

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 16440/2019

BEFORE: SALAH UD DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)

**Khalid Khan Veterinary Assistant Civil Veterinary Hospital
Harichand, Tehsil Tangi Charsadda..... (Appellant)**

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Agriculture Live Stock and Dairy Development Peshawar.
2. The Director General Live Stock and Dairy Development Khyber Pakhtunkhwa Bacha Khan Chowk, Peshawar..... (*Respondents*)

Present:

NAZIR AHMAD,
Advocate --- For Appellant.

MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General, --- For respondents.

Date of Institution.....22.12.2020
Date of Hearing.....22.09.2022
Date of Decision.....13.10.2022

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The instant service appeal has been instituted with the prayer that “on acceptance of this appeal the competent authority may be directed, to regularize and adjust the appellant like others appointed on contract basis w.e.f. date of joining the service as Veterinary Assistant (dated 27.11.2002) and count his service towards seniority, pension and promotion accordingly.”

02. Brief facts, as per memorandum of appeal, are that the appellant was appointed as Veterinary Assistant (BS-06) in development scheme/project on contract basis in former FATA on 27.11.2002. Later on, regular post of Veterinary Assistant was advertised by the respondent department and he was selected against the regular vacancy on 21.02.2009. The appellant resigned from contractual service on 28.02.2009 so as to assume the charge of regular post of Veterinary Assistant on 01.03.2009. In order to get his contract service regularized, he filed Writ Petition No. 354-P/2016 before honourable Peshawar High Court, which was allowed on 22.06.2016. However, the same was challenged in the august Supreme Court of Pakistan through CPLA No. 886/2017 by the respondent department. The august Supreme Court of Pakistan allowed CPLA of the respondent department and set aside judgement of the honourable Peshawar High Court on 20.07.2020. The appellant thereafter submitted departmental appeal on 26.09.2020 which was not responded within the statutory period whereafter he filed the Service appeal on 22.12.2020. The same is under scrutiny for adjudication before us.

03. On 12.07.2021 pre-admission notices were issued to the respondents for submission of reply/comments. Reply/Parawise comments were submitted on 01.12.2021 and the case was posted to D.B for arguments. We have heard learned counsel for the

appellant as well as learned Assistant Advocate General for the respondents in Divisional Bench and gone through the record thoroughly with their valuable assistance today.

04. Learned counsel for the appellant at the outset of his arguments, contended that the period of contract service of the appellant w.e.f. 27.11.2002 is required to be regularized on the same pattern of similarly placed contractual employees whose services were regularized from the date of their contract appointment under the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 and Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009. The appellant, prior to his regular appointment as Veterinary Assistant, though tendered resignation from contract service on 28.02.2009 but his resignation had neither been accepted by the competent authority nor it can be called as resignation for the purpose of pension. He was rather adjusted against the vacant post of Veterinary Assistant vide order dated 02.03.2009 and case of the appellant is covered under CSR 418(b). Moreover, the honourable Peshawar High Court allowed his Writ Petition No. 354/2016 but the respondents challenged it in the august Supreme Court of Pakistan despite the fact that others similarly placed persons regularized through court orders, had also been appointed on contract basis in the prescribed manner and were receiving annual increments as well. The appellant though better placed is

therefore, met out discriminatory treatment by the respondent department irrespective of the fact that temporary service followed by permanent services is counted towards pension. He relied on CSR 418 (b), 2003 SCMR 686 and 2008 PLC (C.S) 482 while concluding his arguments.

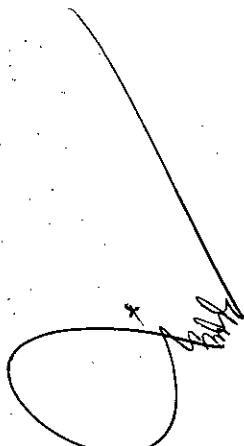
05. Learned Assistant Advocate General on the other hand, contended that the appellant was working as Veterinary Assistant (BS-06) on contract basis who applied for the regular post of Veterinary Assistant advertised by the respondent department. He also submitted resignation so as to join the regular post of Veterinary Assistant w.e.f 01.03.2009. Status of the appellant as contract employee was therefore, vanished and did not remain in the field to be treated at par with similarly placed contract employees whose services were either regularized through Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009 or regularized under the judgements of Peshawar High Court in various Writ Petitions. Moreover, the Writ Petition of appellant allowed by the honourable Peshawar High Court was subsequently set aside by the august Supreme Court of Pakistan on 20.07.2020. The appeal being devoid of merits may be dismissed, he concluded.

06. Perusal of the record reveals that the appellant was initially appointed as Veterinary Assistant (BS-06) in development scheme/project of erstwhile FATA on contract

basis vide Notification dated 27.11.2002. The respondent department advertised a regular post of Veterinary Assistant and the appellant admittedly applied alongwith other candidates for the said post. He was appointed as Veterinary Assistant on regular basis vide order dated 21.02.2009. The appellant, in order to join the regular post of Veterinary Assistant, tendered his resignation on 28.02.2009. He also approached the honourable Peshawar High Court, in Writ Petition No. 354-P/2016 with the same plea as has been prayed in the instant service appeal. His Writ Petition was allowed by the honourable Peshawar High Court vide its judgement dated 22.06.2016 which was challenged in the august Supreme Court of Pakistan through CPLA by the respondent department. The august Supreme Court of Pakistan vide its judgement dated 22.07.2020 allowed CPLA of the respondent department and set aside impugned judgement of honourable Peshawar High Court dated 22.06.2016. Para 4 of the judgement of august Supreme Court of Pakistan is relevant to be reproduced below;

"We are unable to appreciate such an argument of the learned counsel for the respondent nor the law cited by him before us. We have noted that although the respondent was appointed on 27.11.2002 as Veterinary Officer on contract basis in a project from which post the respondent himself admittedly resigned on 28.02.2009. The effect of the resignation is that the respondent himself has brought

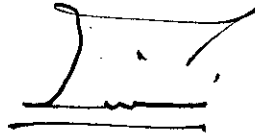
to an end his own service of Veterinary Officer and thereafter, he joined the service as Veterinary Assistant on 02.03.2009 as regular employee of the petitioner. This very fact of resignation and joining afresh, creates a gap in the employment of the respondent and that very gap was created by the respondent himself and not by anybody else. The very post on which respondent was earlier employed was Veterinary Officer and subsequently when he got regular appointment the post was that of Veterinary Assistant. On perusal of the record and going through the relevant documents we note that the High Court has erroneously passed the impugned judgement without taking into consideration the factum of his resignation and giving true effect to the Act of 2009 and thus committed illegality. Consequently, the appeal is allowed and the impugned judgement dated 22.06.2016 is set aside."



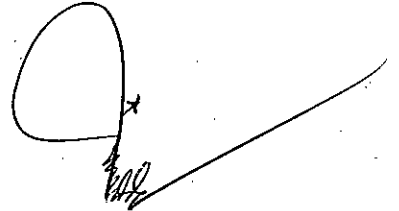
07. In view of the foregoing discussion, we have arrived at the conclusion that the instant service appeal is hit by Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 which clearly stipulates that "no Tribunal shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction." Based on the judgement of august Supreme Court of Pakistan dated 22.07.2020, the issue in question has already and finally been decided which does not need further

consideration. As a result thereof the instant service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 13th day of October, 2022.*



(SALAH UD DIN)
MEMBER (J)



(MIAN MUHAMMAD)
MEMBER (E)

ORDER

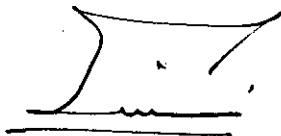
13.10.2022

Mr. Nazir Ahmad, Advocate for the appellant present.

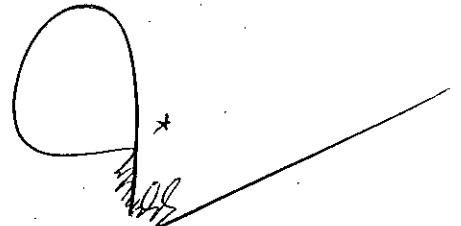
Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

02. Vide our detailed judgement of today separately placed on file containing (07) pages, we have arrived at the conclusion that the instant service appeal is hit by Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 which clearly stipulates that "no Tribunal shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction." Based on the judgement of august Supreme Court of Pakistan dated 22.07.2020, the issue in question has already and finally been decided which does not need further consideration. As a result thereof the instant service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

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(SALAH UD DIN)
MEMBER (J)

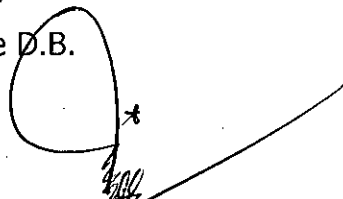


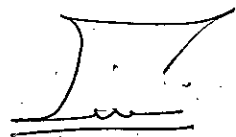
(MIAN MUHAMMAD)
MEMBER (E)

22.09.2022

Mr. Nazir Ahmad, Advocate learned counsel for the appellant present. Dr. Jabir, Senior Veterinary Officer alongwith Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.


Arguments heard. To come up for order on 05.10.2022 before the D.B.



(Mian Muhammad)
Member (E)


(Salah-Ud-Din)
Member (J)

5th October, 2022 Appellant in person present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

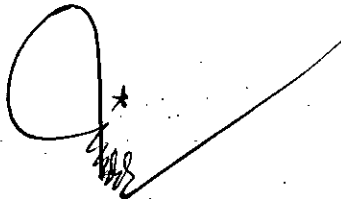
Order could not be announced due to non-availability of proper D.B. To come up for order on 13.10.2022 before the D.B.


(Fareeha Paul)
Member(Executive)

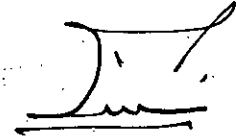

(Kalim Arshad Khan)
Chairman

09.05.2022 Learned counsel for the appellant present. Syed Naseer Ud Din Shah, Assistant Advocate General for respondents present.

Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments before the D.B on 13.06.2022.



(Mian Muhammad)
Member(E)



(Salah Ud Din)
Member(J)

13.06.2022 Appellant in person present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Appellant sought adjournment on the ground that his counsel is not available today due to strike of Lawyers. Adjourned. To come up for arguments before the D.B on 19.07.2022.



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

19.07.2022 Counsel for appellant present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Request for adjournment was made on behalf of both the parties. Adjourned. To come up for arguments on 22.09.2022 before D.B.



(Fareeha Paul)
Member(E)

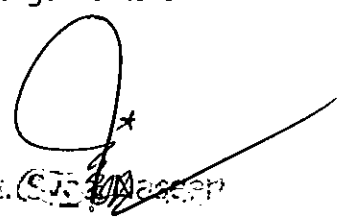


(Rozina Rehman)
Member (J)

06.04.2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt,
Addl: AG for respondents present.

In pursuance of order sheet dated 12.07.2021, the respondent-
department has submitted reply/parawise comments alongwith
connected documents. The service appeal is admitted to regular hearing
subject to all just legal objections. The appellant is directed to deposit
security and process fee within 10 days. To come up for arguments on
09.05.2022 before D.B.



~~09.05.2022~~

~~Counsel for the appellant present. (Mian Muhammad)~~
~~Ud D. Shah, Assistant Ad. Secy General (Mian Muhammad)~~
~~present~~ Member(E)

~~Learned counsel for the appellant requested for~~
~~adjournment. Adjourned. To come up for arguments before the D.B~~
~~on 13.05.2022.~~

~~(Mian Muhammad)~~
Member(E)

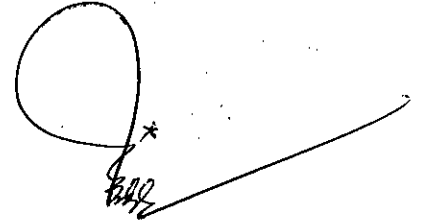
~~(Sajid Sohani)~~
~~(Sajid Sohani)~~



01.12.2021

Appellant alongwith his counsel present. Mr. Kabirullah Khattak, Addl: AG alongwith Dr. Muhammad Jafar, Veterinary Officer for respondents present.

Written reply/comments on behalf of respondents submitted which is placed on file. A copy of the same is also handed over the learned counsel for the appellant. Adjourned. To come up for preliminary hearing on 02.02.2022 before S.B.



(MIAN MUHAMMAD)

MEMBER (E)

02.02.2022

Appellant alongwith his counsel present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present. Preliminary arguments could not be heard due to learned Member (Executive) Mian Muhammad is on leave. To come up for preliminary hearing on 06.04.2022 before S.B.



Reader

29.04.2021

Due to demise of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 12.08.2021 for the same as before.

Early hearing application
accepted and fixed for
13/07/21


Reader

12.07.2021

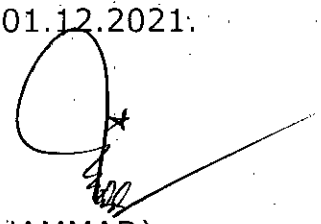
Junior to counsel for the appellant present.

Let the respondents be required through pre-admission to file their comments/written reply. To come up for reply/preliminary hearing on 05.10.2021 before S.B.


Chairman

05.10.2021

Junior of learned counsel for the appellant present. Dr. Muhammad Jaffar, Veterinary Officer alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present and sought time for submission of comments/written reply. Granted. To come up for reply/preliminary hearing before the S.B on 01.12.2021.

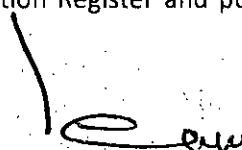



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 16440 /2020

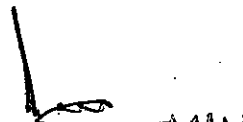
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	31/12/2020	<p>The appeal of Mr. Khaled Khan resubmitted today by Mr. Nazir Ahmad Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR,</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/02/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-	12.02.2021	<p>Junior to counsel for appellant present.</p> <p>Due to general strike of the bar, case is adjourned to 29.04.2021 for preliminary hearing before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p>

This is an appeal filed by Mr. Khaled Khan today on 22.12.2020 against the order dated 21.05.2014 against which he preferred/made departmental appeal/ representation on 26.09.2020 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/Counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action.

No. 4104 /ST,

Dt. 23/12/2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Nazir Ahmad Adv. Pesh.

Sir,
The 90 days period under section 4 of K.P.S.T. Act is
now complete. Re-submitted.

Nazir
24/12/20

Before the Khyberpakhtunkhwa Service Tribunal Peshawar.

Service Appeal No...../2020

Khalid Khan . Veterinary AssistantAppellant

Vs


Government of Khyberpakhtunkhwa through Secretary
Agriculture, live Stock and dairy development Peshawar and
another.....Respondents.

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Through

Appellant


Nazir Ahmad. Advocate.
High Court Peshawar
Cell #0301-8571879
#0332-8540783

①

Before the Khyberpakhtunkhwa Service Tribunal
Peshawar

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 16440/2020

Diary No. 16842

Dated 22-12-2020

Khalid Khan Veterinary Assistant Civil Veterinary Hospital
Harichand, Tehsil Tangi Charsadda.....**Appellant**

Vs

1. Government of Khyberpakhtunkhwa through Secretary Agriculture, live Stock and Dairy Development Peshawar.
2. The Director General Live Stock and Dairy Development Khyberpakhtunkhwa Bacha Khan Chowk, Peshawar(Respondents)

Service Appeal under Section 4 of the KPK Service Tribunal Act, 1974, against the impugned order No- 9170—3157/2011, 2855/2012 court case Peshawar Whereby the Appellant is not regularized and adjusted along with others who were appointed on contract basis and are now regularized w.e f. Date of joining the service as Veterinary Assistant i.e. dated(27.11.2002) and his service is not counted towards seniority, pension and promotion

accordingly.

~~Filed to-day~~

~~Registrar~~
Prayer:

22/12/2020

On acceptance of this Appeal the competent Authority may be ordered, to regularize and adjust the Appellant like others appointed on contract basis w.e f. Date of joining the service as Veterinary Assistant (dated 27.11.2002) and Count his service towards seniority, pension and promotion accordingly.

Respectfully Sheweth: The need for the instant Appeal arises due to the following facts:

Facts:

1. That the Appellant along with others was appointed on contract basis against the vacant post of Veterinary Assistant for the development scheme as per prescriber manner in

Re-submitted to-day
and filed.

Registrar
31/12/20

②

the year 2002 with annual increment from time to time and pay revised like regular employees . Needless to mention that at that time all the appointments though were as per prescribed manner but as per policy was considered a contract employment.

(Appointment of the Appellant as contract employee is attached as Annexure A).

2. That during this time a permanent post was advertised by the Department and all the others working on contract basis applied against it but only the Appellant was selected on merit. The Departmental Selection Committee when recommended him then the Respondents appointed him as Veterinary Assistant through order dated 21.02,2009 against the regular vacant post of Veterinary assistant in Livestock office circle Kuram Agency w.e.f. 1.3.2009. **(The order dated 21.2.2009 is attached as Annexure B).**
3. That in order to join service as permanent employee in the same department the Appellant as per direction of the competent Authority resigned from service on 28.2.2009 and assumed the charge of regular post on 1.3 2009 within one day which as per provisions of Civil Service Regulations No 418(b) is not a resignation of a public service..... **(Copy of such resignation is attached as Annexure C).**
4. That the Government of Khyberpakhtunkhwa for regularization of all contract employees passed NWFP Civil Servant Amendment Act 2005 and KP Employees Regularization of Services Act, 2009 which regularized all such employees equally placed to the Appellant and his other colleagues.
5. That the other employees filed Writ Petition No 3157, Writ Petition No 2655/2012 , Writ Petition No 771/2010, Writ Petition No 2384/2010 which were admitted and allowed and all such employees were regularized w.e from the date of joining the service whereas the Petitioner is considered regular employee w.e from the date of posting against the permanent post..... **(The Writ Petitions a, the judgment and the regularization order in pursuance of the judgment is attached as Annexure D).**

- 3
6. That the Appellant filed a Writ Petition No --354/2016 before the Peshawar High Court for his regularization under the relevant Acts which was allowed and accepted. (**Copy of the Writ Petition No-354-P/2016 and judgment is attached as Annexure E**).
 7. That against the judgment of Peshawar High Court the Department in clear violation of Principle of Natural Justice and ignoring the case of the others who were declared failed in examination in competition with the Appellant filed Civil Appeal No886/2017 before the Supreme Court of Pakistan which is allowed and the judgment of the High Court Peshawar is set aside. The Apex Court directed the Appellant verbally to seek relief through Departmental Appeal or Appeal before the Service Tribunal. ..(**Copy of Civil Appeal and the Order dated 20.07.2020 is attached as Annexure F**).
 8. That the Appellant filed a departmental Appeal on 26.9.2020 but it is not responded by the Respondent till the expiry of the statutory period of 90 days.(**The departmental Appeal is attached as Annexure G**).

Being aggrieved hence this Appeal under the relevant provisions of law and Constitution is preferred on the following grounds.

Grounds:

- A. That all the others who are regularized through court order were appointed on contract basis as per prescribed manner and were given annual increments and the appellant was one of them and is similarly placed rather better in merit been selected on merit in competition with the others therefore depriving him of such benefits which are extended to others is unjust and unfair.
- B. That the Department advertised a post of the same designation and all including the Appellant competed for it and better in merit was selected and all the others were left to continue on contract basis. The concerned authority advised the Appellant that in order to join the regular service you have to resign the old one which the Appellant did .

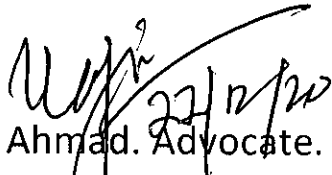
4

- C. That the Civil Service Regulations No 418(b) provides that resignation to join another service is not a resignation and this regulation is now a ruling of the Apex Court in the judgment 2003 SCMR 686 titled Chief Engineer Hydrel North Vs Zafrullah shah .
- D. That the Honourable Supreme Court of Pakistan has just gone through the regulation under the Acts and has not considered this Regulation which resulted injustice to the Appellant.
- E. That it will convey a bad message to all the concerned that the one who is selected on merit is ignored and the others are garlanded.
- F. That the treatment meted out to the Appellant is discriminatory and against the regulation . This is pertinent to mention that Civil Service Rules also provide that temporary service followed by permanent service is counted towards pension.

It is therefore humbly prayed that on acceptance of this I Appeal the relief may be granted as prayed above.


Appellant

Through


Nazir. Ahmad. Advocate.
High Court Peshawar.
Cell# 03328540783

Certificate

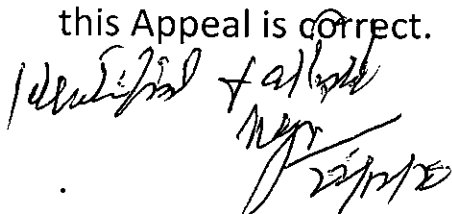
Certified that the Appellant has not filed any appeal in respect of the same subject matter before this Tribunal.


Appellant.

Affidavit

I the Appellant affirm and declare on oath that the contents of this Appeal is correct.

Deponent





BETTER COPY

DIRECTORATE OF LIVESTOCK & DAIRY DEVELOPMENT NWFP PESHAWAR-25000

NOTIFICATION

On the recommendation of the Department Selection Committee, the competent authority is pleased to appoint the following candidate (s) against the vacant post(s) of VETERINARY ASSISTANT (BPS-06) in FATA/FR on contract basis for the Developmental Scheme(s)/Projects for the Project life at the permissible pay scale(s) B-06 with regular allowances according to the Notification of Finance Department Contract Policy 2002 Vide NO. F.D (SOSR-II) 12-1/2002 dated 26.10.2002, from the dates of their taking over the charge of the post.

2. Selectees (s) should report for duty to the Assistant Director Livestock & Dairy Development concerned as mentioned against their name for further adjustment in his circle on the following terms and conditions:

(a) The appointment will be on contract basis for the Project life, subject to the verification of character and medical fitness by the concerned Agency surgeon/Medical Superintendent.

(b) Shall be governed by such rules, regulation, orders, acts, and ordinances, etc relating to appointment transfer, leave, efficiency, and discipline and conduct as have been /may be prescribed by Government for the category of the Government Servants of the status from time to time.

(c) Services shall be liable to termination on the following condition:

i. At any time without notice and without assigning any reasons during the period of the contract appointment if the work during the period was not found satisfactory;

ii. One month notice by the Government on one side or the other. In case the notice on either side is less than one month, a sum of rupees equivalent to one month pay for the period by which the notice falls short of one month will be paid by Government to them or in lieu thereof one month pay shall be forfeited;

iii. By Government without previous notice if it is satisfied on material evidence that they are unfit and / or likely to remain unfit for a considerable period being (the decision of the Government as to what constitutes such considerable period being conclusive to continue to remain unfit by reasons of ill health or physical disability to discharge their duties).

iv. If the Project not extended then their services shall stand terminable without any notice.

(d) Will have no claim to the right of seniority.

(e) The date of their joining the appointment on contract basis or any other factor will have no bearing on the fixation of their seniority.

(f) Shall not be entitled to any travelling allowance/daily allowance while joining first appointment.

(g) The interpretation to be placed on the rules /regulations in case of any doubt arising is left to the Government.

(f) If he is willing to except the above mentioned terms and conditions he should report to concerned Assistant Director within 15 days from the date of issue of this appointment order, failing which the candidate on waiting list shall be given the chance of appointment.

SENIORITY POSTION	NAME OF THE APPOINTEE WITH FATHER NAME	ADDRESS	PLACE OF POSTING SERVICES PLACED AT THE DISPOSAL OF
017	Mr. Khalid Khan S/O Mr. Haleem Gul.	Village Spari Tehsil Parrang Ghar Muhmand Agency.	Assistant Director Livestock & Dairy Development Muhmand Agy at Ekkaghund

Sd/-

(Dr. Syed Shabir Ahmad Shah)
DIRECTOR

No. 11304.05/1/187 Dated

Peshawar

the 27/11/2002

Copy of the above is forwarded to:

1. The Deputy Director Livestock and Dairy Development FR Peshawar.
2. The Assistant Director Livestock and Dairy Development Muhmand Agency at Ekkaghund.
3. The District /Agency Account Officer Muhmand Agency.
4. Mr. Khalid Khan S/O Mr. Haleem Gul Village Spari Tehsil Parrang Ghar Muhmand Agency.
5. Master File.

FOR INFORMATION & NECESSARY ACTION.

Sd/-

(Dr. Malik Ayaz Wazir)
Assistant Director (HQ)

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DIRECTORATE OF LIVESTOCK & DAIRY DEVELOPMENT NWFP PESHAWAR.
(Ph-9210276)

ORDER.

On the recommendation of the Department Selection Committee in its meeting dated 04.2.2009, the competent authority is pleased to appoint the following candidate (s) as Veterinary Assistant at permissible pay scale RBPS-6 (2008) @ Rs 3430-175-8680 with regular allowances against the vacant the vacant posts on regular basis and placed their services at the disposal of Director Livestock & Dairy-Development-FATA Warsak Road Peshawar for further posting in his circle from the date of their taking over the charge of the post.

S.No.	Name with Father name	Address
1.	Mr. Khalid Khan S/O Mr. Haleem Gul.	Village Landi Shah PO Harichand Tehsil Tangi District Charsadda.

2. His /their appointment shall governed by the following terms and conditions:

- a) His/ their appointment shall be on regular basis but without Pension or Gratuity in term of section 19 of the NWFP Service Act 1973 as amended vide NWFP Civil Servants (Amendment) act 2005. He will however be entitled to contributory Provident fund in such a manner and at such rates as May be prescribed by the Government.
 - b) His/ their appointment shall be subject to the medical fitness certificate by the concerned Medical Superintendent.
 - c) He / they shall be governed by such rules, regulations, orders and ordinances etc, relating to appointment, promotion, transfer, leave, TA, Medical attendance, efficiency and discipline and conduct as have been/ may be prescribed by the Government for the category of Government servants of their status from time to time and as interpreted by the Government.
 - d) His/their service shall be liable to termination on the following conditions:
 - i. At any time without notice and without assigning any reason during the period of his appointment on probation i.e. 2-Years his work during this period was not found satisfactory.
 - ii. On one month notice by the Government on one side and by him on other. In case the notice on either side is less than one month, a sum equivalent to pay for the period by which the notice falls short of one month, will be paid by the Government to him or lieu thereof one month pay shall be forfeited.
 - iii. By Government without previous notice if it is satisfied on material evidence that they are unfit and / or likely to remain unfit for a considerable period by reason of ill health physically disability to discharge his duties. The decision of the Government as to what constitute considerable period shall be final.
 - iv. His/they shall not be entitled to any Traveling / Daily Allowance on first appointment / posting.
 - e) His/they shall not contribute to General Provident Fund in such a manner and at such rates as may be prescribed by the Government.
3. If the above terms and conditions are acceptable to him/them. He/they should report for joining their duty within 15-days positively. In case of non compliance/joining their duty the offer will automatically stand cancelled.

Sd/-

(Dr. SHER MUHAMMAD)
DIRECTOR

Dated 21/02/2009

No 793-95/

Copy of the above is forwarded to:

1. The Additional Accountant General PR Sub Office Peshawar.
2. The Director Livestock and Dairy Development FATA Warsak Road Peshawar.
3. The Official concerned for information with the direction to report to Director L&DD FATA Peshawar for their further posting in the circle.

Sd/-

(Dr. HASSAN KHAN)
DIRECTOR (HQ)

(18) (7)

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DIRECTORATE OF LIVESTOCK & DAIRY DEVELOPMENT-FATA.
FATA SECRETARIAT WARSAK ROAD, PESHAWAR.

Ph: No.091-9210272 Fax No.091-9212136.

ORDER.

Consequent upon the appointment of Mr. Khalid Khan S/O Haleem Gul Veterinary Assistant, his further adjustment is hereby made against the vacant posts of Veterinary Assistant in the payment circle of Agency Livestock Officer, Kurram Agency with effect from (01/03/2009.)

SDr _____
(DR. MUHAMMAD BASHIR)
DIRECTOR

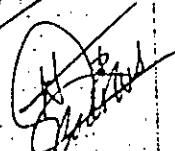
NO. L&DD/FS/1/5-1210-12 DATED PESHAWAR THE 12/12/2009.

Copy of the above is forwarded to:-

1. The Agency Accounts Officers, Kurram Agency for information.
2. The Assistant Director, L&DD, Kurram Agency for information & necessary action
3. Official concerned of compliance.

(DR. MUHAMMAD BASHIR)
DIRECTOR

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خدمت جناب اسٹنٹ ڈائریکٹر صاحب ریوسٹاٹ اینڈ ڈپٹی ڈیویلمنٹ ایجنٹ
محمد امجد

Amjad

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عنوان :- درخواست برائے اسٹیفنڈ ویئر نری اسٹنٹ پوسٹ

جناب عالی!
مروہ بانہ گزارش ہے کہ میں آپ کے زیر سایہ

ڈیویلمنٹ سیکم میں بطور ویئر نری اسٹنٹ ڈیوٹی سرانجام دے رہا ہوں۔
چونکہ اب میرا مستقل آرڈر بنوا گیا تو اسلئے میں یہاں سے ویئر نری
پوسٹ سے استعفا دے رہا ہوں۔

لہذا آپ سے یہاں میرا استعفا منظور فرمائے مشکور فرماؤں۔

عین لوزنسی بیوتی

تاریخ 28/2/09

3/09

العارض

محمد امجد

آپ کا تابع فرماں ویئر نری اسٹنٹ خالد خان سی وی، ڈی آئی ڈی

محمد امجد


BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

3157 /

W.P. No. _____ /2009

Muhammad Bashir & othersPetitioners


Versus

Director, Livestock & others.....Respondents

ADDRESSES OF PARTIES

Petitioners

1. Muhammad Bashir S/o Sher Ali V.A, C.V.H Gumbty F.R Bannu.
2. Muhammad Ikhlq S/o Ghaffar Khan V.A, C.V.D Laka Teeza F.R. Bannu.
3. Ghaffar Ali S/o Zar Gul Khan V.A, A.I.C Kot Zain Ullah F.R. Bannu.
4. Rafi Ullah S/o Muhammad Ameer V.A, A.I.C Kharr sind F.R. Bannu.
5. Rizwan Ullah S/o Mudaris Khan V.A, C.V.D Faqir Sardod F.R. Lakki.
6. Hassan Ali S/o Waris Khan V.A, C.V.C Khan Wali Peeng F.R. Bannu.
7. Kiramat Ullah S/o Khandan V.A, C.V.C Ghondi Hassan Khail F.R Lakki.
8. Meer Zada S/o Haji Farid Khan V.A, C.V.D Ghorra Baka Khail F.R. Bannu.
9. Sher Aman Ullah S/o Akbar Ali V.A, C.V:C Gul Jannat Khan F.R. Bannu.


LED TYPAR
puty Registrar
4 NOV 2009



BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

3157 /
W.P. No. _____/2009

Muhammad Bashir & othersPetitioners

Versus

Director, Livestock & others.....Respondents

ADDRESSES OF PARTIES

Petitioners

1. Muhammad Bashir S/o Sher Ali V.A, C.V.H Gumbty F.R Bannu.
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3. Ghaffar Ali S/o Zar Gul Khan V.A, A.I.C Kot. Zain Ullah F.R. Bannu.
4. Rafi Ullah S/o Muhammad Ameer V.A, A.I.C Kharr sind F.R. Bannu.
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6. Hassan Ali S/o Waris Khan V.A, C.V.C Khan Wali Peeng F.R. Bannu.
7. Kiramat Ullah S/o Khandan V.A, C.V.C Ghe Hassan Khail F.R Lakki.
8. Meer Zada S/o Haji Farid Khan Baka Khail F.R. Bannu.
9. Sher Aman Ullah S/o Akbar Jannat Khan F.R. Bannu.

LED TODAY
City Registrar
4 NOV 2009

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Peshawar High Court

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10. Said Rasool S/o Muhammad Rasool V.A, C.V.D Ghorra Baka Khail F.R. Bannu.
 11. Sher Daraz S/o Bilawar Khan V.A, C.V.C Ishaq Peeng F.R. Bannu.
 12. Ali Khan S/o Sher Abbas Khan V.A, C.V.D Kot Zafar Ullah F.R. Bannu.
 13. Shamil Khan S/o Gul Pyao Jan V.A, C.V.C Kot Muhammad Yousaf Gambatti F.R. Bannu.
 14. Iftikhar Khan S/o Gul Pyao Jan V.A, F.R Lakki.
 15. Sartaj Khan S/o Sarfaraz Deen V.A, C.V.C Kot Jehangir F.R. Bannu
 16. Zaray Khan S/o Langar Khan V.A, A.I.C Ameen Gul F.R Lakki.
 17. Sher Ullah S/o Nari Gul V.A, C.V.D Kot Hakoomat F.R Bannu.
 18. Said Rasool S/o Rustam Khan V.A, C.V.C Gangi Khail F.R. Lakki.
 19. Dilfayaz Khan S/o Badmash Khan V.A, A.I.C Mukhtiar Jan F.R. Lakki.
 20. Muhammad Noor S/o Said Nawaz V.A, C.V.C Kot Qasim Khan F.R. Lakki.
 21. Arif ullah S/o Police Khan V.A, C.V.D Kot Sher Zada Baka Khail F.R. Bannu.
 22. Asghar Ali S/o Bostan Khan V.A, F.R. Bannu.
 23. Qadar Nawaz S/o Mashak Alam Khan V.A, C.V.C Kot Jehangir F.R Bannu.
 24. Raza Ullah S/o Jalil Khan V.A, C.V.C Kot Asghar F.R. Bannu.
 25. Safi Ullah S/o Aoliaz Khan V.A, Azeem Kila F.R Bannu.
 26. Hazrat Ullah S/o Nadar Khan V.A, F.R Bannu.

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 City Registrar
 24 NOV 2009

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Registrar
 Peshawar High Court


27. Abdul Wahab S/o Zaray Jan V.A, C.V.C Hazrat Khan Tatti Palosa F.R. Lakki.
28. Zahir Ullah S/o Sher Abat Khan V.A, C.V.C Hazrat Khan F.R. Bannu.
29. Asghar Ali S/o Waresham Khan V.A, C.V.D Qari Rauf F.R. Lakki.
30. Ghulam Haider S/o Ghulam Rasool V.A, F.R. Bannu.

Respondents

1. Director, Livestock, Dairy Development, FATA Secretariat, Warsak Road, Peshawar.
2. Director General, Livestock Dairy Development, Bacha Khan Chowk, Peshawar.
3. Additional Chief Secretary FATA Secretariat, Warsak Road, Peshawar

Through

Petitioners


Saadullah Khan Marwat
Advocate





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Deputy Registrar
24 NOV 2009

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JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT

WP No. 3157/09.

JUDGMENT

Date of hearing 15.9.2011.

Petitioner (s) (Muhammad Bashir etc) By Mr. Saadullah Khan
Marwat, Advocate.

Respondents (Govt: of NWFP etc) By Barrister Waqar Ali,
AAG alongwith Dr.
Usman Ghani & Dr.
Muhammad Ilyas Afridi,
Directors Live Stock.

DOST MUHAMMAD KHAN, J.- Same order

as in our detailed judgment of even date in the
connected W.P. No.360/ 2009 entitled "Amir

Hussain etc Vs. Govt: & others".

Announced:
15.9.2011

Ed/ Dost Muhammad
Ed/ Yaqar Afridi
Judge

Amir

Amir
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Article 67 of
Peshawar High Court Rules 198

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JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT

WP No.360/2009

JUDGMENT

Date of hearing 15.9.2011.

Petitioner (s) (Amir Hussain etc) By Mr. F.M Sabir, Advocate.

Respondents (Govt: & others) By Barrister Waqar Ali, AAG.

DOST MUHAMMAD KHAN, J.- This single

judgment shall also decide the following writ

petitions as questions of law involved in all these

writ petitions are identical:-

1. WP No.360/09 entitled "Amir Hussain & four other.."
2. WP No.121/2008 entitled "Muhammad Karimullah vs. Government of NWFP etc."
3. W.P.No.1519/2009 entitled "Qias Ahmad Vs. Government of NWFP etc."
4. WP No.2877/2009 entitled "Amjad Ali Vs. Government of NWFP etc."
5. WP No. 1518/2009 entitled "Muhammad Farooq Khan Vs. Government of NWFP etc."
6. WPN0.1236/2011 entitled "Naveed Ahmad vs. Gov. of NWFP etc."
7. WP No.1859/2011 entitled "Muhammad Farooq etc Vs. Government of KPK etc."

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Peshawar

8. WP No.1858/2011 entitled "Nauman Adil etc. Vs. Govt. of KPK etc."
9. WP No.1857/2011 entitled "Amir Hussain vs. Govt. of KPK etc."
10. WP No.1744/2011 entitled "Faisal Younas Khan etc. Vs. Chief Secretary Govt. of KPK etc."
11. WP No.1743/2011 entitled "Nisar Ahmad etc. Vs. Chief Secy. Govt. of KPK etc."
12. WP No.2249/2011 entitled "Saleem Javed. Vs. Govt. of KPK."
13. WP No.345/2009 entitled "Muhammad Tufail vs. Govt. etc."

14. WP No.771/2010 entitled "Noor Ali Khan etc. Vs. Addl. Chief Secretary FATA Peshawar etc."

15. WP No.3157/09 entitled "Muhammad Bashir vs. Director Livestock etc."

16. WP No.3284/2010 entitled "Asmatullah vs. Director Livestock etc."

2. The epitome of the controversy involved in writ petitions at S.No. 1 to 13, mentioned above, is that the petitioners therein were appointed as Water Management Officers (Agriculture/Engineering) (BPS-17), on contract basis, for "National Program for improvement/ lining of water courses in Pakistan (for NWFP)" vide two different Notifications bearing even No. SOE (AD) 11 (2) 70/2004 on 24.11.2004 and 4.2.2005

for a period of one year extendable upto the project life on their satisfactory performance and were posted in different projects. Their contract was extended from time to time and was lastly extended vide Notification dated 16.9.2008 upto 30.6.2009.

Consequent upon approval of Chief Executive of the Province, sanction for creation of 275 posts was accorded by the competent authority in the offices called "*On-Farm Water Management Department*", at district level, with effect from 1st July, 2007 vide notifications dated 21.4.2007 and 30.7.2007 and by virtue thereof, equal number of posts on developmental side automatically stand abolished. The petitioners were expecting their adjustment/ appointments against the newly created 275 regular posts but vide notifications dated 21.2.2007 and 3.9.2008 certain contract employees of different projects

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were adjusted against some of those posts but the petitioners were ignored, for no plausible cause

3. In writ petitions at S.No. 14 to 16, mentioned above, the petitioners therein were appointed as Veterinary Assistants (BPS-6) in FATA under the Contract Policy of 2002 and were posted in various Developmental Schemes which were subsequently converted into regular strength. They continued as such till date and their contract was never renewed till the NWFP Civil Servants (Amendment) Act 2005 came into being, regularizing the services of contract employees by operation of law.

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Vide the impugned order dated 2.1.2010, issued by respondent No.3, the services of the petitioners, in WP No. 771/2010, WP No. 3157/09 and WP No.3284/2010, were transferred from regular sanctioned posts to the project posts with the alleged malafide intention, on part of the respondents, to convert their pay scales into fixed

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pay due to which their salaries w.e. from January, 2010 have been withheld.

4. The petitioners are seeking benefit under the provisions of NWFP now KPK, Civil Servants (Amendment) Act, 2005 (NWFP Act No. IX of 2005) and similar legislation made by the NWFP, now KPK, Employees (Regularization of Services) Act 2009 (NWFP Act No. XVI of 2009) vide which the services of all adhoc & contractual employees were regularized by the Provincial legislature thus they have filed these constitutional petitions, praying for declaring the impugned orders, issued by the respondents, as without lawful authority as well as of no legal effect and have also prayed for issuing of writ to the respondents for regularization of their services.

5. Arguments heard and case law cited at the bar has been gone through minutely.

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6. The respondents were put on notice and by way of interim relief filling of the said posts against which the petitioners are seeking adjustment were held in abeyance.

7. Hon'ble Mr. Justice Mazhar Alam Khan-J on the petition of the petitioners accelerated the date from 8.11.2011 to the second week of August 2011 because of the interim injunction order, suspending the fresh appointments on these posts by the respondents.

Arguments heard extensively and record perused.

8. It was not contested by the respondents that the appointment orders of all the petitioners were made by the competent / appointing authority in the prescribed manner.

9. It deserves to mention here that at the time of appointments of the petitioners as project employees, the method of appointment was through departmental selection committee (DSC). The projects were funded by the ADP, however, keeping

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in view the progress made, the importance and utility of the projects, the services of the petitioners were retained/ extended but on contract basis. In their initial appointment orders, it was stipulated that their tenure would be extended/ extendable on yearly basis (with the approval of the competent authority) and will be subject to the terms and conditions noted/ notified vide their appointment letters.

10. It is worth to mention here that the posts, on which the petitioners were appointed as contract employees, were all duly published/ advertised by the respondents in two daily newspapers i.e. "The News" & "Mashriq Peshawar" on 23.6.2004 and 22.08.2002 respectively.

11. The petitioners after assuming charge of their assigned jobs on contract basis, initially served as project employees for a period of one year as was mentioned in their appointment orders but the tenure of their service was

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extended for further one year vide Notification No. SOE (AD)II(2)70/2007 dated 16.9.2008.

12. Two important facts are not contested by the parties i.e. that the petitioners in all these petitions were project employees thus, their tenure of service was dependent on the completion of the project. It is also not denied that after the successful operation and management of the projects and being of considerable public utility, the Provincial Government converted the schemes/ projects from project budget to the current budget and was taken on the roll and strength of the provincial civil service. The required funds were allocated for the same in the annual budget on currency basis.

13. Another development, providing cause of action / grievance to the petitioners, took place when the Government of NWFP presented a bill in the Provincial Assembly through which

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Section 19 of the NWFP Civil Service Act was to be amended. The said bill was passed by the Provincial Assembly of NWFP on the 5th July, 2005 and assented to by the Governor of NWFP on 12th July, 2005 which was notified/ published in the Gazette of NWFP, extra ordinary on 23rd July, 2005.

Sub-section (2) of Section 2 of the Amendment Act IX of 2005 is to the following effect:-

"2. Amendment of section 19 of N.W.F.P Act No. XVIII of 1973.- In the North- West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act No. XVIII of 1973) for section 19, the following shall be substituted:-

(19.(1) Pension and gratuity.----Not relevant.

(2) A person though selected for appointment in the prescribed manner to service or post on or after the 1st day of July, 2001, till the commencement of the said Act but appointed on contract basis, shall, with effect from the commencement of the said Act be deemed to have been appointed on a regular basis. All such

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persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, alongwith the contributions made by Government to his account in the said fund, in the prescribed manner."

affidavit

14. Through the above provision of law, the employees appointed on contract basis but in the prescribed manner were provided protection by regularizing their services. The proviso added thereto states that a person, who is selected for appointment in the prescribed manner to a service or post but appointed on contract basis, shall with effect from the commencement of this Ordinance or from the date of his continuous appointment whichever may be later, be deemed to have been appointed on regular basis in the department concerned. Such employee shall, for all intents & purposes, be regular

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employees of the Institution concerned except for the purpose of pension or gratuity. All such employees shall, in lieu of pension & gratuity, be entitled to the benefits of the Contributory Provident Fund scheme in the prescribed manner.

15. Again, through sub-section (2) of Section 2 of the (Amendment) Act of 2005, vide proviso added thereto, it was directed 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 appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner, after the commencement of the said Act, shall, for all intents & purposes, be a civil servant except for the purpose of pension or gratuity. Such a civil servant in lieu of pension & gratuity be entitled to receive such amount contributed by him towards the Contributory

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Provident Fund along with contribution made by Government to his account in the prescribed manner.

Further provided that in the event of death of such civil servant, whether before or after the retirement, his family shall be entitled to receive the said amount, if it has already not been received by such deceased civil servant.

16. Once again, through the then NWFP now KPK (Regularization of Services) Act No. XVI of 2009, on the strength of provisions of Section 3 thereof, all employees including the recommendee of the High Court appointed on contract or adhoc basis 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 & experience for a regular post subject to exception that the service / promotion quota of all service cadres shall not be affected.

17. Through the provision of Section 4-A of the Amendment Act, overriding effect was given to the provision of this Act over all other laws & rules for

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the time being enforce and it was further provided that any law or rule, coming in conflict with the provision of Amendment Act or inconsistent thereto, shall cease to have effect. This clause overriding & superimposing nature has equipped the provision of Amendment Act No. XLI of 2009, with ever lasting effect over all other laws & rules then in vogue.

18. Learned counsel for the petitioners invited attention of the Court to the earlier judgments of the Bench involving same & similar Issues which were rendered in the case of "*Dr. Rizwan Ullah & others Vs. Government of NWFP & others*" (W.P.No. 1510/1997) and in many other writ petitions, whose contractual services were regularized by the strength of the said judgment, elaborately dealing with each & every provision of law relevant to the subject matter promulgated from time to time and it was further stated at the bar that this judgment of the Court was accepted & acted upon by the various departments of the Provincial Government and services of contractual employees were duly

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Court given in Civil Appeals No. 150-P & 151-P of 2009 decided on 24.03.2011 where the abovementioned judgment of this Court was impugned. The Hon'ble Apex Court after elaborately & extensively dealing with each & every legal & factual aspect of the case, not only upheld the view held by this Court but also referred to its own judgment given in Civil Appeals No. 834-P to 837-P of 2010 decided on 01.03.2011 wherein, it was held that the cases of contractual employees though appointed on project are squarely covered by the provision of Section 19 (2) of the NWFP Civil Servants Act 1973. Accordingly, both the appeals filed by the Government in the said case were dismissed.

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21. Confronted with the above ironclad legal position, the learned Additional Advocate General and the learned counsel appearing for the respondents were time and again asked to draw line of distinction between the case of the petitioners and of those to whom benefit of the said provision of law

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was extended and their contractual services were regularized, however, they were found defenseless and were found having no answer muchless plausible to offer. We have on record the copies of the appointment orders issued by the Competent Authority appointing the petitioners at different occasions on different dates as contract employees on the posts in question

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✓ 22. An ironclad proof in the shape of documentary record is available on file that the petitioners were appointed on contract basis by the Competent Authority, which is a fact undeniable in nature and their contractual services were renewed and extended from time to time.

23. The undeniable legal position is that the petitioners are contract employees because they have not been absorbed permanently in the departments concerned where they have been appointed, therefore, they are entitled to the protection of the beneficial provision of sub-section (2) of Section 2 of the then NWFP now KPK Civil Servants

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(Amendment) Act 2005 and their rights are further protected in a more effective manner by provisions of Section 3 of the then NWFP now KPK Employees (Regularization of Services) Act, 2009 to which superimposing & overriding effect was given on all the rules & law to the contrary. The latest enactment came into force on 24th October 2009 when it was published in the official gazette of the Province extra ordinary.

24. The learned AAG and the learned counsel appearing for the respondents also took the plea that these are not substantive vacancies, therefore, the question of regularization of contractual services of the petitioners could not be made, is absolutely fallacious because in the first instance no document or record was produced to substantiate this plea. The contents of the published notice in the Press do not indicate in any manner that these vacancies are temporary and not substantive one, hence, this plea has been raised out of malafide and has no foundation to stand upon. However, in case the

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number of vacancies not commensurate with number of petitioners then, in that case some of them may be placed in the surplus pool for onward posting on various projects in near future when the circumstances so arises and re-adjustment becomes possible.

25. For the detailed reasons discussed above, we entertain no amount of doubt that the petitioners are entitled to the prayed relief because services of similarly placed employees of different Institutions/ departments, who were appointed on contract basis, were held to have been regularized through the provision of various enactments, discussed above, moreso, when the main judgment of this Court was not impugned before the Hon'ble Apex Court by the Provincial Government, therefore, no distinction can be drawn between the case of the petitioners and of those to whom the same and similar benefit was extended by this Court. Even otherwise, once the law

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has been interpreted in the earlier judgments of this Court in favour of the employees then, the subsequent Division Bench, in view of the long chain of authorities / dictas of the Hon'ble Apex Court, cannot deviate from the previous view, moreso, when we have no reason to differ with the earlier view.

26. Accordingly, this and all the connected petitions, cited in the opening paragraph, are admitted and allowed and the respondents are issued a writ, directing them to treat the petitioners of this and of all the connected petitions as regular/ permanent employees from the date the law came into force, as discussed above or from the date of officiating service as stated in the relevant provisions of law. Formal office order be immediately issued in this regard by the competent authorities in regard to the above legal position, the service books/ record of

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all the petitioners be duly arranged and prepared,

however, their inter se seniority be determined by the

competent authorities in accordance with law and

rules on the subject.

Edy Dost Muhammed

Edy Yahya Afridi

Announced:
15.09.2011.

Judges

CERTIFIED TO BE TRUE COPY

[Signature] 7/10/11

Peshawar High Court Peshawar
Authorised Officer of
The General Administration Department

Abdul Mujib

3950

Date of Presentation of Application 05/10/2011

No. of Pages 32P

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DIRECTORATE GENERAL (EXTENSION)
LIVESTOCK & DAIRY DEVELOPMENT
KHYBER PAKHTUNKHWA

Bada Khan Chowk, Charsadda Road Peshawar, Email: dgk@krcd.gov.pk, Tel: 091-9210276, 9210249, Fax: 091-9210285

No.9170-9207/ 3157/2011, 2855/2012 Court Case Peshawar

Dated 21.05.2014

ORDER

To implement the judgement dated 04.02.2014 of the Peshawar High Court Peshawar in writ petition No.3157/2011 and No.2655/2012 read with the decision of the Peshawar High Court Peshawar in writ petition No.771/2010, No.3157/2009 and No.3284/2010 and in pursuance of the provision contained in sub section (2) of section 19 of the Khyber Pakhtunkhwa Civil Servant Act 1973 (Khyber Pakhtunkhwa ACT No.XVIII of 1973) as amended by the NWFP Civil Servants (Amendment) through Khyber Pakhtunkhwa Act No.IX of 2005, the competent authority is pleased to regularize the services of the following Veterinary Assistants (BPS-06) of the office noted against each having been appointed in the prescribed manner on contract basis under the contract policy, 2002, with effect from the date of their appointment.

S.No.	Name of Official	Present place of posting	Appointment order.	Date of joining	Date of Birth
1.	Mr. Zia-Ul-Haq S/O Qabil Jan ✓	Assistant Director, Livestock and Dairy Development, Bajour Agency	No.11445-49 dated 27.11.2002	27.11.2002 (FN)	05.02.1981
2.	Mr. Abdul Qayum S/O Muhammad Hussain ✓	Assistant Director, Livestock and Dairy Development, Bajour Agency	No.11380-84 dated 29.11.2002	30.11.2002 (AN)	01.12.1970
3.	Mr. Faizanullah S/O Noor Muhammad ✓	Assistant Director, Livestock and Dairy Development, Bajour Agency	No.11385-89 dated 27.11.2002	30.11.2002 (AN)	01.03.1981
4.	Mr. Gohar Hussain S/O Sallar Ali ✓	Assistant Director, Livestock and Dairy Development, Kurram Agency	No.11594-98 dated 30.11.2002	30.11.2002 AN	12.03.1973
5.	Mr. Illikhar Hussain S/O Sarwar Jan ✓	Assistant Director, Livestock and Dairy Development, Kurram Agency	No.11544-48 dated 28.11.2002	30.11.2002 (AN)	13.04.1979
6.	Mr. Sunail S/O Amanullah ✓	Assistant Director, Livestock and Dairy Development, Mohmand Agency	No.2564-67 dated 17.03.2003	18.03.2003 (FN)	04.02.1978
7.	Mr. Nasir Khan S/O Khaista Khan ✓	Assistant Director, Livestock and Dairy Development, Mohmand Agency	No.11569-73 dated 02.12.2002	02.12.2002 (FN)	14.01.1975
8.	Mr. Muhammad Rehman S/O Rehmanud Din ✓	Assistant Director, Livestock and Dairy Development, Mohmand Agency	No.11634-38 dated 30.11.2002	01.12.2002 (FN)	30.10.1979
9.	Mr. Inayatullah S/O Nasrullah Jan ✓	Assistant Director, Livestock and Dairy Development, Mohmand Agency	No.11339-43 dated 27.11.2002	27.11.2002 (FN)	04.04.1972
10.	Mr. Fazali Rabbi S/O Khan Shbrif ✓	Assistant Director, Livestock and Dairy Development, Mohmand Agency	No.6130-32 dated 29.07.2005	01.08.2005 (FN)	13.03.1975
11.	Mr. Hazrat Said S/O Khan Said ✓	Assistant Director, Livestock and Dairy Development, Khyber Agency	No.6119-20 dated 29.07.2005	01.08.2005 (FN)	09.03.1980
12.	Mr. Sunail Badshah S/O Wali Badshah ✓	Assistant Director, Livestock and Dairy Development, Kurram Agency	No.5058-60 dated 26.07.2005	01.08.2005 (FN)	03.04.1980
13.	Mr. Shehri Yar S/O Abdur Rashid ✓	Assistant Director, Livestock and Dairy Development, Mohmand Agency	No.1878-82 dated 01.03.2003	01.03.2003 (FN)	16.03.1978
14.	Mr. Rahmatullah S/O Faizullah ✓	Assistant Director, Livestock and Dairy Development, Bajour Agency	No.6012-14 dated 27.07.2005	01.08.2005 (FN)	06.05.1980
15.	Mr. Shoukat Ali Khan S/O Badsha Rehman ✓	Assistant Director, Livestock and Dairy Development, Bajour Agency	No.6144-46 dated 30.08.2005	01.08.2005 (FN)	01.04.1980
16.	Mr. Ayub Khan S/O Said Haleem Jan ✓	Assistant Director, Livestock and Dairy Development, Bajour Agency	No.5013-15 dated 25.07.2005	01.08.2005 (FN)	01.04.1981
17.	Mr. Muhammad Arif S/O Muhammad Ibrahim ✓	Assistant Director, Livestock and Dairy Development, Kurram Agency	No.5061-63 dated 26.07.2005	01.08.2005 (FN)	11.04.1982
18.	Mr. Arif Hussain S/O Ali Muhammad ✓	Assistant Director, Livestock and Dairy Development, Kurram Agency	No.5035-37 dated 26.07.2005	01.08.2005 (FN)	20.04.1982
19.	Mr. Rehmatullah S/O Saifur Rehman ✓	Assistant Director, Livestock and Dairy Development, Mohmand Agency	No.6052-54 dated 27.07.2005	01.08.2005 (FN)	03.02.1983

Directorate General (Ext)
L300, Khyber Pakhtunkhwa
Peshawar

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34

20.	Mr. Dost Muhammad S/O Sahib Dad	Assistant Director, Livestock and Dairy Development, Mohmand Agency	No.5038-40 dated 26.07.2005	01.08.2005 (FN)	19.04.1983
21.	Mr. Aminullah S/O Pir Badshah	Assistant Director, Livestock and Dairy Development, Mohmand Agency	No.5070-72 dated 26.07.2005	01.08.2005 (FN)	13.06.1984
22.	Mr. Saeed ullah S/O Sarfaraz Khan	Assistant Director, Livestock and Dairy Development, Kurram Agency	No.5032-34 dated 26.07.2005	01.08.2005 (FN)	01.09.1984

Their appointment on regular basis shall be subject to the following conditions:

- They shall, for all intents and purpose, be civil servants except for purpose of pension or gratuity. In lieu of ~~pension and gratuity~~, they shall be entitled to receive such amount contributed by them towards Contributory Provident Fund (C. P. Fund) along with the contributions made by Government in his account in the said fund in the prescribed manner.
- They shall be governed by the Khyber Pakhtunkhwa Civil Servants Act 1973, all the laws applicable to the Civil Servants and Rules made there under.
- They shall, initially, be on probation for a period of two years extended up to 3 years.
- Their services will liable to termination at any time without assigning any reason, therefore, before the expiry of the period of probation/extended period of probation. If his work during this period is not found satisfactory. In such an event, they will be given a month notice of termination from service or one month pay in lieu thereof. In case they wish to resign from service at any time, a month notice shall be necessary or in lieu thereof a month pay shall be forfeited.

Consequent upon the regularization of contract service of above 22-Veterinary Assistants, (BPS-06) their further adjustment against regular vacant posts of Veterinary Assistant (BPS-06) is hereby ordered as under with immediate effect, in the best interest of public service.

Adjustment order

Director (HQ)
Directorate General (Ext)
L-200 Khyber Pakhtunkhwa

S.#.	Name of Official	From Office of	To Office of
1.	Mr. Zia-Ul-Haq S/O Qabil Jan	Assistant Director, Livestock and Dairy Development, Bajour Agency	Assistant Director, Livestock and Dairy Development, Auarakzai Agency against vacant post.
2.	Mr. Abdul Qayum S/O Muhammad Hussain	Assistant Director, Livestock and Dairy Development, Bajour Agency	Assistant Director, Livestock and Dairy Development, Auarakzai Agency against vacant post.
3.	Mr. Faizanullah S/O Noor Muhammad	Assistant Director, Livestock and Dairy Development, Bajour Agency	Assistant Director, Livestock and Dairy Development, Auarakzai Agency against vacant post.
4.	Mr. Gohar Hussain S/O Sullar Ali	Assistant Director, Livestock and Dairy Development, Kurram Agency	Assistant Director, Livestock and Dairy Development, Kurram Agency against vacant post.
5.	Mr. Iftikhar Hussain S/O Sarwar Jan	Assistant Director, Livestock and Dairy Development, Kurram Agency	Assistant Director, Livestock and Dairy Development, Kurram Agency, <i>against V/Post.</i>
6.	Mr. Ismail S/O Amanullah	Assistant Director, Livestock and Dairy Development, Mohmand Agency	Assistant Director, Livestock and Dairy Development, Auarakzai Agency against vacant post.
7.	Mr. Nasir Khan S/O Khaista Khan	Assistant Director, Livestock and Dairy Development, Mohmand Agency	Assistant Director, Livestock and Dairy Development, Auarakzai Agency against vacant post.
8.	Mr. Muhammad Rehman S/O Rehmanud Din	Assistant Director, Livestock and Dairy Development, Mohmand Agency	Sheep Development Officer, FR Peshawar/ Kohat, against vacant post.
9.	Mr. Inayatullah S/O Nasrullah Jan	Assistant Director, Livestock and Dairy Development, Mohmand Agency	Assistant Director, Livestock and Dairy Development, Auarakzai Agency, against vacant post.
10.	Mr. Fazali Rabbi S/O Khan Sharif	Assistant Director, Livestock and Dairy Development, Mohmand Agency	Assistant Director, Livestock and Dairy Development, Auarakzai Agency against vacant post.
11.	Mr. Hazrat Said S/O Khan Said	Assistant Director, Livestock and Dairy Development, Khyber Agency	Assistant Director, Livestock and Dairy Development, Auarakzai Agency against vacant post.
12.	Mr. Sunail Badshah S/O Wali Badshah	Assistant Director, Livestock and Dairy Development, Kurram Agency	Assistant Director, Livestock and Dairy Development, Kurram Agency, against vacant post.
13.	Mr. Shehri Yar S/O Abdur Rashid	Assistant Director, Livestock and Dairy Development, Mohmand Agency	Assistant Director, Livestock and Dairy Development, Auarakzai Agency, against vacant post.
14.	Mr. Rahmatullah S/O Faizullah	Assistant Director, Livestock and Dairy Development, Bajour Agency	Assistant Director, Livestock and Dairy Development, Auarakzai Agency, against vacant post.

Attendant

15.	Mr. Shoukat Ali Khan S/O Badsha Rehman	Assistant Director, Livestock and Dairy Development, Bajour Agency	Assistant Director, Livestock and Dairy Development, Aurakzai Agency, against vacant post.
16.	Mr. Ayub Khan S/O Said Halcem Jan	Assistant Director, Livestock and Dairy Development, Bajour Agency	Assistant Director, Livestock and Dairy Development, Aurakzai Agency, against vacant post.
17.	Mr. Muhammad Arif S/O Muhammad Ibrahim	Assistant Director, Livestock and Dairy Development, Kurram Agency	Assistant Director, Livestock and Dairy Development, Kurram Agency, against vacant post.
18.	Mr. Arif Hussain S/O Ali Muhammad	Assistant Director, Livestock and Dairy Development, Kurram Agency	Assistant Director, Livestock and Dairy Development, Kurram Agency, against vacant post.
19.	Mr. Rehmatullah S/O Saifur Rehman	Assistant Director, Livestock and Dairy Development, Mohmand Agency	Assistant Director, Livestock and Dairy Development, Aurakzai Agency, against vacant post.
20.	Mr. Dost Muhammad S/O Sahib Dad	Assistant Director, Livestock and Dairy Development, Mohmand Agency	Director, Livestock and Dairy Development FATA; FATA Secretariat, Warsak Road Peshawar against vacant post.
21.	Mr. Aminullah S/O Pir Badshah	Assistant Director, Livestock and Dairy Development, Mohmand Agency	Sheep Development Officer, FR Peshawar/ Kohat, against vacant post.
22.	Mr. Saeed ullah S/O Sarfaraz Khan	Assistant Director, Livestock and Dairy Development, Kurram Agency.	Assistant Director, Livestock and Dairy Development, Aurakzai Agency, against vacant post.

Sd/-
(Dr. SHER MUHAMMAD)
DIRECTOR GENERAL

Copy of the above is forwarded for information to the:

1. Additional Registrar (J) Peshawar High Court Peshawar for information with reference to the judgement passed on 14.02.2014 in writ petition No.3157/2011 and No.2655/2012, please.
2. Additional Accountant General PR Sub Office, Peshawar.
3. Director, Livestock and Dairy Development FATA, Peshawar with reference to his letter No.1328/9/21 dated 03.03.2014 and No.3043/1/6 dated 05.05.2014.
4. Assistant Director, Livestock and Dairy Development, Bajour Agency, Mohmand Agency Khyber Agency at Jamrud, Kuram Agency at Parachinar and Aurakzai Agency.
5. Sheep Development Officer FR Peshawar/ Kohat.
6. Agency Accounts Officer, Bajour Agency, Mohmand Agency, Khyber Agency at Jamrud Kuram Agency at Parachinar and Aurakzai Agency.
7. Official concerned.

(Dr. ALAMZEB)
DIRECTOR HEADQUARTERS

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IN THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition 354P/2016

1. Mr. Khalid Khan S/o Haleem-Gul Veterinary Assistant (BPS 6)
Government Cattle Breeding and Dairy Farm Harichand District
Charsada

.....Petitioner

Versus

1. The Additional Chief Secretary, FATA Secretariat Warsak Road,
Peshawar.
2. The Director General Livestock and Dairy Development Department
KPK. Bacha Khan Chowk, Peshawar.
3. The Director Livestock and Dairy Development FATA, FATA
Secretariat Warsak Road Peshawar.
4. The Director General (Extension) Livestock and Dairy Development
KPK Bacha Khan Chowk, Peshawar

.....Respondents.

*Writ Petition under Art 199 of the constitution of
Islamic Republic of Pakistan read with Article 4, 5, and
25 of the Constitution.*

Respectfully Sheweth:- The need for the instant Writ Petition
arises due to the following fact:-

FACTS:-

1. That the Petitioner along with others who filed Writ Petition
No. 3157, Writ Petition no 2655/2012, 771/2010, 2384/2010 and
others were appointed on 27.11.2002 against the vacant post of
Veterinary Assistant (BPS) in FATA/FR on contract basis for the
Development scheme in response to advertisement published in
press in the year 2002, with test and interview as per prescribed
manner and his salary was fixed in regular pay scale with

10

16 - 37

annual increments and from time to time his pay was revised and was granted allowancesAnnexure-(A)

2. That on the recommendation of Departmental Selection Committee in its meeting dated 04.02.2009 the competent authority appointed the Petitioner as Veterinary Assistant against the regular post on regular basis and placed his services at the disposal of Director Livestock and Dairy Development FATA Warsak Road Peshawar for further posting through order 21.02.2009(Order attached as Annexure-B)

3. That consequent upon the Respondent no.3 adjusted the Petitioner against the vacant post of Veterinary Assistant in the Payment Circle of Assistant Director L&DD Mohmand Agency at Ekkaghund w.e.f. 1.3.2009 with seniority from the date of arrival /adjustment Annexure C)

Resignation from contract post and joining permanent post on the same date

4. That the Petitioner while joining a permanent post in the same department of the same designation tendered resignation for joining the permanent post on the same date without any break with no official comments/reply on the resignation so tendered. It is pertinent to mention that all the petitioners whose are granted seniority and regularization on filing the earlier Writ Petitions were candidates and applied for the regular posting on regular basis but were not selected by the Department Selection Committee in competition with Petitioner ...(Annexure D)

5. That as the Government of KPK amended the Civil Servant Act in 2005 thereby automatically regularizing the services of all similar employees by operation of law and even Act in 2009 regularizing the services of the employees from the date of appointment but the benefit was not extended to the Petitioner.

6. That all the rest colleagues of the Petitioners similarly placed and working under similar circumstances approached this Honorable Court in Writ Petition No. 771/2010 and then other filed Writ Petition no 3157/2011 and other writ petition which were admitted and allowed(Annexure E)

7. That while implementing the judgments of this Honorable Court the Respondents regularized the services of all the colleagues of the Petitioner from the date of joining service through Order dated 21.5.2014 with no mention of the name of the Petitioner but other similarly placed and working in similar circumstances were listed (Annexure F);

8. That the respondents issued another service book to the Petitioner with new entries from the date of adjustment on permanent basis as per order dated 21.02.2009 without counting the earlier service of the Petitioner towards seniority.

..... (Annexure G)

9. That the Petitioner filed Appeal to the Respondent with the prayer that the Petitioner is similarly placed and is entitled to the benefits of the law and judgments of the Honorable Court and be placed as per seniority from the date of joining service on 27-11-2002 but of no avail (Annexure H)

Being aggrieved and with no adequate remedy available, hence this writ petition inter alia is preferred on the following grounds.

GROUNDS:-

A. That not placing the Petitioner in the seniority list from the date of joining service with the respondent along with his colleagues and placing him from the date of adjustment after selection against the permanent post is against the law and is violation of Principle of justice and is without lawful Authority hence require the interference of this Honorable Court.

B. That Respondent have not treated Petitioner in accordance with law rules and policy on subject and acted in violation of Article 4 of the constitution of Islamic Republic of Pakistan, 1973 and have unlawfully denied the right of regularization to the Petitioner from 27.11.2002 which is unjust, unfair and hence not sustainable in the eye of law.

C. That the petitioner has been appointed in the prescribe manner after observing all the required legal formalities such as advertisement, test and interview and recommendations of the Departmental Selection

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27-11-2002
[Signature]

(B) 15 (38)

Committee, was a permanent employee and like others cannot be dubbed as project employee.

D. That another colleague of Petitioner Mr. Shahriyar S/o Abdul Rashid who was appointed on contract basis 1.3.2003 is listed amongst the regularized employees at serial number 13 and is given seniority with effect from 1.3.2003 (date of joining) but the case of the petitioner been identical to it is not granted seniority from date of joining the Department which is discriminatory and violation of Article 25 of the Constitution of Islamic Republic Pakistan(Annexure I)

E. That Petitioner like others have put in long period of service during which period he could have joined other regular service if he has been in time released from service if considered project employees but the respondents keeping the petitioner on regular posts and treating him as regular employees as his period of contract has never been extended so far. On this ground the other similarly placed are regularized and granted seniority, hence the petitioner is also entitled to it as per law established in 1996 SCMR 1185 and 2005 SCMR 499 and 2009 SCMR.

F. That the case of petitioner and that of other petitioner in the cited writ petitioners is same and identical, hence pray for the same relief.

G. That it is established by the Apex Court that resignation tendered for the joining service is not resignation and do not disentitles a civil servant from counting his service.

Prayer:

It is therefore humbly prayed that this Honorable Court on acceptance of this Writ Petition may issue a direction to the Respondents:

A. To consider the service of the Petitioner with effect from 27.11.2002 as a permanent service by regularizing him from that date.

B. Extend the benefits of the Writ Petitions filed by his colleagues to the Petitioner with no adverse effect of his adjustment on permanent post on merit on 21.2.2009.

Handwritten notes:
Seniority from
1.3.2003
to
27.11.2002
to
21.2.2009

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109
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(10) B.2 (48)

Interim relief: The respondents may be directed not to issue a seniority of the employee till the final decision of this Writ Petition.

Sd/-
Petitioner

Through

Sd/-
Nazir Ahmad

Advocate, High Court,

Peshawar

Cell: 0301-8571879

Certificate

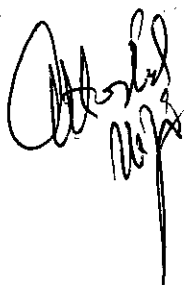
Certified that earlier the Petitioner have not been filed any Writ Petition in respect of the same subject matter before this Honorable Court.

Sd/-
Advocate.

Books Recommended

1. Constitution of Islamic Republic of Pakistan, 1973.
2. Service law and other relevant Acts.
3. Case law.

Sd/-
Advocate



④

(40)

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT



Writ Petition No.354-P of 2016
With Interim Relief.

JUDGMENT

Date of hearing.....22-06-2016.....

Petitioner: (Khalid Khan) by Mr.Nazir Ahmad, Advocate.

Respondents:(The Additional Chief Secretary, FATA
Secretariat Warsak Road, Peshawar and
others) by Mr.Muhammad Sohail, AAG.

YAHYA AFRIDI, J.- Khalid Khan, petitioner seeks
the constitutional jurisdiction of this Court praying
that:-

Yahya Afridi

*"It is, therefore, humbly prayed
that this Honourable Court on
acceptance of this writ petition may
issue a direction to the
respondents:-*

a) *To consider the service of the
petitioner with effect from
27.11.2002 as a permanent
service by regularizing him from
that date.*

b) *Extend the benefits of the writ
petitions filed by his colleagues
to the petitioner with no adverse
effect of his adjustment on
permanent post on merit on
21.02.2009."*

2. In essence, the grievance of the
petitioner is that he being a contract employee was

9

19 JUL 2016

to be regularized in terms of *Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009* ("Act"), which has been illegally denied to him by the respondents.

3. The respondents were put to notice. They have vehemently opposed the stance of the petitioner stating that the petitioner though appointed on 27.11.2002 as Veterinary Officer on *contract basis* had applied for a regular post and was appointed as Veterinary Assistant on 21.02.2009, whereafter, he on 28.02.2009 resigned from the contract post and on 02.03.2009 assumed charge of the regular post of Veterinary Assistant, whereon he is still serving. Furthermore, it was contended that the petitioner has approached this Court at a belated stage through this petition, which is suffering from *laches*.

4. Section 3 of the Act clearly provides that:-

"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 for a regular post.

Provided that the service promotion quota of all service cadres shall not be affected."

31-12-08

to

till commencement of Act

ATTESTED

EXAMINER
Peshawar High Court

19 JUL 2016

(emphasis provided)

5. The condition precedent in the said section provides for the employee to be employed on *contract basis* and *holding* the said post on 31.12.2008. This condition precedent is fulfilled by the present petitioner, as he was holding the post of Veterinary Assistant on *contract basis* on 31.12.2008, the crucial and critical date.

6. In view of the petitioner fulfilling the condition precedent provided under the Act, denying him the regularization of service provided therein would not be appropriate. The fact that the petitioner is already serving on a regular post should not deprive him of any benefits or advantage of seniority of service on his regularization of service under the provisions of the Act.

7. As far as objection of the worthy AAG regarding *laches* is concerned, the provisions of the Act do not mandate an employee employed on *contract basis* to seek his regularization, but in fact, it is the obligation of the government to process the case of all those who fulfill the criteria provided under the Act to be granted the said relief. Moreover, *similarly placed* contract employees, who were serving in the respondent department have

ATTESTED

EXAMINER
Peshawar High Court

10 JUL 2016

(B)

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been granted the regularization and that too vide decision of this Court dated 04.02.2014 in W.P.No.3157/2011. In the circumstances, the objection of the respondent department raised is repelled.

Accordingly, for the reasons stated hereinabove, this writ petition is allowed in terms that the petitioner should be regularized in terms of the provisions provided under the *Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009* and be granted the benefits already provided to other *similarly placed* contract employees vide decision of this Court dated 04.02.2014 in W.P.No.3157/2011.

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sd/ *Jahida Afridi - J*
sd/ *Muhammad Daud Ichen - J*
Dt.22-06-2016.

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JUDGE

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Examiner
Peshawar High Court, Peshawar
Authorized Under Act No. 19 of 1973
The Oath-taking and Shereef Office

19 JUL 2016

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JUDGE

No. 283

Date of Presentation of Application 12-07-16

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Date Given For Delivery 19-07-16

Date of Delivery of Copy 22-07-16



(48)

Answer
(B)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CIVIL APPEAL NO. 886/2017
OUT OF
CIVIL PETITION NO.447-P/2016

Additional Chief Secretary, FATA Secretariat Warsak Road,
Peshawar & Others

-----PETITIONERS

VERSUS

Mr. Khalid Khan

-----RESPONDENT

Appeal from : *Peshawar High Court Peshawar*
Counsel for Petitioner : *Advocate General, KPK, Peshawar*
Instituted by : *Mian Saadullah Jandoli, AOR*

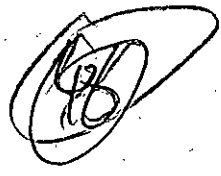
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CERTIFIED that the paper book has been prepared in accordance with the rules of the Court and all the documents necessary for due appreciation of the court have been included in it. Index is complete in all respect.

(Mian Saadullah Jandoli)
Advocate on Record
Supreme Court of Pakistan
For Govt. of KPK/petitioners

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)



CPLA NO. _____/2016

Additional Chief Secretary, FATA Secretariat Warsak Road,
Peshawar & Others.

-----PETITIONERS

VERSUS

Mr. Khalid Khan

-----RESPONDENT

CONCISE STATEMENT

1	Subject matter and the law	Claim for seniority and other back benefits
2	Which side has filed this petition	Government / petitioners

Court / Forum	Date of a) Institution b) Decision	Who filed it and with what result
Peshawar High Court, Peshawar	a) 27/01/2016 b) 22/6/2016	Respondent filed writ petition which has been accepted.

Points noted in the impugned Judgment	Treatment of points in the impugned judgment
<p>In essence, the grievance of the respondent is that he being a contract employee was to be regularized in terms of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 which has been illegally denied to him by the petitioners.</p> <p>The petitioners were put to notice. They have vehemently opposed the stance of the respondent</p>	<p>In view of the respondent fulfilling the condition precedent provided under the Act, denying him the regularization of service provided therein would not be appropriate. The fact that the respondent is already serving on a regular post should not deprive him of any benefits or advantage of seniority of service on his regularization of service under the provision of the act.</p> <p>As far as objection of the worthy AA\g regarding laches is concerned, the provisions</p>



stating that the respondent though appointed on 27/11/2002 as Veterinary ~~Officer~~ ^{Assistant} on Contract Basis had applied for a regular post and was appointed as Veterinary Assistant on 21/02/2009, where-after, he on 28/02/2009 resigned from the contract post and on 02/03/2009 assumed charge of the regular post of Veterinary Assistant, whereon he is still serving. Furthermore, it was contended that the respondent has approached this Court at a belated stage through this petition, which is suffering from laches.

of the act do not mandate an employee employed on contract basis to seek his regularization, but in fact, it is the obligation of the government to process the case of all those who fulfill the criteria provided under the act to be granted the said relief. Moreover, similarly placed contract employees, who were serving in the petitioner department have been granted the regularization and that too vide decision of this Court dated 04/02/2014 in WP NO.3157/2011. In the circumstances, the objection of the petitioner department raised is repelled. Accordingly, for the reasons stated hereinabove this writ petition is allowed in terms that the respondent should be regularized in term of the provisions provided under the Khyber Pakhtunkhwa employees (Regularization of Services) Act, 2009 and be granted the benefits already provided to other similarly placed contract employees vide decision of this Court dated 04/02/2014 in WP NO.3157/2011.

LAW/RULING ON THE SUBJECT

FOR

- 1- CONSTITUTION OF PAKISTAN, 1973
- 2- CIVIL SERVANT REGULARIZATION ACT, 2009

CERTIFICATE:

CERTIFICATE that I myself prepared the above concise statement which is correct.



(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government

①

(Signature)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2016

1. Additional Chief Secretary, FATA Secretariat Warsak Road, Peshawar
2. Director General Livestock & Dairy Development, Department Khyber Pakhtunkhwa Bacha Khan Chowk, Peshawar
3. Director Livestock & Dairy Development FATA, FATA Secretariat Warsak Road, Peshawar
4. Director General (Extension) Livestock and Dairy Development Khyber Pakhtunkhwa, Bacha Khan Chowk, Peshawar

-----PETITIONERS

VERSUS

Mr. Khalid Khan S/o Haleem Gul Veterinary Assistant (BPS-6)
Government Cattle breeding & Dairy Farm Harichand district Charsadda

-----RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLES 185(3) OF
THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973
AGAINST THE JUDGMENT OF LEARNED PESHAWR HIGH COURT,
PESHAWAR DATED 22/6/2016 IN WRIT PETITION NO.354-P/2016.

(Signature)

RESPECTFULLY SHEWETH

The substantial questions of law of public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment and order of the Hon'ble, Peshawar High Court, Peshawar does not suffer from material illegality, factually incorrect and requires interference by this august Court?

- (4)
- (Signature)
2. Whether the Honble Peshawar High Court, Peshawar has properly and legally exercised its jurisdiction in the matter in hand?
 3. Whether the impugned judgment and order of the Hon'ble Peshawar High Court, Peshawar is not without jurisdiction being a matter related to term and condition of service?
 4. Whether the Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 does not bar the jurisdiction of High Court in matters related to term and condition of service?
 5. Whether seniority and other back benefits are not related to term and condition of service which exclusively falls within the jurisdiction of Service Tribunal?
 6. Whether the Hon'ble Peshawar High Court, Peshawar has not adverted to the legal and factual aspect of the case while allowing the writ petition?
 7. Whether the Hon'ble Peshawar High Court, Peshawar has not properly and legally construed the record and material of the case in its true perspective?
 8. Whether after resignation from his previous post in the project service and joining regular post in the department the respondent has no more remain the incumbent of the post?
 9. Whether after resignation and without applying for post through proper channel the respondent is not entitle for back benefits of the resigned post?

(Signature)

- (4)
- (500)
10. Whether the respondent is not at par with those employees who were regularized as project employees as at the relevant time after resignation the respondent was no more remain in service on the particular post?
 11. Whether the impugned judgment and order of the Hon'ble Peshawar High Court, Peshawar is not in utter violation of law, rules?
 12. Whether the impugned judgment and order of the Hon'ble Peshawar High Court, Peshawar is not a legal judgment in the eyes of law and bereft of reasons and discussion on the legal and constitutional point?
 13. Whether the Hon'ble Peshawar High Court, Peshawar has not legally erred by extending back benefits to the respondent after accepting of his resignation from the post?
 14. Whether the writ petition of the respondent is not suffer from laches?
 15. Whether the Hon'ble Peshawar High Court, Peshawar has properly and legally dealt with the question of laches in the impugned judgment?

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FACTS

Facts relevant to the above points of law, inter alia, are as under:-

1. That the respondent was appointed as Veterinary Assistant in BPS-6 in the petitioners department as project employee in 2002 and was performing is duty in the department.

- (A) (S/D)
2. That later on the petitioners advertised regular post of Assistant Veterinary in BPS-6 and requisitioned applications from eligible and competent candidates.
 3. That in response of the said requisition the respondent also applied for the post of Veterinary Assistant as fresh candidate without through proper channel and resigned from his service vide dated 4/2/2009 whereon the respondent was again appointed as fresh candidate on 28/2/2009 in the department.
 4. That the respondent colleagues were regularized on the order of High Court as project employees in the department.
 5. That the respondent filed writ petition No.354-P/2016 before the Hon'ble Peshawar High Court, Peshawar and claimed the seniority and other benefits on the strength of regularization of other colleagues which was refused to the respondent as the respondent had resigned from his service and was no more remain in service at the relevant time.
 6. That comments were called from the petitioners which were filed and the stance of the respondent was denied.
 7. That the Hon'ble Peshawar High Court, Peshawar accepted the writ petition of the respondent and allowed the back benefits to the respondent vide order dated 22/6/2016.
 8. That the petitioners mortally aggrieved from the impugned judgment and order of the Honble Peshawar High Court Peshawar dated

Admitted
10/1/16

22/6/2016 in writ petition No.354-P/2016 prefer this CPLA before this august court.

9. That the petitioners seek leave to appeal against the impugned judgment and order of the Honble Peshawar High Court Peshawar dated 22/6/2016 in WP NO.354-P/2016.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order of Honble Peshawar High Court, Peshawar dated 22/6/2016 in WP NO.354-P/2016 may graciously be granted.

(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar.
(Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

(53)




3. That in response of the said requisition the respondent also applied for the post of Veterinary Assistant as fresh candidate without through proper channel and resigned from his service vide dated 4/2/2009 whereon the respondent was again appointed as fresh candidate on 28/2/2009 in the department.
4. That the respondent colleagues were regularized on the order of High Court as project employees in the department.
5. That the respondent filed writ petition No.354-P/2016 before the Hon'ble Peshawar High Court, Peshawar and claimed the seniority and other benefits on the strength of regularization of other colleagues which was refused to the respondent as the respondent had resigned from his service and was no more remain in service at the relevant time.
6. That comments were called from the petitioners which were filed and the stance of the respondent was denied.
7. That the Hon'ble Peshawar High Court, Peshawar accepted the writ petition of the respondent and allowed the back benefits to the respondent vide order dated 22/6/2016.
8. That the petitioners mortally aggrieved from the impugned judgment and order of the Honble Peshawar High Court Peshawar dated 22/6/2016 in writ petition No.354-P/2016 prefer this CPLA before this august court.

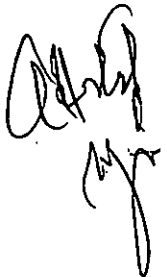


(54)

~~54~~ ~~54~~

9. That the impugned judgment of the Honble High Court is totally illegal against justice and having no backing of law.
10. That the petitioner has a good prima facie case and balance of convenience also lies in maintaining status-quo.
11. That if the impugned judgment and order is not suspended and status-quo is not granted the very purpose of this petition would be lost.

It is, therefore, humbly prayed that the operation of the impugned judgment/order of the learned Peshawar High Court, Peshawar dated 22/6/2016 in WP NO.354-P/2016 may graciously be suspended and to maintain status quo till the final decision of the case.



(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government

(S3) 36

S3

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CMA No. _____/2016

IN

CPLA NO. _____/2016

Additional Chief Secretary, FATA Secretariat Warsak Road,
Peshawar & Others

-----PETITIONERS

VERSUS

Mr. Khalid Khan

-----RESPONDENT

APPLICATION FOR SUSPENSION OF
OPERATION OF THE IMPUGNED JUDGMENT OF
THE LEARNED PESHAWAR HIGH COURT,
PESHAWAR DATED 22/6/2016 IN WRIT PETITION
NO.354-P/2016. AND TO MAINTAIN THE STATUS
QUO TILL THE FINAL DECISION OF THE CASE.

RESPECTFULLY SEHWETH:-

1. That the respondent was appointed as Veterinary Assistant in BPS-6 in the petitioners department as project employee in 2002 and was performing is duty in the department.
2. That later on the petitioners advertised regular post of Assistant Veterinary in BPS-6 and requisitioned applications from eligible and competent candidates.

59/13

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

Civil Appeal No. 886/2017

(On appeal from the judgment dated
22.06.2016 passed by the Peshawar High
Court, Peshawar in W.P. No.354-P/16)

Additional Chief Secretary, FATA Secretariat, WARSAK Road,
Peshawar and others

...Appellants

VERSUS

Khalid Khan

...Respondent

For the appellants: Mr. Zahid Yousaf Qureshi, Addl.A.G.
Mian Saadullah Jandoli, AOR (Absent)
Dr. Muhammad Jaffar, Veterinary Officer

For the respondent: Mr. Zia ur Rehman Tajak, ASC
Syed Rifaqat Hussain Shah, AOR

Date of hearing: 20.7.2020

ORDER

Gulzar Ahmed, C.J.- We have heard the learned
Additional Advocate General, KP so also the learned counsel for the
respondent. The respondent was appointed as Veterinary Officer on
27.11.2002 on contact basis in a project. Subsequently, the post of
Veterinary Assistant was advertised for which the respondent applied
and after test and interview, he was appointed to the said post on
21.02.2009 on regular basis. On 02.03.2009 he assumed the charge
of the regular post of Veterinary Assistant and was given the status of
regular and permanent employee of the petitioner-department. The
respondent filed a writ petition before the Peshawar High Court with
a prayer that his regular service be counted from 27.11.2002 when
he was initially appointed as Veterinary Officer on contract basis in

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

the project. Vide impugned judgment dated 22.06.2016 the High Court has allowed the writ petition and directed the petitioners to regularize the services of the respondent as provided in the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 (the 'Act of 2009') and be granted benefits similar to other contract employees as per decision of the High Court dated 4.02.2014 in Writ Petition No.3157/2011.

2. The learned Additional Advocate General, KP contends that the High Court has not taken into consideration the fact that the respondent has resigned on 28.2.2009 from the post of Veterinary Officer, on which he was employed on contract basis in a project and the effect of such resignation is that there was a complete severing of employment by the respondent from his contract post in a project and then subsequently, he joined the regular post of Veterinary Assistant on 02.03.2009 on which he was appointed. He further contends that the effect of resignation is that it does not make the respondent entitled to get the benefit of the Act of 2009 as on the date when the said Act was promulgated, the respondent had already become a regular employee of the petitioner-department.

3. On the other hand, learned counsel for the respondent has relied upon the case of Chief Engineer, Hydel (North) and Project Director, WAPDA, Warsak Vs. Zafrullah Shah and another (2003 SCMR 686) to contend that the respondent is entitled to have his previous service counted, from the date of his initial appointment, i.e. 27.11.2002 and thus, be given all benefits of such appointment that of seniority, promotion, etc.

4. We are unable to appreciate such an argument of the learned counsel for the respondent nor the law cited by him before us. We have noted that although the respondent was appointed on

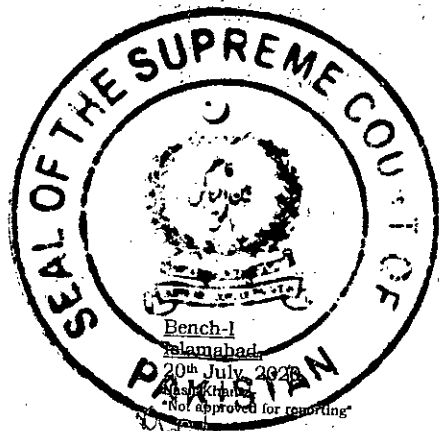
ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

(Handwritten initials)

27.11.2002 as Veterinary Officer on contract basis in a project from which post the respondent himself admittedly resigned on 28.02.2009. The effect of the resignation is that the respondent himself has brought to an end his own service of Veterinary Officer and thereafter, he joined the service as Veterinary Assistant on 02.03.2009, as regular employee of the petitioner. This very fact of resignation and joining afresh, creates a gap in the employment of the respondent and that very gap was created by the respondent himself and not by anybody else. The very post on which respondent was earlier employed was Veterinary Officer and subsequently when he got regular appointment the post was that of Veterinary Assistant. On perusal of the record and going through the relevant documents we note that the High Court has erroneously passed the impugned judgment without taking into consideration the factum of his resignation and giving true effect to the Act of 2009 and thus committed illegality. Consequently, the appeal is allowed and the impugned judgment dated 22.06.2016 is set aside.

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(Handwritten notes: 22/7/20, 12/7)

Certified to be True Copy

**Senior Court Associate
Supreme Court of Pakistan
Islamabad**

(Handwritten signature)

438/20

Date of Presentation: 18-09-20
 No of Words: 900
 No of Folios: 9
 Required Fee: 500
 Copy Fee: 558
 Court Fee Stamp: 1058
 Date of Completion: 21-9-20
 Date of Delivery: 20-10-2020
 Compared by: *(Signature)*
 Received by: _____




**Before the Director General Live Stock and Dairy Development
Khyberpakhtunkhwa Bacha Khan Chowk , Peshawar .
(Competent Authority)**

Departmental Appeal under Section 22 of the KPK Civil Service Act, 1973 read with Rule 3 of KPK Civil Servant (Appeal) Rules 1986, against the impugned order No- 9170—3157/2011, 2855/2012 court case Peshawar.

- A. Whereby the Appellant is not regularized and adjusted along with others appointed on contract basis w.e f. Date of joining the service as Veterinary Assistant(27.11.2002)***
- B. His service is not counted towards seniority and pension and promoted accordingly.***

Prayer:

That the competent Authority may graciously on acceptance of this departmental Appeal, regularize and adjust the Appellant like others appointed on contract basis w.e f. Date of joining the service as Veterinary Assistant and Count his service towards seniority and pension and promote him accordingly.

Respectfully Sheweth: The need for the instant Department Appeal arises due to the following facts:

Facts:

- 1. That the Appellant along with others was appointed on contract basis against the vacant post of Veterinary**



50

Assistant for the development scheme as per procedure, needless to mention that at that time all the appointments though were as per prescribed manner but were considered contract employment according to government policy at that time .

2. That during this time a permanent post was advertised by the Department and all the others on contract applied against the post but the Appellant was selected and the others failed to qualify consequent thereof the Appellant was adjusted against the vacant post of Veterinary assistant in Livestock officer circle Kuram Agency w.e.f. 1.3.2009.
3. That the Appellant as per direction of the competent Authority resigned from service on 28.2.2009 and assumed the charge of regular post on 1.3 2009 which as per provisions of Civil Service Regulations No 418(b) is not a resignation of a public service.
4. That during this time the Government of Khyberpakhtunkhwa passed NWFP Civil Servant Amendment Act 2005 and KP Employees Regularization of Services Act, 2009 which regularized all such employees equally placed to the Appellant and his other colleagues.
5. That the other employees filed Writ Petition No 3157, Writ Petition No 2655/2012 , Writ Petition No 771/2010, Writ Petition No 2384/2010 which were admitted and allowed and all such employees were regularized w.e from the date of joining the service whereas the Petitioner is considered regular employee w.e from the date of posting against the permanent post.

6. That the Appellant filed a Writ Petition No 354/2016 which was allowed and accepted.
7. That against the judgment of Peshawar High Court the Department in clear violation of Principle of Natural Justice and ignoring the case of the others who were declared failed in examination in competition with me file Civil Appeal No886/2017 before the Supreme Court of Pakistan which is allowed and the judgment of the High Court Peshawar is set aside. The Apex Court directed the Appellant verbally to seek your relief through Departmental Appeal or Appeal before the Service Tribunal.

Being aggrieved hence this Departmental Appeal is preferred on the following grounds.

Grounds:

- A. That all the others who are regularized through court order were appointed on contract basis as per prescribed manner and were given annual increments and the appellant was one of them.
- B. That the Department advertised a post of the same designation and all including me competed for it but I was selected and all the others were left to continue on contract basis. The concerned advised the Appellant that in order to join the regular service you have to resign the old one which the Appellant did.
- C. That the Civil Service Regulations No 418(b) provides that resignation to join another service is not a resignation.

D. That it will convey a bad message to all the concerned that the one who is selected on merit is ignored and the others are garlanded.

It is therefore humbly prayed that on acceptance of this Departmental Appeal the relief may be granted as prayed above.

Date 26/9/2020

Appellant

Kh Khan
Khalid Khan . Veterinary Assistant

~~Assistant~~

Civil Veterinary Hospital
Harichand . Tehsil Tangi.
Dist. Charsadda.

Ahmad
Wz

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

APPEAL NO. 16440/ 2020

Khalid Khan S/O Haleem Gul

.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Agriculture & Others

.....Respondents

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

APPEAL NO. 16440/ 2020

Khalid Khan S/O Haleem Gul

..... Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock & Others

..... Respondents

Para-wise comments on behalf of the Respondent No. 1 & 2.

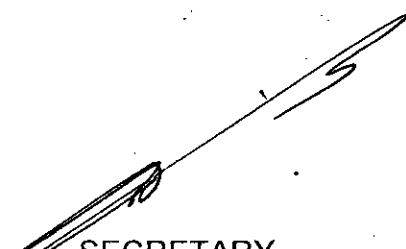
Respectfully Sheweth:

PRELIMINARY OBJECTIONS:


1. That the Appellant has got no locus standi to file this appeal.
2. That the instant appeal has already been decided by the august Supreme Court of Pakistan, wherein the plea of Petitioner has been dismissed.
3. That this Hon'ble Tribunal has no jurisdiction to entertain this case, which has already been decided by the August Supreme Court of Pakistan.
4. That the appeal is wrong and based on illegal and unlawful presumptions.
5. That the appeal is not maintainable.

FACTS

1. Correct to the extent that the Appellant along with others was appointed as Veterinary Assistant (BPS- 06) on contract basis till the project life in the developmental scheme in Ex-FATA/FR on 27-11- 2002. **(Annexure- A)**
2. Correct to the extent that the Appellant applied for regular post against the advertisement and was selected for the same by the departmental selection committee on 21-02-2009. It is pertinent to mention that the Appellant tendered resignation from the post of developmental scheme on 28/02/2009 in order to join the regular post on 02-03-2009. **(Annexure B, C & D).**
3. Incorrect. The Appellant has admittedly resigned from the project post in order to join the regular post of Veterinary Assistant as per rules. Furthermore, the Appellant was required to resign from the project post as at the same time two posts cannot be retained as per rules.
4. Incorrect. The Appellant was admittedly working in a developmental scheme in ex-FATA, so the Civil Servant Amended Act, 2005 and Khyber Pakhtunkhwa, Service Regularization Act, 2009 was not applicable to him.
5. Correct to the extent that colleagues of the Appellant filed writ at the Peshawar High Court, Peshawar in 2009, which was decided in their favor on 15-09-2011. **(Annexure E)**



SECRETARY
Agriculture, Livestock & Cooperative
Department, Khyber Pakhtunkhwa
RESPONDENT NO.1



DIRECTOR GENERAL (EXTENSION)
Livestock & Dairy Development
Department, Khyber Pakhtunkhwa
RESPONDENT NO.2

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

APPEAL NO. 16440/ 2020

Khalid Khan S/O Haleem Gul..... **Petitioner**

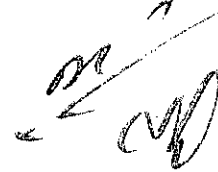
VERSUS

Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock & Others

..... **Respondents**

AFFIDAVIT

I, Dr. Muhammad Jaffar, Veterinary Officer (H) of Directorate of Livestock & Dairy Development, Peshawar, do hereby solemnly affirm on oath that the contents of the appeal are true and correct to the best of my knowledge and belief, and that nothing has been concealed from this Honorable Tribunal.



DEPONENT

14202-1328348-c

Annex 9

DIRECTORATE OF LIVESTOCK & DAIRY DEVELOPMENT, NWFP, PESHAWAR-25000

NOTIFICATION.

On the recommendation of the Departmental Selection Committee, the competent authority is pleased to appoint the following candidate(s) against the vacant post(s) of VETERINARY ASSISTANT (BPS-06) in FATA/ F.R on contract basis for the Developmental Scheme(s)/ Projects for the Project life at the permissible pay scale(s) B-06 with regular allowances according to the Notification of Finance Department Contract Policy 2002 Vide NO. F.D (SOSR-II)12-1/2002 dated 26.10.2002. from the dates of their taking over the charge of the post.

2. Selectee (s) should report for duty to the Assistant Director, Livestock & Dairy Development concerned as mentioned against their name for further adjustment in his circle on the following terms and conditions:

- (a) The appointment will be on contract basis for Project life, subject to the verification of character and medical fitness by the concerned Agency surgeon/ Medical Superintendent.
- (b) Shall be governed by such rules, regulation, orders, acts and ordinances, etc relating to appointment, transfer, leave, efficiency and discipline and conduct as have been / may be prescribed by Government for the category of the Government Servants of the status from time to time.
- (c) Services shall be liable to termination on the following condition:
 - i. At any time without notice and without assigning any reasons during the period of the contract appointment if the work during the period was not found satisfactory;
 - ii. On one month notice by the Government on one side or the other. In case the notice on either side is less than one month, a some of rupees equivalent to one month pay for the period by which the notice falls short of one month will be paid by Government to them or in lieu thereof one month pay shall be forfeited;
 - iii. By Government without previous notice if it is satisfied on material evidence that they are unfit and / or likely to remain unfit for a considerable period (the decision of the Government as to what constitutes such considerable period being conclusive to continue to remain unfit by reasons of ill health or physical disability to discharge their duties).
If the Project not extended then their services shall stand terminated without any notice.
 - iv. If the Project not extended then their services shall stand terminated without any notice.
- (d) Will have no claim to the right of seniority.
- (e) The date of their joining the appointment on contract basis or any other factor will have no bearing on the fixation of their seniority.
- (f) Shall not be entitled to any travelling allowance / daily allowance while joining first appointment.
- (g) The interpretation to be placed on the Rules / Regulations in case of any doubt arising is left to the Government.
- 3. (i) If he is willing to except the above mentioned terms and condition he should report to concerned Assistant Director with in 15-days from the date of issue of this appointment order, failing which the candidate on waiting list shall be given the chance of appointment

SENIORITY POSITION	NAME OF APPOINTEE WITH FATHER NAME	ADDRESS	PLACE OF POSTING/ SERVICES PLACED AT THE DISPOSAL OF
017.	Mr. Khalid Khan S/O Mr. Haleem Gul.	Village Spari Tehsil Parrang Char Muhmand Agency.	Assistant Director Livestock & Dairy Development Muhmand Agency at Ekkaghund.

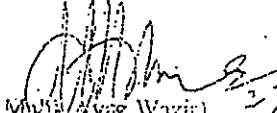
Sd/-
(Dr. Syed Shabir Ahmad Shah)
DIRECTOR.
the 27/11/2002

No. 11304-08 /11/187 Dated Peshawar

Copy of the above is forwarded to:

1. The Deputy Director Livestock and Dairy Development FR Peshawar.
2. The Assistant Director Livestock and Dairy Development Muhmand Agency at Ekkaghund.
3. The District / Agency Account Officer Muhmand Agency.
4. Mr. Khalid Khan S/O Mr. Haleem Gul Village Spari Tehsil Parrang Char Muhmand Agency.
5. Master File.

FOR INFORMATION & NECESSARY ACTION.


 (Dr. Malik Syed Wazir)
 Assistant Director (HQ)

The entries should be dated: _____

Name: _____

Age: _____

Residence: _____

Present

Father's name: _____

Date of birth: _____
nearly as ca

Exact height: _____

Place of birth: _____

Left hand of (Non) GA: _____

Handwriting: _____

Signature: _____

Signature Head of Office: _____

- 2
6. Correct. The Appellant filed writ petition before the Hon'ble Peshawar High Court, Peshawar, which was allowed on 22-06-2016. However, it is pertinent to mention that the judgment of Peshawar High Court, Peshawar been challenged by the Department, and accordingly the August Supreme Court of Pakistan set aside the said judgment on 20-07-2020. **(Annexure F & G)**.
 7. Incorrect. The statement of Appellant is ridiculous as the case of the Appellant has been straight away dismissed by the August Supreme Court of Pakistan as already mentioned and annexed in the above para.
 8. Incorrect. After the dismissal of Appellant's plea at August Supreme Court of Pakistan, his appeal cannot be entertained anymore by any forum.

GROUNDS

- A). Incorrect. The Appellant case is not similar to those, who were regularized through the Hon'ble Peshawar High Court, Peshawar orders and all these facts have been discussed in the August Supreme Court of Pakistan.
- B). Incorrect. The Appellant applied for the regular post and got selected. To join the regular post, the Appellant resigned from the project post, which was required for him as per rules as both project and regular post cannot be retained at the same time. On the other hand, his colleagues continued their services in project and later on file writ petition at the Hon'ble Peshawar High Court, Peshawar in 2009, wherein they were given relief by the same court.
- C). Incorrect. The August Supreme Court of Pakistan after proper hearing, arguments and going through the record has decided the case in favor of the Department. Once the case has been decided by the Apex court, cannot be retained by this Hon'ble Tribunal. Furthermore, the same will be the wastage of precious time of of the Hon'ble Tribunal.
- D). Incorrect. The Appellant cannot challenge the Judgment of August Supreme Court of Pakistan in this Hon'ble Tribunal. If the Appellant was aggrieved by the Apex Court judgment, he should file review petition against the same court.
- E). Incorrect. The August Supreme Court of Pakistan has decided the case on merit.
- F). Incorrect. The Appellant has been treated as per the judgment of August Supreme Court of Pakistan.

It is, therefore, humbly prayed that the instant appeal may be dismissed, please.

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BETTER COPY

DIRECTORATE OF LIVESTOCK & DAIRY DEVELOPMENT NWFP PESHAWAR-25000

NOTIFICATION

On the recommendation of the Department Selection Committee, the competent authority is pleased to appoint the following candidate (s) against the vacant post(s) of VETERINARY ASSISTANT (BPS-06) in FATA/F.R on contract basis for the Developmental Scheme(s)/Projects for the Project life at the permissible pay scale(s) B-06 with regular allowances according to the Notification of Finance Department Contract Policy 2002 Vide NO. F.D (SOSR-II) 12-1/2002 dated 26.10.2002, from the dates of their taking over the charge of the post.

2. Selectees (s) should report for duty to the Assistant Director Livestock & Dairy Development concerned as mentioned against their name for further adjustment in his circle on the following terms and conditions:

- (a) The appointment will be on contract basis for the Project life, subject to the verification of character and medical fitness by the concerned Agency surgeon/Medical Superintendent.
- (b) Shall be governed by such rules, regulation, orders, acts, and ordinances, etc relating to appointment transfer, leave, efficiency, and discipline and conduct as have been /may be prescribed by Government for the category of the Government Servants of the status from time to time.
- (c) Services shall be liable to termination on the following condition:
 - i. At any time without notice and without assigning any reasons during the period of the contract appointment if the work during the period was not found satisfactory;
 - ii. One month notice by the Government on one side or the other. In case the notice on either side is less than one month, a sum of rupees equivalent to one month pay for the period by which the notice falls short of one month will be paid by Government to them or in lieu thereof one month pay shall be forfeited;
 - iii. By Government without previous notice if it is satisfied on material evidence that they are unfit and / or likely to remain unfit for a considerable period being (the decision of the Government as to what constitutes such considerable period being conclusive to continue to remain unfit by reasons of ill health or physical disability to discharge their duties).
 - iv. If the Project not extended then their services shall stand terminable without any notice.
- (d) Will have no claim to the right of seniority.
- (e) The date of their joining the appointment on contract basis or any other factor will have no bearing on the fixation of their seniority.
- (f) Shall not be entitled to any travelling allowance/daily allowance while joining first appointment.
- (g) The interpretation to be placed on the rules /regulations in case of any doubt arising is left to the Government.
- (f) If he is willing to except the above mentioned terms and conditions he should report to concerned Assistant Director within 15 days from the date of issue of this appointment order, failing which the candidate on waiting list shall be given the chance of appointment.

SENIORITY POSTION	NAME OF THE APPOINTEE WITH FATHER NAME	ADDRESS	PLACE OF POSTING SERVICES PLACED AT THE DISPOSAL OF
017	Mr. Khalid Khan S/O Mr. Haleem Gul.	Village Spari Tehsil Parrang Ghar Muhmand Agency.	Assistant Director Livestock & Dairy Development Muhmand Agy at Ekkaghund

Sd/-

(Dr. Syed Shabir Ahmad Shah)
DIRECTOR
the 27/11/2002

No 11304.05/1/187 Dated

Peshawar

Copy of the above is forwarded to:

1. The Deputy Director Livestock and Dairy Development FR Peshawar.
2. The Assistant Director Livestock and Dairy Development Muhmand Agency at Ekkaghund.
3. The District /Agency Account Officer Muhmand Agency.
4. Mr. Khalid Khan S/O Mr. Haleem Gul Village Spari Tehsil Parrang Ghar Muhmand Agency.
5. Master File.

FOR INFORMATION & NECESSARY ACTION.

Sd/-

(Dr. Malik Ayaz Wazir)
Assistant Director (HQ)

Annex - (B)

(6)

DIRECTORATE OF LIVESTOCK AND DAIRY DEVELOPMENT NWFP PESHAWAR.
(Ph-9210276)

ORDER

On the recommendation of the Departmental Selection Committee in its meeting dated 04.2.2009 the competent authority is pleased to appoint the following candidate (s) as Veterinary Assistant the permissible pay scale RBPS-6 (2008) @ Rs 3430-175-8680 with regular allowances against the vacant posts on regular basis and placed their services at the disposal of Director Livestock & Dairy Development FATA Warsak Road Peshawar for further posting in his circle from the date of their taking over the charge of the post.

S.No.	Name with Father name	Address
1.	Mr. Khalid Khan S/O Haleem Gul	Village Landi Shah PO Harichand Tehsil Tangi District Charsadda.

2. His/their appointment shall be governed by the following terms and conditions:
 - a) His/their appointment shall be on regular basis but without Pension or Gratuity in term of section 19 of the NWFP Service Act 1973 as amended vide NWFP Civil Servants (Amendment) act 2005. He will however be entitled to contributory Provident fund in such a manner and at such rates as may be prescribed by the Government.
 - b) His/their appointment shall be subject to the medical fitness certificate by the concerned Medical Superintendent.
 - c) He / they shall be governed by such rules, regulations, orders and ordinances etc, relating to appointment, promotion, transfer, leave, TA, Medical attendance, efficiency and discipline and conduct as have been/ may be prescribed by the Government for the category of Government servants of his/ their status from time to time and as interpreted by the Government.
 - d) His/their service shall be liable to termination on the following conditions:
 - i. At any time without notice and without assigning any reasons during the period of his appointment on probation i.e. 2-Years his work during this period was not found satisfactory.
 - ii. On one month notice by the Government on one side and by him/ them on the other. In case the notice on either side is less than one month, a sum equivalent to the pay for the period by which the notice falls short of one month, will be paid by the Government to him or in lieu thereof one month pay shall be forfeited.
 - iii. By Government without previous notice if it is satisfied on material evidence that they are unfit and / or likely to remain unfit for a considerable period by reasons of ill health or physical disability to discharge his duties. The decision of the Government as to what constitute considerable period shall be final.
 - iv. His/they shall not be entitled to any Traveling / Daily Allowance on their first appointment / posting.
 - v. His/they shall not contribute to Provident Fund in such a manner and at such rates as may be prescribed by the Government.
3. If the above terms and conditions are acceptable to him/ them. He/they should report for joining their duty with in 15-days positively. In case of non compliance / joining their duty, the offer will automatically stand cancelled.

No 793-95 /

(Dr. SHER MUHAMMAD)
DIRECTOR

Dated 21/02/2009

Copy of the above is forwarded for information and necessary action to:

1. The Additional Accountant General PR Sub Office Peshawar.
 2. The Director Livestock and Dairy Development FATA Warsak Road Peshawar.
- The official concerned for information with the direction to report to Director L&DD-FATA Peshawar for their further posting in the circle.

(Dr. HASSAN KHAN)

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BETTER COPY

**DIRECTORATE OF LIVESTOCK & DAIRY DEVELOPMENT NWFP PESHAWAR.
(Ph-9210276)**

ORDER.

On the recommendation of the Department Selection Committee in its meeting dated 04.2.2009, the competent authority is pleased to appoint the following candidate (s) as Veterinary Assistant at permissible pay scale RBPS-6 (2008) @ Rs 3430-175-8680 with regular allowances against the vacant the vacant posts on regular basis and placed their services at the disposal of Director Livestock & Dairy Development FATA Warsak Road Peshawar for further posting in his circle from the date of their taking over the charge of the post.

S.No.	Name with Father name	Address
1.	Mr. Khalid Khan S/O Mr. Haleem Gul.	Village Landi Shah PO Harichand Tehsil Tangi District Charsadda.

2. His /their appointment shall govern by the following terms and conditions:
 - a) His/ their appointment shall be on regular basis but without Pension or Gratuity in term of section 19 of the NWFP Service Act 1973 as amended vide NWFP Civil Servants (Amendment) act 2005.
He will however be entitled to contributory Provident fund in such a manner and at such rates as May, be prescribed by the Government.
 - b) His/ their appointment shall be subject to the medical fitness certificate by the concerned Medical Superintendent.
 - c) He / they shall be governed by such rules, regulations, orders and ordinances etc, relating to appointment, promotion, transfer, leave, TA, Medical attendance, efficiency and discipline and conduct as have been/ may be prescribed by the Government for the category of Government servants of their status from time to time and as interpreted by the Government.
 - d) His/their service shall be liable to termination on the following conditions:
 - i. At any time without notice and without assigning any reason during the period of his appointment on probation i.e. 2-Years his work during this period was not found satisfactory.
 - ii. On one month notice by the Government on one side and by him on other. In case the notice on either side is less than one month, a sum equivalent to pay for the period by which the notice falls short of one month, will be paid by the Government to him or lieu thereof one month pay shall be forfeited.
 - iii. By Government without previous notice if it is satisfied on material evidence that they are unfit and / or likely to remain unfit for a considerable period by reason of ill health physically disability to discharge his duties. The decision of the Government as to what constitute considerable period shall be final.
 - iv. His/they shall not be entitled to any Traveling / Daily Allowance on first appointment / posting.
 - e) His/they shall not contribute to General Provident Fund in such a manner and at such rates as may be prescribed by the Government.
3. If the above terms and conditions are acceptable to him/them. He/they should report for joining their duty within 15-days positively. In case of non compliance/joining their duty the offer will automatically stand cancelled.

Sd/-
(Dr. SHER MUHAMMAD)
DIRECTOR

No 793-95/

Dated 21/02/2009

Copy of the above is forwarded to:

1. The Additional Accountant General PR Sub Office Peshawar.
2. The Director Livestock and Dairy Development FATA Warsak Road Peshawar.
3. The Official concerned for information with the direction to report to Director L&DD FATA Peshawar for their further posting in the circle.

Sd/-
(Dr. HASSAN KHAN)
DIRECTOR (HQ)

Annex - C

7

ت جناب اسٹنٹ ڈائریکٹر ہمارا ایسٹاٹ ایئر ڈیوٹی ڈیولپمنٹ میں
مہمدا

عنواٹ - درخواست برائے اسٹیفن ویٹرنری اسٹنٹ پوسٹ

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جناب عالی!
مروہ بانہ گزارش ہے کہ میں آج تک ریٹائر

ڈیولپمنٹ اسٹیج میں بطور ویٹرنری اسٹنٹ ڈیوٹی سرانجام دے رہا ہوں
تہ آج غیر مستقل آرڈر ہوا۔ تو اسلئے میں یہاں سے ویٹرنری
پوسٹ پر اسٹنٹ سے استعفا دے رہا ہوں۔

میں آج صبح ہی اس استعفا منظور فرما کر حتمی طور پر فارغ ہوں۔

عین کو از غی ہوتی

تاریخ 28/2/09

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الغافل

Signature

آئی اے ایف اے فارمیل ویٹرنری اسٹنٹ خالد خان سی ایس ایس ڈی آئی اے ایف اے

Amesha

Sayyad

Assistant Director
Stock & L
Civil Secretariat FAIA, Rawalpindi

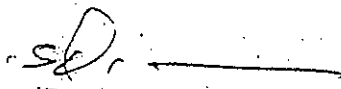
Annex - (D)

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DIRECTORATE OF LIVESTOCK & DAIRY DEVELOPMENT-FATA
FATA SECRETARIAT WARSAK ROAD, PESHAWAR.
Ph: No.091-9210272 Fax No.091-9212136.

ORDER.

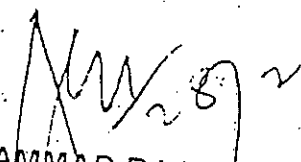
Consequent upon the appointment of Mr. Khalid Khan S/O Haleem Gul Veterinary Assistant, his further adjustment is hereby made against the vacant posts of Veterinary Assistant in the payment circle of Agency Livestock Officer, Kurram Agency with effect from 01/03/2009.


(DR. MUHAMMAD BASHIR)
DIRECTOR

L&DD/FS/1/5 1210 - 12 DATED PESHAWAR THE 2/3/2009.

Copy of the above is forwarded to:-

1. The Agency Accounts Officers, Kurram Agency for information.
2. The Assistant Director, L&DD, Kurram Agency for information & necessary action
3. Official concerned of compliance.


(DR. MUHAMMAD BASHIR)
DIRECTOR

Annex - (E)

(12)

9

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT

WP No. 3157/09.

JUDGMENT

Date of hearing 15.9.2011.

Petitioner (s) (Muhammad Bashir etc) By Mr. Saadullah Khan
Marwat, Advocate.

Respondents (Govt: of NWFP etc) By Barrister Waqar Ali,
AAG alongwith Dr.
Usman Ghani & Dr.
Muhammad Ilyas Afridi,
Directors Live Stock.

DOST MUHAMMAD KHAN, J.- Same order

as in our detailed judgment of even date in the
connected W.P. No.360/ 2009 entitled "Amir

Hussain etc Vs. Govt: & others".

Announced:
15.9.2011

Ed/ Dost Muhammad
Ed/ Yakeya Afridi
Judge

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Peshawar
Article 87 of
Order 108

10

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT

WP No.360/2009

JUDGMENT

Date of hearing 15.9.2011.
Petitioner (s) (Amir Hussain etc) By Mr. F.M Sabir, Advocate.
Respondents (Govt: & others) By Barrister Waqar Ali, AAG.

DOST MUHAMMAD KHAN, J.- This single

judgment shall also decide the following writ
petitions as questions of law involved in all these
writ petitions are identical:-

1. WP No.360/09 entitled "Amir Hussain & four other.."
2. WP No.121/2008 entitled "Muhammad Karimullah vs. Government of NWFP etc."
3. W.P.No.1519/2009 entitled "Qiaash Ahmad Vs. Government of NWFP etc."
4. WP No.2877/2009 entitled "Amjad Ali Vs. Government of NWFP etc."
5. WP No. 1518/2009 entitled "Muhammad Farooq Khan Vs. Government of NWFP etc."
6. WPN0.1236/2011 entitled "Naveed Ahmad vs. Gov. of NWFP etc."
7. WP No.1859/2011 entitled "Muhammad Farooq etc Vs. Government of KPK etc."

ATTEST

Peshawar (NWFP)

8. WP No.1858/2011 entitled "Nauman Adil etc. Vs. Govt. of KPK etc."
9. WP No.1857/2011 entitled "Amir Hussain vs. Govt. of KPK etc."
10. WP No.1744/2011 entitled "Faisal Younas Khan etc. Vs. Chief Secretary Govt. of KPK etc."
11. WP No.1743/2011 entitled "Nisar Ahmad etc. Vs. Chief Secy. Govt. of KPK etc."
12. WP No.2249/2011 entitled "Saleem Javed. Vs. Govt. of KPK."
13. WP No.345/2009 entitled "Muhammad Tufail vs. Govt. etc."
14. WP No.771/2010 entitled "Noor Ali Khan etc. Vs. Addl. Chief Secretary FATA Peshawar etc."
15. WP No.3157/09 entitled "Muhammad Bashir vs. Director Livestock etc."
16. WP No.3284/2010 entitled "Asmatullah vs. Director Livestock etc."

2. The epitome of the controversy involved in writ petitions at S.No. 1 to 13, mentioned above, is that the petitioners therein were appointed as Water Management Officers (Agriculture/ Engineering) (BPS-17), on contract basis, for "National Program for improvement/ lining of water courses in Pakistan (for NWFP)" vide two different Notifications bearing even No. SOE (AD) 11 (2) 70/2004 on 24.11.2004 and 4.2.2005

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for a period of one year extendable upto the project life on their satisfactory performance and were posted in different projects. Their contract was extended from time to time and was lastly extended vide Notification dated 16.9.2008 upto 30.6.2009.

Consequent upon approval of Chief Executive of the Province, sanction for creation of 275 posts was accorded by the competent authority in the offices called "*On-Farm Water Management Department*", at district level, with effect from 1st July, 2007 vide notifications dated 21.4.2007 and 30.7.2007 and by virtue thereof, equal number of posts on developmental side automatically stand abolished. The petitioners were expecting their adjustment/ appointments against the newly created 275 regular posts but vide notifications dated 21.2.2007 and 3.9.2008 certain contract employees of different projects

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were adjusted against some of those posts but the petitioners were ignored, for no plausible cause

3. In writ petitions at S.No. 14 to 16, mentioned above, the petitioners therein were appointed as Veterinary Assistants (BPS-6) in FATA under the Contract Policy of 2002 and were posted in various Developmental Schemes which were subsequently converted into regular strength. They continued as such till date and their contract was never renewed till the NWFP Civil Servants (Amendment) Act 2005 came into being, regularizing the services of contract employees by operation of law.


Vide the impugned order dated 2.1.2010, issued by respondent No.3, the services of the petitioners, in WP No. 771/2010, WP No. 3157/09 and WP No.3284/2010, were transferred from regular sanctioned posts to the project posts with the alleged malafide intention, on part of the respondents, to convert their pay scales into fixed

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pay due to which their salaries w.e. from January, 2010 have been withheld.

4. The petitioners are seeking benefit under the provisions of NWFP now KPK, Civil Servants (Amendment) Act, 2005 (NWFP Act No. IX of 2005) and similar legislation made by the NWFP, now KPK, Employees (Regularization of Services) Act 2009 (NWFP Act No. XVI of 2009) vide which the services of all adhoc & contractual employees were regularized by the Provincial legislature thus they have filed these constitutional petitions, praying for declaring the impugned orders, issued by the respondents, as without lawful authority as well as of no legal effect and have also prayed for issuing of writ to the respondents for regularization of their services.

5. Arguments heard and case law cited at the bar has been gone through minutely.

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6. The respondents were put on notice and by way of interim relief filling of the said posts against which the petitioners are seeking adjustment were held in abeyance.

7. Hon'ble Mr. Justice Mazhar Alam Khan-J on the petition of the petitioners accelerated the date from 8.11.2011 to the second week of August 2011 because of the interim injunction order, suspending the fresh appointments on these posts by the respondents.

Arguments heard extensively and record perused.

Alam Khan
10/8/11

8. It was not contested by the respondents that the appointment orders of all the petitioners were made by the competent / appointing authority in the prescribed manner.

9. It deserves to mention here that at the time of appointments of the petitioners as project employees, the method of appointment was through departmental selection committee (DSC). The projects were funded by the ADP, however, keeping

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in view the progress made, the importance and utility of the projects, the services of the petitioners were retained/ extended but on contract basis. In their initial appointment orders, it was stipulated that their tenure would be extended/ extendable on yearly basis (with the approval of the competent authority) and will be subject to the terms and conditions noted/ notified vide their appointment letters.

10. It is worth to mention here that the posts, on which the petitioners were appointed as contract employees, were all duly published/ advertised by the respondents in two daily newspapers i.e. "The News" & "Mashriq Peshawar" on 23.6.2004 and 22.08.2002 respectively.

11. The petitioners after assuming charge of their assigned jobs on contract basis, initially served as project employees for a period of one year as was mentioned in their appointment orders but the tenure of their service was

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extended for further one year vide Notification

No. SOE (AD)II(2)70/2007 dated 16.9.2008.

12. Two important facts are not contested by the parties i.e. that the petitioners in all these petitions were project employees thus, their tenure of service was dependent on the completion of the project. It is also not denied that after the successful operation and management of the projects and being of considerable public utility, the Provincial Government converted the schemes/ projects from project budget to the current budget and was taken on the roll and strength of the provincial civil service. The required funds were allocated for the same in the annual budget on currency basis.

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13. Another development, providing cause of action / grievance to the petitioners, took place when the Government of NWFP presented a bill in the Provincial Assembly through which

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Section 19 of the NWFP Civil Service Act was to be amended. The said bill was passed by the Provincial Assembly of NWFP on the 5th July, 2005 and assented to by the Governor of NWFP on 12th July, 2005 which was notified/ published in the Gazette of NWFP, extra ordinary on 23rd July, 2005.

Sub-section (2) of Section 2 of the Amendment Act IX of 2005 is to the following effect:-

At Hand

"2. Amendment of section 19 of N.W.F.P Act No. XVIII of 1973.- In the North- West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act No. XVIII of 1973) for section 19, the following shall be substituted:-

(19.(1) Pension and gratuity.----Not relevant.

(2) A person though selected for appointment in the prescribed manner to service or post on or after the 1st day of July, 2001, till the commencement of the said Act but appointed on contract basis, shall, with effect from the commencement of the said Act be deemed to have been appointed on a regular basis. All such

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persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, alongwith the contributions made by Government to his account in the said fund, in the prescribed manner."



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14. Through the above provision of law, the employees appointed on contract basis but in the prescribed manner were provided protection by regularizing their services. The proviso added thereto states that a person, who is selected for appointment in the prescribed manner to a service or post but appointed on contract basis, shall with effect from the commencement of this Ordinance or from the date of his continuous appointment whichever may be later, be deemed to have been appointed on regular basis in the department concerned. Such employee shall, for all intents & purposes, be regular

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employees of the Institution concerned except for the purpose, of pension or gratuity. All such employees shall, in lieu of pension & gratuity, be entitled to the benefits of the Contributory Provident Fund scheme in the prescribed manner.

15. Again, through sub-section (2) of Section 2 of the (Amendment) Act of 2005, vide proviso added thereto, it was directed 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 appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner, after the commencement of the said Act, shall, for all intents & purposes, be a civil servant except for the purpose of pension or gratuity. Such a civil servant in lieu of pension & gratuity be entitled to receive such amount contributed by him towards the Contributory

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Provident Fund along with contribution made by Government to his account in the prescribed manner.

Further provided that in the event of death of such civil servant, whether before or after the retirement, his family shall be entitled to receive the said amount, if it has already not been received by such deceased civil servant.

16. Once again, through the then NWFP now KPK (Regularization of Services) Act No. XVI of 2009, on the strength of provisions of Section 3 thereof, all employees including the recommendee of the High Court appointed on contract or adhoc basis 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 & experience for a regular post subject to exception that the service / promotion quota of all service cadres shall not be affected.

17. Through the provision of Section 4-A of the Amendment Act, overriding effect was given to the provision of this Act over all other laws & rules for

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the time being enforce and it was further provided that any law or rule, coming in conflict with the provision of Amendment Act or inconsistent thereto, shall cease to have effect. This clause overriding & superimposing nature has equipped the provision of Amendment Act No. XLI of 2009, with ever lasting effect over all other laws & rules then in vogue.

18. Learned counsel for the petitioners invited attention of the Court to the earlier judgments of the Bench involving same & similar Issues which were rendered in the case of "*Dr. Rizwan Ullah & others Vs. Government of NWFP & others*" (W.P.No. 1510/1997) and in many other writ petitions, whose contractual services were regularized by the strength of the said judgment, elaborately dealing with each & every provision of law relevant to the subject matter promulgated from time to time and it was further stated at the bar that this judgment of the Court was accepted & acted upon by the various departments of the Provincial Government and services of contractual employees were duly

*Attested
15/12/09*

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Peshawar Hill



regularized, issuing office orders at different occasions and no grudge or grievance was shown against it by the Government to take the matter to the Hon'ble Apex Court.

19. The learned counsel representing the petitioners further invited our attention to different office orders, issued in light of the judgment cited above by various Heads of the Institutions / Administrative Secretaries of the Provincial Government complying with the said judgment in full.

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20. The learned counsel then invited the Court attention to the case of "*Mst. Shagufta Sayed Vs. Government of KPK & others*" W.P.No. 1731/2006 along with W.P.No. 475/2006 dated 11.09.2007, extending the benefit of the provision of Regularization of Services (Amendment) Act 2005 to various employees, who were appointed on contract basis on Farm Management Wing of the Agriculture Department. The learned counsel also produced copy of the judgment of the Hon'ble Apex

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Court given in Civil Appeals No. 150-P & 151-P of 2009 decided on 24.03.2011 where the abovementioned judgment of this Court was impugned. The Hon'ble Apex Court after elaborately & extensively dealing with each & every legal & factual aspect of the case, not only upheld the view held by this Court but also referred to its own judgment given in Civil Appeals No. 834-P to 837-P of 2010 decided on 01.03.2011 wherein, it was held that the cases of contractual employees though appointed on project are squarely covered by the provision of Section 19 (2) of the NWFP Civil Servants Act 1973. Accordingly, both the appeals filed by the Government in the said case were dismissed.

Att. Adv. Gen.

21. Confronted with the above ironclad legal position, the learned Additional Advocate General and the learned counsel appearing for the respondents were time and again asked to draw line of distinction between the case of the petitioners and of those to whom benefit of the said provision of law

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was extended and their contractual services were regularized, however, they were found defenseless and were found having no answer muchless plausible to offer. We have on record the copies of the appointment orders issued by the Competent Authority appointing the petitioners at different occasions on different dates as contract employees on the posts in question

*Att. 2/19
M.P.*

✓ 22. An ironclad proof in the shape of documentary record is available on file that the petitioners were appointed on contract basis by the Competent Authority, which is a fact undeniable in nature and their contractual services were renewed and extended from time to time.

23. The undeniable legal position is that the petitioners are contract employees because they have not been absorbed permanently in the departments concerned where they have been appointed, therefore, they are entitled to the protection of the beneficial provision of sub-section (2) of Section 2 of the then NWFP now KPK Civil Servants

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(Amendment) Act 2005 and their rights are further protected in a more effective manner by provisions of Section 3 of the then NWFP now KPK Employees (Regularization of Services) Act, 2009 to which superimposing & overriding effect was given on all the rules & law to the contrary. The latest enactment came into force on 24th October 2009 when it was published in the official gazette of the Province extra ordinary.

24. The learned AAG and the learned counsel appearing for the respondents also took the plea that these are not substantive vacancies, therefore, the question of regularization of contractual services of the petitioners could not be made, is absolutely fallacious because in the first instance no document or record was produced to substantiate this plea. The contents of the published notice in the Press do not indicate in any manner that these vacancies are temporary and not substantive one, hence, this plea has been raised out of malafide and has no foundation to stand upon. However, in case the

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number of vacancies not commensurate with number of petitioners then, in that case some of them may be placed in the surplus pool for onward posting on various projects in near future when the circumstances so arises and re-adjustment becomes possible.

25. For the detailed reasons discussed above, we entertain no amount of doubt that the petitioners are entitled to the prayed relief because services of similarly placed employees of different Institutions/ departments, who were appointed on contract basis, were held to have been regularized through the provision of various enactments, discussed above, moreso, when the main judgment of this Court was not impugned before the Hon'ble Apex Court by the Provincial Government, therefore, no distinction can be drawn between the case of the petitioners and of those to whom the same and similar benefit was extended by this Court. Even otherwise, once the law

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has been interpreted in the earlier judgments of this

Court in favour of the employees then, the subsequent Division Bench, in view of the long chain of authorities / dictas of the Hon'ble Apex Court, cannot deviate from the previous view, moreso, when we have no reason to differ with the earlier view.

26. Accordingly, this and all the connected petitions, cited in the opening paragraph, are admitted and allowed and the respondents are issued a writ, directing them to treat the petitioners of this and of all the connected petitions as regular/ permanent employees from the date the law came into force, as discussed above or from the date of officiating service as stated in the relevant provisions of law. Formal office order be immediately issued in this regard by the competent authorities in regard to the above legal position, the service books/ record of

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all the petitioners be duly arranged and prepared,

however, their inter se seniority be determined by the

competent authorities in accordance with law and

rules on the subject.

Edy Dost Muhammed

Edy Yalya Afridi

Announced:
15.09.2011.

Judges

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[Signature] 7/10/11

Member
Peshawar High Court Peshawar
Authorized Signatory of
The General Administration Dept

*Abdul
Razaq*

3950

Date of Presentation of Application 05/10/2011
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Annex - (F)

20

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT



Writ Petition No.354-P of 2016
With Interim Relief.

JUDGMENT

Date of hearing.....22-06-2016.....

Petitioner: (Khalid Khan) by Mr.Nazir Ahmad, Advocate.

Respondents:(The Additional Chief Secretary, FATA
Secretariat Warsak Road, Peshawar and
others) by Mr.Muhammad Sohail, AAG.

YAHYA AFRIDI, J.- Khalid Khan, petitioner seeks
the constitutional jurisdiction of this Court praying
that:-

Yahya Afridi

*"It is, therefore, humbly prayed
that this Honourable Court on
acceptance of this writ petition may
issue a direction to the
respondents:-*

- a) To consider the service of the
petitioner with effect from
27.11.2002 as a permanent
service by regularizing him from
that date.*
- b) Extend the benefits of the writ
petitions filed by his colleagues
to the petitioner with no adverse
effect of his adjustment on
permanent post on merit on
21.02.2009."*

2. In essence, the grievance of the
petitioner is that he being a contract employee was

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to be regularized in terms of *Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009* ("Act"), which has been illegally denied to him by the respondents.

3. The respondents were put to notice. They have vehemently opposed the stance of the petitioner stating that the petitioner though appointed on 27.11.2002 as Veterinary Officer on *contract basis* had applied for a regular post and was appointed as Veterinary Assistant on 21.02.2009, whereafter, he on 28.02.2009 resigned from the contract post and on 02.03.2009 assumed charge of the regular post of Veterinary Assistant, whereon he is still serving. Furthermore, it was contended that the petitioner has approached this Court at a belated stage through this petition, which is suffering from *laches*.

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4. Section 3 of the Act clearly provides that:-

"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 for a regular post."

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to

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Provided that the service promotion quota of all service cadres shall not be affected."

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EXAMINER
Peshawar High Court

10 JUL 2016

(emphasis provided)

5. The condition precedent in the said section provides for the employee to be employed on *contract basis* and *holding* the said post on 31.12.2008. This condition precedent is fulfilled by the present petitioner, as he was holding the post of Veterinary Assistant on *contract basis* on 31.12.2008, the crucial and critical date.

6. In view of the petitioner fulfilling the condition precedent provided under the Act, denying him the regularization of service provided therein would not be appropriate. The fact that the petitioner is already serving on a regular post should not deprive him of any benefits or advantage of seniority of service on his regularization of service under the provisions of the Act.

7. As far as objection of the worthy AAG regarding *laches* is concerned, the provisions of the Act do not mandate an employee employed on *contract basis* to seek his regularization, but in fact, it is the obligation of the government to process the case of all those who fulfill the criteria provided under the Act to be granted the said relief. Moreover, *similarly placed* contract employees, who were serving in the respondent department have

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EXAMINER
Peshawar High Court

19 JUL 2016

been granted the regularization and that too vide decision of this Court dated 04.02.2014 in W.P.No.3157/2011. In the circumstances, the objection of the respondent department raised is repelled.

Accordingly, for the reasons stated hereinabove, this writ petition is allowed in terms that the petitioner should be regularized in terms of the provisions provided under the *Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009* and be granted the benefits already provided to other *similarly placed* contract employees vide decision of this Court dated 04.02.2014 in W.P.No.3157/2011.

affidavit
19/7/16

Sd/ *Jahza Afridi - J*
Sd/ *Muhammad Daud Khan - J*
Dt.22-06-2016.

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JUDGE

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Examiner
Peshawar High Court, Peshawar
Authorized Under Article 175
The Constitution of Pakistan

19 JUL 2016

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JUDGE

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59/20

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Attested
(Signature)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

3 Civil Appeal No. 886/2017

(On appeal from the judgment dated 22.06.2016 passed by the Peshawar High Court, Peshawar in W.P. No.354-P/16)

Additional Chief Secretary, FATA Secretariat, WARSAK Road, Peshawar and others

...Appellants

VERSUS

Khalid Khan

...Respondent

For the appellants:

Mr. Zahid Yousaf Qureshi, Addl.A.G.
Mian Saadullah Jandoli, AOR (Absent)
Dr. Muhammad Jaffar, Veterinary Officer

For the respondent:

Mr. Zia ur Rehman Tajak, ASC
Syed Rifaqat Hussain Shah, AOR

Date of hearing:

20.7.2020

ORDER

Guizar Ahmed, C.J.- We have heard the learned Additional Advocate General, KP so also the learned counsel for the respondent. The respondent was appointed as Veterinary Officer on 27.11.2002 on contact basis in a project. Subsequently, the post of Veterinary Assistant was advertised for which the respondent applied and after test and interview, he was appointed to the said post on 21.02.2009 on regular basis. On 02.03.2009 he assumed the charge of the regular post of Veterinary Assistant and was given the status of regular and permanent employee of the petitioner-department. The respondent filed a writ petition before the Peshawar High Court with a prayer that his regular service be counted from 27.11.2002 when he was initially appointed as Veterinary Officer on contract basis in

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Senior Court Associate
Supreme Court of Pakistan

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the project. Vide impugned judgment dated 22.06.2016 the High Court has allowed the writ petition and directed the petitioners to regularize the services of the respondent as provided in the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 (the 'Act of 2009') and be granted benefits similar to other contract employees as per decision of the High Court dated 4.02.2014 in Writ Petition No.3157/2011.

2. The learned Additional Advocate General, KP contends that the High Court has not taken into consideration the fact that the respondent has resigned on 28.2.2009 from the post of Veterinary Officer, on which he was employed on contract basis in a project and the effect of such resignation is that there was a complete severing of employment by the respondent from his contract post in a project and then subsequently, he joined the regular post of Veterinary Assistant on 02.03.2009 on which he was appointed. He further contends that the effect of resignation is that it does not make the respondent entitled to get the benefit of the Act of 2009 as on the date when the said Act was promulgated, the respondent had already become a regular employee of the petitioner-department.

3. On the other hand, learned counsel for the respondent has relied upon the case of Chief Engineer, Hydel (North) and Project Director, WAPDA, Warsak Vs. Zafrullah Shah and another (2003 SCMR 686) to contend that the respondent is entitled to have his previous service counted, from the date of his initial appointment, i.e. 27.11.2002 and thus, be given all benefits of such appointment that of seniority, promotion, etc.

4. We are unable to appreciate such an argument of the learned counsel for the respondent nor the law cited by him before us. We have noted that although the respondent was appointed on

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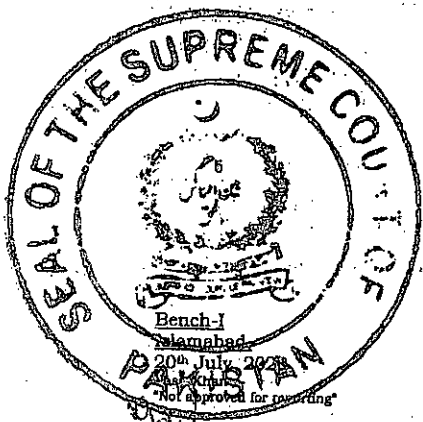
Senior Court Associate
Supreme Court of Pakistan
Islamabad

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C.A.886/17

27.11.2002 as Veterinary Officer on contract basis in a project from which post the respondent himself admittedly resigned on 28.02.2009. The effect of the resignation is that the respondent himself has brought to an end his own service of Veterinary Officer and thereafter, he joined the service as Veterinary Assistant on 02.03.2009 as regular employee of the petitioner. This very fact of resignation and joining afresh, creates a gap in the employment of the respondent and that very gap was created by the respondent himself and not by anybody else. The very post on which respondent was earlier employed was Veterinary Officer and subsequently when he got regular appointment the post was that of Veterinary Assistant. On perusal of the record and going through the relevant documents we note that the High Court has erroneously passed the impugned judgment without taking into consideration the factum of his resignation and giving true effect to the Act of 2009 and thus committed illegality. Consequently, the appeal is allowed and the impugned judgment dated 22.06.2016 is set aside.

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Senior Court Associate
Supreme Court of Pakistan
Islamabad

438/20

Date of Presentation: 18-09-20
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 No of Filings: 9
 Request: 5-00
 Copy Fee: 5-58
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 Compared by: [Signature]
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DIRECTORATE GENERAL (EXTENSION)
LIVESTOCK & DAIRY DEVELOPMENT KHYBER PAKHTUNKHWA,
PESHAWAR

Tel: 091-9210249/9210276, Fax: 091-9210285, E-mail: dglddext@yahoo.com

Web: www.livestockextkp.gov.pk

AUTHORITY LETTER

Dr. Muhammad Jaffar, Veterinary Officer (H), of this office is hereby authorized to pursue the case titled; Khalid Khan versus Government of Khyber Pakhtunkhwa through Secretary & Others in Appeal No.16440 /2020 in the Khyber Pakhtunkhwa, Service Tribunal , on behalf of the Respondents.


DIRECTOR GENERAL
RESPONDENT No.2

SECTION III--SUSPENSIONS--RESIGNATION, BREAKS, AND DEFICIENCIES IN SERVICES

Periods of Suspension

416. Time passed under suspension pending enquiry into conduct counts, if the suspension is immediately followed by reinstatement. (1)

* 417. Time passed under suspension followed by reinstatement shall count for pension irrespective of whether the Government servant was or was not allowed full pay and allowances for that period."

** 417A. If an officer, who has been suspended pending inquiry into his conduct, attains the age of superannuation before completion of the inquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.

Resignations and Dismissals

418. (a) Resignation of the public service or dismissal or removal from service for misconduct, insolvency, infirmity or due to fire or flood or natural calamity or service examination entails forfeiture of past service.

(b) Resignation of an appointment to take up another appointment, service in which counts, is not a resignation of the public service.

419. Any authority who is empowered to appoint, transfer, promote, suspend or remove an officer may declare that the officer's past service counts.

Interruptions

420. An interruption in the service of an officer entails forfeiture of his past service, except in the following cases--

(a) Authorised leave of absence.

(b) Unauthorised absence in continuation of authorised leave of absence so long as the office of the absentee is not substantively filled; if his office is substantively filled, the past service of the absentee is forfeited.

*** (c) Suspension where it is immediately followed by re-instatement, whether to the same or a different office; or where the officer dies or is permitted to retire or is retired while under suspension.

(d) Abolition of office or loss of appointment owing to reduction of establishment.

(e) Transfer to non-qualifying service in an establishment under Government control. The transfer must be made by competent authority; an officer who voluntarily resigns qualifying service cannot claim the benefit of this exception. Transfer to a grant-in-aid school entails forfeiture.

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422. Upon such condition authority competent to fill the vacancy is applied for, without interruptions in his service.

NOTE.--The powers under this Article of Government of Pakistan may be exercised in temporary and officiating service under Article 371-A.]

423 (a) A deficiency of service of an officer shall be deemed to be a deficiency of service if the officer is absent for more than six months but not more than twelve months.

(2) The authority competent to fill the vacancy shall be the authority which was competent to fill the vacancy immediately before the deficiency of service, namely--

(a) The officer has died beyond his control and would have been permitted to retire or retired.

(b) The service rendered by the officer is not less than six months.

"Government Orders. S"

423-A. Cancelled.

†Inserted vide Notification No

**† J. Added vide M.F. Notific

***Substituted by M.F. Notifier

It is for
computation
of pension only

†Omitted vide Notification No. F. 3(2)-RS/65, dated the 4th January, 1966.

**Substituted vide Notification No. F. 6(4)-Reg (6)/81, dated 17-2-1983.

***Inserted vide Notification No. F. 12(S)-Reg (6)/77 dated 10-11-1980.

***†Substituted vide Notification No. F. 27-D-1987

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar and Sardar Muhammad Raza, JJ

CHIEF ENGINEER, HYDEL (NORTH) AND PROJECT DIRECTOR, WAPDA, WARSAK---Appellant

Versus

ZAFRULLAH SHAH and another---Respondents

Civil Appeal No.708 of 1997, decided on 24th January, 2003.

(On Appeal from the judgment, dated 4-3-1996 of the N.-W.F.P. Service Tribunal. Peshawar passed in Appeal No.415 of 1995).

(a) Civil Service Regulations---

--- Regln.418---Resignation or dismissal/removal from service for misconduct etc. and resignation for taking up another appointment--Consequences of both such resignations, whether similar---Principles.

Contents of Regulation 418 indicate different kinds of resignations that entail different consequences

Regulation 418(a) highlights those resignations, which arise from misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination and all such resignations which entail forfeiture of past service. Whereas resignation of an appointment to take up another appointment, in which service counts, is not a resignation of the public service. As the public service continues and as service in both appointments counts, this principle of common sense is enunciated in Regulation 418(b) declaring in unequivocal words that such resignation is not a resignation of the public service and hence, the consequences of resignation under Regulation 418(a) are not similar to the consequences of resignation under Regulation 418(b).

(b) Civil Service Regulations---

--- Regln. 418(b)---North-West Frontier Province Service Tribunals Act (I of 1974), S.4---Constitution of Pakistan (1973), Art.212(3)--Resignation from service in WAPDA for taking up appointment in another Department---Request of civil servant to grant him pensionary benefits for period he had served with WAPDA was declined---Service Tribunal granted relief prayed for to civil servant---Contention of WAPDA was that civil servant for having voluntarily resigned had lost all his rights arising out of his service under WAPDA---Validity---Civil servant under Regln. 418(b) of Civil Service Regulations was entitled to pensionary benefits qua his service rendered in WAPDA---Tribunal had rightly applied Regln. 418(b) to case of civil servant---Such finding was unexceptionable---Supreme Court dismissed appeal in circumstances.

(c) North-West Frontier Province Service Tribunals Act (I of 1974)---

---Ss. 2 (a), 3 & 4---Civil Service Regulations, Regln 418(b)---Constitution of Pakistan (1973), Art. 212 (3)---Service Tribunal, jurisdiction of---Resignation from service in WAPDA for taking up appointment in another Department ---WAPDA refused to pay respondent pensionary benefits for period he had

R Jinn WAPDA as per and after getting higher qualification was promoted to and served in WAPDA

Later Applied to the post of Assistant in civil eng through proper channel. But an appointment was not received by WAPDA. So he resign. and join new appointment

Then he claim pension from WAPDA which was refused. But ST allowed Appeal and CA was dismissed by SC.

served with WAPDA---Service Tribunal granted such relief to respondent---Contention of WAPDA was that relief claimed by respondent was against WAPDA, thus, Provincial Service Tribunal had no jurisdiction to give findings in the matter--Validity---Status/entity of respondent being a provincial civil servant was so strong and specific that had he resorted to Federal Service Tribunal, his claim would have been turned down on the ground that he was provincial civil servant and that Federal Service Tribunal was empowered to adjudicate upon terms and conditions of civil servants belonging to Departments of Federal Government---All formalities of retirement and pension of respondent would be gone into by Provincial Department---Tribunal established for respondent was, thus, Provincial Service Tribunal, and not the Federal one, irrespective of the fact, whether claim was partly recoverable from a Department belonging to Federal Government---Objection to jurisdiction not raised by WAPDA before Tribunal could not be raised before the Supreme Court---Supreme Court dismissed appeal in circumstances.

(d) Service Tribunals Act (LXX of 1973)---

---Ss.4, 3, 1(3) & 2(a)---Sindh Service Tribunals Act (XV of 1973), Ss.4, 3, 1(3) & 2(a)---North West Frontier Province Service Tribunals Act (I of 1974), Ss.4, 3, 1(3) & 2(a)---Balochistan Service Tribunals Act (V of 1974), Ss. 3, 4, 1(3) & 2(a)---Punjab Service Tribunals Act (IX of 1974), Ss.4, 1(3) & 2(a)---Jurisdiction of Service Tribunal--Determination of---Criteria stated.

Two important factors to be considered while determining the jurisdiction of a Tribunal are, firstly, the entity and status of the employee, whether a civil servant or not, and secondly as to whether his claims are with regard to terms and conditions of his service. Again it has to be seen with specific care as to which type of civil servant or servants, the Tribunal is constituted for. If it is for Federal civil servants, then Federal Service Tribunal shall have the jurisdiction, and if for provincial civil servant, then Provincial Service Tribunal will have the jurisdiction.

Primarily a Tribunal would exercise jurisdiction regarding those civil servants, for which it is established or vice versa.

(e) Civil Procedure Code (V of 1908)---

---S.21---Objection to jurisdiction of Court or Tribunal---Not taken in the forum of first instance---Effect---Such objection could not be raised either in appeal or revision and that too, if a failure of justice had been caused in decision of case.

(f) Civil Service Regulations---

---Regln. 418(b)---North-West Frontier Province Service Tribunals Act (I of 1974), S.4---Construction of Punjab (1973), Art. 212(3)--Resignation from service in WAPDA for taking up appointment in other Department---WAPDA refused to pay civil servant his pensionary benefits for period he served with WAPDA---Service Tribunal granted such relief to civil servant--Contention of WAPDA was that claim of civil servant was premature as his retirement was not due in immediate future and lacked cause of action---Validity---WAPDA had denied claim on merit, thus, such objection was of no significance--Claim once denied, its adjudication on merit would become important, because claim would be equally denied when preferred in future at time of retirement---Such claim was merely for transfer of pensionary benefits from one Department to another, which could be made at any time before retirement as same would be encashed only when retirement was materialized by the relevant Department of civil servant---WAPDA could not be disassociated from such claim with reference to previous service, that counts, thus, WAPDA had to be joined as respondent in appeal before Service Tribunal.

(g) Service Tribunals Act (LXX of 1973)---

---S.4---Sindh Service Tribunals Act (XV of 1973), S.4---North-West Frontier Province Service Tribunals Act (I of 1974), S.4---Balochistan Service Tribunals Act (V of 1974), S.4---Punjab Service Tribunals Act (IX of 1974), S.4---Constitution of Pakistan (1973); Art. 212(3)--Objection to jurisdiction, if not taken before Tribunal, could not be taken before Supreme Court.

Muhammad Latif Khan, Advocate Supreme Court and Syed Maqbool Ali Shah, Director, WAPDA for Appellant.

Attiq-ur-Rehman Qazi, Advocate Supreme Court and M Hussain Khan, Advocate-on-Record for Respondent No. 1.

Jehanzeb Rahim, A.-G., N.-W.F.P. for Respondent No.2.

Date of hearing: 8th January, 2003.

JUDGMENT

SARDAR MUHAMMAD RAZA, J.-This appeal, by leave of the Court, is filed by Chief Engineer, Hydel (North)/Project Director, WAPDA Warsak against judgment dated 4-3-1996 of N.-W.F.P. Service Tribunal, accepting Appeal No.415 of 1995 of Zafrullah Shah, respondent No. 1, allowing him pensionary benefits of his services rendered in WAPDA for more than 16 years.

2. Zafrullah Shah, Assistant (BPS-15) presently serving in Civil Defence Directorate, N.-W.F.P. joined service on 1-6-1964 as peon in the office of Resident Engineer, WAPDA, Warsak. In 1967 he was appointed as Fero Printer in Drawing Section. After his becoming a Matriculate and after different appointments he was promoted as Senior Clerk in 1978 and posted in the office of Project Engineer, WAPDA, Warsak.

3. In the year 1980, he applied through proper channel for the post of Assistant in the office of Director, Civil Defence, N.-W.F.P. His application was recommended and forwarded by the Project Engineer, WAPDA, Warsak. He was selected and appointed as Assistant in Civil Defence Directorate through office order No. 1788 dated 27-8-1980. Despite the fact that the Project Engineer, WAPDA had recommended him, he declined to relieve the official for joining his new appointment in the Directorate of Civil Defence. Zafrullah Shah was constrained to resign as per desire of the Project Engineer. His resignation was accepted on 2-9-1980 and he joined his new appointment on 3-9-1980 in the forenoon.

4. The respondent claiming to have served as a regular employee for more than 16 years and having earned qualifying service for pension before his appointment in Civil Defence, applied for the grant of benefit of pension for the period he served with WAPDA. Such application dated 7-5-1995 was forwarded by his department to the Chief Engineer, Hydel/Project Director, WAPDA, Warsak, vide memo. dated 18-5-1995. WAPDA Authorities declined to pay the pension contribution for 16 years, 3 months and 2 days to the official, He moved the N.-W.F.P. Service Tribunal which, vide impugned judgment dated 4-3-1996, granted him the relief prayed for and hence this appeal.

5. All the facts narrated above, mostly related to the service record, are almost admitted. The resignation of Zafrullah Shah before WAPDA Authorities is considered to be the damaging factor and on this score the pensionary benefits are denied. It is alleged that having voluntarily resigned, the official happened to

lose all his rights if at all arising out of his service under WAPDA. Regulation 418(b) of Civil Service Regulations is the proper provision of law that regulates resignations and dismissals. For facility of reference, it is reproduced below in its-entirety:--

"418(a). Resignation of the public service or dismissal or removal from it for misconduct insolvency, inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.

(b) Resignation of an appointment to take up another appointment, service in which counts, is not a resignation of the public service."

The contents of the regulation would clearly indicate the different kinds of resignations that entail upon different consequences. Though the case of respondent fell under sub-Regulation (b) of Regulation 418 yet for the purposes of contrast and comparison a careful perusal of both would be most appropriate. Regulation 418(a) highlights those resignations which arise from misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination and all such resignations entail forfeiture of past service. Whereas resignation, of an appointment to take up another appointment, service in which counts, is not a resignation of the public service. As the public service continues and as service in both appointments counts, this principle of common sense is enunciated in Regulation 418(b) declaring in unequivocal words that such resignation is not a resignation of the public service and hence the consequences of resignation under Regulation 418(a) are not similar to the consequences of resignation under Regulation 418(b).

6. As the learned Tribunal has rightly applied Regulation 418(b) to the admitted facts of the present case, the finding is unexceptionable and the same is upheld. Zafrullah Shah is, therefore, entitled to the pensionary benefits of his past service rendered in WAPDA.

7. Mr. Muhammad Latif, learned counsel for WAPDA raised a strong objection to the effect that the actual relief claimed by Zafrullah Shah was against WAPDA and hence the Provincial Service Tribunal had no jurisdiction at all to give findings in the matter. We had given time, through adjournment, to learned counsel on either side to produce case law on the point involved but nothing was facilitated because the situation in hand appears to be of first impression. A finding in this behalf is therefore needed.

8. Zafrullah Shah admittedly is a civil servant of a Provincial Department and his entity is clearly defined by section 2(a) of N.-W.F.P. Service Tribunals Act, 1974. His status/entity of being a provincial civil servant is so strong, specific, intrinsic and unavoidable that had he resorted to the Federal Service Tribunal, his claim would have been turned down on the ground that he was a Provincial civil servant and that Federal Service Tribunal was empowered to adjudicate upon the terms and conditions of the civil servants belonging to the departments of Federal Government. Such rejection of claim would have been more stronger than the objection raised in the instant case because the respondent before us is at least, though not the least, a Provincial civil servant.

9. Such a situation is not specifically described in the Service Tribunals Act of the Centre as well as the Province. If one reverts to fall back upon the principles of general civil law, one has to see if any help can be sought from sections 15 to 21 of the Civil Procedure, Code.

10. Section 15 deals with the jurisdiction of Courts of different grades whereas the grade of the two Tribunals involved before us is not superior to one another except for the difference that one deals with Federal employees and the other with provincial employees. Appeal against the judgment of both lies to the Supreme Court. In the instant case the status of a civil servant is more important than the entity of

Court or Tribunal. No help, therefore, can be derived from section 15, C.P.C. Sections 16 and 17, C.P.C. deal with the jurisdiction of a forum with strict reference to the tangible subject-matter and the physical location thereof. In the instant case the subject-matter giving jurisdiction is not tangible in the sense in which it is so in the aforesaid sections of the C.P.C. Section 18, C.P.C. is not applicable for it deals with uncertainty of local limits of jurisdiction. The objection qua jurisdiction would have been plausible had the entity of a person being a civil servant been ignored, which in matters of civil servants cannot be ignored at all.

11. Two important factors to be considered while determining the jurisdiction of a Tribunal are, firstly, the entity and status of the employee, whether a civil servant or not and secondly as to whether his claim is with regard to the terms and conditions of his service. Again it has to be seen with specific care as to which type of civil servant or servants the Tribunal is constituted for. If it is for Federal Civil Servants then the Federal Service Tribunal shall have the jurisdiction and if for Provincial Civil Servants then the Provincial Service Tribunal will have the jurisdiction. In the instant case respondent Zafrullah Shah is undoubtedly a Provincial Civil Servant and hence only the Provincial Service Tribunal shall have jurisdiction. Had, he been or had he remained WAPDA employee, he would have gone to Federal Service Tribunal.

12. The preamble of N.-W.F.P. Service Tribunals Act, 1974, clearly lays down the expediency of establishment of a Tribunal to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of service of civil servants, and for matters connected therewith or ancillary thereto. The Act, under section 1(3) applies to all civil servants wherever they may be. A civil servant is defined under section 2(a) of the Act aforesaid. The respondent under such section is a civil servant within the meaning of North-West Frontier Province Civil Servants Act, 1973. His service matters or the terms and conditions thereof can only be determined by a Tribunal constituted under section 3 of the Act and exercising jurisdiction under section 3(2) of the Act. We, therefore, are convinced that primarily a Tribunal would exercise jurisdiction regarding those civil servants for which it is established or vice versa. The respondent being a Provincial Civil Servant, the Tribunal established for him is Provincial Service Tribunal and not the Federal one irrespective of the fact whether any claim is partly recoverable from a department belonging to Federal Government.

13. Real claim of pensionary benefits of the respondent lies with Civil Defence Department which has to pass the final orders of retirement and which has to make payment regardless of the fact that some partial contribution it has to recover from another department. It was under these circumstances, that the respondent applied to the Civil Defence Department for claim in hand which the latter had forwarded to WAPDA/Appellant. This is indicative of the fact that all the formalities of retirement and pension shall be gone into by the Provincial Department and hence the Provincial Service Tribunal will essentially have the jurisdiction. We hold it accordingly.

14. Though from the general principles of civil law, we are not in a position to derive any help yet section 21, C.P.C. lays down a principle that squarely runs counter to the conduct of the appellant WAPDA. The principle is that if no objection to the jurisdiction of a Court or Tribunal is taken in the forum of first instance it cannot be raised either in appeal or in revision and that too, if a failure of justice has occurred in the decision of case. We have gone through the reply of WAPDA before the Tribunal (pages 16, 17 and 18) where no objection to the jurisdiction of Tribunal had at all been raised. All the objection were almost related to the facts of the case and the estoppel by conduct of respondent through his resignation. We hold, in the circumstances, that objection to jurisdiction if not taken before the Tribunal, cannot be taken before this Court now.

15. Another objection was raised to the effect that the respondent has made a premature claim because his retirement is not due in the immediate future and thus, he lacks cause of action. The objection loses

injustice when claim on merit is also denied by the appellant WAPDA. When once it is denied, adjudication on merit becomes important because it would be equally denied when the claim is preferred in future at the time of retirement. Moreover, the claim in hand is not strictly relevant to the time of retirement because it pertains to mere transfer of pensionary benefits from one department to another irrespective of the fact as to when such claim would be received by the respondent from his own department of Civil Defence at any future time of his retirement. The claim is merely for transfer of amount of pensionary benefits for a period of 16 years, 3 months and 2 days which can be made or agitated at any time before retirement, for it would be enquired only when the retirement is materialized by the actual department of respondent. As WAPDA cannot be dis-associated from the claim in hand with reference to the previous service that counts, it has to be joined as respondent in appeal before the Provincial Service Tribunal.

16. Consequently, it is held that under Regulation 418(b) of the Civil Service Regulations, the respondent was entitled to the pensionary benefits qua his service rendered in WAPDA and further it was the Provincial Service Tribunal that had the jurisdiction to entertain the claim.

17. The appeal is hereby dismissed.

S.A.K./C-69/S

Appeal dismissed.

- (v) I have directed the Motor Registration Authority to cancel the Motor Registration immediately or bound them to seek prior permission from Director (MR) in case of the Registration of Embassy Vehicles."

As per inquiry report referred to above, appellant was not found involved in any illegality or gross irregularity. It has been contended that in the absence of N.O.C. of Foreign Office the vehicles were not transferable in the name of any other person and admittedly no such N.O.C. was obtained from Foreign Office. Be that as it may, but in fact the duty of getting verification of documents was of Mr. Muhammad Murad Khaskheli, A.E.T.O. (Verification) Motor Registration Wing and not that of appellant. At the most appellant could have enquired from A.E.T.O. (Verification) about N.O.C. of Foreign Office, but for that simple lapse on the part of the appellant, the two penalties i.e. of withholding of promotion and stoppage of increments were very much harsh. Even otherwise two penalties of different and distinct nature, may be minor, are not permissible under the rules. In the given circumstances and the material placed before us, minor penalty of "Censure" was sufficient to meet the ends of justice.

6. Accordingly, the minor penalties of stoppage of two annual increments and withholding of promotion for a period of two years are converted to that of minor penalty of "Censure". With the above modification in the impugned order, dated 26-11-2004, the appeal stands disposed off. Parties are left to bear their own costs.

7. Announced in open Court.

H.B.T./2/SST

Order accordingly.

2008 P L C (C.S.) 482

[Federal Service Tribunal]

Before Ch. Muhammad Ilyas and
Syed Bilal Ahmed, Members

MUHAMMAD IDREES MAHSUD

versus

MINISTRY OF DEFENCE, GOVERNMENT OF PAKISTAN
through Secretary and 3 others

Appeal No.426(R)(C.S.) of 2004, decided on 29th November, 2007.

Civil Servants Act (LXXI of 1973)---

---S. 5---Service Tribunals Act (LXX of 1973), S.4---Civil Service

Regulations, Arts.357(a), 418(b), 420 & 480(b)---Appointment---
Counting of service rendered in previous department---Appellant joined
Pakistan Air Force as Flight Lieutenant and was granted Special
Purposes Short Service Commission---Subsequently on request of
appellant himself he was selected as Section Officer by Federal Public
Service Commission---Appellant thereafter tendered resignation for
joining his new appointment and he assumed the charge of the post of
Section Officer in Office Management Group---Appellant applied for the
counting of P.A.F. Service in his new post of Section Officer, but his
application was not accepted holding that appellant could not be entitled
to any terminal benefits as an officer who was permitted to resign his
Commission would not be granted any pension or gratuity---Contention
of appellant was that his resignation from P.A.F. was meant to take up
another appointment as Section Officer in which his service would be
counted for pension and in circumstances it was not resignation of the
public service for the purpose of pension in terms of Art.418(b) of Civil
Service Regulations, which stipulated that resignation from service to
take up another appointment in which the service would count for
pension, was not resignation of the public service for the purpose of
pension---Validity---Resignation to join a new post was not a resignation
to disentitle an official from the protection of pay in the last job---
Appellant was granted N.O.C. for the offer of appointment as Section
Officer and also that his resignation was accepted for the purpose of
joining his new assignment by the P.A.F. Authorities---As both elements
of service in the P.A.F. and in the office of Management Group
constituted service under the Government of Pakistan and the pension for
both was paid from the same source i.e. civil estimates, no exclusive
liability by the Air Force was accordingly contemplated in that regard---
Accepting appeal concerned authorities were directed by the Service
Tribunal to take necessary action for a revised pay fixation as well as
counting of the service rendered by the appellant in P.A.F. for the
purpose of qualifying for pension. [pp. 483, 484, 486] A, B, C & D

1996 PLC (C.S.) 832; 1994 PLC (C.S.) 4000; 1996 PLC (C.S.)
856; 1985 SCMR 1995 and 2004 PLC (C.S.) 1375 ref.

Abdul Rahim Bhatti for Appellant.

M. Aslam Uns, Standing Counsel for Respondents.

JUDGMENT

CH. MUHAMMAD ILYAS, (MEMBER)--- The appellant
joined Pakistan Air Force as Flight Lieutenant on 8-7-1998 after he was
granted Special Purposes Short Service Commission (SPSSC). He
applied for the post of Section Officer through proper channel for which
he was selected by the FPSC. He tendered thereafter a resignation for

joining his new appointment which was accepted on 31-8-1999 and he assumed the charge of the post of Section Officer, a day after on 1-9-1999. In response to his application made on 13-11-2001 for the counting of his PAF service, Ministry of Finance back referred his case to PAF to know the background of his tendering resignation from PAF. PAF clarified vide their U.O. dated 5-3-2002 that the appellant was made to understand on his relieving from service that he would not be entitled to any terminal benefits for which he had also submitted a declaration on 21-8-1999 in accordance with para.10(d) of the Appendix "A" to Air Force Order No.177-177, dated 14th June, 1993 stipulating that an officer who is permitted to resign his commission will not be granted any pension or gratuity. The appellant has impugned the order dated 5th March 2002 issued by the Air Headquarter Islamabad to the effect that since the officer resigned his commission at his own accord, there was no financial liability on the part of the PAF for the period in question as he had applied for resignation from service to suit his own convenience. While posted as Assistant Director, Ministry of Foreign Affairs he filed departmental appeal addressed to the Deputy Chief of Air Staff (Personal Branch) which was duly recommended by the Commandant College Sargodha. He was informed vide Ministry of Foreign Affairs' letter dated 30th August, 2003 as below:---

"(2) Your request for counting Past Air Service towards qualifying service for the purpose of Pension and Pay protection was submitted to the Air Headquarters, Islamabad vide our letter of even number dated 21st May, 2003. The Air Headquarter, Islamabad has informed vide their U.O. No.Air-HQ/12312/11911/MNG/PB dated 18-8-2003 that your request has not been acceded to due to policy constraints."

2. The learned counsel for the appellant argued that the appellant's resignation from PAF was meant to take up another appointment as Section Officer in the Office Management Group in which the service counts for pension and therefore it is not a resignation of the public service for the purpose of pension in terms of Article 418 (b)(CSR) which stipulates that resignation of service to take up another appointment in which the service counts for pension is not resignation of the public service for the purpose of pension. He argued that the PAF service being only for a short spell of 14 months was admissible to be counted for at least a complete year of his service in terms of Article 357(a)(CSR) and involved a negligible amount of contribution towards pension liability payable by the Air Force and that the appellant had even otherwise voluntarily consented to bear himself the liability thereof. It was argued that in terms of dictum laid down by the august Supreme Court in PLC (sic) (C.S.) 325, his claim for counting of service was lawful, moreso when there is no interruption in service to constitute

any hurdle requiring a specific condonation and the appellant was therefore entitled to combine his PAF service for 14 months with further service as continued in the Office Management Group in terms of Article 418(b) read with Article 420 of the Civil Service Regulations. The Air Force service of about 14 months being less than the minimum length for qualifying service for pension also does not stand in the way of combining it with the service to be rendered by him in the Civil Service of Pakistan till it reaches the limits to qualify for a valuable right, it was argued, of which the appellant cannot be deprived for no fault of his own. The appeal is accompanied by an application for condonation of delay on the plea that the claim pertains to pay and pension against which no limitation runs by virtue of its being a continued cause of action in terms of 1996 PLC (C.S.) 832 and 1994 PLC (C.S.) 4000 and also that the appellant has been diligently and constantly pursuing his case which is otherwise also arguable on the basis of strong merit. It should, therefore, not be knocked out on technical ground of delay which was neither deliberate nor intentional in terms of 1996 PLC (C.S.) 856 and 1985 SCMR 1995.

3. The learned counsel for the respondents stated that the appellant had appeared in the FPSC examination with effect from 20th March, 1998. He was not eligible to join FPSC as per Air Force Order Nos.36-37, dated 13th November, 1993 as he had not completed maximum 7 years commission service and was not eligible as such for grant of N.O.C. A Special Wavier therefore was obtained in relaxation of the existing policy and N.O.C. was issued and permission granted to him. His resignation was accepted with effect from 1st November, 1998 with specific restrictions as the appellant resigned from service at his free-will with an undertaking given by him that he would not be eligible for any terminal benefits and PAF would have no liability in this regard. It was argued that the service of the appellant in PAF was subject to PAF law whereunder his service is not reckonable under Rules 592 and 593 of Defence Service Regulations and that Article 480(b) of the Civil Service Rules was not applicable to him.

4. The learned counsel for the appellant cited 2005 TD (Service) 291 to argue that undertaking for not agitating for pensionary benefits would not constitute an estoppel from claiming these benefits through an appeal before Service Tribunal and he also cited paragraph 7.220 (ii) of Handbook for Drawing and Disbursing Officers (1982 Edition) that pension contributions can be paid by the foreign employers or the Government servants concerned, as the case may be, according to the agreed terms of deputation.

5. Heard and perused the record. The appeal has been filed against the impugned order dated 18-8-2003 does involve a delay which is

joining his new appointment which was accepted on 31-8-1999 and he assumed the charge of the post of Section Officer, a day after on 1-9-1999. In response to his application made on 13-11-2001 for the counting of his PAF service, Ministry of Finance back referred his case to PAF to know the background of his tendering resignation from PAF. PAF clarified vide their U.O. dated 5-3-2002 that the appellant was made to understand on his relieving from service that he would not be entitled to any terminal benefits for which he had also submitted a declaration on 21-8-1999 in accordance with para.10(d) of the Appendix "A" to Air Force Order No.177-177, dated 14th June, 1993 stipulating that an officer who is permitted to resign his commission will not be granted any pension or gratuity. The appellant has impugned the order dated 5th March 2002 issued by the Air Headquarter Islamabad to the effect that since the officer resigned his commission at his own accord, there was no financial liability on the part of the PAF for the period in question as he had applied for resignation from service to suit his own convenience. While posted as Assistant Director, Ministry of Foreign Affairs he filed departmental appeal addressed to the Deputy Chief of Air Staff (Personal Branch) which was duly recommended by the Commandant College Sargodha. He was informed vide Ministry of Foreign Affairs' letter dated 30th August, 2003 as below:---

"(2) Your request for counting Past Air Service towards qualifying service for the purpose of Pension and Pay protection was submitted to the Air Headquarters, Islamabad vide our letter of even number dated 21st May, 2003. The Air Headquarter, Islamabad has informed vide their U.O. No.Air-HQ/12312/11911/MNG/PB dated 18-8-2003 that your request has not been acceded to due to policy constraints."

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any hurdle requiring a specific condonation and the appellant was therefore entitled to combine his PAF service for 14 months with further service as continued in the Office Management Group in terms of Article 418(b) read with Article 420 of the Civil Service Regulations. The Air Force service of about 14 months being less than the minimum length for qualifying service for pension also does not stand in the way of combining it with the service to be rendered by him in the Civil Service of Pakistan till it reaches the limits to qualify for a valuable right, it was argued, of which the appellant cannot be deprived for no fault of his own. The appeal is accompanied by an application for condonation of delay on the plea that the claim pertains to pay and pension against which no limitation runs by virtue of its being a continued cause of action in terms of 1996 PLC (C.S.) 832 and 1994 PLC (C.S.) 4000 and also that the appellant has been diligently and constantly pursuing his case which is otherwise also arguable on the basis of strong merit. It should, therefore, not be knocked out on technical ground of delay which was neither deliberate nor intentional in terms of 1996 PLC (C.S.) 856 and 1985 SCMR 1995.

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5. Heard and perused the record. The appeal has been filed against the impugned order dated 18-8-2003 does involve a delay which is

condoned for the reasons advanced in the application for condonation. The appellant's prayer involves two elements for pay protection and combination of PAF service with that of civil service with all consequential benefits. It is an established law that a resignation to join a new post is not a resignation to disentitle an official from the protection of pay in the last job. It is also established that the appellant was granted N.O.C. for the offer of appointment as Section Officer and also that his resignation was accepted for the purpose of joining his new assignment by the PAF authorities. His resignation therefore falls within the ambit of (CSR) 418 (b) as both the service in the PAF and Civil Service of Pakistan count for pension. It has on the other hand been misconceived that the claim of the appellant falls in the category of terminal benefits as pay protection does not constitute a terminal benefit and no pensionary benefit is being immediately sought to be paid. The appellant's plea is only to allow him to combine the period of service spent with the Air Force with civil service as a component to qualify for pension when it is actually due. Equally misconceived in this case is the concept of payment of pension contribution which is meant to be collected from a foreign employer to which a civil servant happens to be sent on Foreign Service or deputation which is not the case relevant here. As both the elements of service in the PAF and OMG constitute service under the Government of Pakistan and the pension for both is paid from the same source i.e. civil estimates, no exclusive liability by the Air Force is accordingly contemplated in this regard.

6. In view of the foregoing, we accept the appeal and direct the concerned authorities to take necessary action for a revised pay fixation as well as counting of the service rendered by him in the PAF for the purpose of qualifying for pension.

7. No order as to costs. Parties be informed accordingly.

H.B.T./49/FST

Appeal accepted.

2008 P L C (C.S.) 486

[Federal Service Tribunal]

*Before Justice (R.) Tanvir Bashir Ansari, Chairman
and Ch. Muhammad Ilyas, Member*

IMTIAZ AHMED

versus

FEDERAL LAND COMMISSION

Appeal No.20(R)(C.S.) of 2007, decided on 18th October, 2007.

Removal From Service (Special Powers) Ordinance (XVII of 2000)---

---Ss. 3 & 5---Service Tribunals Act (LXX of 1973), S.4---Dismissal from service---Appeal---Penalty of compulsory retirement was imposed upon appellant after issuing him show-cause notice, but without holding a full-fledged inquiry and without giving an opportunity of personal hearing to him on allegation of absence from duty---Departmental Appellate Authority, enhanced the punishment from compulsory retirement to dismissal from service---Law had provided for two specific procedures; when allegations consisted of disputed questions of fact which were alleged on the one side and denied on the other---Was incumbent upon the Departmental Authorities to hold a full-fledged inquiry---Where, however, the misconduct was apparent on the face of the record, as in the case of absence from duty of appellant, it was sufficient to follow shorter show-cause procedure in order to give an opportunity to the official to explain the alleged lapse---No formal inquiry was necessary to establish absence from duty---Service record had revealed that appellant remained absent from duty without authority on a large number of occasions and at certain times for very long period of 206 days, besides other substantial absences from duty---Competent Authority, in circumstances had taken a justifiable cognizance of the gravity of misconduct of appellant while imposing the major penalty of compulsory retirement from service---Appellate Authority, however, without giving an opportunity of hearing to the appellant for any proposed enhancement of punishment, proceeded to impose the major penalty of dismissal from service through impugned final appellate order---Validity---Departmental Authority ought to have given an opportunity of a meaningful hearing to appellant, if it was proposed to enhance the penalty---Such an opportunity against enhancement of punishment was not given to the appellant---Such lacuna offended against the principles of natural justice which rendered the enhancement of punishment void and of no legal effect---Appeal was partly accepted inasmuch as while upholding the order of compulsory retirement from service, the order of dismissal from service was set aside---Appellant would be entitled to such service benefits as were admissible for compulsory retirement. [pp. 488, 490, 491] A, B, C, D, E, F, G & H

1990 PLC (C.S.) 5; Atta-ur-Rehman v. I.-G.P.2001 TD (Service) 228; 2007 PLC (C.S.) 816; 2002 PLC (C.S.) 395 and 1986 PLC (C.S.) 74 rel.

Abdul Rahim Bhatti and Abdul-Rashid Saqib for Appellant.

G.S. Khan for Respondents with Assad Mahmood Qasi,
Assistant Legal Advisor D.R.

Date of hearing: 17th October, 2007.

Note:— The entries in this page should be renewed or re-attested at least every five years and the Signature to lines 9 and 10 should be dated.

1. Name: Mr. Khalid Khan

2. Race: Pakistani Muslim

Residence: Village Sapri Tehsil Prangghor Mohmand Agency

Present Add: village Landishah P/O Harichand Nehir Banglow Teh. Tangi Dist. Charsadda

Father's name and residence: Halim Gool

Date of birth by Christian era as nearly as can be ascertained: 1-3-1980

Exact height by measurement: 5-6"

Personal marks for identification:

Left hand thumb and Finger impression of (Non-Gazetted) officer:

Little Finger:



Ring Finger:



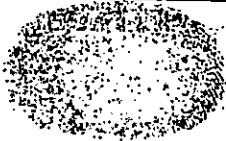
Middle Finger:



Fore Finger:



Thumb:



Signature of Government Servant:

Signature and designation of the Head of the Office, or other Attesting Officer.

Halim Gool
Assistant Director
Livestock & Dairy Dept
Mohmand Agency at Eklaghana

1	2	3	4	5	6	7	8
Name of post	1303-6- (18-2160-110-3460)						
Whether substan- tive or officiating and whether permanent or temporary.	do						
If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.							
Pay in substantive post							
Additional Pay for officiating							
Other emoluments falling under the term "Pay"							
Date of Appointment	11 27-2002	11 27-2003	27-11 2003	27-11 2004	27-11 2005	27-11 2005	27-11 2005
Signature of Government Servant							

11
27-2002

Pike/ PM

2270/-

2380/-

27-11
2003

11
27-2003

27-11
2004

27-11
2005

Part-1/1000 in Rev 5 and 1303-6/2005 w.r.f. 11/2/2005 with NO-F10C/PRE/11-1/2005 dt. 9/7/2005

(Revised BPS-6)
(2485-125-6235)

[Handwritten signature]

Substantive
Appointment
in
Government
Service

2735/-

1-7
2005

2860/-

1-12
2005

No 1

1
2
3
4

9 Name and Designation Head of the office or attesting officer Attestation of columns 1 to 8	10 Date of termination or appointment	11 Reason of termination (such as promotion, transfer, dismissal etc.)	12 Signature of the head of the office or other attesting officer	13 Leave		14 Signature of the head of the office or other attesting officer	15 Reference to any recorded punishment or censure, or reward or praise of the Government Servant	
				Nature and dura- tion of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debtible to another Government			
					Period			Government to which debtible
	30/11/2006	Increment	<i>[Signature]</i>			<i>[Signature]</i>	11/2006 To 30/11/2006	
			<i>[Signature]</i>			<i>[Signature]</i>		
							11/2006 30/11/2007	
	30/6/2007	Revised 2007	<i>[Signature]</i>			<i>[Signature]</i>		
	30/4/2007	Revised	<i>[Signature]</i>					
	30/6/2008	Revised	<i>[Signature]</i>			<i>[Signature]</i>		
	30/4/2008	Revised	<i>[Signature]</i>			<i>[Signature]</i>	1-12-2007 To 30/11/2008	
			<i>[Signature]</i>			<i>[Signature]</i>		

2.2 Beginning of service – Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.

2.3 Temporary and officiating service – Temporary and officiating service shall count for pension as indicated below: -

371-A
Regulations
(i)
(ii)

(i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and

(ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

2.4 Service in a temporary post on abolition of a permanent post – If a permanent post, on which a Government servant holds a lien, is abolished under circumstances entitling him to get a compensation pension or gratuity, his service thereafter in a temporary post under Government qualifies for pension.

2.5 Apprentices and probationers –

(1) One-half of the period of apprenticeship qualifies for pension.

(2) The service of a probationer who is subsequently confirmed in a permanent post without interruption qualifies for pension.

2.6 Training – The time spent by a Government servant in approved training shall count as service qualifying for pension.

Note: – The period of training before actual appointment to Government service shall not count for pension.

2.7 Leave – All leave (other than extraordinary leave) counts as qualifying service for purposes of pension.

2.8 Military Service – (1) Military pensionable service which terminates before a pension has been earned in respect of it, when followed by Civil pensionable service, counts as part of such service provided that any bonus or gratuity received in lieu of pension on or since discharge from military service shall be refunded in lump sum or in monthly instalments not exceeding 36. The military service of the individual concerned and the amount of gratuity paid to him should be verified by reference to the Controller of Military Accounts.

(2) Persons who joined the Armed Forces on or after the outbreak of World War-II, and rendered whole time satisfactory service in Government Forces under the British Rule in India and Pakistan and were appointment in a Civil pensionable post on or before the 18th July, 1949 shall be allowed to count such War Service not exceeding five years rendered between the 3rd September, 1939, and the 1st April, *1946, for purpose of civil Pension and they shall not be required to refund military bonus or gratuity.

Note – In the case of a civil employee who has rendered satisfactory paid military service in the World War-II, in addition to military service pensionable under the military Rules, before or after such war service but who did not earn a pension by his war service in conjunction with his other military service, that portion of the military service which was

* Substituted *Vide* notification No. SO(SR) V-3027/64, dated 9th January, 1965.

• Inserted by Government of West Pakistan Notification No. SO(SR) V-1274/68, dated 24th May, 1968.

- (v) I have directed the Motor Registration Authority to cancel the Motor Registration immediately or bound them to seek prior permission from Director (MR) in case of the Registration of Embassy Vehicles."

As per inquiry report referred to above, appellant was not found involved in any illegality or gross irregularity. It has been contended that in the absence of N.O.C. of Foreign Office the vehicles were not transferable in the name of any other person and admittedly no such N.O.C. was obtained from Foreign Office. Be that as it may, but in fact the duty of getting verification of documents was of Mr. Muhammad Murad Khaskheli, A.E.T.O. (Verification) Motor Registration Wing and not that of appellant. At the most appellant could have enquired from A.E.T.O. (Verification) about N.O.C. of Foreign Office, but for that simple lapse on the part of the appellant, the two penalties i.e. of withholding of promotion and stoppage of increments were very much harsh. Even otherwise two penalties of different and distinct nature, may be minor, are not permissible under the rules. In the given circumstances and the material placed before us, minor penalty of "Censure" was sufficient to meet the ends of justice.

6. Accordingly, the minor penalties of stoppage of two annual increments and withholding of promotion for a period of two years are converted to that of minor penalty of "Censure". With the above modification in the impugned order, dated 26-11-2004, the appeal stands disposed off. Parties are left to bear their own costs.

7. Announced in open Court.

H.B.T./2/SST

Order accordingly

2008 P.L.C. (C.S.) 482

[Federal Service Tribunal]

Before Ch. Muhammad Ilyas and
Syed Bilal Ahmed, Members

MUHAMMAD IDREES MAHSUD

versus

MINISTRY OF DEFENCE, GOVERNMENT OF PAKISTAN
through Secretary and 3 others.

Appeal No.426(R)(C.S.) of 2004, decided on 29th November, 2007.

Regulations, Arts.357(a), 418(b), 420 & 480(b)---Appointment---
Counting of service rendered in previous department---Appellant joined
Pakistan Air Force as Flight Lieutenant and was granted Special
Purposes Short Service Commission---Subsequently on request of
appellant himself he was selected as Section Officer by Federal Public
Service Commission---Appellant thereafter tendered resignation for
joining his new appointment and he assumed the charge of the post of
Section Officer in Office Management Group---Appellant applied for the
counting of P.A.F. Service in his new post of Section Officer, but his
application was not accepted holding that appellant could not be entitled
to any terminal benefits as an officer who was permitted to resign his
Commission would not be granted any pension or gratuity---Contention
of appellant was that his resignation from P.A.F. was meant to take up
another appointment as Section Officer in which his service would be
counted for pension and in circumstances it was not resignation of the
public service for the purpose of pension in terms of Art.418(b) of Civil
Service Regulations, which stipulated that resignation from service to
take up another appointment in which the service would count for
pension, was not resignation of the public service for the purpose of
pension---Validity---Resignation to join a new post was not a resignation
to disentitle an official from the protection of pay in the last job---
Appellant was granted N.O.C. for the offer of appointment as Section
Officer and also that his resignation was accepted for the purpose of
joining his new assignment by the P.A.F. Authorities---As both elements
of service in the P.A.F. and in the office of Management Group
constituted service under the Government of Pakistan and the pension for
both was paid from the same source i.e. civil estimates, no exclusive
liability by the Air Force was accordingly contemplated in that regard---
Accepting appeal concerned authorities were directed by the Service
Tribunal to take necessary action for a revised pay fixation as well as
counting of the service rendered by the appellant in P.A.F. for the
purpose of qualifying for pension [pp. 483, 484, 486] A, B, C & D.

1996 PLG (C.S.) 332, 1994 PLC (C.S.) 4000, 1996 PLC (C.S.)
856, 1985 SCMR 1995 and 2004 PLC (C.S.) 1375 ref.

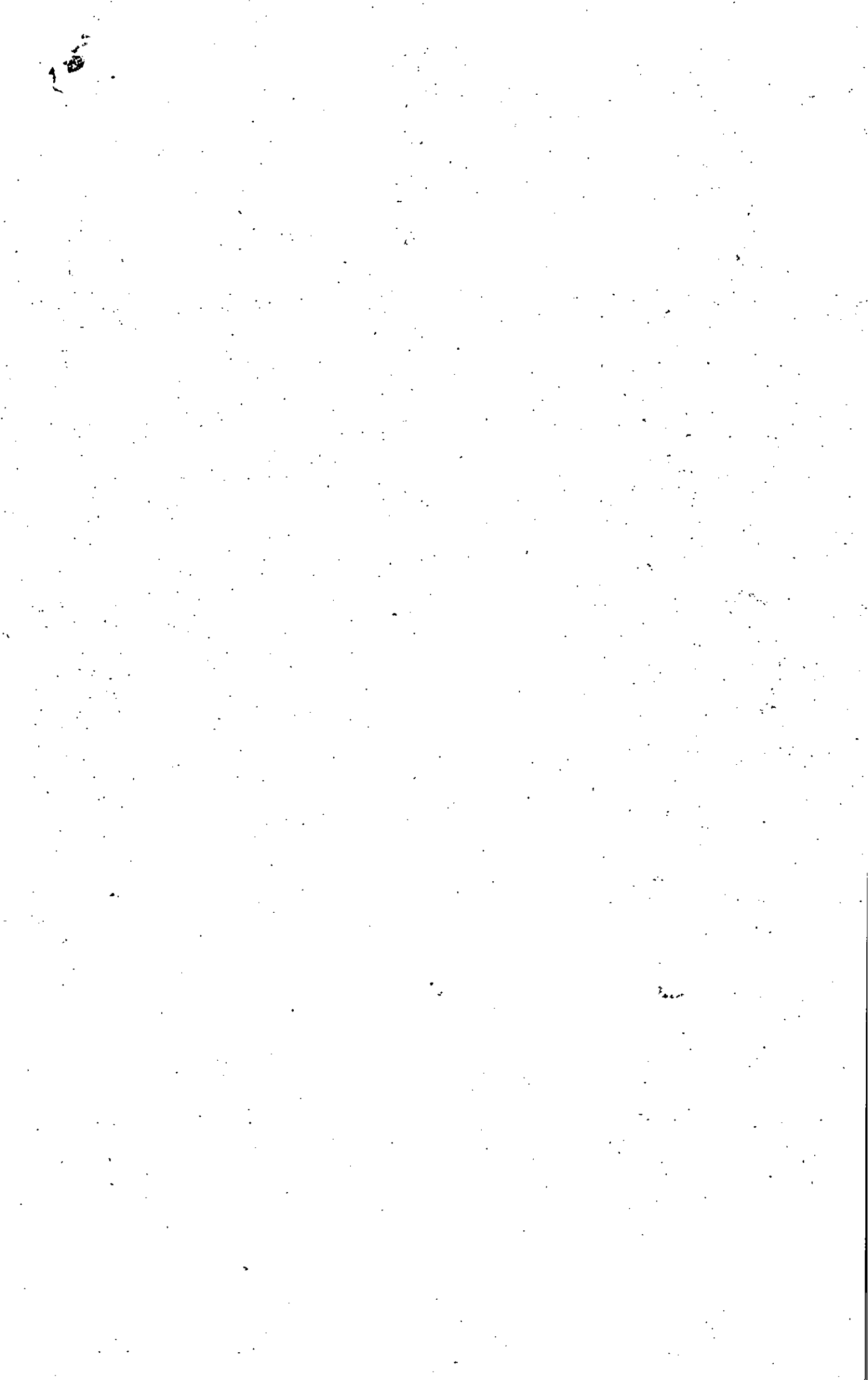
Abdul Rahim Bhatti for Appellant.

M. Aslam Uns, Standing Counsel for Respondents.

JUDGMENT

CH. MUHAMMAD ILYAS, (MEMBER)--- The appellant
joined Pakistan Air Force as Flight Lieutenant on 8-7-1998 after he was
granted Special Purposes Short Service Commission (SPSSC) Hold

*Abdul
Rahim
Bhatti*



The appellant's prayer in regard to combination of PAF service with that of civil service with all consequential benefits. It is an established law that a resignation to join a new post is not a resignation to disentitle an official from the protection of pay in the last job. It is also established that the appellant was granted N.O.C. for the offer of appointment as Section Officer and also that his resignation was accepted for the purpose of joining his new assignment by the PAF authorities. His resignation therefore falls within the ambit of (CSR)-418 (b) as both the service in the PAF and Civil Service of Pakistan count for pension. It has on the other hand been misconceived that the claim of the appellant falls in the category of terminal benefits as pay protection does not constitute a terminal benefit and no pensionary benefit is being immediately sought to be paid. The appellant's plea is only to allow him to combine the period of service spent with the Air Force with civil service as a component to qualify for pension when it is actually due. Equally misconceived in this case is the concept of payment of pension contribution which is meant to be collected from a foreign employer to which a civil servant happens to be sent on Foreign Service or deputation which is not the case relevant here. As both the elements of service in the PAF and OMG constitute service under the Government of Pakistan and the pension for both is paid from the same source i.e. civil estimates, no exclusive liability by the Air Force is accordingly contemplated in this regard.

6. In view of the foregoing, we accept the appeal and direct the concerned authorities to take necessary action for a revised pay fixation as well as counting of the service rendered by him in the PAF for the purpose of qualifying for pension.

7. No order as to costs. Parties be informed accordingly.

H.B.T./49/FST

Appeal accepted.

2008 P L C (C.S.) 486

[Federal Service Tribunal]

Before Justice (R.) Tanvir Bakhsh Ansari, Chairman
and Ch. Muhammad Ilyas, Member

IMTLAZ AHMED

versus

FEDERAL LAND COMMISSION

Appeal No.20(R)(C.S.) of 2007, decided on 18th October, 2007.

PLC (Service)

from service—Appeal—Penalty of compulsory retirement was imposed upon appellant after issuing him show-cause notice, but without holding a full-fledged inquiry and without giving an opportunity of personal hearing to him on allegation of absence from duty—Departmental Appellate Authority, enhanced the punishment from compulsory retirement to dismissal from service—Law had provided for two specific procedures; when allegations consisted of disputed questions of fact which were alleged on the one side and denied on the other—Was incumbent upon the Departmental Authorities to hold a full-fledged inquiry—Where, however, the misconduct was apparent on the face of the record, as in the case of absence from duty of appellant, it was sufficient to follow shorter show-cause procedure in order to give an opportunity to the official to explain the alleged lapse—No formal inquiry was necessary to establish absence from duty—Service record had revealed that appellant remained absent from duty without authority on a large number of occasions and at certain times for very long period of 206 days, besides other substantial absences from duty—Competent Authority, in circumstances had taken a justifiable cognizance of the gravity of misconduct of appellant while imposing the major penalty of compulsory retirement from service—Appellate Authority, however, without giving an opportunity of hearing to the appellant for any proposed enhancement of punishment, proceeded to impose the major penalty of dismissal from service through impugned final appellate order—Validity—Departmental Authority ought to have given an opportunity of a meaningful hearing to appellant, if it was proposed to enhance the penalty—Such an opportunity against enhancement of punishment was not given to the appellant—Such lacuna offended against the principles of natural justice which rendered the enhancement of punishment void and of no legal effect—Appeal was partly accepted inasmuch as while upholding the order of compulsory retirement from service, the order of dismissal from service was set aside—Appellant would be entitled to such service benefits as were admissible for compulsory retirement. [pp. 488, 490, 491] A, B, C, D, E, F, G & H

1990 P L C (C.S.) 5; Atta-ur-Rehman v. I.G.P.2001 TD (Service) 228; 2007 PLC (C.S.) 816; 2002 PLC (C.S.) 395 and 1986 PLC (C.S.) 7, rel.

Abdul Rahim Bhatti and Abdul-Rashid Saqib for Appellant.

G.S. Khan for Respondents with Assad Mahmood Qasi,
Assistant Legal Advisor D.R.

Date of hearing: 17th October, 2007.

PLC (Service)

SECTION III.—SUSPENSIONS—RESIGNATION, BREAKS, AND DEFICIENCIES IN SERVICES

Periods of Suspension

416. Time passed under suspension pending enquiry into conduct counts, if the suspension is immediately followed by reinstatement. ^[1]

*417. Time passed under suspension followed by reinstatement shall count for pension irrespective of whether the Government servant was or was not allowed full pay and allowances for that period. ^[1]

** 417A. If an officer, who has been suspended pending inquiry into his conduct, attains the age of superannuation before completion of the inquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.

Resignations and Dismissals

418. (a) Resignation of the public service, or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.

(b) Resignation of an appointment to take up another appointment, service in which counts, is not a resignation of the public service.

419. Any authority who, on revision or appeal, reverses an order dismissing or removing an officer, may declare that the officer's past service counts.

Interruptions

420. An interruption in the service of an officer entails forfeiture of his past service, except in the following cases—

(a) Authorised leave of absence.

(b) Unauthorised absence in continuation of authorised leave of absence so long as the office of the absentee is not substantively filled; if his office is substantively filled, the past service of the absentee is forfeited.

*** (c) Suspension where it is immediately followed by re-instatement, whether to the same or a different office, or where the officer dies or is permitted to retire or is retired while under suspension.

(d) Abolition of office or loss of appointment owing to reduction of establishment.

(e) Transfer to non-qualifying service in an establishment under Government control. The transfer must be made by competent authority; ^[1] an officer who voluntarily resigns qualifying service cannot claim the benefit of this exception. Transfer to a grant-in-aid school entails forfeiture.

(f) Transfer to service on the household establishment of the President.

(g) Time occupied in transit from one appointment to another provided that the officer is transferred under the orders of competent authority, or, if the is a non-gazetted officer, with the consent of the head of his old office.

(h) "Due to any other reason, provided the interruption is not due to any fault or wilful act of a Government servant, such as, unauthorised absence, resignation or removal from service. ^[1]"

421. The authority who sanctions the pension may commute retrospectively periods of absence without leave into leave without allowances.

Condonation of Interruptions and Deficiencies

422. Upon such conditions as it may think fit in each case to impose the authority competent to fill the appointment held by an officer at the time condonation is applied for, were he to vacate that appointment, may condone all interruptions in his service.

NOTE.—The powers under this Article shall be exercised subject to any Rules which the Government of Pakistan may deem fit to prescribe ^[1] (but shall not be so exercised as to condone breaks in temporary and officiating service specifically excluded from the category of qualifying service under Article 371-A.)

*423. (1) A deficiency of a period not exceeding six months in the qualifying service of an officer shall be deemed to have been condoned automatically.

(2) The authority competent to sanction pension may condone a deficiency of more than six months but less than a year subject to the following conditions, namely :—

(a) The officer has died while in service, or has retired under circumstances beyond his control such as or invalidation or the abolition of his post, and would have completed another year of service if he had not died or retired.

(b) The service rendered by him had been meritorious.

"Government Orders. See serial No. 38, Chapter II in Section VI".

423-A. Cancelled.

^[1] Inserted vide Notification No. F. 6(4)-Reg (6)/81, dated the 17th February, 1983.

*^[1] Added vide M.F. Notification of F. 4(9)-RJ(1)/57, dated the 1-5-1958.

MEDICAL CERTIFICATE

Signature of official Muhammad Khan
 Name of race Muslim
 Name of official Halima Gul
 Residence Village Landi Shah, Hari Chand
Tunzi Charsadda
 Date of birth 01-3-1980
 Height by measurement 5'6"
 Personal mark of identification Wound mark on forehead
 Signature of the official [Signature]
 Signature of head of office _____

Seal of office _____

I do hereby certify that I have examined Mr. Muhammad Khan a candidate
 for employment in the Office of the Deputy Commissioner
 and cannot discover that he had any disease communicable or other constitutional affection or bodily
 infirmity except Nil

I do not consider this as disqualification for employment in the office of the Deputy Commissioner
 His age according to his own statement 29 year and by appearance about
 year Twenty Nine

[Signature]
 MEDICAL SUPERINTENDENT,
 CIVIL HOSPITAL Deputy Commissioner
 Police Services, Feroz
 Peshawar
 3-3-80

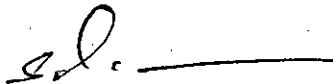
LEFT HAND THUMB AND FINGER IMPRESSIONS

[Signature]

DIRECTORATE OF LIVESTOCK & DAIRY DEVELOPMENT-FATA
FATA SECRETARIAT WARSAK ROAD, PESHAWAR.
Ph: No.091-9210272 Fax No.091-9212136.

ORDER.

Consequent upon the appointment of Mr. Khalid Khan S/O Haleem Gul Veterinary Assistant, his further adjustment is hereby made against the vacant posts of Veterinary Assistant in the payment circle of Agency Livestock Officer, Kurram Agency with effect from 01/03/2009.

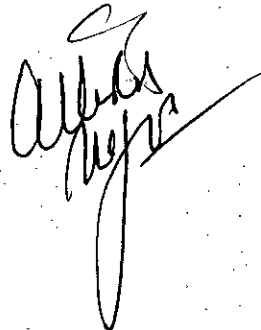

(DR. MUHAMMAD BASHIR)
DIRECTOR

NO.DL&DD/FS/1/5 1810-12 DATED PESHAWAR THE 2 /3/2009.

Copy of the above is forwarded to:-

- ✓ 1. The Agency Accounts Officers, Kurram Agency for information.
2. The Assistant Director, L&DD, Kurram Agency for information & necessary action
3. Official concerned of compliance.


(DR. MUHAMMAD BASHIR)
DIRECTOR



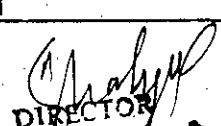
(For use in Police Department only)

Heirs:

1. _____
2. _____
3. _____

Verification Roll No. _____ dated _____ received back _____

Left Thumb Impression

Qualification	Date	Qualification	Date
English		1. Matric 2. ATI Certificate 1996-98 3. P.S.C. 4. B.A.	
Pushto		B.L. Or B.A.	
Urdu		 DIRECTOR Govt. Cattle Breeding & Dairy Farm Barichand, Pledership examination	
Plan-drawing		Training School Final examination	
Finger Print		Other qualification:—	
Drill Instructing			
Court Duties			
Reserve Duties			

N.B.— Line to be drawn under the qualification possessed.

Note: The entries in this page should be renewed or re-attested at least every five years and the signature to lines 9 and 10 should be dated.

1. Name: Mr. Khalid Khan Asstt.

2. Race: Muslim

3. Residence: village Alardi Shah Hari Chand Tungi
- Charsadda

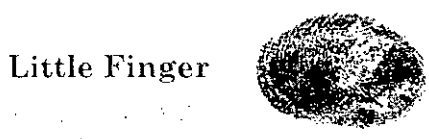
4. Father's name and residence: Halceem Gul جوہا

5. Date of birth by Christian era as nearly as can be ascertained: 01-3-1980

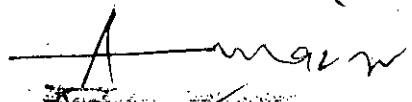
6. Exact height by measurement: 5-6

7. Personal marks for identification: small mark on forehead

8. Left hand thumb and finger impression of (Non-Gazetted) officer:



9. Signature of Government Servant: 

10. Signature and designation of the Head of the Office, or other Attesting Officer: 
Assistant Director
Livestock & Dairy Dev.
Kurram & Peshawar

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "p"	Date of appointment	Signature of Government Servant
@ 3430-175-8680	B.P.S-6	✓	343%			01/3/2009	<i>K. Reddy</i>
@ 3430-175-8680	B.P.S-6		3605%			1/12/2009	<i>K. Reddy</i>
Vij. Asst. B.P.S-6	79:	<i>Alankar Majhi</i>	3780%			1/12/2010	<i>K. Reddy</i>

Designat of the offic
tion of
1 to 8

Assis
Lives
Kurra

Assi
Live
Kurra

Regular basis vide Director General Livestock & Dairy Dev. NWFP order No. 793-95 dt 21/02/2009

8 Signature of Government Servant.	9 Designation of the office holding officer (Nos 1 to 8)	10 Date of termination or appointment.	11 Reason of termination such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting officer.	13 Leave		14 Signature of the head of the office or other attesting officer	15 Reference to any recorded punishment or censure or praise of the Government Servant.
					Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government			
					Period	Government to which debitable		
					Appointed as Jcty. Assst. in BPS-6 vide D. L. O. D. FAT. Parachinar order No. DL-04/15/15/98/10-12 dt 21/02/2009			
	Assistant Director Livestock & Dairy Dev. Kurram A. Parachinar.						Assistant Director Livestock & Dairy Dev Kurram A. Parachinar.	
				Annual Increment			Service Verified A/Roll of Pay W.E.F. 3/12/09 To 31/11/2010	
	Assistant Director Livestock & Dairy Dev. Kurram A. Parachinar.							
					Transferred & posted in the Department Circle of P.O. L.O.D. Cakrai Agency at Hangu.			
							Service Verified A/Roll of Pay W.E.F. 3/12/09 To 31/11/2010	
					Assistant Director Livestock & Dairy Dev Cakrai Agency at Hangu.			
		30/11/2010		Annual Increment				
							Service Verified from A/C 1/12/2009 to 30/11/2010	
	M. Adeeep ASSISTANT DIRECTOR Live Stock & Dairy Development Cakrai Agency at Hangu.			M. Adeeep ASSISTANT DIRECTOR Live Stock & Dairy Development Cakrai Agency at Hangu.			M. Adeeep ASSISTANT DIRECTOR Live Stock & Dairy Development Cakrai Agency at Hangu.	

1	2	3	4	5	6	7	9
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "p"	Date of appointment	Signature and Seal of the head of Government or other attesting authority in attested columns
Yaky Assn PPs-6 3430-175-8680	PPs	-	3780/-	-	-	16/2011	<i>[Signature]</i>
Pay Revert - (304) 5600-290-14200	B-6	In pursuance of Notification No. F-1(S) Imp 2011-419 (Islamabad dated 4-7-2011)	6180			17/2011	<i>[Signature]</i>
6180/6							
Union of the Accountant General Khyber Pakhtunkhwa Feshawar Pay Fixed in the Punjab Basic Pay Scales Rs. w.e.f. 01-07-2007 B Add. Pay Fixed @ Rs. w.e.f. 01-07-2007 Rs. 5600/290/14200 B P.P.S. 6180/- w.e.f. 01-07-2007 B Date of Next Review is on 11-12-2011 Rs. 470/- Accounts Officer P.S. Feshawar							<i>[Signature]</i>

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "p"	Date of appointment	Signature of Government Servant
VA BPS-9	Temp: dl.						
6200-380-17600/	B-9		6580/2			1/7/2012	
do	"		6960/2			1/12/2012	
do	"	Allowed one pre-mature increment vide Govt. of AP's Finance Dept. (Regulations No. 11-2/77) dt. 30.5.2014	7340/2			1/12/2013	
do	H		7720/2			1/6/2014	

Signature of Government Servant

Signature of Government Servant

Signature of Government Servant

8	9	10	11	12	13		14	15
	Name and Designation of the head of the office or attesting officer (Columns 1 to 8)	Date of termination or appointment.	Reason of termination such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer.	Leave		Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure or praise of the Government Servant.
					Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		
Signature of Government Servant					Period	Government to which debitable		
		30-6 (AN) 2012		<i>Muhammad</i> Assistant Director, Livestock & Dairy Development, Mardan Agency at Mardan				Service verified from A/c Roll of pay w.e. from 1-12-2011 To 30-6-12 <i>Muhammad</i> Assistant Director, Livestock & Dairy Development, Mardan Agency at Mardan
				Transfer to the Payment circle of Director, Cattle Breeding & Dairy Farm Harichand vide Director General, DDD, Khyber Pakhtunkhwa, Peshawar order No: 5048-53/1/187 dt: 19-6-2012				
		30-6 2012	Pay fixation BPS-9	<i>Muhammad</i> Assistant Director, Livestock & Dairy Development, Mardan Agency at Mardan				AN 0711 18/11 on 13/11/12
	<i>[Signature]</i> DIRECTOR Govt: Cattle Breeding & Dairy Farm Harichand.			<i>[Signature]</i> DIRECTOR Govt: Cattle Breeding & Dairy Farm Harichand.				Small of promotion involved ref 165 24/10/12 etc total 246
		30-11 2012	Annual increment					Service verified from the A/c Roll of pay w.e. 1-12-2011 to 30-11-2012.
	<i>[Signature]</i> DIRECTOR Govt: Cattle Breeding & Dairy Farm Harichand.			<i>[Signature]</i> DIRECTOR Govt: Cattle Breeding & Dairy Farm Harichand.				<i>[Signature]</i>
		30-11 2013	Annual increment					Service verified from the A/c Roll of pay w.e. 1-12-2012 to 30-11-2013.
	<i>[Signature]</i> DIRECTOR Govt: Cattle Breeding & Dairy Farm Harichand.			<i>[Signature]</i> DIRECTOR Govt: Cattle Breeding & Dairy Farm Harichand.				<i>[Signature]</i>
		31-5 2014	Pay structure increment					

1	2	3	4	5	6	7	8	9
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "P"	Date of appointment	Signature of Government	Signature and Designation of the head of the office attesting in attestation columns 1 to 9
Acty: Assistant BPS-9 6700-380-77600	Temp./off		8100/-			1/12/2014		

PAY FIXATION 2015

Revision of Basic pay scale 2015 vide letter No. FD(PRC) 1-1/2015 dated 27/07/2015

B.P.S.-9 8015-445-22865			10490/-			1/7/2015		
do			10985/-			1/12/2015		
<p>Pay fixed in ^{noted} B.P.S. Wob 1-7-2015 vide Govt. of Madhya Pradesh Finance Deptt. Notification No. FD(PRC) 1-1/2015 dated 19/7/2015</p>								
B.P.S. 9 9860-60-28160			13520/-			1/7/2016		
	N	N	14130/-			1/12/2016		

Atcharya

Govt. Dairy

Govt. Dairy

Govt. Dairy

Govt. Dairy

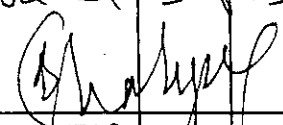
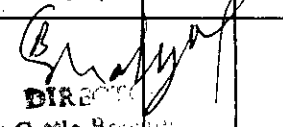
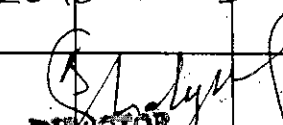
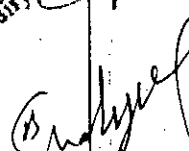
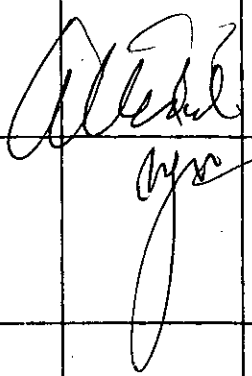
Govt. Dairy

8	9	10	11	12	13		14	15
					Leave			
					Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is debitale to another Government		
		Period	Government to which debitale					
	Signature and Designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination or appointment.	Reason of termination such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer.			Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure or praise of the Government Servant.
		30/11/2014	Annual increment		Service verified from the A/Roll A PMY with 1-12-7-13 to 30-11-2014.			
15	<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.			<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.			<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.	
		30/6/2015	Revision of BPS 2015		Service verified from the A/Roll A PMY with 1-12-2015 to 30-11-2015.			
	<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.			<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.			<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.	
		30/11/2015	Annual increment		Service verified from the A/Roll of Pay w.o. 1-12-2015			
	<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.			<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.			<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.	
		30/6/2016	Revision of BPS to 30-11-2015					
	<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.			<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.			<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.	
		30/11/2016	Annual increment		Actual up to			
	<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.			<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.				
	<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.			<i>[Signature]</i> DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand.				

1	2	3	4	5	6	7	8	9
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "p"	Date of appointment	Signature Government	Signature and Designation of head of the office for attesting or attestation columns 1 to 8
<p><u>Udy: A&H</u></p> <p><u>B.P.S. 9</u></p> <p><u>11770-730-33670</u></p>								
	<p>Pay fixed in revised B.P.S. vide Govt. of J&K letter No. PD/SO(SR-1) dated 17/7/2017</p> <p>Deptt. Notification No. PD/SO(SR-1) dated 17/7/2017</p>							
		officiating/Temp.	16880/-	-	-	1/7/2017		
N	N	N	17610/-	-	-	1/12/2017		
<p>Office of the Accountant General Pay Fixed in the Revised Basic Pay Scale 8012 433-22865 9 10490 ve. 01-07-2015 R.B.P.S. 9860-610-28160 9 13520 ve. 01-07-2016 R.B.P.S. 11770-730-33670 9 Pay Fixed @ 16880 ve. 01-07-2017 Date of Next increment due on 01-12-2017</p>								
<p>Accounts Officer Pay Fixation Party Peshawar</p>								

Govt. Nat.

Govt. Dir.

8	9	10	11	12	13		14	15	
					Leave				
Signature of Government Servant	Name and Designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination or appointment.	Reason of termination such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer.	Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is debit to another Government		Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure or praise of the Government Servant.
						Period	Government to which debit to		
		30-6-2017	Revision of B.P.S.	 DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand		Service verified from April 18 to 30-11-2017			
		30-11-2017	Annual increment	 DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand				 DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand	
				 DIRECTOR Govt. Cattle Breeding & Dairy Farm Harichand					
									

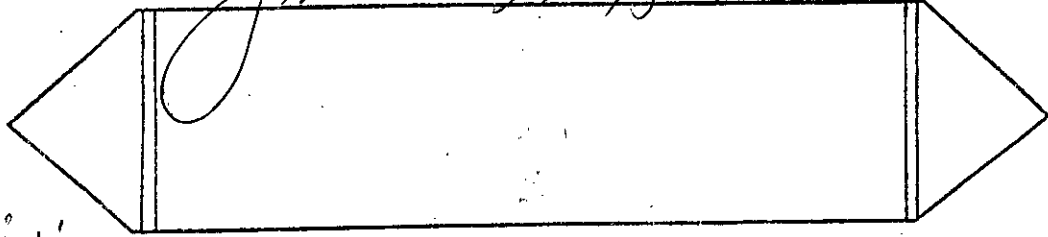
One Post scale upgraded of All Govt Employees from BPS-6 to 5

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	(i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "p"	Date of appointment	Signature Government
vide Govt of H.P. H. Finance Dept (Regulation No) FD/50 (FR) 7-20/2015		Extending, state	20-6-2015		Not applicable	No	
BPS-6							
3430-175-8680	BPS-9						
$1\frac{1}{2}$ 2009 = 3605/-		8015-485-22805					
upgraded BPS-9		$1\frac{1}{2}$ 2015 = 11480/-			option		
3820-230-10720		BPS-10					
$9\frac{1}{2}$ 2010 = 3820/-		8275-544-24595					
230/Proportional emolument		Pay Re-fixation					
$4050\frac{1}{2}$		$2\frac{1}{4}$ 2015 = 11538/-					
$1\frac{1}{2}$ 2010 = 4280/-		544/- Proportional					
BPS-9		12088/-					
6200-380-17600		BPS-10					
$1\frac{1}{2}$ 2011 = 6900/-		10180-570-30280					
$1\frac{1}{2}$ 2011 = 7340/-		$1\frac{1}{2}$ 2016 = 14870/-					
$1\frac{1}{2}$ 2012 = 7720/-		$2\frac{1}{2}$ 2016 = 15540/-					
$1\frac{1}{2}$ 2013 = 8100/-		BPS-10					
$1\frac{1}{2}$ 2014 = 8480/-		12160-800-30160					
BPS-9		$1\frac{1}{2}$ 2017 = 18560/-					
8015-485-22805		$1\frac{1}{2}$ 2017 = 19360/-					
$1\frac{1}{2}$ 2015 = 10985/-							
One step up grade							
BPS-10							
8275-544-24595							
$1\frac{1}{2}$ 2015 = 10985/-							
544/- Proportional							
11538/-							

DIRECTOR
Govt. Cattle Breeding &
Dairy Farm Harichand

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بعدالت حضور کٹرخواہ مسوید اسپیٹ ۱۹



۲۰ بجانب فالنہن (السلینڈ) بنام حکومت

فالنہن

23/10/28

موزخہ

مقدمہ

دعوی

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام مسوید اسپیٹ کیلئے نذیر الہر زید و ولید کے نام سے روایا کو وکل

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخ

نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور

کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ

پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانتا التوائے مقدمہ کے سبب سے ہوگا۔

کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی

نڈ کو کر کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند رہے۔

المرقوم 28 ماہ 10 اکتوبر 2028

بمقام کے لئے منظور ہے۔
acceptance
مقام کے لئے منظور ہے۔