BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 11471/2020

Date of Institution ... 01.10.2020

Date of Decision ... 13.07.2021 2022

Mrs. Noor Ul Huda, Ex-Lady Health Worker, R/O House No. 760, Mohalla Qalander Abad, Wazir Bagh Road, Tehsil and District Peshawar.

... (Appellant)

VERSUS

The Secretary Health, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and five others.

... (Respondents)

SYED NOMAN ALI BUKHARI, Advocate --- For appellant.

MR. NASEER-UD-DIN SHAH, Assistant Advocate General --- For respondents.

MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)
MS. ROZINA REHMAN --- MEMBER (JUDICIAL)

Correction made vide order dt 02/11/2022 passed in C.M.A. No 602/2022.

JUDGMENT

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the appellant has invoked jurisdiction of this Tribunal with the prayer copied as below:-

> *"That on acceptance of this appeal, the order dated 08.09.2020 may be set-aside and the respondents may be directed to count the contractual/temporary period of service of the appellant towards her retirement/pensionary benefits under Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963 and in light of the august Peshawar High Court Larger Bench judgments dated 22.06.2017 passed in W.P No. 3394-P/2016 and W.P No. 2246-9/2016 and any other remedy, which this august Tribunal deems fit and appropriate may also be awarded in favour of the appellant.*

2. Precise facts forming the background of the instant service appeal are that, the appellant was appointed as Lady Health

Worker (LHW) on contract basis vide order dated 31.10.1997 with effect from 01.11.1997. On promulgation of Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and employees (Regularization and Standardization) Act 2014, the services of the appellant alongwith other were regularized vide office order dated 19.09.2014 with effect from 1st July 2012, however on attaining the age of superannuation on 19.02.20219, the appellant was retired from service vide Notification bearing No. 3372-79/DHO.DPIU dated 15.04.2019 without granting her gratuity/pensionary benefits. The appellant approached august Peshawar High Court through Writ Petition No. 4546-P/2019 for considering her contractual period towards her pensionary benefits. Vide judgment dated 02.10.2019, the said Writ Petition of the appellant was transmitted to the concerned Secretary to Government of Khyber Pakhtunkhwa to treat it as departmental appeal and to decide the same strictly in accordance with Civil Servants Pension Rules, 1963. The departmental appeal of the appellant was rejected by Provincial Coordinator Lady Health Worker Programme Khyber Pakhtunkhwa vide order dated 08.09.2020, hence the instant service appeal.

3. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in her appeal.

4. Learned counsel for the appellant has argued that the appellant was though initially appointed as Lady Health Worker on contract basis vide order dated 31.10.1997 with effect from 01.11.1997, however her services were later on regularized vide office order dated 19.09.2014 with effect from 1st July 2012, therefore, in view of rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, the period of contract service shall be counted for the purpose of pensionary benefits; that the appellant has rendered about 21 years service, therefore, depriving her of pensionary benefits is not only against the fundamental rights of the appellant guaranteed under the Constitution but is also violation of rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963; that same nature issue was raised before the Larger Bench of august

Peshawar High Court in Writ petitions No. 3394-P/2016 and 2246-P/2016, in which the august Peshawar High Court vide judgments dated 22.06.2017 laid down the dictum that the service rendered on fixed pay/contract basis is countable towards pension fixation and retirement benefits; that the appeal of the appellant was sent by august Peshawar High Court to concerned Secretary for decision but the same was decided by Provincial Coordinator Lady Health Worker Programme Khyber Pakhtunkhwa, who was not competent to decide the departmental appeal of the appellant, therefore, the impugned order is *corum-non-judice* and is liable to be set-aside on this score alone; that in view of Notification dated 22.05.2019 issued by the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing), the fixed pay/contract period of service of the appellant was required to have been counted towards pensionary benefits.

5. On the other hand, learned Assistant Advocate General for the respondents, has contended that the appellant was initially appointed as Lady Health Worker in the year 1997 on fixed pay/contract basis and her services were regularized vide office order dated 19.09.2014 with effect from 01.07.2012; that the appellant stood retired from service on 19.02.20219 and as such, she had performed duties as regular Lady Health Worker only for a period of about 07 years, 01 month and 18 days, while pensionary benefits could be granted to a civil servant, in case of completion of ten years or more regular service; that the appellant was having less than ten years regular service, therefore, she is not entitled to grant of any pensionary benefits; that the contractual period of service of an employee could not be legally counted in his regular service, therefore, the appeal filed by the appellant is liable to be dismissed.

6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. Keeping in view the respective arguments of both the sides, a perusal of the record would show that the appellant was initially appointed as Lady Health Worker on contract basis vide appointment order dated 31.10.1997 with effect from

01.11.1997, however after promulgation of Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and employees (Regularization and Standardization) Act 2014, the services of the appellant were regularized with effect from 1st July 2012. Vide Notification dated 15.04.2019 issued by District Health Officer Peshawar, the appellant stood retired from service with effect from 19.02.2019 without granting her any pensionary benefits. Now the question, requiring determination is as to whether the contract period of service of the appellant could be counted for granting her pensionary benefits or not? Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963, deal with the issue in question, which are reproduced as below:-

> " ***2.2 Beginning of Service-*** *Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post of which he is first appointed.*
>
> ***Rule 2.3 Temporary and officiating service*** *— Temporary and officiating service shall count for pension as indicated below:-*
>
> *(i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and*
>
> *(ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity".*

8. A bare perusal of the above mentioned rules make it clear that when a government servant is regularized, his total length of service is to be computed from the date he joined the service, whether temporary or otherwise. In this view of the matter, the length of service of the appellant shall be counted from the date of her initial appointment i.e 01.11.1997 for the purpose of pension and gratuity. Wisdom in this respect also derived from the judgment dated 22.06.2017 passed by august Peshawar High Court, Peshawar in Writ Petition No. 3394-P/2016 titled "Amir Zeb Versus District Account Officer Nowshera etc."

9. August Supreme Court of Pakistan in its judgment reported as 2015 PLC (C.S) 296 titled "Secretary to Government of Punjab, Finance Department Versus M. Ismail Tayer and 269 others, has graciously held that the pensionary benefits is not a bounty or ex-gratia payment but a right acquired in

consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant.

10. Consequent upon the above discussion, the appeal in hand is allowed and the respondents are directed to grant pensionary benefits to the appellant by processing and finalizing her pension case within a period of three months of receipt of copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

Correction made vide order dt 02/11/2022 passed in C.M.A. No 602/2022.

ANNOUNCED
13.07.2021 2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(ROZINA REHMAN)
MEMBER (JUDICIAL)

Service Appeal No. 11471/2020

ORDER
13.07.2022

Syed Noman Ali Bukhari, Advocate, for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed and the respondents are directed to grant pensionary benefits to the appellant by processing and finalizing her pension case within a period of three months of receipt of copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
13.07.2022

(Rozina Rehman)
Member (Judicial)

(Salah-Ud-Din)
Member (Judicial)

08.11.2021 Clerk of counsel for the appellant present. Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Clerk of counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of Lawyers. Adjourned To come up for arguments before the D.B. on 10.02.2022.

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

10-2-2022 Due to retirement of the Honoble Chairman the case is adjourned to come up for the same as before on 6/6/2022

Reader

06.06.2022 Appellant in person present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today due to strike of lawyers. Adjourned. To come up for arguments on 13.07.2022 before the D.B.

(Fareeha Paul)
Member (E)

(Salah-ud-Din)
Member (J)

11471/2020

21.06.2021

Junior to counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG alongwith Farman Shah, Junior Clerk for respondent No. 3 present and submitted reply/comments.

Reply of 1, 2 & 6 submitted. Reply of remaining respondents have not been despite the lapse of stipulated time.

Rest of the respondents have not submitted reply/comments. Learned AAG seeks time to contact the respondents. He is required to contact the respondents for submission of reply/comments in office within 10 days, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 08.11.2021 before the D.B.

Chairman

P.S

05.07.2021

Learned Addl: A.G be reminded about the omission and for submission of Reply/comments within extended time of 10 days.

Chairman

02.02.2021 Counsel for the appellant present.

Contended that the appellant had put in about 15 years service on contract basis as Lady Health Worker. She got retired in the year 2019 after serving for another seven years upon her regularization. She was, however, denied pension benefits through memo. dated 08.09.2020, impugned in the appeal.

Learned counsel also referred to provisions contained in Regularization of Lady Health Worker Programme and Employees (Regularization and Standardization) Act, 2014, and argued that although a cut off date i.e. 01.07.2012 was provided therein, an employee covered under the Act was made entitled to such pension and retirement benefits as may be determined by Government. In the context, he relied on Rule 2.3 of West Pakistan Civil Services Pension Rules 1963 and contended that in view thereof and also 2019 PLC (C.S) 1065, the appellant was entitled for the adding up of period served on contract basis in her length of service for the purpose of pension.

In view of arguments of learned counsel and available record, instant appeal is admitted to regular hearing subject to all just exceptions. Appellant is required to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 30.04.2021 before S.B.

Appellant Deposited Security & Process Fee

Chairman

30.04.2021 Due to demise of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 21.06.2021 for the same as before.

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 11471 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01/10/2020	The appeal of Mst. Noor Ul Huda presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on 16/11/2020. CHAIRMAN
	16.11.2020	Due to third day of mourning the demise of Honourable Chief Justice, Peshawar High Court, the members of the Bar are not appearing before the courts today. The matter is, therefore, adjourned to 02.02.2021 before S.B. Chairman

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. /2020

Mrs. Noor Ul Huda V/S The Govt. of KP etc

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2.	Appointment Order dt: 31.10.1997	---A---	05-06
3.	Regularization Order dt: 19.09.2014	---B---	07
4.	Notification mentioning her retirement	---C---	08
5.	Copy of Judgment in W.P. 3394-P/2016	---D--	09-20
6.	Copy of Judgment in W.P 2246-P/2016	---E--	21-28
7.	Copy of W.P/Departmental Appeal	---F---	29-32
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Noor-ul-Huda

APPELLANT

Noor-Ul-Huda

THROUGH:-

(M.ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT

(S. NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT,

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,

S. Khan

(SHAHKAR KHAN YOUSAFZAI)
ADVOCATE PESHAWAR

Room No. Fr-8, 4th Floor,
Bilour Plaza, Peshawar Cantt:
Contact No. 03339103240

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 11471 /2020

Mrs. Noor Ul Huda,
Ex-Lady Health Worker,
R/O House no. 760, Mohalla Qalander Abad,
Wazir Bagh Road, Tehsil and District Peshawar.

Khyber Pakhtunkhwa Service Tribunal
Diary No. 10860
Dated 01/10/2020

APPELLANT

VERSUS

1. The Secretary Health, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The District Health Officer, Judicial Complex, Khyber Road, Peshawar.
3. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. The District Accounts Officer, Fort Road, Peshawar.
5. The District Coordinator LHWs Program, Peshawar.
6. The Provincial Coordinator LHWs Program, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

Filed to-day
Registrar
01/10/2020

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 08.09.2020 WHEREIN THE DEPARTMENTAL APPEAL HAS BEEN REJECTED FOR NO GOOD GROUNDS.

.....

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 08.09.2020 MAY BE SET-ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO COUNT THE CONTRACTUAL/TEMPORARY PERIOD OF SERVICE OF THE APPELLANT TOWARDS HER RETIREMENT/PENSIONARY BENEFITS UNDER RULE 2.3 OF THE WEST PAKISTAN CIVIL SERVICES PENSION RULES, 1963 AND IN THE LIGHT OF THE AUGUST PESHAWAR HIGH COURT LARGER BENCH JUDGEMENTS DATED 22.06.2017 PASSED IN W.P. NO. 3394-P/2016 AND W.P. NO. 2246-P/2016 AND ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was appointed as Lady Health Worker (LHW) on contract basis on 31.10.1997 w.e.f. 01.11.1997 in OD Rashid Ghari in the respondent department. The appellant performed her duties with full dedication and no complaint has been filed against her. **(Copy of appointment order dated 31.10.1997 is attached as Annexure - "A").**

2. That vide order dated 19.09.2014 under the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014 the appellant along with other LHWs got regularized w.e.f. 01.07.2012. **(Copy of the regularization order dated 19.09.2014 is attached as Annexure - "B").**

3. That the appellant served the department with honesty from 01.11.1997 till her retirement on 19.02.2019, by rendering more than two decades (20 years) of service. **(Copy of notification mentioning her retirement is attached as Annexure - "C").**

4. That the appellant previous rendered service on contract/temporary basis was not counted towards her pension fixation/pensionary benefits, which caused a huge financial, loss to the appellant and kept her deprived from her right of proper fixation and grant of pension.

5. That the same issue was raised before the Honorable Peshawar High Court Larger Bench in Writ Petition nos. 3394-P/2016 and 2246-P/2016 which were decided on 22.06.2017. The august court has laid the dictum that the service rendered on fixed pay/contract basis is countable towards pension fixation and retirement benefits. **(Copies of the judgments are attached as Annexures - "D" & "E").**

6. That the appellant approached the Honorable Peshawar High Court in Writ Petition no. 4546-P/2019 for considering her contractual period towards her pensionary benefits. The Peshawar High Court, Peshawar vide judgment dated 02.10.2019 disposed of, by transmitted the same to the concerned secretary of KP to be treated it as a departmental appeal. **(Copy of the W.P & judgment is attached as Annexure –F & G).**

7. That the departmental appeal of the appellant was rejected by an incompetent authority vide order dated 08.09.2020 for no good grounds. The said order communicated to the appellant through endorsement. **(Copy of the Impugned Order dated 08.09.2020 is attached as Annexure - "H").**

8. That now the appellant comes to this August Tribunal on the following grounds amongst others:

GROUNDS:

A. That not counting the previous service rendered by the appellant as contract employee towards her pension fixation and pensionary benefits and the impugned refusal of the respondents is against the law, rules, norms of justice and material on record.

B. That the appellant is entitled to her claim under the West Pakistan Civil Services Pension Rules, 1963 Rule 2.3.

C. That even under 370 & 371 CSR the appellant is entitled to her claim and her previous service should have been counted towards her pension fixation and retirement benefits. The same view was also upheld by the August Supreme Court of Pakistan in a judgment reported as 2016 PLD(SC)-534.

D. That the appellant has not been dealt with according to law and rules and has been deprived from her proper fixation of pension and payment of pensionary benefits in an arbitrary and fanciful manner.

E. That the most recent judgment of the Honorable Peshawar High Court passed in Writ Petition No. 3221-P/2013 also upheld by the Supreme Court in C.A. No. 411/2020 on 23.09.2020 makes the appellant entitled for her claim.

F. That the appeal of the appellant was sent to Concerned Secretary for decision by the Peshawar High court, Peshawar but the same was decided by the incompetent authority so the impugned order is corum-non-judice and liable to be set-aside on this score alone.

G. That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Noor-ul-Huda

APPELLANT

Noor-Ul-Huda

THROUGH:

(M.ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT

(S. NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT,

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,

S. Khan

(SHAHKAR KHAN YOUSAFZAI)
ADVOCATE PESHAWAR

Annexure "A"

C/O RASHID AHMAD BILOR

C/o Rashid Ahmad Bilor

05

OFFICE OF THE DISTRICT HEALTH OFFICER, PESHAWAR.

OFFICE ORDER.

Subject: APPOINTMENT ORDER FOR LADY HEALTH WORKER UNDER PRIME MINISTER'S PROGRAMME FOR FAMILY PLANNING AND PRIMARY HEALTH CARE DISTRICT PESHAWAR.

On the recommendation of selection committee Miss NOOR UL HUDA D/O- W/O MUHAMMAD PARVAIZ of Village/Mohalla QALANDER ABAD Tehsil PESHAWAR is hereby appointed as Lady Health Worker (LHW) in CD RASHID GHARI w.e.f. 1-11-1997. on the following terms and conditions:-

30/10/97

1- The appointment will be purely on contract basis.

2- The appointment will be initially for one year. However it is extendable subject to satisfactory performance.

3- After selection she will be trained for a duration of 15 months. In the first 3 months she will attend training at the health centre for 5 days in a week. while during the next 12 months, she will work in her catchment area for 3 weeks in every month and will attend the training session at the health centre in the Ist week of every month.

4- She will be paid Rs. 50/= Per day during initial 3 months of training and subsequently she will be given a stipend of 1200/= per month.

5- She will have to work in this programme for atleast one year after completion of training for which she will have surety bond at the time of joining training on stamp paper of Rs. 50/=. If she wishes to resign within this period, she will have to deposit the whole amount of salary which she has received during training and service untill acceptance of resignation.

6- On expiry of surety bond period, if she wishes to resign, She will serve one month advance notice or will deposit one month's salary in lieu of notice.

7- The post is non transferable and the services will be terminated if the LHW move out of her area of appointment.

8- She will be required to establish a health house in her residence and maintain it according to the requirements of the programme. She will work closely with the local community and establish a local health committee and a women group with the assistance of the Field Supervisor and Health centre Staff.

9- She will be ensure her presence during the field visits of supervisors and will arrange home visit for them.

10- She will be required to open a bank account in the nearest bank to the training centre. The branch will be identified by the District PIU and her salary will be disbursed through this bank.

11- She will keep a proper record of supply and receipt from the health centre and will also maintain a proper record of consumption of the supplies and will provide this to the health centre every month at the time of receiving new supplies.

ATTESTED

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12 - She will maintain a proper record of the money being earnd through the sales of contraceptives (condoms and Pills). She will be required to submit the details of money every month to the health centre. If she is found guilty of wrong reporting or selling contraceptives to the unathorised persons of shops her services will be terminated alongwith other disciplinary action including the recovery of the amount involved.

13- She will submit a monthly report of her activities on the prescribed form to the health centre regularly.

14- She will be entitled for 20 days casual leave in a year. However there will be no leave during training period, and if she abstain herself unauthorisedly, her services will be terminated. She will be required to take the the sanction of leave from the health centre.

15- She will be entitled for 20 days maternity leave at one time which will commence 10 days before the delivery date untill 10 days after the delivery. After this she will resume her duties from her health home and then start field visits not later than one month from the date of delivery.

16- TA/DA will not be admissible on account of attending training or on any field visit.

District Health Officer,
Peshawar.

No. 676565/DHO, PIU, Dated Peshawar the 1/10/1997.

A Copy of the is forwarded to the :-

1- Provincial Coordinator, PMP, FP & PHC, NWFP, Peshawar.
2- Medical Officer, Incharge RHC/BHU/MCH/C.D/C.H./IDH/_____.
3- Official Concernd.
4- Supervisor Concernd (Local)
5- Dealing Clerk/Accounts Clerk Distt: PIU, FP & PHC, Peshawar.
6- District Coordinator PMP, FP & PHC, Peshawar.

For information and necessary action.

District Health Officer,
Peshawar.

U. TABASSUM/

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Annexure "B"

(7)

Health Department, Khyber Pakhtunkhwa
Lady Health Workers Program
District Programme Implementation Unit, Peshawar

No: DHO/DPIU

Date: /2014

OFFICE OF THE DISTRICT HEALTH OFFICER PESHAWAR
OFFICE ORDER

In terms of Section 4 (1) read with 1st Proviso there under, of the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act 2014, services of the following Lady Health Workers Program employees of district PESHAWAR Khyber Pakhtunkhwa are hereby regularized w.e.f 1st July 2012. Their terms and conditions of service will be governed under the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014 and rules to be made there under.

Sr. No	Name of Community Embedded Employee	Designation	Father Name	Husband Name	Date of appointment	TLCF	Name of Catchment Area
1	Noor-ul-Huda	LHW	Molvi Abdul Hadi	Muhammad Parveez	31/10/1997	CD Rasheed Gari	Kalandar Abad
2	Shaheen Akhtar	LHW	Sheer Afzal	Abdul Aziz	25/09/1999	CD Rasheed Gari	Hussain abad
3	Noor Hidayat Hadi	LHW	Molvi ali Hadir	Un Married	9/10/2001	CD Rasheed Gari	New Muhammad Abad
4	Rubina Shaheen	LHW	Naseem Khan	Un Married	16/3/2002	CD Rasheed Gari	Sharif abad
5	Noshena Ambreen	LHW	Abdul Qayoum	Haroon Naseem	20/03/2002	CD Rasheed Gari	Soft Colony
6	Shazia Tabsum	LHW	Ilyas	Ghulam Murtaza	1/7/2009	CD Rasheed Gari	Rehman Abad
7	Rizwana Shaheen	LHW	Roshan	Nasser Faisal	16/06/2009	CD Rasheed Gari	Sharif abad
8	Shakila	LHW	Mukhtar ul Afzal	Un Married	16/06/2009	CD Rasheed Gari	Mehmal abad
9	Arshia	LHW	Shah Zaman	Tanveer Hussain	17/7/2009	CD Rasheed Gari	Azeem abad

In exercise of powers conferred under sub section (2) of the Section ibid, the above Community Embedded Employees are placed in the following pay scales as mentioned against their respective designations.

Name of Post	Basic Pay Scale	No of Staff
Lady Health Supervisor	7	0
Lady Health Worker	5	9
Driver	4	0

-------Sd-------
District Health Officer
Peshawar

No:/10102-108/DHO/DPIU

Date: 19/09/2014

Copy forwarded to:

1. Accountant General Office Khyber PakhtunKhwa Peshawar.
2. Director General Health Services Khyber PakhtunKhwa, Peshawar.
3. Provincial Coordinator LHWs Programme Khyber PakhtunKhwa, Peshawar.
4. PS to secretary Health, Govt Khyber PakhtunKhwa, Peshawar.
5. District Coordinator LHWs Programme Khyber PakhtunKhwa, Peshawar.
6. SMO/MO Incharge CD Rashid Gari
7. All Officials Concern Staff

District Health Officer
Peshawar

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Health Department, Khyber Pakhtunkhwa
Lady Health Workers Program
District Programme Implementation Unit, Peshawar.

No DHQ DPIU

Dated _____2014

Office of the District Health Officer Peshawar
Office Order

In terms of Section 4(1) with 1st Proviso there under of the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regulation and standardization) Act 2014, services of the following Lady Health Workers Program employees of district Peshawar Khyber Pakhtunkwha are hereby regularized w.e.f 1st July 2012. Their terms and conditions of service will be governed under the Khyber Pakhtunkhwa Regulation of Lady Health Workers program and Employees (Regularization and Standardization) Act, 2014 and rules to be made there under.

Sr No	Name of community Embedded Employee	Designation	Father Name	Husband Name	Date of appointment	FLCF	Name of catchment Area
1	Noor Ul huda	LHW	Molvi Abdul Hadi	M Pervez	31.10.1997	CD Rasheed Gari	Kalandar ABad
2	Nasreen Akhtar	LHW	Sher Afzal	Abdul Aziz	25.09.199	CD Rasheed Gari	Hussain Abad
3	Rubina Shaheen	LHW	Movil Ali Hadir	Un married	9.10.2001	CD Rasheed Gari	New Muhammad ABad
4	Nosheen Ambareen	LHW	Naseem Khan	Un married	16.3.2002	CD Rasheed Gari	Sharif Abad
5	Shazia Tabasum	LHV	Abdul Qayum	Haroon Naseem Ahmad	20.03.2002	CD Rasheed Gari	Sofi Colony
6	Rozina	LHW	Resham	Naser Abad	16.06.2009	CD Rasheed Gari	Sharif Abad
7	Shakila	LHW	Muhammad Azhad	Din	16.06.2009	CD Rasheed Gari	Rehmat ABad
8	Nelofar	LHW	Shah Zaman	Omer	1.7.2009	CD Rasheed Gari	Azeem Abad

In exercise of powers conferred under Sub Section (2) of the Section ibid, the above Community Embedded Employees are placed as the following pay scales as mentioned against their respective designation.

Name Post	Basic Pay Scale	No of Staff
Lady Health Supervisor	7	0
Lady Health Worker	5	9
Driver	4	0

Sd
District Health Officer
Peshawar.

No. 10.03.08 DPIU

Date 19.09.2014

Copy forwarded to:-

1. Accountant General Office Khyber Pakhtunkhwa Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa Peshawar.
3. Provincial Coordinator LHWs Programme Khyber Pakhtunkhwa Peshawar.
4. PS to Seretary Health Govt of Khyber Pakhtunkhwa Peshawar.
5. District Coordination LHWS programme Khyber Pakhtunkhwa Peshawar.
6. SMO/MO Incharge CD Rashid Gari
7. All officials Conern Staf

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District Health Officer
Peshawar.

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Annexure "C" (08)

GOVERNAMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEALTH OFFICER PESHAWAR

Dated Peshawar the 15/06/2019
No. 3372-79 /DHO.DPIU

NOTIFICATION

NO.PA/Khyber PakhtunKhwa/Bills/2014/351. In terms of provision of The Khyber PakhtunKhwa Regulation of Lady Health Workers Program & employees (regularization & standardization) Act, 2014 (Para (4) Sub-Para (4) & (5) if the Khyber PakhtunKhwa Civil Servants Revised Leave Rules 1981 and instructions there under issued from time to time, sanction is hereby accorded to the grant of 338 days leave encashment in lieu of LPR in respect of Mr/Mst. Noor ul Huda W/o Muhammad Parveez BPS-05 attached to CD Rashid Gari/District Health Officer Peshawar.

2. In terms of Section-13 of the Khyber PakhtunKhwa Civil Servants Act 1973, the official shall stand retire from service on 19/02/2019AN on attaining the age of superannuation.

Sd/-xxxxxxxxxxxxxx
District Health Officer
Peshawar

A Copy is forwarded to the:-

1. Accountant General Khyber PakhtunKhwa Peshawar.
2. Provincial Coordinator LHWs Program Khyber PakhtunKhwa Peshawar.
3. District Coordinator LHWs Program Peshawar.
4. Litigation Officer DHO Office Peshawar.
5. Office Assistant.
6. Establishment section to update the retired personnel list.
7. Account section

For information an n/action.

District Health Officer
Peshawar

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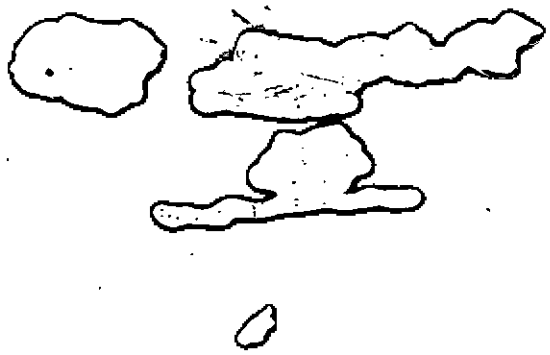

Annexure "D" (09)

IN THE PESHAWAR HIGH COURT, PESHAWAR,
[Judicial Department].

Writ Petition No.3394-P/2016

Date of hearing:- 22.06.2017

Petitioner(s):- Amir Zeb Widower of Mst. Asiya Shah by Mr. Khush Dil Khan, Advocate.

Respondent (s):- The District Account Officer, Nowshera & others by Syed Qaisar Ali Shah, AAG.

SEAL OF HIGH COURT PESHAWAR عدالت عالیہ پشاور

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through this Common judgment, we, propose to decide the following Constitutional Petitions filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 **(the Constitution)**, as identical questions of law and facts are involved therein and the writ sought by the petitioners is also one and the same.

1. **Writ Petition No.3394-P/2016**
(Amir Zeb Vs District Account Officers Nowshera etc)
2. **Writ Petition No.2867-P/2016**
Mst. Akhtar Bibi Vs District Education Officer (M) Kohat etc).
3. **Writ Petition No.3143-P/2014**
(Muhammad Shah Zaib etc Vs Govt of Khyber Pakhtunkhwa through Chief Secretary and others)
4. **Writ Petition No.2872-P/2014.**
Hakeem Khan through LRs Vs Govt.of KPK through Sectary Elementary & Secondary Education, Peshawar etc)
5. **Writ Petition No.1339-P/2014**
(Mst. Rani Vs Sub-Division Education Officer etc).
6. **Writ Petition No.55-P/2015**
(Mst. Bibi Bilqees Vs Govt of KPK through Secretary Finance, Peshawar).

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2. Amir Zeb petitioner in W.P. No.3394-P/2016 is the widower of Mst. Asiya Shafi (late). His grievance is that on 28.02.2003, his wife was initially appointed as PTC on contract basis and, later on, by virtue of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, her service was regularized. On 31.07.2015, during her service, she met her natural death, therefore, he being her widower/LR applied for payment of her all admissible retirement benefits, in pursuance whereof, leave encashment, GP fund and other admissible funds were paid to him by the respondents, but his pension claim was refused by the respondents on the ground of lack of prescribed length of her regular service, excluding the period of her service on contract, hence, this petition.

3. Mst. Akhtar Bibi, the petitioner in Writ Petition No.2867-P/2016, is the widow of (late) Lal Din Class-IV employee. She has averred in her writ petition that her late husband was initially appointed as Chowkidar on 01.10.1995 on contract basis, however, later on, his service was regularized vide Notification No.BO1-1-22/2007-08 dated 05.08.2008. On 15.05.2010, the deceased died during his service, so she applied for her pension but the same was refused to her on the ground that the regular service of the deceased employee was less than the prescribed length of regular service, hence, this petition.

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4. Muhammad Shah Zaib and Muhammad Afnan Alam are the LRs of deceased Fakhar Alam. Their grievance is that their deceased father was appointed as Chowkidar on 13.01.1998 in Mother Child Health Centre Tank, who, later on, during his service was murdered, for which FIR was registered against the accused. Petitioners applied for retirement of the deceased. Vide notification dated 31.12.2013, the deceased was retired from service on account of his death w.e.f. 21.10.2013. The family pension of the deceased was prepared and processed, however, the same was refused to the petitioners, hence, this petition.

5. Petitioners in Writ Petition No.2872-P/2014, are the LRs of deceased Hakeem Khan Class-IV employee, who died during pendency of the instant writ petition. Grievance of the petitioners is that their predecessor was appointed as Chowkidar on fixed pay in Education Department on 24.04.1993. Vide order dated 29.01.2008, service of the deceased alongwith his counterparts was regularized by virtue of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 w.e.f. 30.06.2001. On attaining the age of superannuation, the deceased got retired on 31.12.2012, so petitioner applied for grant of his pension but the same was refused, hence, this petition.

6. Mst. Rani, petitioner in Writ Petition No.1339-P/2014, is the widow of Syed Imtiaz Ali Shah (late) Class-IV employee. She has averred in her writ

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petition that on 15.01.1996 her late husband was appointed as Chowkidar in the respondents department on adhoc basis/fixed pay, whose service was, later on, regularized on 30.07.2008. During his service, the deceased met his natural death on 15.01.2012, hence, the petitioner applied for her pensionary benefits, but the same was refused on the ground that though service of the deceased was regularized but without pension gratuity, hence, this petition.

7. Mst. Bibi Bilqees, petitioner in Writ Petition No.55-P/2015, is the widow of Saif ur Rehman deceased. Her grievance is that her deceased husband was initially appointed as Chowkidar on 09.07.1995 in Public Health Department Nowshera on contract basis, however, his service was regularized on 01.07.2008. The deceased died during his service on 05.05.2012, so when petitioner applied for his pensionary benefits, the same was refused to her on the ground that the deceased was lacking the prescribed length of regular service, hence, this petition.

8. Respondents in the above writ petitions have filed their respective Para-wise comments, wherein they have admitted the fact that the pensions have been refused to the petitioners/LRs of the deceased employees because they were lacking the prescribed length of their regular service, whereas period of adhoc or contract service cannot be counted towards regular service for the purpose of pension.

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The learned Addl. A.G. also questioned the maintainability of the writ petitions on the ground that section 19 (2) of the Khyber Pakhtunkhwa Civil Servant Acts deal with right of pension of deceased civil servant, which squarely falls in Chapter-II, pertaining to terms and conditions of service, therefore, jurisdiction of this Court under Article 212 of the Constitution is barred.

9. Having heard the arguments of learned counsel for the parties, record depicts that undisputedly the deceased employees were the Civil Servants and instant writ petitions have been filed by their LRs qua their pensions. Since the controversy pertains to pension of the deceased employees which according to the contention of worthy Law Officer is one of the terms and conditions of a civil servant under section 19 (2) of the Civil Servants Act, 1973, hence, before determining the eligibility of the deceased employees to the pension or otherwise, we, would like to first meet the legal question qua maintainability of the instant writ petitions on the ground of lack of jurisdiction of this Court under Article 212 of the Constitution. To answer the question, it would be advantageous to have a look over the definition of **"Civil Servant"** as contemplated under section 2(b) of Khyber Pakhtunkhwa Civil Servants Acts, 1973 and section 2 (a) of Khyber Pakhtunkhwa Service Tribunal Act, 1974. For the sake of convenience and ready reference, definition

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given in both the Statute are reproduced below one after the other

> "2(b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include---
>
> (i) A person who is on deputation to the Province from the Federation of any other Province or other authority;
>
> (ii) A person who is employed on contract or on work charged basis, or who is paid from contingencies; or
>
> (iii) A person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VII of 1923)".

> "S.2(a) **"Civil Servant"** means a person who is or has been a civil servant within the meaning of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.XVIII of 1973), but does not include a civil servant covered by the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991;]

As per the definitions of a **"civil servant"** given in the two Statutes referred to above, the petitioners neither holding any civil post in connection with the affairs of the Province nor have been remained as civil servants, thus, do not fall within the definition of **"civil servant"**.

10. Though section 19(2) of the Khyber Pakhtunkhwa Civil Servants Acts, 1972, in the event of death of a civil servant, whether before or after retirement conferred a right of pension on his/her family who shall be entitled to receive such pension or gratuity or both as prescribed by Rules. It is also undeniable fact that pension and gratuity fall within the ambit of terms and conditions of a civil servant, but a legal question would arise as to whether the legal heirs i.e. family of a deceased civil servant would be competent to agitate his/her/their grievance regarding pension before the Service Tribunal, particularly, when

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he/she/they do not fall within the definition of Civil Servant. The Service Tribunals have been constituted under Article 212 of the Constitution for dealing with the grievances of civil servants and not for their legal heirs. The question regarding filing appeal by the legal heirs of deceased's civil servant and jurisdiction of Service Tribunal, cropped up before the Hon'ble Supreme Court in case titled, **"Muhammad Nawaz Special Secretary Cabinet Division through his Legal Heirs Vs Ministry of Finance Government of Pakistan through its Secretary Islamabad"** (1991 SCMR 1192), which was set at naught in the following words:-

> "A 'civil servant' has been defined in section 2(b) of the Civil Servants Act, 1973. A right of appeal under the Service Tribunals Act, 1973 has been given to a civil servant aggrieved by any final order whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his serve. The appellants admittedly are the legal heirs of the deceased civil servant and there being no provision in the service Tribunals Act of 1973 to provide any remedy to the successors-in-interest of a civil servant, the learned Tribunal, in our view, was correct in holding that the appeal before it stood abated and the same is hereby maintained".

In case titled, **"Rakhshinda Habib Vs Federation of Pakistan and others"** (2014 PLC (C.S) 247), one Habib ur Rehman Director General in Ministry of Foreign Affairs, aggrieved by his supersession filed appeal before the worthy Service Tribunal, but unfortunately, during pendency of appeal he died, therefore, his appeal before the Federal Service Tribunal Islamabad was abated. Rakhshinda Habib, the widow of

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deceased then filed constitution petition No.1021 of 2010 before the Islamabad High Court, but the same was dismissed vide judgment dated 13.06.2013, against which she preferred aforesaid appeal before the Hon'ble Supreme Court, which was allowed and it was held by the worthy apex court that:-

> "That civil servant could not be promoted after his death, however, pensionary benefits of promotion could be extended to the legal heirs of the deceased employees".

11. Going through the law on the subject and deriving wisdom from the principles laid down by the Honble apex Court in the judgments (supra), we are firm in our view that petitioners/legal heirs of the deceased employees have locus standi to file these petitions because the pensionary benefits are inheritable which under section 19 (2) of the Khyber Pakhtunkhwa Civil Servant Act, on the demise of a civil servants, devolves upon the legal heirs. The petitioners, as stated earlier, being LRs of the deceased civil servants do not fall within the definition of "Civil Servant", and they having no remedy under section 4 of the Service Tribunal Act to file appeal before the Service Tribunal, the bar under Article 212 of the Constitution is not attracted to the writ petitions filed by them and this Court under Article 199 of the Constitution is vested with the jurisdiction to entertain their petitions. Resultantly, the objection regarding non-maintainability of the petitions stands rejected.

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12. Adverting to question of entitlement of the deceased employees to the pension, we, would like to reproduce the relevant rules of the West Pakistan Civil Services Pensions Rules, 1963 below, as these would advantageous in resolving the controversy:-

> "2.2. **Beginning of service-** Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed."
>
> **Rule 2.3 Temporary and officiating service**—Temporary and officiating service shall count for pension as indicated below:-
>
> (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and
>
> (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

13. The rules ibid reveal that the service of government servant begins to qualify for pension from the very first day of his/her taking over the charge, irrespective of the fact whether his/her appointment and entry in to service was temporary or regular. It is also clear from sub-rule (i) that continuous temporary service of a civil servant shall also be counted for the purpose of pension and gratuity and by virtue of sub rule (ii), temporary and officiating service followed by confirmation shall be counted for pension and gratuity. It is undeniable fact that the NWFP Civil Servant (Amendment Bill), 2005 was passed by the provincial assembly on 5th July 2005 and

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assented by the Governor of the Province on 12th July 2005 whereby section 19 was amended and all the employees of the Provincial Government selected for appointment in the prescribed manner to the post on or after 1st day of July 2001, but on contract basis were deemed to be appointed on regular basis. They were declared Civil Servants, however, were held disentitled for the pensionary benefits. Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013. The text of section 19 (4) (proviso 1 and 2) are reproduced as below:-

> *"Provided that those who are appointed in the prescribed manner to a service or post on or after the 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis:*
>
> *Provided further that the amount of Contributory Provident Fund subscribed by the civil servant shall be transferred to his General Provident Fund."*

14. From bare reading of section 19 of Amendment Act, 2005 and 2013 respectively, it is manifest that the persons selected for appointment on contract basis shall be deemed as regular employee and subsequently were held entitled for pensionary benefits. The deceased employees have completed the prescribed length of service as their service towards pension shall be counted from the first day of their appointment and not from the date of regularization of their service.

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15. We deem it appropriate to mention here that question of interpretation and true import of the term pension was raised before the august Supreme Court of Pakistan in case titled **"Government of NWFP through Secretary to Government of NWFP Communication & Works Department, Peshawar Vs Muhammad Said Khan and others (PLD 1973 Supreme Court of Pakistan 514)** wherein it was held that:

> *"It must now be taken as well settled that a person who enters government service has also something to look forward after his retirement to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well settled that pension like salary of a civil servant is no longer a bounty but a right acquired after putting a satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."*

16. In case titled **"Secretary to Govt: of the Punjab, Finance Department Vs M. Ismail Tayer and 269 others" 2015 PLC (CS) 296,** the august Supreme Court of Pakistan was pleased to held that the pensionary benefits is not a bounty or ex-gratia payment but a right acquired in consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant.

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17. For what has been discussed above, we by allowing these writ petitions, issue a writ to the respondents departments to pay pension of the deceased employees to the petitioners/LRs of the deceased.

Announced:
22.06.2017
Siraj Afridi P.S.

Gul Rashid Khan Adv
Sh. Qalender Ali Adv
Sh. Syed Mehmood Akhtar Shah Adv

JUDGE

JUDGE

JUDGE

عدالت عالیہ پشاور
SEAL OF THE PESHAWAR HIGH COURT

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984
20 JUL 2017

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Date of Presentation of Application 14/7/17
No of Pages 20
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Urgent Fee
Total 80-00
Date of Preparation of Copy 20/7/17
Date Given For Delivery 20/7/17
Date of Delivery of Copy 31/7/17
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Annexure "E"

IN THE PESHAWAR HIGH COURT PESHAWAR

(21)

WRIT PETITION No. 2246 P/2016

Rizwanullah
s/o Muhammad Ali Khan
R/o Village Nasatta, Tehsil and District Charsadda ..... *Petitioner*

SEAL PESHAWAR HIGH COURT

Versus

1. **The Govt. of Khyber Pakhtunkhwa**
   through Secretary Health,
   Civil Secretariat, Peshawar.

2. **The Secretary**
   Govt. of Khyber Pakhtunkhwa
   Finance Department,
   Civil Secretariat, Peshawar.

3. **The District Accounts Officer,**
   District Charsadda.

4. **The District Health Officer,**
   District Charsadda..... *Respondents*

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

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. **That** petitioner was appointed as Class-IV employee/Baheshti by Respondent No.4 way back on 09.03.1995 in the Health Department and in pursuance of the appointment order he submitted Charge Report and since then had been performing his duties to the entire satisfaction of the high-ups till his retirement. (Extracts from the Service Book *Annex*:-A).

2. **That** petitioner served the Department in that capacity for a period of more than 20 years and stood retired on attaining the age of superannuation vide Office order dated 07.07.2015 (*Annex*:-B) while being posted at BHU Nasatta District Charsadda.

FILED TODAY
Deputy Registrar
09 JUN 2016

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EXAMINER
Peshawar High Court
21 SEP 2017

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IN THE PESHAWAR HIGH COURT, PESHAWAR,

[Judicial Department].

Writ Petition No.2246-P/2016

Date of hearing:- 22.06.2017

Petitioner(s):- Rizwanullah by Mr. Khalid Rehman, Advocate.

Respondent (s):-By Syed Qaisar Ali Shah AAG.

SEAL OF HIGH COURT PESHAWAR عدالت عالیہ پشاور

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through this common judgment, we, propose to decide the following writ petitions as identical questions of law and facts are involved therein:-

Writ Petition No.2246-P/2016
Rizwan Ullah Vs Govt
Writ Petition No.290/2016
Haq Nawaz Vs Govt
Writ Petition No.3061-P/2015
Mehrab Gul Vs Govt
Writ Petition No.1084-P/2017
Saadullah Khan Vs Govt
Writ Petition No.1281-P/2016
Naimatullah Vs Govt.
Writ Petition No.1626-P/2015
Shafiq ur Rehman Vs Govt
Writ Petition No.1861-P/2016
Siyal Khan Vs Govt
Writ Petition No.2177-P/2016
Hamidullah Khan Vs Govt
Writ Petition No.3373-P/2016
Anderaz Gul Vs Govt
Writ Petition No.286-P/2016
Basir Azam Vs Govt
Writ Petition No.2868-P/2016
Gulistan Khan Vs Govt
Writ Petition No.3226-P/2016
Ashiq Ali Vs Govt
Writ Petition No.4623-P/2016
Said Mali Khan Vs Govt
Writ Petition No.4924-P/2016
Malik Wali ur Rehman Vs Govt
Writ Petition No.457-P/2016
Liaq Shah Vs Govt

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Writ Petition No.4923-P/2016
Gul Zarin Vs Govt
Writ Petition No.4086-P/2016
Hayat Hussain Vs Govt
Writ Petition No.3203-P/2016
Muhammad Rehman Vs Govt
Writ Petition No.4179-P/2015
Mian Asfandyar Vs Govt
Writ Petition No.181-D/2017
Parveen Begum Vs Govt.
Writ Petition No.2876-P/2014
Sher Ali Vs Govt
Writ Petition No.501-P/2016
Fazal Khan Vs Govt
Writ Petition No.2064-P/2016
Rahim Shah Vs Govt
Writ Petition No.4683-P/2016
Abdul Qadeer Vs Govt
Writ Petition No.3451-P/2016
Nisar Bacha Vs Govt
Writ Petition No.3071-D/2016
Shah Jehan etc Vs Govt.
Writ Petition No.3368-P/2016
Abdul Ghaffar Vs Govt
Writ Petition No.3639-P/2016
Nadar Khan Vs Govt
Writ Petition No.3367-P/2016
Syed Muzarab Shah Vs Govt
Writ Petition No.3369-P/2016
Muhammad Faiq Vs Govt
Writ Petition No.3370-P/2016
Syed Man Shah Vs Govt
Writ Petition No.590-P/2017
Rab Nawaz Khan Vs Govt
Writ Petition No.204-P/2017
Zahir Shah Vs Govt
Writ Petition No.1072-P/2017
Noor Zada Vs Govt
Writ Petition No.337-D/2014
Ali Man Shah Vs Govt
Writ Petition No.724-D/2016
Ghulam Shabir Vs Govt
Writ Petition No.651-D/2016
Syeda Allah Wasaye Vs Govt
Writ Petition No.515-D/2016
Rab Nawaz Vs Govt
Writ Petition No.2-D/2015
Muhammad Jaffar Vs Govt
Writ Petition No.278-D/2017
Rashid Ahmad Vs Gomal University
Writ Petition No.31-D/2017
Mehmood ul Hassan Vs Govt

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Writ Petition No.880-D/2016
Abdul Rashid Vs Govt
Writ Petition No.94-D/2016
Rab Nawaz Vs Govt
Writ Petition No.399-D/2014
Bibi Amna Vs Govt
Writ Petition No.410-D/2016
Rehmatullah Vs Mst. Azra Bibi
Writ Petition No.1397-P/2014
Azam Khan Vs Govt
Writ Petition No.1396-P/2014
Roshan Din Vs Govt
Writ Petition No.620-P/2015
Saleem Khan Vs Govt
Writ Petition No.376-P/2015
Muhammad Ramzan Vs Govt
Writ Petition No.843-P/2015
Lachi Khan Vs Govt
Writ Petition No.4538-P/2015
Raham Khan Vs Govt
Writ Petition No.176-P/2016
Shah Nawaz Vs Govt
Writ Petition No.1167-P/2016
Muhammad Shoaib Vs Govt
Writ Petition No.599-P/2016
Abdur Rehman Vs Govt
Writ Petition No.2044-P/2016
Muhammad Aslam Khan Vs Govt
Writ Petition No.4798-P/2016
Dilfaraz Vs Govt
Writ Petition No.4799-P/2016
Muhammad Iqbal Vs Govt
Writ Petition No.3506-P/2016
Noor Muhammad Shah Vs Govt
Writ Petition No.588-P/2017
Mumtaz Khan Vs Govt
Writ Petition No.4800-P/2016
Sherullah Jan Shah Vs Govt
Writ Petition No.4801-P/2016
Muhammad Azam Khan Vs Govt
Writ Petition No.4802-P/2016
Zinda Khan Vs Govt
Writ Petition No.842-P/2015
Wakeel Khan Vs Govt
Writ Petition No.4131-P/2016
George Masih Vs Govt

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2. Facts in brief forming the background of the above writ petitions are that petitioners are Class-IV employees. They were initially recruited/appointed on

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contract/adhoc/temporary/ fixed pay basis in various departments of the Government of Khyber Pakhtunkhwa. By virtue of the Khyber Pakhtunkhwa Regulation Acts, their service was, later on, regularized. After their retirements, the petitioners have been refused pension by the respondents-departments on the ground of lack of prescribed length of their regular service. Grievance of the petitioner is that the respondents-departments by excluding the period of their temporary/adhoc/ contract/fixed pay service towards their regular service, have illegally deprived them from pension as under the law and rules their temporary service was to be calculated/counted with regular service, hence, these writ petitions.

3. On day before yesterday i.e. 20.06.2017, these writ petitions along with connected writ petitions in respect of family pension of deceased civil servants, were fixed for hearing. The moment, these writ petitions were taken up for hearing, learned A.A.G. raised a preliminary objection qua maintainability of the instant writ petitions on the ground that since the petitioners are retired civil servants and they claiming their right conferred upon them by section 19 of the Khyber Pakhtunkhwa Civil Servant Acts, 1973, which pertains to the terms and conditions of a civil servant, therefore, the jurisdiction of this Court is barred under Article 212 of the Constitution as the same exclusively falls in the domain of the Service Tribunal.

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4. When confronted with the preliminary objection, learned counsel for the petitioners sought time to assist the Court, hence, the cases were posted for today.

5. Today, learned counsel for petitioners tried their level best to wriggle out of the situation by submitting that petitioners are no more civil servants as they have already been retired from service, hence, under section 4 of Service Tribunals Act, 1973, their appeals before the Service Tribunal would be incompetent. The next limb of their arguments was that since the petitioners have been discriminated, therefore, under Article 25 of the Constitution, this Court is vested with the powers to quash the illegal action and inaction of the respondents. Some of learned counsel for the petitioners straightaway conceded the bar on the jurisdiction of this Court in the matter of pension under Article 212 of the Constitution and requested for treating the instant petitions as Departmental Appeals and sending the same to the competent authority for onward proceeding.

6. We are not in consonance with the first argument of learned counsel for the petitioners because under section 2 (a) of the Service Tribunal Act, 1973, "civil servant" means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973. Petitioners are retired civil servants. Admittedly, dispute regarding pension of a civil servant squarely falls in terms and conditions of service of a civil servant, hence, Service Tribunal is vested

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Peshawar High Court
21 SEP 2017

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with exclusive jurisdiction in such like matter. It has persistently been held by this Court as well as by the august Supreme Court of Pakistan that a civil servant, if aggrieved by a final order, whether original or appellate, passed by the departmental authority with regard of his/her terms and conditions of service, the only remedy available to him/her would be filing of appeal before the Service Tribunal even if the case involves vires of particular Rule or notification.

7. So far as the argument of learned counsel for petitioner with regard to discriminatory treatment and violation of Article 25 of the Constitution is concerned, we deem it necessary to clarify that a civil servant cannot bypass the jurisdiction of Service Tribunal by taking shelter under Article 25 of the Constitution in such like matter. The Service Tribunal shall have the exclusive jurisdiction in a case which is founded on the terms and conditions of service, even if it involves the question of violation of fundamental rights because the Service Tribunals constituted under Article 212 of the Constitution are the outcome of the constitutional provisions and vested with the powers to deal with the grievances of civil servants arising out from original or appellate order of the department.

8. As regards the submission of learned counsel for petitioners to treat the instant writ petitions and send the same to the concerned authority for consideration/decision, the same has weight. In this regard we are fortified by the

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EXAMINER
Peshawar High Court
21 SEP 2017

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judgment of the august apex Court in case titled, "**I.A. Sherwani and others v Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041).**

9. In view of the above, it is held that all these writ petitions are not maintainable, however, in the interest of justice, we instead of dismissing the same, transmit to the concerned Secretaries to the Government of Khyber Pakhtunkhwa to treat them as departmental appeals and decide strictly in accordance with Civil Servants Pension Rules, 1963.

10. Before parting with the judgment, we, deem it appropriate to mention here that the concerned Secretaries while deciding the departmental appeals, may take guidance from the judgment of this Court rendered in **Writ Petition No.3394-P/2016, titled, "Amir Zeb Vs District Account Officer Nowshera etc" dated 22.06.2017**, wherein guideline has been provided for eligibility of a civil servant for the pension who had served on adhoc/contract and fixed pay basis.

Announced:
22.06.2017
Siraj Afridi P.S.

Mr. Rooh ul Amin adv.
Mr. Rehmat Ali adv.
Mr. Syed Mohammad Kaif Shah adv.

JUDGE

JUDGE

JUDGE

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CERTIFIED TO BE TRUE COPY
Peshawar
Article 87 of
Order 1984
21 SEP 2017

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Annexure F

29

SEAL OF HIGH COURT PESHAWAR
عدالت عالیہ
پشاور

W.P.No._____2019

Mst.Noor-ul-Huda w/o Muhammad Parvez
Ex-Lady Health Worker
R/O Rasheed Garhi, Tehsil and District Peshawar..... Petitioner

Versus

1) Govt. of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
2) Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3) District Health Officer, Judicial Complex, Khyber Road, Peshawar
4) Accountant General, Khyber Pakhtunkhwa, Peshawar.
5) District Accounts Officer, Fort Road, Peshawar.
6) District Coordinator LHWs Program, Peshawar.
7) Provincial Coordinator LHWs Program, Khyber Pakhtunkhwa, Peshawar..... Respondents

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

Respectfully Sheweth;

Petitioner humbly submits as under:

1) That petitioner belongs to a respectable family and permanent resident of District Peshawar. (Copy of CNIC is Annexure "A").

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ATTESTED
EXAMINER
Peshawar High Court

2) That the petitioner was initially inducted in the respondent-department as Lady Health Worker in BPS-5 on fixed pay on 01.10.1997. (Copy of the order is Annexure "B").

3) That the petitioner was performing her duties with zeal, zeat, honesty and punctuality and to the entire satisfaction of her seniors and colleagues.

4) That later on regularized in the said department under the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regulations and Standardization) Act, 2014 w.e.f. 01.07.2012. (Copy of the office order dated 19.09.2014 is Annexure "C").

5) That the petitioner served the department with honesty from 01.10.1997 to 01.07.2012 and the petitioner was then retired from the service on 19.02.2019 on attaining the age of superannuation. (Copy of notification dated 15.04.2019 is Annexure "D").

6) That as per pensionary rules and judgments of the superior courts the contract period of service will be counted for the purpose of pension and pensionary benefits on confirmation into service later on, but the respondents have denied the pensionary benefits. So the petitioner has no other adequate remedy for the redressal of her grievances, hence the instant writ petition on the following grounds inter alia;

GROUNDS:

a. That the action and inaction of the respondents of non-counting of the contract period into permanent service for the purpose of pensionary benefit is arbitrary, spiteful, fanciful and unjust.

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EXAMINER
Peshawar High Court

b. That the indifferent behaviour of the respondents towards the pensionary benefit of the petitioner is based on red-teposim and is an embodiment of nepotism and discrimination.

c. That in the impugned action there is no legal consideration.

d. That the impugned action and inaction is illegal, without lawful authority and without jurisdiction and is activated by malice and has got no legal value in the eye of law.

e. That petitioner has been discriminated, which is violative of Article 25/27 of Constitution of Pakistan.

f. That impugned act/ action is against Article 4 of the Constitution of Pakistan, 1973 as every citizen is to be dealt with in accordance with law.

g. That as per the judgments of the apex court and law in respect of pension if the services of an employee regularized then in that case the contract period shall be counted for the purpose of pension but the case in hand the respondents totally ignored the law on the subject.

h. That as per law petitioner was a regular civil servant and her contract service and regular service is to be counted for pay and pension.

It is, therefore, humbly prayed that on acceptance of this writ petition, respondents may please be directed to count the contract service period of the petitioner as regular service (being a regular employee) for the purpose of pension and pensionary benefits and the respondents may also be directed to release the same to the petitioner.

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EXAMINER
Peshawar High Court

Any other relief which this hon'ble court deems appropriate in the circumstances of the case though not specifically asked for may kindly also be granted.

32

Petitioner

Through

Asad Jan Durrani
Advocate High Court

CERTIFICATE:
Certified as per information furnished by my clients that no such like writ petition has earlier been filed by them before this Hon'ble Court.

LIST OF BOOKS:

1) Constitution of Islamic Republic of Pakistan, 1973.
2) Law books as per need.

Advocate

ATTESTED
EXAMINER
Peshawar High Court

ATTESTED

FORM OF ORDER SHEET

Annexure G

Court of .....

Case No.....

33

Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	02.10.2019.	**WP No.4546-P/2019.** **Present:-** **Mr. Asad Jan Durrani Advocate, for the petitioner.** **Mr. Rab Nawaz Khan AAG, for official respondents.** ===== **IKRAMULLAH KHAN, J:-**Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, petitioner Mst. Noor-ul-Huda has prayed for the following relief:- ***"that on acceptance of this writ petition, respondents may please be directed to count the contract service period of the petitioner as regular service (being a regular employee) for the purpose of pension and pensionary benefits and the respondents may also be directed to release the same to the petitioner."*** 2. In essence, petitioner was initially

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EXAMINER
Peshawar High Court

Health Worker in BPS-5 on fixed pay on 1.10.1997, who was lateron regularized in the department under the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regulations and Standardization) Act, 2014 w.e.f 1.7.2012. She was retired from the service on 19.2.2019 vide notification dated 15.4.2019 but the respondents denied the pensionary benefits to the petitioner, hence the petitioner approached this Court by filing the instant writ petition.

3. It is pertinent to mention here that in identical cases Hon'ble Larger Bench of this Court while deciding Writ Petition No.2246-P/2016 alongwith other writ petitions through single judgment dated 22.6.2017, has held that:-

> ***"We are not in consonance with the first argument of learned counsel for the petitioners because under section 2 (a) of the Service Tribunal Act, 1973, "civil servant" means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973. Petitioners are retired civil servants. Admittedly, dispute regarding pension of a civil servant squarely falls in terms and conditions of service of a civil servant, hence, Service Tribunal is***

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EXAMINER
Peshawar High Court

[illegible] exclusive jurisdiction in such like matter. It has persistently been held by this Court as well as by the august Supreme Court of Pakistan that a civil servant, if aggrieved by a final order, whether original or appellate, passed by the departmental authority with regard of his/her terms and conditions of service, the only remedy available to him/her would be filing of appeal before the Service Tribunal even if the case involves vires of particular Rule or notification."

Similarly, at concluding portion of the above writ petition, the Hon'ble Larger Bench of this Court also held that:-

> *"In view of the above, it is held that all these writ petitions are not maintainable, however, in the interest of justice, we instead of dismissing the same, transmit to the concerned Secretaries to the Government of Khyber Pakhtunkhwa to treat them as departmental appeals and decide strictly in accordance with Civil Servants Pension Rules, 1963.*
>
> *10. Before parting with the judgment, we, deem it appropriate to mention here that the concerned Secretaries while deciding the departmental appeals, may take guidance from the judgment of this Court rendered in Writ Petition No.3394-P/2016, titled, "Amir Zeb Vs District Account Officer Nowshera etc" dated 22.06.2017, wherein guideline has been provided for eligibility of a civil servant for the pension who had served on adhoc/contract and fixed pay basis.*

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Peshawar High Court

The facts as well as the legal proposition involved in this case is similar to the one already decided by Hon'ble Larger Bench of this Court in the above mentioned cases, therefore, this Court could not take a different view, hence, this writ petition is also disposed in terms mentioned in the above Writ Petition thereby transmitting it to the concerned Secretary to the Government of Khyber Pakhtunkhwa to treat it as departmental appeal and decide strictly in accordance with Civil Servants Pension Rules, 1963.

Announced.
2.10.2019.

JUDGE

No. 6912
Date of Presentation of Application 03-10-19
No of Pages
Copying fee 32
Total
Date of Preparation of Copy 09-10-19
Date of Delivery of copy 09-10-19
Received By

CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 87 of the Qanun-e-Shahadat Order 1984
09 OCT 2019

ATTESTED

Annexure "H"

37

Health Department, Khyber Pakhtunkhwa
Lady Health Workers Program
Provincial Programme Implementation Unit, Peshawar

Phone 091-9216344-42 Fax. 091-9216346

No. 2936-42 DHS/IHP/2018-19 Dated 08/09/2020

To,

The Director General Health Services,
Khyber Pakhtunkhwa

Subject: **APPLICATION FOR PENSION IN R/O MRS. NOOR UL HUDA, EX-LHW BPS-05, ATTACHED TO DISTRICT HEALTH OFFICER, PESHAWAR.**

It is with reference to your office letter NO. 952-53/AE-VI dated 05-03-2020 on the subject noted above and to state that Section-8 of the Khyber Pakhtunkhwa Provincial Assembly Act No. XXVI of 2014 provides that:

"The Programme employees shall be dealt in accordance with the provision of this Act and rules: provided that if no specific rules are available on any matter, the Govt. rules shall be applicable to such Programme Employees"

Similarly, Rule-17 of the "THE KHYBER PAKHTUNKHWA REGULATION OF LADY HEALTH WORKERS PROGRAM EMPLOYEES SERVICE RULES, 2015" provides that:

"Rules made by Government, regulating Pension, General Provident Fund, Benevolent Fund and Group Insurance shall apply for regulating the matters of Pension, General Provident Fund, Benevolent Fund and Group Insurance for those employees of Program whose services have been regularized under this Act"

It is also pertinent to mention that as per Judgment of the Supreme Court of Pakistan in Crl Original Petition NO. 15/12 and Crl Original Petition No. 73/12, the services of the Programme employees have been regularized w-e-f 01-07-2012 as initial appointment.

As per pension rules, a Govt. servant can only be entitled for pension, if he/she retires after rendering ten years ***regular service*** and may entitle for gratuity, if he/she renders five years regular services.

Therefore, the rules made by Govt. regulating the pension of Govt. servants, may apply to the Programme employees.

As far as the case of Mrs Noor Ul Huda is concerned, she approached the Peshawar High Court Peshawar under WP No.4546-P/2019 for considering her contract service towards regular service for the purpose of pension whereby the court directed the respondent department to treat the WP as departmental appeal and decide strictly in accordance with Civil Servants Pension Rules, 1963 vide judgment dated 02-10-2019. As per the Pension rules, Mrs Noor Ul Huda has rendered 06-years, 07-months and 18-days regular services, which is less than the qualifying 10-years ***regular service*** for pension. She may be entitled for gratuity but not for pension.

Keeping in view the above legal position of the case, the request of Mrs Noor Ul Huda for pension cannot be covered under the rules and hence cannot be acceded to.

8/9/2020

Provincial Coordinator
Lady Health Worker Programme
Khyber Pakhtunkhwa

Copy for Information To:

1. Registrar Peshawar High Court Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa Health Department Peshawar.
3. District Health Officer Peshawar.
4. Section Officer-III Health Department Peshawar.
5. Mrs Noor Ul Huda through DHO Peshawar.
6. Office copy.

ATTESTED

VAKALAT NAMA

APPEAL NO._____/2020

IN THE COURT OF KP SERVICE TRIBUNAL, PESHAWAR

NOOR UL HUDA (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

GOVERNMENT OF KP, etc (Respondent)
(Defendant)

I/~~We~~, Noor UL Huda

Do hereby appoint and constitute ***M. Asif Yousafzai, Advocate Supreme Court Peshawar,*** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

Noor-ul-Huda
نور الہدیٰ

(CLIENT)

ACCEPTED

M. ASIF YOUSAFZAI
Advocate Supreme Court Peshawar.
&
TAIMUR ALI KHAN
Advocate High Court, Peshawar
&
SYED NOMAN ALI BUKHARI
Advocate High Court
S. Khan &
SHAHKAR KHAN YOUSAFZAI
Advocate.

OFFICE:
Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO .11471/2020

Mrs Noor Ul Huda.....Appellant.

V/S

Government of Khyber Pakhtunkhwa, through Secretary,
Health,Peshawar & others.....Respondents.

(Reply on behalf of respondent No. 3)

Respectfully Sheweth:-

Para :- 1 to 8 :-

Being an administrative matter, the issue relates to other Respondents. And they are in a better position to redress the grievances of the Appellant. Besides the Appellant has raised no grievances against Respondent No.03.

It is Pertinent to mention here that a letter No. 2936-42/DHS/IHP/2018-19, dated: 08/09/2020, issued by the Health Department Peshawar, is very much clear that states in its last para:

> "Mrs Noor-ul-Huda has rendered 06-years, 07 months and 18 days regular service, which is less than the Qualifying 10-years (regular) service for pension. She may be entitled for gratuity but not for Pension".

It is further added that appellant and her Administrative Department has not yet submitted any gratuity claims to Respondent No.3. And which shall be entertained as and when received without any delay under the applicable rules.

Keeping in view the above mentioned facts it is, humbly prayed that the appellant may approach her Administrative Department for her grievances and appeal in hand having no merits may be dismissed with cost.

ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO .11471/2020

Mrs Noor Ul Huda.....Appellant.

V/S

Government of Khyber Pakhtunkhwa, through Secretary,
Health,Peshawar & others.....Respondents.

(Reply on behalf of respondent No. 3)

Respectfully Sheweth:-

Para :- 1 to 8 :-

Being an administrative matter, the issue relates to other Respondents. And they are in a better position to redress the grievances of the Appellant. Besides the Appellant has raised no grievances against Respondent No.03.

It is Pertinent to mention here that a letter No. 2936-42/DHS/IHP/2018-19, dated: 08/09/2020, issued by the Health Department Peshawar, is very much clear that states in its last para:

> "Mrs Noor-ul-Huda has rendered 06-years, 07 months and 18 days regular service, which is less than the Qualifying 10-years (regular) service for pension. She may be entitled for gratuity but not for Pension".

It is further added that appellant and her Administrative Department has not yet submitted any gratuity claims to Respondent No.3. And which shall be entertained as and when received without any delay under the applicable rules.

Keeping in view the above mentioned facts it is, humbly prayed that the appellant may approach her Administrative Department for her grievances and appeal in hand having no merits may be dismissed with cost.

ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA

8/11

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 11471/2021

Mst. Noor Ul Huda, Ex-Lady Health Worker, R/O House No 760, Muhallah Qalander Abad, Wazir Bagh Road, Tehsil and District Peshawar.....**Appellant.**

VERSUS

Government of Khyber Pakhtunkhwa & others ..... **Respondents**

INDEX

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 11471/2021

Mst. Noor Ul Huda, Ex-Lady Health Worker, R/O House No 760, Muhallah Qalander Abad, Wazir Bagh Road, Tehsil and District Peshawar.....**Appellant.**

Versus

1. Secretary Health, Government of Khyber Pakhtunkhwa.
2. District Health Officer Peshawar.
3. Accountant General Khyber Pakhtunkhwa Peshawar.
4. District Accounts Officer Peshawar
5. District Coordinator LHWs Program Peshawar
6. Provincial Coordinator (LHW Program) Khyber Pakhtunkhwa .....**Respondents.**

REPLY ON BEHALF OF RESPONDENTS No 01, 02 & 05

Preliminary Objections.

I. The appellant has got neither cause of action nor locus standi.

II. The appeal is not maintainable in its present form.

III. That the appellant has deliberately concealed material facts from the Hon'ble Service Tribunal Peshawar, hence liable to be dismissed.

IV. That the appellant has filed the instant appeal just to pressurize the respondents and the Government.

V. That the appellant has filed the instant appeal with mala-fide motives.

VI. That the appeal is not maintainable in its present form and also in the present circumstance of the issue.

VII. The appellant has not come to the Hon'ble Tribunal with clean hands and hit by laches.

VIII. That the appeal is bad due to non-joinder and mis-joinder of necessary and proper parties.

IX. That the appeal is barred by law and badly time barred.

Respectfully Sheweth:

1. Para No 01 of the appeal pertains to record.

2. Para No 02 of the appeal pertains to record.

3. Para No 03 of the appeal pertains to record.

4. Correct to the extent that appellant served as Lady Health worker for 21 years and 03 months under Lady Health Workers Program, but it is pertinent to mention here the appellant was appointed as Lady Health Worker on 01-11-1997 on contract basis on fixed pay without any pay scale (appointment order as **Annex-I**). While, the Apex Court of Pakistan on 03-10-2012, ordered regularization of Lady Health Workers program in Cr. Original Petition No 15 and 73 of 2021 in Human Rights Case No 16360 of 2009 and Constitution Petition No 36 of 2112 "Bushra Arain Vs. Jahanzaib Khan, Secretary Health and Others. As per judgment of Hon'ble Supreme Court of Pakistan and in view of *The Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) ACT 2014* appellant was also regularized w.e.f 1st July 2012 as her initial appointment as Lady Health Worker in BPS 05 **(Annex-III)**, and as appellant served as a regular government employee only for 06 years, 07 Months and 18 days (i.e from 1st July 2012 till 19th February 2019) therefore appellant after attaining the age of superannuation was relieved and her services were made stand retired from service on 19th February 2019 **(Annex IV)**, therefore, appellant is not entitled for any pensionary benefits on the plea that pension liability will accrue after ten years from the date of regularization i.e June 30, 2022.

5. In Correct. Judgments rendered in Write Petition No 3394-P/2016 and 2246-P2016 are not applicable upon the appellant's appeal on the ground that the Apex Court of Pakistan has already declared date of regularization w.e.f 1st July 2012 as initial appointment. Secondly appellant was regularized under *The Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) ACT 2014*. **(Annex-V)**

6. Correct to the extent that appellant approached Hon'ble Peshawar High Court Peshawar through WP 4546/2019, wherein the Hon'ble Court disposed off the petition and directed concerned department to treat the petition as departmental appeal and decide strictly in accordance with Civil Servants Pension Rules 1963, but the same was not entertained on the ground that as per pension rules, a Government servant can only be entitled for pension, if he/she retired after rendering ten years regular service, but here the appellant served as regular employee for 06 years, 07 Months and 18 days, therefore, appellant found not entitled for any pensionary benefits on the plea that pension liability will accrue after ten years from the date of regularization i.e June 30, 2022.

7. That the instant appeal is not maintainable and barred by law.

REPLY ON GROUNDS

a) Incorrect. Already explained above.

b) Incorrect. As stated in Para No 04 to 06 ibid.

c) Incorrect. Already explained above.

d) Incorrect .The appellant has been treated in accordance with law, rules and appellant is not entitled for pension as stated in Para No 06 above.

e) Already explained in answering Para No 05 above.

f) Incorrect. Already explained in answering Para No 06 above.

g) The respondents seek permission to raise further grounds during the arguments.

PRAYER:

In the view of above, it is humbly prayed that the instant appeal being devoid of merit may very graciously be dismissed with cost.

Secretary Health
Government of Khyber Pakhtunkhwa
Respondent No 01

District Health Officer
Peshawar
Respondent No 02

District Coordinator
LHWs Program Peshawar
Respondent No 06

6

(8) C/O BASHIR AHMAD BILOR

C/o Ahmad Wazir Baghi

OFFICE OF THE DISTRICT HEALTH OFFICER, PESHAWAR. (1)

Annex "B"

OFFICE ORDER.

Subject: APPOINTMENT ORDER FOR LADY HEALTH WORKER UNDER PRIME MINISTER'S PROGRAMME FOR FAMILY PLANNING AND PRIMARY HEALTH CARE DISTRICT PESHAWAR.

On the recommendation of selection committee Miss NOOR UL HUDA D/O- W/O MUHAMMAD PARVAIZ of Village/Mohalla QALANDER ABAD Tehsil PESHAWAR is hereby appointed as Lady Health Worker (LHW) in CD RASHID GHARI w.e.f. 1-11-1997. on the following terms and conditions:-

1- The appointment will be purely on contract basis.

2- The appointment will be initially for one year. However it is extendable subject to satisfactory performance.

3- After selection she will be trained for a duration of 15 months. In the first 3 months she will attend training at the health centre for 5 days in a week. while during the next 12 months, she will work in her catchment area for 3 weeks in every month and will attend the training session at the health centre in the Ist week of every month.

4- She will be paid @ Rs. 50/= Per day during initial 3 months of training and subsequently she will be given a stipend of 1200/= per month.

5- She will have to work in this programme for atleast one year after completion of training for which she will have surety bond at the time of joining training on stamp paper of Rs. 50/=. If she wishes to resign within this period, she will have to deposit the whole amount of salary which she has received during training and service untill acceptance of resignation.

6- On expiry of surety bond period, if she wishes to resign, She will serve one month advance notice or will deposit one month's salary in lieu of notice.

7- The post is non transferable and the services will be terminated if the LHW move out of her area of appointment.

8- She will be required to establish a health house in her residence and maintain it according to the requirements of the programme. She will work closely with the local community and establish a local health committee and a women group with the assistance of the Field Supervisor and Health Centre Staff.

9- She will be ensure her presence during the field visits of supervisors and will arrange home visit for them.

10- She will be required to open a bank account in the nearest bank to the training centre. The branch will be identified by the District PIU and her salary will be disbursed through this bank.

11- She will keep a proper record of supply and receipt from the health centre and will also maintain a proper record of consumption of the supplies and will provide this to the health centre every month at the time of receiving new supplies.

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(8)

Annx: B

C/o Bashir Ahmad Bilor

OFFICE OF THE DISTRICT HEALTH OFFICER, PESHAWAR.

OFFICE ORDER

Subject: Appointment Order for Lady Health Worker Under Prime Minister's Program for family Planning and primary Health Care District Peshawar.

On the recommendation of Selection Committee
Mian Noor Ul Huda W/o Muhammad Parvaiz of Village/ Mohallah Qalander ABad Tehsil Peshawar is hereby appointed as Lady Health Worker (LHW) in CD Rashid Ghari w.e.f 1.11.1997. On the following terms and conditions:-

1. The appointment will be purely on contract basis.
2. The appointment will be initially for one year. However it is extendable subject to satisfactory performance.
3. After Selection she will be trained for a duration of 15 months. In first 3 months she will attend training at the health Centre for 5 days in a week. While during the next 12 months, she will work in her catchment area for 3 weeks in every month and will attend the training session at the health centre in the 1st week of every month.
4. She will be paid @ Rs. 50 per day during initial 3 months of training and subsequently she will be given a stipend of 1200/- per month.
5. She will have to work in this programme for atleast one year after completion of training for which she will have surety bond at the time of joining training on stamp paper of Rs. 50/- if she wishes to resign within this period. She will have to deposit the whole amount of salary which she has received during training and service until acceptance of resignation.
6. On expiry of surety bond period, if she wishes to resign, she will serve one month advance notice or will deposit one months salary in lieu of notice.
7. The post is non transferable and the services will be terminated if the LHW move cut of her area of appointment.
8. She will be required to establish a health house in her residence and maintain it according to the requirements of the programme. She will work closely with the local community and establish a local health committee and a women group with the assistance of the Field supervisor and health centre staff.
9. She will be ensure her presence during the field visits of supervisors and will arrange home visit for them.
10. She will be required to open a bank account in the nearest bank to the training centre. The branch will be identified by the District PIU and her salary will be disbursed through this bank.
11. She will keep a proper record of supply and receipt from the health centre and will also maintain a proper record of consumption of the supplies and will provide this to the health centre every moth a the time of receiving new supplies.

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12- She will maintain a proper record of the money being earnd through the sales of contreceptives (condoms and Pills). She will be required to submit the details of money every month to the health centre. If she is found guilty of wrong reporting or selling contraceptives to the unathorised persons of shops her services will be terminated alongwith other disciplinary action including the recovery of the amount involved.

13- She will submit a monthly report of her activities on the prescribed form to the health centre regularly.

14- She will be entitled for 20 days casual leave in a year. However there will be no leave during training period, and if she abstain herself unauthoriscdly, her services will be terminated. She will be required to take the the sanction of leave from the health centre.

15- She will be entitled for 20 days maternity leave at one time which will commence 10 days before the delivery date untill 10 days after the delivery. After this she will resume her duties from her health home and then start field visits not later than one month from the date of delivery.

16- TA/DA will not be admissible on account of attending training or on any field visit.

District Health Officer,
Peshawar.

No. 6763-65/DHO, PIU, Dated Peshawar the 13/10/1997.

A Copy of the is forwarded to the :-

1- Provincial Coordinator, PMP, FP & PHC, NWFP, Peshawar.
2- Medical Officer, Incharge RHC/BHU/MCH/C.D/C.H./IDH/_____.
3- Official Concernd.
4- Supervisor Concernd (Local)
5- Dealing Clerk/Accounts Clrk Distt: PIU, FP & PHC, Peshawar.
6- District Coordinator PMP, FP & PHC, Peshawar.

For information and necessary action.

District Health Officer,
Peshawar.

A.U. TABASSUM/

ATTESTED
To Be True Copy

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present
Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain

Crl. Original Petition No.15 and 73 of 2012
In
Human Rights Case No.16360 of 2009
And
Constitution Petition No.36 of 2012
(Regarding the Regularization of Service of Lady Health Supervisor/Workers)

Bushra Arain (In Crl.O.P.15/12)
Dr. Pir Ghulam Hussain and others (In Crl.O.P.73/12)

...Petitioners

Versus

Mr. Jahanzeb Khan, Secretary Health and others ...Respondents

In Attendance:	Ms. Bushra Araen, LHS (Crl.O.P.15/12) Ms. Rukhsana Anwar, LHS (in Cont. P.36/12) Ms. Shafaq, Programme Officer Ms. Farhat Sultana, LHS Ms. Saeeda Shaheen, LHS Ms. Maryam Sultana, LHS Dr. Pir Ghulam Hussain, Field Monitoring Coordinator (Crl.O.P.73/12)
For the Federation:	Raja M. Aleem Abbasi, DAG
For Govt. of Punjab:	Mr. Javed Hassan, AAG
For Govt. of Sindh:	Mr. M. Qasim Mir Jat, AAG, Sindh Mr. Saeed Qureshi, Focal Person to Secretary Health
For Govt. of KPK:	Syed Arshad Hussain Shah, AAG, KPK Mr. Asmatullah Qureshi, S.O.
For Govt. of Balochistan:	Mr. M. Azam Khan Khattak, AAG, Balochistan
Date of hearing:	03.10.2012.

ORDER

The learned DAG stated that the in pursuance of the policy funds have been released for the distribution of salaries etc. to the Provinces till the moth of September, 2012. According to his instructions on the completion of codal formalities from the Finance Ministry this amount is likely to be transferred in the shortest possible time so that the respective Provinces may reimburse the amount to the staff working in various projects relating to health. Mst. Bushra Araen, LHS and others stated that the [illegible]

ATTESTED

Superintendent
Supreme Court of Pakistan

and the Provincial Governments may take interest to disburse their salaries well in time particularly before the Eid-ul-Azha. Learned DAG stated that all efforts shall be made to do the needful. We expect that the Chief Secretaries of the respective Provinces and the Commissioner ICT shall also take steps in this behalf.

2. Dr. Pir Ghulam Hussain, Field Monitoring Coordinator stated that the Officers and Staff of Programme Monitoring Units (PMUs) approximately 167 in numbers have been left at the disposal of Provinces for the purpose of confirmation yet they are working at par with the LHWs and LHSs on the Federal strength, since 1996, therefore, their services may also be regularized by the Federation. The learned DAG has stated that this decision has been taken in a meeting duly represented by the representatives of the respective Provincial Governments. He has referred to the summary sent to the Prime Minister, relevant paragraphs of the same are reproduced as under:-

> "iv. *All LHSs, LHWs Account Supervisors and Drivers will be regularized from 1st July, 2012 as initial appointed and calculation of financial implication to be borne by Federal Government shall be made accordingly on the basis of employees' strength as on 30th June, 2011 including cost of medicine and operational costs not exceeding 10% of the total cost of the project.*
>
> v. *Staff of the PMUs of concerned provinces shall be regularized by the respective Provinces. The Provnices shall be responsible for the payment of liabilities accruing on this account."*

We observed that if it is mutually agreed between Federal and Provincial Governments, they must undertake exercise to regularize the employees as early as possible without any discrimination. If the Lady Health Supervisors (LHSs) and Lady Health Workers (LHWs) are confirmed by the Federal Government then again another issue of discrimination in respect of regularization of PMUs Staff will arise. The Chief Secretaries of the respective Provinces and the Commissioner ICT is required to submit a progress report in this behalf on the next date of hearing. It is requested on behalf of the Federation that four weeks time may kindly be granted in order to regularize the aforesaid employees. The request is allowed. The matter shall be listed for hearing after four weeks.

Sd/- Iftikhar Muhammad Chaudhry, C.J.
Sd/- Jawwad S. Khawaja, J
Sd/- Khilji Arif Hussain, J

THE SUPREME COURT OF PAKISTAN

Islamabad,
03.10.2012.
M. Asiar Malik

Certified to be True Copy
4/12/13
Superintendent

دفتر ڈسٹرکٹ ہیلتھ آفیسر

نمبر 10102-108

مورخہ 19/9/2014

خیبر پختونخوا ریگولیشن آف لیڈی ہیلتھ ورکرز پروگرام اینڈ ایمپلائز (ریگولرائزیشن اینڈ سٹینڈرڈائزیشن) ایکٹ مجریہ 2014 کی شق نمبر ۴(۱) کے تحت معاہدہ کی بنیاد پر کام کرنے والے درج ذیل ملازمین کی ملازمت کو مورخہ ۱-۷-۲۰۱۲ سے مستقل بنیاد پر باقاعدہ تصور کیا جاتا ہے۔ انکی ملازمت کی قیود و شرائط مذکورہ بالا ایکٹ اور اسکے تحت بنائے جانے والے قواعد کے مطابق ہوں گی۔

نمبر شمار	نام ملازم	والد کا نام	شوہر کا نام	عہدہ	تاریخ تقرری	مرکز صحت کا نام	متعلقہ علاقہ کا نام
۱	نورالہدیٰ	مولوی عبدالہادی	محمد پرویز	ایل ایچ ڈبلیو	31/10/1997	سی ڈی راشید گڑھی	قلندر آباد
۲	نسرین اختر	شیر افضل	عبدالعزیز	ایل ایچ ڈبلیو	25/9/199	سی ڈی راشید گڑھی	حسین آباد
۳	نور ہدایت بی بی	مولوی علی حیدر	غیر شادی شدہ	ایل ایچ ڈبلیو	9/10/2001	سی ڈی راشید گڑھی	نیو محمد آباد
۴	روبینہ شاہین	نسیم خان	غیر شادی شدہ	ایل ایچ ڈبلیو	16/3/2002	سی ڈی راشید گڑھی	شریف آباد
۵	نوشین عنبرین	عبدالقیوم	ہارون نسیم احمد	ایل ایچ ڈبلیو	20/3/2002	سی ڈی راشید گڑھی	صوفی کالونی
۶	شازیہ تبسم	امتیاز	غلام مرتضیٰ	ایل ایچ ڈبلیو	1/7/2009	سی ڈی راشید گڑھی	رحمان آباد
۷	روزینہ	روشن	نصیر احمد	ایل ایچ ڈبلیو	16/16/2009	سی ڈی راشید گڑھی	شریف آباد
۸	شکیلہ	محمد افضل	غیر شادی شدہ	ایل ایچ ڈبلیو	16/16/2009	سی ڈی راشید گڑھی	رحمت آباد
۹	نیلم	شاہ زمان	عمر حسین	ایل ایچ ڈبلیو	1/7/2000	سی ڈی راشید گڑھی	عظیم آباد

مذکورہ بالا ایکٹ کی شق نمبر ۲ میں تفویض کردہ اختیارات کو بروئے کار لاتے ہوئے کمیونٹی سے منسلک ملازمین کو مندرجہ ذیل بنیادی تنخواہ کے سکیل میں رکھا جاتا ہے۔

نمبر شمار	عہدہ کا نام	بنیادی تنخواہ کا سکیل
1	لیڈی ہیلتھ سپروائزر	7
2	لیڈی ہیلتھ ورکر	5
3	ڈرائیور	4

ڈسٹرکٹ ہیلتھ آفیسر
District Health Officer Peshawar

نقل برائے اطلاع:۔

۱۔ اکاؤنٹ جنرل آفس خیبر پختونخوہ، پشاور
۲۔ ڈائریکٹر جنرل ہیلتھ سروس خیبر پختونخوہ، پشاور
۳۔ صوبائی کوارڈینیٹر ایل ایل ڈبلیو پروگرام خیبر پختونخوہ، پشاور
۴۔ پی۔ایس سیکرٹری ہیلتھ، گورنمنٹ خیبر پختونخوہ، پشاور
۵۔ ضلع کوارڈینیٹر ایل ایچ ڈبلیو پروگرام خیبر پختونخوہ، پشاور
۶۔ ایس ایم او/ایم او انچارج سی ڈی راشید گڑھی
۷۔ تمام متعلقہ ملازمین

ڈسٹرکٹ ہیلتھ آفیسر
District Health Officer Peshawar

11

GOVERNAMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEALTH OFFICER PESHAWAR

Dated Peshawar the 15/04/2019
No. 3372-79 /DHO.DPIU

NOTIFICATION

NO.PA/Khyber PakhtunKhwa/Bills/2014/351. In terms of provision of The Khyber PakhtunKhwa Regulation of Lady Health Workers Program & employees (regularization & standardization) Act, 2014 (Para (4) Sub-Para (4) & (5) if the Khyber PakhtunKhwa Civil Servants Revised Leave Rules 1981 and instructions there under issued from time to time, sanction is hereby accorded to the grant of 338 days leave encashment in lieu of LPR in respect of **Mr/Mst. Noor ul Huda** W/o **Muhammad Parveez** **BPS-05** attached to **CD Rashid Gari/District Health Officer Peshawar.**

2. In terms of Section-13 of the Khyber PakhtunKhwa Civil Servants Act 1973, the official shall stand retire from service on 19/02/2019AN on attaining the age of superannuation.

Sd/-xxxxxxxxxxxxxx
District Health Officer
Peshawar

A Copy is forwarded to the:-

1. Accountant General Khyber PakhtunKhwa Peshawar.
2. Provincial Coordinator LHWs Program Khyber PakhtunKhwa Peshawar.
3. District Coordinator LHWs Program Peshawar.
4. Litigation Officer DHO Office Peshawar.
5. Office Assistant.
6. Establishment section to update the retired personnel list.
7. Account section

For information an n/action.

District Health Officer
Peshawar

Received along with S. Book.
15/04/2019

FOR THE EXTRAORDINARY GAZETTE ISSUE OF
THE KHYBER PAKHTUNKHWA

12

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 2 /07/2014.

No.PA/Khyber Pakhtunkhwa/Bills/2014/ 351 The Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Bill, 2014 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 24th June, 2014 and assented to by the Governor of the Khyber Pakhtunkhwa on 29th June, 2014 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA REGULATION OF LADY HEALTH WORKERS PROGRAM AND EMPLOYEES (REGULARIZATION AND STANDARDIZATION) ACT, 2014

(KHYBER PAKHTUNKHWA ACT NO. XXVI OF 2014)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa. (Extraordinary), dated the 02/07/2014).

(Here print as in the accompaniment).

SECRETARY,
Provincial Assembly of Khyber Pakhtunkhwa.

No. and date (as per notification above).

A copy of the above notification with the accompaniment is forwarded to the Manager, Government Stationery and Printing Department, Peshawar, with the request to publish the same in the extraordinary issue of the Khyber Pakhtunkhwa Government Gazette of today's date and distribute copies thereof immediately in accordance with the list given overleaf.

Proof should be sent to this Secretariat before publication.

SECRETARY,
Provincial Assembly of Khyber Pakhtunkhwa

E.No. PA/Khyber Pakhtunkhwa /Bills/2014/ 352-56 Dated 2/07/2014

A copy of the above is forwarded to :-

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. The Secretary to Government of Khyber Pakhtunkhwa, Health Department
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department.
4. The Director Information, Khyber Pakhtunkhwa.
5. The Director I.T/ Special Secretary Provincial Assembly of Khyber Pakhtunkhwa.

SECRETARY,
Provincial Assembly of Khyber Pakhtunkhwa

AN
ACT

to regulate the status of Lady Health Workers Program in the Province of the Khyber Pakhtunkhwa and to regularize and standardize the services of employees of the said program

WHEREAS in pursuance of the Constitution (Eighteenth Amendment) Act, 2010, the subject of Health has been devolved to the Provinces and as such Lady Health Workers Program run by Federal Government for supporting the family planning and primary health care was devolved to the Provinces accordingly;

AND WHEREAS in the Lady Health Workers Program, the community based workers have a special nature of job, for the execution of which they have to remain continuously embedded with their local catchment population;

AND WHEREAS it is obligatory to maintain the original concept and design of the Lady Health Workers Program, to ensure the presence of community embedded employees for effective service delivery to the people of the area;

AND WHEREAS it is expedient to regulate the status of Lady Health Workers Program in the Province of the Khyber Pakhtunkhwa and to regularize and standardize the services of the employees of the said program.

It is hereby enacted as follows:-

1. **Short title, application and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014.

(2) It shall apply to all persons employed or to be employed in Lady Health Workers Program, in the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once except section 4, which shall come in to force on 1st July, 2012.

2. **Definitions.**---In this Act, unless there is anything repugnant in the subject or context,-

(a) "catchment population" means the local population for which a Community Embedded Employee of the Program is appointed or posted and regularly resides therein;

(b) "Community Embedded Employee" means a Program employee residing and working within his defined catchment population for which he was appointed or posted;

(c) "District Program Implementation Unit" means the Management Unit of the Program at District level;

(d) "Government" means the Government of the Khyber Pakhtunkhwa;

(e) "prescribed" means prescribed by rules;

(f) "Program" means the Lady Health Workers Program devolved to the Province and which was previously run by the Federal Government under the name of the National Program for Family Planning and Primary Health Care;

(g) "Program employee" means an employee of the Program, whose service is regularized under this Act and includes persons to be appointed after the commencement of this Act;

(h) "Province" means the Province of the Khyber Pakhtunkhwa;

(i) "Provincial Program Implementation Unit" means the Management Unit of the Program at Provincial level; and

(j) "rules" mean rules made under this Act.

3. **Status of Program.**---(1) On commencement of this Act, the National Program for Family Planning and Primary Health Care, shall be deemed to be a Program of Government to be known as the Lady Health Workers Program.

(2) The purpose of the Program shall be to provide preventive, curative, rehabilitative and promotive health care services to the catchment population in the Province.

(3) The Program shall continue for such a period as Government may determine.

(4) After coming into force of this Act, Government may appoint persons to various posts in the Program on contract basis and there shall be no regular appointment in the Program.

(5) The appointment under sub-section (4) shall be made in accordance with the criteria and manner as may be prescribed.

[4.] Regularization.---(1) On commencement of this Act, all the Program employees, who were appointed in the Program on contract or fixed monthly stipend basis before 1st July 2012, and holding the said post till the commencement of this Act, shall stand regularized with effect from 1st July, 2012:

Provided that the services of such Program employees shall be deemed to have been regularized under this Act only on the publication of their names in the official Gazette:

Provided further that the posts of the Program fallen vacant on account of death, retirement, resignation, dismissal, termination or otherwise shall be filled-in on contract basis.

(2) The Program employees regularized under this Act shall be placed in the relevant Pay Scales corresponding to the civil servants or as may be determined by Government.

(3) The seniority of the Program employees regularized under this Act shall be determined in a manner as may be prescribed.

(4) A Program employee, whose services are regularized under this Act, shall retire from service, on the option of the Program employee and on such date as requested by the Program employee, after completion of twenty five years of qualifying service or on the completion of sixtieth year of age.

(5) A Program employee, whose service is regularized under this Act, shall be entitled to such pensionary and retirement benefits as may be determined by Government.

5. Mechanism of recruitment for Community Embedded Employees.---(1) For filling a post of Community Embedded Employee, the appointing authority shall cause to verify and ensure in the prescribed manner that person, who is to be appointed against such post, shall be a regular resident of his catchment population.

(2) The Provincial Program Implementation Unit shall oversee and monitor the process and finding of the verification, carried out by the appointing authority under sub-section (1), before a person is appointed against post of Community Embedded Employee.

(3) The Community Embedded Employee shall perform his duties within the catchment population of his residence; provided that Government may adjust a Community Embedded Employee in another area in certain circumstances to be prescribed.

(4) Notwithstanding anything contained in other provisions of this Act, the services of the Community Embedded Employees, whose services are regularized under this Act, or other Community Embedded Employees to be appointed after the commencement of this Act, shall be liable to termination, if the employee-

(a) has unlawfully ceased to be a regular resident within or has become a non-resident for his catchment population; or

(b) is involved in any other engagement or a practice which is not in accordance with the laid down and approved policy of the Program; or

(c) has ceased to be efficient in the performance of official duties; or

(d) has proved guilty of gross misconduct.

(5) A Community Embedded Employee, whose service is terminated under sub-clause (a) or (b) of sub-section (4) of this Act may be reinstated into service in a manner as may be prescribed:

Provided that this opportunity of reinstatement shall not be given more than once throughout the tenure of a Community Embedded Employee's service:

Provided further that-

(a) no salary or allowances shall be paid to the re-instated employee for the period spent under termination; and

(b) payment made, if any, to the terminated employee being re-instated, which was not allowed during or for the period spent under termination, is recovered from the employee.

6. Posting, transfer and adjustment of Program employees.---Notwithstanding anything contained in other provisions of this Act, the Program employees, except the Community Embedded Employees, may be transferred to perform duty anywhere in the Province.

7. Disciplinary action.---Disciplinary cases against the Program employees shall be dealt with in a manner as may be prescribed.

8. Application of Government rules.---The Program employees shall be dealt in accordance with the provisions of this Act and rules; provided that if no specific rules are available on any matter, the Government rules shall be applicable to such Program employees.

9. Public servants.---All Program employees shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

10. Power to make rules.---Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

11. Saving.--- Any rules, orders or instructions in respect of any terms and conditions of services of Program employees duly made or issued by an authority competent to make them and in force immediately before the commencement of this Act shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act.

12. Removal of difficulties.---If any difficulty arises in giving effect to any of the provisions of this Act, Government may make such order, not inconsistent with the provisions of this Act, as may appear to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from the commencement of this Act.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Miscellaneous Application No. 602/2022

Mrs. Noor-ul-Huda

Vs.

The secretary Health, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar etc.

ORDER

02.11.2022 The instant Miscellaneous application received. It be registered in the relevant register. Mr. Muhammad Adeel Butt, Additional Advocate General for the petitioner present. Record requisitioned and perused.

2. Through the instant application, the respondents are seeking correction of date of decision, which was inadvertently mentioned in the judgment as 13.07.2021 instead of 13.07.2022. On perusal of the record, it transpired that the concerned Service Appeal bearing No. 11471/2020 titled "Mrs. Noor Ul Huda Versus The Secretary Health, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and five others", was decided on 13.07.2022, however due to inadvertence, the date of decision was wrongly mentioned as 13.07.2021 in the judgment dated 13.07.2022. This Tribunal within the meaning of Subsection-(02) of Section-7 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 is deemed as civil court under the Code of Civil Procedure, 1908. Section-152 C.P.C provides for amendment of the judgment, decree or orders. It provides that mistakes in judgments, decrees or orders or errors arisen therein due to accidental slip or omission may at any time be

corrected by the court either of its own motion or on the application of any of the parties.

3. The date and month have been mentioned correctly in the judgment, however mentioning of the year as 2021 instead of 2022 is a typographical mistake, which occurred due to accidental slip, hence needs correction. The application is, therefore, allowed and office is directed to do the needful accordingly. Copy of this order as well as copy of the application be placed on file of Service Appeal No. 11471/2020. After necessary correction in the concerned judgment, certified copies of the same be sent to appellant as well as respondents. File be consigned to the record room after its completion.

ANNOUNCED
02.11.2022

(Rozina Rehman)
Member (Judicial)

(Salah-Ud-Din)
Member (Judicial)

FORMOF ORDERSHEET

Court of _____

Misc. application No. 602/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11/10/2022	The Misc. application for correction of date of decision of in appeal no.11471/2020 submitted by District Health Officer Peshawar. It is fixed for the same before Single Bench at Peshawar on 02-11-2022. Original file be requisitioned. Notices be issued to applicant for the date fixed. By the order of Chairman REGISTRAR

عدالت جناب محمد رضا صاحب سروس ٹریبونل خیبر پختونخوا پشاور

C.Misc. Application No. 602/2022

نور الہی

بنام حکومت کے پی کے وغیرہ

عنوان :- درخواست برائے درستگی اندراج تاریخ فیصلہ

Put up to the D.B with relevant appeal.

11/10/22

جناب عالی !

گذارش مضمون ذیل ہے۔

Readers

① یہ کہ اپیل مندرجہ بالا 1-10-2022 کو معزز ٹریبونل کے سامنے پیش کی گئی۔ جسمیں فیصلہ بتاریخ 13-7-2022 کو معزز ٹریبونل نے صادر فرمایا۔

② یہ کہ گورنمنٹ نے محکمہ قانون سے رائے برائے دائر کرنے کے اپیل سپریم کورٹ میں طلب کی۔ اور محکمہ قانون اپیل کیلئے مناسب جانتے ہوئے محکمہ کو اپیل میں مشورہ دیا گیا۔

③ یہ کہ جب AOR دفتر میں مصدقہ نقل فیصلہ داخل کیا گیا تو معلوم ہوا کہ نقل فیصلہ میں تاریخ 13-7-2022 کے بجائے 13-7-2021 درج کیا گیا ہے۔

لہٰذا استدعا کی جاتی ہے۔ کہ نقل فیصلہ پر تاریخ فیصلہ کی درست طور پر اندراج کیا جائے۔

العارض

الراقم

گل حسن علی

کلرک محکمہ ہیلتھ انسپکٹر

J/C

11-10-2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 11471/2020

Date of Institution ... 01.10.2020

Date of Decision ... 13.07.2021

Mrs. Noor Ul Huda, Ex-Lady Health Worker, R/O House No. 760, Mohalla Qalander Abad, Wazir Bagh Road, Tehsil and District Peshawar.

... (Appellant)

VERSUS

The Secretary Health, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and five others.

... (Respondents)

SYED NOMAN ALI BUKHARI, Advocate --- For appellant.

MR. NASEER-UD-DIN SHAH, Assistant Advocate General --- For respondents.

MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)
MS. ROZINA REHMAN --- MEMBER (JUDICIAL)

JUDGMENT

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the appellant has invoked jurisdiction of this Tribunal with the prayer copied as below:-

> *"That on acceptance of this appeal, the order dated 08.09.2020 may be set-aside and the respondents may be directed to count the contractual/temporary period of service of the appellant towards her retirement/pensionary benefits under Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963 and in light of the august Peshawar High Court Larger Bench judgments dated 22.06.2017 passed in W.P No. 3394-P/2016 and W.P No. 2246-9/2016 and any other remedy, which this august Tribunal deems fit and appropriate may also be awarded in favour of the appellant.*

2. Precise facts forming the background of the instant service appeal are that, the appellant was appointed as Lady Health

Worker (LHW) on contract basis vide order dated 31.10.1997 with effect from 01.11.1997. On promulgation of Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and employees (Regularization and Standardization) Act 2014, the services of the appellant alongwith other were regularized vide office order dated 19.09.2014 with effect from 1st July 2012, however on attaining the age of superannuation on 19.02.20219, the appellant was retired from service vide Notification bearing No. 3372-79/DHO.DPIU dated 15.04.2019 without granting her gratuity/pensionary benefits. The appellant approached august Peshawar High Court through Writ Petition No. 4546-P/2019 for considering her contractual period towards her pensionary benefits. Vide judgment dated 02.10.2019, the said Writ Petition of the appellant was transmitted to the concerned Secretary to Government of Khyber Pakhtunkhwa to treat it as departmental appeal and to decide the same strictly in accordance with Civil Servants Pension Rules, 1963. The departmental appeal of the appellant was rejected by Provincial Coordinator Lady Health Worker Programme Khyber Pakhtunkhwa vide order dated 08.09.2020, hence the instant service appeal.

3. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in her appeal.

4. Learned counsel for the appellant has argued that the appellant was though initially appointed as Lady Health Worker on contract basis vide order dated 31.10.1997 with effect from 01.11.1997, however her services were later on regularized vide office order dated 19.09.2014 with effect from 1st July 2012, therefore, in view of rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, the period of contract service shall be counted for the purpose of pensionary benefits; that the appellant has rendered about 21 years service, therefore, depriving her of pensionary benefits is not only against the fundamental rights of the appellant guaranteed under the Constitution but is also violation of rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963; that same nature issue was raised before the Larger Bench of august

Peshawar High Court in Writ petitions No. 3394-P/2016 and 2246-P/2016, in which the august Peshawar High Court vide judgments dated 22.06.2017 laid down the dictum that the service rendered on fixed pay/contract basis is countable towards pension fixation and retirement benefits; that the appeal of the appellant was sent by august Peshawar High Court to concerned Secretary for decision but the same was decided by Provincial Coordinator Lady Health Worker Programme Khyber Pakhtunkhwa, who was not competent to decide the departmental appeal of the appellant, therefore, the impugned order is *corum-non-judice* and is liable to be set-aside on this score alone; that in view of Notification dated 22.05.2019 issued by the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing), the fixed pay/contract period of service of the appellant was required to have been counted towards pensionary benefits.

5. On the other hand, learned Assistant Advocate General for the respondents, has contended that the appellant was initially appointed as Lady Health Worker in the year 1997 on fixed pay/contract basis and her services were regularized vide office order dated 19.09.2014 with effect from 01.07.2012; that the appellant stood retired from service on 19.02.20219 and as such, she had performed duties as regular Lady Health Worker only for a period of about 07 years, 01 month and 18 days, while pensionary benefits could be granted to a civil servant, in case of completion of ten years or more regular service; that the appellant was having less than ten years regular service, therefore, she is not entitled to grant of any pensionary benefits; that the contractual period of service of an employee could not be legally counted in his regular service, therefore, the appeal filed by the appellant is liable to be dismissed.

6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. Keeping in view the respective arguments of both the sides, a perusal of the record would show that the appellant was initially appointed as Lady Health Worker on contract basis vide appointment order dated 31.10.1997 with effect from

01.11.1997, however after promulgation of Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and employees (Regularization and Standardization) Act 2014, the services of the appellant were regularized with effect from 1st July 2012. Vide Notification dated 15.04.2019 issued by District Health Officer Peshawar, the appellant stood retired from service with effect from 19.02.2019 without granting her any pensionary benefits. Now the question, requiring determination is as to whether the contract period of service of the appellant could be counted for granting her pensionary benefits or not? Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963, deal with the issue in question, which are reproduced as below:-

> " ***2.2 Beginning of Service-*** *Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post of which he is first appointed.*
>
> ***Rule 2.3 Temporary and officiating service*** — *Temporary and officiating service shall count for pension as indicated below:-*
>
> *(i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and*
>
> *(ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity".*

8. A bare perusal of the above mentioned rules make it clear that when a government servant is regularized, his total length of service is to be computed from the date he joined the service, whether temporary or otherwise. In this view of the matter, the length of service of the appellant shall be counted from the date of her initial appointment i.e 01.11.1997 for the purpose of pension and gratuity. Wisdom in this respect also derived from the judgment dated 22.06.2017 passed by august Peshawar High Court, Peshawar in Writ Petition No. 3394-P/2016 titled "Amir Zeb Versus District Account Officer Nowshera etc."

9. August Supreme Court of Pakistan in its judgment reported as 2015 PLC (C.S) 296 titled "Secretary to Government of Punjab, Finance Department Versus M. Ismail Tayer and 269 others, has graciously held that the pensionary benefits is not a bounty or ex-gratia payment but a right acquired in

consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant.

10. Consequent upon the above discussion, the appeal in hand is allowed and the respondents are directed to grant pensionary benefits to the appellant by processing and finalizing her pension case within a period of three months of receipt of copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
13.07.2021

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(ROZINA REHMAN)
MEMBER (JUDICIAL)

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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