ORDER

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

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

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

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

03.10.2022

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

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

(Farceha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

29.11.2021 Appellant present through counsel.

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

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

(Atiq ur Rehman Wazir)
Member (E)

(Rozina Rehman)
Member (J)

28.03.2022 Learned counsel for the appellant present.

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

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

(Rozina Rehman)
Member (J)

(Salah-Ud-Din)
Member (J)

23.06.2022 Learned counsel for the appellant present. Mr. Ahmad Yar Khan, Assistant Director (Litigation) alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

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

(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

16.12.2020 Junior to counsel for the appellant present. Additional AG alongwith Mr. Ahmad Yar Khan, AD(Litigation) for respondents present.

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

Adjourned to 11.03.2020 for arguments before D.B.

(Mian Muhammad)
Member (E)

Chairman

11.03.2021 Appellant present through counsel.

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

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

(Mian Muhammad)
Member (E)

(Rozina Rehman)
Member (J)

01.07.2021 Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

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

(Rozina Rehman)
Member(J)

Chairman

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

Reader

30.06.2020 Due to Covid-19, the case is adjourned. To come up for the same on 29.09.2020 before D.B.

Reader

29.09.2020 Appellant present through counsel.

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

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

(Mian Muhammad)
Member (E)

(Rozina Rehman)
Member (J)

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

(HUSSAIN SHAH)
MEMBER

(M. AMIN KHAN KUNDI)
MEMBER

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

Member

Member

25.02.2020 Appellant absent. Learned counsel for the appellant absent. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Adjourn. To come up alongwith connected service appeals on 03.04.2020 before D.B.

Member

Member

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

(HUSSAIN SHAH)
MEMBER

(M. AMIN KHAN KUNDI)
MEMBER

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

Member

Member

25.02.2020 Clerk to counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is not available. Adjourn. To come up for arguments on 03.04.2020 before D.B.

Member

Member

18.04.2019 Clerk to counsel for the appellant present. M/S Zaki Ullah Senior Auditor and Sagheer Musharaf present. Zakiullah Senior Auditor representative of respondent No.4 submitted written reply/comments. Sagheer Musharraf AD representative of the remaining respondents seeks time to furnish written reply/comments. Adjourn. To come up for written reply/comments on 13.06.2019 before S.B.

Member

13.06.2019 Counsel for the appellant and Addl. AG alongwith Saghir Mushraf AD for the respondents present.

The representative of respondents has submitted Parawise comments of the respondents which are placed on record. To come up for arguments before the D.B on 05.08.2019. The appellant may submit rejoinder, within a fortnight, if so advised.

Chairman

05.08.2019 Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment as learned senior counsel is not in attendance. Adjourn. To come up for arguments on 26.09.2019 before D.B.

Member

Member

02.05.2019 Clerk to counsel for the appellant and Mr. Riaz Paindkhel learned Assistant Advocate General alongwith Mr. Saghir Musharaf, AD for the respondents present. Clerk to counsel for the appellant requested for adjournment as counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 16.05.2019 before D.B.

Member Member

16.05.2019 Counsel for the appellant and Addl. AG alongwith Saghir Musharaf, A.D for the respondents present.

Due to demise of his father, learned Member of the Bench (Mr. Hussain Shah) is on leave. Adjourned to 29.07.2019 for arguments before the D.B.

Chairman

29.07.2019 Junior to counsel for the appellant present, stated that identical nature appeals have been fixed for hearing on 26.09.2019 and sought adjournment. Adjourn. To come up for arguments on 26.09.2019 before D.B.

Member Member

07.11.2018 Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 31.12.2018.

Reader

31.12.2018 Nemo for appellant. Addl. alongwith Saghir Musharaf, A.D for the respondents present.

Learned AAG states that in a matter involving similar proposition (antedated regularization) the respondents have submitted a Review Petition before the Apex Court which is pending disposal while the other similar matters before this Tribunal are fixed for hearing on 14.02.2019. Let instant matter be also adjourned to 14.02.2019 for arguments before the D.B. Notices to appellant/counsel be issued for the next date.

Member Chairman

14.02.2019 Clerk of counsel for the appellant and Addl. AG alongwith Saghir Musharaf, AD for the respondents present.

Rejoinder to the comments has been submitted on behalf of the appellant. To come up for arguments on 02.05.2019 before the D.B.

Member Chairman

31.05.2018 Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General present. Clerk to counsel for the appellant seeks adjournment on the ground that Learned counsel for the appellant is busy before Hon'ble Peshawar High Court Peshawar. Learned AAG requested that the present service appeal be fixed alongwith connected appeals for 03.08.2018. Adjourned. To come up for arguments alongwith connected appeals on 03.08.2018 before D.B

(Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

03.08.2018 Appellant absent. Learned counsel for the appellant is also absent. However, clerk of counsel for the appellant present and requested for adjournment on the ground that learned counsel for the appellant is busy before the Hon'ble Peshawar High Court. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Sagheer Musharaf, Assistant Director for the respondents present. Adjourned. To come up for arguments on 27.09.2018 before D.B alongwith connected appeals.

(Ahmad Hassan)
Member (E)

(Muhammad Hamid Mughal)
Member (J)

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

(Ahmad Hassan)
Member (E)

(Muhammad Amin Kundi)
Member (J)

06.02.2018 Clerk to counsel for the appellant and Addll: AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 21.02.2018 before S.B.

(Ahmad Hassan)
Member(E)

21.02.2018 Clerk of the counsel for appellant and Assistant AG alongwith Sagheer Musharraf, AD (Lit) & Zaki Ullah, Senior Auditor for official respondents present. Written reply submitted on behalf of official respondent 2 to 5. Learned Assistant AG relies on behalf of respondent no. 2 to 5 on the same respondent no. 1. The appeal is assigned to D.B for rejoinder, if any, and final hearing on 29.03.2018.

(Gul Zeb Khan)
Member

29.03.2018 Clerk of counsel for the appellant and Addl. AG for the respondents present. Rejoinder submitted. Counsel for the appellant is not in attendance. To come up for arguments on 31.05.2018 before D.B.

Member Chairman

27.11.2017 Clerk to counsel for the appellant and Addl: AG for respondents present. Due to general strike of the Bar arguments could not be heard. Adjourned. To come up for arguments on 06.02.2018 before D.B.

Member Chairman

06.2.2018 Clerk of the counsel for the appellant and Mr. Kabeerullah Khattak, Addl. AG for the respondents present. The learned counsel for the appellant was stated to be busy before the Hon'ble High Court. Requested for adjournment. Granted. To come up for arguments on 04.04.2018 before the D.B.

Member Chairman

04.04.2018 Clerk to counsel for the appellant and Addl; AG for respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 31.05.2018 before D.B.

(Ahmad Hassan)
Member

(M. Hamid Mughal)
Member

Appeal No. 483/2017
M. Nadeem Jan Vs Govt

Clerk of counsel for the appellant and AAG for the respondents present. Written reply not received on behalf of the respondents and AAG requested for further time. Adjourned. To come up for written reply/comments on 5/10/2017.

(Gul Zeb Khan)
Member

05.10.2017 Clerk of the counsel for appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sagheer Musharaf, AD for the respondents also present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment. Adjourned. To come up for written reply/comments on 02.11.2017 before S.B.

(Muhammad Amin Khan Kundi)
Member

02.11.2017 Clerk to counsel for the appellant and Additional Advocate General alongwith Sagheer Musharraf, AD (Litigation) for the respondents present. Written reply on behalf of respondents No. 4, 5 & 7 submitted. Learned Addl: AG relies on behalf of respondents No. 1, 2 & 3 on the same. The appeal is assigned to D.B for rejoinder if any and final hearing for 27.11.2017.

Chairman

Appeal No. 483/2012
M. Nadeem Jan VS Govt

06.07.2017

Appellant in person present and requested for adjournment. Adjourned. To come up for preliminary hearing on 03.08.2017 before S.B.

(Ahmad Hassan)
Member

03.08.2017

Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was appointed as Family Welfare Assistant vide order dated 01.02.2012. It was further contended that the appellant was terminated on 13.06.2014 by the District Population Welfare Officer Peshawar without serving any charge sheet, statement of allegations, regular inquiry and show cause notice. It was further contended that the appellant challenged the impugned order in august High Court in writ petition which was allowed and the respondents were directed to reinstate the appellant with back benefits. It was further contended that the respondents also challenged the order of august High Court in apex court but the appeal of the respondents was also rejected. It was further contended that the respondents were reluctant to reinstate the appellant, therefore, the appellant filed C.O.C application against the respondents in august High Court and ultimately the appellant was reinstated in service with immediate effect but back benefits were not granted from the date of regularization of the project.

The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 06.09.2017 before S.B.

Appellant Deposited
Security & Process Fee
3/8/17

(Muhammad Amin Khan Kundi)
Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 483/2017

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge or Magistrate
1	2	3
1	19/05/2017	The appeal of Mr. Muhammad Nadeem Jan resubmitted today by Mr. Javed Iqbal Gulbela Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-	24-5-2017	This case is entrusted to S. Bench for preliminary hearing to be put up there on 5-06-2017 CHAIRMAN
	05.06.2017	Clerk to counsel for the appellant present. Preliminary arguments could not be heard due to General strike of the Bar. To come up for preliminary hearing on 06.07.2017 before S.B. (Ahmad Hassan) Member

The appeal of Mr. Muhammad Nadeem Jan Family Welfare Assistant received today on 16.05.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Memorandum of appeal may be got signed by the appellant.
2- Copy of completion report of Project mentioned in para-3 of memo of appeal (Annexure-B) is not attached with the appeal which may be placed on it.
3- The authority to whom the departmental appeal was made/preferred has not been arrayed a party.
4- One copy/set of the appeal along with annexures i.e complete in all respect may also be submitted with the appeal.

No. 1333 /S.T,

Dt. 17-5-/2017

REGISTRAR 17/5/17
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Javed Iqbal Gulbela Adv.

Respected Sir,

Resubmitted after necessary Completion.

18/05/2017

Note: Annexure-B is available at P-13 & the same is the sole available document vis-a-vis completion of the project, with the appellant & the case may graciously be fixed before the Hon'ble Tribunal.

18/5/2017

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re S.A 483 /2017

Muhammad Nadeem Jan

VERSUS

Govt. of Khyber Pakhtunkhwa and others

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Dated: 12/05/2017

Appellant

Through

JAVED IQBAL GULBELA
Advocate High Court
Peshawar.

Off Add: *9-10A Al-Nimrah Centre, Govt College Chowk Peshawar*

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re S.A 483 /2017

Muhammad Nadeem Jan, Family Welfare Assistant (BPS-07) R/o Family Welfare Center (FWC) Kabapyan, Peshawar.

----------(*Appellant*)

VERSUS

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

Filedto-day
Registrar
16/5/17.

----------(*Respondents*).

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT - 1974 FOR GIVING RETROSPECTIVE EFFECT TO THE APPOINTMENT ORDER DATED 05/10/2016 IN ORDER TO INCLUDE PERIOD SPENT SINCE BRINGING THE PROJECT IN QUESTION ON CURRANT SIDE W.E.F 01/07/ 2014 TILL THE APPOINTMENT ORDER DATED 05/10/2016 WITH ALL BACK BENEFITS, IN TERMS OF ARREARS, PROMOTIONS AND SENIORITY, IN THE LIGHT OF JUDGMENT AND ORDER DATED 24/02/2016 RENDERED BY HON'BLE SUPREME COURT OF PAKISTAN IN CPLA 605 OF 2015.

Re-submitted to-day and filed.
Registrar
19/5/17

(2)

Respectfully Sheweth;

1. That the appellant was initially appointed as Family Welfare Assistant (FWA) (BPS-07) on contract basis in the District Population Welfare Office, Peshawar on 01/02/2012. (Copy of the appointment order dated 01/02/2012 is annexed as Ann "A").

2. That it is pertinent to mention here that in the initial appointment order the appointment was although made on contract basis and till project life, but no project was mentioned therein in the appointment order. However the services of the appellant alongwith hundreds of other employees were carried and confined to the project "Provisions for Population Welfare Programme in Khyber Pakhtunkhwa (2011-14)".

3. That later-on the project in question was brought from developmental side to currant and regular side vide Notification in the year 2014 and the life of the project in question was declared to be culminated on 30/06/2014. (Copy of completion of project is annexed herewith as Ann "B").

4. That instead of regularizing the service of the appellant, the appellant was terminated vide the impugned office order No. F.No. 4 (35)/2013-14/Admn, dated 13/06/2014 and office order No. F. No. 1 (27)/2013-Adm dated: 13/06/2014 and

thus the service of the appellant was terminated w.e.f 30/06/2014. (Copies of termination orders are annexed as Ann- "C & D", respectively).

5. That the appellant alongwith rest of his colleagues impugned their termination order before the Hon'ble Peshawar High Court vide W.P# 1730-P/2014, as after carry-out the termination of the appellant and rest of his colleagues, the respondents were out to appoint their blue-eyed ones upon the regular posts of the demised project in question.

6. That the W.P# 1730-P/2014 was allowed by the Hon'ble Peshawar High Court Peshawar vide the judgment and order dated 26/06/2014. (Copy of W.P#1730-P/2014 and order dated 26/06/2014 are annexed herewith as Ann "E & F, respectively).

7. That the Respondents impugned the same before the Hon'ble Apex Court of the country in CPLA No. 496-P/2014, but here again good fortune of the appellant and his colleagues prevailed and the CPLA was dismissed vide judgment and order dated 24/02/2016. (Copy of CPLA 496-P/2014 is annexed as Ann "G").

8. That as the Respondents were reluctant to implement the judgment and order dated 26/06/2014, so initially filed COC# 479-P/2014, which became infructous due to suspension order from the Apex Court and thus that COC No. 479-P/2014 was dismissed, being in fructuous vide order dated 07/12/2015. (Copies of record of COC# 479-P/2015 is annexed as Ann- "H").

9. That after dismissal of CPLA No. 496-P/2014 by the Hon'ble Apex Court on 24/02/2016, the appellant alongwith others filed another COC# 186-P/2016, which was disposed off by the Hon'ble Peshawar High Court vide Judgment and order dated 03/08/2016 with the direction to the Respondents to implement the judgment dated 26/06/2014 within 20 days. (Copies of record of COC# 186-P/2016 are annexed as Ann- "I").

10. That inspite of clear-cut and strict directions as in aforementioned COC# 186-P/2016 the Respondents were reluctant to implement the judgment dated 26/06/2014, which constrained the appellant to move another COC#395-P/2016. (Copy of the COC No. 395-P/2016 is annexed as Ann- "J").

11. That it was during the pendency of COC No.395-P/2016 before the August High Court, that the appellant was re-instated vide the impugned

office order No. SOE (PWD) 4-9/7/2014/HC dated 05/10/2016, but with immediate effect instead w.e.f 01/02/2012 i.e initial appointment or at least 01/07/2014 i.e date of regularization of the project in question. (Copy of the impugned office re-instatement order dated 05/10/2016 is annexed as Ann- "K").

12. That feeling aggrieved the appellant prepared a departmental appeal, but inspite of laps of statutory period no findings were made upon the same, but rather the appellant repeatedly attended the office of the Learned Appellate Authority for disposal of appeal and every time was extended positive justure by the Learned Appellate Authority about disposal of departmental appeal and that constrand the appellant to wait till the disposal, which caused delay in filing the instant appeal before this Hon'ble Tribunal and on the other hand the departmental appeal was also either not decided or the decision is not communicated or intimated to the appellant. (Copy of the appeal is annexed herewith as annexure "L").

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

GROUNDS:

A. That the impugned appointment order dated 05/10/2016 to the extent of giving "immediate effect" is illegal, unwarranted and is liable to be modified to that extent.

B. That in another CPLA No. 605 of 2015 the Apex Court held that not only the effected employee is to be re-instated into service, after conversion of the project to currant side, as regular Civil Servant, but as well as entitled for all back benefits for the period they have worked with the project or the K.P.K Government. Moreover the Service of the Appellants, therein, for the intervening period i.e from the date of their termination till the date of their re-instatement shall be computed towards their pensionary benefits; vide judgment and order dated 24/02/2016. It is pertinent to mention here that this CPLA 605 of 2015 had been decided alongwith CPLA of 496 of 2014 of the Appellant on the same date.

C. That thus by virtue of 2009 SCMR page- 01 the appellant is entitled for equal treatment and is thus fully entitled for back benefits for the period, the appellant worked in the project or with the Government of K.P.K. (Copy of CPLA 605/2015 is annexed as Ann- "M").

D. That where the posts of the appellant went on regular side, then from not reckoning the benefits from that day to the appellant is not only illegal and void, but is illogical as well.

E. That where the termination was declared as illegal and the appellant was declared to be re-instated into service vide judgment and order dated 26/06/2014, then how the appellant can be re-instated on 05/10/2016 and that too with immediate effect.

F. That attitude of the Respondents constrained appellant and his colleagues to knock the the Hon'ble High Court again and a even out to appoint blue-eyed o

of the appellant and at last when strict directions were issued by Hon'ble Court, the Respondents vent out their spleen by giving immediate effect to the re-instatement order of the appellant, which approach under the law is illegal.

G. That where the appellant has worked, regularly and punctually and thereafter got regularized then under rule- 2.3 of the pension Rules- 1963, the appellant is entitled for back benefits as well.

H. That from every angle the appellant is fully entitled for the back benefits for the period that the appellant worked in the subject project or with the Government of K.P.K, by giving retrospective effect to the re-instatement order dated 05/10/2016.

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

(9)

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

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

Dated: 12/05/2017.

Appellant

Through

JAVED IQBAL GULBELA
Advocate High Court
Peshawar.

NOTE:-

No such like appeal for the same appellant, upon the same subject matter has earlier been filed by me, prior to the instant one, before this Hon'ble Tribunal.

Advocate.

9(a)

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In CM No. _____ /2017

Muhammad Nadeem Jan

Versus

Govt. of K.P.K & Others

APPLICATION FOR CONDONATION OF DELAY

RESPECTFULLY SHEWETH,

1. That the petitioner/Appellant is filing the accompanying Service Appeal, the contents of which may graciously be considered as integral part of the instant petition.

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

3. That after filing departmental appeal on 20-05-2016, the appellant with rest of their colleagues regularly attended the Departmental Appellate Authority and every time was extended positive gestures by the worthy Departmental Authority for disposal of the departmental appeal, but in spite of lapse of statutory rating period and period thereafter till filing the accompanying service appeal before this Hon'ble Tribunal, the same were never decided or never communicated the decision if any made thereupon.

9-6

4. That besides the above as the accompanying Service Appeal is about the back benefits and arrears thereof and as financial matters and questions are involved which effect the current salary package regularly etc of the appellant, so is having a repeatedly reckoning cause of action as well.

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

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

Dated: 12/05/2017

Petitioner/Appellant

Through

JAVED IQBAL GULBELA
Advocate, High Court
Peshawar.

(10)

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re S.A _____/2017

Muhammad Nadeem Jan

VERSUS

Govt. of Khyber Pakhtunkhwa and others

AFFIDAVIT

I , Muhammad Nadeem Jan, Family Welfare Assistant (BPS-07) R/o Family Welfare Center (FWC) Kabapyan, Peshawar, do hereby solemnly affirm and declare that all the contents of the accompanied appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

DEPONENT
17301-1876899-3

Identified By :

Javed Iqbal Gulbela
Advocate High Court
Peshawar.

ATTESTED

NOTARY PUBLIC DISTRICT PESHAWAR

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re S.A _____/2017

Muhammad Nadeem Jan

VERSUS

Govt. of Khyber Pakhtunkhwa and others

ADDRESSES OF PARTIES

APPELLANT.

Muhammad Nadeem Jan, Family Welfare Assistant (BPS-07) R/o Family Welfare Center (FWC) Kabapyan, Peshawar.

RESPONDENTS:

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

Dated: 12/05/2017

Appellant

Through

JAVED IQBAL GULBELA
Advocate High Court
Peshawar.

Government of Khyber Pakhtunkhwa
Population Welfare Department
Office of the District Population Welfare Officer
House 4501, Street No.03, Sikandar Town Peshawar.

(12) Am-A 2

Dated Peshawar, the 01/02/2012.

OFFER OF APPOINTMENT:

F.No.1 (27)/2011-2012/Admn: Consequent upon the recommendation of the Departmental Selection Committee (DSC) you are offered of appointment as Family Welfare Assistant Male (BPS-5) on contract basis in the District Population Welfare Office, Peshawar for the project life on the following terms and conditions:

TERMS & CONDITIONS

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

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

3. You shall provide Medical Fitness Certificate from the Medical Superintend of the DHQ Hospital Peshawar before joining service.

4. Being contract employee, in no way you will be treated as Civil Servant and in case your performance is found un-satisfactory or found committed any mis-conduct, your service will be terminated without adopting the procedure provided in Khyber Pakhtunkhwa (E&D) Rules, 1973 which will not be challengeable in Khyber Pakhtunkhwa Service Tribunal/ any court of law.

5. You shall be held responsible for the losses accruing to the Project due to your carelessness or in-efficiency and shall be recovered from you.

6. You will neither be entitled to any pension or gratuity for the services rendered by you nor you will contribute towards GP Fund or C.P Fund.

7. This offer shall not confer any right on you for regularization of your service against the post occupied by you or any other regular posts in the Department..

8. You have to join duty at your own expenses.

9. If you accept the above terms and conditions, you should report for duty to this Office within 15-days of the receipt of this offer failing which your appointment shall be considered as cancelled.

10. You will execute a surety bond with the Department.

District Population Welfare Officer,
Peshawar.

Mr.Muhammad Nadeem Jan s/o Ayub Khan
Tehkal Payan, University Road,, Peshawar

Copy forwarded to the:-

1. Accountant General, Khyber Pukhtoon Khwa.
2. PS to Minister for Population Welfare, Khyber Pukhtoon Khwa, Peshawar.
3. PS to Director General, Population Welfare Department, Khyber Pukhtoon Khwa, Peshawar.

ATTESTED

(13)

Annex-B
2

Population Welfare Department
Office of the District Population Welfare Officer, Pesh.
Govt. of Khyber Pakhtunkhwa
House no.4501,St#3,Sikandar Town, Pesh.

F.No:1(27)/2013-Admn

Dated: 13 /06/2014.

To,

Mr. Muhammad Riaz
Chowkidar
Post-Rano Ghazi

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

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

District Population Welfare Officer,
Peshawar

Copy to:-

1. Accountant (Local) for n/action.
2. P/F of the official concerned.

District Population Welfare Officer,
Peshawar

ATTESTED

ATTESTED

(14)

Annex C
2

Government of Khyber Pakhtunkhwa,
Directorate General Population Welfare
Post Box No. 235
FC Trust Building Sunehri Masjid Road, Peshawar Cantt: Ph: 091-9211536-38
****

Dated Peshawar the 13/06/2014.

OFFICE ORDER

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

S.No.	Name	Designation	District /Institution
1	Bibi Amina	FWW	Peshawar
2	Abida Hnif	FWW	Peshawar
3	Saba Naz	FWW	Peshawar
4	Sumy Naz	FWW	Peshawar
5	Basmeen	FWW	Peshawar
6	Sajida Parveen	FWW	Peshawar
7	Naila Usman	FWW	Peshawar
8	Nosheen Ihsan	FWW	Peshawar
9	Bibi Nadia	FWW	Peshawar
10	Asma	FWW	Peshawar
11	Saba Gul	FWW	Peshawar
12	Neelofar Munif	FWA (F)	Peshawar
13	Said Amina Mustafa	FWA (F)	Peshawar
14	Rozina Akram	FWA (F)	Peshawar
15	Aneela Gul	FWA (F)	Peshawar
16	Qasida Bibi	FWA (F)	Peshawar
17	Misbah Shokat	FWA (F)	Peshawar
18	Zeba Gul	FWA (F)	Peshawar
19	Tasawar Iqbal	FWA (F)	Peshawar
20	Sarwat Jehan	FWA (F)	Peshawar
21	Shaheen Akhtar	FWA (F)	Peshawar
22	Syed Muhammad Ubaid	FWA (M)	Peshawar
23	Jehanzeb	FWA (M)	Peshawar
24	Husnian Raza	FWA (M)	Peshawar
25	Naseer Ullah	FWA (M)	Peshawar
26	Syed Kamran Mustafa	FWA (M)	Peshawar
27	Muhammad Nadeem Jan	FWA (M)	Peshawar
28	Tariq Rahim	FWA (M)	Peshawar
29	Noor Elahi	FWA (M)	Peshawar
30	Muhammad Imran	FWA (M)	Peshawar
31	Muhammad Naeem	FWA (M)	Peshawar
32	Shehbaz Khan	FWA (M)	Peshawar
33	Nmuhammad Ikram	Chowkidar	Peshawar
34	Sajid Nawab	Chowkidar	Peshawar
35	Ibrahim Khalil	Chowkidar	Peshawar
36	Farooq Sher	Chowkidar	Peshawar
37	Muhammad Naveed	Chowkidar	Peshawar
38	Muhamamd Riaz	Chowkidar	Peshawar
39	Adnan Hameed	Chowkidar	Peshawar
40	Inamullah	Chowkidar	Peshawar
41	Imran Khan	Chowkidar	Peshawar
42	Muhamamd Jamal	Chowkidar	Peshawar
43	Shah Khalid	Chowkidar	Peshawar
44	Mehwish	Aya / Helper	Peshawar
45	Nabila Khan	Aya / Helper	Peshawar
46	Humara Tabasum	Aya / Helper	Peshawar
47	Tania	Aya / Helper	Peshawar
48	Razia	Aya / Helper	Peshawar
49	Zaib un Nisa	Aya / Helper	Peshawar

ATTESTED

50	Shahdab Irfan	Aya / Helper	Peshawar
51	Saadia	Aya / Helper	Peshawar
52	Farzana Bano	Aya / Helper	Peshawar
53	Sadia Bibi	Aya / Helper	Peshawar

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

Sd/-
(Project Director)

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

Dated Peshawar the_____2014.

Copy forwarded to the:-

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

Assistant Director (Admn)

ATTESTED

ATTESTED

(16)

Annex-D

Population Welfare Department
Office of the District Population Welfare Officer, Pesh.
Govt. of Khyber Pakhtunkhwa
House no.4501,St#3,Sikandar Town, Pesh.

F.No:1(27)/2013-Admn

Dated: 13 /06/2014.

To,

Mr. Muhammad Riaz
Chowkidar
Pwe-Rano Ghanhi

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

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

District Population Welfare Officer.
Peshawar

Copy to:-

1. Accountant (Local) for n/action.
2. P/F of the official concerned.

District Population Welfare Officer.
Peshawar

ATTESTED

(17) Anx-E

IN THE PESHAWAR HIGH COURT PESHAWAR

W. P No. 1730 /2014

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

(Petitioners)

VERSUS

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

(Respondents)

ADDRESSES OF PARTIES

Petitioner:

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

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(13)

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

Prayer in Writ Petition:

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

Interim Relief

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(19)

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

Respectfully Submitted:

1. That provincial Govt Health department has approved a scheme namely Provision for Population Welfare Programme" for a period of 5 year 2010-2015, this integral scheme aims were:
   i. To strengthen the family through encouraging responsible parenthood, promoting practice of reproductive health & Family planning, improving basic health & thereby enhancing socio economic wellbeing.
   ii. To introduce participatory approach whereby stakeholders are involved & ownership of program rest with the community"

   (Copy of the PC-1 is attached as annexure "A")
2. That the respondents to carry out the purposes of this scheme advertisement different posts in different districts. It is however pertinent to mention here that the advertisement did not find mention of any project, the petitioners while holding the prescribed qualifications applied for the post commensurate with their qualification, they remained successful in the selection process, thus after the recommendation of the departmental selection committee,

ATTESTED

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(20)

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

3. That (you are offered appointment on contract basis in the District Population Welfare Office for the Project Life).

4. That it would be pertinent to refer that due to the efforts of the project staff most of the aims and object of the project were achieved and in view of the importance the Govt seriously considered bringing the project on regular side.

5. That the schemes in which the Petitioners were serving was brought on the regular budget, the same was reported in the press wherein reference was made to the Senior Minister who claimed that the Govt have approved creation of 560 posts on regular side. (Copies of the news cutting is attached as Annexure D).

6. That the petitioners agitated their regularization on their posts which have been duly sanctioned by the Finance Department, they also brought the matter in the notice of Provincial Govt through MPAs, however, no action was taken thereon. (Copies of the proceedings are attached as Annexure E).

7. That the petitioners also requested to the respondents for treating them alike with those who were regularized in accordance with the regularization of the scheme however no action was taken thereon.

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

GROUNDS OF WRIT PETITION:

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

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

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

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

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

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

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

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

G. That the Petitioners fulfilled the criteria for appointment, they have been appointed in the prescribed manner, hence they should not suffer for the administrative slackness / inactions in not regularizing the petitioners..

H. That it is pertinent to point out here that in similar circumstances the projects when brought on regular side its employees are also regularized but in the case of the petitioner they have been discriminated against and thus deprived of regularization. (Copies of the regularization orders are attached as Annexure F)

I. That the petitioners seek the permission of this Honorable Court to rely on additional grounds at the hearing of this Appeal.

Interim Relief

The Petitioners may please be allowed to continue on their posts which is being regularized and brought on regular budget and be paid their salaries after 30..2014 till the decision of writ petition.

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

Petitioners

Through

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(24)

IJAZ ANWAR
Advocate Peshawar

List of Books:-

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

CERTIFICATE

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

Petitioners

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

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

JUDGMENT

Date of hearing 26.06.2019

Appellant Petitioners in person by Mr. Ibad Ahmad Khattak

Respondent Govt. pleader by Qazi Anwar Ali Shah AAG.

****

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

ATTESTED

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

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

ATTESTED

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

ATTESTED

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

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

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

ATTESTED

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

ATTESTED

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EXAMINER
Peshawar High Court
12 JUL 2014

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

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

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EXAMINER
Peshawar High Court
12 JUL 2014

ATTESTED

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

ATTESTED
EXAMINER
Peshawar High Court
10 JUL 2014

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ATTESTED

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

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

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

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EXAMINER
Peshawar High Court.
12 JUL 2014

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

Announced on
26th June, 2014.

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

...e of Presentation of Application 01/7/2014
...of Pages 3/6

...62-
12/7/2014
12/7/2014
12/7/2014

ATTESTED

ATTESTED

(34)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Livestock and others

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For the Respondent(s) : Not represented.

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

For Respondent No.1 : In person (Absent)

For Respondent No.2 : Not represented.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For the Respondent(s) : Not represented.

Date of hearing : 24-02-2016

JUDGMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Civil Appeal No.52-P of 2015

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Islamabad

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29.5.2016

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Civil/Criminal

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

CIVIL APPEAL NO.134-P OF 2013

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

CIVIL APPEAL NO.135-P OF 2013

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

CIVIL APPEAL NO.136-P OF 2013

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

CIVIL APPEAL NO.137-P OF 2013

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

CIVIL APPEAL NO.138-P OF 2013

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

CIVIL APPEAL NO.52-P OF 2015

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

CIVIL APPEAL NO.1-P/2013

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

CIVIL APPEAL NO.133-P OF 2013

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

CIVIL APPEAL NO.113-P OF 2013

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

CIVIL APPEAL NO.605 OF 2015

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

CIVIL APPEAL NO.231 OF 2015

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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CIVIL PETITION NO.371-P OF 2014

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

CIVIL PETITION NO.619-P OF 2014

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

CA.134-P/2013
For the appellant(s) : Mr. Waqar Ahmed Khan, Addl. AG KPK
Syed Masood Shah, SO Litigation.

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

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

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

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

Respondent No.1 : In person

Respondents 2-11 : Nemo.

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

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

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

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

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

For the Respondent(s) : Not represented.

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

For Respondent No.1 : In person.

For Respondent No.2 : Not represented.

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

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

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

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Supreme Court of Pakistan
Islamabad

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CIVIL APPEAL NO.232 OF 2015

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

CIVIL PETITION NO.600-P OF 2013

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

CIVIL PETITION NO.496-P OF 2014

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

CIVIL PETITION NO.34-P OF 2015

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

CIVIL PETITION NO.526-P OF 2013

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

CIVIL PETITION NO.527-P OF 2013

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

CIVIL PETITION NO.528-P OF 2013

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

CIVIL PETITION NO.28-P OF 2014

Govt. of KPK through Chief Secy. Peshawar and others — Vs. — Raimullah and others

CIVIL PETITION NO.214-P OF 2014

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

CIVIL PETITION NO.621-P OF 2015

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

CIVIL PETITION NO.368-P OF 2014

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

CIVIL PETITION NO.369-P OF 2014

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

CIVIL PETITION NO.370-P OF 2014

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

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CAs.134-P/2011 etc

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

For the Respondent(s) : Not represented.

Date of hearing : 24-02-2016

ORDER

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

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

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Islamabad

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IN THE PESHAWAR HIGH COURT, PESHAWAR

C.M. No. 479-P /2014

In

Writ Petition No. 1730/2014

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

.....(Petitioners)

VERSUS

1) Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2) Fazal Nabi, Secretary to Govt. of Khyber Pakhtunkhwa, Population Welfare Department, Khyber Pakhtunkhwa, House No. 125/111, Street No. 7, Defence Officer's Colony, Khyber Road, Peshawar.
3) Fazal Nabi, Director General Population Welfare Department, Khyber Pakhtunkhwa, F.C. Plaza, Sunehri Masjid Road, Peshawar.

.....(Respondents)

Application for implementation of judgment and order dated 26.06.2014 of this Honourable Court.

Respectfully Sheweth,

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EXAMINER
Peshawar High Court
15 DEC 2015

That the petitioners filed Writ Petition No. 1730/2014 in this Honourable Court with the following prayer:

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(68) (A) (B)

" On acceptance of this Writ Petition an appropriate Writ may please be issued declaring that Petitioners to have been validly appointed on the posts correctly mentioned against their names in the Scheme namely "Provision for Population Welfare Programme" they are working against the said posts with no complaint whatsoever, due to their hard work and efforts the scheme against which the petitioners was appointed has been brought on regular budget, the posts against which the petitioners are working have become regular / permanent posts hence petitioners are also entitled to be regularized in line with the regularization of other staff in similar projects, the service of the petitioners and claiming to relieve them on the completion of the project i.e. 30.06.2014 is malafide in law and fraud upon their legal rights, the petitioners may please be declared as regular civil servant for all intent and purposes or any other remedy deemed proper may also be allowed".

2; That the writ petition was entertained, notices were issued to the respondents they contested the petition, finally it came up for final hearing on 26.06.2014, the writ petition was allowed in the following terms.

"In view of the concurrence of the learned counsel for the petitioners and the learned Additional Advocate General and following the ratio of order passed in W.P. No. 2131/2013, dated 30.01.2014 titled Mst. Fozia Aziz vs Govt. of Khyber Pakhtunkhwa, this

FILED TODAY
Deputy Registrar
28 NOV 2014

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26.06.2014, inter alia on the following amongst other grounds.

GROUNDS

A) That vide order / judgment of this honourable court dated 26.06.2014 it is very much crystal clear stated that "the writ petition is allowed in the terms that the petitioners shall remain on the posts subject to the fate of CP No. 344-P/2012 as identical proposition of fact and law is involved therein".

So according to the implementation of judgment of this honourable court in true, letter and spirit the petitioners are require to be remain on posts subject to the fate of CP No. 344-P/2012 which has not been done and inspite of that petitioners were terminated form their posts.

B) That even in the suspension of parent judgment the W.P. No. 2131/2013 Fauzia Aziz v/s Govt. of KPK has been allowed and she was allowed conditionally to continue her job till the fate of C.P. No. 334-P/2012. (Copy of Writ Petition No. 2131/2013 and fresh pay roll of Mst. Fozia Aziz are annexure D and E respectively)

C) That in non compliance of judgment by the respondents the 510 employees are suffered and are in great financial crises and in miserable conditions because 510 families are become deprived from

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writ petition is allowed in the terms that the petitioners shall remain on the posts subject to the fate of CP No. 344-P/2012 as identical proposition of facts and law is involved therein. (Copy of the judgment and order dated 26.06.2014 is attached as Annexure A)

3) That the petitioners thereafter approached the respondents for implementation of the Judgment and order of this Honourable Court, however, they gave a deaf ear.

4) That as the respondents are willfully flouting and violating the judgment and order of this honourable court, therefore, a contempt of court No. 333-P/2014 was filed before this honourable court with the That in the interest of justice and for the sake of rule of law, the respondents deserve exemplary punishment so that the dignity and honor of the courts is maintained.

5) That on 27.10.2014 it was came up for hearing before the honourable bench whereby their lordships were pleased to dispose of the C.O.C. application with the pela that the parent judgment wherein this court had allowed the regularization of project employee has been suspended by the worthy apex court. (Copy of COC and order dated 27.10.2014 are attached as Annexure B to C respectively)

6) That the petitioner through the instant C.M. application approach this honourable court for implementation of judgment / order dated

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earning and lot of them i.e. about 300 hundred employees are also become overage.

D) That Govt. / respondents have regularize the project whereby a huge budget has been approved and also the respondents have hired round about 110 centers throughout the province on monthly rent basis and thus spent a huge expenditure and by this the Govt. is also suffering a huge financial expenses.

E) That petitioners are ready to work on conditional basis as done in W.P. No. 2131/2013 Mst. Fauzia Aziz V/s Govt. who was allowed conditionally and is now performing her job.

F) That it is the responsibility of respondents to implement the judgment of this honourable court in true spirit and letter and follow the directions of this honourable court that the petitioner shall remain on posts subject to the fate of C.P. No. 344-P/2012.

It is, therefore, most humbly prayed that the respondents may graciously be directed to implement the judgment of this honourable court in true terms and spirit and without disturbing the position of petitioners they be allowed to remain on their posts conditionally i.e. subject to the fate of C.P. No. 344-P/2012.

FILED TODAY

Deputy Registrar

28 NOV 2014

Dated : 11.11.2014

Petitioner

Through

Arif Ullah

Advocate, High Court,

Peshawar

ATTESTED

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
10.06.2015	C.M.No.826-P/2015 in W.P.No.1730-P/2014 Present: Mr. Javed Iqbal Gulbela, Advocate for petitioners. Mr. Rab Nawaz Khan, AAG for respondents alongwith Masood Khan Orakzai, D.G. ——— Applicants have filed this C.M. with the grievance that after acceptance of W.P.No.1730-P/2014 vide order dated 26.6.2014, the respondents were directed to retain the petitioners on their posts subject to the fate of CP No.344-P/2012 as well as any appeal filed by respondents against ibid order dated 26.6.2014 but despite that, they have advertised the same posts. Let notice be issued to respondents, which is accepted by Mr. Rab Nawaz Khan, AAG and Masood Khan Orakzai on behalf of respondents and seek time to file reply. Allowed. May do so within a week. Till then, operation of impugned advertisement dated 04.01.2015 shall remain suspended. Sd/- Waqar Ahmad J Sd/- M. Dawood Khan J JUDGE JUDGE

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ATTESTED

(73) (2) (72)

PESHAWAR HIGH COURT, PESHAWAR.

ORDER SHEET

Date of Order or Proceedings.	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary.
1	2
14.7.2015	C.M N0. 826-P/2015 in COC N0-479-P/2014 in W.P N0-1730-P/2014. Present: Nemo for petitioner. ** ** Adjourned for want of service of learned counsel for petitioners for a date to be fixed by the office. Sd/- Yahya Afridi. J JUDGE Sd/- Gohar Dawar. J JUDGE

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87
The Qanun-e-Shahadat Order 19

15 DEC 2015

(K.Ali)

ATTESTED

ATTESTED

ATTESTED

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Court of.....

Case No.....of.....

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2	3
	14.10.2015	C.M.No.1309-P/2015 in W.P.No.1730-P/2014.

Present: Mr. Javed Iqbal Gulbela, Advocate, for the petitioners.

Mr. Qaiser Ali Shah, Addl. AG, for the officials of Provincial Govt.

******

Notice of this C.M. be issued to all the respondents for 29th instant.

CHIEF JUSTICE

Ed Mashir Alam Kha-Sahib
JUDGE

Ed Jawad Qaiser

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Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87
The Qanun-e-Shahadat Order 1984
15 DEC 2015

(Fayaz)

ATTESTED

ATTESTED

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Court of.....

Case No.....of.....

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2	3
	29.10.2015	C.M.No.1309-P/2015 in W.P.No.1730-P/2014 Present: Agent of counsel for the petitioners. Mr. Mujahid Ali Khan, Addl. AG, for the officials of Provincial Govt. ****** Former states that the learned counsel for the petitioners due to some emergency cannot appear today. Seeks adjournment. Allowed. Adjourn to a short date in office. CHIEF JUSTICE JUDGE Ed Mazhar Alam Khan-J & Musarrat Hilali. J

(Fayaz)

ATTESTED

PESHAWAR HIGH COURT PESHAWAR

ORDER SHEET

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
1	2	3
	07.12.2015	**C.O.C No. 479-P/2015.** Present: M/S Arif Ullah & Javed Iqbal Gulbela, Advocates for applicants. Mr. Kab Nawaz Khan, AAG for respondents. ****** *ROOH-UL-AMIN KHAN, J:-* The instant COC has been filed for imitating contempt of Court proceedings against the respondents for non compliance of the judgment of this Court dated 26.6.2014 in Writ Petition No. 1730-P/2014, para 8 and 9 of which are reproduced below. "8. Learned counsel for petitioners produced a copy of order of this Court passed in W.P No. 2131/2013 dated 30.1.2014 whereby project employee's petition was allowed subject to the final decision of the august Supreme Court of Pakistan in C.P. No. 344-P/2012 and requested that this petition be given alike treatment. The learned AAG conceded to the proposition that let fate of the petitioners be decided by the august Supreme Court of Pakistan.

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EXAMINER
Peshawar High Court
15 DEC 2015

DB\WP-2016\Compliance\CM No. ...

9. In view of the concurrence of the learned counsel for the petitioners and the learned Additional Advocate General and following the ratio of order passed in W.P No. 2131/2013, dated 30.1.2014 titled Mst. Fozia Aziz vs. Government of Khyber Pakhtunkhwa, this writ petition is allowed in the terms that the petitioners shall remain on the posts subject to the fate of CP No. 344-P/2012 as identical proposition of facts and law is involved therein.

2. Notice was issued to respondents with directions to file their reply which was submitted accordingly.

3. The learned counsel for petitioner emphasized that the petitioner approached the respondents and produced the judgment of this Court to them for its implementation, however, they paid no heed to the matter by giving a deaf ear; that the respondents are willfully and deliberately flouting the judgment of this Court, thus have exposed themselves to the rigors of contempt of Court. Earlier the petitioner had approached this Court through COC No. 333-P/2014 which was disposed of by this Court vide order dated 27.10.2014 in the terms that the parent judgment wherein this Court had allowed

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regularization of the project employees, had been suspended by the august Apex Court. The successive application for initiating contempt of Court proceedings against respondents have been filed for implementation of the judgment dated 26.6.2014 in litter spirit.

4. having heard learned counsel for petitioners and learned AAG, perusal of record would reveal that no doubt the writ petition of petitioner was allowed in terms of decision of this Court in Fozia Aziz's case (Writ Petition No. 2131-P/2013), but the august Supreme Court of Pakistan while hearing various cases regarding employees of projects was pleased to grant leave to appeal and the matter was placed before the Chief Justice of Pakistan for constitution of a larger Bench. Subsequently, in civil petition No. 93-P/2013 filed against the judgment dated 5.12.2012, passed in writ petition No. 3087/2011, by this Court, the august Supreme Court of Pakistan granted leave to appeal while CM No. 140-P/2013 was allowed by suspending the impugned judgment, vide order dated 12.3.2015. Petitioner seeks implementation of the judgment dated 26.6.2014

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passed in Writ Petition No. 1790, which has been assailed by the respondent-department before the august Supreme Court of Pakistan, through CPLA, wherein the apex Court was pleased to pass the following order:-

> "Learned Additional Advocate General, Khyber Pakhtunkhwa has brought to our notice the order dated 13.6.2013 passed in CP No. 302-P/2011 and other connected petitions to show that the controversy involved in the present Appeals/petitions is already subject matter of adjudication in the said cases where leave has been granted on the legal points as formulated in paragraph-7 of the order. He has further referred to paragraph-9 of the same order to show that for hearing of these cases a Reference has been made to the Hon'ble Chief Justice of Pakistan for constitution of a larger Bench. This being the position, hearing of these appeals/petitions is adjourned. Office is directed to fix these appeals/petitions for hearing along with the appeals arising out of the order dated 13.6.2013. Interim order passed earlier, if any shall remain operative in the meantime."

5. Bare reading of the above quoted order of august Supreme Court of Pakistan, would make it abundantly clear that the judgment dated 26.6.2014 passed by this Court has been suspended by the august Supreme Court of Pakistan and at this stage it would not be appropriate to proceed further or to direct the respondents for implementation of the same.

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EXAMINER
Peshawar High Court
15 DEC 2015

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6. In views of the above, the instant COC has become infructuous, thus lost its efficacy, which is dismissed accordingly. The notices issued to respondents are hereby recalled.

Ed/- Rashid Amin Khan
JUDGE

Ed/- Muzaffar Hussain Shah
JUDGE

Announced on;
7th of December, 2015.

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No. 1259
Date of Presentation of Application 14/12/15
No of Pages 19P
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Urgent Fee 200
Total 219
Date of Preparation 15/12/15
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Received by

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IN THE HON'BLE PESHAWAR HIGH COURT PESHAWAR

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

Ann "I"

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

Petitioners

VERSUS

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

Respondents

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

RESPECTFULLY SHEWETH,

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

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(81)

IN THE HON'BLE PESHAWAR HIGH COURT PESHAWAR

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

Ann-I

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

Petitioners

VERSUS

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

Respondents

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

RESPECTFULLY SHEWETH,

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

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

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

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

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the thenceforth C.M are annexed as annexure – "D & E", respectively).

4. That in the meanwhile the Apex Court suspended the operation of the judgment and order dated 26/06/2014 of this August Court & in the light of the same the proceedings in light of COC# 479-P/2014 were declared as being in fractious and thus the COC was dismissed vide judgment and order dated 07/12/2015. (Copies of order dated 07/12/2015 is annexed as annexure "F").

5. That the Apex Court dismissed the C.P.L.A # 496-P/2014 of the Respondents, which had been moved against judgment and order 26/06/2015 of this August Court, vide judgment and order dated 24/02/2016. (Copies of judgment and order dated 24/02/2016 of the Supreme Court of Pakistan is annexed as Ann – "I").

6. That inspite of dismissal of the C.P.L.A # 496-P/2014 by the Apex Court and instead of regularizing the services of the petitioners, the

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respondents in utter violation to the reverend judgment and order of this August Court has once again made advertisement vide daily "Mashriq" dated 07/04/2016 for fresh recruitment. (Copy of the advertisement is annexed as annexure "G").

7. That this act of repeated abusing the process of court and flouting the orders of this August Court the respondents have thus envisaged themselves to be proceeded against for contempt of court.

It is, therefore, most humbly prayed that on acceptance of the instant petition, the contempt of court proceedings may very graciously be initiated against the respondents and be punished accordingly. It is further prayed that respondents be directed to implement the judgment and order dated 26/06/2014 in W.P # 1730-P/2014 of this August Court in its true letter and spirit.

Dated: - 13-04-2016

Petitioner

Through

JAVED IQBAL GULBELA
Advocate High Court
Peshawar

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PESHAWAR HIGH COURT, PESHAWAR

FORM 'A'
FORM OF ORDER SHEET

Date of order.	Order or other proceedings with the order of the Judge
3.8.2016	COC 186-P of 2016 in W.P. 1730-P of 2014. Present: Mr.Javed Iqbal Gulbela, advocate for petitioner. Mr.Rab Nawaz Khan, AAG alongwith Mr.Sagheer Musharaf, Assistant Director Population Welfare Department for respondents. --- *MUSARRAT HILALI, J.-* Through this petition, the petitioners seek initiation of contempt of court proceedings against the respondents for not implementing the judgment of this court in W.P. 1730-P of 2014 dated 26.6.2014, which has attained finality as the C.P.L.A. filed thereagainst has also been dismissed by the apex court on 24.2.2016. 2. Respondents were put on notice, who filed reply, which is placed on file. As per contents of reply, the respondents do not qualify to be granted the desired relief and prayed for dismissal of this petition. 3. However, when the case was called, the learned AAG alongwith representative of respondent-department turned up and stated that they may be

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EXAMINER
Peshawar High Court
06 AUG 2016

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given some time to implement the judgment of this court. As such the respondents are given 20 days to positively comply with the judgment of this court in the aforesaid writ petition and appoint the petitioners against the posts they have applied for. No deviation shall be made from the statement rendered at the bar on behalf of respondents.

Petition disposed of in the above terms.

JUDGE

JUDGE

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Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984

06 AUG 2016

1682

06-08-16

3P

6:00

06-08-16

06-08-16

06-08-16

Nadeem

Attested

Saqaf Shah PS

Office 578

ATTESTED

IN THE HON'BLE PESHAWAR HIGH COURT PESHAWAR

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

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

Petitioners

VERSUS

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

Respondent

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

Respectfully Sheweth,

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

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

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

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

ATTESTED

(5) (3)

order dated 07/12/2015. (Copies of order dated 07/12/2015 is annexed as annexure "F").

5. That the Apex Court dismissed the C.P.L.A # 496-P/2014 of the Respondents, which had been moved against judgment and order 26/06/2015 of this August Court, vide judgment and order dated 24/02/2016. (Copies of judgment and order dated 24/02/2016 of the Supreme Court of Pakistan is annexed as Ann – "F").

6. That inspite of dismissal of the C.P.L.A – 496-P/2014 by the Apex Court and instead of regularizing the services of the petitioners, the respondents in utter violation to the reverend judgment and order of this August Court has once again made advertisement vide daily "Mashriq" dated 07/04/2016 for fresh recruitment. (Copy of the advertisement is annexed as annexure "G").

7. That again another COC No.186 P/2016 was moved which was deposed off by this August Court vide judgment and order dated 03/08/2016 with direction to respondent to implement the judgment dated 26/06/2014 in W.P.No.1730-P/2014, within a period of 20 days, but inspite of clear cut directions the respondent is lingering on the implementation on one or the other

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pretention. (Copies of COC No.186-P/2014 and order dated 03/08/2016 are annexed as Annexure "H" & "J"; respectively)

8. That this act of repeated abusing the process of court and flouting the orders of this August Court the respondents has thus envisaged himself to be proceeded against for contempt of court

It is, therefore, most humbly prayed that on acceptance of the instant petition, the contempt of court proceedings may very graciously be initiated against the respondent and be punished accordingly. It is further prayed that respondent be directed to implement the judgment and order dated 26/06/2014 in W.P # 1730-P/2014 of this August Court in its true letter and spirit.

Dated: 02/09/2016

Petitioners

Through

JAVED IQBAL GULBELA,

&

AMIR NAWAZ KHAN,
Advocates High Court
Peshawar

ATTESTED

(91)

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

Dated Peshawar the 05th October, 2016

OFFICE ORDER

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

SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT

Endst: No. SOE (PWD) 4-9/7/2014/HC/ Dated Peshawar the 05th Oct: 2016

Copy for information & necessary action to the: -

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

5/10/2016
SECTION OFFICER (ESTT)
PHONE: NO. 091-9223623

ATTESTED

ATTESTED

To,

(92)

The Chief Secretary,
Khyber Pakhtunkhwa,
Peshawar

Subject: **DEPARTMENTAL APPEAL**

Respected Sir,

With profound respect the undersigned submit as under:

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

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

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

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

ATTESTED

(93)

5) That the said principle has been discussed in detail in the judgment of august Supreme Court vide order dated 24.02.2016 whereby it was held that appellants are reinstated in service from the date of termination and are entitle for all back benefits.

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

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

Yours Obediently,

Muhammad Nadeem Jan
Family Welfare Assistant
Population Welfare Department
Peshawar
Office of District Population Welfare Officer, Ali House, Qafila Road, Tehkal Payan, Peshawar

Dated: 20.10.2016

ATTESTED

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

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

Rizwan Javed and others ... ... Appellants

VERSUS

Secretary Agriculture Livestock etc ... ... Respondents

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

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

Date of hearing : 24-02-2016

ORDER

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

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

ATTESTED
Court Associate
Supreme Court of Pakistan
Islamabad

ATTESTED

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

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

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

ATTESTED

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

(56)

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

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

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

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

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

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

ATTESTED

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

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

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

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad

SEAL OF THE SUPREME COURT

Announced in open Court on 30.5.16

Approved for reporting.

J 11685/16

GR No: Civil/Criminal
Date of [illegible] 6.6.16
No of [illegible]
No of [illegible]
Requisition
Copy [illegible]
Court Fee
Date of [illegible] 6-6-2016
Date of [illegible] 6-6-2016
[illegible] M/S Khattak, ADR

ATTESTED

وکالت نامہ

بعدالت:

بنام

منجانب   دعویٰ

تاریخ 12/ ...

باعث تحریر آنکہ مقدمہ مندرجہ بالاعنوان اپنی طرف سے واسطے پیروی وجوابدہی بمقام .... کیلئے **جاوید اقبال گل بیلہ** ایڈوکیٹ ہائی کورٹ کو بدیں شرط وکیل مقرر کیا ہے۔ کہ میں ہر پیشی کا خود یا بذریعہ مختار خاص روبرو عدالت حاضر ہوتا رہونگا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کرونگا، اگر پیشی پر من مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کی کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہونگے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختارانہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کو کل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجرائے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد ثالثی و راضی نامہ فیصلہ برخلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختارانہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزوی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے ہمراہ بھی اور ویسے ہی اختیارات حاصل ہونگے جیسے کے صاحب موصوف کو حاصل ہیں۔ اور دوران مقدمہ میں جو کچھ ہرجانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کرونگا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہٰذا مختار نامہ لکھ دیا کہ سند رہے۔

مورخہ .... مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

In S.A# 483/2017

Mr. Muhammad Nadeem Jan

Versus

The Government of Khyber Pakhtunkhwa and Others

INDEX

Dated: 05/04/2018

Appellant

Through

JAVED IQBAL GULBELA,

&

SAGHIR IQBAL GULBELA

Advocates High Court

Peshawar

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

In S.A# 483/2017

Mr. Muhammad Nadeem Jan

Versus

The Government of Khyber Pakhtunkhwa and Others

REJOINDER ON BEHALF OF THE APPELLANT TO THE COMMENTS FILED BY THE RESPONDENTS NO: 2, 3 & 5

Respectfully Sheweth,

Reply to Preliminary objections:-

1. Incorrect and Denied. The appellant has got a good cause of action.

2. Incorrect and denied.

3. Incorrect and denied.

4. Incorrect and denied.

5. Subject to proof. However mere filing of review petition before the Hon'ble Apex Court or pendency of the same before the Hon'ble

Apex Court does not constitute an automatic stay of proceedings before this Hon'ble Tribunal, unless there has been an express order of the Hon'ble Apex Court in this regard.

On Facts:-

1. Incorrect and hypocratic. The appellant was appointed on contract basis and has been regularized later-on and is now entitled for the relief sought, while true picture is detailed in the main appeal.

2. Incorrect. True and detailed picture is given in the corresponding paras of the main appeal.

3. Incorrect and misleading. The appellant along with rest of her colleagues were duly appointed, initially, on contract basis in the subject project and after being creating same strength of numbers of vacancies on regular right and for accommodation their blue eyed ones, thereupon, the appellant

along with her colleagues were terminated from their services. This termination order was impugned in writ petition on 1730-P/2014 which was allowed vide judgment and order dated 26/06/2014. This decision of the Hon'ble Peshawar high Court was impugned by the Respondent department in the Hon'ble Apex Court in CPLA No. 496-P/2014, but that was also dismissed vide the Judgment and order dated 24/02/2016. Now the appellant and all her colleagues have been regularized, but maliciously with effect from 05/10/2016, instead of regularizing the appellant and her colleagues from their initial date of appointment or at least from 01/07/2014, whereby the project was brought on regular side. And now in order to further defeat the just rights of the appellant, the Respondent department has malafidely moved a Review Petition No. 3012-P/2016 in the Hon'ble Apex Court and now has taken the

pretention of its being pendency before the Hon'ble Apex Court just to have a miserable feign to evade the just rights and demands of the appellant and her colleagues, which under no canon of law is allowed or warranted, nor such plea can be allowed to defeat the ends of justice.

4. Correct. Detailed picture is given above and as well as in the main appeal.

5. Incorrect and denied. Detailed picture is given above in the main appeal.

6. Correct to the extent that the writ Petition of appellant was allowed. While the rest is incorrect and misleading.

7. Correct to the extent that CPLA No. 496-P/2014 was dismissed by the Hon'ble Apex Court, while the rest of the para is not only incorrect and concocted one, but as well as suffice to prove the adamancy and

arrogance of the Respondent department as well as its loathsome and flout-full attitude towards the judgments of the Hon'ble Superior Courts of the land.

8. No comments.

9. No comments.

10. Correct to the extent that CPLA was dismissed against the judgment dated 24/02/2016 and the Review petition is malafidely moved while the rest is misleading and denied.

11. Correct to the extent that the appellant along with rest of her colleagues were reinstated into service while the rest is misleading and denied.

12. In reply to Para No. 12 of the comments it is submitted that the Respondent department has no regard for the judgment of the superior Courts, otherwise there

would have been no need for filling the instant appeal.

13. No comments.

On Grounds:-

A. Hypocratic and malicious. True picture is given in the main appeal.

B. Incorrect. The appellant and rest of her colleagues are fully entitled for the relief they have sought from this Hon'ble Tribunal.

C. Misleading and hypocratic. True and detailed picture is given above and as well as in appeal.

D. Correct to the extent that the department is bound to act as per Law, Rules and Regulation, but it does not.

E. Correct to the extent of judgment dated 26/06/2014, 24/02/2016 and moving CPLA, while the rest is misleading.

F. Incorrect and denied.

G. Incorrect and denied. The appellant and all her colleagues have validly and legally been regularized and now are entitle for the relief sought.

H. Incorrect and denied.

I. No comments.

It is, therefore, most humbly prayed that on acceptance of instant rejoinder, the appeal of the appellant may graciously be allowed, as prayed for therein.

Dated: 05/04/2018

Appellant

Through

JAVED IQBAL GULBELA,

&

SAGHIR IQBAL GULBELA

Advocates High Court

Peshawar

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

In S.A# 483/2017

Mr. Muhammad Nadeem Jan

Versus

The Government of Khyber Pakhtunkhwa and Others

AFFIDAVIT

I, **Saghir Iqbal Gulbela (Adv) S/o Jan Muhammad R/o Gulbela Peshawar,** *as per instruction of my client*, do hereby solemnly affirm and declare on oath that contents of the Rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble court.

Deponent

CNIC: 17301-1502481-3

Identified By:-

Javed Iqbal Gulbela
Advocate High Court
Peshawar

IN THE PESHAWAR HIGH COURT PESHAWAR

W.P No. 2131 /2012

Mst. Fauzia Aziz D/O Abdul Aziz, Ex-Superintendent BPS-17 Welfare Home Charsadda R/O Village Ashoorabad, Amangarh District Nowshera.

(Petitioner)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar
2. Secretary to Govt of Khyber Pakhtunkhwa, Social Welfare and Women Development Department, Peshawar.
3. Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
4. Director, Directorate of Social Welfare, Special Education and Women Empowerment Jamrud Road Peshawar.

(Respondents)

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

Prayer in Writ Petition:

On acceptance of this Writ Petition an appropriate Writ may please be issued declaring that Petitioner to have been validly appointed on the post of ~~Superintendent BPS-17~~ Welfare Home for Destitute Children Charsadda she worked against the said posts with no complaint whatsoever, the scheme against which the petitioner was appointed has been brought on regular budget, similarly placed employees working with her were going to be regularized while the petitioner was terminated, the Petitioner is also entitled to be reinstated and regularized in line with the regularization of other staff, the reluctance on the part of the respondents in reinstating / regularizing the service of the

ATTESTED
EXAMINER
Peshawar H.
17 FEB 2014

FILED TODAY
Deputy Registrar
20 JUN 2012

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P....No. 2131....of...2013

JUDGMENT

Date of hearing..... 30-01-2014.

Appellant/Petitioner (s). (Mst. Fauzia Aziz) by Mr. Ijaz Anwar, Advocate.

Respondent (s). Mr. Rab Nawaz Khan Babar the Respondent

YAHYA AFRIDI, J. – Mst.Fauzia Aziz, petitioner seeks the Constitutional jurisdiction of this Court praying that:

> *"that an appropriate writ may please be issued declaring that the petitioner be treated to have been validly appointed on the post of Superintendent BPS-17 in Welfare Home to destitute children Charsadda; that the scheme against which the petitioner was appointed has been bought on regular budget; that similar placed employees working with her were going to be regularized, while she was terminated; that the petitioner is also entitled to be reinstated and regularized in line with the regularization of other staff and that the order dated 14.6.2012 may be declared as illegal, without lawful authority and of no legal effect"*

ATTESTED
EXAMINER
Peshawar High Court,
17 FEB 2014

2. In essence, the grievance of the petitioner is that she was the only officer in Welfare Home for Destitute Children at Charsadda (Project), who had not been adjusted by the respondents after the Project was merged into Provincial Government.

3. The matter was argued at some length. Finally, the worthy AAG ably assisted by Ibad Khan, representative of the respondents, argued at the bar that the Government has challenged the regularization of the Project employees before the apex Court in which leave has been granted. He further stated that the respondents agree to allow the conditional appointment of the petitioner subject to the final decision of the apex Court.

4. Accordingly, this writ petition is allowed in terms that the petitioner be appointed on conditional basis subject to

the final decision of the apex Court in Civil Petition No344-P of 2012.

Ahmad Jafar Afridi - J
M. Dawood - J

Announced on:
30th January, 2014

PESHAWAR HIGH COURT PESHAWAR
عدالت عالیہ پشاور

GULAB

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984
17 FEB 2014

Date of Presentation of Application	30/1/14
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IN THE HONOURABLE SERVICE TRIBUNAL, PESHAWAR

In Service Appeal No. 483/2017

Muhammad Nadeem Jan ..... (Appellant)

V/S

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

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Mushtaq

DEPONENT

IN THE HONOURABLE SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No.483/2017.

Muhammad Nadeem Jan ..... (Appellant)

VS

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

Joint Para-wise reply/comments on behalf of the Respondents No.4, 5 & 7.

Respectfully Sheweth,

Preliminary Objections

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

On Facts.

1. Incorrect. That the appellant was initially appointed on project post as Family welfare Assistant in BPS-05 on contract basis till completion of project life i.e. 30/6/2014 under the ADP Scheme Titled "Provision for Population Welfare Program in Khyber Pakhtunkhwa (2011-14)". It is also pertinent to mention that during the period under reference, there was no other such project in / under in Population Welfare Department with nomenclature of posts as Family Welfare Assistant. Therefore name of the project was not mentioned in the offer of appointment.
2. Incorrect. As explained in para-1 above.
3. Incorrect. The project in question was completed on 30/6/2014, the project posts were abolished and the employees were terminated. According to project policy of Govt. of Khyber Pakhtunkhwa on completion of scheme, the employees were to be terminated which is reproduced as under : "on completion of the projects the services of the project employees shall stand terminated. However, they shall be re-appointed on need basis, if the project is extended over any new phase or phases. In case the project posts are converted into regular budgetary posts, the posts shall be filled in according to the rules, prescribed for the post through Public Service Commission or The Departmental Selection Committee, as the case may be. Ex-project employees shall have no right of adjustment against the regular posts. However, if eligible, they may also apply and compete for the post with other candidates. However keeping in view requirement of the Department, 560 posts were created on current side for applying to which the project employees had experience marks which were to be awarded to them.
4. Correct to the extent that after completion of the project the appellant alongwith other incumbents were terminated from their services as explained in para-3 above.
5. Incorrect. Verbatim based on distortion of facts. The actual position of the case is that after completion of the project the incumbents were terminated from their post according to the project policy and no appointments made against these project posts. Therefore the appellant alongwith other filed a writ petition before the Honorable Peshawar High Court, Peshawar.

6. Correct to the extent that the Honorable Court allowed the subject writ petition on 26/6/2014 in the terms that the petitioners shall remain on the post subject to the fate of C.P No.344-P/2012 as identical proposition of facts and law is involved therein. and the services of the employees neither regularized by the court nor by the competent forum.
7. Correct to the extent that the CPLA No.496-P/2014 was dismissed but the Department is of the view that this case was not discussed in the Supreme Court of Pakistan as the case was clubbed with the case of Social Welfare Department, Water Management Department, Live Stock etc. in the case of Social Welfare Department, Water Management Department, Live Stock etc. the employees were continuously for the last 10 to 20 years while in the case of Population Welfare Department their service period during the project life was 3 months to 2 years & 2 months.
8. No comments.
9. No comments.
10. Correct. But a re-view petition No.312-P/2016 has been filed by this Department against the judgment dated:24/2/2016 of the larger bench of Supreme Court of Pakistan on the grounds that this case was not argued as it was clubbed with the cases of other Department having longer period of services Which is still pending before the Supreme Court of Pakistan.
11. Correct to the extent that the appellant alongwith 560 incumbents of the project were reinstated against the sanctioned regular posts, with immediate effect, subject to the fate of re-view petition pending in the August Supreme Court of Pakistan. During the period under reference they have neither reported for nor perform their duties.
12. Correct to the extent that a re-view petition is pending before the Apex Court and appropriate action will be taken in light of the decision of the Supreme Court of Pakistan.
13. No comments.

On Grounds.

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

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

Secretary to Govt. of Khyber Pakhtunkhwa
Population Welfare, Peshawar.
Respondent No.4

Director General
Population Welfare Department
Peshawar
Respondent No.5

District Population Welfare Officer
District Peshawar
Respondent No.7

IN THE HONOURABLE SERVICE TRIBUNAL, PESHAWAR

In Service Appeal No. 483/2017

Muhammad Nadeem Jan ..... (Appellant)

V/S

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

Counter Affidavit

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

Musharaf

DEPONENT

CNIC No. 17301-1642774-9