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.*

(Farecha Paul)
Member (E)

(Salim 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. 875/2017 titled "Shuja Ur Rehman 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 Junior to counsel for the appellant present. Additional AG alongwith Mr. Ahmad Yar Khan, AD(Litigation) for respondents present.

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

Adjourned to 11.03.2020 for arguments before D.B.

(Mian Muhammad)
Member (E)

Chairman

11.03.2021 Appellant present through counsel.

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

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

(Mian Muhammad)
Member (E)

(Rozina Rehman)
Member (J)

01.07.2021 Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

File to come up alongwith connected Service Appeal No.695/2017 titled Rubina Naz Vs. Government of Khyber Pakhtunkhwa, on 29.11.2021 before D.B.

(Rozina Rehman)
Member(J)

Chairman

30.06.2020 Due to COVID19, the case is adjourned to 24.09.2020 for the same as before.

Reader

29.09.2020 Appellant present through counsel.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Ahmad Yar Khan A.D 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 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)

29.09.2020 Appellant present through counsel.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Ahmad Yar Khan A.D 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 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 appellant, for arguments on 16.12.2020 before D.B

(Mian Muhammad)
Member (E)

(Rozina Rehman)
Member (J)

21.11.2018 Since 21.11.2018 has been declared as public holiday on account of 12th Rabi-ul-Awal. Therefore, the case is adjourn. To come on 10.01.2019 before D.B.

Reader

10.01.2019 Appellant absent. Learned counsel for the appellant absent. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Adjourn. To come up for arguments on 01.03.2019 before D.B.

Member Member

[illegible] learned Deputy District Attorney alongwith Mr. [illegible] Assistant for the respondents present. Learned counsel for the appellant stated that the respondent department has approached Supreme Court of Pakistan against judgment in question by filing [illegible]

01.03.2019 The Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. due to general strike of the bar, the case is adjourned. To come up for arguments on 17.04.2019 before D.B

Member Member

Service Appeal No. 882/2017

02.05.2018 None present for appellant. Mr. Kabirullah Khattak, Additional AG for the respondents present. The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 25.06.2018.

Reader

25.06.2018 Neither the appellant nor his counsel present. Mr. Muhammad Jan, DDA alongwith Mr. Masroor Ahmad, Junior Clerk & Mr. Zaki Ullah, Senior Auditor on behalf of official respondents present. Written reply submitted on behalf of official respondents which are placed on file. To come up for rejoinder, if any, arguments on 15.08.2018 before D.B.

Chairman

15.08.2018 Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Due to general strike of the bar, the case is adjourned. To come up on 09.10.2018 before D.B.

(Muhammad Amin Kundi)
Member

(Muhammad Hamid Mughal)
Member

09.10.2018 Learned counsel for appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for appellant seeks adjournment. Adjourn. To come up for arguments on 21.11.2018 before D.B.

(Hussain Shah)
Member

(Muhammad Hamid Mughal)
Member

29.01.2018 Clerk to counsel for the appellant and Asst: AG for respondents present. Security and process fee not deposited. Appellant is directed to deposit security and process fee within 10 days, thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 19.03.2018 before S.B.

Appellant Deposited
Security & Process Fee

(Ahmad Hassan)
Member(E)

19.03.2018 Appellant absent. Clerk of the counsel present on behalf of appellant. Mr. Kabir Ullah Khattak Additional AG alongwith Sagheer Musharraf, AD (Lit) for the respondent present. Written reply not submitted. Learned Additional AG requested for adjournment. Adjourned. To come up for written reply/comments on 03.04.2018 before S.B.

(Muhammad Amin Khan Kundi)
Member

03.04.2018 Appellant in person present. Mr. Kabir Ullah Khattatk, Additional AG alongwith Mr. Sagheer Musharaf, AD (Lit) for the respondents present. Written reply not submitted. Learned Additional AG requested for adjournment. Adjourned. To come up for written reply/comments on 17.04.2018 before S.B.

Member

17.04.2018 Junior counsel for the appellant and Addl: AG alongwith Mr. Sagheer Musharraf, AD (Lit) for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Last opportunity is granted. To come up for written/comments on 02.05.2018 before S.B.

Member

05.12.2017 Learned counsel for the appellant present. Preliminary arguments heard and case file perused.

Learned counsel for the appellant argued that the appellant was initially appointed as Family Welfare Assistant BS-05 on contract basis in District Population Welfare Office Chitral on 07.05.2012, that later on the Project in question was converted into regular budget and services of employees were regularized. Further argued that the respondents instead of regularizing the service of appellant, issued termination order, office order dated 13.06.2014. That the appellant along with rest of the employees challenged/impugned their termination order before Honorable Peshawar High Court vide Writ Petition No. 1730-P/2014. That the appellant filed COC No. 186-P/2016, which was disposed of by the Hon'ble Peshawar High Court vide order dated 03.08.2016. That again the respondents did not obey order of Honorable Superior Courts. The appellant filed another COC No. 395-P/2016 in order to get the orders/judgments of Hon'ble court implemented. That during the pendency of COC No. 395-P/2016 the respondents passed an impugned office order dated 5.10.2016 and 24.10.2016 and reinstated the appellant with immediate effect instead of 13.06.2014 or from the date of regularization on 1.7.2014.

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

(Gul Zeb Khan)
Member

12.10.2017 Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 07.11.2017 before S.B.

(AHMAD HASSAN)
MEMBER

07.11.2017 None for the appellant present. Notices be issued to the appellant and his counsel. To come up for preliminary hearing on 05.12.2017 before S.B.

(AHMAD HASSAN)
MEMBER

Form-A

FORMOF ORDERSHEET

Court of_____

Case No. 882/**2017**

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge
1	2	3
1	21/08/2017	The appeal of Mr. Saif Ali presented today by Mr. Rahmat Ali Shah Advocate, may be entered in the Institution Register and put up to the Learned Member for proper order please. REGISTRAR
2-	23-8-2017	This case is entrusted to S. Bench for preliminary hearing to be put up there on 13-9-2017. MEMBER
	13.09.2017	Junior to counsel for the appellant present and seeks adjournment. Granted. To come up for preliminary hearing on 12.10.2017 before S.B. Chairman

BEFORE K.P.K SERVICE TRIABUNAL, K.P.K, PESHAWAR

In Re. S.Al No. 882 /2017

Saif Ali .....Appellant

Versus

Government of Khyber Pakhtunkhwa and Others.....Respondents

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Appellant

Through,

RAHMAT ALI SHAH
Advocate High Court

And

ARBAB SAIFUL KMAL
Advocate High Court

BEFORE K.P.K SERVICE TRIABUNAL, K.P.K PESHAWAR

Appeal No. 882/017

Saif Ali S/O Sultan Khan R/O Village Mogh, Tehsil and District Chitral .....Appellant

Versus

1. **Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.**
2. **Govt of Khyber Pakhtun Khawa through Secretary Population Welfare Department, Peshawar.**
3. **Director General, Population Welfare Department, Plot No. 18, Sector E-8, Phase VII, Hayatabad Peshawar.**
4. **Account General, Khyber Pakhtunkhwa at account General office, Peshawar Cantt.**
5. **District Population Welfare Officer Goldor, Chitral.**

..... **Respondents**

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ACT OF THE RESPONDENTS WHO ISSUED REINSTATEMENT ORDER DATED 5/10/2016 BY REINSTATING THE APPELLANT WITH IMMEDIATE EFFECT.

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED REINSTATEMENT ORDER DATED 5/10/2016 MY GRACIOUSLY BE MODIFIED AND THE APPELLANT MAY KINDLY BE REINSTATED IN SERVICE SINCE 13/06/2014 INSTEAD OF 5/10/2016 AND REGULARIZE THE APPELLANT FROM THE DATE OF REGULARIZATION i.e. 01/07/2014 WITH ALL BACK BENEFITS IN TERM OF FINANCIAL AND SERVICE BENEFITS, ARREARS, PROMOTIONS, SENIORITY IN ACCORDANCE WITH LAW, CONSTITUTION AND DICTA OF SUPERIOR COUERTS.

Respectfully Sheweth.

The Petitioner humbly submits as under:-

1. That the appellant was initially appointed as Family Welfare Assistant (BPS-05) on contract basis in District Population Welfare office, Chitral on 20/02/2012.

   {Copy of the appointment order is attached as Annexure-A}.

2. That later on the Project in question was converted into regular budget and services of employees were regularized.

3. That the respondents instead of regularizing the service of appellant, issued termination order, office order No. F.2(3)/2013-14 dated 13/06/2014. It is worth to mention here that the respondent were bent to appoint their blue eyed ones upon the regular post of the project in question

   {Copies of termination order is Annexure-B}.

4. That the appellant along with rest of other employees challenged/impugned their termination order before the Hon'ble Peshawar High court vide W.P No. 1730-P/14.

5. That the Hon'ble Peshawar High Court while endorsing the rights of appellants pleased to allow the Writ Petition through order dated 26/06/2014.

(Copy of order/judgment dated 26/6/2014 is Annex-D)

6. That the respondents impugned the order passed by Hon'ble Peshawar High Court before Supreme Court by filing CPLA No. 496-P/2014. But the Hon'ble Supreme court through order dated 24/2/2016 upheld the Order/judgment of Hon'ble Peshawar High Court and dismissed the CPLA filed by Respondents.

{Copy of CPLA and Order of Supreme Court is Annexure-E }.

7. That despite the clear orders/judgments of Hon'ble High Court dated 26/06/2014 and Hon'ble Supreme Court dated 24/02/2016 the respondents were reluctant to comply the courts orders and accept the genuine rights of appellant and his other colleagues to reinstate them since the date of termination and to regularize them. The appellant filed COC No. 186-P/2016, which was disposed of by the Hon'ble Peshawar High Court vide Order dated 3/08/2016 with direction to respondents to implement the judgment of Hon'ble Peshawar High Court within 20-days.

{Copy record of COC is attached as Annexure-F}

8. That again the respondents were seemed disobedient towards the order of Hon'ble Superior Courts the appellant compelled to file another COC No. 395-P/2016 in order to get the orders/judgments of Hon'ble courts implemented.

(Copy of COC No. 395-P/2016 is Annexure-G)

9. That during the pendency of COC No. 395-P/2016 the respondents passed an impugned office order No. SOE (PWD) 4-9/7/2014/HC dated 5/10/2016 and 24/10/2016 and reinstated the appellant with immediate effect instead of 13/6/2014 or at least from the date of regularization dated 1/7/2014. The same was in contravention of Order of Hon'ble High Court and Supreme Court and was also against the rights of appellant.

Copy of impugned reinstatement order is attached as annexure-H)

10. That feeling aggrieved the appellant moved departmental appeal on 2/11/2016, but again the respondent as usual by using all sort of delaying tactics to deprive the appellant from their due rights. Furthermore despite the laps of statutory period have not informed the appellant about fate of departmental appeal. It is pertinent to mention here that the respondents at first showed positive response to appellant by assuring that department is keen to redress their genuine issue. It is

one of the reason which delayed the matter to be addressed before this Hon'ble Tribunal.

(Copy of appeal is Annexur-I)

11. That feeling dissatisfied and deprivation the appellant prefer the instant appeal on the following grounds inter alia.

GROUNDS:

A. That the impugned Office reinstatement Order dated 5/10/2016 to the extent of **"immediate effect"** is against law, facts and utter disregard of Order/judgment of Hon'ble Peshawar High Court dated 26/6/2014, in which it was clearly mentioned that ; **"This writ petition is allowed in the terms that the petitioners shall remain in the post**...." Which order was later on endorsed by Hon'ble Supreme court through order dated 24/2/2016. Hence the interference of this Hon'ble Tribunal to modify and give retrospective effect to reinstatement order dated 5/10/2016 from the date of termination dated 13/6/2014 or from the date of conversion of project into regular side dated 1/7/2014, will meet the ends of justice.

B. That when the post of the appellant went on the regular side, and the termination office order dated 13/6/2014 was declared illegal by the Hon'ble Superior Courts, then not reckoning the rights of the appellant from that day is not only against the law but also against the norms of justice. Hence the impugned office order is unwarranted.

C. That the impugned office order dated 5/10/2016 to the extent of reinstatement with immediate effect is contradictory to the monthly pay slip and service card of similarly placed employees who were also reinstated through the office order dated 5/10/2016. **The pay slip reveal that the services of the employees is 5 years something**. Meaning thereby that the

respondents considered the employees since the date of initial appointment while on other hand they reinstated the appellant with immediate effect dated 5/10/2016 and left the previous services in vacume. Which is not only unlawful but also against the provisions of constitution of Pakistan. Hence need the interference of this Hon'ble tribunal.

(Copy of Pay slip and Service card is attached as Annexure J and K)

D. That it is worth to mention here that, in a connected case, CPLA No. 605/2015 with the CPLA No. 496, of 2014, the apex court has already held that not only the effected employee is to be re-instated into service, after conversion of project to current side, as regular civil servant, but are also entitled for all back benefits for the period they have worked with the project or the KPK government. Hence in the light of the above findings the office reinstatement order dated 5/10/2016 deserve interference to meet the ends of justice.

(Copy of order dated 24/2/2016 is attached as Annexure-L)

E. That in the light of judgment of Hon'ble High Court dated 26/6/2014 the appellant were presumed to be in service with respondents and during the period i.e. **from termination till reinstatement by respondents the appellant did not engaged in any other profitable activity,** either with government or semi government department. Hence the modification of office order dated 5/10/2016 is the need of hour.

F. That under the constitution and dicta of Supreme Court reported in 2009 SCMR 1 the appellant are entitled to be treated alike. As the Hon'ble Supreme Court in similar nature case reported in **2017 PLC (CS) 428 [Supreme Court]** pleased to allow the relief. Hence the appellant is entitled for equal treatment and is thus entitled for back benefits and other attached benefits.

G. That under the constitution of Islamic republic of Pakistan discrimination is against the fundamental rights. And no one could be deprived from his due rights on any pretext. Hence the

appellant is entitle for all back benefit, seniority and other rights.

H. That it is evident from entire record the conduct and treatment of respondents with the appellant was not justifiable. The appellant was dragged to various court of law and then intentionally not complying Hon'ble Court orders. Which compelled the appellant to move more than one time COC and miscellaneous applications, and the same resulted not only huge financial lose to appellant but also mental torture.

I. That it is due to extreme hard work of appellant along with other colleagues the project achieved the requisite objectives, and the Provincial Government constrained to put the project on regular side. Thus the appellant is entitled to be given all financial benefits admissible to regular employees, such as pensionary benefits and other benefits attached from the date of appointment.

J. That the Respondents erroneously exercised their discretion against judicial principle passed the impugned order and opened a new pandora box in clear violation of Service law, hence, they office reinstatement order dated 5/10/2016 is liable to be modified by giving retrospective effect with effect.

K. That other grounds will be raised with prior permission of Hon'ble tribunal at the time arguments.

IT IS, THEREFORE, MOST RESPECTFULLY PRAYED THAT ON ACCEPTANCE OF THIS APPEAL AN ORDER MAY GRACIOUSLY BE PASSED TO;

i. **MODIFY THE IMPUGNED REINSTATEMENT ORDER BY REINSTATING THE APPELLANT SINCE 13/6/2014 INSTEAD OF 5/10/2016.**

ii. **DIRECT THE RESPONDENT S TO PAY ARREARS OF MONTHLY SALARY/BACK BENEFITS OF INTERVENING PERIOD I.E. 13/6/2014 TO 5/10/2016.**

iii. **REGULARIZE THE APPELLANT SINCE, 1/7/2014.**

iv. **REVISIT THE SENIORITY LIST BY GIVING SENIORITY ACCORDING TO INITIAL APPOINTMENT OF APPELLANT.**

ANY OTHER RELIEF WHICH THIS HON'BLE COURT DEEMS FIT MAY KINDLY BE AWARDED.

Appellant

Through,

Rahmat ALI SHAH **and** **Arbab Saiful kamal**

Advocate High Court **Advocate High court**

Dated: /08/2017

VERIFICATION:

It is verified that (as per information given me by my client) all the contents of the instant appeal are true and correct and nothing has been concealed intentionally from this Hon'ble Tribunal. And no such like petition is filed before any other forum..

Advocate

BEFORE K.P.K SERVICE TRIABUNAL, K.P.K PESHAWAR

Appeal No. /017

Saif Ali

Versus

Government of Khyber Pakhtunkhwa and others

Application for condonation of Delay

Respectfully Sheweth.

1. That the instant Service Appeal has been filed by petitioner/ appellant today, in Which no date has yet been fixed.
2. That the content of the main appeal may graciously be considered an integral part of this petition.
3. That as the appellant belong to far-flung area of chitral and after filing of departmental appeal on 2/11/2016 before the competent authorities the appellant with rest of their colleagues regularly proceeded the appealed filed. The Departmental Appellate Authority every time was assuring the appellant with some positive outcome. But despite passing of statutory period and period thereafter till filing the accompanying service appeal before this Hon'ble Tribuanl, the same were never decided or never communicated the decision if any to appellant.

4. That beside the above the accompanying service Appeal is about the back benefits and arrears thereof and as financial matte, which effecting the current salary package regularly etc, of the appellant, so having repeatedly reckoning cause of action.

5. That the delay in filing the accompanying appeal was never deliberate, but due to reason for beyond control of petitioner.

6. That beside the above law always favor the adjudication on merits and technicalities must always be eschwed in doing justice and dealing cases on merit.

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

Appellant

Through:

Rahmat ALI SHAH

Advocate High Court

And

Arbab Saiful Kamal

Advocate High Court.

Dated: /08/2017

(11)

BEFORE K.P.K SERVICE TRIABUNAL, K.P, PESHAWAR

Appeal No. /017

Saif Ali

Versus

Government of Khyber Pakhtunkhwa and others

AFFIDAVIT

I, **Saif Ali S/O Sultan Khan R/O village Mogh**, Tehsil and District chitral, do hereby solemnly affirm and declare on oath that the contents of the instant appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

17 AUG 2017

ATTESTED

Hafiz Muhammad Sadiq Qureshi
Oath Commissioner

(12)

BEFORE K.P.K, SERVICE TRIABUNAL, K.P.K PESHAWAR

Appeal No. /017

ADDRESSES OF PARTEIS

Appellant

Saif Ali S/O Sultan Khan R/O Village Mogh, Tehsil and District Chitral

Respondents

1. **Government of Khyber Pakhtunkhwa Through Chief Secretary, Civil Secretariat, Peshawar.**
2. **Govt of Khyber Pakhtun Khawa through Secretary Population Welfare Department, Peshawar.**
3. **Director General, Population Welfare Department, Plot No. 18, Sector E-8, Phase VII, Hayatabad Peshawar.**
4. **Account General, Khyber Pakhtunkhwa at account General office, Peshawar Cantt.**
5. **District Population Welfare Officer Peshawar, plot No. 18, Sector E-8, Phase-VII, Peshawar.**

Appellant

Through

Sayed Rahmat Ali Adv H.C

(13)

OFFICE OF THE DISTRICT POPULATION WELFARE OFFICER, CHITRAL

Nazir Lal Building Governor Cottage Road Gooldure Chitral

Dated Chitral, the 20/2/2012

Annex "A"

OFFER OF APPOINTMENT

F.No.2(2)/2010-2011/Admn: Consequent upon the recommendation of the Departmental Selection Committee (DSC), and with approval of the Competent Authority you are offered of appointment as Family Welfare Assistant (BPS-5) on contract basis in Family Welfare Centre Project, Population Welfare Department, Khyber Pakhtunkhwa for the project life on the following terms and conditions.

TERMS AND CONDITIONS

1. Your appointment against the post of Family Welfare Assistant (BPS-5) is purely on contract basis for the project life. This Order will automatically stand terminated unless extended. You will get pay in BPS-5 (5400 - 260 - 13200) plus usual allowances as admissible under the rules.

2. Your service will be liable to termination without assigning any reason during the currency of agreement. In case of resignation, 14 days prior notice will be required, otherwise your 14 days pay plus usual allowances will be forfeited.

3. You shall provide medical fitness certificate from the Medical 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 any misconduct, your service will be 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 Khyber 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 funds or CP fund.

7. This offer shall not confer any right on you for regularization of your service against the post occupied 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 Officer (DPWO), Chitral 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.

District Population Welfare Officer,
(DPWO) Chitral

(44)

Saif Ali S/O Sultan Khan
Village Mogh P.O G.Chasma.

Dated Chitral, the 20/2/2012

F.No.2(2)/2010-2011/Admn

Copy forwarded to the:-

1. PS to Director General, Population Welfare Department, Peshawer.
2. District Account Officer, Chitral.
3. Account Assistant Local
4. Master File.

ATTESTED

OFFICE OF THE DISTRICT POPULATION WELFARE OFFICER CHITRAL

F.No.2 (2)/2013-14/Admn: -

Dated Chitral 13 / 06 / 2014

Annex (B)

To

Saif Ali Family Welfare Assistant (Male)
S/o Sultan Khan
Village Mough
District Chitral

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

Memo,

The Subject Project is going to be completed on 30-06-2014. The Services of saif Ali S/o Sultan Khan Family Welfare Assistant (Male) ADP-FWC Project shall stand terminated w.e.from 30-06-2014.

Therefore the enclosed Office Order No.4 (36) 2013-14/Admn dated 13-06-2014 may be treated as fifteen days notice in advance for the termination of your Services as on 30-06-2014 (AN).

(Asghar Khan)
District Population Welfare Officer
Chitral

Copy Forwarded to:

1. PS to Director General Population Welfare Department, Khyber Pakhtunkhwa Peshawar for favour of information please.
2. District Accounts Officer Chitral for favour of information please.
3. Accounts Assistant (Local) for information and necessary action.
4. Master File.

(Asghar Khan)
District Population Welfare Officer
Chitral

ATTESTED

(15)

IN THE PESHAWAR HIGH COURT, PESHAWAR

Annex C

W.P No. 1036-P /2014

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

FILED TODAY
Deputy Registrar
31 MAY 2014

ATTESTED

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

Prayer in Writ Petition:

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

Interim Relief

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

FILED TODAY
Deputy Registrar
31 MAY 2014

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EXAMINER
Peshawar High Court
12 JUL 2015

Respectfully Submitted:

1. That provincial Govt Health department has approved a scheme namely "Provision for Population Welfare Programme" for a period of 5 year 2010-2015, this integral scheme aims were:

   i. To strengthen the family through encouraging responsible parenthood, promoting practice of reproductive health &

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

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

Annex "D"

JUDGMENT

Date of hearing 26/06/2014

Appellant Nadeem Nisar etc by Mr. [illegible] Advocate

Respondent Govt etc by Qaiser Ali Shah AAG.

****

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

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ATTESTED
EXAMINER
Peshawar High Court
12 JUL 2014

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

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

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ATTESTED

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

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

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

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

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ATTESTED

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

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ATTESTED
EXAMINER
Peshawar High Court
12 JUL 2014

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

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

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EXAMINER
Peshawar High Court
12 JUL 2014

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

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

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

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

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EXAMINER
Peshawar High Court,
12 JUL 2014

ATTESTED

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

Announced on
26th June, 2014.

Mr. Nisar Hussain Khan - C
Sd/- Asadullah Khan Chamkani J.

Office
12/07/14

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CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Qanun-e-Shahadat Order 1984
12 JUL 2014

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

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

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

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

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.206-A/2012)

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

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

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

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

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

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

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

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

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

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Court Associate
Supreme Court of Pakistan
Islamabad

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Annex "E"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Islamabad

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CIVIL PETITION NO.619-P OF 2014
(On appeal against the judgment dated 18-09-2014 passed by the Peshawar High Court Peshawar, in Writ Petition No.2425-P/2013)

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

CA.134-P/2013

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

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

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

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

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Court Associate
Supreme Court of Pakistan
Islamabad

ATTESTED

ATTESTED

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(32)

(A-D)

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

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

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

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

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

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

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

For the Respondent(s) : Not represented.

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

For Respondent No.1 : In person (Absent)

For Respondent No.2 : Not represented.

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

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

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

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

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

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

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

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

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

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Court Associate
Supreme Court of Pakistan
Islamabad

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ATTESTED

CAs.134-P/2015 etc

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(38)

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

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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

ATTESTED

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, Ahsanullah, 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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Court Associate
Supreme Court of Pakistan
Islamabad

ATTESTED

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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Court Associate
Supreme Court of Pakistan
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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.

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.319-P/2014
Establishment of Database Development Based on Electronic Tools (Project)

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

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Civil Petitions No.350-P of 2014 to 371-P of 2014
Industrial Training Centre Garhi Shehsdad and Industrial Training Centre Garha Tajak, Peshawar

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

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

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

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

Civil Petition No.621-P of 2015
Dsar-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.

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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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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.

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

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

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

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Civil Appeal No.52-P of 2015

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

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

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

12. In response to an advertisement, the Respondents applied for different positions in the "Welfare Home for Female Children", Malakand at Batkhela and "Female Industrial Training Centre" at Garhi Usman Khel. Upon the recommendations of the Departmental Selection Committee, the Respondents were appointed on different posts on different dates in the year 2006, initially on contract basis for a period of one year, which period was extended from time to time. However, the services of the Respondents were terminated, vide order dated 09.07.2011, against which the Respondents filed Writ Petition No.2474 of 2011, *inter alia*, on the ground that the posts against which they were appointed had been converted to the budgeted posts, therefore, they were entitled to be regularized alongwith the similarly placed and positioned employees. The learned High Court, vide impugned order dated 10.05.2012, allowed the Writ Petition of the Respondents, directing the Appellants to consider the case of regularization of the Respondents. Hence this Appeal 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.425-P of 2014.
Provision of Population Welfare Programme

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

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

Civil Petition No.34-P of 2015

Pakistan Institute of Community Ophthalmology Hayatabad Medical Complex, Peshawar

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

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

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

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

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

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

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

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

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

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(Regularization of Services) Act, 2009, was not applicable to present Respondents. He referred to Section 19(2) of the KPK Civil Servants Act 1973, which was substituted vide KPK Civil Servants (Amendment) Act, 2005, provides that *"A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act, but appointment on contact basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis."* Furthermore, vide Notification dated 11.10.1989 issued by the Government of NWFP, the Governor of KPK was pleased to declare the "On Farm Water Management Directorate" as an attached Department of Food, Agriculture, Livestock and Cooperation Department, Govt. of NWFP. Moreover, it was also evident from the Notification dated 03.07.2013 that 115 employees were regularized under section 19 (2) of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 and Regularization Act, 2009 from the date of their initial appointment. Therefore, it was a past and closed transaction. Regarding summaries submitted to the Chief Minister for creation of posts, he clarified that it was not one summary (as stated by the learned Addl. Advocate General KPK) but three summaries submitted on 11.06.2006, 04.01.2012 and 20.06.2012, respectively, whereby total 734 different posts of various categories were created for these employees from the regular budgetary allocation. Even through the third summary, the posts were created to regularize the employees in order to implement the judgments of Hon'ble Peshawar High Court dated 15.09.2011, 8.12.2011 and Supreme Court of Pakistan dated 22.3.2012. Approximately 20-30% employees were

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

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

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

24. Mr. Ijaz Anwar, learned ASC, appeared in C.A 137-P/2013 for Respondents No. 2 to 6, CPs.526-P to 528-P/2013 for Respondents and for Appellant in Civil Appeal No.605-P/2015 (JR) and submitted that the Regularization Act of 2005, is applicable to his case and if benefit is given to some employees then in light of the judgment of this Court titled *Government of Punjab Vs. Samina 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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rules of good governance demand that the benefit of the said decision be extended to others also who may not be parties to that litigation. Furthermore, the judgment of Peshawar High Court which included Project employees as defined under Section 19(2) of the KPK Civil Servants Act 1973 which was substituted vide KPK Civil Servants (Amendment) Act, 2005, was not challenged. In the NWFP Employees (Regularization of Services) Act, 2009, the Project employees have been excluded but in presence of the judgment delivered by this Court, in the cases of *Govt. of NWFP vs. Abdullah Khan (ibid)* and *Govt. of NWFP vs. Kaleem Shah (ibid)*, the Peshawar High Court had observed that the similarly placed persons should be considered for regularization.

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

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

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

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

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

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

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

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

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

30. It is also an admitted fact that the Respondents were appointed on contract basis on Project posts but the Projects, as conceded by the learned Additional Advocate General, were funded by the Provincial Government by allocating regular Provincial Budget prior to the promulgation of the Act. Almost all the Projects were brought under the regular Provincial Budget Schemes by the Government of KPK and summaries were approved by the Chief Minster of the KPK for operating the Projects on permanent basis. The "On Farm Water Management Project" was brought on the regular side in the year 2006 and the Project was declared as an attached Department of the Food, Agriculture, Livestock and Co-operative Department. Likewise, other Projects were also brought under the regular Provincial Budget Scheme. Therefore, services of the Respondents would not be affected by the language of Section 2(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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Court Associate
Supreme Court of Pakistan
Islamabad

ATTESTED

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

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

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

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

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

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad

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

11565/16 Civil/Criminal
Date of Presentation: 24-2-16
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ATTESTED

IN THE HON'BLE PESHAWAR HIGH COURT PESHAWAR

In Re COC No// 186-P / 2016
In W.P No. 1730-P/2014

Annex. F

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

Petitioners

VERSUS

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

Respondents

P.41

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

RESPECTFULLY SHEWETH,

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

ATTESTED

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

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

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

ATTESTED

ATTESTED

IN THE HON'BLE PESHAWAR HIGH COURT PESHAWAR

In Re COC No. 395-P/ 2016
In COC No.186-P/2016
In W.P No.1730-P/2014

Annex (G)

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

Petitioners

VERSUS

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

Respondent

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

P43

Respectfully Sheweth,

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

ATTESTED

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

3. That it was during the pendency of COC II 479-P/2014 that the respondents in utter violation to judgment and order of this August Court made advertisement for fresh recruitments. This illegal move of the respondents constrained the petitioners to file C.M II 826/2015 for suspension of the recruitment process and after being halted by this August Court, once again made advertisement vide daily "Mashriq" dated 22/09/2015 and daily "Aaj" dated 18/09/2015. Now again the petitioners moved another C.M for suspension. (Copies of C.M II 826/2015 and of the thenceforth C.M are annexed as annexure – "C & D", respectively).

4. That in the meanwhile the Apex Court suspended the operation of the judgment and order dated 26/06/2014 of this August Court & in the light of the same the proceedings in light of COC II 479-P/2014 were declared as being infructuous and thus the COC was dismissed vide judgment and

P.44

FROM : FAX NO. : 9223623 05 Oct. 2016

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Annex "H"

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 24-02-2016 passed in Civil Petition No. 496-P/2014, the ex-ADP employees, of ADP Scheme titled "Provision for Population Welfare Programme in Khyber Pakhtunkhwa (2011-14)" are hereby reinstated against the sanctioned regular posts, with immediate effect, subject to the fate of Review Petition pending in the August Supreme Court of Pakistan.

SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT

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

ATTESTED

P.45

ATTESTED

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OFFICE OF THE DISTRICT POPULATION WELFARE OFFICER CHITRAL.

F. No. 2(2)/2016/Admn Chitral dated 24th October, 2016.

OFFICE ORDER

In compliance with Secretary Government of Khyber Pakhtunkhwa Population Welfare Department Office Order No. SOE(PWD)4-9/7/2014/HC dated 05/10/2016 and the Judgments of the Honourable Peshawar High court, Peshawar dated 26-06-2014 in W.P No. 1730-P/2014 and August Supreme Court of Pakistan dated 24-02-2016 passed in Civil Petition No.496-P/2014, the Ex-ADP Employees, of ADP Schemes titled "Provision for Population Welfare Program 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 (vide copy enclosed). In the light of the above, the following temporary Posting is hereby made with immediate effect and till further orders.

S.No	Name of Employees	Designation	Place of Posting	Remarks
1	Shehnaz Bibi	FWW	FWC Ouchu	
2	Haji Mena	FWW	FWC Gulti	
3	Khadija Bibi	FWW	FWC Brep	
4	Robina Bibi	FWW	FWC Chumurkone	
5	Nahida Tasleem	FWW	Waiting for Posting	
6	Ajaz Bibi	FWW	FWC Oveer	
7	Zainab Un Nisa	FWW	FWC G. Chasma	
8	Saliha Bibi	FWW	FWC Breshgram	
9	Suraya Bibi	FWW	FWC Madaklasht	
10	Shahnaz Bibi No.2	FWW	FWC Arkary	
11	Shazia Bibi	FWW	FWC Meragram.2	
12	Najma Gul	FWW	FWC Kosht	
13	Nazia Gul	FWW	FWC Harcheen	
14	Jamshid Ahmed	FWA(M)	FWC Gulti	
15	Saifullah	FWA(M)	FWC Chumurkone	
16	Abdul Wahid	FWA(M)	FWC Arandu	
17	Shaukat Ali	FWA(M)	FWC Breshgram	
18	Shoujar Rehmaan	FWA(M)	FWC Kosht	
19	Anis Afzal	FWA(M)	FWC Madaklasht	
20	Saif Ali.	FWA(M)	FWC Ouchu	
21	Muhammad Rafi	FWA(M)	FWC Arkary	
22	Shouja Ud Din	FWA(M)	FWC Rech	
23	Sami Ullah	FWA(M)	FWC Seenlasht	
24	Imran hussain	FWA(M)	FWC Barenis	
25	Zafar Iqbal	FWA(M)	FWC G. Chasma	
26	Bibi Zainab	FWA(F)	FWC Seenlasht	
27	Bibi Saleema	FWA(F)	FWC Kosht	
28	Hashima Bibi	FWA(F)	RHSC-A booni	
29	Bibi Asma	FWA(F)	FWC Breshgram	
30	Hariea	FWA(F)	FWC Arkary	
31	Nazira Bibi	FWA(F)	FWC Rech	
32	Shehla Khateon	FWA(F)	FWC Brep	
33	Sufia Bibi	FWA(F)	FWC Meragram. 2	
34	Jamila Bibi	FWA(F)	FWC Ouchu	
35	Farida Bibi	FWA(F)	FWC G. Chasma	
36	Rehman Nisa	FWA(F)	FWC Gulti	
37	Samina Jehan	FWA(F)	FWC Bumburate	
38	Yasmin Hayat	FWA(F)	FWC Hone Chitral	

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39	Amina Zia	FWA(F)	FWC Mastuj	
40	Zarifa Bibi	FWA(F)	RHSC Chitral	
41	Nasim	FWA(F)	FWC Madaklasht	
42	Akhtar Wali	Chowkidar	FWC Oveer	
43	Abdur Rehman	Chowkidar	FWC Arandu	
44	Shokorman Shah	Chowkidar	FWC Arkary	
45	Wazir Ali Shah	Chowkidar	FWC Ouchu	
46	Ali Khan	Chowkidar	FWC Harcheen	
47	Azizullah	Chowkidar	FWC Bumburate	
48	Nizar	Chowkidar	FWC Koshi	
49	Ghafar Khan	Chowkidar	FWC Gufti	
50	Sultan Wali	Chowkidar	FWC G.Chasma	
51	Muhammad Amin	Chowkidar	FWC Madaklasht	
52	Nawaz Sharif	Chowkidar	FWC Chumurkone	
53	Sikandar Khan	Chowkidar	FWC Breshgram	
54	Zafar Ali Khan	Chowkidar	FWC Brep	
55	Shakila Sadir	Aya/Helper	FWC Scenlasht	
56	Kai Nisa	Aya/Helper	FWC Reeh	
57	Bibi Amina	Aya/Helper	FWC Gufti	
58	Farida Bibi	Aya/Helper	FWC Breshgram	
59	Benazir	Aya/Helper	FWC Oveer	
60	Yadgar Bibi	Aya/Helper	FWC Booni	
61	Nazmina Gul	Aya/Helper	FWC Madaklasht	
62	Nahid Akhtar	Aya/Helper	FWC Ouchu	
63	Sajeda	Aya/Helper	FWC Arandu	
64	Gulistan	Aya/Helper	FWC Ayun	
65	Hoor Nisa	Aya/Helper	FWC Naggar	
66	Kulsa Bibi	Aya/Helper	FWC Harcheen	
67	Sadiqa Akbar	Aya/Helper	Waiting for posting	
68	Bibi Ayaz	Aya/Helper	RHSC-A Booni	
69	Khadija Bibi	Aya/Helper	FWC Arkary	

P47

District Population Welfare Officer
Chitral.

Copy forwarded to the:-

1). PS to Director General Population Welfare Government of Khyber Pakhtunkhwa, Peshawar for favour of information please.
2). Deputy Director (Admn) Population Welfare Government of Khyber Pakhtunkhwa, Peshawar for favour of information please.
3). All officials Concerned for information and compliance.
4). P/F of the Officials concerned.
5). Master File.

District Population Welfare Officer
Chitral.

ATTESTED

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To,

The Secretary Population Welfare Department ,
Khyber Pakhtunkhwa,
Peshawar

Subject: **DEPARTMENTAL APPEAL**

Annex I

Respected Sir,

With profound respect the undersigned submit as under:

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

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

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

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

ATTESTED

5) That the said principle has been discussed in detail in the judgment of august Supreme Court vide order dated

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

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

Yours Obediently,

Shoukat Ali
Family Welfare Assistant
Population Welfare Department
Chitral

Dated: 02.11.2016

ATTESTED

Anx J

Nowshera

GS 1

P Sec:001 Month.July 2017
NR6203 -District Population Welfar
POPULATION WELFARE NOWSH

Pers # 00679554 Buckle:
Name. MUHAMMAD ZAKRIRA
FAMILY WELFARE ASSISTANT
CNIC No 1720165300039
GPF Interest Free
Dr Active Temporary

NTN:
GPF #.
Old #:

NR6203

PAYS AND ALLOWANCES.

0001 Basic Pay	10,990.00
1500-House Rent Allowance	1,099.00
1211-Convey Allowance 2005	1,932.00
1300-Medical Allowance	1,500.00
1721-Fixed T.A / D.A	250.00
2148-15% Adhoc Relief All-2013	290.00
2199 Adhoc Relief Allow @10%	187.00
2211 Adhoc Relief All 2016 10%	922.00
2224 Adhoc Relief All 2017 10%	1,099.00
Gross Pay and Allowances	18,229.00

DEDUCTIONS:

GPF Balance	7,596.00	Subro:	844.00
3501-Benevolent Fund			600.00
4004-R Benefits & Death Comp:			450.00

Total Deductions 1,894.00

16,335.00

D.O.B 15.01.1991
05 Years 04 Months 005 Days

LFP Quota:
THE BANK OF KHYBER SAAD PLAZA NOWSHERA
11534

Jamshidahmad pwd@gmail.com

ATTESTED

(09) 65

GOVERNMENT OF KHYBER PAKHTUNKHWA

DISTRICT NOWSHERA

POPULATION WELFARE DEPARTMENT

MUHAMMAD ZAKRIYA

FWA

Annex (K)

No.	018-00000055
Personnel No.	00679554
Office.	POPULATION WELFARE NOWSHERA

Issuing Authority

SERVICE IDENTITY CARD

Father/husband Name: **ASARAF UD DIN**

CNIC No. **17201-6530003-9** Date of Birth: **15-01-1991**

Mark Of Identification: **NIL**

Issue Date: **26-10-2014** Valid Up To: **25-10-2019**

Emergency Contact No: **0313-9191372** Blood Group: **B+**

Present Address: **ASHOOR ABAD AMANGARH TEHSIL AND DISTRICT NOWSHERA**

Note: For Information / Verification, Please Contact HR-Wing Finance Department. (091-9212673)

(452) 66

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

CIVIL APPEAL NO.605 OF 2015
(On appeal against the judgment dated 18.2.2015 Passed by the Peshawar High Court Peshawar, in Writ Petition No.1961/2011)

Rizwan Javed and others ... ... Appellants

VERSUS

Secretary Agriculture Livestock etc ... ... Respondents

For the Appellant : Mr. Ijaz Anwar, ASC
Mr. M. S. Khattak, AOR

For the Respondents : Mr. Waqar Ahmed Khan, Addl. AG KPK

Date of hearing : 24-02-2016

ORDER

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

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

ATTESTED
Court Associate
Supreme Court of Pakistan
Islamabad

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

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

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

ATTESTED

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

P.2

(56)

Pakhtunkhwa Agriculture, Live Stock and Cooperative Department through its Secretary and others vs. Ahmad Din and another (Civil Appeal No.687/2014 decided on 24.6.2014), by distinguishing the cases of *Government of NWFP vs. Abdullah Khan* (2011 SCMR 989) and *Government of NWFP (now KPK) vs. Kaleem Shah* (2011 SCMR 1004) has categorically held so. The concluding para of the said judgment would require reproduction, which reads as under :-

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

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

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

5. We have heard the learned Counsel for the Appellants and the learned Additional Advocate General, KPK. The only distinction between the case of the present Appellants and the case of the Respondents in Civil Appeals No.134-P of 2013 etc. is that the project in which the present Appellants were appointed was taken over by the KPK Government in the year 2011 whereas most of the projects in which the aforesaid Respondents were appointed, were regularized before the cut-off date provided in North West Frontier Province (now KPK) Employees (Regularization of Services) Act, 2009. The present Appellants were appointed in the year 2007 on contract basis in the project and after completion of all the requisite codal formalities, the period of their contract appointments was extended from

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

P.3

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

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad

SEAL OF THE SUPREME COURT

Announced in open Court on 6.6.16

Approved for reporting.

J 1685/16

GR No: Civil/Criminal
Date of [illegible] 6.6.16
No of Words
No of Folios
Requisition
Copy Fee in
Court Fee
Date of
Date [illegible]

ATTESTED

6-6-2016

6-6-2016

M. S. Iqbal Nasir ADR

بعدالت سیشن جج ہیڈکوارٹر سول لنساتار

مورخہ 2017ء منجانب

مقدمہ بنام حکومت خیبرپختونخواہ

دعویٰ

جرم

باعث تحریر آنکہ

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

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 وہ ہوگا۔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۔

المرقوم ماہ 20 17ء

العبد گواہ العبد

مقام کے لئے منظور ہے۔

Before the Khyber Pakhtunkhwa Services Tribunal Peshawar

Appeal No.882/2017

Saif Ali.....Appellant.

V/S

Government of Khyber Pakhtunkhwa, through Chief Secretary,
Khyber Pakhtunkhwa Peshawar & 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 11:-

That the matter is totally administrative in nature and relates to respondent No.1,2,3,4 & 5 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.6, may kindly be excluded from the list of respondent.

9.4.18

ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA

IN THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

In Appeal No.882/2017.

Saif Ali Family Welfare Assistant (Male) BPS-05..... (Appellant

VS

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

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Deponent
Sagheer Musharraf
Assistant Director (Lit)

IN THE HONOUABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

In Appeal No.882/17.

Saif Ali, Family Welfare Assistant (Male) BPS-05.....Appellant

VS

Govt. Of Khyber Pakhtunkhwa and others.....Respondents

Joint Para-wise reply/comments on behalf of the respondents No..2,3 &5

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 appellant has come to the Tribunal with un-cleaned hands.
5- That re-view petition is pending before The Supreme Court of Pakistan, Islamabad.
6- That the appeal is bed for non-joinder & mis-joinder of unnecessary parties.
7- That the tribunal has no jurisdiction to adjudicate the matter.

On Facts.

1. Incorrect. That the appellant was initially appointed on project post as Family Welfare Assistant in BPS-05 on contact 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)".
2. Incorrect. The actual position of the case in that after completion of the project the incumbents were terminated from their posts according to the project policy and no appointments made against these project posts. 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 has experience marks which were to be awarded to them.
3. Correct to the extent that after completion of the project the appellant along with other incumbents were terminated from their as explained in para-2 above.
4. The actual position of the case is that after completion of the project the incumbents were terminated from their post according to the project policy and no appointment made against these project posts. Therefore the appellant along with other filed a writ petition before the Honorable Peshawar High Court, Peshawar.
5. Correct to the extent the Honorable Court allowed the subject writ petition on 26-06-2014 in the terms that the petitioners shall remain on the post subject to the fate of C.P No.344-P/2012 as identical proposition of facts and law is involved therein. And the service 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 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 lifer was 3 months to 2 years and 2 months.

7 No Comments.

8 No Comments.

9 Correct to the extent that the appellant along with 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.

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

11 No Comments.

On Grounds.

A- In correct. The Appellant along with 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- Incorrect. That every Govt. Department is bound to act as per law, rules and regulation.

C- Incorrect. The appellant along with other incumbents re-instated against the regular sanctioned posts, with immediate effect, subject to the fate of review petition pending the August Supreme Court of Pakistan.

D- Incorrect. The appellant along with other incumbents have taken all the benefits for the period, they worked in the project as project policy.

E- Correct to the extent that the appellant along with 560 incumbents of the project were re-instated against the regular sanctioned posts, with immediate effect, subject to the fate of review petition pending the August Supreme Court of Pakistan. During the period under reference they have neither reported for nor did perform their duties.

F- Incorrect. As explain in para-6 of the facts above.

G- No discrimination has been done to the petioners. The appellant along with other incumbents have taken all benefits for the periods, they worked in the project as per project policy. As explained in Para-E above.

H- As per paras above.

I- Incorrect. As explained in para-3 of the facts above.

J- Incorrect. The appellant along with other incumbents re-instated against the sanctioned regular posts, with immediate effect, subject to the fate of re-view petition pending before the August Supreme Court of Pakistan.

K- 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 with cost.

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 Chitral
Respondent No.5

IN THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

In Appeal No.882/2017.

Saif Ali Family Welfare Assistant (Male) BPS-05..... (Appellant

VS

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

Affidavit

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

Deponent
Sagheer Musharraf
Assistant Director (Lit)