

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 1064/2016

Date of Institution ... 18.10.2016

Date of Decision ... 27.10.2022

Jawad Hussain Rehabilitation Officer, at Rehabilitation Centre for Drug Addict Peshawar.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary at Civil Secretariat Peshawar and four others.

... (Respondents)

SYED GHUFRAN ULLAH SHAH

Advocate

For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,

Assistant Advocate General

For respondents.

SALAH-UD-DIN

MEMBER (JUDICIAL)

MIAN MUHAMMAD

MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts surrounding the instant appeal are that the appellant was initially appointed as Rehabilitation Officer (BPS-17) on contract basis in Zakat, Ushr, Social Welfare and Women Development Department vide appointment Notification dated 08.12.2007. The services of the appellant were terminated vide order dated 10.01.2009 constraining the appellant to file Writ Petitions before august Peshawar High Court. The writ petition filed by the appellant was allowed vide judgment dated 11.03.2015 and vide order dated 02.03.2016, he was reinstated in service with effect from 09.12.2008.

Similarly, his services were regularized with effect from

24.09.2009, however the intervening period with effect from 09.12.2008 till taking over the charge of his post was considered as extra-ordinary leave without pay. The appellant filed departmental appeal claiming that he was entitled to all service benefits with effect from 09.12.2008, but the same was rejected vide order dated 19.09.2016, hence the instant service appeal.

2. Respondents contested the appeal by way of submitting written reply, wherein they refuted the assertions raised by the appellant in his appeal.

3. It is pertinent to mention here that at the very outset of the arguments, learned counsel for the appellant stated at the bar that as no seniority list regarding the post of the appellant has been issued by the department, therefore, as per instructions of the appellant, he does not want to press the appeal to the extent of prayer regarding seniority. In this respect, he submitted written application, which is placed on file.

4. Learned counsel for the appellant has argued that the appellant was entitled for regularization of his services in light of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 but the respondents deliberately deprived him of the same, therefore, he filed Writ Petition, which was allowed and the appellant was reinstated in service as regular employee with effect from 24.09.2009; that the appellant was entitled to all service benefits for the period with effect from 24.09.2009, however the same were not granted to him and the intervening period with effect from 09.12.2008 till the taking over the charge by the appellant was wrongly and illegally treated as extra-ordinary leave without pay; that nothing was mentioned by

honourable Peshawar High Court, Peshawar in its judgment dated 11.03.2015 for treating the intervening period as leave without pay, therefore, competent Authority was not justified in treating the intervening period with effect from 09.12.2008 till assumption of the charge as leave without pay; that as the matter pertains to financial benefits, therefore, no limitation would run against the same, however departmental appeal of the appellant was regretted on the ground that the same was barred by time.

5. On the other hand, learned Assistant Advocate General for the respondents has argued that the judgment of honourable Peshawar High Court, Peshawar has been implemented in letter and spirit; that the request of the appellant for granting him service benefits of intervening period is wrong and baseless; that the departmental appeal of the appellant was time barred, therefore, the appeal in hand is not maintainable and is liable to be dismissed.

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

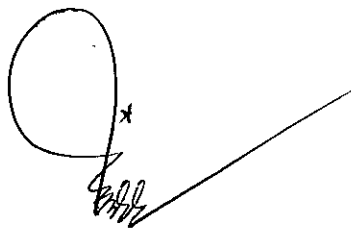
7. A perusal of the record would show that the appellant was serving as Rehabilitation Officer (BPS-17) on contract basis in Zakat, Ushr, Social Welfare and Women Development Department, when Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 was promulgated. The services of the appellant were, however not regularized, therefore, he approached the honourable Peshawar High Court, Peshawar through filing of Writ Petition No. 542/2010, which was allowed vide judgment dated 11.03.2015.

The competent Authority issued Notification dated

02.03.2016, whereby the appellant was reinstated in service with effect from 09.12.2008, while his services were regularized with effect from 24.09.2009 by treating the intervening period with effect from 09.12.2008 till the assumption of the charge as extra-ordinary leave without pay. During the period with effect from 24.09.2009 till the assumption of the charge by the appellant, he was kept out of service on account of fault of the respondents. Furthermore, when the competent Authority had itself regularized the services of the appellant with effect from 24.09.2009 then the appellant was entitled to all financial back benefits from the said date. So far as the question of limitation is concerned, the matter being one of financial benefits, is not hit by the bar of limitation.

8. In view of the above discussion, the appeal in hand is partially allowed and the appellant is held entitled to all financial back benefits with effect from 24.09.2009 till the date of charge assumption i.e 04.03.2016 (F.N). The claim of the appellant regarding seniority stands dismissed being not pressed, however the same shall not preclude the appellant from seeking this remedy afresh, if he feels aggrieved of tentative seniority list upon its issuance and circulation. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
27.10.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



ORDER
27.10.2022

Appellant alongwith his counsel present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is partially allowed and the appellant is held entitled to all financial back benefits with effect from 24.09.2009 till the date of charge assumption i.e 04.03.2016 (F.N). The claim of the appellant regarding seniority stands dismissed being not pressed, however the same shall not preclude the appellant from seeking this remedy afresh, if he feels aggrieved of tentative seniority list upon its issuance and circulation. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
27.10.2022

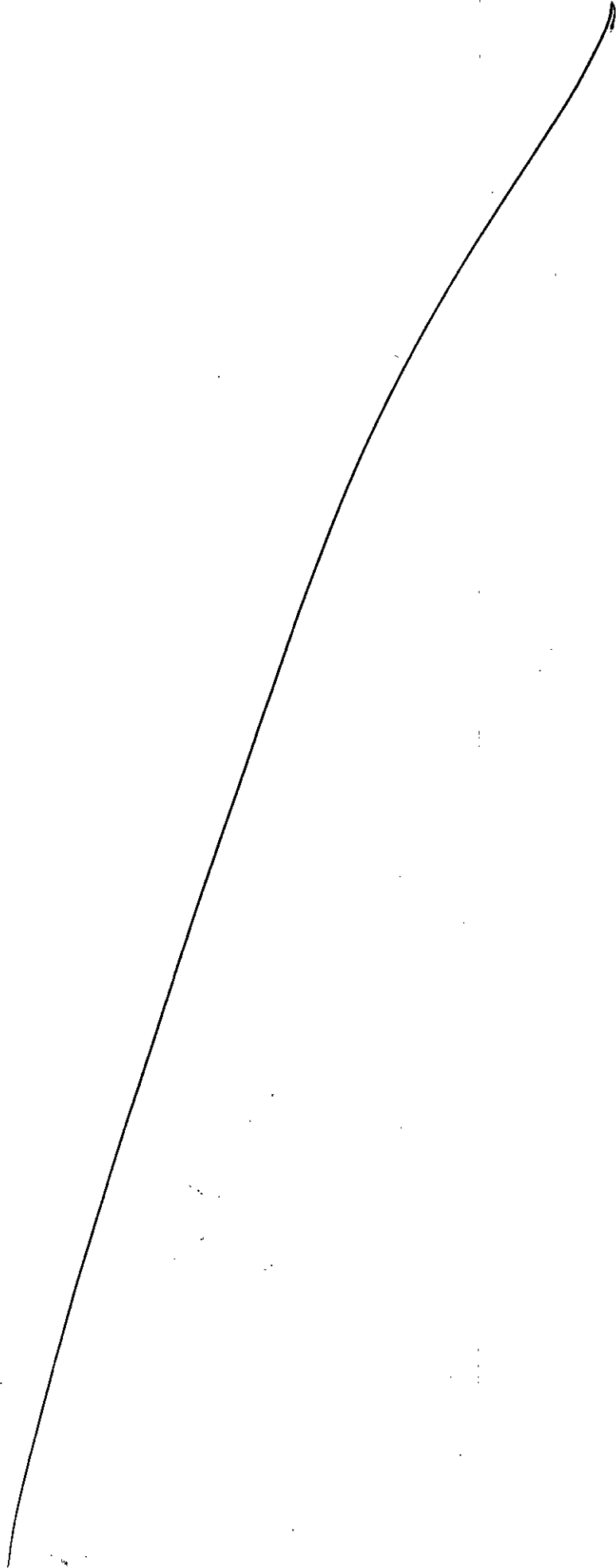
(Mian Muhammad)
Member (Executive)

(Salah-Ud-Din)
Member (Judicial)

29.08.2022

Bench is incomplete, therefore, case is adjourned to
27.10.2022 for the same as before.


Reader




14.12.2021

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant sought adjournment on the ground that he has not made preparation for arguments. Adjourned. Last opportunity given. To come up for arguments on 18.02.2022 before the D.B.



(Atiq-ur-Rehman Wazir)
Member (E)



(Salah-ud-Din)
Member (J)

18-2-22

*Due to Retirement of the Hon,ble Chairman
The case is adjourned to come up for the
same as before on 9-6-22
Syad's
Reader*

09.06.2022

Clerk of learned counsel for the appellant present. Ms. Naila Gul, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional 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 not available today due to strike of lawyers. Adjourned. To come up for arguments on 29.08.2022 before the D.B.



(Fareeha Paul)
Member (E)




(Salah-ud-Din)
Member (J)

28.01.2021 Due to pandemic of Covid-19, the case is adjourned to 15.04.2021 for the same.


Reader

15.04.2021 Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 04.08.2021 for the same as before.



Reader


04.08.2021

Junior to counsel for the appellant present.

Mr. Riaz Khan Paindakheil, Assistant Advocate General for respondents present.

Former made a request for adjournment as senior counsel is indisposed; granted. To come up for arguments on 14.12.2021 before D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

19.06.2020

Appellant in person and Mr. Kabirullah Khattak learned Addl. AG for the respondents present.

Former requests for adjournment as his learned counsel is engaged today before the Hon'ble High Court in various cases.

Adjourned to 08.09.2020 for argument before

D.B.

08.09.2020

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Appellant requests for adjournment due to the ailment of his learned counsel.

Adjourned to 13.11.2020 for arguments before D.B.

(Mian Muhammad)
Member (E)

(Muhammad Jamal)
Member(J)

13.11.2020

Junior to counsel for the appellant and Addl.A.G for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 28.01.2021 for hearing before the D.B.

(Atiqur Rahman Wazir)
Member

Chairman

31.12.2019

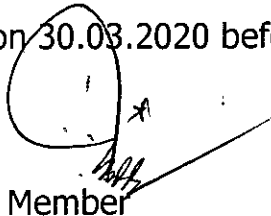
Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 17.02.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

17.02.2020

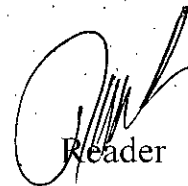
Counsel for the appellant present. Mr. Ziaullah, DDA for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned To come up for arguments on 30.03.2020 before D.B.


Member


Member

30.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 19.06.2020 before D.B.


Reader

08.07.2019

Counsel for the appellant and Mr. Ziaullah, DDA for respondents present. Learned counsel for the appellant seeks as he has not prepared the case. Last opportunity granted for arguments. Adjourned. Case to come up for arguments on 02.09.2019 before D.B.


Member


Member

02.09.2019

Appellant in person and Mr. Usman Ghani, District Attorney for the respondents present.

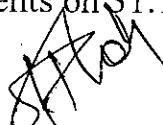
Learned District Attorney states that the present appeal was assigned to Mr. Kabirullah Khattak, Additional Advocate General who is not available today due to death of his father. He therefore requested for adjournment. Adjourned to 17.10.2019 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

17.10.2019

Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney present. Appellant submitted application for adjournment. Application allowed. Adjourn. To come up for arguments on 31.12.2019 before D.B.


Member


Member

20.02.2019

Clerk to counsel for the appellant and Mr. Muhammad Jan learned DDA for the respondents present. Clerk to counsel for the appellant requests for adjournment as learned counsel for the appellant is not available today. Adjourned to come up for arguments on 02.04.2019 before D.B.


Member


Chairman

02.04.2019

Counsel for the appellant and Mr. Ziaullah, DDA for the respondents present.

Learned counsel for the appellant requests for adjournment as he could not prepare the brief of instant matter. Adjourned to 22.05.2019 before the D.B.


Member


Chairman

22.05.2019

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

Learned counsel for the appellant requests for adjournment due to his engagement in various cases before the Honourable High Court today. Adjourned to 08.07.2019 on which date the matter shall positively be argued.


Member


Chairman

30.05.2018

Appellant in person and Mr. Muhammad Jan, DDA for respondents present. Appellant seeks adjournment. Adjourned. To come up for arguments on 03.08.2018 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

03.08.2018


Appellant absent. Learned counsel for the appellant is also absent. However, clerk of counsel for the appellant present and requested for adjournment. Mr. Ziaullah, Deputy District Attorney for the respondents present. Adjourned. To come up for arguments on 27.09.2018 before D.B.


(Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

27.09.2018


Appellant in person and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Nabi Gul, Superintendent for the respondents present. Due to general strike of the bar, arguments could not be heard. Adjourned. To come up for arguments on 06.11.2018 before D.B alongwith connected appeals.


(Ahmad Hassan)
Member (E)


(Muhammad Amin Kundi)
Member (J)

06.11.2018


Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 2002.2018 before D.B.



Reader

Service Appeal No. 1063/2016

07.12.2017

Junior counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Nabi Gul, Superintendent for the respondents also present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 25.01.2018 before D.B.


(Ahmad Hassan)
Member (E)


(Muhammad Amin Khan Kundi)
Member (J)

25.01.2018

Appellant in person present. Mr. Zia Ullah, DDA alongwith Nabi Gul, Superintendent for the respondents present. Rejoinder submitted. Appellant seeks adjournment as his counsel is not available today. Adjourned. To come up for arguments on 30.03.2018 before D.B.



Member


Chairman

30.03.2018


Appellant with counsel and Addl. AG alongwith Nabi Gul, Superintendent for the respondents present. Learned counsel for the appellant seeks adjournment. Granted. To come up for arguments on 30.05.2018 before the D.B.


Member


Chairman

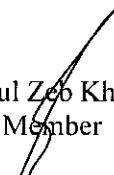
10.05.2017

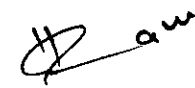
Clerk to counsel for the appellant and Mr. Nabi Gul, Supdt. alongwith Addl. AG for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 05.07.2017 before D.B.


Chairman

09. 05.07.2017

Counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondent present. Counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 03.11.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Hamid Mughal)
Member

03.11.2017

Counsel for the appellant and Addl: AG alongwith Mr. Rahim Shah, Assistant for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 07.12.2017 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

1064/2016

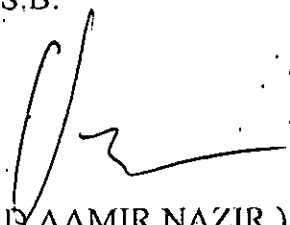
02.02.2017

Counsel for appellant and Syed Nabi Gul, Superintendent (lit.) alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents present. Written reply by respondents not submitted and requested for further time for submission of written reply. To come up for written reply/comments on 07.03.2017 before S.B.


(ASHFAQUE TAJ)
MEMBER

07.03.2017

Appellant in person and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 05.04.2017 before S.B.


(MUHAMMAD AMIR NAZIR)
MEMBER

05.04.2017

Counsel for the appellant and Addl. AG for the respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 10.05.2017 before S.B.


Chairman

A. Nos. 1064/2016
Jawad Hussain vs Govt

01.11.2016

Learned counsel for the appellant contends that identical service appeal No. 1063/2016 has already been admitted for regular hearing and fixed for submission of written reply on 28.12.2016.

In view of the above, the instant appeal is also admitted to regular hearing. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 28.12.2016 before S.B.

Appellant Deposited
Security & Process Fee

Chairman

28.12.2016

1-11-2016

28.12.2016



Clerk of counsel for the appellant and Assistant AG for the respondents present and requested for adjournment. To come up for written reply/comments on 2.2.2017 before S.B.

Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1064/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	18/10/2016	<p style="text-align: center;">The appeal of Mr. Jawad Hussain presented today by Syed Ghufan Ali Shah 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</p>
2-	20-10-2016	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>1-11-2016</u></p> <p style="text-align: right;"> MEMBER</p>

BEFORE THE KHYBER PAKHTUNKHUWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1064 2016

Jawad Hussain

V E R S U S


Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary at
Civil Secretariat Peshawar and others

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7	Copy of Notification of re-instatement	"D"	15-17
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9	Copy of impugned Notification	"F"	19
10	Wakalat Nama		✓


Appellant

Through


Syed Ghufrun Ullah Shah
Advocate Peshawar.

Office Address: 22-A Nasir Mention Railway road Peshawar.

Cell # 0334-9185580

1

BEFORE THE KHYBER PAKHTUNKHUWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1064 2016.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1097

Dated 18/10/2016

Jawad Hussain Rehabilitation Officer, at Rehabilitation Centre for Drug Addict Peshawar.Appellant

V E R S U S

1. Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary at Civil Secretariat Peshawar.
2. Secretary Establishment Department Government of K.P.K at Civil Secretariat Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa (KPK) Social Welfare and Women Development Department, Peshawar.
4. Director Social Welfare and Women Development Department K.P.K Peshawar.
5. Secretary Finance Government of K.P.K at Civil Secretariat Peshawar.

.....Respondents

Filed to-day

Registrar

Appeal U/S, 4 of KPK, Service Tribunal Act 1974 with effect to consider Seniority of the Appellant from 09-12-2008 instead of 04-03-2016 and to grant all back benefits including pay fixation, increments, arrears and other monetary benefits of the intervening period with effect from 09-12-2008 in compliance of Judgment Passed in Writ Petition No.542/2010 resultantly to set aside the impugned Order bearing No.SO-II (SWD)/II-

198/2015 /PC dated 19-09-2016 whereby Respondents No.3 has rejected departmental Appeal/representation of the appellant . Any other relief which deems Just and proper may also be granted to the appellant keeping in view facts and circumstance of the case.

Respectfully Sheweth:

That brief facts and grounds giving rise to the instant Service Appeal are as under;

1. That the appellant was firstly appointed as Rehabilitation Officer (BPS-17) on 08-12-2007 by Government of Khyber Pakhtunkhwa (KPK) Social Welfare and Women Development Department, Peshawar where he served at Rehabilitation Center Drug Addict, Peshawar when relived from service vide Letter dated 10-01-2009.

(Copies of appointment/posting orders along with relieving order are annexed as Annexure-"A" & "B")

2. That in the meanwhile KPK Employees (Regularization of Service) Act, 2009 was promulgated and the appellant was held as regular Government servant.

3. That act and omission of Respondents with effect to deny applicability of the afore mentioned law on the appellant resulted Litigation before Peshawar High Court Peshawar through Writ Petition No. 542/2010 which was allowed on 11-03 -2015.

(Copy of Order/Judgment is annexed as Annexure-"C")

4. That the matter remained under consideration between the Respondents offices for one year and lastly on 02-03-2016 vide Notification No. SO -II (SWD)/II-171/2013/PC/798-806 issued by Respondent No.3, the appellant was re-instated in service with effect from 09-12-2008 and his service

was considered as regular with effect from 24-09-2009. However the intervening period with effect from 09-12-2008 to taking over the charge was considered as Extra Ordinary Leave without pay.

(Notification of re-instatement is annexed as Annexure "D")

5. That being aggrieved from the impugned portion of the aforementioned Notification the appellant filed Departmental Appeal/Representation (Annexure "E") before Respondent No.3 on 24-06-2016, which was rejected on 19 -09-2016 vide impugned Notification No. SO -II (SWD) /II-198 /2015/PC /5465-68 issued by Respondent No.3 (Annexure "F")
6. That as a matter of right in terms of Government Service of the appellant and having no other remedy; the appellant approaches this honourable Tribunal amongst the following other grounds;

GROUND:


- A) The admittedly the appellant was duly entitle for his regular service as per applicability of KPK Employees (Regularization of Service) Act, 2009 soon after its promulgation but respondents deliberately deprived him from the same, therefore the Respondents are bound by law to grant him all the service benefit of the intervening period with effect from 09-12-2008 or 24-09-2009 what may be the case of appellant.
- B) That to consider the intervening period as leave without pay is illegal and in effective upon the legal rights of the appellant because as per applicable Leave Rules there is no such rule to grant the same for such long duration and that's too without request or application of the appellant.
- C) That the impugned order with effect to reject the departmental appeal of the appellant being time bared is also based on evasive ground because firstly in terms of financial benefit a Government Servant at any time seeks remedy for such financial benefit, secondly the departmental appeal of the appellant was well within time.

- D) That the restoration of the service of the appellant is based upon the order/judgment passed by the Peshawar High Court, whereby no such order for considering the intervening period as leave without pay has been mentioned, therefore the same is against the letter and spirit of the subject judgment.
- E) That to consider the intervening period as leave without pay is against the vested rights of the appellant as well as having adverse effect upon the seniority, fixation and other financial benefit of the appellant, therefore the appellant is not bound by the same.
- F) That the impugned act and omission of the respondents is based on malafide intention, against the well established norms of administration of justice as well as against the fundamental rights of the appellant.
- G) That the instant appeal relates to terms and conditions of civil servant and this honorable tribunal has been vested with statutory power to entertain the matter.
- H) That any other grounds will be furnished at the time of final arguments with the prior permission of this honourable court.

Therefore, it is, most humbly prayed that the instant service appeal be accepted as prayed for.


Appellant

Through


Syed Ghuffan-Ullah Shah
Advocate High Court
Peshawar.

BEFORE THE KHYBER PAKHTUNKHUWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____ 2016

Jawad Hussain

V E R S U S

Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary
at Civil Secretariat Peshawar and others

AFFIDAVIT

I, Jawad Hussain Rehabilitation Officer, at Rehabilitation Centre for Drug Addict Peshawar, Appellant; do hereby solemnly verify and declare on oath that all the contents of the subject appeal; are true and correct to the best of my knowledge and belief and nothing has been concealed from this Tribunal.

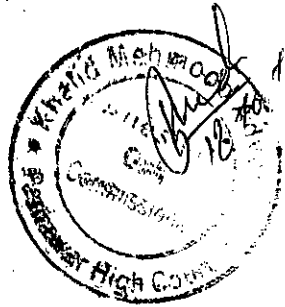


Deponent

C.N.I.C No. 16102-2263333-3

Verified by:


Syed Ghufraan Ullah Shah
Advocate, Peshawar.



BEFORE THE KHYBER PAKHTUNKHUWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____ 2016

Jawad Hussain

V E R S U S

Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary
at Civil Secretariat Peshawar and others


ADDRESSES OF PARTIES

PETITIONER;

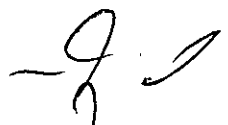
Jawad Hussain Rehabilitation Officer, at Rehabilitation Centre
for Drug Addict Peshawar.

RESPONDENTS;

1. Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary at Civil Secretariat Peshawar.
2. Secretary Establishment Department Government of K.P.K at Civil Secretariat Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa (KPK) Social Welfare and Women Development Department, Peshawar.
4. Director Social Welfare and Women Development Department K.P.K Peshawar.
5. Secretary Finance Government of K.P.K at Civil Secretariat Peshawar.


Appellant

Through,


Syed Ghufraan ullah Shah
Advocate-Peshawar

GOVERNMENT OF NWFP
ZAKAT, USHR, SOCIAL WELFARE &
WOMEN DEVELOPMENT DEPARTMENT

Dated Peshawar the 8-12-2007

NOTIFICATION

NO.SOII(SW)II-171/2007 In pursuance to the recommendations of the Departmental Selection Committee (DSC) and acceptance of the Terms & Conditions offered to them vide this department offers of appointment No SOII(SW)II-171/2007 dated 24-11-2007, the Competent Authority is pleased to appoint the following as **Rehabilitation Officers (BPS-17)** on contract basis for a period of six (06) months or till the arrival of nominee of NWFP Public Service Commission (whichever is earlier) w.e.f the date they execute agreements with this department on the prescribed proforma.

- i) Shah Khalid S/O Guldar Shah, Tappa Khupa Khel, Basi Khel, PO Landi Kotal Tehsil Landi Kotal Khyber Agency.
- ii) Jawad Hussain S/O Sakawat Shah House // 4, Canal Lane Near Al-Badar Hospital University Town
- iii) Ejaz Ahmed S/O Jamshed Khan Village and PO Boko, District and Tehsil Swabi

SECRETARY

Endst. No. NO.SOII(SW)II-171/2007

Dated Peshawar the 8-12-2007

1. The Accountant General NWFP, Peshawar
2. The Director, Social Welfare & Women Development NWFP, Peshawar.
3. PS to Secretary, Zakat, Ushr, Social Welfare & WD Department NWFP.
4. Section Officer (General) Zakat, Ushr SW & WD Deptt with reference to appointment of Mr. Jawad Hussain Internee at S. No.ii.
5. Officers Concerned.
6. Office Order Files.
7. Personal Files.

(ILAM KHAN KHATTAK)
SECTION OFFICER-II

ATTESTED

GOVERNMENT OF NWFP
ZAKAT, USHR, SOCIAL WELFARE &
WOMEN DEVELOPMENT DEPARTMENT
Dated Peshawar the, 11-12-2007

NOTIFICATION

NO.SOII(SW)II-52/2006: Consequent upon their appointment as Rehabilitation Officers (B-17), they are hereby posted in the places mentioned against their names as given below in the public interest with immediate effect:-

S.#	Name	place of posting	Remarks
1	Mr. Shah Khalid S/O Guldar Shah	Rehabilitation Officer, Centre for Drug Addicts, Kohat	Against a vacant post
2	Mr. Jawad Hussain S/O Sakhawat Shah	Rehabilitation Officer, Centre for Drug Addicts, Peshawar	-do-
3	Mr. Ejaz Ahmed S/O Jamshed Khan	Rehabilitation Officer, Centre for Drug Addicts, Swat	-do-

19680-95 SECRETARY

Endst. No. NO.SOII(SW)II-52/2006 Dated Peshawar the, 11-12-2007

1. The Accountant General NWFP, Peshawar.
2. District Coordination Officers, Peshawar, Kohat & Swat
3. The Director, Social Welfare & Women Development NWFP, Peshawar.
4. District Accounts Officers Kohat & Swat
5. District Officers Social Welfare Peshawar, Kohat & Swat
6. PS to Secretary, Zakat, Ushr, Social Welfare & WD Department NWFP.
7. Section Officer (General) Zakat, Ushr SW & WD Deptt with reference to appointment of Mr. Jawad Hussain Internee at S. No.ii.
8. Officers Concerned.
9. Office Order Files.
10. Personal Files.

(ILAM KHAN KHATTAK)
SECTION OFFICER-II

ATTESTED

Government of NWFP
Zakat, Ushr, Social Welfare
& Women Development Department

Dated Peshawar the 30th June 2008

NOTIFICATION:

NO.SOI(SW)VI-55/2006/ On the expiry of their contract appointment, the Competent Authority is pleased to reappoint the following officers on contract basis in B-17 on the existing terms and conditions for a period of six months or till the availability of regular candidates through NWFP Public Service Commission whichever is earlier from the dates noted against each:-

S.#	Name & Designation	Place of posting	Date of expiry of contract appointment	Date of fresh reappointment
I	Mr. Mohib Ullah, Planning Officer.	Directorate of Social Welfare and Women Development NWFP, Peshawar	07-06-2008	09-6-2008
II	Mr. Jawad Hussain, Rehabilitation Officer	Rehabilitation Centre for Drug Addicts, Peshawar	08-06-2008	10-06-2008
III	Syed Muhammad Younis, Social Welfare Officer	Social Welfare Officer Malakanad at Dalkhela	08-06-2008	10-06-2008
IV	Syed Riaz Ahmed Social Welfare Officer.	Social Welfare Officer, Abbottabad	08-06-2008	10-06-2008
V	Mr. Shah Khalid, Rehabilitation Officer.	Rehabilitation Centre for Drug Addict, Kohat	08-06-2008	10-06-2008
VI	Mr. Ejaz Ahmad, Rehabilitation officer.	Rehabilitation Centre for Drug Addict, Swat	08-06-2008	10-06-2008
VII	Mr. Amjad Afridi, Superintendent.	Darul Kafala, Peshawar	30-06-2008	3-7-2008
VIII	Mst Nadia Shah, Superintendent	Darul Aman Mardan	30-06-2008	3-7-2008

Secretary to Govt of NWFP
Zakat, Ushr, Social Welfare &
Women Dev: Department

Endst: NO.SOI(SW)VI-55/2006

Dated Peshawar the 30th June 2008

Copy forwarded to: -

1. The Accountant General, NWFP Peshawar.
2. The District Coordination Officers, Peshawar / Mardan / Swat / Abbottabad / Malakand / Kohat
3. The Director, Social Welfare & Women Dev: NWFP Peshawar
4. The Distt: Officers, (Social Welfare) Peshawar / Mardan / Swat / Abbottabad / Malakand / Kohat
5. The Distt: Accounts Officer, Mardan / Swat / Abbottabad / Malakand / Kohat
6. PS to Secretary, Zakat, Ushr, Social Welfare & Women Dev: Deptt. NWFP.
7. The Officers Concerned.
8. Personal File of the Officers.

ATTESTED

(QAMAR ALI)
Section Officer -II

Annexure B

110

Government of NWFP

GOVERNMENT OF N.W.F.P
ZAKAT, USHR, SOCIAL WELFARE &
WOMEN DEVELOPMENT DEPARTMENT

Dated Peshawar, the 10 January 2009

NOTIFICATION:

No SOH(SWD)V-55/2006. On the expiry of their contract appointment the com-
authority is pleased to relieve the following officers (B-17) from their duties as per the terms
conditions of their contract agreement, from the dates mentioned against each:-

S.#	Name & Designation	Place of posting	Date of Expi- contract pe
I	Syed Riaz Ahmed Social Welfare Officer (B-17).	Social Welfare Officer, Abbottabad	9-12-2008
II	Syed Muhammad Younis, Social Welfare Officer (B-17)	Social Welfare Officer Malakand at Balkhola	9-12-2008
III	Mr. Mohib Ullah, Planning Officer (B-17)	Directorate of Social Welfare and Women Development NWFP, Peshawar	8-12-2008
IV	Mr. Anjad Afridi, Superintendent	Darul Kafala Peshawar	2-1-2009
V	Mr. Jawad Hussain, Rehabilitation Officer (B-17).	Rehabilitation Centre for Drug Addicts, Peshawar	9-12-2008
VI	Nadia Shah, Superintendent	Darul Aman, Mardan	2-1-2009
VII	Mr. Shah Khalid, Rehabilitation Officer	Rehabilitation Centre for Drug Addict, Kohat	9-12-2008

ATTESTED

Secretary to Govt: of NWFP
Zakat, Ushr, Social Welfare & Women
Dev: Department

Endst: NO.SOH(SW)VI-55/2006 Dated Peshawar the 10th Jan 2009

Copy forwarded to:

1. The Accountant General, NWFP Peshawar.
2. The District Coordination Officers, Peshawar / Mardan / Abbottabad / Malakand
3. The Director, Social Welfare & Women Dev: NWFP, Peshawar
4. The Distt: Officers, (Social Welfare) Peshawar / Mardan / Abbottabad/ Malakand / Kohat
5. The Distt: Accounts Officers, Mardan / Abbottabad/ Malakand/ Kohat
6. PS to Secretary, Zakat, Ushr, Social Welfare & Women Dev: Deptt, NWFP.
7. The Officers Concerned.
8. Personal File of the Officers.

(Muhammad Saeed)
Section Officer -II

-1- Annexure-2
JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT
JUDICIAL DEPARTMENT.

Writ Petition.....No.....542.....of.....2010

J U D G M E N T

Date of hearing: 11th March, 2015

Petitioner(s): (Jawad Hussain) by Mr. Ijaz Anwar, Advocate

Respondent(s): (Government etc.), by Mr. Qaiser Ali Shah,
Additional Advocate General.

MAZHAR ALAM KHAN MIANKHEL, C.J.-

By this single judgment, we propose to decide Writ Petition No.542 & 2104 of 2010, wherein, the petitioners namely, Jawad Hussain and Syed Riaz Ahmad Jan, have asked for the issuance of an appropriate writ directing the respondents to regularize their services under the KPK (the then NWFP) Employees (Regularization of Services) Act, 2009 and they be reinstated in service.

2. The learned counsel appearing on behalf of the petitioners by producing copy of the judgment of this Court dated 01.12.2010, rendered in Writ Petition No.702/2010, titled Muhammad Younas vs. Government of NWFP, submitted that since the relief, asked for, has been given to the petitioner of the aforesaid writ petition, the petitioners herein

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court

16 APR 2015

the same qualification and experience for a regular post:

12

A look at the relevant statute reveals that all employees appointed on contract basis, who were holding those posts till 31.12.2008 or till the commencement of the Act, were deemed to have been validly appointed on regular basis provided they had the required qualification and experience. It is not disputed before us that the petitioner possessed the requisite qualification and experience. It is also not disputed before us that the petitioner fulfilled the conditions laid down in the Section, quoted above.

The argument that the very remarks in the appointment order that the petitioner shall continue till the arrival of the nominee of the Public Service Commission would barricade his way towards regularization, hasn't impressed us, when Section 3 of the Act doesn't provide any such condition and Section 4 of the Act protects the rights of those, who have been selected through Public Service Commission.

For the reasons discussed above, we allow this petition and direct the respondents to regularize the services of the petitioner at par with those, who being similarly placed have been regularized."

ATTESTED

In view of the aforesaid paragraph, when Writ

No.702/2010, titled Muhammad Younas vs

ATTESTED
EXAMINER
Peshawar High Court

16 APR 2015

being similarly placed are also liable to be given alike treatment.

(13)

3. As against that the learned Additional Advocate General appearing on behalf of the respondents vehemently argued that when the petitioners were not in service on the cut-off date i.e. 31.12.2008 and their contract had been expired before the crucial date, they are not liable to be given the benefit of the Act, *ibid*.

4. We have gone through the record carefully and considered the submissions made by the learned counsel for both the parties.

5. Before we proceed with the merits of the case, it would be worthwhile to reproduce herein below the relevant portion of the aforesaid judgment dated 01.12.2010 of this Court, which reads as under:-

"Before we proceed to discuss the arguments of the learned counsel for the parties, it is worthwhile to refer to Section 3 of the Act, which reads as under:-

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

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court.

16 APR 2015

Government of NWFP, involving similar controversy, has been allowed by this Court vide judgment dated 01.12.2010, we, in light whereof, don't feel persuaded to change our view, from the one, already expressed in the above writ petition, therefore, we, in the circumstances of the case, also while allowing these writ petitions, direct the respondents to regularize the services of the petitioners at par with those, who being similarly placed have been regularized.

14

Announced.
11. 03. 2015

CHIEF JUSTICE

sd/ Muzhar Alam Khan

JUDGE

sd/ Abdul Latif Khan



CERTIFIED TRUE COPY
16 APR 2015

.....	10461	.....
Date of Presentation of Application.....	16.4.15	.....
No of Pages.....	02	.....
Copying fee.....	.....	.....
Urgent Fee.....	.....	.....
Total.....	18.00	.....
Date of Preparation of copy.....	16.4.15	.....
Date Given For Delivery.....	16.4.15	.....
Date of Delivery of Copy.....	16.4.15	.....
.....	M. Saleem	.....

ATTESTED

Annexure D



15

GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT DEPARTMENT

Dated Peshawar the 2nd March, 2016

NOTIFICATION:

No. SO-II(SWD)/II-171/2013/PCI ⁷⁹⁸⁻³⁰⁶

In the light of judgment of Peshawar High Court, the competent authority is pleased to re-instate Mr. Jawad Hussain, Rehabilitation Officer and Syed Riaz Ahmed Jan, Social Welfare Officer w.e.f. 09-12-2008. Their Services shall be treated as regular w.e.f. 24-09-2009 as laid down in the NWFP Employees (Regularization of Services) Ordinance, 2009. The intervening period w.e.f. 09-12-2008 to taking over the charge would be considered as Extra Ordinary Leave without pay.

2. Consequent upon their appointments, Mr. Jawad Hussain is posted as Rehabilitation Officer (BPS-17) at Rehabilitation Centre for Drug Addicts, Peshawar against the vacant post and Syed Riaz Ahmad Jan is posted as Social Welfare Officer, Abbottabad with immediate effect in the best public interest.

Secretary to Govt. of Khyber Pakhtunkhwa
Zakat, Ushr, Social Welfare, Special Education &
Women Empowerment Department

Endst. No. SO-II(SWD)/II-171/2013/PCI

Dated Peshawar the 02/03/2016

Copy forwarded for information to: -

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director, Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa, Peshawar.
3. The District Officer, Social Welfare, Peshawar and Abbottabad.
4. The District Account Officer, Peshawar and Abbottabad.
5. PS to Minister for Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa, Peshawar.
6. PS to Secretary, Zakat, Ushr, Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa, Peshawar.
7. Office files.
8. Officers concerned.
9. Personal files.

ATTESTED


2/3
Section Officer-II

To

(16)

The Secretary to Government of Khyber Pakhtunkhwa,
Zakat, Ushr, Social Welfare, Special Education &
Women, Empowerment Department.

Subject: **ARRIVAL REPORT.**

Respected Sir,

Reference^{to} Government of Khyber Pakhtunkhwa Zakat, Ushr,
Social Welfare, Special Education & Women, Empowerment Department.
Notification No. SO-II(SWD)II-171/2013/PC/798-806 dated 02nd March, 2016, I
submit my arrival report for duty as **Rehabilitation Officer (BPS-17)** today on
04th March, 2016 (F.N.).


Jawad Hussain
Rehabilitation Officer

Copy for information to:-

Director Social Welfare, Special Education & Women, Empowerment
Khyber Pakhtunkhwa.


Rehabilitation Officer


ATTES TED



(17)

**OFFICE OF THE REHABILITATION
CENTER FOR DRUG ADDICTS ,
SOCIAL WELFARE DEPARTMENT, PESHAWAR.**

No. 1186-92

Dated Peshawar the _____/2016

CHARGE ASSUMPTION REPORT

Consequent upon my re-instatement order vide Notification No.SO-II(SWD)/II-171/2013/PC/798-806 dated 02nd March 2016, I Jawad Hussain, Rehabilitation Officer, Social Welfare Department Peshawar do hereby assume the charge of the post of Rehabilitation Officer, Social Welfare Department, Peshawar on 07-03-2016 (F.N)

/

**(JAWAD HUSSAIN)
REHABILITATION OFFICER
SOCIAL WELFARE DEPARTMENT
PESHAWAR**

Copy to: -

1. The Accountant General, Khyber Pakhtunkhwa.
2. P.S to Minister, Social Welfare, Special Education and Women Empowerment Khyber Pakhtunkhwa.
3. P.S to Secretary, Social Welfare, Special Education and Women Empowerment Khyber Pakhtunkhwa.
4. P.S to Deputy Commissioner, Peshawar.
5. P.S to Director, Social Welfare, Special Education and Women Empowerment Department Khyber Pakhtunkhwa.
6. The District Officer, Social Welfare Department Peshawar.
7. Personal File.


**REHABILITATION OFFICER
SOCIAL WELFARE DEPARTMENT
PESHAWAR**

ATTESTED

To,

The Honorable Secretary
Social Welfare, Zakat, Ushr & Women Empoerment Department
Government of Khyber Pokhtoonkhwa,
Benevolent Fund Building, Peshawar

Annexure
18
24.06.16

Subject:

PROVISION OF SENIORITY & MONETARY BENEFITS (w.e.f) 24-12-2008 IN PURSUANCE OF JUDGMENT PASSED BY HONORABLE PESHAWAR HIGH COURT, PASSED IN WRIT PETITION No. 542/2010 DATED: 11.03.2015.

Sir,

With veneration, I would like to bring in your kind notice that my contract with the department expired on 09-12-2008 and I was relieved vide Notification No. SO-I (SWD) V-55/2006; Dated: 10-01-2009. In meantime the provincial Assembly of NWFP passed KPK (the then NWFP) Employees (Regularization of Service) Act, 2009 (KPK Act No. XVI of 2009, whereby all the contract employees holding a post on 31-12-2008 or till the commencement of the Act, were declared as regularized civil servants. In this regard a request was put before the department for the regularization of my services in pursuance to the said Act, but my request was not considered.

2. Consequently, I prayed before Honorable Peshawar High Court for the regularization of my services and my request was accepted vide Writ Petition No. 542/2010. The honorable PHC passed judgment on 11th March 2015, in my favour, by re-instating my services w.e.f 09-12-2008 (Copy Attached).

3. The department, in the light of the said decision re-instated /regularized my service w.e.f 09-12-2008. But unfortunately, the department has neither given me seniority, nor increment and nor any monetary benefit since 09-12-2008, instead considered the intervening period as extra- ordinary leave without pay and I have been treated as fresh candidate w.e.f 04-03-2016 instead of 09-12-2008.

4. It is therefore requested, that I may be given seniority along with all increments and monetary benefits of intervening period w.e.f 09-12-2008 in the interest of justice.

5. I am sanguine that my legitimate matter will be mulled over objectively and magnanimously, please.

Yours Faithfully,

Jawad Hussain

Rehabilitation Officer

Rehabilitation Centre for Drug Addicts,
Peshawar.

Date: 28 June, 2015.

ATTESTED



Annexure "F" (19)

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT DEPARTMENT**

No. SO-II(SWD)/II-198/2015/PC 5465-
Dated Peshawar the 19th September, 2016

To,

1. Syed Riaz Ahmad Jan,
Social Welfare Department, Abbottabad.
2. Mr. Syed Muhammad Younas,
Social Welfare Department, Malakand at Batkhela.
3. Mr. Jawad Hussain,
Rehabilitation Officer, Reh: Centre for Drug Addict Peshawar.

Subject: -

**PROVISION OF SENIORITY & MONETARY BENEFITS (W.E.F)
24.12.2008 IN PURSUANCE OF JUDGMENT PASSED BY
HONOURABLE PESHAWAR HIGH COURT, PASSED IN WRIT
PETITION NO. 2104/2010 DATED 11.03.2015.**

I am directed to refer to the Subject noted above and to state that your application/representations are time barred, as such, your request for pay fixation from retrospective effect and payment of arrears may not be acceded to, being not covered under the rules.

2. However, you may submit application for fixation of your respective Seniorities after publication of Tentative Seniority List for the calendar year 2017.

Aras
Section Officer-II

Endst: of Even No. & Date:

1. PS to Secretary Social Welfare, Special Education & Women Empowerment Department Khyber Pakhtunkhwa.

Aras
Section Officer-II

ATTESTED

WAKALAT NAMA

BEFORE THE K.P.K SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____ of 2016

✓ **Jawad Hussain**

VERSUS

**Government of K.P.K, through Chief Secretary at Civil Secretariat
Peshawar, and others**

(Petitioner)
(Plaintiff)
✓ (Appellant)
(Accused)
(Decree-Holder)

Respondent
(Defendant)
(Opponent)
(Complainant)
(Judgment-Debtor)

I/we **Mr. Jawad Hussain S/O Sakhawat Shah, Appellant.**

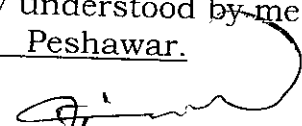
The above named accused/Petitioner /Appellant do hereby appoint and constitute **SYED GHUFRAN ULLAH SHAH, Advocate** as counsel (for Appellant) in the above mentioned case, to do all or any of the following acts, deeds and things:-

- 1- To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal or any other court/tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
- 2- To sign, verify and file or withdraw all proceedings, petitions, appeals, revision, review affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other document, as may be deemed necessary or advisable by him for the conduct, prosecution or defense of the said case at any stages.
- 3- To receive payment of and issue receipts for all money that may be or become due and payable to us during the course or on the conclusion of the proceedings. To do all other acts and things this may be deemed necessary or advisable during the course of the proceedings.

AND HEREBY AGREE:-

- a) To ratify whatever the said Advocate may do in the proceedings.
- b) Not to hold the Advocate responsible if the said case be proceeded ex-parte or dismissed in default in consequence of their absence from the Court/Tribunal when it is called for hearing.
- c) That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole OR any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this power of Attorney/Wakalat Nama hereunder the contents of which have been read/explained to me/us and fully understood by me / us this
_____ 07th Day of _____ October, 2016 at Peshawar.


Signature of Executants'

Accepted subject to term regarding payment of fee.


SYED GHUFRAN ULLAH SHAH
Advocate High Court Peshawar

22-A Nasir Mansion, Railway Road Peshawar

Off:-0342-9047344/H.C.B No.091-9210186/Mob: 0334-9185580

Firm Regist.No.RF/ICT #8565/09
N.T.N 3796081-4

62

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service appeal No. 1064 of 2016

Jawad Hussain Rehabilitation Officer, at Rehabilitation Center for Drug Addicts
Peshawar.....Appellant

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary at Civil Secretariat Peshawar.
2. Secretary Establishment Department Government of Khyber Pakhtunkhwa at Civil Secretariat Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa Social Welfare, Special Education and Women Empowerment Department, Peshawar.
4. Director Social Welfare, Special Education and Women Empowerment Department Khyber Pakhtunkhwa Peshawar.
5. Secretary Finance Government of Khyber Pakhtunkhwa at Civil Secretariat Peshawar.

Respondents

PRELIMINARY OBJECTIONS:

- i. The appellant has got no cause of action
2. The appeal is not maintainable in its present form.
3. The appeal is based on malafide intentions.
4. The appellant has no locus standi.
5. The appeal in hand is badly time barred.
6. The appellant has not come to Honorable Tribunal with clean hands.
7. The appellant has concealed the material facts from this Honorable Tribunal, hence liable to be dismissed.
8. The appeal is liable to be dismissed for mis-joinder and non-joinder necessary parties.
9. The appeal is against the prevailing law & rules.

43

PARA-WISE COMMENTS BY RESPONDENT NO. 1 TO 3.

Respectfully Sheweth,

FACTS


1. Incorrect hence denied. The appellant was appointed on contract basis for a period of (6) six months or till the arrival of nominee of Public Service Commission Govt. of Khyber Pakhtunkhwa, which ever is earlier (**Annexure A**).
2. Correct
3. Incorrect hence denied. As explained in para 1 above, the appellant was appointed on contract basis for a period of (6) six months or until the arrival of the nominee of the Public Service Commission, the appellant was reappointed for period of (6) six months vide notification No. SO II(SW)VI-55/2006/1930-52 dated 30 June 2008 on the same terms and conditions (**Annexure B**) and on expiry of his contract period on dated 9/12/2008 the appellant was relieved from his duties as per the terms and conditions of his contract agreement (**Annexure C**).
4. Correct.
5. Correct to the extent that proper reply of the appeal/ representation has been issued vide SO II (SWD)/II-1198/2015/PC/5465 dated 19th September 2016 (**Annexure D**).
6. No comments

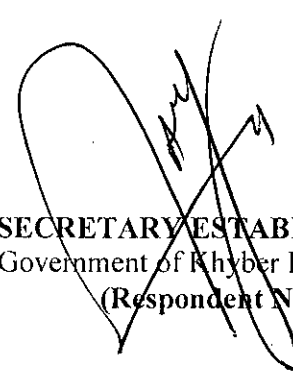
GROUND

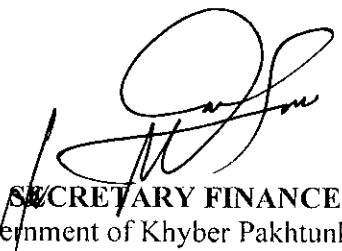
- A. Incorrect hence denied. As explained in Para 1 and 3 above.
- B. Incorrect hence denied. The judgment of honorable Peshawar High court dated 11th March 2015 has been implemented in letter and spirit and re-instatement Notification No. SO-II(SWD)/II-171/2013/PC/798-806 issued on dated 2nd March 2016 (**Annexure E**).
- C. Incorrect hence denied. As explained in preceding paras.
- D. Correct to the extent that the order/Judgment passed by the Peshawar High Court dated 11/3/2015 is implemented in letter and spirit.
- E. Incorrect hence denied. As explained in para 1 & 3 of the facts and para B in grounds.
- F. Incorrect hence denied. Factual position has been explained in above paras.
- G. No comments.
- H. That any other grounds will be furnished at the time of final arguments with the prior permission of this honorable court.

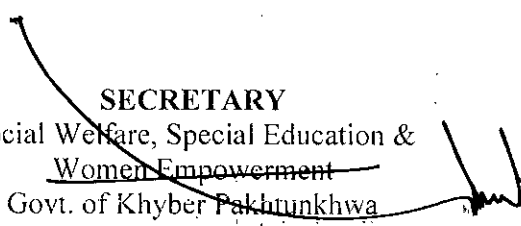
44

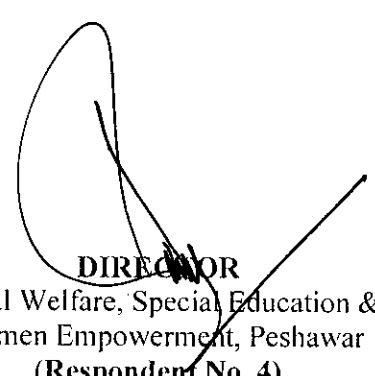
In view of the above clarifications/explanations, it is therefore humbly prayed that the instant appeal may graciously be dismissed having no weight and being based on malafide intention as the appellant have concealed the facts of the case to misguide/misleading this honorable Tribunal.


CHIEF SECRETARY
Government of Khyber Pakhtunkhwa
(Respondent No. 1)


SECRETARY ESTABLISHMENT
Government of Khyber Pakhtunkhwa
(Respondent No. 2)


SECRETARY FINANCE
Government of Khyber Pakhtunkhwa
(Respondent No. 5)


SECRETARY
Social Welfare, Special Education &
~~Women Empowerment~~
Govt. of Khyber Pakhtunkhwa
(Respondent No. 3)


DIRECTOR
Social Welfare, Special Education &
Women Empowerment, Peshawar
(Respondent No. 4)

Annex
345

GOVERNMENT OF NWFP
ZAKAT, USHR, SOCIAL WELFARE &
WOMEN DEVELOPMENT DEPARTMENT
Dated Peshawar the, 8-12-2007

NOTIFICATION

19597

NO.SOU(SW)II-171/2007: In pursuance to the recommendations of the Departmental Selection Committee (DSC) and acceptance of the Terms & Conditions offered to them vide this department offers of appointment No SOU(SW)II-171/2007 dated 24-11-2007, the Competent Authority is pleased to appoint the following as **Rehabilitation Officers (BPS-17)** on contract basis for a period of six (06) months or till the arrival of nominee of NWFP Public Service Commission (whichever is earlier) w.e.f the date they execute agreements with this department on the prescribed proforma.

- i) Shah Khalid S/O Guldar Shah, Tappa Khuga Khel, Basi Khel, PO Landi Kotal Tehsil Landi Kotal Khyber Agency
- ii) **Jawad Hussain** S/O Sakhawat Shah House # 4, Canal Lane Near Al-Badar Hospital University Town
- iii) Ijaz Ahmed S/O Jamshed Khan Village and PO Boko, District and Tehsil Swabi

19598-613 ✓

SECRETARY

Endst. No. NO.SOU(SW)II-171/2007

Dated Peshawar the, 8-12-2007

- ✓ 1. The Accountant General NWFP, Peshawar.
- ✓ 2. The Director, Social Welfare & Women Development NWFP, Peshawar.
- 3. PS to Secretary, Zakat, Ushr, Social Welfare & WD Department NWFP.
- 4. Section Officer (General) Zakat, Ushr SW & WD Deptl with reference to appointment of Mr. Jawad Hussain Internee at S. No.ii.
- 5. Officers Concerned.
- 6. Office Order Files.
- 7. Personal Files.

(ILAM KHAN KHATFAK)
SECTION OFFICER-II

17/54

ADM 14-12-07

open a new file
15/12

08
14-12-07

14

+

Annex B
46

Government of NWFP
Zakat, Ushr, Social Welfare
& Women Development Department

Dated Peshawar the 30th June 2008

NOTIFICATION:

NO.SOII(SW)VI-55/2006/

On the expiry of their contract appointment, the Competent Authority is pleased to reappoint the following officers on contract basis in B-17 on the existing terms and conditions for a period of six months or till the availability of regular candidates through NWFP Public Service Commission whichever is earlier from the dates noted against each:-

S.#	Name & Designation	Place of posting	Date of expiry of contract appointment	Date of fresh reappointment
I	Mr. Mohib Ullah, Planning Officer	Directorate of Social Welfare and Women Development NWFP, Peshawar	07-06-2008	09-6-2008
II	Mr. Jawad Hussain, Rehabilitation Officer	Rehabilitation Centre for Drug Addicts, Peshawar	08-06-2008	10-06-2008
III	Syed Muhammad Younis, Social Welfare Officer	Social Welfare Officer Malakanad at Batkhela	08-06-2008	10-06-2008
IV	Syed Riaz Ahmed Social Welfare Officer.	Social Welfare Officer, Abbottabad	08-06-2008	10-06-2008
V	Mr. Shah Khalid, Rehabilitation Officer.	Rehabilitation Centre for Drug Addict, Kohat	08-06-2008	10-06-2008
VI	Mr. Ejaz Ahmad, Rehabilitation officer.	Rehabilitation Centre for Drug Addict, Swat.	08-06-2008	10-06-2008
VII	Mr. Amjad Afridi, Superintendent	Darul Kafala, Peshawar.	30-06-2008	3-7-2008
VIII	Mst Nadia Shah, Superintendent	Darul Aman Mardan	30-06-2008	3-7-2008

Secretary to Govt of NWFP
Zakat, Ushr, Social Welfare &
Women Dev: Department

Dated Peshawar the 30th June 2008

Endst: **NO.SOII(SW)VI-55/2006**

Copy forwarded to: -

1. The Accountant General, NWFP Peshawar.
2. The District Coordination Officers, Peshawar / Mardan /Swat/ Abbottabad/ Malakand/ Kohat
3. The Director, Social Welfare & Women Dev: NWFP Peshawar
4. The Distt: Officers, (Social Welfare) Peshawar / Mardan /Swat/ Abbottabad/ Malakand/ Kohat
5. The Distt: Accounts Officer, Mardan /Swat/ Abbottabad/ Malakand/ Kohat
6. PS to Secretary, Zakat, Ushr, Social Welfare & Women Dev: Deptt, NWFP.
7. The Officers Concerned.
8. Personal File of the Officers.

(Signature)
(QAMAR ALI)
Section Officer -II

ADA

17/54

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4-07-08

D-3

Annex D
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**GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT DEPARTMENT**

No. SO-II(SWD)/II-198/2015/PC 5465-E
Dated Peshawar the 19th September, 2016

To,

1. Syed Riaz Ahmad Jan,
Social Welfare Department, Abbottabad.
2. Mr. Syed Muhammad Younas,
Social Welfare Department, Malakand at Batkhela.
3. Mr. Jawad Hussain,
Rehabilitation Officer, Reh: Centre for Drug Addict Peshawar.

Subject: - PROVISION OF SENIORITY & MONETARY BENEFITS (W.E.F) 24.12.2008 IN PURSUANCE OF JUDGMENT PASSED BY HONOURABLE PESHAWAR HIGH COURT, PASSED IN WRIT PETITION NO. 2104/2010 DATED 11.03.2015.

I am directed to refer to the Subject noted above and to state that your application/representations are time barred, as such, your request for pay fixation from retrospective effect and payment of arrears may not be acceded to, being not covered under the rules.

2. However, you may submit application for fixation of your respective Seniorities after publication of Tentative Seniority List for the calendar year 2017.

[Signature]
Section Officer-II

Endst: of Even No. & Date:

1. PS to Secretary Social Welfare, Special Education & Women Empowerment Department Khyber Pakhtunkhwa.

[Signature]
Section Officer-II

[Signature]
ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT DEPARTMENT

Dated Peshawar the 2nd March, 2016

NOTIFICATION:

No. SO-II(SWD)/II-171/2013/PC/ 798-806 In the light of judgment of Peshawar High Court, the competent authority is pleased to re-instate Mr. Jawad Hussain, Rehabilitation Officer and Syed Riaz Ahmed Jan, Social Welfare Officer w.e.f. 09-12-2008. Their Services shall be treated as regular w.e.f. 24-09-2009 as laid down in the NWFP Employees (Regularization of Services) Ordinance, 2009. The intervening period w.e.f. 09-12-2008 to taking over the charge would be considered as Extra Ordinary Leave without pay.

2. Consequent upon their appointments, Mr. Jawad Hussain is posted as Rehabilitation Officer (BPS-17) at Rehabilitation Centre for Drug Addicts, Peshawar against the vacant post and Syed Riaz Ahmad Jan is posted as Social Welfare Officer, Abbottabad with immediate effect in the best public interest.

Secretary to Govt. of Khyber Pakhtunkhwa
Zakat, Ushr, Social Welfare, Special Education &
Women Empowerment Department

Endst. No. SO-II(SWD)/II-171/2013/PC/

Dated Peshawar the 02/03/2016

Copy forwarded for information to: -

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director, Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa, Peshawar.
3. The District Officer, Social Welfare, Peshawar and Abbottabad.
4. The District Account Officer, Peshawar and Abbottabad.
5. PS to Minister for Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa, Peshawar.
6. PS to Secretary, Zakat, Ushr, Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa, Peshawar.
7. Office files.
8. Officers concerned.
9. Personal files.

Directorate of
Social Welfare K.P.K.
No: 14240
Date: 9-3-16

Section Officer-II

2/134

Armen "E" 107
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DDA

7/13/2016

AD(DI)
N

BEFORE THE KHYBER PAKHTUNKHUWA SERVICE
TRIBUNAL PESHAWAR

Re In;

Service Appeal No.1064/2016

Jawad Hussain

V E R S U S

Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary
Peshawar and others

REPLICATION TO REPLY OF RESPONDENTS

Respectfully Sheweth:

Replication on behalf of appellant is submitted as under;

Answer to Preliminary Objections:

All the 9 preliminary objections induced by respondents are incorrect because no reason in support of the same has ever been given why the appeal is not based on facts, why he has not come to this honourable tribunal with clean hands, what are the material facts which the appellant has tried to conceal from this honourable Tribunal, how the appeal of the appellant is time barred, why his appeal is not maintainable and how this honourable court has no jurisdiction to entertain this service appeal. Through the formatted preliminary objection it has been tried to avoid their responsibilities with effect to assure the appellant his basic right of appeal against their unjust and mala fide impugned order dated 18-09-2016.

ON FACTS:

1. Para No.1 of the Comments filed by respondent is incorrect because the question of regularization of contract employment of the appellant has already been resolved through Promulgation of KPK Employees (Regularization of Service) Act, 2009.

BEFORE THE KHYBER PAKHTUNKHUWA SERVICE
TRIBUNAL PESHAWAR

Re In;

Service Appeal No.1064/2016

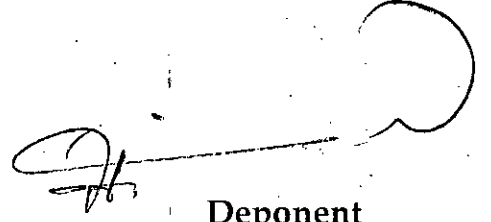
Jawad Hussain

VERSUS

Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary
Peshawar and others

AFFIDAVIT

I, Jawad Hussain Rehabilitation Officer, at Rehabilitation Centre for Drug Addict Peshawar, Appellant; do hereby solemnly verify and declare on oath that all the contents of the subject re-joinder; are true and correct to the best of my knowledge and belief and nothing has been concealed from this Tribunal.



Deponent

C.N.I.C No.16102-2263333-3

Verified by;



Syed Ghufuran Ullah Shah
Advocate, Peshawar.



To

The Service Tribunal Khyber Pakhtunkhwa
Peshawar.

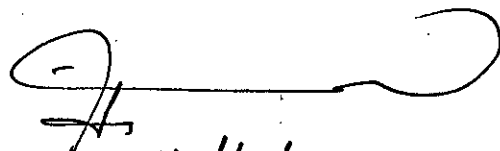
Title :- Jomard Hussain vs Govt of KPK 1064/16

Subject :- Adjourment application

R/sir

Reference to the subject cited above
and to state that my lawyer is
busy at high court and not able to
attend or argue in my case. Therefore it is
requested to adjourn my case for the
next date.

Regards Jomard Hussain applicant No
1064/16


17/10/19

DFA

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 1064/2016

Date of Institution ... 18.10.2016

Date of Decision ... 27.10.2022

Jawad Hussain Rehabilitation Officer, at Rehabilitation Centre for Drug Addict Peshawar.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary at Civil Secretariat Peshawar and four others.

... (Respondents).

SYED GHUFRAN ULLAH SHAH

Advocate

For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,

Assistant Advocate General

For respondents.

SALAH-UD-DIN

MEMBER (JUDICIAL)

MIAN MUHAMMAD

MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts surrounding the instant appeal are that the appellant was initially appointed as Rehabilitation Officer (BPS-17) on contract basis in Zakat, Ushr, Social Welfare and Women Development Department vide appointment Notification dated 08.12.2007. The services of the appellant were terminated vide order dated 10.01.2009 constraining the appellants to file Writ Petitions before august Peshawar High Court. The writ petition filed by the appellant was allowed vide judgment dated 11.03.2015 and vide order dated 02.03.2016, he was reinstated in service with effect from 09.12.2008. Similarly, his services were regularized with effect from

24.09.2009, however the intervening period with effect from 09.12.2008 till taking over the charge of his post was considered as extra-ordinary leave without pay. The appellant filed departmental appeal claiming that he was entitled to all service benefits with effect from 09.12.2008, but the same was rejected vide order dated 19.09.2016, hence the instant service appeal.

2. Respondents contested the appeal by way of submitting written reply, wherein they refuted the assertions raised by the appellant in his appeal.

3. It is pertinent to mention herein that at the very outset of the arguments, learned counsel for the appellants stated at the bar that as no seniority list regarding the post of the appellant has been issued by the department, therefore, as per instructions of the appellant, he does not want to press the appeal to the extent of prayer regarding seniority. In this respect, he submitted written application, which is placed on file.

4. Learned counsel for the appellant has argued that the appellant was entitled for regularization of his services in light of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 but the respondents deliberately deprived him from the same, therefore, he filed Writ Petition, which was allowed and the appellant was reinstated in service as regular employee with effect from 24.09.2009; that the appellant was entitled to all service benefits for the period with effect from 24.09.2009, however the same were not granted to him and the intervening period with effect from 09.12.2008 till the taking over the charge by the appellant was wrongly and illegally treated as ^{extra ordinary} leave without pay; that nothing was mentioned by honourable Peshawar High

Court, Peshawar in its judgment dated 11.03.2015 for treating the intervening period as leave without pay, therefore, competent Authority was not justified in treating the intervening period with effect from 09.12.2008 till ~~the~~ assumption of the charge as leave without pay; that as the matter pertains to financial benefits, therefore, no limitation would run against the same, however departmental appeal of the appellant was regretted on the ground that the same was barred by time.

5. On the other hand, learned Assistant Advocate General for the respondents has argued that the judgment of honourable Peshawar High Court, Peshawar has been implemented in letter and spirit; that the request of the appellant for granting him service benefits of intervening period is wrong and baseless; that the departmental appeal of the appellant was time barred, therefore, the appeal in hand is not maintainable and is liable to be dismissed.

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

7. A perusal of the record would show that the appellant was serving as Rehabilitation Officers ~~//~~ (BPS-17) on contract basis in Zakat, Ushr, Social Welfare and Women Development Department, when Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 was promulgated. The services of the appellant were, however not regularized, therefore, he approached the honourable Peshawar High Court, Peshawar through filing of writ petition ^{no: 542/2010} which was allowed vide judgment dated 11.03.2015. The competent Authority issued Notification dated 02.03.2016, whereby the appellant was reinstated in service with effect from 09.12.2008, while his services

were regularized with effect from 24.09.2009 by treating the intervening period with effect from 09.12.2008 till the assumption of the charge as extra-ordinary leave without pay. During the period with effect from 24.09.2009 till the assumption of the charge by the appellant, he was kept out of service on account of fault of the respondents. Furthermore, when the competent Authority had itself regularized the services of the appellant with effect from 24.09.2009 then the appellant was entitled to all financial back benefits from the said date. So far as the question of limitation is concerned, the matter being one of financial ~~X~~^{the} benefits, is not hit by bar of limitation.

8. In view of the above discussion, the appeal in hand is partially allowed and the appellant is held entitled to all financial back benefits with effect from 24.09.2009 till the date of charge assumption i.e 04.03.2016 (F.N). The claim of the appellant regarding seniority stands dismissed being not pressed, however the same shall not preclude the appellant from seeking this remedy afresh, if he feels aggrieved of tentative seniority list upon its issuance and circulation. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
27.10.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

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

CIVIL APPEAL NO.134-P OF 2013

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

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

CIVIL APPEAL NO.135-P OF 2013

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

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

CIVIL APPEAL NO.136-P OF 2013

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

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

CIVIL APPEAL NO.137-P OF 2013

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

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

CIVIL APPEAL NO.138-P OF 2013

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

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

CIVIL APPEAL NO.52-P OF 2015

(On appeal against the judgment dated 5-12-2012 passed by the Peshawar High Court, Peshawar in Writ Petition No 3987/2011)

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

CIVIL APPEAL NO.1-P/2013

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

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

CIVIL APPEAL NO.133-P OF 2013

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

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

Livestock and others

CIVIL APPEAL NO.113-P OF 2013

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

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

CIVIL APPEAL NO.231 OF 2015

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

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

CIVIL APPEAL NO.232 OF 2015

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

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

CIVIL PETITION NO.600-P OF 2013

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

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

CIVIL PETITION NO.496-P OF 2014

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

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

CIVIL PETITION NO.34-P OF 2015

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

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

CIVIL PETITION NO.526-P OF 2013

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

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

CIVIL PETITION NO.527-P OF 2013

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

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

CIVIL PETITION NO.528-P OF 2013

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

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

CIVIL PETITION NO.28-P OF 2014

(On appeal against the judgment dated 19-09-2013 passed by the Peshawar

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

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

CIVIL PETITION NO.214-P OF 2014

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

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

CIVIL PETITION NO.621-P OF 2015

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

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

CIVIL PETITION NO.368-P OF 2014

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

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

CIVIL PETITION NO.369-P OF 2014

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

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

CIVIL PETITION NO.370-P OF 2014

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

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

CIVIL PETITION NO.371-P OF 2014

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

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

CIVIL PETITION NO.619-P OF 2014

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

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

CA.134-P/2013

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

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

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

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

CA.135-P/2013

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

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

CA.136-P/2013

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

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

CA.137-P/2013

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

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

CA.138-P/2013

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

For the Respondent(s) : Not represented.

CA.52-P/2013

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

For Respondent No.1 : In person (Absent)

For Respondent No.2 : Not represented.

CA.1-P/2013

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

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

CA.133-P/2013

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

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

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

CA.113-P/2013

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

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

CA.231-P/2015

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

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

CA.232-P/2015

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

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

CP.600-P/2014

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

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

CP.496-P/2014

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

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

CP.34-P/2014

For the Petitioner(s) : Mr. Shakeel Ahmed, ASC

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

CPs.526 to 528-P/2013

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

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

CP.28-P/2014

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

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

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

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

For the Respondent(s) : Not represented.

Date of hearing : 24-02-2016

JUDGMENT

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

CA.134-P/2013

On Farm Water Management Project, KPK.

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

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

On Farm Water Management Project, KPK

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

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

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

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

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

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

Civil Petition No.619-P/2014

Establishment of Database Development Based on Electronic Tools (Project)

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

Civil Petitions No.368-P of 2014 to 371-P of 2014

Industrial Training Centre Garhi Shehsdad and Industrial Training Centre Garha Tajak, Peshawar

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

Civil Petition No.214-P of 2014

Welfare Home for Destitute Children, Charsadda.

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

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

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

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

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

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

Civil Petitions No.526 to 528-P of 2013

Centre for Mentally Retarded & Physically Handicapped (MR&PH), Nowshera, and Welfare Home for Orphan Female Children Nowshera

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

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

Civil Appeal No.52-P of 2015

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

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

Civil Appeal No.01-P of 2013

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

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

Civil Appeals No.133-P

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

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

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

Civil Appeal No.113-P of 2013

Establishment of One Science and One Computer Lab in Schools/Colleges of NWFP

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

Civil Appeals No.231 and 232-P of 2015

National Program for improvement of Water Courses in Pakistan

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

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

Civil Petition No.496-P of 2014.

Provision of Population Welfare Programme

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

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

Civil Petition No.34-P of 2015

Pakistan Institute of Community Ophthalmology Hayatabad Medical Complex, Peshawar

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chief Justice

Judge

Judge

Judge

Judge

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

Before the KP Service Tribunal, Peshawar

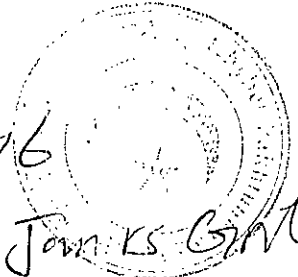
Jawad Hussain Vs Govt of KPK and others
Syed Muhammad Younis Vs 71

STATEMENT OF COUNSEL OF APPELLANTS

I do It is hereby stated upon the instruction of the appellants that due to non availability and no issuance of Seniority List, the appellants want to not press the Pray about their Seniority subject to permission for fresh appeal after issuance of the same, if needed. The Honorable Tribunal is requested to dispose the remaining Prays of the appellants except the one Seniority.

Sd/- 27/1/22
Syed Ghumanullah
Counsel of Appellants
(ASL)

A. No. 1063/2016
 S. Riad Ahmad Jans KS GWT



31.10.2016

Learned counsel for the appellant argued that the appellant was initially appointed as Social Welfare Officer on contract basis in Zakat & Ushr Department vide appointment order dated 08.12.2007. That services of the appellant were terminated vide order dated 10.1.2009 constraining the appellant to prefer Writ Petition No. 2104/2010 which was accepted vide judgment dated 11.03.2015. That on the strength of the judgment of the Hon'ble Peshawar High Court referred to above appellant was reinstated in service vide order dated 02.03.2016 with effect from 09.12.2008 but the services of the appellant rendered on contract basis were not treated as regular service and appellant was deprived of seniority as well as other service benefits. That the intervening period was also treated as extra-ordinary leave without pay constraining the appellant to prefer departmental appeal which was also rejected on 19.09.2016 and hence the instant service appeal on 18.10.2016.

That the appellant is entitled to all service benefits including seniority, financial benefits and his service is to be counted as regular service and as such the impugned order is against facts and law and liable to be set aside.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 28.12.2016 before S.B.

Date of Appeal: 18-10-16
 Date of Judgment: 31-10-16
 Date of Deposit: 31-10-16
 Date of Security: 31-10-16
 Date of Process Fee: 31-10-16
 Date of Notice: 31-10-16
 Date of Reply: 31-10-16
 Date of Comments: 31-10-16
 Date of Final Order: 31-10-16
 Date of Execution: 31-10-16
 Date of Appeal: 18-10-16

Appellant Deposited Security & Process Fee

Certified to be true copy

BY: [Signature]
 Khaym-e-Pakistan
 Service Tribunal
 Peshawar

[Signature]
 Chairman