

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD.

Service Appeal No. 987/2019

BEFORE: **MR. KALIM ARSHAD KHAN** ... **CHAIRMAN**
 MISS. FAREEHA PAUL ... **MEMBER(E)**

Molana Abdul Hayee S/O Abdul Ghafoor, Resident of Khandar Shareef Abad, Cum Kuza Banda, Tehsil & District Battagram, (Ex-District Khateeb Battagram)

.... **(Appellant)**

Versus

1. **The Govt. of Khyber Pakhtunkhwa through Secretary Auqaf/ Chief Administration Auqaf, Hajj, Religious and Minority Affairs.**
2. **Administrator Auqaf Khyber Pakhtunkhwa.**
3. **Deputy Commissioner Battagram.**
4. **Secretary Finance, Khyber Pakhtunkhwa, Peshawar.**
5. **Accountant General Khyber Pakhtunkhwa, Peshawar.**

... **(Respondents)**

Mr. Hamayun Khan
Advocate

...

For appellant

Mr. Muhammad Riaz Khan Paindakhel
Asstt. Advocate General

...

For respondents

Date of Institution.....29.07.2019
Date of Hearing.....17.05.2022
Date of Decision.....18.05.2022

JUDGEMENT

FAREEHA PAUL MEMBER (E) The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 wherein order dated 21.7.2014 issued by respondent No. 1 & 2 has been impugned through which services of the appellant have been terminated.

2. Brief facts of the case, as per memorandum of appeal, are that the appellant was appointed District Khateeb in District Battagram on contract basis on fixed pay vide order dated 29.07.1999 and on 07.07.2007 his



services were regularized vide office order No. SO(AUQAF)1-153/2004/VOL-VI w.e.f 02.11.2006. Through an office order dated 02.02.2010 the appellant was retired/relieved from service w.e.f 16.12.2009 after attaining the age of superannuation, without any gratuity/pensionary benefits as per the terms and conditions of the notification dated 07.07.2007. Through another office order dated 21.04.2010 the appellant was appointed District khateeb on fixed pay of Rs. 4000/ per month on provisional basis for a period of 6 months till the appointment of a regular khateeb, whichever was earlier, by the Auqaf, Hajj, Religious and Minority Affairs Department after which his services were terminated w.e.f 07.05.2014 vide order No. 1855-87/ME dated 21.07.2014.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the Assistant Advocate General and perused the case file with connected documents minutely and thoroughly.

4. Learned counsel for the appellant contended that order dated 21.07.2014 through which services of the appellant were terminated was illegal, without lawful authority and void ab-initio. He admitted that services of the appellant were regularized in 2007 and that he retired from service after attaining the age of superannuation in 2009. He prayed for declaring the order dated 21.07.2014 as null and void, and pay all the remaining/outstanding salaries alongwith pensionary benefits from 2006 to 2009.

5. The learned Assistant Advocate General responded that the appellant was an employee of the statutory body and was not a civil servant. Although he was appointed in 1999, regularized in 2006 and relieved from service in 2009, all his salaries were paid to him and that he was not entitled to



pension, gratuity and other benefits as per his terms and conditions contained in order dated 07.07.2007. He further contended that after retirement he was reappointed on fixed pay vide order dated 21.4.2010 which was extended from time to time, and ultimately his services were terminated w.e.f 07.05.2014 vide order dated 21.07.2014.

6. After perusal of the record and hearing the learned counsel for the appellant and learned Assistant Advocate General, it is clear that the appellant was initially appointed as District Khateeb on contract basis. His services were then regularized in 2007 and he retired from service after attaining the age of superannuation on 16.12.2009 vide order dated 02.02.2010. His terms and conditions in order of initial appointment dated 07.07.2007 were clear and he was not entitled for pension, gratuity and other such benefits. Record further reveals that he was reappointed as District Khateeb on fixed pay of Rs. 4000 per month initially for a period of six months on 21.4.2010 which was extended from time to time till final order of termination dated 21.07.2014.

7. After going through the available record and hearing arguments of the learned counsels, the appeal in hand is dismissed. Parties are left to bear their own costs. File be consigned to record room.

8. *Pronounced in open court in Abbotabad and given under our hands and seal of the Tribunal this 18th day of May, 2022.*



(KALIM ARSHAD KHAN)
Chairman



(Fareeha Paul)
Member (E)

Service Appeal No. 987/2019

Mr. Hamayun Khan, Advocate for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgement containing 03 pages, we have arrived at the conclusion that the appellant was initially appointed as District Khateeb on contract basis. His services were then regularized in 2007 and he retired from service after attaining the age of superannuation on 16.12.2009 vide order dated 02.02.2010. His terms and conditions in order of initial appointment dated 07.07.2007 were clear and he was not entitled for pension, gratuity and other such benefits. Record further reveals that he was reappointed as District Khateeb on fixed pay of Rs. 4000 per month initially for a period of six months on 21.4.2010 which was extended from time to time till final order of termination dated 21.07.2014. After going through the available record, the appeal in hand is dismissed. Consign.

3. *Pronounced in open court in Abbotabad and given under our hands and seal of the Tribunal this 18th day of May, 2022.*


(KALIM ARSHAD KHAN)
Chairman


(Fayeeka Paul)
Member (E)

17.05.2022

Hamayun Khan, Advocate, learned counsel for the appellant present. Mr. Muhamad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Arguments heard. To come up for order before D.B on 18.07.2022 at camp court Abbottabad.



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

01.10.2021

Appellant alongwith counsel and Mr. Muhammad Adeel Butt, Addl. AG alongwith Naseeb Khan, S.O and Abdul Khaliq, Junior Clerk for the respondents present.

The reply of respondent No. 3 as already filed is available on record. Representative of respondent No. 5 produced joint parawise comments of respondents No. 1, 2 and 5 which is placed on file. Respondents No. 4 and 6 are at the most proforma respondents. Therefore, there is no need to require reply on their behalf. To come up for arguments on 23.12.2021 before D.B at camp court, Abbottabad.

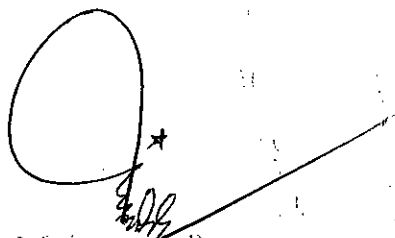


Chairman
Camp Court, A/Abad

23.12.2021

Appellant alongwith his counsel present. Mr. Asif Masood, DDA alongwith Mr. Abdul Khaliq, Junior Clerk for respondents No. 1 and 2 and Mr. Amanat Ali, SO for respondent No. 5 for respondents present

Representative of respondents No. 1 and 2 requested for adjournment on the ground that their Legal Advisor namely Nasir Mehmood Khattak, Advocate will argue the case on behalf of respondents No. 1 and 2, however he is busy today in the Hon'able Peshawar High Court, Peshawar. Last opportunity given. Adjourned. To come for arguments before D.B on 15.02.2022 at camp court Abbottabad.



(Mian Muhammad)
Member(E)



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

20.10.2020

Nemo for parties.

Usman Ghani learned District Attorney present.

Written reply on behalf of respondents was not submitted. Notice be issued to appellant/counsel and respondents for reply/comments, for 15.12.2020 before S.B at Camp Court, Abbottabad.



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

15.12.2021

Due to Covid-19, case is
adjourned to 16.03.2021 for the
same as before



Reader.

16.03.2021

Learned counsel for the appellant present.

Riaz Khan Paindakheil learned Asst. AG for respondents present.

Reply/comments on behalf of respondent No.3 has already submitted. Neither written reply/comment on behalf of respondent No. 1, 2 & 4 to 6 submitted nor their representative are present, therefore, notice be issued to them with direction to direct the representative to attend the court and submit written reply/comments on the next date positively. Case to come up for written reply/comments on behalf of respondents No. 1,2 & 4 to 6 on 16/03/2021 before S.B at Camp Court Abbottabad.



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, A/Abad

22.01.2020

None present on behalf of appellant. Written reply not submitted. Sohail Assistant representative of the respondent department present and seeks ^{true} to furnish reply. Granted. To come up for written reply/comments on 19.02.2020 before S.B at Camp Court Abbottabad.



Member
Camp Court, A/Abad

Due to covid ,19 case to come up for the same on ^{16/4/20}
at camp court abbottabad.



Reader

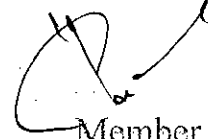
Due to covid ,19 case to come up for the same on ^{20/10/20}
at camp court abbottabad.



Reader

20.11.2019

Learned counsel for the appellant present. Jameel Hussain Shah Superintendent representative of respondent No.3 present and submitted written reply on behalf of the said respondent. No one present on behalf of remaining respondents. Notice be issued to the remaining respondents i.e. respondents No.1, 2 & 4 to 6 for submission of written reply/comments. Adjourn. To come up for written reply/comments on 19.12.2019 before S.B at Camp Court, Abbottabad.



Member
Camp Court, A/Abad

19.12.2019

Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Zia Ullah, Deputy District Attorney alongwith Mr. Jamil Hussain Shah, Superintendent on behalf of respondent No. 3 present. Written reply on behalf of respondent No. 3 has already been submitted. Neither written reply on behalf of respondents No. 1, 2 & 4 to 6 submitted nor their representatives are present therefore, notice be issued to them with the direction to direct the representatives to attend the court and submit written reply on the next date positively. Case to come up for written reply/comments on behalf of respondents No. 1, 2 & 4 to 6 on 22.01.2020 before S.B at Camp Court Abbottabad.



(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad


20.09.2019

Counsel for the appellant Molana Abdul Hayee present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving as Khateeb in Auqaf Department. It was further contended that the appellant was appointed vide order dated 29.07.1999 on contract/fixed pay. He was regularized vide order dated 07.07.2007 with effect from 02.11.2006. It was further contended that after 60 years of age, the respondent-department was required to issue retirement order of the appellant but the respondent-department has terminated the appellant vide order dated 21.04.2014 therefore, the appellant filed departmental appeal on 05.04.2019 but the same was not responded hence, the present service appeal. It was further contended that the respondent-department was bound to issue retirement order of the appellant and pay pensionary benefits to the appellant but instead of issuing of retirement order and paying pensionary benefits, the appellant was illegally terminated from service after 60 years of his age therefore the respondent-department is bound to pay pensionary benefits to him.

The contention raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days thereafter, notices be issued to the respondents for written reply/comments for 20.11.2019 before S.B at Camp Court Abbottabad.

Appellant Deposited
Security & Process Fee



23/9/19


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- 987/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/07/2019	<p>The appeal of MOlana Abdul Hayee received today by post through Mr. Hamayun Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 29/7/19</p> <p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>20-9-19</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 987 /2019

Molana Abdul Hayee son of Abdul Ghaffar, resident of Khandar Shareef Abad, Cum Kuza Banda, Tehsil & District Battagram, (Ex-District Khateeb Battagram).

...APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Auqaf/ Chief Administrator Auqaf, Hajj Religious Affairs, Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

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3.	Copy of termination order dated 07/05/2014	<u>13-15</u>	"B"
4.	Copy of departmental appeal	<u>16</u>	"C"
5.	Wakalatanama	<u>17</u>	


...APPELLANT

Through

Dated: 23/7 /2019


(HAMAYUN KHAN)
Advocate High Court, Abbottabad

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 987/2019

Molana Abdul Hayee son of Abdul Ghaffar, resident of Khandar Shareef Abad, Cum Kuza Banda, Tehsil & District Battagram, (Ex-District Khateeb Battagram).

...APPELLANT

**Khyber Pakhtunkhwa
Service Tribunal**

VERSUS

Diary No. 1075

Dated 29/7/19

- 1. Govt. of Khyber Pakhtunkhwa through Secretary Auqaf/ Chief Administrator Auqaf, Hajj Religious Affairs, Peshawar.
- 2. Administrator Auqaf Khyber Pakhtunkhwa, Peshawar.
- ✓3. Deputy Commissioner Battagram.
- 4. Account Officer Battagram.
- 5. Secretary Finance Khyber Pakhtunkhwa, Peshawar.
- 6. Accountant General Khyber Pakhtunkhwa, Peshawar.

...RESPONDENTS

Filed to-day

ew.
Registrar

29/7/19

SERVICE APPEAL UNDER SECTION 4

KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL ACT 1974, AGAINST THE ORDER

DATED 21/07/2014, ISSUED BY

RESPONDENT NO. 1 & 2 WHEREBY THE

RESPONDENT NO. 1 & 2 INSTEAD OF

RETIREMENT, TERMINATED THE

APPELLANT FROM SERVICE, WHICH IS

ILLEGAL, UNLAWFUL, WITHOUT LAWFUL
AUTHORITY, VOID AB-INITIO AND IS
INEFFECTIVE UPON THE RIGHTS OF THE
APPELLANT.

PRAYER: ON ACCEPTANCE OF THE
INSTANT APPEAL;

- (I) THE IMPUGNED ORDER DATED
21/07/2014, MAY KINDLY BE
DECLARED NULL AND VOID TO THE
EXTENT OF THE APPELLANT AND
THE RESPONDENTS MAY
GRACIOUSLY BE DIRECTED TO ISSUE
RETIREMENT ORDER OF THE
APPELLANT WITH EFFECT FROM 31ST
DECEMBER 2009.
- (II) THEY FURTHER BE DIRECTED TO
PAY ALL THE REMAINING/
OUTSTANDING SALARIES OF THE
APPELLANT FROM 02/11/2006 TILL 31ST
DECEMBER 2009
- (III) TO PAY ALL PENSIONERY AND
FINANCIAL BENEFITS TO THE
APPELLANT FROM 31/12/2009 WITH
COUNTING SERVICE FORM THE DATE

OF INITIAL APPOINTMENT DATED
29/07/1999 TILL RETIREMENT AND
THEREAFTER TILL DATE.

(IV) ANY OTHER RELIEF WHICH THIS
HONOURABLE COURT DEEMS FIT
AND PROPER IN THE INTEREST OF
JUSTICE.

Respectfully Sheweth;-

Brief facts of the instant appeal are as under;-

1. That on 29/07/1999, appellant was appointed as District Khateeb at District Battagram on contract basis.
2. That thereafter, appellant took charge and continuously performed his duties with full devotion and liability.
3. That on 04/06/2007, respondent No. 1 regularized services of the appellant in BPS-16, w.e.f. 02/11/2006. Copy of

regularization order is annexed as Annexure
"A".

4. That on 31/12/2009, after attaining age of the superannuation (i.e. 60 years) appellant was retired from service.

5. That since 04/06/2007 respondents not paid salaries to the present appellant.

6. That after retirement appellant approached to the respondent No. 1 & 2 for his lawful financial benefits (Pension & outstanding salaries from 11/10/2007 to 31/12/2009), and onward monthly pension but till date respondents not redressed grievances of the appellant.

7. That on 21/07/2014 after 05 years of the retirement respondent No. 1 issued termination order of the appellant with effect from 07/05/2014. Copy of termination order dated 07/05/2014 is annexed as Annexure "B".

8. That feeling aggrieved from the aforesaid situation, appellant filed departmental appeal before the respondent No. 1 but till date respondent No.1 not passed any order and similarly not given any response. Copy of departmental appeal is annexed as Annexure "C".

9. That faced with the above said situation, the appellant seeks indulgence of this Honourable Tribunal through instant appeal, inter-alia on the following grounds;-

GROUND S;-

- a. That the acts of respondents are against the law, facts and against the constitutionally guaranteed rights.
- b. That acts of the respondents are against the principle of natural justice.
- c. That the respondents without showing anything in black and white, illegally deprived the appellant from his lawful

rights, which is against the law and fundamental rights of the appellant guaranteed under the Constitution of Islamic Republic of Pakistan, 1973.

d. That the respondents are duty bound to pay all outstanding salaries and allowed all monthly pensions to the appellant. Neither the appellant has committed illegal, unlawful act against the rights of department nor respondents has served any notice/ order containing the reason for him non paying benefits. Hence, impugned act of respondents are not sustainable in the eye of law and is liable to be struck down.

e. That respondents ignored basic law on the subject without considering rules regulation framed for civil servant by discriminating employee by violating basic and fundamental rights of all such employee.

- f. That appellant has been discriminated was much as his other colleague civil servants have been granted pensionary benefits where as for appellant has been denied the same which is against Article 4 & 25 of the Constitution.
- g. That this practice of the respondent comes within the domain of classical example of discrimination, bias, prejudice.
- h. That there is no other officious speedy and adequate remedy available to the appellant except the instant appeal.
- i. That the other points shall be agitated at the time of arguments with the leave of this Honourable Tribunal.

It is, therefore, humbly prayed that on acceptance of the instant appeal;

- (I) The impugned order dated 21/07/2014, may kindly be declared null and void to the extent of the appellant and the respondents

may graciously be directed to issue retirement order of the appellant with effect from 31st December 2009.

- (II) They further be directed to pay all the remaining/ outstanding salaries of the appellant from 02/11/2006 till 31st December 2009.
- (III) To pay all pensionary and financial benefits to the appellant from 31/12/2009 with counting service form the date of initial appointment dated 29/07/1999 till retirement and thereafter till date.
- (IV) Any other relief which this Honourable Tribunal deems fit and proper in the interest of justice.

Dated: 23/17 /2019

Through

...APPELLANT


(HAMAYUN KHAN)
Advocate High Court, Abbottabad 

VERIFICATION:-

Verified on oath that the contents of foregoing writ petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.


...APPELLANT



ANNEXURE "A"

"A"

9
GOVERNMENT OF N.W.F.P.
AUQAF, HAJJ, RELIGIOUS AND
MINORITY AFFAIRS DEPARTMENT.

Dated Peshawar the 07-07-2007

OFFICE ORDER

NO.SO(AUQAF)1-153/2004/Vol.VI Under sub rule 2 of Rule 10 of the NWFP. Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, and in pursuance of approval of the Competent Authority the services of District Khutaba, who were appointed on fixed pay on the dates noted against each are regularized w.e.f. 02.11.2006. The innervring period i.e 02-11-2006 to date would count towards increment under F. R- 26 (C) but without arrears.

The terms and conditions of their present services are as follows.

Terms and Conditions:

1. They will get pay at the minimum of BPS-16 plus usual allowances as admissible under the Rules. They will also be entitled annual increment as per policy.
2. Their services will be liable to termination with or without any reason on 14 days notice from either side. In case of termination without notice by the employer or 14 days notice from the employee for resignation, 14 days pay shall be paid by the Government or refunded by the employee as the case may be.
3. They will be allowed C.P. Fund facility and will not be entitled to pension, gratuity etc. and other such benefits.
4. They will be allowed Conveyance, House Rent Allowances and leave as per rules.
5. They have already joined duty in the Auqaf Department as per orders noted below against each:

Attested
H. S. J.

10

The Names/Appointment Order No with dates etc. of the District
Khutaba are as under :

S.No.	Name & Father's Name	Designation with place of posting	Appointment Order No. & date	Date of Regularization
1.	Maulana Latif Ullah s/o Muhammad Munir	District Khateeb Swat	No. 6883-88/1-A-2 dated 8.10.02	w.e.f 2.11.06
2.	Maulana Muhammad Mekaail s/o Gul Nawaz	District Khateeb Karak	No. 6914-19/1-A-8 dated 08.10.02	w.e.f 2.11.06
3.	Maulana Abdul Wahab s/o Behram Khan	District Khateeb Lakki Marwat	No. 6920-25/1-A-8 dated 08.10.02	w.e.f 2.11.06
4.	Maulana Nasser-ud-Din s/o Maulana Muhammad Shoaib	District Khateeb Shangla	No. 6932-37/1-A-8 dated 08.10.02	w.e.f 2.11.06
5.	Maulana Saecdur Rehman s/o Arbab Khan	District Khateeb Kohistan	No. 6877-82/1-A-8 dated 08.10.02	w.e.f 2.11.06
6.	Maulana Hazrat Said s/o Sher Ahmad Khan	District Khateeb Dir (Upper)	No. 6938-43/1-A-8 dated 08.10.02	w.e.f 2.11.06
7.	Maulana Hamcedur Rehman s/o Shamsur Rehman	District Khateeb Buner	SO(Auqaf)I- 153/2004/Vol:1 dated 05.09.06	w.e.f 2.11.06
8.	Maulana Abdul Hayee s/o Abdul Ghaffar	District Khateeb Batagram	No. 2352-56/A-8/ Auqaf Dated 29.07.99	w.e.f 2.11.06

SECRETARY/CHIEF ADMINISTRATOR
AUQAF NWFP.

NO. 1207

Copy forwarded to:

1. Administrator Auqaf NWFP, Peshawar
2. Director Local Fund Audit Peshawar
3. PS to Secretary Auqaf, Hajj, Religious & Minority Affairs Department
Peshawar
4. Officials concerned.
5. Personal File.

Fade
SECTION OFFICER (AUQAF-I)

29/07/07

Attested
H

~~18~~ ~~15~~ ~~12~~ 11

GOVERNMENT OF N.W.F.P.
AUQAF, HAJJ, RELIGIOUS AND
MINORITY AFFAIRS DEPARTMENT.

Dated Peshawar the 4-06.2007. / 756

OFFICE ORDER.

NO.SO(AUQAF)1-53/205-06/Vol.IV. In exercise of the Powers conferred upon me under Rule 4 of the West Pakistan Auqaf Department (Imam/Khateeb) Service Rules 1968, the provisional services of following Imams, District/Tehsil Khateeb are hereby extended for appointment of regular Imams/Khateeb whichever is earlier on the existing terms and conditions.

S.No.	Name of Khateeb	Period from	To
1	Maulana Fathul Bari Tehsil Khateeb Booni, Chitral	28-02-2007	27-08-2007
2	Maulana Khalil-ur-Rahman Khateeb, Masjid, Chugallia D.I.Khan.	10-6-2007	9-12-2007
3	Maulana Abdul Hai, District Khateeb, Batagram	17-4-2007	16-10-2007
4	Maulana Abdul Ghafar Imam, Auqaf Complex, Shami Road, Peshawar.	12-4-2007	11-10-2007



A. Akhtar
H. J. Khan

SECRETARY/CHIEF
ADMINISTRATOR AUQAF

PTO

6/7/07

Ends: of even No. & date.

Copy forwarded to: -

1. Administrator Auqaf, NWFP Peshawar w/r to his letter No. 1354 dated 23.05.2007,
2. Director Local Fund Audit, NWFP, Peshawar.
3. P.S. to Secretary, Auqaf, Hajj, Religious & Minority Affairs Department.

ME

Javed Akhtar
(JAVED AKHTAR)
SECTION OFFICER (AUQAF-1)

A.A.
⑤

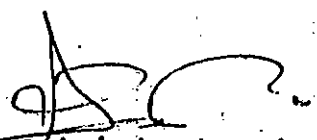
12
16 18 18

OFFICE OF THE
ADMINISTRATOR AUQAF NWFP PESHAWAR.

Endst: NO. 1760-65 dated: 28-06-07

Copy forwarded to the:-

1. Dy. Administrator Auqaf, NWFP, Peshawar.
2. Accounts Officer, Auqaf Department, NWFP1, Peshawar for information.
3. ~~Manager~~ Auqaf concerned.
4. Official concerned.
5. Personal File.


Administrator Auqaf,
NWFP, Peshawar.

Attested
H. S. O. R.

ANNEXURE



OFFICE OF THE
ADMINISTRATOR AUQAF
KHYBER PAKHTUNKHWA
PESHAWAR

Phone: 2043428 Fax 2013127

No: 1855-87/ME.

Dated: 21-5-2014

OFFICE ORDER

In compliance of the approval of the competent authority, the services of the following fixed pay staff of Masjid are hereby terminated with effect from the date mentioned against each.

S.No	Name	Designation	Date of Expiry	Present place of duty
1.	Qari Ijaz Ahmad.	Khadim	30.06.2014	Masjid Sethi Iqbal Namakmandi, Peshawar
2.	Wakil Khan.	Khadim	30.06.2014	Masjid Qasim Ali Khan, Peshawar
3.	Molvi Minhajuddin	Imam	30.06.2014	Masjid Karam Shah, Qissa Khwani Peshawar
4.	Muhammad Fayyab Qureshi	Imam	30.06.2014	Masjid Mohabat Khan, Peshawar
5.	Maulana Abdul Hai.	Dist: Khateeb	07.05.2014	District Khateeb Balamir
6.	Muhammad Talha Qureshi	Khadim	30.06.2014	Masjid Gunj Ali Khan, Peshawar
7.	Hafiz Mushtaq Hussain	Khadim	30.06.2014	Masjid Shah Hussain Sherazi, D.I.Khan
8.	Muhammad Yousaf Shah	Khadim	30.06.2014	Masjid Gunj Faqir Wali, Peshawar
9.	Afzal Ali	Chowkidar	30.06.2014	Auqaf Plaza Dalazak, Peshawar
10.	Rehmat Ullah	Khadim	30.06.2014	Masjid Piple Wali Qissa Khawani Peshawar
11.	Lal Zaman	Khadim	30.06.2014	Masjid Quwatul Islam Mardan
12.	Abdul Majid	Imam cum Khadim	30.06.2014	Masjid Chowk Bazar Haripur
13.	Sami Ullah	Khadim	30.06.2014	Masjid Sabzi Lora, Peshawar
14.	Abdus Samad	Imam	30.06.2014	Masjid Qasaban, Bannu
15.	Syed Hidayat Ullah.	Khadim	30.06.2014	Masjid Bahadar Shah Baba, Khyber Bazar, Peshawar
16.	Asghar Khan	Khadim	30.06.2014	Waqf Plot Sarki Gate, Peshawar
17.	Saif Ullah Khan	Chowkidar	30.06.2014	Shaikh Shahbaz Baba Pabbi Nowshera
18.	Molvi Raham Sher	Khadim	30.06.2014	Masjid Haji Muhammad Amin Sethi Peshawar

Attested
14/5/14

~~10~~ 10

14



حکومت پاکستان

قومی اسمبلی کا روم

13202-7800646-1



نام: عبدالرشید

تعلقہ: مرد

وادی: کراچی

تاریخ: 1949

1949

مقام: کراچی

Attested
14 OR

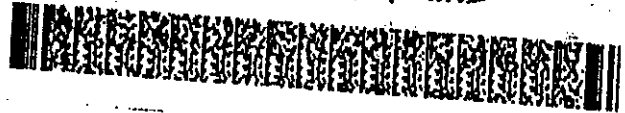
18
15

شناختی نمبر: 13202-7880646-1 خانہ نمبر: T744WC
موجودہ پتہ: کنڈر شریٹ آباد، گورنمنٹ ہائیڈرو پاور کمپنیز، لاہور

مسلک پتہ: کنڈر شریٹ آباد، گورنمنٹ ہائیڈرو پاور کمپنیز، لاہور

تاریخ اجراء: 09/02/2010
گندہ کارڈ ملنے پر فریڈی میٹر میں ڈال دیں

12444004972



ANNEXURE C¹⁶
 حکومت خیبر پختونخوا اور
 حکومت خیبر پختونخواہ

ڈیپل بک کے متعلق سابقہ نمونے

صبا بھائی!

جیکہ سائل بیسٹ، گانا سے عالم دین ہے اور گزشتہ 40 سال
 سے ضلع بہتر نام میں نجی دسکاری سطح پر اینٹا ہزار
 سرایاں رہتا ہے۔

جیکہ سائل کی تفصیلات جیسے ضلعی سطح پر بہتر نام
 29/7/1999 کو ہوئی۔

جیکہ اس کے بعد سائل نے خورشید ٹریڈنگ سے اپنے مزارع
 یعنی سرایاں دیتا ہے۔

جیکہ مورخہ 6/4 کو صبا نے سائل کی ملازمت
 کو مستقل کرنے کا حکم صادر کیا۔
 جیکہ 12/11 کو سائل کی عمر 60 سال ہوئی ہے
 جس کے سائل کو زبانی طور پر ریٹائرڈ کیا گیا۔

جیکہ اس کے بعد سائل کو کسی قسم کا کوئی پنشن
 دیا اور ادراہ 21/11 سے 12/11 کو سائل
 کو 5PS-16 کی تنخواہ بھی پنشن دیا ہے۔

جیکہ مورخہ 21/7 کو جس کے مزید حکم جاری کرتے
 ہوئے سائل ریٹائرمنٹ نے 6 سال بعد نوکری سے
 برطرف کیا۔

محمد علی
 11/11

اس کے بعد سائل کو تمام سابقہ نمونے پیش
 ڈیپل بک کے متعلق جاری کرنے کا حکم فرمائی جاوے۔

5/4/19

محمد علی صاحب کی سائل ضلع بہتر نام کے متعلق ریٹائرمنٹ کے متعلق ہونے والے تمام

وکالت نامہ

کورٹ فیس

بعدالت Before The K.P.C Service Tribunal
عنوان: Mulana Abdul Hayee نام Court
منجانب: Appellant
نوعیت مقدمہ: Service Appeal

باعث تحریر آنکہ A. Akmal

مقدمہ مندرجہ میں اپنی طرف سے واسے پیروی و جواب دہی کل کاروائی متعلقہ آں مقام
Fazalullah Khan & Hamayun Khan

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب
موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء
وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور
کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار
بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پرداختہ مجھ کو منظور و
قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔
نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب موصوف
پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں کوئی جزو بقایا ہو تو وکیل صاحب موصوف
مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراہ استجارت نالاش بصیغہ مفلسی کے دائرہ کرنے اور اس کے
پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

المرقوم: 23/7/19

بمقام:

Accepted by

Adm.

H. J.

حیدر علی صاحبی

ایب کسٹ

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Appeal No. 987 of 2019

Mulana Abdul Hayee s/o Abdul Ghaffar resident of Khandar Shareff Abbad Kuzabanda Tehsil
& District Battagram Petitioner

Versus

Govt: of Khyber Pakhtunkhwa Secretary Auqaf/ Chief Administrator Auqaf, Hajj, Religious
Affairs Peshawar & other Respondents

Para wise comments on behalf of respondent No. 3 (Deputy Commissioner Battagram)
are submitted in above title write petition

PRELIMINARY OBJECTION

- I. Petitioner has got no locus standi
- II. Petitioner has not come with clear hand to this court.
- III. Petitioner has no connection/ relation with respondent No. 3 office.
- IV. Respondent No. 3 is neither necessary party nor proper party in this appeal. so
kindly omit

PARA WISE COMMENTS


1. It is submitted that the appointment, work and functions of District Khateeb are regulated by Auqaf Department, Deputy Commissioner Office Battagram has nothing to do with such appointment.
2. It is submitted that it relates to Auqaf Department. They are in a better position to explain & reply.
3. It is submitted that it relates to Auqaf Department. They are in a better position to explain & reply
4. It is submitted that it relates to Auqaf Department. They are in a better position to explain & reply
5. It is submitted that it relates to Auqaf Department. They are in a better position to explain & reply
6. It is submitted that it relate to Auqaf Department. They are in a better position to explain & reply

7. It is submitted that it relates to Auqaf Department. They are in a better position to explain & reply
8. It is submitted that it relates to Auqaf Department. They are in a better position to explain & reply
9. It is submitted that it relates to Auqaf Department. They are in better a position to explain & reply

GROUNDS

- a. Respondent No. 3 is incorrect neither Appointing Authority, supervisor of petitioner nor the reporting Officer
- b. Incorrect. Hence denied. Not related to DC Office Battagram
- c. Incorrect. Hence denied. Not related to DC Office Battagram
- d. Incorrect. Hence denied. Not related to DC Office Battagram
- e. Incorrect. Hence denied. Not related to DC Office Battagram
- f. Incorrect. Hence denied. Not related to DC Office Battagram
- g. Incorrect. Hence denied. Not related to DC Office Battagram
- h. Incorrect. Hence denied. Not related to DC Office Battagram
- i. Incorrect. Hence denied. Not related to DC Office Battagram.

Therefore it is submitted that instant service appeal may kindly be dismissed.


Deputy Commissioner
Battagram



DEPUTY COMMISSIONER BATTAGRAM (Khyber Pakhtunkhwa)

Deputy Commissioner Battagram



ap.batagram@gamil.com



0997-310136



0997310051

No. _____ /AG/

Dated:

AUTHORITY LETTER

Mr. Jamil Hussain Shah Superintendent BPS-17 of this office is authorized to attend the Honorable Court of Khyber Pakhtunkhwa Service Tribunal Peshawar in the case titled “ **Mulana Abdul Hayee (Ex-District Khateeb) VS Through Secretary Auqaf Khyber Pakhtunkhwa** on behalf of Deputy Commissioner Battagram respondent No.3 on 20-11-2019 and defend the same till the decision of the case.


Deputy Commissioner
Battagram

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BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No. 987\2019

Maulana Abdul Hayee

Versus

Govt. of Khyber Pakhtunkhwa through Secretary Auqaf

INDEX

S.No.	Description of Documents	Annexure	Pages
1.	Written reply		1-4
2.	Copy of appointment Order	A	5
3.	Copy of Officer Order	B	6
4.	Copy of the Order dated 21.04.2010	C	7
5.	Copy of the Departmental Appeal	D	8
6.	Copy of the report of the Administrator Auqaf	E	9
7.	Letter dated 12.07.2012	F	10
8.			

Respondents No. 1, 2 & 5

Through

Nasir Mahmood Advocate,
Supreme Court of Pakistan
13-D Haroon Mansion
Peshawar.

26

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No. 987\2019

Maulana Abdul Hayee

Versus

Govt. of Khyber Pakhtunkhwa through Secretary
Auqaf

WRITTEN REPLY ON BEHALF OF RESPONDENT NO 1,2 & 5

Respectfully Sheweth:

Preliminary Objections:-

- A. That the Appellant has got no caust of action to file the present appeal.
- B. That this Hon'ble Tribunal with due respect has not jurisdiction to entertain and adjudicate the present Appeal, because the Appellant was an employee of statutory body and was not a Civil Servant. In accordance of the Section 3 o the Waqf Property Ordinance, 1979, the Chief Administrator Auqaf shall be corporation role by the name of Chief Administrative of Auqaf KP and shall have perpetual succession and an Official Seal and may sue and be sued in his corporate name.
- C. That Appellant is stopped by his own conduct to file the instant Appeal.
- D. That the appeal is bad in its present shape and is not maintainable in its present form.

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F. That Appeal is false, frivolous and vexatious and is liable to be dismissed with special compensatory costs.

F. That the Appeal is barred by law and is liable to be dismissed, moreover the Appeal does not disclose any cause of action.

G. That Appeal in hand is false, baseless, frivolous, malafide and vexatious, hence Appeal is liable to be dismissed and the Respondents are entitled for special compensatory cost.

H. That the instant Appeal is badly time barred.

ON FACTS:

1. In reply to Para 1 it is submitted that the Appellant was appointed as district Khateeb on provisional basis for the period of 4 months vide order dated 29.07.1999 which order was extended from time to time. **(Copy of Appointment Order is attached as annexure A)**

2. Para No 2 needs no reply.

3. In reply to para No 3 it is submitted that the service of the Appellant were regularized, however he was not entitled to pension gratuity etc and other such benefit.

4. In Reply to Para 4 it is submitted that vide office order dated 02.02.2010 the Appellant was relived from duty with effect from 16.12.2009 on attaining the age of superannuation without any gratuity / pensionary benefits as per the terms and conditions of the Notification dated 09.07.2007. **(Copy of office order is attached as annexure B)**

- 28
P
5. Para No 5 is wrong and incorrect.
 6. Para No 6 is wrong and incorrect, the salaries of the Appellant have been paid to him, however he was not entitled to rest of the benefits as per the Terms and conditions of the Notification dated 09.07.2007.
 7. In reply to para 7, it is submitted that after retirement of the Appellant, he was re-appointed on fixed pay vide order dated 21.04.2010, which order was extended from time to time. **(Copy of the Order dated 21.04.2010 is attached as annexure C)**
 8. Para No 8 is wrong and incorrect, the present Respondent has not received any departmental appeal of the Appellant, however the Appellant has previously moved departmental appeal on 15.04.2012 for doing the needful which was duly responded to the Appellant by stating that there is no liability of the Appellant against the present Respondents. **(Copy of the Departmental Appeal is annexure D, Copy of the report of the Administrator Auqaf is annexure E and letter dated 12.07.2012 is annexure F)**
 9. In reply to Para No 9, it is submitted that with due respect this Hon'ble Tribunal has no jurisdiction to entertain and adjudicate the present Appeal.

ON GROUNDS:

Reply to Ground A to I:

All the grounds agitated in the appeal are wrong and incorrect, the Respondents had acted in accordance with law and no rights of the Appellant have been infringed by the present Respondents. At the relevant time the Appellant was properly informed that he has no liability against the present Respondents. It is further submitted that the salaries of the Appellant have been paid to him, the Appellant is not the Civil Servant therefore this Hon'ble Tribunal has no jurisdiction to entertain the instant appeal, the Appellant has not been discriminated. Efficacious remedy available to the Appellant, the present Respondents may be allowed to argue further ground agitated by the Appellant.

It is, therefore, most humbly prayed that on acceptance of the instant Written Reply, the Appeal of the Appellant may kindly be dismissed.


Respondent No 1
Secretary Auqaf,
Hajj & Religious Affairs


Respondent No 2
Administrator Auqaf


Respondent No 5
Secretary Finance

AFFIDAVIT:

It is stated that the contents of the instant Written Reply are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.

DEPONENTS

OFFICE OF THE,
ADMINISTRATOR AUQAF, N.W.F.P.

No. _____ /Auqaf,
Dated 29 / 7 /1999.

DER

In pursuance of the Member Board of Revenue/
Chief Administrator Auqaf 's letter No.14444/AUQ-I/153,
dated 16-7-1999, Molvi Abdul Hayee s/o Abdul Chaffar R/O
village Kuza Banda Tehsil and District Batagram ^{is hereby appointed} against the
newly created post on provisional basis for a period of four
months as contained in Rule 4 of the West Pakistan Auqaf
Department (Khateeb & Imams) Service Rules, 1968 with effect
from the date of assuming the charge.

He will be governed under the provision of West
Pakistan Auqaf Department (Khateeb & Imams) Service Rule,
1968.

sd
Administrator Auqaf,
N.W.F.P, Peshawar.

No. 2352-56/1A-8 /Auqaf.

Copy forwarded to the:-

- 1)- Member Board of Revenue/Chief Administrator Auqaf, NWFP,
Peshawar for information w/r to his letter referred above.
- 2)- Molvi Abdul Hayee s/o Abdul Chaffar R/O village Kuza Banda
Tehsil and District Batagram for information.
- 3)- Assistant Manager Auqaf, Abbottabad for information and
necessary action.
- 4)- Accountant Auqaf, Peshawar for necessary action.
- 5)- Personal File.

M
Administrator Auqaf,
N.W.F.P, Peshawar.

B
/

11

3590-3

GOVERNMENT OF N.W.F.P.
AUQAF, HAJJ, RELIGIOUS AND
NOBILITY AFFAIRS DEPARTMENT.

Issued Pursuant to the 02.02.2010.

OFFICE ORDER.

NO.SO(AUQAF-1)153/09. The Compete Authority has been pleased to retire/relieve Maulana Abdul Hai District Miteeb Bategan with effect from 16.12.2009 (A.N. No. 16.12.2009) in accordance with the age superannuation without any Gratuity/Pensionary benefits as per the terms and conditions of the Notification No.SO(Auqaf)1-153/2 dated 2-07-09.

Sd/
SECRETARY, CHIEF
MINISTRY, AUQAF.

Endst:of even No. & d

Copy forwarded

1. Director, Hajj, Religious & Miteeb Bategan, Peshawar.
2. ✓ Adl. Officer, District Miteeb Bategan, Peshawar. /r to l No.295/ME/Auqaf
3. P.S. to Secretary, Hajj, Religious & Miteeb Bategan, Peshawar. Department.
4. Maulana Abdul Hai District Miteeb Bategan, Peshawar.

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SECRETARY (AUQAF)

SECRETARY

N.W.F.P. PESHAWAR.

15-16/1ME Dated 15/02/10
forwarded to the:-
1. Administrator Auqaf, I & II, NWFI
2. Accounts Officer, Auqaf deptt: for NWFI
3. Maulana Abdul Hai, Distt:Khatib (Ex:): NWFI
4. Peshawar.

[Handwritten signature]

[Handwritten signature]

IME
261

o/c
Administrator Auqaf,
NWFI, Peshawar.

32

7
116

C

**GOVERNMENT OF NWFP
AUQAF, HAJJ, RELIGIOUS AND
MINORITY AFFAIRS DEPARTMENT.**

D- J Peshawar the: 21.04.2010

NO. AUQAF/ E-153/2009
Auqaf, Peshawar under Rule-4
pleased to appoint Maulana
Khateeb", on fixed pay
month on provisional basis
regular Khateeb (whiche

u/late 1/ JS
The Chief Executive Authority/ Chief Administrator
(Mam/ Khateeb) Service Rules 1968, is
Abdullah Ex-Khateeb Battagram as "**District**
Rs. 4000/- (Rupees Four Thousand Only) per
month for a period of six months till the appointment of
a regular Khateeb by the Department.

Sd/-
**SECRETARY/
CHIEF ADMINISTRATOR AUQAF.**

- Endst: of even :
Copies forwarded to:
1. P
2. P
3. A
4. P
5. P
6. P
7. P

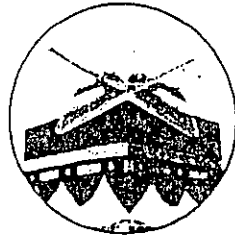
Peshawar.
2. Peshawar
Minority Affairs Deptt.

AUQAF)

رہائش

کوزہ بانڈہ
موبائل 01-8124320

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ



عبدالحمیدی (مولانا)

ڈسٹرکٹ خطیب صلح بن گرام

تاریخ

قابل توجہ اور زبردست مندرجہ بالا اور دروازہ مورچہ کھنڈن پورہ

خیا علی

اس کے قبل رہا درخواست ضابطہ کو دے دیا گیا ہے
دوبارہ برائے یاد دہانی کے لئے کو تعلق دیا گیا ہے
میں نے اس بار سروس کے فنڈنگ کے سلسلے میں ضابطہ فراہم
کیا ہے۔ زبردستی کے ساتھ کہ میں نے اس کے لئے
بہت سے کوششیں کی ہیں۔ لیکن اس کے باوجود
بہت سے کوششوں کے باوجود اس کے لئے
بہت سے کوششوں کے باوجود اس کے لئے
بہت سے کوششوں کے باوجود اس کے لئے

~~Scay August~~

P.S

Answer D.O. letter
to Scay August.

15/7/12

نہ اس فنڈنگ کے لئے کوئی رقم
میں نے توجہ سے دیکھی ہے

عبدالحمیدی

15/7/2012



OFFICE OF THE
ADMINISTRATOR AUQAF
Khyber Pakhtunkhwa, Peshawar
Eidgah Charsadda Road Peshawar
Phone: 2043428 Fax: 2043427

No. 1059 / ME / Auqaf, Dated Peshawar the 25/05/2012.

To

The Secretary / Chief Administrator Auqaf,
Khyber Pakhtunkhwa, Peshawar.

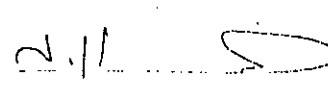
SUBJECT: -APPLICATION REGARDING SERVICE FUND

Kindly refer to your office letter No. SO(Auqaf-I) 1-153/2012 / Vol:18 / 1744
45, dated 14.05.2012.

It is submitted that according to NIC, date of birth of Moulana Abdul Hai is
17.12.1944 and at the age of 55 years he was appointed as District Khateeb, Batagram in
July, 1999 on provisional basis for a period of 4 months and regular scale BPS-16 was
allowed to him w.e.f November, 2006 on the terms and conditions that he will not be
entitled for any pensionary / gratuity etc and other such benefits (copy enclosed).

In the year, 2010, Moulana Abdul Hai was retired from service in 60 years of
age of superannuation and from the date of regular appointment till his retirement, his
total service is only three years.

The then Secretary Auqaf, Hajj, Religious and Minority Affairs, Khyber
Pakhtunkhwa has reappointed him on fixed pay of Rs. 4000/- per month as District
Khateeb, Batagram (copy enclosed). It is to mention here that there is no outstanding
liabilities of Moulana Abdul Hai against the Department in the shape of pension / gratuity
claim etc.


Administrator Auqaf,
Khyber Pakhtunkhwa,
Peshawar



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ADMINISTRATOR AUQAF 133
Khyber Pakhtunkhwa, Peshawar
 Eldgah Charsadda Road Peshawar
 Phone: 2043428 Fax: 2043427

to 1399 IME / Auqaf

Dated Peshawar the 12 / 07 / 2012

Moulana Abdul Hai,
 Honorary District Khateeb,
 Jata...

F

NOTIFICATION REGARDING SERVICE FUND

is to inform you that you have no liability in the shape of service fund /
 st th... Department as per your appointment order

[Signature]
 Administrator Auqaf,
 Khyber Pakhtunkhwa, Peshawar 1817



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

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MOST IMMEDIATE
COURT MATTER

NO.SO(LIT-II)/FD/2-1989/2019.
Dated Peshawar the, 04/03/2020.

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Auqaf, Hajj Religious & Minority Affairs,
Department.

Subject: **PREPARATION OF JOINT PARA WISE COMMENTS IN**
SERVICE APPEAL NO. 987/2019 TITLED "MAULANA ABDUL
HAYEE (EX-DISTRICT KHATEEB) BATTAGRAM V/S
SECRETARY/CHIEF ADMINISTRATOR AUQAF AND
OTHS.

Dear Sir,

I am directed to refer to your letter No. SO(Auqaf)3-48/court cases/2019/1691-92 dated 02.03.2020 on the subject noted above and to return herewith Joint Parawise Comments (in original) duly signed by Secretary to Govt: of Khyber Pakhtunkhwa Finance Department, for further necessary action at your end please.

Priority is requested being court matter.

Encl: As Above.

Yours faithfully

A. Ahmad
6-3-2020

SECTION OFFICER (LIT-II).

IN THE PESHAWAR HIGH COURT PESHAWAR

3394-P

WRIT PETITION No. _____ /2016



نوٹس کے مطابق حکومت
عزیز ابیسن

Amir Zeb,
Widower of Asiya Shafi,
R/o Fazal Ganj, Siace Mandi,
Risalpur, District Nowshera.....

Petitioner

Versus

1. The District Account Officer,
District Nowshera.
2. The Accountant General,
Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female),
District Nowshera.
4. The Director,
Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.
5. The Secretary,
Govt: of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department,
Peshawar.
6. The Secretary,
Govt: of Khyber Pakhtunkhwa,
Finance Department, Peshawar.....Respondents

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

FILED TODAY

Deputy Registrar

03 SEP 2016

Respectfully Sheweth,

ATTESTED
EXAMINER
Peshawar High Court
06 SEP 2017

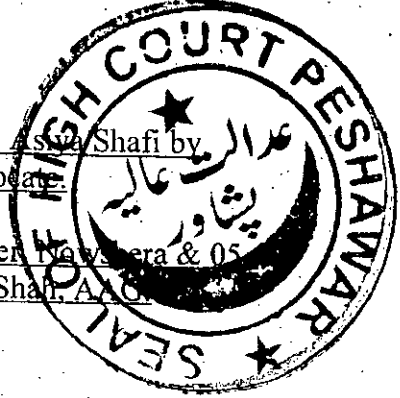
IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.3394-P/2016

Date of hearing:- 22.06.2017

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

Respondent (s):-The District Account Officers Nowshera & 05
others by Syed Qaisar Ali Shah, Advocate.



JUDGMENT

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

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

Rooh ul Amin Khan

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

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

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

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

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

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

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

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

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

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

For the Court

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

"2(b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include---

- (i) A person who is on deputation to the Province from the Federation of any other Province or other authority;
- (ii) A person who is employed on contract or on work charged basis, or who is paid from contingencies; or
- (iii) A person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VII of 1923)".

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

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

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

Abdul Samad

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

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

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

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

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

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

Justice Saqib

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

“2.2. Beginning of service- Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.”

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

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

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

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

"Provided that those who are appointed in the prescribed manner to a service or post on or after the 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis:

Provided further that the amount of Contributory Provident Fund subscribed by the civil servant shall be transferred to his General Provident Fund."

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

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

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

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

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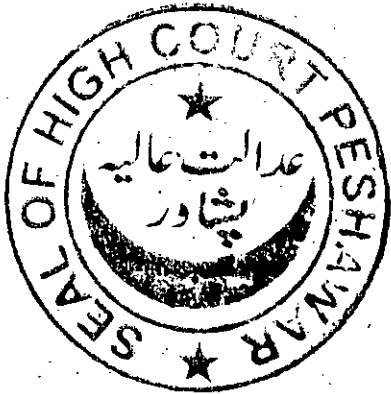
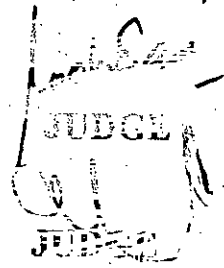
17. For what has been discussed above, we by allowing these writ petitions, issue a writ to the respondents departments to pay pension of the deceased employees to the petitioners/LRs of the deceased.

Announced:

22.06.2017

Siraj Afridi P.S.

Sd/- Rooh ul Amin
Sd/- Qalender Ali
Sd/- Syed Imtiaz Ahmad Attique
Shahid



CERTIFIED TO BE TRUE COPY
Peshawar Examiner,
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Qanun-e-Shahadat Order 1984
06 SEP 2017

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Date of Presentation of Application 06/08/17
No of Pages 207
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Date of Preparation of Copy 06/08/17
Date Given for Delivery 06/08/17
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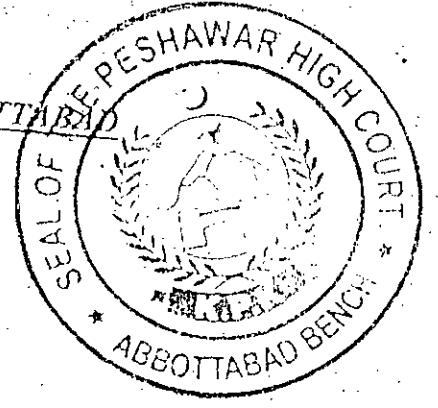
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PESHAWAR HIGH COURT ABBOTTABAD
BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

WP.No. 935-A/2017.



Date of hearing 13.12.2018.

Petitioner/s (Mst. Hassan Zari) by Mr.
Hamayun Khan, Advocate.

Respondent/s (Govt. of KPK & others)
by Mr. Yasir Zahoor Abbasi, Assist. AG.

SYED MUHAMMAD ATTIQUE SHAH.J.

Through the instant petition under Article
199 of the Constitution of Islamic
Republic of Pakistan, 1973, the petitioner
namely *Mst. Hassan Zari* has prayed as
under:-

"On acceptance of the
instant writ petition,
respondents may graciously
be directed to pay all
pension and financial
benefit to the
petitioner/widow and any
other relief which this
Honourable Court deem fit
and proper in the
circumstances of case"

Certified to be True Copy
EXAMINER

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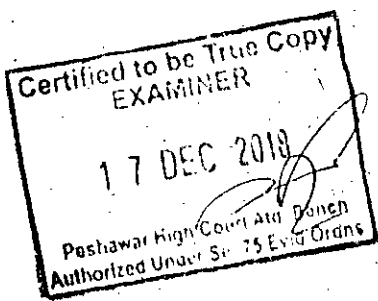
Peshawar High Court Bench
Authorized Under Sec 75 of the Ordinance

2. Brief facts of the case are that Syed Hisam-ud-Din/husband of petitioner was appointed on the contract basis vide order dated 12.03.1995. Lateron, his services were regularized w.e.f 01.07.2008. That during his service on 29.04.2016, he died. That petitioner being legal heir of deceased employee applied for his pensionary benefits etc but she was refused on the ground that regular service of the deceased employee was only 7 years, 9 months and 27 days. Hence, the instant writ petition.

3. Arguments heard and record available gone through.

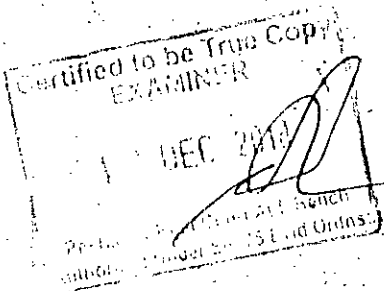
4. Without going deep into the merits of the case, suffice it to say that the issue involved in the present writ petition has already been discussed and decided by this Court in writ petition No. 19-A/2014, which reads as under:-

"As there is no denial of the fact that petitioner was initially appointed on fixed pay and subsequently his services were



regularized, hence, in view of
 the Rule 2.3 of West Pakistan
 Civil Services Pension Rules,
 1968, the petitioner is to be
 paid pensionary benefits from
 the date of his first
 appointment. It is well settled
 law, when any employee on
 contract is absorbed into
 regular employment, and there
 is no break in his service, then
 period on contract employment
 has to be considered for
 counting length of service of
 pensionary benefits etc.
 Reliance is placed on 2010
 PLC 354, wherein it is held
 that:-

When an employee was
 regularized, his total length of
 service, was to be computed
 from the day he joined the
 service that could be
 temporary or otherwise. Even
 period of an employee of daily



wages would be counted for
the purpose of computing
pensionary benefits”

5. Therefore, while considering the
above as well as the judgments passed by
this Court in Writ petitions No. 3394-
P/2016, 551-A/2017 and 1035-A/2017,
we are not inclined to hold a different
view, therefore, while accepting this
petition, we direct the respondents to pay
all the pensionary benefits (admissible
under the law) to the legal heirs of
deceased (*S. Hisam-ud-Din*) in accordance
with law by counting his service from the
date of his first appointment i.e.

12.03.1995.

Announced.

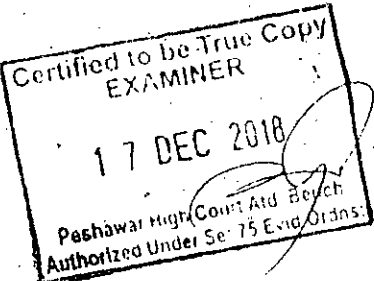
13.12.2018.

Tohr PS

Sell JUDGE

Sell JUDGE

Hon'ble Justice Lai Jan Khattak & Syed Muhammad Attique Shah.



40 Tr.C. NAZAR HUSSAIN v. SECRETARY, STATE & FRONTIER
REGIONS DIVISION, GOVERNMENT OF PAKISTAN, ISLAMABAD
[Federal Service Tribunal, Islamabad]

4. On which, DFO Rahim Yar Khan inflicted penalty of Dismissal from service alongwith Recovery of Rs. 457000/- against present appellant vide order dated 11.09.2013 without holding any inquiry into the matter.

5. It is settled principle of law that for resolving controverted questions of fact, evidence has to be recorded, in that opportunity for cross-examination is to be provided to both the parties and for proper course would be to hold full fledged inquiry. Otherwise finding recorded will be based more on conjectures than on evidence. Reliance is placed on 1993 SCMR 603 titled as *Alam Gir vs. D. Multan, etc.*

6. In view of what has been discussed above, without touching the merits of the case, this appeal is allowed; impugned orders are set aside and the appellant is reinstated in service with immediate effect. However, keeping in view the seriousness of the matter, the case is remanded to the competent authority for *de novo* proceedings and disposal of the same strictly in accordance with law. Intervening parties shall also be decided by the competent authority.

(R.A.)

Appeal allowed

PLJ 2016 Tr.C. (Services) 40
[Federal Service Tribunal, Islamabad]

Present: SYED RAFIQUE HUSSAIN SHAH AND
SYED MUHAMMAD HAMID MEMBERS

NAZAR HUSSAIN--Appellant

versus

SECRETARY, STATE & FRONTIER REGIONS DIVISION,
GOVERNMENT OF PAKISTAN, ISLAMABAD
and 2 others--Respondents

Appeal No. 56(P)CS of 2012, decided on 23.9.2015.

Kohat Division Levies Efficiency & Discipline Order, 1999--

Regul. 871-A--Retired from service without extending pensionary benefit--Discrimination--Entitled to pensionary benefit--Valid--Temporary and officiating service, who retired on or after January, 1949, or who joined service thereafter, shall count pension according to rules--In case levy personnel of Malakand

NAZAR HUSSAIN v. SECRETARY, STATE & FRONTIER Tr.C. 41
REGIONS DIVISION, GOVERNMENT OF PAKISTAN, ISLAMABAD
[Federal Service Tribunal, Islamabad]

... who performed same duties and were similarly placed persons--To deprive appellant and others of pensionary benefits would certainly amount to discrimination between similarly placed persons--Principle of natural justice and equality before law--Appellant had made out case for grant of pensionary benefits--Appellant and his colleagues could not be deprived of pensionary benefits and hence they should be allowed/extended all pensionary benefits from date of their retirement. [Pp. 43 & 44] A, B, C & E

... Servant--

Pension benefit--Limitation--Condonation of delay in filing of proceedings--Validity--In matters of pay and pension, being continuous grievance, limitation is not applicable to appeals filed by civil servants. [P. 44] D

Syed Nazir Hussain Zaidi, Advocate for Appellant.

Mr. Waheed Iqbal, Advocate for Respondent-SAFRON.

Date of hearing: 23.9.2015.

JUDGMENT

Syed Rafique Hussain Shah, Member.--Appeals No. (P)CS/2012, 215, 219 to 253, 273, 276 & 327 to 336(P)CS/2014, 40 & (P)CS/2015 pertain to one and the same relief sought for by the appellants and, as such, we would like to dispose of all the appeals through this single judgment being recorded in Appeal No. (P)CS/2012.

2. Precisely, the facts of the matter are, that the appellant (Nazar Hussain) was recruited as Sepoy (levy personnel) on 01.05.1981 in Kurram Levy Force. After attaining the age of fifty-five years he got discharged from service vide order dated 29.06.2007 without extending pensionary benefits. He, therefore, felt aggrieved of such treatment at the hands of the respondents whom he served for long twenty-two years. Later on, the appellant approached the departmental authority for grant of pension but his appeal/representation proved abortive which obliged him to file the instant service appeal praying for grant of pension and all other retirement related benefits.

3. In the memo of appeal while narrating the facts of the case, the appellant took the stance that the authority had ignored all rules, regulations, decisions/judgments of the competent Courts, pension rules & orders and statutory notifications in connection with grant of pension to him and his other colleagues. He alleged discrimination

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مہتمم عدالت
Limitation

against him and his other colleagues at the hands of the respondent and described their attitude as illegal, unjustified and against the provisions of Constitution of Pakistan, 1973. It was submitted by the appellant that all levymen were entitled to pension as provided under the rules vide Circular dated 04.08.1981 issued by the Commissioner, Kohat Division, Kohat as well as under Regulation 371-A of Pension Rules. According to the appellant he being a "Government servant" was entitled to pensionary benefits which were covered under Regulation No. 371-A. The appellant pointed out that the General Provident Fund and Benevolent Fund had been deducted from the levy employees' salaries as Government officials. The appellant made reference to the judgment of the Hon'ble Supreme Court of Pakistan dated 30.11.1993 in the case titled *Mir Ahmad Khan vs Secretary to Government and others* (Appeal No. 574/1992) and submitted that as per verdict of the Hon'ble Court all those employees who rendered ten years service in any Government department were entitled to pensionary benefits. The appellant next pointed out that the President of Pakistan had decided to please to grant pensionary benefits to the employees of Malakand/Dir Levies who retired prior to the 1st March, 1972 vide notification dated 26.03.1995 and, hence, Kurram Levy Force also deserves the same/equal treatment.

4. The appeal of the appellant was resisted by the respondent taking the stance in their parawise comments that Kurram Levy Force was established in 1981 but no statutory rules or regulations were framed by the Government regarding its pensionary benefits. Subsequently, the pensionary benefits were granted to the levy personnel with effect from 16.06.2010 prospectively. By the notification dated 26.03.1995 pensionary benefits were extended to the Kurram Levy Force and the appellant had already been retired from service and thus he is not entitled to pension.

5. In this background, we heard the arguments of the respondent's counsel for both the parties and perused the material placed on the record.

6. The record would show that the Commissioner, Kohat Division, Kohat, in exercise of the administrative powers enabled to him in this behalf, promulgated the Standing Order dated 04.08.1983 which was called the Kohat Division Levies (Efficiency and Discipline) Order, 1983. It came into force at once. This order was promulgated to ensure uniformity in the administration and working of Levies in the Kohat Division. According to Clause-19 of the Standing Order

of 1983, the levy men were held entitled to pension as admissible under the rules.

7. The appellant alongwith ten others was retired from service with effect from 01.07.2007 in view of the Kohat Division Levies (Efficiency and Discipline) Order, 1983. In case the Order dated 04.08.1983, above mentioned, was applied for retirement of the appellant and others then the question arises why he same was not entitled to the levy personnel in connection with pension which was specifically provided in Clause-19 of the order. The logic of the respondents that the Commissioner's order dated 04.08.1983 was not attracted to the matter of pension of the appellant and others is not plausible, unjustified and unconvincing because if the said order was applicable to the appellant and others in connection with their retirement why it was not attracted to them with regard to their pension and pensionary benefits.

8. We are of the considered view that there could not be pick and choose in one and the same order. The order of 1983, in our opinion, would be applicable in toto which included pension to the levy personnel.

9. It has been clearly mentioned in Regulation 371-A that persons in temporary and officiating service, in case of Government servants who joined on or after the 1st January, 1949, or who joined service thereafter, shall count for pension according to the rules mentioned therein. So in the light of Regulation 371-A the appellant and others being Government servants are entitled to the pensionary benefits.

10. It may also be mentioned over here that pensionary benefits were extended to Malakand/Dir Levies personnel who retired prior to 1st March, 1972 vide order of States and Frontier Regions Commissioner dated 26.03.1995. In case the levy personnel of Malakand/Dir Division were made entitled to pensionary benefits why not the personnel of Kurram Levy Force who performed the same duties and were similarly placed persons. To deprive the appellant and others of the pensionary benefits would certainly amount to discrimination between the similarly placed persons. It has been claimed rather alleged by the appellant that two persons of Kurram Levy Force namely Syed Hussain Shah and Mr. Jaffar Hussain have already been granted pensionary benefits by the respondents. The respondents have not denied the pension to those two persons. However, the respondents have been unable to give plausible explanation as to why the said two persons are given pensionary benefits and why the appellant and others do not. This would also reflect discrimination with the appellant

and others at the hands of the respondents. It has been admitted by the respondents that they have been paying pensionary benefits to the personnel of Kurram Levy Force since 2010 onward. If the pensionary benefits to Levy personnel of Kurram Levies have been allowed since 2010 why the same have been refused to the appellant and others who retired in 2007 i.e. 2/3 years prior to sanction of pensionary benefits to the other Levy Force.

C 11. Keeping in view the principle of natural justice and equality before law, the appellant and others have made out their case for the grant of pensionary benefits.

D 12. As regards the question of limitation, it is considered/treated as mixed question of law and fact. In condoning delay in filing of proceedings depends upon facts of each case. There are several judgments of this Tribunal to hold that in the matter of pay and pension, being continuous grievance, the limitation is not applicable to appeals filed by the civil servants. Reference may be made to 1995 PLC (CS) 1026, 1996 PLC (CS) 832 and 2006 PLC (CS) 119. In view of the aforementioned judgments of this Tribunal coupled with the judgment of the Hon'ble Supreme Court of Pakistan reported as 2002 SCMR 947 we are of the opinion that as per the circumstances of the instant case the question of limitation is irrelevant. It has been observed by the Hon'ble Supreme Court of Pakistan in the judgment reported 2003 SCMR 318 that technicality should not create hurdles in the way of substantial justice. In the judgment reported as 2009 PLC (CS) 119 the Hon'ble Supreme Court of Pakistan had held a temporary employee of Union Council on completion of ten years service, entitled to the pensionary benefits under West Pakistan Civil Services Pension Rules. We may mention here that Article 25 of the Constitution pertains to equality of citizens. According to this Article all citizens are equal before law and are entitled to equal protection of law. The case of the appellant and others fall under Article 25 of the Constitution who are entitled to be treated alike with that of their other colleagues of Malakand Agency Levies.

E 13. Putting all the relevant facts together, we are of the opinion that the appellant and his colleagues of the connected appeals should not be deprived of the pensionary benefits and hence they should be allowed/extended all the pensionary benefits from the date of their retirement. To grant the appellant and others, pensionary benefits would not be so heavy on the Government exchequer whereas on the other hand, it would develop the sense of loyalty among all the concerned who live in sensitive areas like Kurram Agency.

ing Afghanistan from where infiltrators and miscreants very readily cross over to our side for sabotage. In this view of the facts we allow this appeal with direction to respondents to grant pensionary benefits to the appellant and his other colleagues of the connected appeals.

14. This judgment shall *mutatis mutandis* be applicable to appeals Nos. 215, 219 to 253, 273, 276 & 327 to 336(P)CS/2014, 40 & 41/2015.

15. There shall be no order as to costs.

16. Parties be informed accordingly.

Appeal allowed.

PLJ 2016 Tr.C. (Services) 45
[Federal Service Tribunal, Islamabad]

Present: JUSTICE (R) SAYED ZAHID HUSSAIN, CHAIRMAN AND
SYED MUHAMMAD HAMID, MEMBER

KHALID MAHMOOD, EX-ASST. SENIOR POST-MASTER UBRC,
LAHORE GPO--Appellant

versus

POST-MASTER GENERAL, CENTRAL PUNJAB CIRCLE,
LAHORE and another--Respondents

Appeal No. 1539(R)CS of 2013, decided on 17.12.2015.

under the Civil Servants Act, 1973 (LXX of 1973)--

Civil servant--Failed to perform legitimate duties--Charge of inefficiency not charge of misconduct--Penalty of compulsory retirement from govt. service--Question of--Whether penalty imposed was commensurate to inefficiency attributed--There can be no doubt that while deciding an appeal, tribunal is vested with powers "to confirm set aside, vary or modify order appealed against"--Thus, it is settled law that Tribunal while hearing and deciding appeal under Service Tribunals Act, 1973 has extensive powers--Acts of serious misconduct deserve to be visited with major penalty, but at same time, facts and circumstances of each case and nature of allegation charge of "inefficiency" or "misconduct" brought home to civil servant are not to be overlooked--Sentence or penalty being imposed is commensurate with nature/gravity of charge that is not unreasonable or disproportionate.

Aftab Iqbal Chaudhry, Advocate-General, Punjab for Respondents.

ORDER

A criminal case F.I.R. No.177, dated 27-1-2006 under section 10 of the Zina (Enforcement of Hudood), Ordinance, 1979 was registered against the petitioner and Mst. Allah Rakhi at Police Station Jaranwala, District Faisalabad. Both the accused were allowed bail by the Additional Sessions Judge, Jaranwala, District Faisalabad. However, on the move of complainant Allah Ditta through Criminal Miscellaneous No.3704/CB of 2006, the bail of the petitioner was cancelled by the Lahore High Court, Lahore, vide impugned order dated 31-5-2006.

2. The learned counsel for the petitioner argued that the very arrest and investigation of the case by the Sub-Inspector Muhammad Afzal was illegal and violative of the provisions of section 156-B, Cr.P.C. whereunder only Superintendent of Police was competent to do so.

3. Mr. Aftab Iqbal Chaudhry, learned Advocate-General, Punjab, stated that Muhammad Afzal, Sub-Inspector of Police, who had made the arrest of the petitioner and co-accused Mst. Allah Rakhi had already been suspended from service by order of the District Police Officer and that it would be just and proper if the bail was allowed to the petitioner.

4. In this view of the matter, this petition is converted into appeal and the same is allowed. Consequently, the impugned order, dated 31-5-2006, passed by the Lahore High Court, Lahore in Criminal Miscellaneous No.3704/CB of 2006 is set aside. The petitioner shall be released on bail subject to his furnishing bail bond in the sum of Rs.50,000 with one surety in the like amount to satisfaction of the Trial Court

Bail allowed.

N.H.Q./S-63/SC

2008 S C M R 554

[Supreme Court of Pakistan]

Present: Ijaz-ul-Hassan Khan and Mian Hamid Farooq, JJ

MAJID MAHMOOD---Petitioner

versus

MUHAMMAD SHAFI---Respondent

Civil Review Petition No.167 of 2007 in Civil Appeal No.1517 of 2005 and Civil Review Petition No.168 of 2007 in Civil Appeal No.1518 of 2005, decided on 15th January, 2008.

SCMR

(For review of judgment, dated 9-3-2007 passed by this Court in Civil Appeals Nos.1517 and 1518 of 2005).

(a) Review---

---Scope---Case cannot be re-opened on merits in review---Scope of review is very limited and review petition is not maintainable on those points which have been decided one way or the other---Any dispute which has already been resolved cannot be reviewed. [p. 556] A

(b) Constitution of Pakistan (1973)---

---Art. 188---Supreme Court Rules, 1980, G.XXVI, R.1---Review of Supreme Court judgment---Principles---Fact not considered---Effect---Petitioner sought review of the judgment on the ground that while rendering judgment, Supreme Court did not consider a fact---Validity---Exercise of review jurisdiction did not mean a re-hearing of the matter and as finality was attached to the order, a decision even though it was erroneous per se, would not be a ground to justify its review---In keeping with the limits of review jurisdiction, it was futile to reconsider the submissions, which converge on merits of the decision---Before an error could be a ground for review, it was necessary that it must be one which was apparent on the face of record---Error must be so manifest and so clear that no court could permit such an error to remain on record---Error might have been of fact or of law but it must be an error which was self-evident and floating on the surface and did not require any elaborate discussion or process of ratiocination---If court had taken a conscious and deliberate decision on a point of law or fact while disposing of a petition or an appeal, review of such judgment or order could not be obtained on the ground that the court took an erroneous view or that another view on reconsideration was possible---Review also could not be allowed on the ground of discovery of some new material, if such material was available at the time of hearing of appeal or petition but not produced---Contentions of petitioner in the present case, were nothing but reiteration of the same grounds, which were urged at the hearing of appeal but were rejected by Supreme Court after consideration---Supreme Court did not allow the petitioner to raise the contentions again in review proceedings---Petitioner could not obtain rehearing of appeal in the garb of proceedings for review---Petition was dismissed. [p. 557] B

Allah Ditta and others v. Mehrban and others 1992 SCR 145; Zafar Iqbal v. Allotment Committee of Municipal Committee, Mirpur and others 1994 SCR 157 and Sh. Mehdi, Hassan v. Province of Punjab through Member, Board of Revenue and 5 others 2007 SCMR 755 rel.

Ch. Muhammad Rafique Warraich, Advocate Supreme Court for Petitioner (in both cases).

SCMR

Advocate-on-Record for Petitioner.

which has now been decided after hearing the appellant and rejected through the order impugned.

3. It may be added that the appellant was promoted on regular basis as Principal in BS-19 and is imparting education at Government Institute of Commerce, Yazman, District Bahawalpur. Appellant through this appeal seeks the ante-dating of his promotion to BS-18 from 2-2-1998 when the post was available and also in BS-19 from the date of agradation of the post under the four-tier structure. In the alternative, it was prayed that the promotion of the appellant in BS-18 and BS-19 be ante-dated to the dates when respondent No.6, his junior was promoted. The reply of the respondents was that the appellant was considered for promotion as Assistant Professor in BS-18 and the Departmental Promotion Committee held in the year 1991 rejected his case as he was not eligible being a 3rd Division in M.A, whereas the requirement under the rules was to possess at least Masters degree in 2nd Division in Commerce/Education/Business Administration. Finally, the appellant was promoted as Principal in BS-18 in 1993. It was stated that the appellant failed to challenge the observation of the Departmental Promotion Committee held on 28/29-5-1991 declaring the appellant not to be eligible for promotion as he did not possess Masters degree in 2nd Division. On the other hand, respondent No.6 was promoted as Assistant Professor having been recommended by the D.P.C., in 1991 under the prevailing Departmental Service Rules, 1990 to BS-18. Appellant failed to challenge the promotion of respondent No.6 in 1991. Subsequently, appellant was promoted as Principal in BS-18 in the year 1993 and from that date, till the filing of the appeal before the Punjab Service Tribunal, appellant did not challenge the promotion with effect from back date, therefore, he was estopped to seek relief of promotion, which was not a right, given to him under the law, after 12 years.

4. I have heard the arguments at length and also perused the record.

5. Appellant's own admission in the memo. of appeal that for the first time, he challenged the promotion of respondent No.6 in BS-18 on 8-8-2002 drives a final nail in the coffin. Promotion in BS-18 having been granted to the respondent after being cleared by the Departmental Promotion Committee, on the other hand, appellant having been considered and superseded in the year 1991, the challenge to it being brought on 8-8-2002 almost after 11 years in a matter, which was not the right of the appellant, cannot be given any serious thought now. Appellant slept over his rights and his assertion that the observation of Departmental Promotion Committee, in 1991, that he did not possess a 2nd Division degree in Masters was void ab-initio, cannot be given any credence, as he failed to agitate it within the period provided under the

law and to say that he came to know about the grievance after 11 years cannot be believed as it lacks tangible evidence and is opposed to common sense and comprehension that a civil servant superseded in 1991, would not know that someone else, junior to him was promoted in the same selection/promotion process. His appeal is without merit and is accordingly dismissed.

H.B.T./50/PST

Appeal dismissed.

2005 P L C (C.S.) 1439

[Supreme Court of Pakistan]

Present: Khalil-ur-Rehman Ramday and Falak Sher, JJ

CHIEF EXECUTIVE PROGRESSIVE PAPER LIMITED/THE
CHAIRMAN NATIONAL PRESS TRUST, ISLAMABAD

versus

Sh. ABDUL MAJEED and another

Civil Petition No.2680-L of 2004, decided on 11th May, 2005.

(On appeal from the judgment dated 28-7-2004 of the Federal Service Tribunal at Lahore, passed in Appeal No. 411(L) of 1999).

Civil Servants Act (LXXI of 1973)---

---S. 19---Service Tribunals Act (LXX of 1973), S. 4---Constitution of Pakistan (1973), Art. 212(3)---Pension, grant of---Service Tribunal granted pension to the employee holding him entitled to it dismissing preliminary objection of employer with regard to limitation on ground that receipt of pension was a continuing cause of action and could be agitated at any time---Employer could not show any illegality in impugned judgment of Tribunal which could have entitled him to grant of leave in terms of Art.212(3) of the Constitution---Petition was dismissed and leave refused---Employee having denied pension to the employee for almost 10 years, and having dragged him into litigation before all kinds of fora, employer was directed to pay Rs.5,000 to employee as costs. [p. 1440] A

Muhammad Ozair Chughtai, Advocate-on-Record for Petitioner.

Sh. Khizar Hayat, Advocate Supreme Court and Ch. Talib Hussin, Advocate-on-Record (absent) for Respondent No.1.

M. Rafiq Shad, Advocate Supreme Court with A.H. Masood, Advocate-on-Record for Respondent No.2.

ملک کی اسٹیٹس
سوالا کے لئے تیار ہوئے
Limitation

Nemo for Respondent. No.3.

Date of hearing: 11th May, 2005.

JUDGMENT

KHALIL-UR-REHMAN RAMDAY, J.---The first respondent felt aggrieved of non-payment of pension to him since 1-12-1996. He approached the Labour Court for the redress of his said grievance but on account of insertion of section 2-A in the Service Tribunals Act, 1973, the said respondent approached the Federal Service Tribunal to seek the same relief. The petitioner opposed the said respondent's appeal before the learned Tribunal initially on the ground that his appeal was barred by time and also for the reason that whatever was due to the said respondent had been paid to him.

2. The learned Tribunal dismissed the preliminary objection vis-à-vis the limitation on the ground the receipt of pension was a continuing cause of action and could be agitated at any time. This objection was not sustainable also on the ground that on account of the fluent situation of law, no one was sure of the forum before which such grievance could be agitated.

3. On the merits of the case, it was found by the learned Tribunal that it had already declared through a judgment dated 4-10-2003 passed in Appeals bearing Nos.1339 to 1367(L) of 1999 that the employees of the PPL were entitled to the grant of pension. It was further found by the learned Tribunal that no evidence had been placed on record to show either that the pension had been paid to the first respondent or that he had waived his said right in any manner.

4. We have heard the learned Advocate Supreme Court for the petitioner at some length who could not show any illegality in the impugned judgment of the learned Tribunal which could have entitled the petitioner to the grant of leave in terms of Article 212(3) of the Constitution. This petition is, therefore, dismissed and leave refused.

5. The petitioner had denied pension to an employee for almost 10 years and had dragged him into litigation before all kind of fora. In this view of the matter, the petitioner is directed to pay Rs.5,000 to the said respondent, as costs, within one month and the copies of the receipts evidencing the said payment shall be filed with the Assistant Registrar of this Court within the said period of time, for the information of this Bench.

H.B.T./C-38/S

Petition dismissed.

2005 P L C (C.S.) 1441

[Supreme Court of Pakistan]

Present: *Faqir Muhammad Khokhar and
Tassadduq Hussain Jilani, JJ.*

MUHAMMAD MALIK

versus

ABDUL SHAKOOR MEMON and others

Civil Petitions Nos.2943 of 2004, 115 and 124 of 2005, heard on 28th February, 2005.

(On appeal from the judgment dated 7-11-2004 of the Federal Service Tribunal, Islamabad passed in Appeal No.238(R)CS of 2004).

Civil Servants Act (LXXI of 1973)---

---S. 9---Constitution of Pakistan (1973), Art. 212(3)---Promotion---Entitlement---Respondent who originally was on deputation, was absorbed in the Department on regular basis as Inspector and was promoted as Assistant Director BS-17---Subsequently on issuance of show-cause notice for disciplinary proceedings against him his promotion in B.P.18 was deferred---Petitioner, who otherwise was junior to respondent, was promoted as Deputy Director in BS-18---Appeal filed by respondent was disposed of by Service Tribunal with direction to Departmental Authorities to place his promotion case before appropriate Committee for consideration---Finally Service Tribunal ordered promotion of respondent, against which petitioner and department had filed petition for leave to appeal---Respondent had submitted that he would have no objection if his case was remanded to Departmental Authority for consideration of his promotion in accordance with law, rules and instructions on the subject---Service Tribunal, in peculiar circumstances of case, was not justified to order promotion of respondent and his case was required to be remanded to Departmental Promotion Committee for consideration in accordance with law, rules and instructions---Impugned judgment of Tribunal needed to be modified---Petition for leave to appeal was converted into appeal and same was partly allowed---Competent Departmental Authority would consider and decide afresh case of promotion in accordance with law, rules and instructions within a period of two months. [pp. 1442, 1443] A, B & C

Mehr Khan Malik M.A. Zaidi and Ch. Akhtar Ali, Advocates-on-Record for Petitioner.

statement. The same situation existed during the proceedings in the second enquiry as the presumed buyer Hafiz Abdul Aziz did not admit that he purchased the ballot boxes from the appellant. Despite this lacuna the findings of the second enquiry report was accepted.

12. Allegation No.3 also remained inclusive as Enquiry Committee was of the view that further probing into his allegation was required.

13. Allegation No.4 cannot be termed as established as the appellant required 15 days to produce Polling Assistants to whom he paid honorarium. In our view the Enquiry Committee should have given him time to produce the witnesses to clear his position rather than depending upon the statement of subordinate staff of the appellant's office that people were still approaching the office for receipt of their dues.

14. The above analysis would show that the Enquiry Committee did not probe the allegations as per prescribed procedure. Evidence of key witnesses who could determine the direction of the enquiry proceedings and lead to definite conclusions was not recorded to the detriment of the appellant. The Competent Authority in this case also acted as appellate authority to whom the Departmental Representation/Review Petition was addressed by the appellant on 9-2-2003 to which no reply was given. Moreover, the appellant could not expect justice from the appellate authority who also acted his Competent Authority and issued impugned order dated 19-8-2003 on which Notification dated 20-8-2003 was based. We cannot expect the appellate authority (Chief Election Commissioner) to change his views which he has already formulated about the appellant while acting as his Competent Authority.

15. The above critical analysis of the appeal would amply manifest that the respondents acted as accused Judge and executioner. Not satisfied with legality of the proceedings adopted in the proceedings, we set aside the order dated 20-8-2003 and reinstate the appellant with effect from the date he was dismissed from service. The respondents have the option to conduct fresh disciplinary proceedings against the appellant in accordance with the correct law within a period of six (6) months from the date of the communication of this order based on the same allegations by removing the legal and procedural discrepancies as identified above. The decision of the criminal case registered against the appellant if available should also be kept in view. The appellant shall be afforded full opportunity within the parameters of law to defend allegations against him. Back-benefits and retention of the appellant in

the service of the respondent-Department shall depend upon the findings of the de novo enquiry proceedings if initiated and completed within the timeframe as indicated above.

16. No order as to costs. Parties be informed, accordingly.

H.B.T./99/FS

Appeal accepted accordingly.

2005 P L C (C.S) 1497

[Federal Service Tribunal, Islamabad]

Before Abdur Razzaque and Abdul Rashid Baloch, Members

ASAD ALI SHAH

versus

SECRETARY, FINANCE DIVISION and others

Appeal No.77(L) (CS) of 2000, decided on 3rd December, 2003.

Civil Servants Act (LXXI of 1973)---

---Ss. 13 & 19---Service Tribunals Act (LXX of 1973), S.4--- Retirement---Orderly Allowance/Special Additional Pension--- Entitlement---Appeal to Service Tribunal---Appellant was retired from Government service in 'B-22' on 11-7-1990 on which date Orderly Allowance/Special Additional Pension was part of his emoluments--- Appellant was re-employed in same capacity for one year during which period, appellant was issued a Pension Payment Order on 16-7-1990, but Orderly Allowance, earlier included and being paid to appellant was not made part of said Pension Payment Order--- Appellant who was drawing Orderly Allowance/Special Additional Pension at time of his superannuation, denial same to him afterwards, would not be in the interest of good governance and in consonance with principles of natural justice---Appellant was entitled to benefit of said Orderly Allowance which had been allowed to officers who retired from Government service on or before 19-2-1991---Period specified for preference of appeal would not be applicable in case of appellant as financial benefit was involved in his case---Delay, if any in preference of appeal, was condoned---Service Tribunal accepting appeal set aside impugned order and directed Authorities to allow Orderly Allowance/Special Additional Pension to appellant w.e.f. 19-2-1991. [pp. 1498, 1504] A & B

S.A.M. Wahidi v. Federation of Pakistan 1999 SCMR 1904; 1994 SCMR 881; 1996 SCMR 1470; 1998 PLC (CS) 694; 1996 PLC (CS) 1224 and Hamid Akhtar Niazi v. Sectary Finance 1996 SCMR 1185 ref.

مکتبہ اسلامیہ
 ڈی. پی. اے. ڈی. اے.
 ڈی. پی. اے. ڈی. اے.
 Limitation

Hafiz Tariq Nasim for appellant.

Javed Aziz Sandhu, Standing Counsel for Respondent with
D.Rs. Ali Sher, S.O. and M. Mansoor Shahzad A.A.O., AGPR.

Date of hearing: 7th June, 2003.

JUDGMENT

ABDUL RASHID BALOCH (MEMBER).---This is an appeal challenging the acceptance of representation of the Agency against the recommendations of Wafaqi Mohtasib, conveyed to the appellant by Law, Justice and Human Rights Division vide their letter dated 20-9-1999, where-against, he submitted Departmental Appeal dated 11-10-1999 to the President of Pakistan indicating that representation to this effect has simultaneously been submitted to the Secretary, Finance Division for allowing the appellant benefit of Orderly Allowance in his pension w.c.f. the date of his retirement.

2. The facts of the case, in small compass, are that the appellant retired from Government service in B-22 on 11-7-1990 on which date the Orderly Allowance was part of his emoluments. He was re-employed in the same capacity for one year, during which period, he was issued a Pension Payment Order (PPO) on 16-7-1990 and when pointed out by his colleagues, he noticed that Orderly Allowance, earlier included and being paid to him, was not made part of the said PPO. He submitted an application to the Respondents requesting the inclusion of Orderly Allowance in his pension as being done in case of such other officers. He also submitted application dated 9-3-1998 to the Hon'ble Wafaqi Mohtasib who heard the parties and acceded to his request vide order dated 30-7-1998, directing the Respondents to allow the said benefit on him. However, Respondent No.1 Finance Division submitted a representation to the President of Pakistan who accepted the same on 20-9-1999, against which the appellant submitted the Departmental Appeal/Review Petition dated 11-10-1999 and, having no response thereto, he preferred present appeal in this Tribunal on 29-1-2000.

3. The learned Counsel for the appellants stated that the impugned action/order was an outcome of colourable exercise, was discriminatory and violative of fundamental rights. He submitted that the O.M. dated 4-12-1991, issued by Respondent No.1, itself reflected such attitude as Special Additional Pension was allowed to Government officers in B-20 to 22 w.e.f. 19-2-1991 but the officers who retired prior to the said date were not considered entitled thereto and the impugned order was thus based on the pick and choose policy of the Respondents. He contended that it was a settled law that whenever

there was an element of interpretation of rule or law, the interpretation favourable to the individual was required to be adopted, whereas in the instant case the appellant had been denied his right in a mechanical manner. He referred to the cases of retired officers, namely; Tufail Ahmed Qureshi, Ch. Muhammad Din and Abdul Ghani Rohi whose appeals on the same issue were accepted by this Tribunal and/or by the Hon'ble apex Court and they were allowed the said benefit. He also placed reliance on 1999 SCMR 1904 (S.A.M. Wahidi v. Federation of Pakistan), 1994 SCMR 881, 1996 SCMR 1470 and 1998 PLC (C.S) 694, in support of his arguments. The learned counsel prayed that the appeal may be accepted, impugned order/action of the respondents be set aside and the appellant be allowed Orderly Allowance, in addition to his pension, w.e.f. 16-7-1990, with consequential benefits.

4. The learned counsel for the respondent vehemently opposed the appeal. He contended that the appeal was time barred. He stated that the benefit of Special Additional Pension, equal to pre retirement Orderly Allowance, had been allowed to Government officers in B 20 21 and 22, who retired on or after 19-2-1991 vide Finance Division's OM, dated 19-8-1991 and since the appellant retired before the said date i.e. 19-2-1991, he was not considered to be entitled thereto. According to him, the action of the respondent was lawful and not unconstitutional. He argued that the judgment of the Hon'ble Supreme Court of Pakistan in S.A.M. Wahidi's case was 'personam' in nature and thus could not be applied in 'rem' and other judgments referred to from appellant's side were not applicable to the instant case. He also referred to this Tribunal's judgment/order dated 21-11-1993 and 1-4-1999 in Appeals Nos.191(R)/92 and 875(R)/98 respectively, whereby such prayers were declined. It was, therefore, prayed on behalf of the Respondents that the appeal, being time-barred and devoid of merits, deserved to be dismissed.

5. We heard the parties and perused the relevant record.

6. Concisely, the case of appellant is that his total emoluments included Orderly Allowance till his retirement on 11-7-1990 but the said benefit was excluded from PPO dated 16-7-1990. A number of his colleagues, who retired after cut off date i.e. 19-2-1991, were stated to have been allowed the benefit in accordance with decision/recommendation of the Hon'ble Wafaqi Mohtasib. In this respect, he mentioned name of one Mr. S. Athar Mehmood. According to him, a number of such officers were allowed the same benefit by the Respondents, in compliance of judgment of Hon'ble Superior Courts. Therefore, the denial thereof to him would amount to discrimination.

As against that, the contention of the respondent is that since

the appellate retired after the cut off date i.e. 19-2-1991, he was not entitled to the inclusion of Orderly Allowance in his pension and hence their action was lawful. As regards payment of Orderly Allowance as Additional Pay to Mr. Athar Mehmood, the representative of AGPR submitted, vide letter dated 18-6-2003, that the name of Mr. Athar Mehmood had not been found on the Computer Data Base of the pensioners as well as in their manual registers of pensioners/P.P.O., the same was also not traceable in the records of ACPR, Sub-Office, Lahore and, therefore, they were not in a position to intimate whether the said officer was granted additional pension equal to Orderly Allowance or otherwise because the PPO number and name of Audit Officer was not known to them. As regards officers quoted by the appellant who were allowed the said benefit in pursuance of the judgments of Hon'ble Superior Courts, the version of the respondent was that while S.A.M. Wahidi was allowed the benefit as 'personam' and not in 'rem', other cases were not similar to that of the present one.

7. To arrive at a just conclusion, we consider it appropriate to reproduce the relevant portions of the judgments of the Honourable Supreme Court of Pakistan and this Tribunal, hereunder:--

Supreme Court of Pakistan

(i) Civil Appeals Nos. 422 & 423 of 1994.

S. A. M. Wahidi v. Federation of Pakistan and another.

"As regards C.A. 423/1994, the appellant has case on merits in terms of the above quoted para. of the judgment in the case of I.A. Sharwani (supra). The only technical question, which is in issue is whether the Tribunal was justified in not entertaining the appellant's above Misc. Petition No. 98 of 1993 on the ground that Appeal No. 191-R of 1992 had already been disposed of. In our view, since interpretation of the above O.M. dated 29-9-1991 was involved, it was incumbent upon the Tribunal to have given its own interpretation instead of referring the matter to the Ministry of Finance, though with the consent of the parties.

We are of the view that it will not be just and proper to decline the relief to the appellant on the above technical aspect. It may be stated here that this Court, in terms of Clause (1) of Article 187 of the Constitution is competent to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it we are, therefore, of the view that this is a fit case where this

Court should overlook the above technical aspect as the appellant has served the Ministry of Law commendably which is a fact known to all. We would, therefore, allow the above appeal, set aside the above judgment of the Tribunal and declare that the appellant is entitled to the benefit of the above quoted para. 2 of O.M. No.F.1(2) Reg. (6)/91 w.e.f. 19-2-1991. However, there will be no order as to costs."

(ii) Civil Appeals Nbs. 1298 of 1995, 3, 4 and 2006 of 1998.

Asghar Mehmood and 3 others v. Military Accountant General Rawalpindi and others.

"8. In this view of the matter, the above notification dated 29-5-1996 cannot be enforced retrospectively. In consequence whereof, the appellants who were in Grade 17 or above and retired during the period prior to 23-5-1996 would be entitled to get the personal allowance payable to them at the time of their retirement included for the purpose of calculating the pension amount of as under:--

That the appellants who have retired during the period commencing from 16-6-1994 to 23rd May, 1996 will be entitled to inclusion of the personal allowance for the purpose of computing the pension payable to them."

(iii) Civil Petitions Nos. 1776 to 1820, 1824, 1826, 1895, 1911 and 1588 of 2000 and 11 of 2001.

Syed Mustajab Ahmed and others v. Secretary Ministry of Finance and others.

"Further, it is common ground between the parties that Secretariat Allowance/Personal Allowance now stands merged into the pay of civil servants concerned. The parties are also one on the point that the petitioners would not be entitled to any such raise in their pay in that they all attained the age of superannuation before 23-5-1996. That being the position, it would be in the fitness of things to dispose of the petitions with the observation that, notwithstanding the promulgation of the Ordinance the causes of the petitioners require re-consideration by the Competent Authority and in line with the judgment of this Court dated 24-6-1999 in Asghar Mehmood's case as expeditiously as possible but not later than ninety days from the receipt of a copy of this order. Order accordingly. If any adverse order is passed against the petitioners they shall

Memorandum and not to those who have been retired before this date.

8. Therefore, in the light of the earlier judgments of the Tribunal and legal interpretation of the O.M, the appeal is misconceived and is, therefore, dismissed with no order as to costs.

8. In our view, the argument of the respondent that the Supreme Court's judgment in S.A.M. Wahdi's case is personam in nature is not tenable because the said judgment has laid down a principle which gives it a character of judgment in rem. Here it would be relevant to quote Supreme Court's judgment in the case of Hamid Akhtar Niazi v. Secretary Finance reported in 1996 SCMR 1185 wherein the Honourable Judge observed:

"...that the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum."

9. As would be observed from para. 7 *ibid*, of the eight cases (i to viii), five (i to v) had been decided by the Honourable Supreme Court of Pakistan and this Tribunal on the principle that the appellants, who were in receipt of the benefit at the time of their retirement, were entitled thereto even thereafter but the last three decisions (vi to viii) of this Tribunal were to the contrary that the benefit was restricted to the officers retiring after a specific date given by the Finance Division, and out of these three judgments the one mentioned at No. vii was decided on the doctrine of *res judicata*. The present appellant was drawing orderly allowance (i.e. Special Additional Pension) at the time of his superannuation, thus the denial thereof to him afterwards would not be in the interest of good governance and in consonance with the principle of natural justice. We opine that to keep the same taintless and beyond discrimination, he should be extended the same benefit which has been allowed to the officers who retired for Government service on or after 19-2-1991. Finance Division may also undertake an exercise to ameliorate the financial hardship being faced by the vanishing category of the pensioners, who would be presently in their mid-seventies, to bring them at par with slightly junior pensioners and

take a sympathetic decision in that direction as they are senior citizens too.

10. As for the point of limitation, the Hon'ble apex Court has held in a number of similar cases that the period specified for preference of appeal would not be applicable where financial benefit is involved. We, therefore, condone the delay, if any, in preference of this appeal.

11. Pursuance to the above discussion, we are constrained to accept the appeal set aside the impugned order dated 20-9-1999 and direct the respondent to allow Special Additional Pension to the appellant w.e.f. 19-2-1991.

12. No order as to costs. Parties be informed accordingly.

H.B.T./276/FST

Appeal accepted.

2005 P.L.C (C.S.) 1505

[Federal Service Tribunal]

Before Qazi Muhammad Hussain Siddiqui and
Rashid Ali Mirza, Members

GOHRAM KHAN and another

versus

DEPUTY INSPECTOR GENERAL, PAKISTAN
RAILWAYS POLICE, C.P.O. LAHORE and another

Appeals Nos.62 and 63 (K)(CS) of 2002, decided on 19th October, 2004.

Removal from Service (Special Powers) Ordinance. (XVII of 2000)---

---Ss.3, 5 & 6---Service Tribunals Act (LXX of 1973), S.4---Removal from service---Appeal---Appellant serving as a constable was removed from service after issuing him show-cause notice on allegations of previous eight different punishments to him, being reported highly corrupt and having bad reputation---Appellant was proceeded against without holding a regular inquiry against him---Validity---Major penalty of removal from service imposed upon employee, without holding a regular inquiry on alleged serious acts of misconduct, was not justified---Impugned order of removal of appellant from service, was set aside with direction to reinstate appellant in service to the post