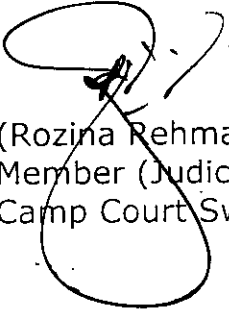


ORDER
05.10.2022

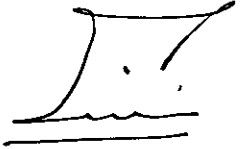
Nemo for the appellant. Mr. Nasir Ali Khan, Litigation Officer alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

The appeal in hand was called on for hearing after various intervals, however none appeared on behalf of the appellant till the closing time, therefore, the appeal in hand stands dismissed in default. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
05.10.2022



(Rozina Rehman)
Member (Judicial)
Camp Court Swat



(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat

(ڈر مشرفا) 5
APPEAL BEFORE THE HONORBLE DIRECTOR HEALTH SERVICES KHYBER PAKHTUNKHWA HEALTH DEPARTMENT PESHAWAR FOR THE UPDATION OF SERVICE RECORD IN THE LIGHT OF KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR; JUDGEMENT ARRIVED IN THE SERVICE APPEAL NO. 541/2019.

Through Proper Channel.

Respected Sir,

With great reverence and humble submission I beg to lay down for your kind information that I was initially appointed on 25/11/1995 as Medical Officer (BPS-17) on contract basis. Later under the provision of Khyber Pakhtunkhwa Civil Servants (Amendment) Act 2005 my services were regularized with effect from 1/7/2001, but deprived from the right of seniority for the period from 25/11/1995 till 01/07/2001..

Against such injustice of the department I approached the Honorable Peshawar High Court Peshawar vide writ petition No. 3518-P/2017, but the petition being not maintainable was dismissed vide verdict arrived on 30/10/2018. However I was allowed to approach the NWFP Services Tribunal for the redressal of my cogent and comprehensive grievances.

Taking cognizance of the situation I filled Service appeal No. 541/2019 in the NWFP Services Tribunal on 3/4/2019. After threadbare discussion the honorable Services Tribunal only permitted me for the pensioner benefits from the date of my initial appointment i.e (25/11/1995) and not allowed my seniority as is evident from Para 10 of the judgment dated 28/4/2022, (Copy attached for ready reference).

It is pertinent to add here that the Honorable Services Tribunal has granted me the penionery benefits strictly in accordance with the provision laid down in the Pension Rules 2.2 and 2.3 while dis allow seniority for the period I served in the department on contract basis.

In view of the above explicit exposition, it is requested to kindly direct the concerned quarter of Health Department of District of Swat to maintain and complete my services record and after the grant of annual increments pertaining to the intervening period from 25/11/1995 to 1/7/2001 my pension documents may be prepared, because I have been retired from services on 28/02/2021 and obliged please.

Furthermore preparation and payment of my pension was withheld for want of decision of the Services Tribunal, which has now been arrived, therefore humbly prayed to kindly expedite and considered my request on priority basis enabling me to receive my pension, gratuity and other benefits well in time please..

Obediently Yours

(DR.MUSTAFA)

MEDICAL OFFICER

CATEGORY-C HOSPITAL

KHWAZAKHELA DISTT.SWAT.

APPEAL BEFORE THE HONORBLE DIRECTOR HEALTH SERVICES KHYBER PAKHTUNKHWA HEALTH DEPARTMENT PESHAWAR FOR THE UPDATION OF SERVICE RECORD IN THE LIGHT OF KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR; JUDGEMENT ARRIVED IN THE SERVICE APPEAL NO. 541/2019.

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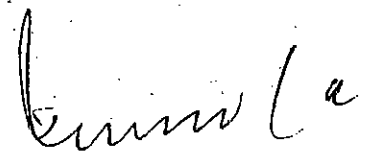
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In view of the above explicit exposition, it is requested to kindly direct the concerned quarter of Health Department of District of Swat to maintain and complete my services record and after the grant of annual increments pertaining to the intervening period from 25/11/1995 to 1/7/2001 my pension documents may be prepared, because I have been retired from services on 28/02/2021 and obliged please.

Furthermore preparation and payment of my pension was withheld for want of decision of the Services Tribunal, which has now been arrived, therefore humbly prayed to kindly expedite and considered my request on priority basis enabling me to receive my pension, gratuity and other benefits well in time please..

Obediently Yours

(DR.MUSTAFA)
MEDICAL OFFICER
CATEGORY-C HOSPITAL
KHWAZAKHELA DISTT.SWAT.



(1)



BEFORE THE PROVINCIAL SERVICE TRIBUNAL PESHAWAR

Appeal No. 541 /2019

*Dr. Mustafa medical officer category
Hospital Khawaja Khil-e-Sawal*

Versus

Khyber Pakhtunkhwa Service Tribunal
Peshawar
Diary No. 510
Dated 03-4-2019

1. Govt. of KPK through Chief Secretary.
2. Secretary to Govt. of KPK, Health Department Khyber Pakhtunkhwa, Peshawar.
3. Secretary of Govt. of KPK, Law & Parliamentary Affairs Department Civil Secretariat Peshawar.
4. Secretary of Govt. of KPK, Establishment Department Civil Secretariat Peshawar.
5. Secretary to Finance Department KPK, Civil Secretariat Peshawar.

APPEAL U/S SECTION-4 OF THE SERVICE TRIBUNAL ACT 1974 AGAINST THE DECISION OF RESPONDENTS NO.1-4 WHEREBY THEY HAD NOT CONSIDERED THE CONTRACT PERIOD OF PETITIONER SERVICES W.E.F 1995 TO 2001 WHEREBY THEIR CONTRACT PERIOD ABOUT 5/6 YEARS WERE NOT CONSIDER FOR SENIORITY MOVE OVER IN VIOLATION OF THE JUDGMENT OF HONORABLE SUPREME COURT AS LAID DOWN IN 2008 SCMR PAGE-380.

FACTS:

Filed to-day

Registrar

3/4/19

1. That the appellants No.1 were appointed on contract basis in the Health Department under supervision of Respondent No.1 Medical Officer BPS-17 in the year 25-11-1995 to 2001.

2. That the appointment on contract basis as stop gap arrangement.

Re-submitted to-day and filed.


Registrar

29/4/19

3. That in Govt. of KPK Civil Secretariat Amendment Act 2013. The appellants were regularization W.E.F 01.07.2001.

4. That the intervening period w.e.f 25-11-1995 upto 01.07.2001 were not considered for seniority, more over. To the next grade etc.

ATTESTED


Registrar

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 541/2019

Date of Institution ... 03.04.2019

Date of Decision ... 28.04.2022



Dr. Mustafa, Medical Officer, Category-C Hospital Khawaza Khila, Swat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary and four others.

... (Respondents)

MALIK AKHTAR ALI KHAN,
Advocate

--- For appellants.

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

--- For respondents.


MR. SALAH-UD-DIN
MR. MIAN MUHAMMAD

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- This single judgment is aimed at the disposal of the instant as well as connected Service Appeals bearing No. 542/2019 titled "Mohammad Ali Jan Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 543/2019 titled "Dr. Fazal Subhan Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 544/2019 titled "Dr. Jamil Ahmad Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 545/2019 titled "Dr. Bakht Zada Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 546/2019 titled "Dr. Faridoon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 1054/2019 titled "Sardeer Kumar Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others" and 1055/2019 titled

ATTESTED


CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

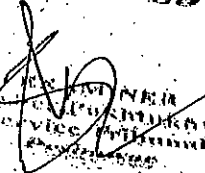
Dr. Abdul Ghafoor Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", as common questions of law and facts are involved in all the above mentioned appeals.

2. Briefly stated the facts as alleged by the appellants in their appeals are that the appellants namely Dr. Mustafa, Dr. Muhammad Ali Jan, Dr. Fazal Subhan, Dr. Jamil Ahmed, Dr. Bakht Zada and Dr. Sardeef Kumar were appointed as Medical Officers on contract basis in the year 1995, while the appellants namely Dr. Faridooon and Dr. Abdul Ghafoor were also appointed as Medical Officers on contract basis in the year 1999. On promulgation of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, their services were regularized with effect from 01.07.2001, however the intervening period of their contract services till 01.07.2001 was not considered for the purpose of seniority, therefore, the appellants filed Writ Petition No. 3518-P/2017 before the august Peshawar High Court, Peshawar, which was dismissed vide judgment dated 30.10.2018, being not maintainable, however it was observed that petitioners may approach the Services Tribunal for redressal of their grievance, hence the instant service appeals.

3. Notices were issued to the respondents, but they failed to submit reply/comments, despite several opportunities being given to them, therefore, the appeals were fixed ultimately for arguments.

4. Learned counsel for the appellants has contended that the contract period with effect from the date of initial appointment of the appellants till 01.07.2001 is legally required to be counted towards seniority and promotion of the appellants as seniority is reckoned from the date of initial appointment; that the appellants were performing similar duties being performed by the regular appointed Medical Officers, therefore, the period of their contract service shall be counted towards seniority; that according to Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963, the period of contract service shall be counted towards pensionary benefits of the appellants; that in light of numerous judgments

ATTESTED


Secretary, Peshawar
Khyber Pakhtunkhwa
Civil Services Tribunal

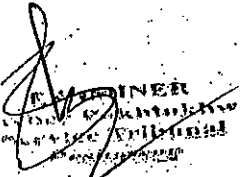
of worthy apex court, contract period shall be considered for the purpose of seniority but the respondents have wrongly and illegally ignored the judgments of worthy apex court; that the contract services of the appellants were without any break, which fact has not been considered by the respondents and resultantly, juniors to the appellants have become their seniors. Reliance was placed on 2018 SCMR 380, 1998 SCMR 969, 1991 SCMR 1765, 1993 SCMR 609, PLD 1970 Quetta 115 and unreported judgment dated 23.09.2020 passed by august Supreme Court of Pakistan in Civil Appeal No. 411 of 2020 titled "Additional Chief Secretary FATA, Peshawar and others Versus Sultan Muhammad and others".

5. On the other hand, learned Assistant Advocate General for the respondents has contended that the services of the appellants were regularized with effect from 01.07.2001 vide Notification dated 17.10.2017, which has not been challenged by the appellants through filing of departmental appeals within the statutory period of 30 days, therefore, the appeals are not at all maintainable; that the departmental appeals were allegedly filed by the appellants in the year 2018 and 2019, which are badly time barred, rendering their service appeals liable to be dismissed on this score alone; that the contract period of services of the appellants could not be counted for the purpose of their seniority as their seniority shall be counted with effect from the date of regularization of their services; that the seniority of the appellants has rightly been reckoned from the date of regularization of their services, therefore, the appeals in hand may be dismissed with costs. Reliance was placed on 2022 SCMR 448 and 2019 PLC (C.S) 740.

6. We have heard the arguments of learned counsel for the appellants as well as learned Assistant Advocate General for the respondents and have perused the record.

7. A perusal of the record would show that some of the appellants were appointed as Medical Officers (BPS-17) on contract basis in the year 1995, while some were appointed as such in the year 1999. In view of sub-section 2 of Section-2 of

ATTESTED


 ATTESTED
 JUDGE

the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 and the proviso under sub-section-4 of Section-19 of Civil Servants (Amendment) Act, 2013 as well as judgment dated 18.11.2018 passed by august Peshawar High Court, Peshawar in Writ Petition No. 1510 of 2007, Government of Khyber Pakhtunkhwa Health Department issued Notification dated 17.10.2017, whereby services of the appellants were regularized with effect from 01.07.2001. The core issue requiring determination is that as to whether the period of contract service of the appellants could be counted towards their seniority or not? In order to properly appreciate the controversy in question, it would be advantageous to go through para-1 (a) and (b) of Section-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, which is reproduced as below:-

***"Seniority.---(1)** The seniority inter se of civil servants [appointed to a service, cadre or post] shall be determined...*

- (a) *In the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission [or, as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and*
- (b) *In the case of civil servants appointed otherwise, with reference to the dates of their continuous regular appointment in the post; provided that civil servant selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se seniority as in the lower post".*

Explanation-I, ---.....

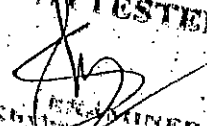
Explanation-II, ---.....

Explanation-III, ---.....

(2).....

[(3).....]

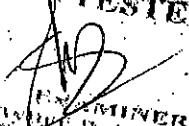
8. While going through clause-b of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules,

ATTESTED

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

1989, it is clear that the period of contract services of the appellants could not be counted for the purpose of seniority. Moreover, Section-8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 also provides that seniority in a post service or cadre to which a civil servant is promoted, shall take effect from the date of regular appointment to that post. It is by now well settled that services rendered by an employee on ad-hoc or contract basis cannot be counted for the purpose of their seniority as the same will be counted from their regular appointment. Wisdom in this respect derived from the judgment of august Supreme Court of Pakistan reported as 2022 SCMR 448. The appellants have themselves mentioned in para-2 of their respective appeals that their appointment on contract basis was a stop gap arrangement. Furthermore, according to para (1) of offer of appointment, the appellants were appointed for a period of one year or till the availability of selectees of Public Service Commission or return of original incumbents from leave/deputation, whichever is earlier. The appellants were not even falling within the category of civil servants prior to their regularization on 01.07.2001. The appellants thus cannot claim their seniority vis-à-vis the Medical Officers, who were appointed on regular basis during the period during which the appellants were serving on contract basis. The judgments relied upon by learned counsel for the appellants are distinguishable and could not in any way foster the claim of the appellants regarding counting of their contractual period of employment for the purpose of their seniority.

9. One of the plea taken by learned counsel for the appellants is that as the period of contract service could be counted towards pensionary benefits in view of rules 2.2 and 2.3 of Pension Rules, therefore, the same has to be considered for the purpose of seniority also. Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963, are reproduced as below:-

" 2.2 Beginning of Service- Subject to any special rules, the service of Government servant begins to qualify for pension when he

ATTESTED

 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal

takes over charge of the post to which he is first appointed.

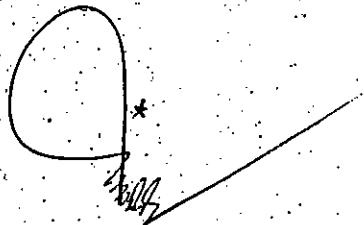
Rule 2.3 Temporary and officiating service —
Temporary and officiating service shall count for pension as indicated below:-

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity".

10. While going through the above mentioned reproduced Pension Rules, it is evident that the period of contract employment could be considered only for the purpose of counting qualifying service for pensionary benefits and not for the purpose of seniority or any other benefits.

11. Consequently, the appeal in hand as well as connected Service Appeals bearing No. 542/2019, 543/2019, 544/2019, 545/2019, 546/2019, 1054/2019 and 1055/2019, being devoid of any merits stand dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.04.2022

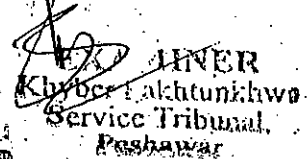


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy


MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 13/6/22
Number of Words 2800
Copying Fee 30/-
Urgent 5/-
Total 35/-
Name of Copyist -
Date of Completion of Copy 13/6/22
Date of Delivery of Copy 13/6/22

04.07.2022

Nemo for appellant.

Noor Zaman Khattak, learned District Attorney for respondents present.

Notice be issued to appellant/counsel for 01.08.2022 for hearing before D.B at Camp Court, Swat.



(Fareeha Paul)
Member (E)
Camp Court, Swat



(Rozina Rehman)
Member (J)
Camp Court, Swat

1-8-22

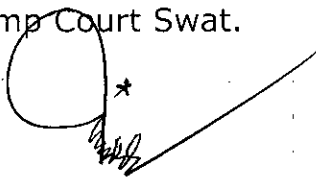
due to barrister vacation the case is adjourned to 6-9-22 for the same.



06.09.2022

Learned counsel for the appellant present. Mr. Muhammad Afzal, Section Officer alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant sought adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 05.10.2022 before the D.B at Camp Court Swat.



(Mian Muhammad)
Member (Executive)
Camp Court Swat

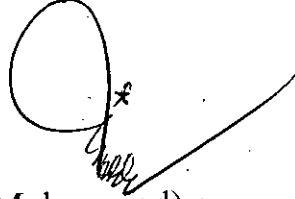


(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat

13.05.2022

Junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Mr. M. Usman, Assistant for respondents present. ^{and Sabirullah, focal person}

Junior of learned counsel for the appellant requested for adjournment on the ground that learned senior counsel is busy before the august Supreme Court of Pakistan. Adjourned. To come up for arguments on 07.06.2022 before the D.B at camp court Swat. .



(Mian Muhammad)
Member(E)



(Salah Ud Din)
Member(J)
Camp Court Swat

07.06.2022

Clerk of learned counsel for the petitioner present. Mr. Kabirullah Khattak, learned Additional Advocate General for the respondents present.

Counsel are on strike. Adjourned. To come up for arguments on ~~04.07.2022~~ before D.B at camp court Swat. ~~4.07.2022~~
~~at Camp Court Swat~~




(Mian Muhammad)
Member (E)
Camp Court Swat



(Kalim Arshad Khan)
Chairman
Camp Court Swat

11.02.2022

Tour is hereby canceled .Therefore, the case is adjourned to 08.04.2022 for the same as before at Camp Court Swat.



Reader


08.04.2022

Clerk of counsel for the appellant. Mr. Muhammad Riaz Khan Paindakheil Assistant Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is unable to appear for arguments due to some domestic engagements. Adjourned. To come up for arguments on 13.05.2022 before D.B at Camp Court, Swat.



(Rozina Rehman)
Member (J)



(Salah-Ud-Din)
Member (J)

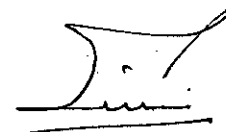
03.11.2021

Mr. Hamza Iqbal, Advocate junior of learned counsel for the appellant present. Mr. Jaffar Ali, Assistant alongwith Mr. Riaz Khan Paindakhel, Assistant Advocate General for respondents present.

Junior of learned counsel for the appellant requested for adjournment as senior counsel for the appellant is busy before Hon'ble Peshawar High Court, Mingora Bench Swat. Adjourned. To come up for arguments before the D.B on 06.01.2022 at Camp Court Swat.



(Atiq-Ur-Rehman Wazir)
Member (Executive)
Camp Court, Swat

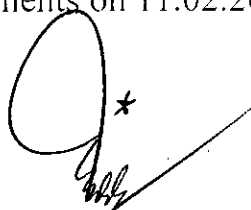


(Salah-Ud-Din)
Member (Judicial)
Camp Court, Swat

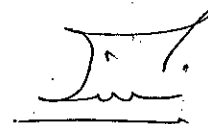
06.01.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that his counsel is not available today due to general strike of the Bar. Adjourned. To come up for arguments on 11.02.2022 before D.B at camp court Swat.



(Mian Muhammad)
Member(E)



(Salah Ud Din)
Member(J)
Camp Court Swat

08/04/2021

Due to COVID-19, the case is adjourned to

08/06/2021 for the same.


READER

26.07.2021

To come up for written reply/comments of respondents on 25.08.2021 before S.B at Camp Court, Swat. Notices be issued to appellant/counsel as well as respondents for the date fixed.


Chairman

25.08.2021

Counsel for the appellant and Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG alongwith Jaffar Ali, Asstt. for respondents present.

Representative of respondents has submitted reply/comments. The appeal is entrusted to D.B for arguments on 03.11.2021 at camp court Swat.


Chairman
Camp Court Swat.

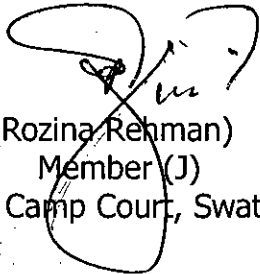
03.02.2021

Appellant present through counsel.

Points raised need consideration. Admitted to regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for written reply/comments. To come up for written reply/comments on 02.03.2021 before S.B at Camp Court, Swat.

Appellant Deposited
Security & Process Fee

11/2/21



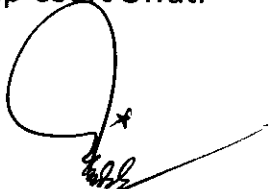
(Rozina Rehman)
Member (J)
Camp Court, Swat

02.03.2021

None for the appellant present. Mr. Noor Zaman, District Attorney for respondents present.

Written reply/comments not submitted. Learned District Attorney seeks time. Notices be issued to the parties.

Adjourned to ^{6.4.2021} before S.B at camp court Swat.



(Mian Muhammad)
Member(E)
Camp Court Swat

08.10.2020

Clerk of counsel for appellant is present.

Shed Jehanzeb, Advocate, General Secretary District Bar Association, Swat, by virtue of a reference no. nil dated 07.10.2020 communicated a day before that the Members of District Bar Association, Swat, have been invited to participate in the Oath taking ceremony of the President Peshawar High Court Mingora Bench (Bar Association) PHCMBBA to take place on 08.10.2020 therefore, it was requested for extension of cooperation and adjournment of cases after 10:00 A.M while at the moment prescribed time of 10:00 A.M has already passed. The case is adjourned to 10.12.2020 on which to come up for preliminary hearing before S.B at Camp Court, Swat.


(MUHAMMAD JAMAL KHAN)
MEMBER
CAMP COURT SWAT

10.12.2020

Due to Covid-19, case is adjourned to 03.02.2021 for the same as before



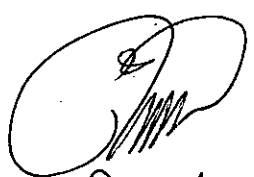

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1681 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge		
1	2	3		
1-	12/03/2020	<p>The appeal of Dr. Ijaz Ahmad presented today by Mr. Asghar Ali Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR 12/03/2020.</p> <p>2-</p>		<p>This case is entrusted to touring S. Bench at Swat for preliminary hearing to be put up there on <u>07-08-2020</u></p> <p style="text-align: right;"> Chairman</p> <p>Due to Summer vacation the case is adjourned. To come up for the same on <u>08-10-2020</u></p> <p style="text-align: right;"> Reader</p>

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. 1681 / 2020

Dr. Ijaz Ahmad.

... Appellant

- VERSUS -

Government of Khyber Pakhtunkhwa and others.

... Respondents

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APPELLANT
THROUGH COUNSEL

Dr. Ijaz Ahmad

ASGHAR ALI

ADVOCATE HIGH COURT

Off: D-18,19, 3rd Floor, Continental
Plaza, Makanbagh, Swat.

Cell: 0300-5740564

Dated: -03-2020

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. 1681 / 2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1854

Dated 12/13/2020

Dr. Ijaz Ahmad S/o Hazrat Hilal, Deputy District Health Officer
Swat.

... Appellant

- VERSUS -

1. Government of Khyber Pakhtunkhwa through Secretary Health at Peshawar.
2. Director General Health, Khyber Pakhtunkhwa at Peshawar.
3. District Health Officer, Swat at Saidu Sharif, District Swat.
4. Secretary Finance, Government of Khyber Pakhtunkhwa at Peshawar.

... Respondents

Filed to-day

Registrar

12/03/2020

Appeal Under Section 4 of the Service Tribunal Act, 1974, against refusal of respondents to count seniority of appellant from initial appointment i.e. 18-12-1995 w.e.f after counting the contract period.

Prayer:

On acceptance of this appeal respondents may please be directed to count the seniority of appellant from 18-12-1995 i.e. the date of initial appointment on contract basis, with all back / ancillary benefits.

Any other relief not specifically prayed for, but this August Court deems proper may also be granted.

Respectfully Sheweth;

1. That appellant was initially appointed as a Medical Officer on contract basis vide order No. 32420 – 23 dated 18-12-1995 (Copy of appointment order is annexure A).
2. That as initial period of appointment of the appellant was one year, which was extended time and again and lastly after passing competitive examination conducted by the public service commission of the erstwhile NWFP, appellant was appointed as a regular Medical Officer vide Order No. 37871-74 dated 11-12-1998 (Copy of order dated 11-12-1998 is annexure B).
3. That although appellant is performing his duties as regular Medical Officer since 18-12-1995, but instead of counting and treating seniority of appellant since 18-12-1995 the respondents have counted, the seniority of appellant since 11-12-1998, whereagainst respondents were requested time and again and finally a representation was filed to respondent No. 1 through respondent No. 3 vide memorandum dated 28-11-2019, but was not responded in the stipulated time.
4. That being aggrieved from refusal of respondents, the appellant files the instant appeal on the following grounds amongst others

GROUNDS:

- i. That refusal of respondents to count seniority of the appellant since 18-12-1995 is illegal and unlawful.
- ii. That appellant is entitled to be treated as a regular Medical Officer since 18-12-1995.

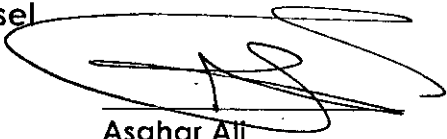
- iii. That the question involved in instant appeal has been resolved by the apex court of Pakistan time and again that the contract period should be counted towards total length of service and the appellant in pursuance to the dictum is entitled to be regularized with effect from the date of initial appointment.
- iv. That the appellant has strong prima facie case and no one be discriminated under the mandate of article 4 and 25 of the Constitution of Islamic Republic of Pakistan.
- v. That at the time of appointment the appellant was appointed under the prevailing rules and policy and after regularization, the contract period be counted towards pecuniary benefits and other reliefs as per spirit of law, so the refusal / no response is against the law and be declared Coram-non-judice and ineffective upon the rights of appellant.
- vi. That the contract period has been counted by the answering respondent towards his length of services, then it is astonishing that the answering respondents are reluctant to count the same period towards his / seniority, pension benefits and other relief, so such act of the respondents is highly discriminatory and has nullity in the eyes of law.
- vii. Any other grounds not specifically raised will be argued with prior permission of this august court.

It is therefore very humbly prayed that, on acceptance of this appeal respondents may please be directed to count the seniority of appellant from 18-12-1995 i.e. the

date of initial appointment on contract basis, with all back / ancillary benefits.

Any other relief which is otherwise deemed proper, lawful, efficacious may also be granted in favour of appellant.

Appellant: 
Dr. Ijaz Ahmad

Counsel 
Asghar Ali
Advocate High Court

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

Service Appeal No. _____ /-2020

Dr. Ijaz Ahmad.

... Appellant

- VERSUS -

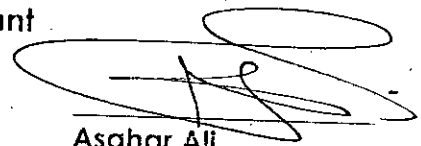
Government of Khyber Pakhtunkhwa and others.

... Respondents

Certificate

It is certified that as per instruction received from my client that no such like other service appeal has earlier been filed before this Hon'ble Court.

Appellant
Through Counsel



Asghar Ali
Advocate High Court

Appellant

Dr. Ijaz Ahmad

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. _____ / 2020

Dr. Ijaz Ahmad.

... Appellant

- VERSUS -


Government of Khyber Pakhtunkhwa and others.

... Respondents

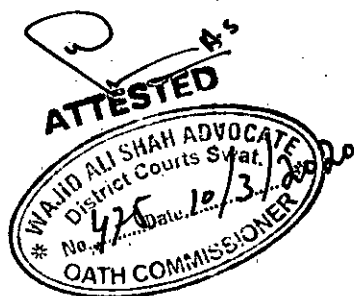
Affidavit

I, do hereby solemnly affirm and declares that, all the contents of this service appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed therein from this august court.

Deponent:



Dr. Ijaz Ahmad
(Appellant)



BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. _____ / 2020

Dr. Ijaz Ahmad.

... Appellant

- VERSUS -

Government of Khyber Pakhtunkhwa and others.

... Respondents

Address of Appellant:

Dr. Ijaz Ahmad S/o Hazrat Hilal, Deputy District Health Officer
Swat.

Addresses of Respondents:

1. Government of Khyber Pakhtunkhwa through Secretary Health at Peshawar.
2. Director General Health, Khyber Pakhtunkhwa at Peshawar.
3. District Health Officer, Swat at Saidu Sharif, District Swat.
4. Secretary Finance, Government of Khyber Pakhtunkhwa at Peshawar.

Appellant
Through Counsel

Dr. Ijaz Ahmad



Asghar Ali
Advocate High Court

Dr. Ijaz Ahmad S/O Hazrat Hilal.

8

A

Subject:-

APPOINTMENT ON CONTRACT BASIS:

Memo:-

Reference your application on the above subject of the post of Medical Officer/Women Medical Officer/Dental Surgeon.

The competent authority is hereby appoint you as Medical Officer/Women Medical Officer/Dental Surgeon in the Health Department, Government of NWFP, on contract basis for a period of one year or till the availability of post from leave/deputation selectee/return of original incumbent and conditions laid down in the attached agreement Deed. You shall be posted to BHU, Hazrat Abad (District Swat).

transferable.

- 02. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
- 03. If you accept the offer of appointment on contract basis as a Medical Officer/Women Medical Officer/Dental Surgeon, the attached Agreement Deed should be filled in duly signed by you and should report at your own expense.
- 04. If you fail to report for duty at the station specified in Para-2 above within (15) Ten days, the offer of appointment on contract basis will be deemed to have been withdrawn automatically and no further correspondence shall be entertained in this respect.

SD/-----
DR. AZMAL KHAN (FRIDE)
DIRECTOR GENERAL HEALTH
SERVICES, NWFP PESHAWAR.

DATED PESHAWAR THIS 18.12.1995.

NO 32420-23 /S.T. Copy forwarded to the :-

- 01. Secretary to Govt. of NWFP, Health Department, Peshawar for information w/r to his letter No.SO(H)IV/3-18/93, dated 16.11.1995.
- 02. M.S.; DHO; Hospital,
- 03. Divisional Director Health Services, Malakand.
- 04. District Health Officer/Agency Surgeon, Swat.
- 05. Accountant General, N.W.F.P. Peshawar.
- 06. District/Agency Accounts Officer, Swat.

for information and if/when

for information and necessary action.

Attested
(Signature)

DI
SERVICES, PESHAWAR

(Signature)

Better Copy of Page No.

Dr. Ijaz Ahmad S/o Hazrat Hilal.

Subject: **OFFER OF APPOINTMENT ON CONTRACT BASIS.**

Memo:-

Reference your application on the above subject for the post of Medical officer/Women Medical Officer/Dental Surgeon.

01. The competent authority is hereby appoint you as Medical Officer/Women Medical Officer/Dental Surgeon in the Health Department, Government of NWFP, on contract basis in B-17 for a period of one year or till the availability of Public Service Commission selectee/return of erigina incumbent from leave/deputation whichever is earlier, on the terms and conditions laid down in the attached Agreement Deed.

You shall be posted to **BHU Nazar Abad (District Swat)**.

This contract appointment is not transferrable.

02. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.

03. If you accept the offer of appointment on contract basis as a Medical Officer/Women Medical Officer/Dental Surgeon, the attached Agreement Deed should be filled in duly signed by you and should report at your own expense.

04. If you fail to report for duty at the station specified in Para-3 above within (10 Ten days, the offer of appointment on contract basis will be deemed to have been withdrawn automatically and no further correspondence shall be entertained in this respect..

SD/-----

DR. AZMAT KHAN AFRIDI
DIRECTOR GENERAL HEALTH
SERVICES, NWFP PESHAWAR

Attested


No. 32420-23/E.I. DATED PESHAWAR THE 18.12.1995

Copy forwarded to the :-

01. Secretary to Govt: of NWFP, Health Department, Peshawar for information on w/r to his letter No. SO(H)IV/3-18/93 dated 16.11.1995.
02. M.S., DHO: Hospital.
03. Divisional Director Health Services Malakand.
04. District Health Officer/Agency Surgeon, Swat.
05. Accountant General, N.W.F.P. Peshawar.
06. District/Agency Accounts Officer, Swat.

For information and necessary action.

DIRECTOR GENERAL HEALTH
SERVICES, NWFP PESHAWAR

5840
22/12/98

9 "B"

DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

OFFICE ORDER.

In pursuance of the Govt. of NWFP, Health Deptt: Notification No. SOH-IV/3-12/93/KC. Dated 27.11.1998, in the subject mentioned, through Public Service Commission No. _____ Idag Ahmad

S/O Hazrat Hilal Director on contract basis at BIU Peshawar Swat is hereby posted/retained at _____ on the terms and conditions mentioned in the notification ibid.

He is hereby directed to report for duty in the Institution/ Hospital mentioned above within 25 days of the receipt of this communication.

N.B:- Handing/taking over charge reports must be submitted to this Directorate urgently.

SD/-XXXXXXXX
Director General Health Services, NWFP, Peshawar.

NO. 37871-74

D.I, Dated Peshawar 11/12/1998

Copy forwarded to the :-

1. Secretary Health Govt: of NWFP, Peshawar.
2. Distt: Health Officer, Swat
3. Distt: Accounts Officer, Swat
4. Doctor concerned.

Attested
(Signature)

324

for information and necessary action.

DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

[Handwritten signature]

E-547

Better Copy of Page No.

**DIRECTORATE GENERAL HEALTH
SERVICES, NWFP, PESHAWAR**

OFFICE ORDER.

In pursuance of the Govt: of NWFP, Health Deptt: Notification No. SOH-IV/3-12/93/KC, dated 27.11.1998, on his first appointment, through Public Service Commission Dr.**Ijaz Ahmad**.....
S/o**Hazrat Hilal**.....already working on contract basis at
.....**BHU Bar Shawar Swat**..... is hereby posted/retained at
.....**same post**..... on the terms and conditions mentioned in the Notification ibid.

He is hereby directed to report for duty in the institution Hospital mentioned above within 25 days of the receipt of this communication.

N.B:- Handling/taking over charge reports must be submitted to this Directorate urgently.

SD/XXXXXXXXXX
DIRECTOR GENERAL HEALTH
SERVICES, NWFP PESHAWAR

NO. 37871-74 / E.I, Dated Pesh the 11 / 12 / 1998

Coy forwarded to the :-

01. Secretary Health Govt: of NWFP, Peshawar.
02. Distt: Health Officer, Swat.
03. Distt: Accounts Officer, Swat.
04. Doctor concerned.

Attested


For information and necessary action.

DIRECTOR GENERAL HEALTH
SERVICES, NWFP PESHAWAR

10

The Secretary Health,
Govt: of Khyber Pakhtunkhwa Peshawar.

Through:- Proper Channel.

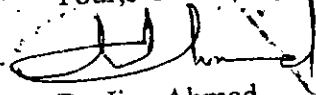
Subject:- REQUEST FOR REGULARIZATION OF SERVICE.

Respected Sir,

I have the honour to state that I was appointed as Medical Officer BPS-17 on contract basis by the Director General Health Services the then N.W.F.P vide No. 32420-23/E-1 dated, 18/12/1995 and then my service was regularized through Public Service Commission vide Director General Health Services officer order No. 37871-74/ dated, 11/12/1998. (Photo copies of above orders are attached).


It is therefore requested that my contract period w.e.f 24/12/1995 to 11/12/1998 may very kindly be regularized, please.

Your,s Obediently,



Dr. Ijaz Ahmad,
Deputy District Health Officer,
District Swat.

Attested


90/1

DHO



11

"D"

**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

All communications should be addressed to the Director General Health Services
Peshawar and not to any official by name E-Mail Address K.P.Kdghs@yahoo.com
Office # 091-9210269 Exchange # 091-9210187, 9210196 Fax # 091-9210230
NO 2/809-10/E-1 Dated: 28 / 11 / 2019

To

The Secretary to Govt. of
Khyber Pakhtunkhwa Health Department,
Peshawar.

20
2/11/2020

Subject:

REQUEST FOR REGULARIZATION OF SERVICE.

Dear Sir,

I have the honour to enclose herewith a copy of letter No. 19445/PF dated 01.10.2019, from DHO, Swat alongwith application of Dr. Ijaz Ahmad Deputy DHO, Swat requesting for regularization of his service from 24.12.1995 to 11.12.1998, for favour of further necessary action.

It is stated that Dr. Ijaz Ahmad Deputy DHO, Swat was initially appointed as MO (BPS-17) on contract basis w.e from 24.12.1995. His contract was extended time to time. In the meantime he was selected as MO (BPS-17) through Public Service Commission and he assumed charge of his duty as regular MO (BPS-17) w.e from 12.12.1998.

It is therefore requested that necessary order of the Govt. may please be conveyed in the matter.

Attested

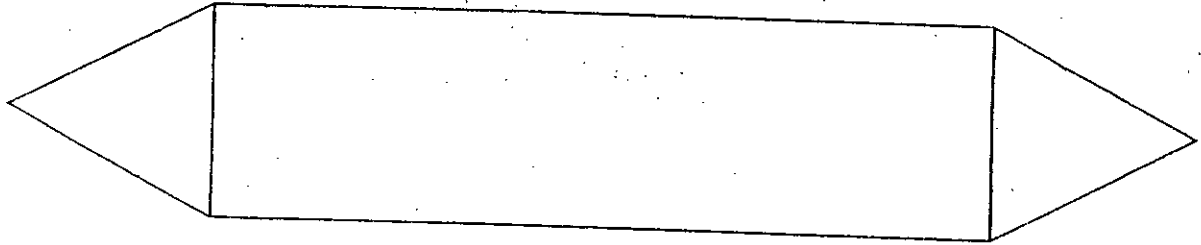
Ijaz Ahmad

**DIRECTOR GENERAL HEALTH
SERVICES KHYER PAKHTUNKHWA PESHAWAR**

Cc:

DHO, Swat for information w/r to his letter referred above.

بعدالت صبا۔ سرورین ٹریبیٹل ٹیم پیار



مورثہ 20ء منجانب
مقدمہ
دعویٰ ڈاکٹر اعجاز احمد بنام گورنمنٹ و ملبر
جرم زیر دفعہ ادفعات

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام سپتاور کیلئے ایسٹریٹسٹ اور پروفیسٹ مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ بر حلف دینے جواب دہی اور قبالی دعویٰ اور خوبصورت ڈگری کرانے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زر اس پر دستخط کرنیکا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ اپیل کی برآمد اور منسوخی اور دائر کرنے، اپیل نگرانی و نشانی و پیروی کرنے کا اختیار ہوگا۔ اور یہ صورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کراپنے ہمراہ یا اپنی بجائی تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہونگے۔ اور اس کا ساختہ پر داختم منظور و قبول ہوگا۔ اور دوران ان مقدمہ میں جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق وکیل صاحب موصوف ہونگے۔ نیز بقایا و خرچہ کی وصولی کرنے کا اختیار حاصل ہوگا۔ اگر کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے۔ کہ پیروی مقدمہ مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

200ء

الرقوم

العبد گواہ شہد العبد

کیلئے منظور ہے۔

بمقام مستفاد

Attestation Accepted by

Asghar Advocate

ڈاکٹر اعجاز احمد

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1681/2020

Dr. Ijaz Ahmad.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents

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8-8/2021

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1681 OF 2020

Dr. Ijaz Ahmad.....Appellant

Versus

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

Respectfully Sheweth:

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Preliminary Objections:-

1. That the appellant has got neither cause of action nor did locus standi to file the instant appeal.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Laws and Rules.
4. That the appeal is not maintainable in its present form and also in the present circumstances of the issue.
5. That the appellant has filed the instant appeal with mala-fide intention hence liable to be dismissed.
6. That the appellant has not come to the Tribunal with clean hands.
7. That the appeal is time barred.
8. That the Honorable Tribunal has already adjudicated the matter vide its Judgment dated 12/11/2019 case titled "Dr. Alif Jan and others Vs Secretary Health Khyber Pakhtunkhwa" whereby the Honorable Court dismissed all the appeals filed by similarly placed doctors, hence the instant appeal is hit by Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974.
9. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

REPLY ON FACTS:

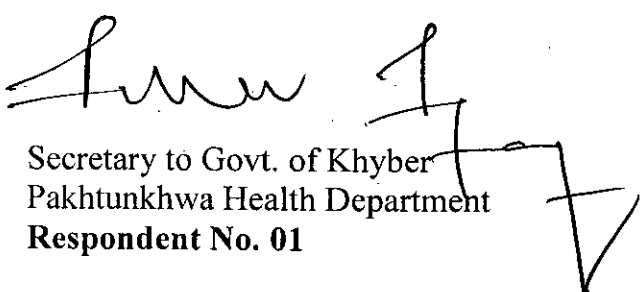
1. Pertains to record
2. Correct to the extent that the appellant has been regularly appointed as Medical officer on the recommendation of Erstwhile NWFP Public Service Commission.
3. Incorrect. The appellant being recommended of the commission is entitled for seniority in accordance with the merit assigned by PSC as per Rule 17(1)(a) of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989. The appellant is not entitled for the seniority or other benefit of the service rendered as contract employee, hence denied.
4. The instant appeal is badly time barred.


GROUNDS:


- i. Incorrect. Seniority of the appellant has been counted in accordance with Rule 17(1)(a) of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules 1989.
- ii. Incorrect. There is no law or rule under which the appellant is entitled for seniority from the date of appointment on contract basis.
- iii. Incorrect. Each and every case has different facts and circumstances and as per dictum laid down by The Supreme Court is that each case is to be decided on its own merit. However, it is worth mentioning that the matter has already been decided by The Honorable Service Tribunal vide its Judgment dated 12/11/2019 in case titled Dr. Alif Jan and others Vs Secretary Health KP whereby the Honorable Court dismissed all the appeals filed by similarly placed doctors (Annex-A).
- iv. Incorrect, the appellant has been treated in accordance with law and Rules. Moreover, the appellant has no Prima facie case.
- v. Incorrect as per Para No. 3 of the Facts.
- vi. Incorrect. As stated in Para-iii ibid.
- vii. Any other ground, deem appropriate, shall be argued with prior permission of this august Tribunal.

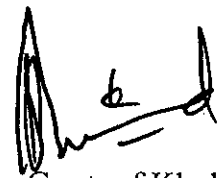
PRAYER:

It is therefore humbly prayed that on acceptance of the comments, the appeal of the appellant may very graciously be dismissed with cost.


Secretary to Govt. of Khyber
Pakhtunkhwa Health Department
Respondent No. 01


Director General Health Services
Khyber Pakhtunkhwa
Respondent No. 02


District Health Officer Swat
Respondent No. 03


Secretary to Govt. of Khyber
Pakhtunkhwa Finance Department
Respondent No. 04

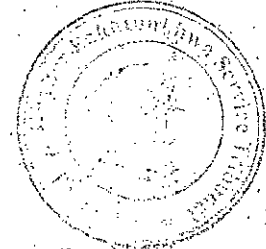
Annex-A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 318/2018

Date of Institution 06.03.2018

Date of Decision 12.11.2019



Dr. Akram Khan S/O Arbab Khari, SMO, Nowshera.....

(Appellant)

VERSUS

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

Present:

MR. MUHAMMAD AYUB KHAN SHINARI,
Advocate

For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

MR. ZIALLAH,
Deputy District Attorney

For respondents.

MR. AHMAD HASSAN

MR. MUHAMMAD AMIN KHAN KUNDI

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT:

AHMAD HASSAN, MEMBER:-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 317/2018 titled Dr. Alif Jan, no. 319/2018 titled Dr. Mamoon Elahi, no. 325/2018 titled Dr. Sheikh Muhammad Farooq Azam, no. 326/2018 titled Dr. Muhammad Hasham, no. 327/2018 titled Dr. Sultan-un-Nisa, no. 328/2018 titled Dr. Syeda Shahnaz Jabeen, no. 332/2018 titled Dr. Shahida Hussain Bukhari, no. 342/2018 titled Dr. Zafar Iqbal, no. 358/2018 titled Dr. Muhammad Zahid, no. 359/2018 titled Dr. Alamgeer Khan, no. 360/2018 titled Dr. Yousaf Khan, no. 361/2018 titled Abdur Rashid, no. 557/2018 titled Dr. Hafiz Zia-

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

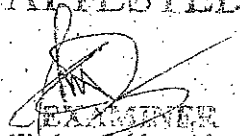
ul-Habib, no. 845/2018 titled Dr. Sajjad Ahmad, no. 846/2019 titled Dr. Qaisar Zaman and no. 847/2015 titled Dr. Muhammad Hamayun as similar question of law and facts are involved therein.

02. Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

03. Learned counsel for the appellant argued that he was appointed as Medical Officer in the Health Department on contract basis through notification dated 27.11.1995. That upon promulgation of Khyber Pakhtunkhwa civil servants (Amendments) Act (IX) 2005, where-under section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was amended and resultantly services of contract employees were regularized. Respondent no.3 (Secretary Establishment) through letter dated 10.08.2005 informed that as a sequel to Act of 2005, the employees for all intents and purposes would be deemed to be civil servants except pension. After the said enactment respondent no.3 was reluctant to regularize the services of the appellant and others which compelled them to file writ petition no. 1510/17 before Peshawar High Court, Peshawar, which was allowed vide judgment dated 18.11.2008. After receipt of above judgment services of the appellant/others were regularized w.e.f the date of promulgation of Act 2005 i.e 23.07.2005. However, services of a colleague of the petitioners namely Muhammad Iqbal son of Amir Waiz Khan, was appointed on 08.07.1998 were regularized from the date of contractual appointment vide notification dated 09.12.2006.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
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04. Learned counsel for the appellant further argued that subsequently the government of Khyber Pakhtunkhwa made further amendments in Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 through Act of 2013, where-under those employees appointed to a post in the prescribed manner on or after 01.07.2001 to 23.07.2005 on contract basis shall be deemed to have been appointed on regular basis. For implementation, the petitioners again approached the respondents but got a lukewarm response and again knocked the door of Peshawar High Court, Peshawar through writ petition no. 3960-P/2014, which was decided on 20.12.2016. The matter was referred to the respondents in the light of Section-5 of the Act of 2013 for appropriate decision. Thereafter, the respondents through impugned notification dated 17.10.2017 regularized the services of the appellant/others w.e.f 01.07.2001. Feeling aggrieved, the appellant filed departmental appeal on 11.11.2017, which remained unanswered, hence, the present service appeal. As there was no break in the service of the appellants, therefore, they were entitled for regularization from the date of initial appointment on contract basis. Act of 2013 was a beneficial legislation through which services of the employees were to be regularized from the date of initial appointment on contract basis. Reliance was placed on case law reported as 2012 PLC(C.S) 602, 2014-SCMR 1289, 2019-PLC (C.S) 103, 2009-PLC (CS) 389.

05. Learned Deputy District Attorney argued that there was hardly any confusion that services of the appellant/others were regularized w.e.f 01.07.2001 on the strength of Act of 2013. As the act did not allow regularization of contract appointment from the date of initial appointment i.e 27.11.1995 thus the action of the respondents was not suffering from any legal infirmity. Moreover, the Peshawar

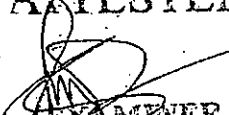
High Court, Peshawar, while deciding writ petition no. 3960-P/2014 on 20.12.2016 directed to constitute a committee in the light of Section-5 of the Act referred to above and the petitioners were directed to file department appeals. It was clear beyond any shadow of doubt that through the above judgment the Peshawar High Court, Peshawar had not regularized their services. However, if they were not satisfied from the relief granted by the august Court they were at liberty to assail the same before the august Supreme Court of Pakistan.

06. He further contended that present service appeal is hit by Rule-23 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 for the reason that the appellants were demanding the same relief through the present service appeal, as was sought in writ petition no. 3960-P/2014. This point has already been decided by the competent forum, therefore, the present service appeal was not maintainable. He further invited attention to regularization of Dr. Muhammad Iqbal notified on 09.12.2006. The said doctor was regularized on the basis of Section-23 of Khyber Pakhtunkhwa civil servants Act, 1973, thus parallel cannot be drawn between the two cases. It also settled the issue of discrimination agitated by the appellant. Reliance was placed on case law reported as 1990 MLD 1283, 2019 SCMR 349 and judgment of this Tribunal dated 25.04.1990 passed in service appeal no. 964/2016.

07. Learned Assistant Advocate General also invited attention of this Tribunal to the fact that the following doctors earlier appointed on contract basis were subsequently appointed on regular basis on the recommendations of Khyber Pakhtunkhwa Public Service Commission:-

1. Dr. Qaiser Zaman
2. Dr. Sajjad Ahmad

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3. Dr. M. Hamayun
4. Dr. Syed Shahnaz Jabeen
5. Dr. Shahid Hussain Bukhari
6. Dr. Zafar Iqbal
7. Dr. M. Hashim
8. Dr. Sheikh M. Farooq Azam
9. Dr. Sultan-un-Nisa

These details were not divulged by the learned counsel for the appellant during arguments. How a civil servant, appointed through Public Service Commission, could lay claim for regular appointment from the date of contractual appointment?

CONCLUSION:

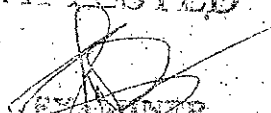
08. Before dilating on the merits of the case, we deem it appropriate to flag the critical issue of appointment of Dr. Qaiser Zaman (date 19.10.2000), Dr. Sajjad Ahmad (date 15.09.1997), Dr. M. Hamayun (date 27.11.1998), Dr. Syed Shahnaz Jabeen (date 12.07.2004), Dr. Shahid Hussain Bukhari (date 08.02.2005), Dr. Zafar Iqbal (date 16.03.2005), Dr. M. Hashim (date 08.02.2005), Dr. Sheikh M. Farooq Azam (date 07.09.2007) and Dr. Sultan-un-Nisa (date 07.09.2007) on regular basis on the recommendations of Khyber Pakhtunkhwa Public Service Commission. The dates in the brackets indicate date of their regular appointment. It is pertinent to point out that though relevant notifications about their regular appointment have been annexed with the service appeals, but their learned counsel kept mum over it for reasons best known to him. Strictly going by the rules seniority in such cases is assigned on the basis of merit list assigned by the Khyber Pakhtunkhwa Public Service Commission. Keeping in view the aforementioned position, it is not clear whether seniority was assigned to above petitioners from the date of regularization or appointment through Public Service Commission. As this issue was ^{not} properly raised/agitated by the learned counsel for the petitioners, so we would not like to address it.

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09. Through thirteen separate service appeals the appellants assailed notification dated 17.10.2017, where under their services were regularized w.e.f 01.07.2001 and made a request to allow them regularization from the date of initial appointment on contract basis on 23.11.1995/relevant date. The appellants were appointed as Medical Officer on contract basis vide order dated 27.11.1995/relevant date. After promulgation of Khyber Pakhtunkhwa Civil Servants (Amendments) Act (IX) 2005 amendments were brought in Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and services of contract employees were regularized. However, when respondents failed to act according to the above enactment, the appellants knocked the door of Peshawar High Court, Peshawar by way of filing writ petition no. 1510-P/2007 decided on 18.11.2008. Thereafter, their services were regularized from the date of enactment of Act of 2005 i.e 23.07.2005. Thereafter, Section-19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended and those employees appointed in the prescribed manner to service or post on or after 1st July 2001 till 23.07.2005 on contract basis were deemed to have been appointed on regular basis. Again respondents were not ready to treat the appellants on the basis of amendment referred to above, which forced them to file another writ petition no. 3960-P/2014 before Peshawar High Court, Peshawar. The mechanism to redress anomalies in the said act was available in Section-5 of the Act referred to above, therefore, the Peshawar High Court, Peshawar through judgment dated 20.12.2016 remanded the case to respondents for decision after thorough deliberations and according to the spirit of above referred provision. It resulted in issuance of impugned notification dated 17.10.2017 but that too failed to redress the grievances of the appellants. They were adamant for regularization of service from the date of initial appointment on

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contract basis. It is pertinent to point out that if the appellants were not satisfied from the judgment of Peshawar High Court, Peshawar dated 20.12.2016 the same could be easily assailed before the august Supreme Court of Pakistan by filing CPLA, however, the appellants remained silent for unknown reasons. Having attained finality, now it has become a story of the past and no relief can be claimed on the strength of the same.

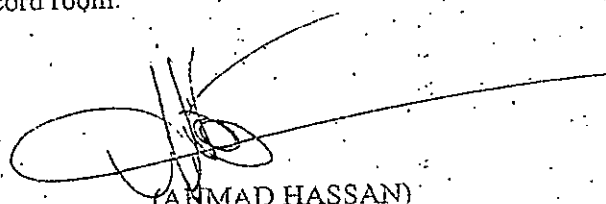
10. We have carefully scrutinized the entire record specially amendments brought in Khyber Pakhtunkhwa Civil Servants Act, 1973 through separate enactments but were unable to lay hand on any legal lacuna. We observed that thousands of government servants benefited from the legislation referred to above. Had there been some legal infirmity, it could have been assailed by them in the competent court of law? Interpretation of statutes by the learned counsel for the appellant was beyond our comprehension. He was unable to produce any supporting material through which he could establish his claim. Had his claim carried any weight, it might be easily defended by quoting cases of similar nature from other departments, if given regularization demanded by the appellants from a particular date. Furthermore, attention of the learned counsel for the appellant was also invited to notification dated 17.10.2017, where-under services of 680 contract employees were regularized from various dates but none of them challenged this order except the appellants. However, learned counsel for the appellant was not in a position to give any convincing response/reply.

11. As regards regularization of services of Dr. Muhammad Iqbal are concerned that was dealt with under Section-23 of the Khyber Pakhtunkhwa Civil Servants

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Act, 1973 and this fact was not contested by the learned counsel for the appellant. Entire case record is quite clear that he did not avail the benefits of regularization Act referred to above. As such his case is not akin with that of the appellants and they cannot claim similar treatment by quoting it as a precedent.


12. As a sequel to the above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
12.11.2019

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