


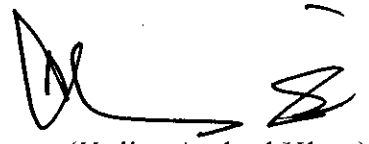
ORDER

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

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

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


(Farzeha Paul)
Member (I)


(Kalim Arshad Khan)
Chairman

03.10.2022

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

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



(Farecha Paul)
Member (E)




(Kalim Arshad Khan)
Chairman

28.03.2022

Learned counsel for the appellant present.

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

File to come up alongwith connected Service Appeal No.695/2017 titled Rubina Naz Vs. Government of Khyber Pakhtunkhwa on 23.06.2022 before the D.B.

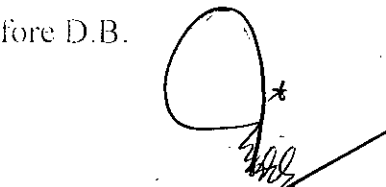

(Rozina Rehman)
Member (J)



(Salah-Ud-Din)
Member (J)

23.06.2022

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

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


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


11.03.2021

Appellant present through counsel.

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

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


(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

01.07.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

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


(Rozina Rehman)
Member(J)

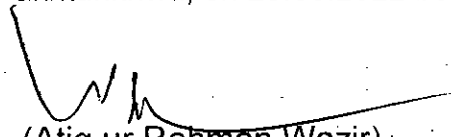

Chairman


29.11.2021

Appellant present through counsel.

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

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


(Atiq ur Rehman Wazir)
Member (E)

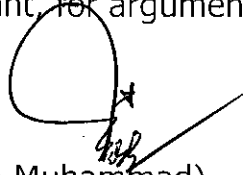

(Rozina Rehman)
Member (J)

29.09.2020

Appellant present through counsel.

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

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



(Mian Muhammad)
Member (E)



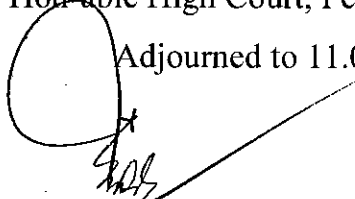
(Rozina Rehman)
Member (J)

16.12.2020

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

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

Adjourned to 11.03.2020 for arguments before D.B.



(Mian Muhammad)
Member (E)



Chairman

11.03.2021

Appellant present through counsel.

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

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

(Mian Muhammad)
Member (E)

(Rozina Rehman)
Member (J)

11.12.2019.

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


Member


Member

25.02.2020

Appellant absent. Learned counsel for the appellant absent. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Adjourn. To come up alongwith connected service appeals on 03.04.2020 before D.B.


Member


Member


03.04.2020

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


Reader

30.06.2020

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


Reader

31.05.2019

Appellant absent. Learned counsel for the appellant absent. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Adjourn. To come up for arguments on 26.07.2019 before D.B.


Member


Member

26.07.2019


Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file, and requested for adjournment. Adjourned. To come up for arguments on 26.09.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

26.09.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 11.12.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

16.05.2019

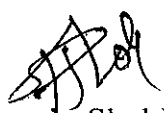
Counsel for the appellant and Mr. Ziaullah, DDA alongwith Saghir Musharaf, A.D for the respondents present.

Due to demise of his father, learned Member of the Bench (Mr. Hussain Shah) is on leave. Adjourned to 26.07.2019 for further proceedings before the D.B.

Chairman

26.07.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 26.09.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

26.09.2019


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

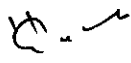

(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

01.01.2019

Learned counsel for the appellant present and stated that identical nature cases filed Muhammad Nadeem Jan and Muhammad Ayaz are fixed for 14.02.2019. Adjournment requested. Adjourn. To come up for arguments on the date fixed as 14.02.2019 before D.B


Member


Member

14.02.2019


Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sagheer Musharraf, Assistant Director and Mr. Zakiullah, Senior Auditor for the respondents present. Due to strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Adjourned to 26.03.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

26.03.2019

Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Counsel for the appellant request for adjournment. Adjourned. To come up for arguments on 16.05.2019 before D.B.


(Hussain Shah)
Member


(Muhammad Amin Khan khudi)
Member

31.07.2018

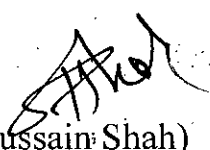
Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 26.09.2018 before D.B


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

26.09.2018

Clerk to counsel for the appellant and Mr. Kabirullah Khattak Additional AG present. Clerk to counsel for appellant seeks adjournment as learned counsel for appellant is not in attendance. Adjourned. To come up for arguments on 13.11.2018 before D.B.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

13.11.2018

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


Chairman

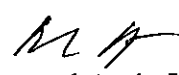
10.01.2018

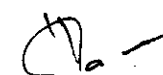
Counsel for the appellant present. Mr. Riaz Ahmed Payanda Khel, Assistant AG alongwith Mr. Sagheer Musharaf, AD (litigation) and Mr. Zakiullah, Senior Auditor for the respondents also present. Written reply on behalf of respondents No. 2 to 5 submitted. Representative of the department relies on the written reply submitted by respondents No. 2 to 5 on behalf of respondent No. 1. Adjourned. To come up for rejoinder and arguments on 16.03.2018 before D.B.


(Muhammad Amin Khan Kundi)
Member

16.03.2018


Appellant absent. Learned counsel for the appellant and Mr. Riaz Ahmed Pinda Kheil, Assistant AG alongwith Mr. Sagheer Musharaf, AD for the respondents present. Learned counsel for the appellant seeks ^{adjournment} Adjourned. To come up for arguments on 15.05.2018 before D.B.



(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

15.05.2018

Appellant absent. Counsel for the appellant is also absent. However, junior counsel for the appellant present, submitted rejoinder and seeks adjournment for arguments. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sagheer Musharaf, AD for the respondents also present. Adjourned. To come up for arguments on 31.07.2018 before D.B.



(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

20.09.2017

Appellant Deposited
Security & Process Fee

Counsel for the appellant present. Security and process fee not deposited. Counsel for the appellant is directed to deposit security and process fee within 7 days, thereafter notices be issued to the respondents for submission of written reply on 26.10.2017 before S.B.


(Ahmad Hassan)
Member

26.10.2017

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sagheer Musharaf, AD (litigation) for the respondents also present. Written reply not submitted. Learned Additional AG requested for adjournment. Adjourned. To come up for written reply/comments on 22.11.2017 before S.B.


(Muhammad Amin Khan Kundi)
Member

22.11.2017

Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Zakiullah, Senior Auditor for the respondents also present. Written reply on behalf of respondents not submitted. Learned District Attorney requested for further adjournment. Adjourned. To come up for written reply/comments on 19.12.2017 before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

19.12.2017

Learned counsel for the appellant present. Mr. Riaz Pinda Kheil, learned Assistant Advocate General for the respondents present. None present on behalf of the department. Notice be issued to respondent department to attend the court and file written reply/comments. Last opportunity granted. To come up for written reply/comments on 10.01.2018 Before S.B


(Muhammad Hamid Mughal)
MEMBER

15/8/2017

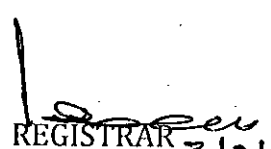


Counsel for the appellant present. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law, hence the instant appeal under section-4 of Khyber Pakhtunkhwa Service Act, 1974 for giving retrospective effect to the appointment order dated 5/10/2016. He further argued that similar nature appeals titled "383/2017 Muhammad Nadeem Jan and 384/2017 Muhammad Ayaz versus Secretary Population Welfare and others" have already been admitted by this Tribunal. Points urged at the bar need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 20/9/2017 before SB.


(GUL ZEB KHAN)
MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 696/2017


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	03/07/2017	<p style="text-align: center;">The appeal of Mst. Mahpara Perveen resubmitted today by Mr. Zahoor Islam Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <div style="text-align: right; margin-top: 20px;">  REGISTRAR 3/7/17 </div>
2-	4-7-17	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19-7-17</u></p> <div style="text-align: right; margin-top: 20px;">  CHAIRMAN </div>
	19.07.2017	<p style="text-align: center;">Learned counsel for the appellant is absent. Lawyer community is on strike. Adjourned. To come up for preliminary hearing on 15.08.2017 before S.B.</p> <div style="text-align: right; margin-top: 20px;">  (Muhammad Hamid Mughal) Member </div>

The appeal of Mst. Mahpara Perveen d/o Asper Khan R/o Village Takht-e-Nasrati Distt. Karak received today on 25.05.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal Rules 1974.
- 2- Memorandum of the appeal may be got signed by the appellant.
- 3- Copies of appointment order and extract from service Book mentioned in para-1 of the memo of appeal are not attached with the appeal which may be placed on it.
- 4- Copy of completion report of project mentioned in para-3 of the memo of appeal (Annexure-B) is not attached with the appeal which may be placed on it.
- 5- Copy of Writ Petition mentioned in para-6 of the memo of appeal is not attached with the appeal which may be placed on it.
- 6- Copy of impugned order dated 5.10.2016 mentioned in heading of the appeal is not attached with the appeal which may be placed on it.
- 7- Annexures of the appeal may be attested.
- 8- Annexures of the appeal may be flagged.
- 9- Copy of CPLA mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 10- Copy of termination order of the appellant is not attached with the appeal which may be placed on it.
- 11- Seven more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1405 /S.T.

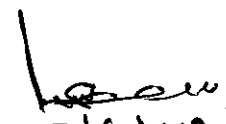
DI. 26/5 /2017


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

26/5/17

Mr. Zahoor Islam Adv. Peshawar.

Time extended up to 3/7/17


8/6/17

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 696/2017

Mahpara Perveen(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat Peshawar and others.....(Respondents)

I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Service Appeal		1-8
2.	Affidavit		9
3.	Application with affidavit		10-13
4.	Addresses of the parties		14
5.	Copy of appointment order	A	15
6.	Copy of completion of project	B	16
7.	Copies of termination orders	C & D	17-18
8.	Copy of W.P. No. 1730-P/2014 and order dated 26/06/2014	E & F	19-35
9.	Copy of CPLA 496-P/2014	G to G/1	36-64
10.	Copy of the departmental appeal	H	65-66
11.	Copy of CPLA 605/2015	I	67-70
12.	Wakalat Nama		

Appellant
Mahpara Perveen

Through



Zahoor Islam
Advocate High Court,
Peshawar.
Cell No. 0346-9083579

Dated: 24/05/2017

D

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 696 /2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 581

Dated 25/5/2017

Mahpara Perveen D/o Asper Khan R/o Village Takht-e-Nasrati, Tehsil and District, Karak.....(Appellant)

V E R S U S

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary Population Welfare Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Director General, Population Welfare Department R/o Plot No. 18, Sector E-8, Phase-VII, Peshawar.
4. Accountant General, Khyber Pakhtunkhwa at Accountant General Office, Peshawar Cantt, Peshawar.
5. District Population Welfare Officer Peshawar Plot No. 18, Sector E-8, Phase-VII, Peshawar.....(Respondents)

APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974, FOR GIVING RETROSPECTIVE EFFECT
TO THE APPOINTMENT ORDER DATED
05/10/2016 IN ORDER TO INCLUDE PERIOD
SPENT SINCE BRINGING THE PROJECT IN
QUESTION ON CURRANT SIDE w.e.f
01/07/2014 TILL THE APPOINTMENT
ORDER DATED 05/10/2016 WITH ALL BACK
BENEFITS, IN TERMS OF ARREARS,
PROMOTIONS AND SENIORITY, IN THE
LIGHT OF JUDGMENT AND ORDER DATED
24/02/2016 RENDERED BY HON'BLE

Filed to-day

Registrar

25/5/17.

Re-submitted to -day
and filed.

Registrar

31/5/17.

2)

SUPREME COURT OF PAKISTAN IN CPLA 605
OF 2015.

Respectfully Sheweth:

1. That the appellant was initially appointed as Family Welfare Worker (FWW) (BPS-08) on contract basis in the District Population Welfare Office, Peshawar on 03/01/2012. (Copy of the appointment order dated 03/01/2012/~~SECRET~~ "A").
2. That it is pertinent to mention here that in the initial appointment order the appointment was although made on contract basis and till project life, but no project was mentioned therein in the appointment order. However the services of the appellant along with hundreds of other employees were carried and confined to the project "Provisions of Population Welfare Programme in Khyber Pakhtunkhwa (2011-14)".
3. That later-on the project in question was brought from developmental side to current and regular side vide Notification in the year 2014 and the life of the

project in question was declared to be culminated on 30/06/2014. (Copy of completion of project is annexed herewith as annexure "B").

4. That instead of regularizing the service of the appellant, the appellant was terminated vide the impugned office order No. F.No. 4 (35)/2013-14/Admn, dated 13/06/2014 and thus this service of the appellant was terminated w.e.f. 30/06/2014. (Copies of termination orders are annexed as annexure "C" & "D" respectively).

5. That the appellant along with rest of his colleagues impugned their termination order before the Hon'ble Peshawar High Court vide W.P. No. 1930-P/2014, as after carry-out the termination of the appellant and rest of his colleagues, the respondents were out to appoint their blue-eyed ones upon the regular posts of the demised project in question.

6. That the W.P. No. 1730-P/2014 was allowed by the Hon'ble Peshawar High Court, Peshawar vide the judgment and order dated 26/06/2014. (Copy of W.P. No. 1730-P/2014 and order dated 26/06/2014

are annexed herewith as annexure "E" & "F" respectively).

7. That the respondents impugned the same before the Hon'ble Apex Court of the country in CPLA No. 496-P/2014, but here again good fortune of the appellant and his colleagues prevailed and the CPLA was dismissed vide judgment and order dated 24/02/2016. (Copy of CPLA 496-P/2014 is annexed as annexure "G").
8. That after dismissal of CPLA No. 496-P/2014 of the respondents have reinstated the appellants vide the impugned office order No. SOE(PWD)4-9/2014/IIC dated 05/10/2016, but with immediate effect i.e. initial appointment or at least 01/07/2014 that is date of regularization of the project in question. (Copy of the impugned office reinstatement order dated 05/10/2016 is attached as annexure "G/1").
9. That feeling aggrieved the appellant prepared a departmental appeal, but inspite of laps of statutory period no findings were made upon the same, but rather the appellant repeatedly attended the office of the learned Appellate Authority for disposal of appeal and every time was extended positive justice by the Learned Appellate Authority about disposal of departmental appeal and that constrained the appellant to wait till the disposal, which caused delay in filing the instant appeal before this Hon'ble Tribunal and on the other hand the departmental appeal was also either not decided or the decision is not communicated or intimated to the appellant.

5)

(Copy of the departmental appeal is annexed herewith as annexure "H").

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

GROUND:

- A. That the impugned appointment order dated 05/10/2016 to the extent of giving "immediate effect" is illegal, unwarranted and is liable to be modified to that extent.
- B. That in another CPLA No. 605 of 2015 the Apex Court held that not only the effected employee is to be re-instated into service, after conversion of the project to current side, as regular Civil Servant, but as well as entitled for all back benefits for the period they have worked with the project or the KPK Government. Moreover the Service of the Appellants, therein, for the intervening, period i.e. from the date of their termination till the date of their re-instatement shall be computed towards their

pensionary benefits; vide judgment and order dated 24/02/2016. It is pertinent to mention here that this CPLA 605 of 2015 had been decided along with CPLA of 496 of 2014 of the Appellant on the same date.

- C. That thus by virtue of 2009 SCMR Page-01 the appellant is entitled for equal treatment and is thus fully entitled for back benefits for the period, the appellant worked in the project or with the Government of KPK. (Copy of CPLA 605/2015 is annexed as annexure "I").
- D. That where the posts of the appellant went on regular side, then from not reckoning the benefits from that day to the appellant is not only illegal and void, but is illogical as well.
- E. That where the termination was declared as illegal and the appellant was declared to be re-instated into service vide judgment and order dated 26/06/2014, then how the appellant can be re-instated on 05/10/2016 and that too with immediate effect.

- F. That attitude of the respondents constrained the appellant and his colleagues to knock the doors of the Hon'ble High Court again and again and were even out to appoint blue-eyed once to fill the posts of the appellant and at last when strict directions were issued by Hon'ble Court, the respondents vent out their spleen by giving immediate effect to the re-instatement order^a of the appellant, which approach under the law is legal.
- G. That where the appellant has worked, regularly and punctually and thereafter got regularized then under Rule 23 of the Pension Rules 1963, the appellant is entitled for back benefits as well.
- H. That from every angle the appellant is fully entitled for the back benefits for the period that the appellant worked in the subject project or with the Government of K.P.K, by giving retrospective effect to the re-instatement order dated 05/10/2016.

I. That any other ground not raised here may graciously be allowed to be raised at the time of arguments.


It is, therefore, most humbly prayed that on acceptance of the instant Appeal, the impugned reinstatement order NO. SOE (PWD) 4-9/7/2014/HC, dated 05/10/2017 may graciously be modified to the extent of "immediate effect" and the reinstatement of the appellant be given effect w.e.f 01/07/2014 date of regularization of the project in question and converting the post of the appellant from developmental and project one to that of regular one, with all back benefits in terms of arrears, seniority and promotion.

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


Appellant

Through

Dated: 24/05/2017


Zahoor Islam
Advocate High Court,
Peshawar.

9)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. _____/2017

Mahpara Perveen(Appellant)

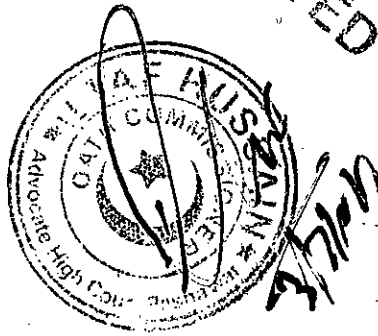
V E R S U S

Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat Peshawar and others.....(Respondents)

AFFIDAVIT

I, Mahpara Perveen D/o Asper Khan R/o Village Takht-e-Nasrati, Tehsil and District, Karak, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

ATTESTED



Md

DEPONENT
CNIC: 14203-8207001-4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

C.M. No. _____/2017

In

Service Appeal No. _____/2017

Mahpara Perveen(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat Peshawar and others.....(Respondents)

APPLICATION FOR CONDONATION OF
DELAY.

Respectfully Sheweth:

1. That the petiotner/ appellant is filing the accompanying Service Appeal, the contents of which may graciously be considered as integral part of the instant petition.
2. That delay in filing the accompanying appeal was never deliberate, but due to reason for beyond control of the petitioner.

3. That after filing departmental appeal on 20/05/2016, the appellant with rest of their colleagues regularly attended the Departmental Appellate Authority and every time was extended positive gestures by the worthy Departmental Authority or disposal of the departmental appeal, but in spite of lapse of statutory rating period and period thereafter till filing the accompanying service appeal before this Hon'ble Tribunal, the same were never decided or never communicated the decision if any made thereupon.
4. That the appellant is lady and belongs to far flung area of District Karak and it was not possible for her to approach to this Hon'ble Tribunal.
5. That besides the above as the accompanying Service Appeal is about the back benefits and arrears thereof and as financial matters and questions are involved which effect the current salary package regularly etc of the appellant, so is having a repeatedly reckoning cause of action as well.


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

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


Appellant

Through

Dated: 24/05/2017


Zahoor Islam
Advocate High Court,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

C.M. No. _____/2017

In

Service Appeal No. _____/2017

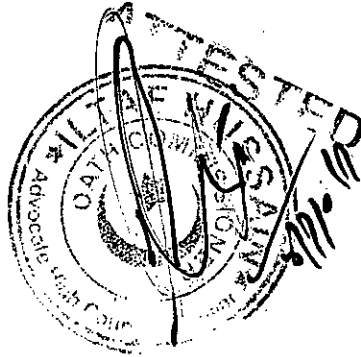
Mahpara Perveen(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Chief Secretary,
 Civil Secretariat Peshawar and others.....(Respondents)

AFFIDAVIT

I, Mahpara Perveen D/o Asper Khan R/o Village Takht-e-Nasrati, Tehsil and District, Karak, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Mahpara Perveen
DEPONENT
 CNIC: 14203-8207001-4

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Service Appeal No. _____/2017

Mahpara Perveen(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat Peshawar and others.....(Respondents)

ADDRESSES OF THE PARTIES

PETITIONER:

Mahpara Perveen D/o Asper Khan R/o Village Takht-e-Nasrati, Tehsil and District, Karak.


RESPONDENTS:

1. Government of Khyber Pakhtunkhwa through Chief, Civil Secretariat Peshawar.
2. Secretary Population Welfare Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Director General, Population Welfare Department R/o Plot No. 18, Sector E-8, Phase-VII, Peshawar.
4. Accountant General, Khyber Pakhtunkhwa at Accountant General Office, Peshawar Cantt, Peshawar.
5. District Population Welfare Officer Peshawar Plot No. 18, Sector E-8, Phase-VII, Peshawar.


Appellant

Through

Dated: 24/05/2017


Zahoor Islam
Advocate High Court,
Peshawar.

15)

66

Amir A

Government of Khyber Pakhtunkhwa
Directorate General Population Welfare

Post Box No. 235

1st & 2nd Floor, FC Trust Building Sunehri Masjid Road, Peshawar Cantt

Dated Peshawar, the 03/01/2012

OFFER OF APPOINTMENT

No.4(35)/2011/Admn: Consequent upon the recommendation of the Departmental Selection Committee (DSC), and with approval of the Competent Authority you are offered of appointment as Family Welfare Worker (BPS-8) on contract basis in Family Welfare Centre Project, Population Welfare Department, Khyber Pakhtunkhwa for the project life on the following terms and conditions.

TERMS & CONDITIONS

1. Your appointment against the post of Family Welfare Worker (BPS-8) is purely on contract basis for the project life. This Order will automatically stand terminated unless extended. You will get pay in BPS-8 (6000-350-16500) plus usual allowances as admissible under the rules.
2. Your services will be liable to termination without assigning any reason during the currency of the agreement. In case of resignation, 14 days prior notice will be required, otherwise your 14 days pay plus usual allowances will be forfeited.
3. You shall provide Medical Fitness Certificate from the Medical Superintendent of the DHO Hospital concerned before joining service.
4. Being contract employee, in no way you will be treated as Civil Servant and in case your performance is found un-satisfactory or found committed any mis-conduct, your service will be terminated with the approval of the competent authority without adopting the procedure provided in Khyber Pakhtunkhwa (E&D) Rules, 1973 which will not be challengeable in Khyber Pakhtunkhwa Service Tribunal / any court of law.
5. You shall be held responsible for the losses accruing to the Project due to your carelessness or in-efficiency and shall be recovered from you.
6. You will neither be entitled to any pension or gratuity for the service rendered by you nor you will contribute towards GP Fund or CP Fund.
7. This offer shall not confer any right on you for regularization of your service against the post occupied by you or any other regular posts in the Department.
8. You have to join duty at your own expenses.
9. If you accept the above terms and conditions, you should report for duty to the District Population Welfare Officer, Hangu within 15 days of the receipt of this offer failing which your appointment shall be considered as cancelled.
10. You will execute a surety bond with the Department.

(Director General)
Population Welfare Department,
Khyber Pakhtunkhwa

Mah Para Parveen D/O Asper Khan
Vill: Said Ali Banda P.O Takht Nusrati Distt: Karak

No.4(35)/2011-Admn:

Dated Peshawar, the 03/01/2012

Copy forwarded to the:-

1. Director Technical, Population Welfare Department, Peshawar.
2. PS to Director General, Population Welfare Department, Peshawar.
3. District Population Welfare Officer, Hangu.
4. District Accounts Officer, Hangu.
5. Master File.

(Kashif Fida)
Assistant Director (Admn)

Attested to be a
true copy
[Signature]

16)

Annex B



GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT POPULATION WELFARE OFFICE,
KOHAT.

F.No.33(7)2011/Admn:

Dated Kohat the 13th June 2014.


To,

Miss. Mahpara Parveen,
Family Welfare Worker,
FWC Dhoda Kohat.

Subject:


COMPLETION OF ADP PROJECT i.e PROVISION FOR POPULATION
WELFARE DEPARTMENT, KHYBER PAKHTUNKHWA.

The subject project is going to be completed on 30-06-2014. Therefore,
the enclosed office order No.4(35)/2013-14/Admn dated 13-06-2014 may be treated as
fifteen days notice in advance fro the termination of your services as on 30-06-
2014(A.N).


(Shai Nawab Khattak)
D.P.W.O. KOHAT.

Copy to:-

- 1- Accountant (local) for necessary action.
- 2- Personal file of the official concerned.


D.P.W.O. KOHAT.

Attested to be a
true copy



Page No. 13/2013

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Dated Peshawar the 13/6/2014

OFFICE ORDER

F.No.4(35)/2013-14/Admn On completion of the ADP Project No.903-821-790/110622 under the scheme provision of Population Welfare Programme Khyber Pakhtunkhwa the services of the following ADP Project employees stands terminated w.e.f. 30.06.2014 as per detail below.

S.No	Name	Designation	District /Institution
1	Afra Zahra	FWA (F)	Kohat
2	Rumina	FWA (F)	Kohat
3	Mahpara Parveen	FWA (F)	Kohat
4	Oneeba Noor	FWA (F)	Kohat
5	Salma Yasmeen	FWA (F)	Kohat
6	Shaista Bibi	FWA (F)	Kohat
7	Sami Ullah	FWA (M)	Kohat
8	Kamal Raza	FWA (M)	Kohat
9	Zahid Rehman	FWA (M)	Kohat
10	Zahid Muhammad Khan	Chowkidar	Kohat
11	Nauman Halder	Chowkidar	Kohat
12	Aziz Ullah	Chowkidar	Kohat
13	Asla Bibi	Aya/Helper	Kohat

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

Sd/
(Project Director)

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

Dated Peshawar the 13/6/2014

Copy forwarded to the:

1. Director Technical, PWD, Peshawar.
2. District Population Welfare Officer, Kohat.
3. District Accounts Officer, Kohat.
4. Chief Health P&D Department, Khyber Pakhtunkhwa.
5. PS to Advisor to Chief Minister for Population Welfare, Khyber Pakhtunkhwa.
6. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department, Peshawar.
7. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Population Welfare Department, Peshawar.
8. PS to Director General, PWD, Peshawar.
9. Officials concerned.
10. Master File.

(Signature)
Assistant Director (Admn)

(18)
Annex D
GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT POPULATION WELFARE OFFICE,
KOHAT.

F.No.33(7)2011/Admn:

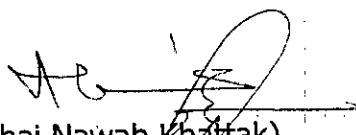
Dated Kohat the 13th June 2014.

To,

Miss. Mahpara Parveen,
Family Welfare Worker,
FWC Dhoda Kohat.


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

The subject project is going to be completed on 30-06-2014. Therefore,
the enclosed office order No.4(35)/2013-14/Admn dated 13-06-2014 may be treated as
fifteen days notice in advance from the termination of your services as on 30-06-
2014(A.N).


(Shai Nawab Khattak)
D.P.W.O. KOHAT.

Copy to:-

- 1- Accountant (local) for necessary action.
- 2- Personal file of the official concerned.


D.P.W.O. KOHAT.

Attested to be a
true copy



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IN THE PESHAWAR HIGH COURT PESHAWAR

W. P No. 1730 /2014

Muhammad Nadeem Jan s/o Ayub Khan FWA Male District
Peshawar and others.

(Petitioners)

VERSUS

Govt of Khyber Pakhtunkhwa Secretary Population Welfare
Department, Khyber Pakhtunkhwa House No. 125/111, Street
NO. 7 Defence Officer's Colony, Khyber Road Peshawar and
others.

(Respondents)

ADDRESSES OF PARTIES

Petitioner:

1. Muhammad Nadeem Jan s/o Ayub Khan FWA Male District Peshawar.
2. Muhammad Inam s/o Afab Ahmad FWA Male District Peshawar.
3. Jehanzaib s/o Taj Akbar FWA Male District Peshawar.
4. Sajida Parveen d/o Bad Shah Khan FWA Female District Peshawar.
5. Abida Bibi D/O Hanif Shah FWA Female District Peshawar.
6. Bibi Amina d/o Fazali Ghani FWA Female District Peshawar.
7. Tasawar Iqbal d/o Iqbal Khan FWA Female District Peshawar.
8. Zeba Gul w/o Karim Jan FWA Female District Peshawar.
9. Neelofar Munif w/o Inamullah FWA Female District Peshawar.
10. Muhammad Riaz s/o Taj Muhammad Chowkidar District Peshawar.
11. Ibrahim Khalil s/o Ghulam Sarwar Chowkidar District Peshawar.
12. Miss Qaseeda Bibi w/o Nadir Muhammad FWA Female District Peshawar.

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be a true copy

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20.11

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

Prayer in Writ Petition:

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

Interim Relief

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a true copy
[Signature]

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~~ATTESTED~~

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

Respectfully Submitted:

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

- i. To strengthen the family through encouraging responsible parenthood, promoting practice of reproductive health & Family planning, improving basic health & thereby enhancing socio economic wellbeing.
- ii. To introduce participatory approach whereby stakeholders are involved & ownership of program rest with the community"

(Copy of the PC-1 is attached as annexure "A")

2. That the respondents to carry out the purposes of this scheme advertisement different posts in different districts. It is however pertinent to mention here that the advertisement did not find mention of any project, the petitioners while holding the prescribed qualifications applied for the post commensurate with their qualification, they remained successful in the selection process, thus after the recommendation of the departmental selection committee,

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a true copy*
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they were appointed on different dates in the scheme, with the approval of the competent authority in the prescribed manner. (Copies of the advertisement and appointment order are attached as Annexure "B & C).

- 3. That (you are offered appointment on contract basis in the District Population Welfare Office for the Project Life).
- 4. That it would be pertinent to refer that due to the efforts of the project staff most of the aims and object of the project were achieved and in view of the importance the Govt. seriously considered bringing the project on regular side.
- 5. That the schemes in which the Petitioners were serving was brought on the regular budget, the same was reported in the press wherein reference was made to the Senior Minister who claimed that the Govt have approved creation of 560 posts on regular side. (Copies of the news cutting is attached as Annexure D).
- 6. That the petitioners agitated their regularization on their posts which have been duly sanctioned by the Finance Department, they also brought the matter in the notice of Provincial Govt through MPAs, however, no action was taken thereon. (Copies of the proceedings are attached as Annexure E).
- 7. That the petitioners also requested to the respondents for treating them alike with those who were regularized in accordance with the regularization of the scheme however no action was taken thereon.

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8. That the petitioners have been discriminated in the matter of regularization and the judgments rendered by this Honourable Court have not been applied to the case of the Petitioners. hence this treatment meted out to them is illegal, unlawful, without lawful authority and of no legal effect. the Petitioners felt themselves aggrieved of the above acts and omission, and having no other remedy available in law is constrained to invoke the Constitutional Jurisdiction of this Honorable Court inter alia on the following grounds:-

GROUNDS OF WRIT PETITION:

A. That the petitioners have not been treated in accordance with law and their rights secured and guaranteed under the law have been violated.

B. That this Honorable Court in a number of judgments allowed the cases of similarly placed employees including of contract Doctors in W.P. No. 1510 / 2007 decided on 18-11-2008 and decided a point of law in the matter of regularization of contract employees. however the respondents are illegally denying this benefit to the Petition. the Honorable Supreme Court of Pakistan in a number of judgments held that where a point of law is decided by the Supreme Court or the Courts which not only cover the cases of the civil servants who litigated but of other also who may not have litigated, in such cases the dictate of good governance demands that such benefit

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be extended to those Civil Servants who may not have litigated instead of forcing them to recourse to litigation, thus the department violated such principles and acted illegally, reference can be made to the judgment reported in S.C.M.R 2009 Page-1.

C. That the Petitioners were fit and eligible for the subject post and were duly recommended for appointment by the appropriate departmental selection committee and the competent authority issued the orders of their appointment, therefore they have matured their rights for regularization against the post held by them.

D. That the scheme where the Petitioners were posted was brought on regular side, therefore, the petitioners have a right to continue on the posts despite the closure of the project, on the regularization of the posts.

E. That the inaction on the part of the respondents are adversely affecting their careers, they would become overage for fresh appointment, hence the proprietary demands that the Petitioners should be allowed reinstatement and should be regularized.

F. That it is pertinent to point out here that similar employees appointed on the same advertisement, on which the petitioners were considered to be appointed in project, while the other employees were appointed on regular basis and serving as regular civil servant, this

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[Signature]

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treatment meted out to the petitioner is highly illegal and not maintainable.

- G. That the Petitioners fulfilled the criteria for appointment, they have been appointed in the prescribed manner, hence they should not suffer for the administrative slackness / inactions in not regularizing the petitioners.
- H. That it is pertinent to point out here that in similar circumstances the projects when brought on regular side its employees are also regularized but in the case of the petitioner they have been discriminated against and thus deprived of regularization. (Copies of the regularization orders are attached as Annexure F)
- I. That the petitioners seek the permission of this Honorable Court to rely on additional grounds at the hearing of this Appeal.

Interim Relief

The Petitioners may please be allowed to continue on their posts which is being regularized and brought on regular budget and be paid their salaries after 30.12.2014 till the decision of writ petition.

It is, therefore, prayed that on acceptance of this Writ Petition an appropriate Writ may please be issued as prayed for in the heading of this Petition.

Petitioners

Through

*Attested A be
a true copy*

[Signature]

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IJAZ ANWAR
Advocate Peshawar

List of Books:-

1. Constitution, 1973.
2. Books according to need.

CERTIFICATE

Certified that no writ petition on the same subject and between the same parties have been filed previously or concurrently.

Petitioners

*Attested to be
a true copy
[Signature]*

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT



W.P. No. 1730 of 2004
with CM 559-P/14 and CM 600 and 607/14

JUDGMENT

Date of hearing 26/06/2014

Appellant Members of Nuclear Institute by Mr. Ijaz Anwar Advocate

Respondent Govt. etc by Mr. Ali Shah AAG.

NISAR HUSSAIN KHAN, J.- By way of instant

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

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ATTORNEY GENERAL
R. Akh
(Advocate)

12/11

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

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

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

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

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

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

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

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

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

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& they are meted out the treatment of Master and Servant.

Having been put in a situation of uncertainty, they more often than not fall prey to the foul hands. The policy makers should keep all aspects of the society in mind.

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

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

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

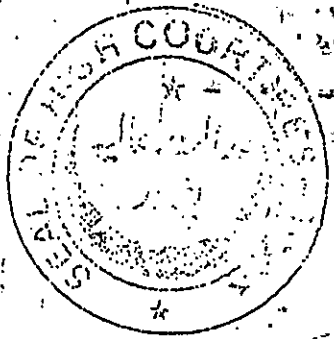
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subject to the fate of CP No.344-P/2012 as identical proposition of facts and law is involved therein.

Announced on 26th June, 2014.

Dr. Nisar Hussain Khan
Dr. Assadullah Khan Channala

Office
12/07/14



CERTIFIED TO BE TRUE COPY
By the Clerk of the Court, Peshawar
Punjab and Federal Territory of Chandernagore
The Qanun-e-Shahadat Order, 1984
12 JUL 2014

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Muhammad Ayaz

(36)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

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

CIVIL APPEAL NO.134-P OF 2013

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

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

CIVIL APPEAL NO.135-P OF 2013

(On appeal against the judgment dated 22-09-2011 passed by the Peshawar High Court, Peshawar, in Writ Petition No.2170/2011)

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

CIVIL APPEAL NO.136-P OF 2013

(On appeal against the judgment dated 07-03-2012 passed by the Peshawar High Court, Peshawar, in Writ Petition No.1897/2011)

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

CIVIL APPEAL NO.137-P OF 2013

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

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

CIVIL APPEAL NO.138-P OF 2013

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

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

CIVIL APPEAL NO.52-P OF 2015

(On appeal against the judgment dated 5-12-2012 passed by the Peshawar High Court, Peshawar in Writ Petition No.3087/2011)

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

CIVIL APPEAL NO.1-P/2013

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

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

CIVIL APPEAL NO.133-P OF 2013

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

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

ATTESTED

Court Appointed
Supreme Court of Pakistan
Inscribed

Livestock and others

CIVIL APPEAL NO.113-P OF 2013

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

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

CIVIL APPEAL NO.231 OF 2015

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

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

CIVIL APPEAL NO.232 OF 2015

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

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

CIVIL PETITION NO.600-P OF 2013

(On appeal against the judgment dated 06-06-2012 passed by the Peshawar High Court, Peshawar, in Writ Petition No.1818/2011)

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

CIVIL PETITION NO.496-P OF 2014

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

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

CIVIL PETITION NO.34-P OF 2015

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

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

CIVIL PETITION NO.526-P OF 2013

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

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

CIVIL PETITION NO.527-P OF 2013

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

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

CIVIL PETITION NO.528-P OF 2013

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


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

CIVIL PETITION NO.28-P OF 2014

(On appeal against the judgment dated 19-09-2013 passed by the Peshawar High Court Peshawar, in Writ Petition No.379-P/2012)



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Court Associate
Supreme Court of Pakistan
Islamabad

High Court, Mingora Bench (Dar-ul-Qaza) Swat, in Writ Petition No.4335-P/2010)
Govt. of KPK through Chief Secy. Vs. Rahimullah and others
Peshawar and others:

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

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

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

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

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

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

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

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

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

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

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

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

CIVIL PETITION NO.619-P OF 2014
(On appeal against the judgment dated 18-09-2014 passed by the Peshawar
High Court Peshawar, in Writ Petition No.2428-P/2013)

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

CA.134-P/2013
For the appellants) : Mr. Waqar Ahmed Khan, Addl. AG KPK
: Syed Masood Shah, SO Litigation.
Hafiz Attaul Memeen, SO. Litigation (Fin)
Muhammad Khalid, AD (Litigation)
Abdul Hadi, SO (Litigation)

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

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

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

ATTESTED

Court Secretary
Supreme Court of Peshawar

(39)

CA.134-P/2013 etc

CA.135-P/2013

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

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

CA.136-P/2013

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

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

CA.137-P/2013

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

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

CA.138-P/2013

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

For the Respondent(s) : Not represented.

CA.52-P/2013

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

For Respondent No.1 : In person (Absent)

For Respondent No.2 : Not represented.

CA.1-P/2013

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

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

CA.133-P/2013

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

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

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

CA.113-P/2013

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

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

CA.231-P/2015

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

For Respondents (1-3) : Mr. Shouib Shabeer, ASC

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Court Assistant

Supreme Court of Pakistan
Islamabad

CA.232-P/2015

For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK
For Respondent No.1 : Mr. Shoaib Shaheen, ASC

CP.600-P/2014

For the Petitioner(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK
For the Respondent(s) : Mst. Sadia Rehim (in person)

CP.496-P/2014

For the Petitioner(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK
: Noor Afzal, Director, Population Welfare
Department.

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

CP.34-P/2014

For the Petitioner(s) : Mr. Shakeel Ahmed, ASC
For the Respondent(s) : Syed Rifaqat Hussain Shah, AOR

CPs.526 to 528-P/2013

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

CP.28-P/2014

For the Petitioner(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK
For the Respondent(s) : Mr. Ghulam Nabi Khan, ASC
Mr. Khushdil Khan, ASC

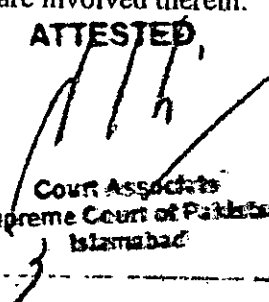
CPs.214-P/2014, 368-
371-P/2014 and 619-
P/2014 & 621-P/2015,

For the Petitioner(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK
For the Respondent(s) : Not represented.
Date of hearing : 24-02-2016

JUDGMENT

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

ATTESTED,


Court Associate
Supreme Court of Pakistan
Islamabad

(4P1)

CA.134-P/2013 etc

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CA.134-P/2013

On Farm Water Management Project, KPK.

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

CA.No.135-P/2013 & Civil Petition No.600-P of 2013

On Farm Water Management Project, KPK

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

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

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Countersigned
Supreme Court of Pakistan
Islamabad

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

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

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

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Supreme Court of Pakistan
Islamabad

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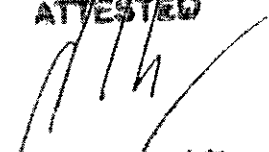
20.06.2012, with the direction to consider the case of the Respondents in the light of the judgment dated 22.12.2008 and 03.12.2009. The Appellants filed Petition for leave to Appeal before this Court in which leave was granted; hence these Appeals.

Civil Petition No.619-P/2014

Establishment of Database Development Based on Electronic Tools (Project)

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

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Court Associate
Supreme Court of Pakistan
Islamabad

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Civil Petitions No.368-P of 2014 to 371-P of 2014
Industrial Training Centre Garhi Shehsdad and Industrial Training Centre Garha Tajak, Peshawar

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

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

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

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

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

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

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Supreme Court of Pakistan
Islamabad

(4B7)

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

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

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

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

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

Civil Appeal No.52-P of 2015

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

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

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 Supreme Court of Pakistan
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Civil Appeal No.01-P of 2013

Welfare Home for Female Children, Malakand at Bathhela and Industrial Training Centre at Garhi Usman Khel, Dargal.

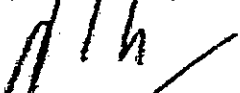
12. In response to an advertisement, the Respondents applied for different positions in the "Welfare Home for Female Children", Malakand at Bathhela and "Female Industrial Training Centre" at Garhi Usman Khel. Upon the recommendations of the Departmental Selection Committee, the Respondents were appointed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

Civil Appeals No.133-P

Establishment and Upgradation of Veterinary Outlets (Phase-III)-ADP

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

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

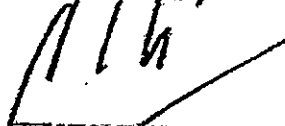
Civil Appeal No.113-P of 2013
Establishment of One Science and One Computer Lab in Schools/Colleges of NWFP

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

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

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

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Supreme Court of Pakistan
Islamabad

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

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

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

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CA 134-P/2013 etc

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

Civil Petition No.34-P of 2015

Pakistan Institute of Community Ophthalmology Hayatabad Medical Complex, Peshawar

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

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

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

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

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Coast Associate
Supreme Court of Pakistan
Islamabad

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

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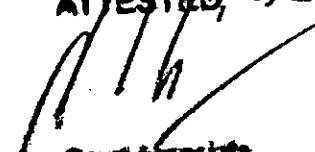


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Peshawar Court of Pakistan
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employees appointed in 2005 and those in 1980 were not similarly placed and, therefore, there was no question of discrimination. According to him, they will have to come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

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

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

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

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

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

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

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

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

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Supreme Court of Pakistan

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

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

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Supreme Court of Pakistan
Islamabad

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

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

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

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

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

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

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Supreme Court of Pakistan

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

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

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

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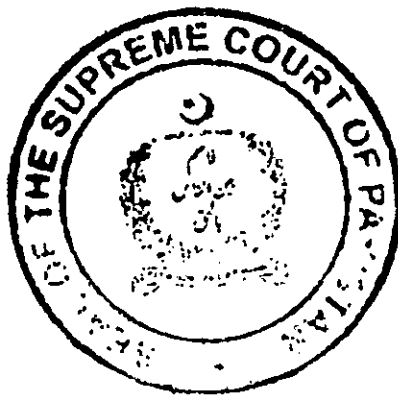
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Government departments. The employees of the same Project were adjusted against the posts created by the Provincial Government in this behalf.

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

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

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



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

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

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Supreme Court of Pakistan
Islamabad

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No. 5. 2-16

11565/16 Civil/Criminal

Date of Presentation: 2-6-16

No of Words: 540

No of Pages: 34

Requisition: 0

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

Dated Peshawar the 05th October, 2016

OFFICE ORDER

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

SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT

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

Dated Peshawar the 05th Oct: 2016

Copy for information & necessary action to the:

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

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

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To,

The Chief Secretary,
Khyber Pakhtunkhwa,
Peshawar

Subject: DEPARTMENTAL APPEAL

Respected Sir,

With profound respect the undersigned submit as under:

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

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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PRESENT:

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

CIVIL APPEAL NO.605 OF 2015

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

Rizwan Javed and others ... Appellants

VERSUS

Secretary Agriculture Livestock etc ... Respondents

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

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

Date of hearing : 24-02-2016

ORDER

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

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

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Court Associate
Supreme Court of Pakistan
Islamabad

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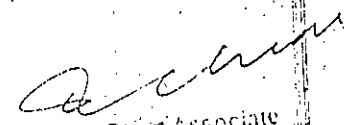
dates in the month of September, 2007, upon the recommendations of the Departmental Selection Committee (DPC) and the approval of the Competent Authority, the Appellants were appointed against various posts in the Cell, initially on contract basis for a period of one year, extendable subject to satisfactory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

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

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

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

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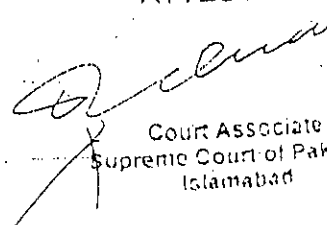
"In view of the clear statutory provisions the respondents cannot seek regularization as they were admittedly project employees and thus have been expressly excluded from purview of the Regularization Act. The appeal is therefore allowed, the impugned judgment is set aside and writ petition filed by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

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

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

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

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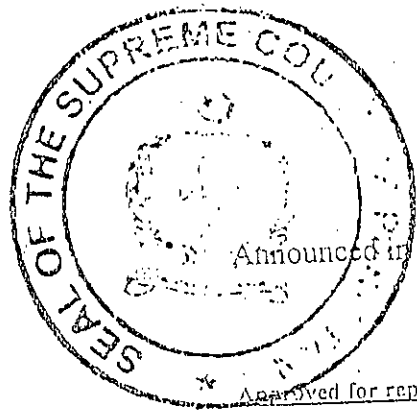
time to time up to 30.06.2011, when the project was taken over by the KPK Government. It appears that the Appellants were not allowed to continue after the change of hands of the project. Instead, the Government by cherry picking, had appointed different persons in place of the Appellants. The case of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

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7. We, for the aforesaid reasons, allow this Appeal and set aside the impugned judgment. The Appellants shall be reinstated in service from the date of their termination and are also held entitled to the back benefits for the period they have worked with the project or the KPK Government. The service of the Appellants for the intervening period i.e. from the date of their termination till the date of their reinstatement shall be computed towards their pensionary benefits.

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

Certified to be True Copy



Announced in open Court on

[Signature]

Court Associate
Supreme Court of Pakistan
Islamabad

Approved for reporting

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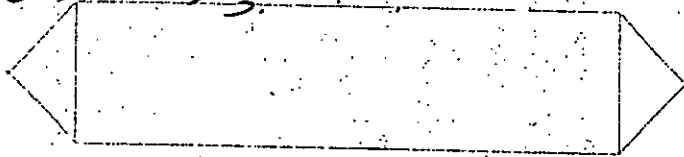
30.5.16

GR No:	Civil/Criminal
Date of Judgment:	6.6.16
No of Pages:	1902
No of Exhibits:	(12)
Requirements:	5.00
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[Signature]

M/S Khilji Arif Hussain, AOR

بعدالت فناء جسٹریٹس سرورس ٹریڈنگ کمپنی



25 مئی 2017ء پنجاب 66 پارہ پیرس
مقدمہ
دعویٰ
جرم

صنف سیکرٹری گورنمنٹ جسٹریٹس سرورس ٹریڈنگ کمپنی

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و عمل کاروانی متعلقہ
آن مقام بے جا کہ
مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی عمل کاروانی کا کامل اختیار ہوگا۔ نیز
دیکل صاحب کو راضی نامہ کرنے اور رٹائرمنٹ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت دعویٰ کرنے اجراء اور وصولی چیک وصولی اور دعویٰ اور درخواست ہر قسم کی تصدیق
زر میں پر دستخط کرنے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا دعویٰ یا بظرف یا انہی کی ہدایتی
اور منسوخی نیز دائرہ کرنے اپیل گھرانے و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت شہادت
مقدمہ مذکورہ کے عمل یا جزوی کاروانی کے واسطے اور عمل یا اختیار قانونی کو اپنے ہمراہ اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ یا اختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب اتوارے مقدمہ کے
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حدت باہر ہو تو دیکل صاحب پر بند ہوں
گے۔ کہ پیروی مذکورہ کریں۔ بندہ کا نام لکھنا یا نہ لکھنا ہے۔

66 پارہ پیرس

2017 مئی 25

Accepted and accepted

تعداد

2206190
0113345-8222009

BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.696/2017

Mahpara Perveen

(Appellant)

VERSUS

I. Government of Khyber Pakhtunkhwa and Others.

(Respondents)

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Mushara

RESPONENT

Sagheer Musharaf
Assistant Director (Lit)

IN THE HONOURABLE SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No.696/2017.

Mahpara Perveen

(Appellant)

VS

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

(Respondents)

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

Respectfully Sheweth,

Preliminary Objections

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

On Facts.

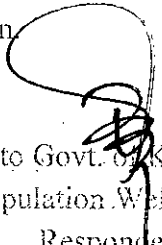
1. Incorrect. That the appellant was initially appointed on project post as Family Welfare Worker in BPS-08 on contract basis till completion of project life i.e. 30/6/2014 under the ADP Scheme Titled "Provision for Population Welfare Program in Khyber Pakhtunkhwa (2011-14)". It is also pertinent to mention that during the period under reference, there was no other such project in / under in Population Welfare Department with nomenclature of posts as Family Welfare Worker. Therefore name of the project was not mentioned in the offer of appointment.
2. Incorrect. As explained in para-1 above.
3. Incorrect. The project in question was completed on 30/6/2014, the project posts were abolished and the employees were terminated. According to project policy of Govt. of Khyber Pakhtunkhwa on completion of scheme, the employees were to be terminated which is reproduced as under : "on completion of the projects the services of the project employees shall stand terminated. However, they shall be re-appointed on need basis, if the project is extended over any new phase or phases. In case the project posts are converted into regular budgetary posts, the posts shall be filled in according to the rules, prescribed for the post through Public Service Commission or The Departmental Selection Committee, as the case may be: Ex-project employees shall have no right of adjustment against the regular posts. However, if eligible, they may also apply and compete for the post with other candidates. However keeping in-view requirement of the Department, 560 posts were created on current side for applying to which the project employees had experience marks which were to be awarded to them.
4. Correct to the extent that after completion of the project the appellant alongwith other incumbents were terminated from their services as explained in para-3 above.
5. Incorrect. Verbatim based on distortion of facts. The actual position of the case is that after completion of the project the incumbents were terminated from their post according to the project policy and no appointments made against these project posts. Therefore the appellant alongwith other filed a writ petition before the Honorable Peshawar High Court, Peshawar.

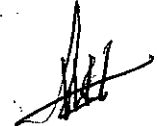
6. Correct to the extent that the Honorable Court allowed the subject writ petition on 26/6/2014 in the terms that the petitioners shall remain on the post subject to the fate of C.P No.344-P/2012 as identical proposition of facts and law is involved therein and the services of the employees neither regularized by the court nor by the competent forum.
7. Correct to the extent that the CPLA No.496-P/2014 was dismissed but the Department is of the view that this case was not discussed in the Supreme Court of Pakistan as the case was clubbed with the case of Social Welfare Department, Water Management Department, Live Stock etc. in the case of Social Welfare Department, Water Management Department, Live Stock etc. the employees were continuously for the last 10 to 20 years while in the case of Population Welfare Department their service period during the project life was 3 months to 2 years & 2 months.
8. No comments.
9. Correct to the extent that a re-view petition is pending before the Apex Court and appropriate action will be taken in light of the decision of the Supreme Court of Pakistan.
10. Correct to the extent that a re-view petition is pending before the Apex Court and appropriate action will be taken in light of the decision of the Supreme Court of Pakistan.

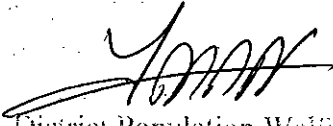
On Grounds.

- A. Incorrect. The appellant alongwith other incumbents reinstated against the sanctioned regular posts, with immediate effect, subject to the fate of re-view petition pending in the August Supreme Court of Pakistan.
- B. Correct to the extent that the employees entitled for the period they have worked with the project but in the instant case they have not worked with the project after 30/6/2014 till the implementation of the judgment. Anyhow the Department will wait till decision of re-view petition pending in the Supreme Court of Pakistan.
- C. As explained in para-7 of the grounds above.
- D. Incorrect. The Department is bound to act as per Law, Rules & Regulation.
- E. Incorrect. After the judgment dated:26/6/2014 of PHC, Peshawar this Department filed civil petition No.496/2014 in the Apex Court of Pakistan. Which was decided by the larger bench of Supreme Court of Pakistan where dismissed all the civil petitions filed by the Govt. of Khyber Pakhtunkhwa on 24/2/2016 and Now the Govt. of Khyber Pakhtunkhwa filed a re-view petitions in the Apex Court of Pakistan against the decision referred above. Which is still pending. The appellant alongwith other incumbents reinstated against the sanctioned regular posts, with immediate effect, subject to the fate of re-view petition pending in the August Supreme Court of Pakistan.
- F. Incorrect. Verbatim based on distortion of facts. As explained in Ground E above.
- G. Incorrect. They have worked against the project post and the services of the employees neither regularized by the court nor by the competent forum hence nullifies the truthfulness of their statement.
- H. Incorrect. The appellant alongwith other incumbents have taken all the benefits for the period, they worked in the project as per project policy.
- I. The respondents may also be allowed to raise further grounds at the time of arguments.

Keeping in view the above, it is prayed that the instant appeal may kindly be dismissed in the interest of merit as a re-view petition is still pending before the Supreme Court of Pakistan


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


Director General
Population Welfare Department
Peshawar
Respondent No.3


District Population Welfare Officer
Karak
Respondent No.5

BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.696 /2017

Mahpara Perveen

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa and Others.

(Respondents)

Counter Affidavit

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



DEPONENT

Sagheer Musharraf
Assistant Director (Lit)

Before the Khyber Pakhtunkhwa Service Tribunal

Appeal No. 698/2017

Mst. Mahpara Parveen.....Appellant.

V/S

Chief Secretary Civil Secretariat Peshawar and others.....Respondents.

(Reply on behalf of respondent No. 4)

Preliminary Objections.

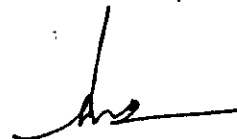
- 1). That the appellant has no cause of action.
- 2). That the appellant has no locus standi.
- 3). That the appeal in hand is not maintainable.

Respectfully Sheweth:-

Para 1 to 9:-

It is submitted that the case in hand is totally administrative matter and respondent No. 2, 3, & 5, are in better position to satisfy the grievances of the appellant. Besides, the appellant has raised no grievances against respondent No. 4.

Keeping in view the above mentioned facts, it is therefore, requested that name of the respondent No. 4, may kindly be excluded from the list of respondents please.



ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No.696/2017

*Mst: Mahpara Perveen
Appellant*

VERSUS

*The Govt of KPK Peshawar
and others*

**APPELLANT'S REJOINDER IN RESPONSE
TO REPLY OF RESPONDENTS NO.2,3,4
AND 5.**

Respectfully Sheweth:

Preliminary objections:

The all preliminary objections raised by respondents No.2,3,4, & 5 in their reply are irrelevant to the fact of the case illegal, wrong and incorrect and are denied in every detail. The appellant has a genuine cause of action and his appeal does not suffer from any formal defect whatsoever.

FACTS:

- 1- Para No.1 of the respondents comments is incorrect while the that of the appeal is correct. The appellant was appointed on 30/06/2014 Under the ADP Scheme titled "provision for population welfare program in Khyber Pakhtunkhwa (2011 -2014)" but it is also fact that appellant was reinstated and regularized by the Hon'ble Supreme Court of Pakistan having CPLA No.*
- 2- Para No.2 of the reply is incorrect as explained above in Para No.1.*

- 3- Para No.3 of the reply of the respondent is incorrect. The appellant was inducted in service on 30/06/2014 and they provided their services efficiently in the respondents department but the respondents terminated the appellant from her services with malafide intention and later on appointed the near and dear once.
- 4- Para No.4 of the reply of the respondents is incorrect the appellant was regularized and reinstated in service through judgment of Hon'ble Supreme Court of Pakistan and still respondents are reluctant to provide back benefits to the appellant.
- 5- Para No.5 of the reply of the respondents is incorrect, the respondents have terminated the services of the appellant with malafide intention and now they avoiding to fulfill and implement the judgments of the Superior Courts.
- 6- Para No.6 of the reply of the respondents is incorrect, the appellant was reinstated in service by the Hon'ble Peshawar High Court in Writ Petition No. On 26/06/2014 and the same judgment was maintained by the Hon'ble Supreme Court of Pakistan and CPLA No.344-P/2012 and through this judgment the services of the appellant was regularized.
- 7- Para No.7 of the reply of the respondents is incorrect the respondents have filed review petition before the Hon'ble Supreme Court of Pakistan which was also dismissed
That it means that respondents have burn all the boats, ~~But~~
- 8- Para No.8 is admitted by the respondents
- 9&10- Paras No.9&10 of the reply of the respondents are incorrect because the review

petition of the respondents is dismissed by the Hon'ble Supreme Court of Pakistan.


GROUNDS:


- A) Incorrect. That the appellant is entitled to all the back benefits from the date of their appointment and review petition of the respondents is dismissed by the Hon'ble Court of Pakistan.
- B) Incorrect. Ground B of the respondents is incorrect because the appellant have served in the respondent department since 30/06/2014. Moreover, the respondents is dismissed.
- C) Para C of the Ground of the respondents is incorrect and the august Supreme Court of Pakistan regularized the services of the appellant and appellant is entitled to the back benefits.
- D) Para D of the ground of the respondents is incorrect the department is not acting under the law, rather respondents is refusing to implement the judgment of the Hon'ble Supreme Court of Pakistan.
- E) Para E of the respondents is incorrect the Hon'ble Supreme Court and High Court have reinstated the services of the appellant and the review petition of the respondents is dismissed and the order of the immediate effect of the respondents is illegal and liable to be set aside in the light of the judgment of Hon'ble Supreme Court of Pakistan.
- F) Para F of the respondents the appellant have narrated have all the facts in the appeal rather respondents are reluctant to implement the judgment of the Supreme Court of Pakistan.

- G) Para G of the reply of the respondents is incorrect the appellant is regularized the Hon'ble Supreme of Pakistan and respondents have no reason to refused the back benefits of the appellant.
- H) Para H of the respondents reply is incorrect the project of the appellant is converted to current side and the appellant is regularized by the Hon'ble Supreme Court of Pakistan, so the appellant are entitled for the back benefits.
- I) Para I of the reply of the respondents is incorrect because the respondents have no stance to agitate in the Hon'ble Service Tribunal.

It is, therefore, prayed that on acceptance of appeal and rejoinder, the relief as prayed for may be granted to the appellant to meet the ends of justice because the review of the respondents in which they rely throughout their reply is dismissed.

Dated 16/03/2018


Appellant
Through


Zahoor Islam Khattak
Advocate, Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No.696/2017

Mst: Mahpara Perveen
Appellant

VERSUS

The Govt of KPK Peshawar
and others

AFFIDAVIT

I, Mst: Mahpara Perveen D/o Aspar Khan
R/o Village Nusratabad, Tehsil Takht-e-Narati
District Karak do hereby solemnly affirm and
state on oath that all contents of appeal and
rejoinder are true and correct to the best of my
knowledge and belief and that nothing wrong has
been stated by me in the matter.

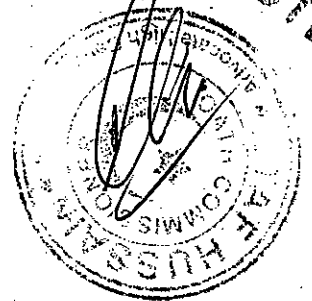


DEPONENT

Identified by



Zahoor Islam Khattak
Advocate



IN SENATE
JANUARY 11, 1918
COMMISSIONER OF LAND OFFICES
STATE OF MICHIGAN
C. H. FURBER, JR.
Petitioner

vs.
M. W. WAGAR, JR.
Respondent

Presented by
C. H. FURBER, JR.

C. H. FURBER, JR.
Petitioner

WITNESSES

John J. Davidson

Respondent's
Counsel

At the hearing on
the petition

held at
LANSING, MICHIGAN

Mr. Wagar Ahmed Khan, Attorney at Law,
of Detroit, Michigan, for Respondent,
and
C. H. Furber, Jr., Attorney at Law,
of Detroit, Michigan, for Petitioner,
were present.

The hearing was held on
the 11th day of January, 1918.

Done at Lansing, Michigan, this 11th day of January, 1918.

ORDER

MIAN SAQIS NISAR, C.J. After hearing the petitioner
and also Mr. Wagar Ahmed Khan, learned Additional
Commissioner that no case for review has been made out. On