER

(M. AMIN KHAN KUNDI)
MEMBER

20.12.2018 Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments alongwith connected appeals on 14.02.2019 before D.B.

(Hussain Shah)
Member

(Muhammad Amin Khan Kundi)
Member

14.02.2019 Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sagheer Musharraf, Assistant Director and Mr. Zakiullah, Senior Auditor for the respondents present. Due to strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Adjourned to 25.03.2019 for arguments alongwith connected appeals before D.B.

(HUSSAIN SHAH)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

25.03.2019 Due to non available of D.B the case is adjourned for the same on 16.05.2019

Reader

16.05.2019 Clerk to counsel for the appellant and Addl: AG for respondents present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant was busy before the Peshawar High Court, Peshawar. Adjourned to 03.07.2019 before D.B.

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

03.08.2018 Appellant absent. Learned counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sagheer Musharaf, Assistant Director for the respondents present. Learned counsel for the appellant submitted rejoinder and seeks adjournment for arguments. Adjourned. To come up for arguments on 27.09.2018 before D.B.

(Ahmad Hassan)
Member (E)

(Muhammad Hamid Mughal)
Member (J)

27.09.2018 Clerk of counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Masroor Khan, Junior Clerk and Mr. Zakiullah, Senior Auditor for the respondents present. Due to general strike of the bar, arguments could not be heard. Adjourned. To come up for arguments on 07.11.2018 before D.B alongwith connected appeals.

(Ahmad Hassan)
Member (E)

(Muhammad Amin Kundi)
Member (J)

07.11.2018 Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 20.12.2018.

Reader

24.01.2018 Learned counsel for the appellant present. Mr. Kabir Ullah Khattak, Learned Additional Advocate General along with Mr. Zaki Ullah, Senior Auditor and Mr. Sagheer Musharraf, Assistant for the respondents present. Mr. Zaki Ullah, submitted written reply on behalf of respondent No.4 and respondent No.5 relied on the same. Mr. Sagheer Musharraf submitted written reply on behalf of respondents No.2, 3, & 6 and respondent No.1 relied upon the same. Adjourned. To come up for rejoinder/arguments on 20.03.2018 before D.B

(Muhammad Hamid Mughal)
MEMBER

29.03.2018 Counsel for the appellant and Addl. AG for the respondents present. Counsel for the appellant seeks adjournment to file rejoinder. To come up for rejoinder and arguments on 31.05.2018 before D.B.

Member Chairman

30.05.2018 Learned counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment to file rejoinder. Adjourned. To come up for rejoinder/arguments 03.08.2018 before D.B

(Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

16.11.2017 Counsel for the appellant present. Mr. Kabir Ullah Khattak, Addl: Advocate General alongwith Sagheer Musharraf, AD (Litigation) for the respondents present. Written reply not submitted. Requested for further adjournment. Adjourned. To come up for written reply/comments on 13.12.2017 before S.B.

(Gul Zeb Khan)
Member (E)

13.12.2017 Counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 04.01.2018 before S.B.

(Ahmad Hassan)
Member (E)

04.01.2018 Clerk of the counsel for appellant present and Assistant AG alongwith Sagheer Musharaf Assistant Director (Litigation) for the respondents present. Written rely not submitted. Learned Assistant AG requested for adjournment. Adjourned. Last opportunity granted. To come up for written reply/comments on 24.01.2018 before S.B.

(Gul Zeb Khan)
Member (E)

16/10/2017

Counsel for the appellant present and argued that the appellant was appointed as Family Welfare Assistant vide order dated 25/2/2012. It was further contended that the appellant was terminated on 13/6/2012 by the District Population Welfare Officer 2Peshawar without serving any charge sheet, statement of allegation, regular inquiry and show cause notice. It was further contended that the appellant challenged the impugned order in Peshawar High Court in writ petition which was allowed and the respondents were directed to reinstate the appellant with back benefits. It was further contended that the respondents also challenged the order of Peshawar High Court in apex court but the appeal of the respondents were reluctant to reinstate the appellant, therefore, appellant filed C.O.C application against the respondents in High Court and ultimately the appellant was reinstated in service with immediate effect but back benefits were not granted from the date of regularization of the project.

Points urged at bar need consideration. The appeal is admitted for regular hearing subject to all legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments on 16/11/2017 before SB.

Appellant Deposited
Security & Process Fee

(GUL ZEB KHAN)
MEMBER

Form-A

FORMOF ORDERSHEET

Court of _____

Case No. 928 /2017

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge
1	2	3
1	24/08/2017	The appeal of Mr. Shakirullah presented today by Mr. Muhammad Ziaullah Advocate, may be entered in the Institution Register and put up to the Learned Member for proper order please. REGISTRAR
2-	25-8-17	This case is entrusted to S. Bench for preliminary hearing to be put up there on 18-9-17. MEMBER
	18.09.2017	Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 16.10.2017 before S.B. (Ahmad Hassan) Member

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

In Ref. S.A 928/2017

SHAKIR ULLAH

Versus

GOVT: OF KP & OTHERS

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Dated: 21/08/2017

Shakir

APPELLANT

Through

Muhammad Zia Ullah
Athar Abbas
Advocates Peshawar High Court Peshawar.

D

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

In Ref. S.A 988/2017

Khyber Pakhtukhwa Service Tribunal
Diary No. 944
Dated 24-8-2018

Shakir Ullah S/O Rehmat Ullah
R/O Village and P/O Behram Khel District Lakki Marwat.

.....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 Lakki Marwat.
6. District Population Welfare officer Lakki Marwat, Banglow No.21, Defence Officer Colony, District Lakki Marwat.

.....RESPONDENTS

Filedto-day
Registrar
24/8/18

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT 1974 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: -

1. That the appellant was initially appointed as Family Welfare Assistant (FWC) (BPS-05) on contract basis in the District Population Welfare Office, Lakki Marwat on 25/02/2012.

   (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.1(19)/2013-14/Admn/842 dated: 14/06/2014 and office order No.F.No.4(35)/2013-14/Admn dated:13/06/2014 mentioned in annexure "B" of Para 3 of the instant appeal thus the service of the appellant was terminated w.e.f 30/06/2014.

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

5. That the appellant alongwith rest of his colleagues by feeling aggrieved from the Impugned termination order filed a W.P No.293-B/2014 before the August Peshawar High Court, Bannu Bench which was decided in favour of the appellant/petitioners vide order dated:16/12/2014. It is also pertinent to mention here that apart from the above cited W.P another W.P No.1730-P/2016 was also filed on same subject matter before Peshawar High Court Peshawar and was allowed accordingly.

   (copy of W.P and order are annexed as "C", "D" respectively).

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 appellant and his colleagues prevailed and the CPLA was dismissed vide judgment and order dated:24/02/2016.

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

7. That some beneficiary of the Judgment order dated 24/02/2016 of the August High Court file COC for implementation of the judgment but during pendency COC No.395-P/2016 before the August High court, that the appellant alongwith rest of the employees were re-instated vide the impugned office order No.SOE(PWD)4-9/7/2014/HC dated: 05/10/2016, 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.

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

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 "G").

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:

GROUNDS:

A. That the impugned appointment order dated05/10/2016 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 "H")

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.

Dated: 21/08/2017

Shakir

APPELLANT

Through

Muhammad Zia Ullah
Athar Abbas
Advocates Peshawar High Court Peshawar.

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.

Advocate

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

In Ref. S.A _____/2017

SHAKIR ULLAH

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

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: 21/08/2017

Shakil

APPELLANT

Through

Athar

Muhammad Zia Ullah
Athar Abbas
Advocates Peshawar High Court Peshawar.

(8)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

In Ref. S.A _____/2017

SHAKIR ULLAH

Versus

GOVT: OF KP & OTHERS

AFFIDAVIT

I, Mr. Shakir Ullah, Family Welfare Assistant (BPS-05) Office Of The District Population Welfare Officer Lakki Marwat, 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.

Shakir

DEPONENT

Identified by:

Muhammad Zia Ullah Khan
Advocate High Court Peshawar.

Fazal R... Ocate
NOTARY PUBLIC
Distt: Courts
19/08/2017

(9)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

In Ref. S.A _____/2017

SHAKIR ULLAH

Versus

GOVT: OF KP & OTHERS

==========

MEMO OF ADDRESSES

==========

APPELLANT:

Shakir Ullah S/O Rehmat Ullah

R/O Village and P/O Behram Khel District Lakki Marwat.

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 Lakki Marwat.
6. District Population Welfare officer Lakki Marwat, Banglow No.21, Defence Officer Colony, District Lakki Marwat.

Dated: 21/08/2017

Shakir

APPELLANT

Through

Muhammad Zia Ullah
Athar Abbas
Advocates Peshawar High Court Peshawar.

حکومت پاکستان

قومی شناختی کارڈ

11201-7425403-3

نام : شاکر اللہ

جنس : مرد

والد کا نام : رحمت اللہ

شناختی علامت : کوئی نہیں

تاریخ پیدائش : 10/12/1991

علی ارشد حکیم

دستخط ساکن وارڈ

دستخط رجسٹرار جنرل

شناختی نمبر : 11201-7425403-3 خاندان نمبر : TQ3V94

موجودہ پتہ : بہرام خیل، تحصیل و ضلع لکی مروت

مستقل پتہ : ایضاً

جاری کردہ : 13/12/2010 تاریخ تنسیخ : 30/11/2021

گمشدہ کارڈ ملنے پر قریبی نیشنل بینک میں جمع کرائیں

(10)

"A"

DISTRICT POPULATION WELFARE OFFICE
Lakki Marwat

Offer of appointment 1164 Dated 25 / 02 / 2012

F.No.1(19) 2009-11/Admn/Vol-II: - Consequent upon the recommendations of the Departmental selection committee, you are offered for appointment as Family Welfare Assistant (M) (BPS-05) on contract basis in Family Welfare Centre Project. Population Welfare Department district Lakki Marwat for the project life on the following terms and conditions:-

1. Your appointment against the post of Family Welfare Assistant (M) BPS 05 in purely on contract basis for the project life. This order will automatically stand terminated unless extended. You will get pay in BPS-05 (5400-260 13200) plus usual allowances as admissible under the rules.
2. Your services will be liable to termination with assigning any reason during the currency of agreement. In case of resignation, 14 days prior notice will required otherwise your 14 days pay plus usual allowance will be forfeited.
3. You shall provide Medial Fitness Certificate from the Medial Superintendent of the DHQ Hospital concerned before joining service.
4. Being contract employee, in no way you will be treated as Civil Servant and in case your performance is found un-satisfactory or found committed an misconduct your service will terminated with the approval of the competent authority without adopting the procedure provided in Khyber Pakhtunkhwa (E&D) Rules, 1973 which will not be challengeable in Pakhtunkhwa Service Tribunal / any court of law.
5. You shall be held responsible for the losses accruing to the Project due to your carelessness or in-efficiency and shall be recovered from you.
6. You will neither be entitled to any pension or gratuity for the service rendered by you nor you will contribute towards GP fund or CP fund.
7. This offer shall not confer any right on you for regularization of your service against the post occupiged by you or any other regular posts in the Department.
8. You have to join duty at your own expenses.
9. If you accept the above terms and conditions you should report for duty to the District Population Welfare Office Lakki Marwat within 15 days of the receipt of this offer failing which your appointment shall be considered as cancelled.
10. You will execute a surety bond with the Department.

Ikram Ullah Marwat
District Population Welfare Officer
Lakki Marwat

Shakir ullah S/o Rehmat ullah
vill/P.O-Behram Khel
Distt-Lakki Marwat

Attested to be true Copy

Copy to:

1. PS to Director General Directorate General PWD, Peshawar
2. District Account Officer Lakki Marwat
3. Account Assistant (Local) Lakki Marwat
4. Master File

District Population Welfare Officer
Lakki Marwat

(11)

"B"

Government of Khyber Pakhtunkhwa
Office of the Population Welfare Officer
Nazim abad Takht Marwat

F. No. 419/2013-14 Admn — /842 —
Dated 13-06-2014

To

Mr. Shakir Ullah
Family Welfare Assistant (M)
On ADP Project

Subject: COMPLETION OF ADP PROJECT I.E. PROVISION FOR POPULATION WELFARE DEPARTMENT KHYBER PAKHTUNKHWA

The subject project is going to be completed on 30-6-2014 and therefore the enclosed office order No. 1351-30-3-14 Admn dated 13-06-2014 may be treated as fifteen days notice in advance for the termination of your service as Social Mobilizer.

District Population Welfare Officer
Takht Marwat

Copy to the:

1. Account Assistant (Local) for information and necessary action
4. P File of Official concerned

District Population Welfare Officer
Takht Marwat

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OFFICE OF THE
DISTRICT POPULATION WELFARE OFFICER,
KARAK

F.No 1(1)/2015-16 Admn/1128-46 Karak the 10/10/2016

OFFICE ORDER

Incompliance with Section Officer(ESTT). PW-Deptt. KP. Peshawar office order SOB(PWD) 19/2011/HC filed 10/2016 and their subsequent arrival report for duty following officials are hereby on staff strength of this office with effect from the mentioned against each.

S. NO.	Name of Official	Designation	Date of Arrival
1	Irshad Begum	FWW	07/10/016
2	Sadia	FWW	07/10/016
3	Taslim Akhter	FWA	07/10/016
4	Rehana Ambreen	FWA	07/10/016
5	Nazish Rafiq	FWA	07/10/016
6	Fayid Shah	FWA	07/10/016
7	Zakir Jalil	FWA	07/10/016
8	Kifayat ullah	FWA	07/10/016
9	Nasrullah Khan	Chawkidar	07/10/016
10	Hamid ullah	Chawkidar	07/10/016
11	Qaisar Hussain	Chawkidar	07/10/016
12	Zaf... Bibi	Dai	07/10/016
13	Safia Jabeen	Dai	07/10/016
14	Naseem Bibi	Dai	07/10/016

ASRAR MUHAMMAD KHAN
District Population Welfare Officer
Karak

Copy to:

1. The Director General PW-Deptt. KPK. Peshawar for information please.
2. Section Officer Distt Population Welfare Department for information & with reference to his End. letter No. SOB(PWD)(1-9/7/10) /HC dated 05/10/2016
3. District Accounts office Karak for information please.
4. PS to Advisor for (PWD) KP. Peshawar
5. Acct. Assistant store
6. Officials concerned for information and compliance
7. P Files of the officer concerned.

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P.5

(12)

"C"

Writ Petition No. 293-B
BANNU High Court.

IN THE PESHAWAR HIGH COURT BANNU BENCH BANNU

Writ Petition No. 293-B /2014

1) Mst. Samab Abbasi D/O Latif Ullah Abbasi R/O Shamshi Khel Bannu.

2) Mst. Mehroon W/O Adnan Khan R/O Hibak Sherza Khan Bannu.

3) Mst. Shaheen Bibi D/O Gulzar Khan R/O village & P/O Shera District Bannu.

4) Mst. Tufeeda Begum D/O Muhammad Noor Khan R/O Kochbat Asad Khan Bannu.

5) Mst. Nisbat Jahan W/O Rasabaz Tahir R/O Khujani Babar Tehsil & District Bannu.

6) Mst. Tehzaroon D/O Muhammad Sahib Ullah Khan R/O House Nr. 104 D/L Mohalla Jaman Road Jadid Abadi Bannu.

7) Hazrat Bilal Shah S/O Syed Khumar Shah R/O Village Kotu Sadat Bannu

8) Adnan S/O Muhammad Younis Khan R/O Goas Amir Kala P/O Nizam Bazar Bannu.

9). Ahmad Nawaz S/O Raip Khan R/O Taji Kala Bannu.

10) Amel Khan S/O Angrez Khan R/O Luban Khujani Ghuss Tehsil & District Bannu

11) Adnan Khan S/O Shahzad Khan R/O Hibak Sherza Khan Bannu.

12) Farman Ullah S/O Gul Zaman R/O Kastoor Hotel Kohat Road Bannu.

Filed Today
Additional Registrar
21-5-14

ATTESTED
Peshawar High Court
Bannu Bench

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13) Muhammad Akbar Khan S/O Muhammad Noor Khan R/O Kachkot Asad Khan Bannu,

14) Asif Khan S/O Imtiaz Khan R/O Kotka Feroz Surrani P/O Nizam Bazar Bannu. ..... (Petitioners)

VERSUS

1) Government of Khyber Pukhtunkhwa through Secretary Population Welfare Department Peshawar,

2) Director General Population Welfare Department Khyber Pukhtunkhwa, Peshawar,

3) District Population Welfare Officer Bannu.

4) Project Director Population Welfare Department Khyber Pukhtunkhwa, Peshawar

5) District Comptroller of Accounts Bannu.

..... (Respondents)

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

PRAYER: ON ACCEPTANCE OF INSTANT WRIT PETITION, THIS HONOURABLE COURT MAY VERY GRACIOUSLY BE PLEASED TO SET ASIDE OFFICE ORDER NO. 4 (35)/2013-14/ADMN DATED PESHAWAR THE 13/02/2014 AND OFFICE ORDER NO. 1(1)/2014/ADMN/270, 285, 284, 272, 283, 271, 278, 275,

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Peshawar High Court, Bannu Bench

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280, 281, 279, 276, 277, 274 DATED 14/06/2014 BY DECLARING THE PETITIONERS REGULAR EMPLOYEES AS PER ADVERTISEMENT DATED 19/01/2012 IN POPULATION WELFARE DEPARTMENT AS PER REGULATION OF OTHER STAFF IN SIMILAR PROJECT ON THE STRENGTH OF ABOVE ADVERTISEMENT, THIS HONOURABLE COURT MAY FURTHER BE PLEASED TO DECLARE THE COMPLETION OF PROJECT I.E. ON 30/06/2014 AS ILLEGAL, WITHOUT LAWFUL AUTHORITY BASED ON MALICE, MISREPRESENTATION AND VIOLATIVE UPON THE RIGHTS OF PETITIONERS, BESIDE THOSE THE PETITIONERS MAY VERY KINDLY BE DECLARED AS REGULAR CIVIL SERVANTS AND THEY MAY VERY KINDLY BE ALLOWED THE BENEFITS OF CIVIL SERVANTS.

INTERIM RELIEF; THIS HONOURABLE COURT MAY VERY GRACIOUSLY BE PLEASED TO SUSPEND THE OPERATION OF IMPUGNED NOTIFICATIONS/ORDERS AND THE PETITIONERS MAY VERY KINDLY BE ALLOWED TO PERFORM THEIR DUTIES WITH THE BENEFIT OF SALARIES.

NOTE; ANY OTHER REMEDY THOUGH MAY NOT BE SPECIFICALLY BE ASKED FOR MAY VERY KINDLY ALSO BE ALLOWED IF THIS HONOURABLE COURT DEEMS APPROPRIATE IN CIRCUMSTANCES.

Note: The Addresses of the parties given in the heading of the petition are sufficient for the purpose of service of summons and notice etc.

Filed today
Deputy Registrar
21-6-14

ATTESTED
Peshawar High Court,
Bannu Bench

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(15)

Respectfully Sheweth;

Brief facts of the case are:-

A) That in response of advertisement for the different posts in District [illegible] issued by Respondent No.1 in Population Welfare [illegible] the Petitioners applied and submitted their testimonials and [illegible] successful in the process conducted by [illegible] they were appointed being [illegible] qualified.

(Copies of advertisement, testimonials and appointment orders are hereby annexed as Annexture-A, B & C)

B) That after appointment the Petitioners being regular contract employees of the project joined their duties [illegible] posted and they were allowed to draw their salaries against their posts.

(Copies of service books and pay slips are hereby annexed as Annexture-D & E)

C) That due to hard work and efficiency of the Petitioners, the aims and goals of the project were timely achieved and the provincial government then took serious interest to turn the project on regular side and thus the Chief Minister by announcing the project approved the creation of 560 posts on regular side, it is pertinent to mention here that 560 employees are already working in the said project.

(Copies of News-cutting is hereby annexed as Annexture-F)

D) That the Petitioners were waiting for their fruit but all of a sudden they were surprised with the impugned notices/orders [illegible] illegal, unlawful, unwarranted of no legal effect and [illegible] authority upon the rights of Petitioners and [illegible]

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21-8-24

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Peshawar High Court,
Bannu Bench

remedy, therefore, the Petitioners knock the doors of this Honourable Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 inter alia, on the following grounds:

(copies are annexed)

GROUNDS:

That the rights [illegible] are fundamental rights [illegible] and guaranteed by the Constitution of Pakistan.

That [illegible] the posts were filled by [illegible] permanent/regular employees of the project, [illegible] also selected on the strength of advertisement [illegible] of the Petitioners, but they were not served with any type of notice [illegible] the part of Respondents.

Copies of appointment letters are hereby annexed as Annexture-C.

That the [illegible] Courts of the land have [illegible] judgments which are binding [illegible] every person [illegible] has not litigated can also sull and eat its fruits, but the Petitioners though entitled [illegible] the benefit, which [illegible] have [illegible] the [illegible] Respondents.

That according to PC-1, ADP No. 790 Code 110627 provision of [illegible] Development Plan for 2011-12 Khyber Pakhtunkhwa was for [illegible] which was [illegible] in the present budget announced by [illegible] Khyber Pakhtunkhwa and the Petitioners being fit, eligible and experienced for the subject posts are deserve to continue their duties against their posts as they have matured their rights for regularization against posts held by them.

(Copy of PC-1 is hereby annexed as Annexture-H)

That as the Government has approved the regularization of the project, therefore, the Petitioners are required to continue on the

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21-6-14

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Peshawar High Court,
Bannu Bench

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[illegible]

[illegible]

[illegible]

[illegible]

PETITIONERS

THROUGH

SPECIAL ATTORNEY

THROUGH

Dated: 21/06/2014

ZAHID UL HAQ

ADVOCATE HIGH COURT

BANNU

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National Registrar
21-6-14

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Peshawar High Court
Bannu Bench

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(18) Judgement, BANNU BENCH.

"D"

PESHAWAR HIGH COURT, BANNU BENCH

FORM OF ORDER SHEET

Date of order or proceedings (1)	Order or other proceedings with signature of Judge (s). (2)
16.12.2014	W.P No. 293-B of 2014 Present:- Zahid ul Haq advocate for petitioners Muhammad Faheem Dy. District Officer Population Welfare Officer, alongwith Saif ur Rehman Khattak, Addl.A.G for official respondents. ****** MUHAMMAD DAUD KHAN, J.- Through instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, the 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, the 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 the respondents in regularization of the petitioners is illegal, malafide and fraud upon their legal rights and as a consequence petitioners be declared as regular civil servants for all

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EXAMINER
Peshawar High Court
Bannu Bench

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(19)

intent and purposes.

Learned counsel for petitioners produced copy of order of this Court passed in WP No. 1730-P of 2014, decided on 26.06.2014, whereby project employee's petition was allowed subject to the final decision of the august Supreme Court in CP No 344-P/2012. The learned counsel for petitioner stated that as the instant petition is alike nature, hence, this petition be given same treatment. The learned Addl. A.G conceded to the proposition.

In view of the concurrence of the learned counsel for the parties and following the ratio of order passed in WP No 2111 of 2013 dated 30.01.2014 [illegible] petition is allowed [illegible] shall remain on the [illegible] of CP No. 344-P/2013, as identical proposition of facts and law is involved therein.

Announced
16.12.2014

Sd/- Muhammad Daud Khan, J.
Sd/- Muhammad Ghazanfar Khan, J.

CERTIFIED TO BE TRUE COPY

Bench
Article 87 and
the Constitution of Pakistan, 1973

Attested to be true Co

(20)

"E"

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

CIVIL APPEAL NO.134-P OF 2013
(On appeal against the judgment dated 24-05-2011 passed by the Peshawar High Court, Peshawar, in Review Petition No.103/2009 in WP. No.59/2009)

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

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

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

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

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

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

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

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

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

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

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

CIVIL APPEAL NO.1-P/2013
(On appeal against the judgment dated 10-05-2012 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Writ Petition No.247-I/2011)

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

CIVIL APPEAL NO.138-P OF 2013
(On appeal against the judgment dated 17-05-2012 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, in Writ Petition No.2001/2009)

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

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Livestock and others

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

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

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

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

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

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

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

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

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

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

CIVIL PETITION NO.34-P OF 2015
(On appeal against the judgment dated 25-09-2014 passed by the Peshawar High Court, Peshawar, in Writ Petition No.141-P/2014)

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

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

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

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

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

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

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

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

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High Court, Mingora Bench (Dar-ul-Qaza) Swat, in Writ Petition No.4335-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.2151-P/2013)

Govt. of KPK through Chief Secy. Vs. Mst. Fauzia 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, Abbottabad Bench, in Writ Petition No.55-A/2015)

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

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

Govt. of KPK through Chief Secy. 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. Nafeesa 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.2454-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/2013

For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK
Syed Masood Shah, SO Litigation.
Hafiz Attaul Mameen, SO. Litigation. (Fin)
Muhammad Khalid, AD (Litigation)
Abdul Hadi, SO (Litigation)

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

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

(CMA.496-P/13) : Mr. Ayub Khan, ASC

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Supreme Court of Pakistan
Islamabad

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CA.135-P/2013 For the appellant(s)	:	Mr. Waqar Ahmed Khan, Addl. AG KPK
For the Respondent(s)	:	Hafiz S. A. Rehman, Sr. ASC Mr. Imtiaz Ali, ASC
CA.136-P/2013 For the appellant(s)	:	Mr. Waqar Ahmed Khan, Addl. AG KPK
For the Respondent(s)	:	Hafiz S. A. Rehman, Sr. ASC Mr. Imtiaz Ali, ASC
CA.137-P/2013 For the appellant(s)	:	Mr. Waqar Ahmed Khan, Addl. AG KPK
For Respondents (2 to 6)	:	Mr. Ijaz Anwar, ASC
CA.138-P/2013 For the appellant(s)	:	Mr. Waqar Ahmed Khan, Addl. AG KPK
For the Respondent(s)	:	Not represented.
CA.62-P/2013 For the appellant(s)	:	Mr. Waqar Ahmed Khan, Addl. AG KPK
For Respondent No.1	:	In person (Absent)
For Respondent No.2	:	Not represented.
CA.3-P/2013 For the appellant(s)	:	Mr. Waqar Ahmed Khan, Addl. AG KPK
For Respondents (1-4, 7, 8, & 10-13)	:	Mr. Ghulam Nabi Khan, ASC Mr. Khushdil Khan, ASC
CA.133-P/2013 For the appellant(s)	:	Mr. Waqar Ahmed Khan, Addl. AG KPK
For Respondents (1-3, 5 & 7)	:	Mr. Ghulam Nabi Khan, ASC
For respondents (4,8,9 & 10)	:	Not represented.
CA.113-P/2013 For the appellant(s)	:	Mr. Waqar Ahmed Khan, Addl. AG KPK
For the Respondent(s)	:	Ghulam Nabi Khan, ASC
CA.231-P/2015 For the appellant(s)	:	Mr. Waqar Ahmed Khan, Addl. AG KPK
For Respondents (1-3)	:	Mr. Shoaib Shaheen, ASC

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Supreme Court of Pakistan
Islamabad

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(24)

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

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

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

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

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

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

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

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

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

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

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

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

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

For the Respondent(s) : Not represented.

Date of hearing : 24-02-2016

JUDGMENT

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

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

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(25)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Civil Appeal No.52-P of 2015

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(Regularization of Services) Act, 2009, were not applicable to present Respondents. He referred to Section 19(2) of the KPK Civil Servants Act 1973, which was substituted vide KPK Civil Servants (Amendment) Act, 2005, provides that *"A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act, but appointment on contact basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis."* Furthermore, vide Notification dated 11.10.1989 issued by the Government of NWFP, the Governor of KPK was pleased to declare the "On Farm Water Management Directorate" as an attached Department of Food, Agriculture, Livestock and Cooperation Department, Govt. of NWFP. Moreover, it was also evident from the Notification dated 03.07.2018 that 115 employees were regularized under section 19 (2) of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 and Regularization Act, 2009 from the date of their initial appointment. Therefore, it was a past and closed transaction. Regarding summaries submitted to the Chief Minister for creation of posts, he clarified that it was not one summary (as stated by the learned Addl. Advocate General KPK) but three summaries submitted on 11.06.2006, 04.01.2012 and 20.06.2012, respectively, whereby total 734 different posts of various categories were created for these employees from the regular budgetary allocation. Even through the third summary, the posts were created to regularize the employees in order to implement the judgments of Hon'ble Peshawar High Court dated 15.09.2011, 8.12.2011 and Supreme Court of Pakistan dated 22.3.2012. Approximately 20-30% employees were

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

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

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

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

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

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

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

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

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

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

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

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

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Islamabad

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

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

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

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

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

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

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

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

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

CIVIL APPEAL NO.134-P OF 2013

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

CIVIL APPEAL NO.135-P OF 2013

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

CIVIL APPEAL NO.136-P OF 2013

Govt. of KPK and others Vs. Muhammad Younus 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 Livestock, Peshawar and others Vs. Muhammad Ayub Khan

CIVIL APPEAL NO.52-P OF 2015

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

CIVIL APPEAL NO.113-P OF 2013

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

CIVIL APPEAL NO.605 OF 2015

Rizwan Javed and others Vs. Secy. Agriculture Livestock and Corporation Department KPK, Peshawar and others

CIVIL APPEAL NO.231-OF 2015

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

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Supreme Court of Pakistan
Islamabad

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CA.123-P/2013
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

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

For respondents (4,8,9 & 16) : Not represented.

CA.213-P/2015
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

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

CA.605-P/2015
For the appellant(s) : Mr. Ijaz Anwar, ASC
Mr. M. S. Khattak, AOR.

For Respondents (4-7) : Mr. Waqar Ahmed Khan, Addl. AG KPK

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

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

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

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

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

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

CP.396-P/2014
For the Petitioner(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK
Noor Afzal, Director, Population Welfare Department.

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

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

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

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

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

CC 28-P/2015
For the Petitioner(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

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

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Superintendent
Peshawar Court of Judicature
Peshawar

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CIVIL PETITION NO.371-P OF 2014

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

CIVIL PETITION NO.619-P OF 2014

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

CA.134-P/2013

For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK
Syed Mansoor Shah, SO Litigation.

For the Respondent(s) : Hafiz Attaul Memeen, SO. Litigation (Fin)
Muhammad Khalid, AD (Litigation)
Abdul Hadi, SO (Litigation)

(CMA496-P/13) : Mr. Ayub Khan, ASC

CA.135-P/2013

For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

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

Respondent No.1 : Mr. Imtiaz Ali, ASC

Respondents 2-11 : In person

CA.136-P/2013

For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK.

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

CA.137-P/2013

For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

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

CA.138-P/2013

For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For the Respondent(s) : Not represented.

CA.52-P/2013

For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For Respondent No.1 : In person.

For Respondent No.2 : Not represented.

CA.1-P/2013

For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

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

For Respondents 5, 6 & 9 : In person (absent)

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Supreme Court of Pakistan
Islamabad

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CIVIL APPEAL NO.232 OF 2015

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

CIVIL PETITION NO.600-P OF 2013

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

CIVIL PETITION NO.496-P OF 2014

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

CIVIL PETITION NO.34-P OF 2015

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

CIVIL PETITION NO.214-P OF 2014

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

CIVIL PETITION NO.621-P OF 2015

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

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. Nafeesa Bibi

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Supreme Court of Pakistan
Islamabad

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(52)

Civil Appeals No.

Civil Appeals 214-P/2015, 368-P/2014 and 619-P/2014 & 621-P/2015

For the Petitioner(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK

For the Respondent(s) : Not represented.

Date of hearing : 24-02-2016

ORDER

ANWAR ZAHEER JAMALI, CJ.- Arguments heard. For the reasons to be recorded separately, these Appeals, except Civil Appeal No.605 of 2015, are dismissed. Judgment in Civil Appeal No.605 of 2015 is reserved.

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

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FROM : FAX NO. : 9223622 05 Oct. 2016 ~~02:04PM~~ P1

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

Dated Peshawar the 05th October, 2016

OFFICE ORDER

No. SOE (PWD) 4-9/7/2014/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 24-07-2016 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 05th Oct. 2016.

Copy for information & necessary action to the:

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

5/10/2016

SECTION OFFICER (ESTT)
PHONE NO. 091-9223623

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"G"

To

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

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 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 required to be follow in the present case in the light of 2009 SCMR 01.

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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: 21/10/2016

21-10-016

Yours Sincerely,

Shakir Ullah
Family Welfare Assistant
Population Welfare Department
Peshawar
Office of District Welfare
Officer Lakki Marwat

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(56)

Annex: "H"

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 ppsts. On various

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Supreme Court of Pakistan
Islamabad

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P.1

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

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Khyber Pakhtunkhwa Agriculture, Live Stock and Cooperative Department through its Secretary and others vs. Ahmad Din and another (Civil Appeal No.687/2013 decided on 26.6.2014), 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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Islamabad

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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.

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

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Supreme Court of Pakistan
Islamabad

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بعدالت سروس ٹرائبیونل خیبر پختونخوا پشاور

مورخہ Service Appeal اپیل نمبر

مقدمہ 2017ء منجانب

دعویٰ شاکر اللہ بنام

جرم حکومت خیبر پختونخوا پشاور

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ

آن مقام پشاور کیلئے محمد ضیاء اللہ ایڈووکیٹ / اسد اللہ خان ایڈووکیٹ

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 وتقرر ثالث وفیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک وروپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا مختار 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 بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہٰذا وکالت نامہ لکھدیا کہ سند رہے۔

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المرقوم 21 ماہ اگست 2017ء

العبد گواہ العبد

مقام پشاور

کے لئے منظور ہے۔

Accepted

عدنان سٹیشنری مارٹ
چوک مستگری پشاور سٹی فون: 2220193
Mob: 0345-9223239

قیمت 10 روپے

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پشاور بار ایسوسی ایشن، خیبر پختونخواہ

PESHAWAR BAR ASSOCIATION PBA

ایڈوکیٹ: اطہر عباس

بار کونسل/ایسوسی ایشن نمبر: 702

رابطہ نمبر: 0312881812

بعدالت جناب: سروس ٹریبونل خیبر پختونخواہ پشاور

منجانب: اپیلانٹ

شاکر اللہ

بنام

حکومت خیبر پختونخواہ

دعویٰ: Service Appeal

علت نمبر: 928/2017 اپیل نمبر

مورخہ:

جرم:

تھانہ:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام پشاور کیلئے اطہر عباس ایڈووکیٹ کو وکیل 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 ثالث و فیصلہ ہر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ 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 وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تاکہ سند رہے

Shakir

PESHAWAR BAR ASSOCIATION KHYBER PAKHTUNKHWA

المرقوم: 21/08/2017

گواہ شد

العبد

العبد

مقام پشاور کے لیے منظور ہے۔

Accepted by

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Before the Khyber Pakhtunkhwa Services Tribunal Peshawar

Appeal No. 928

Shaigirullah .....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 7:-

That the matter is totally administrative in nature. And relates to respondent No. 1, 2, & 3. 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.

ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA

Before the Khyber Pakhtunkhwa Services Tribunal Peshawar

Appeal No. 928

Shaigir ullah .....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 7:-

That the matter is totally administrative in nature. And relates to respondent No. 1, 2, & 3. 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.

ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA

IN THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

In Appeal No.928/2017.

Shakir Ullah, F.W.A(M) (BPS-05)..... (Appellant)

VS

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

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Musharraf

Deponent
Sagheer Musharraf
Assistant Director (Lit)

IN THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

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Shakir Ullah, F.W.A(M) (BPS-05)..... (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 Family Welfare Assistant (male) in BPS-05 on contract basis till completion of project life i.e. 30/06/2014 under the ADP Scheme Titled" Provision for Population Welfare Program in Khyber 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 Family Welfare Assistant (male). 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 Lakki Marwat
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Shakir Ullah, F.W.A(M) (BPS-05)..... (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.

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