

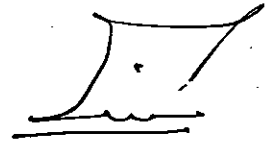
05.10.2022

Appellant alongwith his counsel present. Mr. Muhammad Jan, 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 08.11.2022 before the D.B at Camp Court Swat.



(Rozina Rehman)
Member (J)
Camp Court Swat




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

07.09.2022

Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Partial arguments heard. To come up for remaining arguments on 08.09.2022 before the D.B at Camp Court Swat.

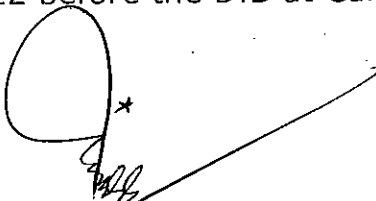

(Mian Muhammad)
Member (Executive)
Camp Court Swat

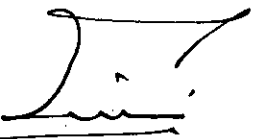
(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat

08.09.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Pension papers of the appellant had not been submitted either by the appellant or by the respondents, therefore, the same may be produced and 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

7th June, 2022

Appellant in person present. Mr. Kabirullah Khattak,
Addl: AG alongwith Mr. Muhammad Naeem, Assistant
Director for respondents present.

Written reply on behalf of respondents alongwith cost of
Rs. 1000/- has submitted which is placed on file. A copy of the
written reply is handed-over to the appellant. To come up for
arguments on 05.07.2022 before the D.B at camp court Swat.



(Kalim Arshad Khan)
Chairman
Camp Court Swat


05.07.2022

Learned counsel for appellant present.

Noor Zaman Khattak, learned District Attorney for respondents
present.

Former submitted rejoinder with a request for adjournment.
Adjourned. To come up for arguments on 02.08.2022 before D.B at
Camp Court, Swat.


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


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


2.8.22

*Due to summer vacation the case is
adjourned to 7-9-22 for the same.*



07.02.2022

Tour is hereby canceled. Therefore, the case is adjourned to 04.04.2022 for the same as before at Camp Court Swat.

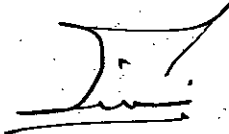


Reader

04.04.2022

Counsel for the appellant present. Mr. Muhammad Aman, PHC (Technologist) alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

Representative of the respondents sought time for submission of written reply/comments on the next date. Adjourned. Last opportunity given. To come up for submission of written reply/comments on 11.05.2022 before the S.B at Camp Court Swat.

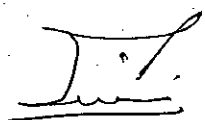


(Salah-Ud-Din)
Member (J)
Camp Court Swat

11.05.2022

Learned counsel for the appellant present. Mr. Muhammad Usman, Assistant alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Representative of the respondents requested that time may be granted for submission of written reply/comments on behalf of respondents. The request is acceded, however subject to payment of costs of Rs. 1000/. Adjourned. To come up for submission of written reply/comments as well as costs of Rs. 1000/- on behalf of respondents on 07.06.2022 before the S.B at Camp Court Swat.



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

06.12.2021

Learned counsel for the appellant present. Mr. Muhammad Rasheed, Deputy District Attorney for respondents present.

Reply/comments on behalf of respondents are still awaited. Learned D.D.A is required to contact the respondents to submit reply/comments. Adjourned. To come up for reply/comments on 03.01.2022 before S.B at Camp Court Swat.



(Atiq Ur Rehman Wazir)
Member (E)
Camp Court, Swat

03.01.2022

Appellant in person present.

Vide order dated 04.10.2021 it was directed that notices be issued to the respondents for submission of written reply/comments, however the same have not been issued, therefore, explanation in this respect be called from Moharrar. Notices for submission of written reply/comments be issued to the respondents through registered post and to come up for submission of written reply/comments on 07.02.2022 before the S.B at Camp Court Swat.



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

04.10.2021

Mr. Imdadullah, Advocate, for the appellant present.
Preliminary arguments heard.

Learned counsel for the appellant has contended that the appellant has filed Departmental appeal during the process of finalization of his pension case for inclusion of his contract service towards pensionary benefits but was not responded. The appellant waited for finalization of his pension papers, but he found that the contract period was not included. Regarding limitation the learned counsel added that since the issue involves monetary benefits in favor of appellant hence, limitation would not run in the instant case. The learned counsel referred to Rule 2.3 of pension rules 1962, and added that such rules allows the period under question for pensionary benefits.

Points raised need consideration. The appeal is admitted to regular hearing subject to all legal and valid objections. The appellant is directed to deposit security and process fee within 10 days, where-after notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments before the D.B on 06.12.2021 at Camp Court Swat.

Appellant Deposited
Security & Process Fee

(ROZINA REHMAN)
MEMBER (JUDICIAL)
CAMP COURT SWAT

27.07.2021

Counsel for the appellant present.

The appellant as a matter of underlying purpose of this appeal seeks benefit of his contractual services prior to his regular appointment made on recommendations of the Public Service Commission. Attention of learned counsel has been drawn to the very order of contract appointment of the appellant which he accepted under the terms and conditions of offer of appointment made to him and learned counsel was required to assist this Tribunal as to how and under what law the appellant is able to seek the relief as prayed for. Learned counsel seeks time. Granted. To come up for preliminary hearing on 04.10.2021 before S.B at Camp Court Swat.


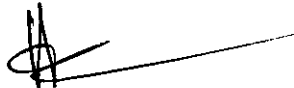

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No:- 4752/2021

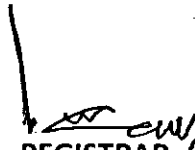
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/04/2021	<p>The appeal of Mr. Shafi-ul-Mulk resubmitted today by Mr. Imdadullah Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	04/06/2021	<p>This case is entrusted to S. Bench Peshawar. Notices be issued to appellant/counsel for preliminary hearing on 27/07/2021.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Shafi-ul-Mulk Medical Superintendent (Retired) DHQ Hospital Alpuri District Shangla received today i.e. on 05/04/2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of impugned order and departmental appeal against it are not attached with the appeal which may be placed on it.
- 2- Annexure-B of the appeal is illegible which may be replaced by legible/better one.

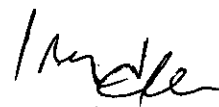
No. 635 /S.T,

Dt. 05/04 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

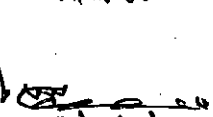
Mr. Imdadullah Adv, Swat.

Re Submitted with a request that impugned order is irrelevant the appeal may be fixed along with the objection p/2



objection No-1 is still stand. 05/04/2021
The appeal is again returned to the counsel for the appellant for completion & resubmission within 10 days.

NO 636 / ST
dated 05/04/2021


05/04/2021

Gr.

Resubmitted after doing the needful.

The case pertains to Terms and conditions of Service and Article 212 this Honorable Tribunal has got exclusive jurisdiction.

The details of the matter are detailed in the memo of Appeal, moreover the issue leads to pensionary benefits in which case even the retirement order is even not yet provided.

It is, therefore, very respectfully requested that the case may very kindly be placed before the Honorable Tribunal

Mudal
06/04/2021
Mudal Ullah
Advocate Swat

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

Service Appeal No. _____ of 2021

*Shafi-ul-Mulk Medical Superintendent (Retired) District Head Quarter Hospital
Alpuri, District Shangla.*

...Appellant

VERSUS

The Secretary Health Government of Khyber Pakhtunkhwa, Peshawar and Others.

...Respondents

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2.	<i>Affidavit</i>	6
3.	<i>Addresses of the parties</i>	7
4.	<i>Copy of the Order dated 18-12-1995</i>	A	8
5.	<i>Copy of the Order dated 21-11-1998</i>	B	9
6.	<i>Copy of the Departmental Appeal</i>	C	10-12
7.	<i>Vakalat Nama</i>	13

Appellant Through

 Imdad Ullah

Advocate Swat

*Office: Khan Plaza, Gulshone Chowk,
Mingora Swat, Cell 0333 929 7746*

4752/21

①

BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 4752 of 2021

Diary No. 4536

Dated 05/4/2021

Shafi-ul-Mulk Medical Superintendent (Retired) District
Head Quarter Hospital Alpuri, District Shangla.

...Appellant

VERSUS

1. The Secretary Health Government of Khyber Pakhtunkhwa, Peshawar.
2. The Director General Health Services Government of Khyber Pakhtunkhwa, Peshawar.
3. The District Health Officer District Swat.

...Respondents

Filed to-day

Registrar
05/04/21

SERVICE APPEAL UNDER SECTION 4
OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 FOR
COUNTING THE SERVICE FROM 18-12-
1995 INSTEAD OF 21-11-1998, FOR THE
REDRESSAL OF WHICH GRIEVANCE
THE APPELLANT HAS FILED A
DEPARTMENTAL APPEAL ON 23-12-
2020, BUT THE SAME IS NOT
RESPONDED TO DESPITE THE LAPSE
OF STATUTORY PERIOD OF TIME.

Prayer:

That on acceptance of this appeal the service of the
appellant may very kindly be considered from 18-12-

re-submitted
08/4/2021
6-day & filed

2

1995 instead of 21-11-1998 for the purpose of pensionary benefits.

Respectfully Sheweth:

Facts:

1. That the appellant was initially appointed in the Health Department as Medical Officer vide order No. 32379/E.I. dated Peshawar the 18-12-1995. Copy of the order is enclosed as Annexure "A".
2. That subsequently the appellant applied for regular post through Public Service Commission, through proper channel, and got selected vide order No. 35035/E.IV. dated Peshawar the 21-11-1998. Copy of the order is enclosed as Annexure "B".
3. That since then the appellant has regularly been performing his duties to the satisfaction of the authorities as neither any complaint has ever been received till while the same time got promoted to B-19 and presently performing his duties as MS at District Head Quarter Hospital Alpuri, District Shangla, which proves the excellent service of the appellant.
4. That the appellant while getting himself prepared for his retirement, which was due in the month of March, 2021, that the appellant came to know that

his initial service of about 3 years is not counted for the purpose of pensionary benefits.

5. That as per the numerous judgments of the Supreme Court of Pakistan it has become a settled principal that the initial service, even it be contract or ad hock will counted for the purpose of calculating pension of the employee.
6. That unfortunately the same is not being done in the case of the appellant although it is be now a settled principal as well that the benefit of a judgment in favour of an employees will be extended to all those who have not been part of the litigation, yet none of the same is being done as far as the appellant is concerned.
7. That in the interest of justice and to safeguard the valuable rights of the appellant the same benefits may also be granted to the appellant so as to do justice on one hand while the same time to avoid forced litigation on the other hand.
8. That feeling aggrieved the Appellant submitted a departmental appeal for the redressal of the grievances, but the same is not responded to despite the lapse of statutory period of time, hence this service appeal for the redressal of the grievances on the following grounds. Copy of the departmental

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appeal along with the postal receipt are enclosed as Annexure "C".

Grounds:

- a. That the appellant has regularly been performing his duties since his first entry into service in due course i.e. since 18-12-1995 till date without any break, but the period from 18-12-1995 till 21-11-1998 is not being counted in utter violation and negation of the law and rules on the subject to the detriment of the Appellant.
- b. That the Appellant has been discriminated with as in case of other similarly placed persons the service is counted from the first entry into service.
- c. That this is a classic case of misuse and abuse of authority by the Respondents and that too in utter negation of the law, rules and judgments of the Apex Court.
- d. That the Appellant has got legitimate expectations as well as valuable rights of the Appellant have also been denied.

It is, therefore, very respectfully prayed that on acceptance of this service appeal the period from 18-12-1995 till 21-11-1998 may be counted in the service record of the appellant.

5

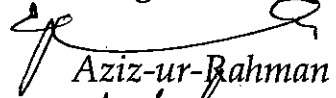
Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted.

Appellant



Shafi-ul-Mulk

Through Counsels,



Aziz-ur-Rahman



Imdad Ullah

Advocates Swat

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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2021

Shafi-ul-Mulk Medical Superintendent (Retired) District
Head Quarter Hospital Alpuri, District Shangla.

...Appellant

VERSUS

The Secretary Health Government of Khyber
Pakhtunkhwa, Peshawar and Others.

...Respondents

AFFIDAVIT

It is solemnly stated on Oath that all the contents of
this service appeal are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
Tribunal.

Deponent

Shafi-ul-Mulk
Shafi-ul-Mulk

Identified By:

Imdad Ullah
Imdad Ullah
Advocate Swat

ATTESTED

U R
UMAR SADIQ Advocate,
OATH COMMISSIONER
Distt: Courts Swat.
No. 103 Date 03/04/2021

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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2021

*Shafi-ul-Mulk Medical Superintendent (Retired) District
Head Quarter Hospital Alpuri, District Shangla.*

...Appellant

VERSUS

*The Secretary Health Government of Khyber
Pakhtunkhwa, Peshawar and Others.*

...Respondents

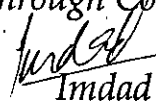
ADDRESSES OF THE PARTIES

Appellant:

*Shafi-ul-Mulk Medical Superintendent (Retired) District
Head Quarter Hospital Alpuri, District Shangla.*

Respondents:

- 1. The Secretary Health Government of Khyber
Pakhtunkhwa, Peshawar.*
- 2. The Director General Health Services Government
of Khyber Pakhtunkhwa, Peshawar.*
- 3. The District Health Officer District Swat.*

*Appellant
Through Counsel,

Imdad Ullah
Advocate Swat*

DIRECTORATE GENERAL,
HEALTH SERVICES, N.W.F.P., PESHAWAR.

No. 32379 /E-I Dated 18/12/1995.

Dr. Shafiqul Malik s/o
Hazrat Malik

Annexure AN

Subject:- OFFER OF APPOINTMENT ON CONTRACT BASIS.

(8)

MEMORANDUM:

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

1. 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 FPS-17 for a period of one year or till the availability of Public Service Commission selectee/return of original incumbent from leave/deputation whichever is earlier, on the terms and conditions laid down in the attached Agreement Deed. You shall be posted to B/M JOG Dist Kohistan. This contract appointment is not transferable.
2. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
3. 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.
4. If you fail to report for duty at the station specified in para-3 above, within Ten(10) 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.

Dr. Azmat Khan Afridi
(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH
SERVICES, NWFP, PESHAWAR.

No. /E-I dated Peshawar the 18/12/1995

Copy forwarded to the:-

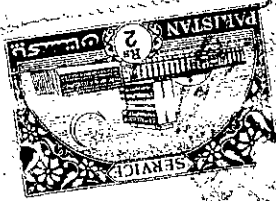
1. Secretary to Government of NWFP, Health Department Peshawar for information with reference to his letter No. SOH-IV/3-18/93 dt: 16.11.95.
2. Medical Superintendent, _____ for information and n/a
3. Divisional Director Health Services, Abbotabad
4. District Health Officer/Agency Surgeon Kohistan
5. Accountant General NWFP, Peshawar.
6. District/Agency Accounts Officer, Kohistan

for information and necessary action.

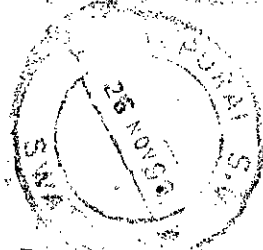
Attest
Abdur
S. SAIDUL ABRAR,
Medical Officer,
Abbotabad.

Attest
Sina
Medical Superintendent
Nawaz Sharif Kidney Hospital, Swat.

Dr. Azmat Khan Afridi
(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH
SERVICES, NWFP, PESHAWAR.



DEPARTMENT OF HEALTH SERVICES, PESHAWAR



9

DIRECTORATE GENERAL HEALTH SERVICES, N.W.F.P. PESHAWAR

NO. 35035 /E.IV,

DATED PESH: THE 21/11 /1998.

TO:-

Dr. Shafi-ul-Mulk S/O Hazrat Mulk,
Vill: & PO Shakpur Teh: Alpuri,
Distt: Shangla Swat.

Annexure "B"

SUBJECT:-

RECRUITMENT OF MEDICAL OFFICER (BFS-17) IN THE HEALTH DEPARTMENT.

Memo:

As recommended by the NWFP Public Service Commission, Peshawar for appointment as Medical Officer (BFS-17) in the Health Department on regular basis subject to your Medical Fitness.

Please appear before of the Medical Board on the 8th & 9th Dec, 98 at 9.00 A.M. in the office of the Superintendent Police/Services Hospital, Peshawar (Civil Surgeon), Peshawar in order to complete the pre-requisite.

FOR DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

NO. _____ /E.IV,

Copy forwarded to the Medical, Supdt: Police/Services, Hospital, Peshawar. He is requested to forward the proceedings of the Medical Board to this Directorate (in triplicate).

FOR DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

NO. _____ /E.IV,

Copy forwarded to the Secretary to Govt: of NWFP, Health Department for information w/r to his letter No.

Medical Superintendent
Nowaz Sharif Kidney Hospital, Swat

FOR DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

ABDUL ALEEM.

To

The Secretary Health,
Government of Khyber Pakhtunkhwa,
Peshawar.

Signature "C"

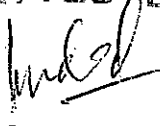
10

Subject: Departmental Appeal for counting of service from first appointment i.e. 18-12-1995 for the purpose of pensionary benefits.

Respected Sir,

The appellant submits as under;

1. That the appellant was initially appointed in the Health Department as Medical Officer vide order No. 32379/E.I. dated Peshawar the 18-12-1995. Copy of the order is enclosed.
2. That subsequently the appellant applied for regular post through Public Service Commission, through proper channel, and got selected vide order No. 35035/E.I. dated Peshawar the 21-11-1998. Copy of the order is enclosed.
3. That since then the appellant has regularly been performing his duties to the satisfaction of the authorities as neither any complaint has ever been received till while the same time got promoted to B-19 and presently performing his duties as MS at District Head Quarter Hospital Alpuri, District Shangla, which proves the excellent service of the appellant.
4. That the appellant while getting himself prepared for his retirement, which is due in the month of March, 2021, that the appellant came to know that his initial service of about 3 years is not counted for the purpose of pensionary benefits.

ATTESTED

ADVOCATE

5. That as per the numerous judgments of the Supreme Court of Pakistan it has become a settled principal that the initial service, even it be contract or ad hock will counted for the purpose of calculating pension of the employee.
6. That unfortunately the same is not being done in the case of the appellant although it is be now a settled principal as well that the benefit of a judgment in favour of an employees will be extended to all those who have not been part of the litigation, yet none of the same is being done as far as the appellant is concerned.
7. That in the interest of justice and to safeguard the valuable rights of the appellant the same benefits may also be granted to the appellant so as to do justice on one hand while the same time to avoid forced litigation on the other hand.

It is, thus very humbly requested that on acceptance of this departmental appeal the initial service of the appellant i.e. from 18-12-1995 may very kindly be ordered to counted for pensionary benefits.

Appellant
Shafi-ul-Mulk
 Shafi-ul-Mulk

23/12/2020

Affidavit:

It is solemnly stated on oath that all the contents of this departmental appeal are true and correct to the best of my knowledge and belief.

Deponent
Shafi-ul-Mulk
 Shafi-ul-Mulk

ATTESTED

[Signature]

ADVOCATE

23/12/2020

No. 800

RGL46850449

For Insurance Notices see reverse.
Stamps affixed except in case of
uninsured letters of not more than
the actual weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.

12

Received a registered*
addressed to

S. S. of Date *10/10/50*

Initials of Receiving Officer Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary

Insured for Rs. (in figures) *Health Department* (in words)

If insured.

Insurance fee Rs. Ps. (in words) Weight Kilo Grams

Name and address of sender *Pushawari*

Registered
Indel
Advocate

(13)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In the matter of:-

Qasfi Ul Mulk Appellant

VERSUS

The Govt. K.P. through Respondents
Secretary Health and Other

KNOWN ALL to whom these present shall come that I/we, the undersigned appoint

AZIZ-UR-RAHMAN and IMDAD ULLAH

Advocates High Court -

To be the advocate for the Appellant in the above mentioned case to do all the following acts, deeds and things or any one of them, that is to say:-

- ❖ To acts, appear and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or at any other stage of its progress until its final decision.
- ❖ To present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- ❖ To withdraw or compromise the said or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- ❖ To receive money and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- ❖ To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate wherever he may think fit to do so.
- ❖ I understand that the services of aforesaid lawyer are hired irrespective of the outcome of the case.

And I/We hereby agreed to ratify whatever the advocate or his substitute shall to do in the said premises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

And I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, the Advocate shall be entitled to withdraw from the prosecution of the case until the same is paid.

IN THE WITNESS WHEREOF I/WE hereunto set my/our hand(s) to these present the contents of which have been explained to and understood by me/us, this 29 day of 03 2024

(Signature or thumb impression)

Qasfi Ul Mulk

(Signature or thumb impression)

(Signature or thumb impression)

Accepted subject to terms regarding fees

Aziz-Ur-Rahman
(AZIZ-UR-RAHMAN)

Advocate High Court
Office: Khan Plaza, Gulshone Chowk
G.T. Road Mingora, District Swat.
Cell No. 0300 907 0671

Imdad Ullah
(IMDAD ULLAH)

Advocate High Court
Office: Khan Plaza, Gulshone Chowk,
G.T. Road, Mingora, District Swat
Cell No. 0333 929 7746

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

4752

21

APPEAL No..... of 20

Shafi-ul-Mulk

Appellant/Petitioner

Versus

Sey: Health KPIK Pesh:

RESPONDENT(S)

Counsel

Notice to Appellant/Petitioner

Imdadullah

Advocate Swat

Office Minon Plaza Gulshan-e-Chiragh

Mingora Swat 0333-9297746

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *27-7-2021 9:00 AM* at.....

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

at Peshawar
(Signature)

(Signature)
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

APPEAL No. 4752 of 20 21

Mulik
Shafi-ul-Mulik Appellant/Petitioner

Versus

The Secy. Health K.P. Pesh.
RESPONDENT(S)

Notice to Appellant/Petitioner

Shafi-ul-Mulik
Medical Superintendent (Retired)
DHQ Hospital Aspur Distt.
Shangha

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 27-7-2021 at 9:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

at Peshawar

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

72

No.

Appeal No. 47-52, 4752 of 20 21

Shafi ul Mulk & Others Appellant/Petitioner

Versus

The Secy. Health & P.W. Dept. Respondent

Respondent No. 3

Notice to: The Distt. Health Officer, Distt. Swat


WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on.....at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this.....
Jan 22
Day of.....20

at Camp Court Swat


Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

713

Appeal No. 4753 of 20 21

Shahid Malik & Daughter Appellant/Petitioner
Versus

The Secy, Health Dept Respondent
Respondent No. 2

Notice to: — The Director General Health Services
Govt of NWFP Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 12-2-2022 at 8.00 A.M. If you wish to urge anything against the appellants/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this.....

Day of Jan 20 22

12/11

*Received on 18/1/22.
at Camp Court Secret*

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

“B”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

TB

Appeal No. 1752, 4753 of 2022

12/01/2022

Shafiqul Haq M.A. Q. A. M. Appellant/Petitioner

Versus

The Secy. Health Dept. of K.P. Province Respondent

Respondent No. I

The Secy. Health Dept. of K.P. Province

Notice to: —

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 1-2-2022 at 8.00 A.M. If you wish to urge anything against the appellants/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No. dated~~

Given under my hand and the seal of this Court, at Peshawar this 12/1/2022

Day of 12/1/2022

at Camp Court Seat

Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 4752 OF 2021

Shafi ul Mulk.....Appellant

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 03

Respectfully Sheweth:

Preliminary Objections:-

1. That the appellant has got neither cause of action nor 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 Law 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 this Honorable Tribunal with clean hands.
7. That the appeal is barred by law and limitation.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
10. That the Honorable Tribunal has already adjudicated the matter vide its judgment dated 12/11/2019 (Annex-A) titled Dr. Alif Jan and others versus Secretary Health Khyber Pakhtunkhwa whereby the Honorable Tribunal dismissed all the appeals filed by similarly placed doctors, hence the instant appeal is hit by rule 23 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974.

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. Rest of the para pertains to record.
3. Pertains to record.
4. Correct to the extent that the appellant being recommended by the commission is entitled for seniority in accordance with the merit signed by Khyber Pakhtunkhwa Public Service Commission as per rule-17 (I)(a) of the Khyber Pakhtunkhwa Civil

Servant (Appointment, Transfer & Transfer) Rules, 1989, the appellant is not entitled for the seniority or other benefits of the service rendered as contract employee.



5. Pertains to record, however, as per judgment dated 12/11/2019 of the Khyber Pakhtunkhwa Service Tribunal, the appellant is not entitled for the said benefits.
6. Incorrect as in preceding para.
7. Pertains to record, however, the contract service cannot be counted toward pension benefits according to rules and in the light of Judgment dated 12/11/2019 of this Honorable Tribunal.
8. Pertains to record, however, the appellant is not entitled for his plea according to rules.

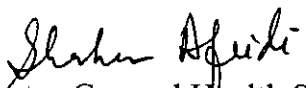
ON GROUNDS:

- a. Incorrect. The contract service of the appellant cannot be counted toward pension & other benefits according to rules and in the light of Judgment dated 12/11/2019 of this Honorable Tribunal.
- b. Incorrect. There is no discrimination in the case of the appellant as the Khyber Pakhtunkhwa Service Tribunal has already dismissed the same nature case vide its Judgment dated 12/11/2019.
- c. Incorrect, as in preceding para.
- d. Incorrect as already explained in above paras.

PRAYER:

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


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

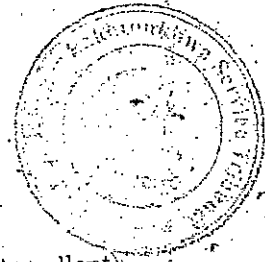
Annex A

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 Khan, 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)

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar.

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. Sheikhi Muhammad Farooq Azam, no. 326/2018 titled Dr. Muhammad Hasham, no. 327/2018 titled Dr. Sultan-un-Nisa, no. 328/2018 titled Dr. Syeda Shahnaabeen, 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


2
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
Service Tribunal,
Peshawar

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 these 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

ATTESTED


ATTESTING OFFICER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


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 appellants 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 of 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.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

ATTESTED


 Khyber Pakhtunkhwa
 Services Tribunal,
 Peshawar

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.

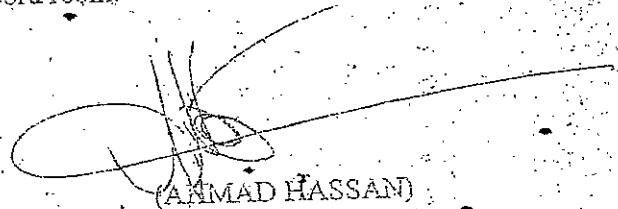
10. We have carefully scrutinized the entire record specially amendments brought in Khyber Pakhtunkhwa Civil Servants Act, 1973 through separate enactments but were unable to lay hand on any legal lacuna. We observed that thousands of government servants benefited from the legislation referred to above. 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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 Peshawar

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.

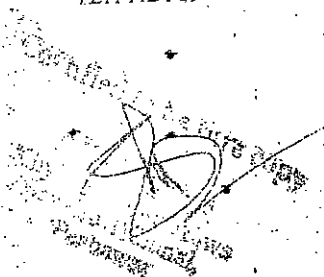
13. As a sequel to the above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
12.11.2019



Date of Filing of Appeal: 31-01-2020
Number of Pages: 3200
Costs: 34-00
Total: 34-00
Name of Counsel: *[Signature]*
Date of Completion: 19-02-2020
Date of Delivery of Copy: 19-02-2020

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 4752 OF 2021

Shafi ul Mulk.....Appellant

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 03

Respectfully Sheweth:

Preliminary Objections:-

1. That the appellant has got neither cause of action nor 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 Law 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 this Honorable Tribunal with clean hands.
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8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
10. That the Honorable Tribunal has already adjudicated the matter vide its judgment dated 12/11/2019 (Annex-A) titled Dr. Alif Jan and others versus Secretary Health Khyber Pakhtunkhwa whereby the Honorable Tribunal dismissed all the appeals filed by similarly placed doctors, hence the instant appeal is hit by rule 23 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974.

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. Rest of the para pertains to record.
3. Pertains to record.
4. Correct to the extent that the appellant being recommended by the commission is entitled for seniority in accordance with the merit signed by Khyber Pakhtunkhwa Public Service Commission as per rule-17 (I)(a) of the Khyber Pakhtunkhwa Civil

Servant (Appointment, Transfer & Transfer) Rules, 1989, the appellant is not entitled for the seniority or other benefits of the service rendered as contract employee.



5. Pertains to record, however, as per judgment dated 12/11/2019 of the Khyber Pakhtunkhwa Service Tribunal, the appellant is not entitled for the said benefits.
6. Incorrect as in preceding para.
7. Pertains to record, however, the contract service cannot be counted toward pension benefits according to rules and in the light of Judgment dated 12/11/2019 of this Honorable Tribunal.
8. Pertains to record, however, the appellant is not entitled for his plea according to rules.

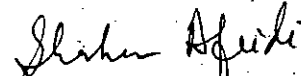
ON GROUNDS:


- a. Incorrect. The contract service of the appellant cannot be counted toward pension & other benefits according to rules and in the light of Judgment dated 12/11/2019 of this Honorable Tribunal.
- b. Incorrect. There is no discrimination in the case of the appellant as the Khyber Pakhtunkhwa Service Tribunal has already dismissed the same nature case vide its Judgment dated 12/11/2019.
- c. Incorrect, as in preceding para.
- d. Incorrect as already explained in above paras.

PRAYER:

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


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

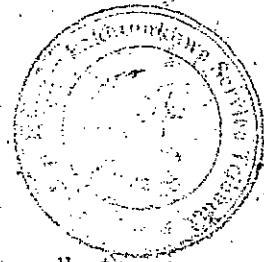
Annex A

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 Khan, SMO, Nowshera.

(Appellant)

VERSUS

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

Present:

MR. MUHAMMAD AYUB KHAN SHINAI,
Advocate

For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

MR. TIALLAH,
Deputy District Attorney

For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

MEMBER (Executive)
MEMBER (Judicial)

TESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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. Mansoor Elahi, no. 325/2018 titled Dr. Sheikhi Muhammad Farooq Azam, no. 326/2018 titled Dr. Muhammad Hasham, no. 327/2018 titled Dr. Sultan-un-Nisa, no. 328/2018 titled Dr. Syeda Shahnaaz Iabeen, 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

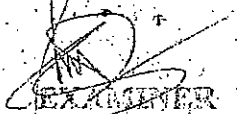
ul-Habib, no. 845/2018 titled Dr. Sajjad Ahmad, no. 846/2019 titled Dr. Qaisar Zaman and no. 847/2015 titled Dr. Muhammad Hamayun as similar question of law and facts are involved therein.

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 Arif Waiz Khan, was appointed on 08.07.1998 were regularized from the date of contractual appointment vide notification dated 09.12.2006.

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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 these 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

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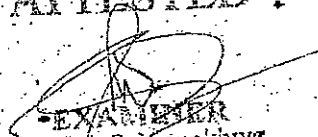
3. Dr. M. Hamayun
4. Dr. Syed Shahnaz Jabeen
5. Dr. Shahid Hussain Bukhari
6. Dr. Zafar Iqbal
7. Dr. M. Hashim
8. Dr. Sheikh M. Farooq Azam
9. Dr. Sultan-un-Nisa

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:

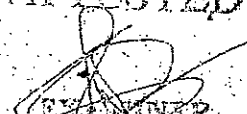
08. Before dilating on the merits of the case, we deem it appropriate to flag the critical issue of appointment of Dr. Qaiser Zaman (date 19.10.2000), Dr. Sajjad Ahmad (date 15.09.1997), Dr. M. Hamayun (date 27.11.1998), Dr. Syed Shahnaz Jabeen (date 12.07.2004), Dr. Shahid Hussain Bukhari (date 08.02.2005), 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.

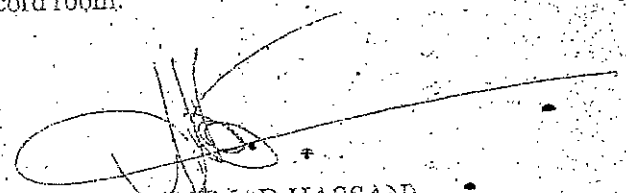
10. We have carefully scrutinized the entire record specially amendments brought in Khyber Pakhtunkhwa Civil Servants Act, 1973 through separate enactments but were unable to lay hand on any legal lacuna. We observed that thousands of government servants benefited from the legislation referred to above. 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.

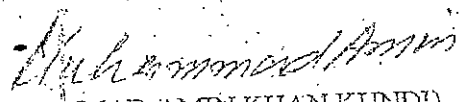
11. As regards regularization of services of Dr. Muhammad Iqbal are concerned that was dealt with under Section-23 of the Khyber Pakhtunkhwa Civil Servants

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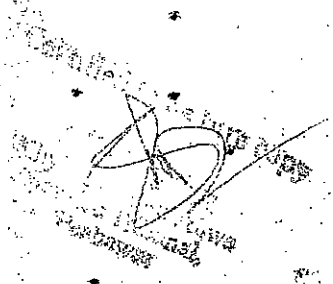
Act, 1973 and this fact was not contested by the learned counsel for the appellant. Entire case record is quite clear that he did not avail the benefits of regularization Act referred to above. As such his case is not akin with that of the appellants and they cannot claim similar treatment by quoting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

ANNOUNCED
12.11.2019



Date of Filing of Appeal 31-01-2020
Number of Appeals 2200
Number of Cases 34-00
Value of Cases 34-00
Total 34-00
Name of the Officer [Signature]
Date of Completion of Work 19-02-2020
Date of Rectification of Cases 19-02-2020

BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 4752 of 2021

*Shafi-ul-Mulk Medical Superintendent (Retired) District
Head Quarter Hospital Alpuri, District Shangla.*

...Appellant

VERSUS

*The Secretary Health Government of Khyber
Pakhtunkhwa, Peshawar and Others.*

...Respondents

REJOINDER BY THE APPELLANT

Respectfully Sheweth:

Preliminary Objections:

That all the preliminary objections are incorrect, baseless, against the law and rules on the subject, thus the same are specifically denied. Moreover the Appellant has got a prima facie case in his favour and has approached this Honourable Tribunal with clean hands and will within time and this Honourable Tribunal has got the jurisdiction to adjudicate upon the same.

On Facts:

- 1. Para 1 of the comments amounts to admission, hence needs no reply.*

2. *Para 2 of the comments also amounts to admission hence needs no reply as well.*
3. *Para 3 of the comments also being admission, hence no reply needed.*
4. *Para 4 of the comments is misconstrued, the Appellant never prayed for seniority rather has prayed for pensionary benefits in line with law and rules on the subject, thus the para to the extent is denied.*
5. *Para 5 of the comments to the extent of the judgment of this Honourable Tribunal is concerned so the same is very distinguishable and has got no relevancy with the case of the Appellant, thus the same is denied to the extent.*
6. *Para 6 of the comments as drafted is vague and evasive and amounts to admission, hence needs no reply.*
7. *Para 7 of the comments as denied to the extent of the judgment delivered by this Honourable Tribunal as the same is distinguishable.*
8. *Para 8 of the comments as drafted is vague, evasive, devoid of merits and in needs of solid proof, thus the same is denied*

On Grounds:

- a. *Ground A of the comments as drafted is denied for the reason that the judgment referred to is*

distinguishable from the case of the Appellant as the case of the Appellant is supported by the law and rules on the subject.

- b. Ground B of the comments as drafted also is denied in light of the reply in the foregoing para.*
- c. Ground C of the comments as drafted is vague, evasive and is devoid of merits, thus the same needs no reply being amounting to admission.*
- d. Ground D of the comments drafted also is vague, evasive and devoid of merits, hence amounts to admission and needs no reply as well.*

It is, therefore, very respectfully prayed that on acceptance of this rejoinder the case of the Appellant may very kindly be decided as prayed for originally.

Appellant
Shafi-ul-Mulk
Through Counsel,
Imdad Ullah
Advocate Swat

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 4752 of 2021

Shafi-ul-Mulk Medical Superintendent (Retired) District
Head Quarter Hospital Alpuri, District Shangla.

...Appellant

VERSUS

The Secretary Health Government of Khyber
Pakhtunkhwa, Peshawar and Others.

...Respondents

AFFIDAVIT

It is solemnly stated on Oath that all the contents of
this rejoinder are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
Tribunal.

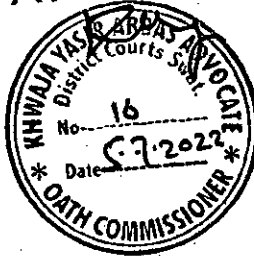
Deponent

Shafi-ul-Mulk
Shafi-ul-Mulk

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Identified By:

Imdad Ullah
Imdad Ullah
Advocate Swat



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

SERVICE APPEAL NO. 4752/2021

Shafi ul Mulk.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents.

Affidavit

I, Muhammad Naeem Assistant Director (Litigation) office of the Director General Health Services, Khyber Pakhtunkhwa, Peshawar, under the directions of the Competent Authority, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondent are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Court.

M Naeem

Deponent

