

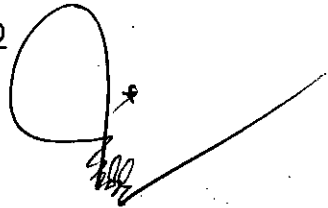
Service Appeal No. 542/2019

ORDER
28.04.2022

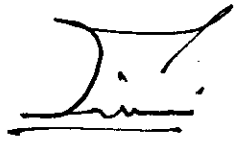
Learned counsel for the appellant present. Mr. Safiullah, Focal Person alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 541/2019 titled "Dr. Mustafa Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.04.2022



(Mian Muhammad)
Member (Executive)



(Salah-ud-Din)
Member (Judicial)

25.04.2022

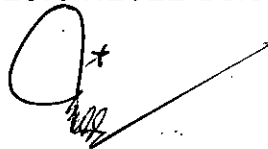
Proper D.B is not available, therefore, case to come up for proper D.B on 27.04.2022.


READER

27.04.2022

Syed Noman Ali Bukhari, Advocate for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Syed Noman Ali Bukhari, Advocate stated at the bar that as Mr. Malik Akhtar Ali, Advocate is co-counsel in the instant appeal and he was under the impression that the same will be argued by the said counsel, however the said counsel has informed him that he is unable to appear before the Tribunal today due to illness. Syed Noman Ali Bukhari, Advocate requested that an adjournment may be granted so as to enable him to argue the instant appeal. Adjourned. To come up for arguments on 28.04.2022 before the D.B.



(Mian Muhammad)
Member (E)




(Salah-ud-Din)
Member (J)


20.10.2021

Counsel for the appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 31.01.2022 before D.B.


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



(Rozina Rehman)
Member (J)

31.01.2022


Syed Noman Ali Bukhari Advocate present and submitted Wakalat Nama in favor of appellant. Mr. Naseer ud Din Shah Assistant Advocate General for the respondents present.

Being freshly engaged, learned counsel for the appellant requested for adjournment in order to prepare the brief. Adjourned with direction to learned counsel for the appellant to submit spare copy of the instant appeal on the next date. To come up for arguments on 31.03.2022 before the D.B.

31.03.2022


Counsel for the appellant and Mr. Muhammad Adeel
(Rozina Rehman) (Salah-Ud-Din)
Addl. A.G for the respondents present. Member (J)
Member (J)

Learned AAG states that similar nature of appeals have been decided by a Bench comprising of Mr. Salah-ud-Din, learned Member (Judicial) and Mr. Mian Muhammad, learned Member(Executive). Therefore, this appeal is also placed before the said Bench. To come up for arguments on 25.04.2022 before the said D.B.


(Mian Muhammad)
Member(Executive)


Chairman

12.4.21


Due to COVID 19, the case is
adjourned to 28.7.21 for the bench



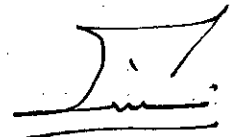
28.07.2021

Clerk of counsel for the appellant present. Mr. Javed Ullah
Assistant Advocate General for the respondents present.

Clerk of counsel for the appellant stated that learned
counsel for the appellant is unable to attend the Tribunal today
due to strike of Lawyers. Adjourned. To come up for arguments
before the D.B. on 20.09.2021.



(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)


20.09.2021

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

Learned counsel for the appellant seeks adjournment
for preparation and assistance. Request is accorded. To
come up for arguments on 20.10.2021 before the D.B.



(Rozina Rehman)
Member(Judicial)



Chairman

10.09.2020

Counsel for the appellant and Addl. AG alongwith Hazrat Shah, S.O for the respondents present.

The respondents have not furnished reply/comments despite last opportunity granted to them on previous date of hearing. The matter is, therefore, posted to D.B for arguments on 17.11.2020.


Chairman

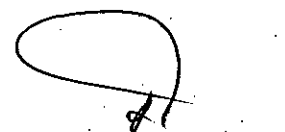
17.11.2020

Counsel for appellant present.

Zara Tajwar learned Deputy District Attorney for respondents present.

A request for adjournment was made. Request is acceded. To come up for arguments on 01.02.2021 before D.B.


(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)


01.02.2021

Due to COVID-19, the case is adjourned to 12.04.2021 for the same.


Reader

06.03.2020

Counsel for the appellant present. Mr. Kabirullah Khattak learned Additional AG alongwith Saleem Javed Litigation Officer for respondent No. 1 to 4 and Sajid Superintendent for respondent No.5 present. Written reply not submitted. Representatives of respondent No. 1 to 5 seeks time to furnish written reply/comments. Adjourned. To come up for written reply/comments on 15.04.2020 before S.B.


(Hussain Shah)
Member

15.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 09.07.2020 for the same. To come up for the same as before S.B.



Reader

09.07.2020

Counsel for the appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Hazrat Shah Superintendent, for the respondents present.


Written reply on behalf of respondents is still awaited. Again, a request was made for adjournment in order to furnish written reply/comments. Last opportunity is granted. To come up for written reply/comments on 10.09.2020 before S.B.


Member (J)

25.11.2019

Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned AAG seeks time to furnish the reply/comments. Adjourned to 07.01.2020 on which date the requisite reply/comments shall positively be submitted.


Chairman

07.01.2020

Counsel for the appellant and Addl. AG alongwith Sher Baz, SO for the respondents present.

Representative of the respondents seeks time to furnish reply/comments. Adjourned to 06.03.2020 on which date the requisite reply/comments shall positively be furnished.


Chairman

11.07.2019

Counsel for the appellant present.

Learned counsel requests for time to further document the appeal. Adjourned to 12.09.2019 for hearing before S.B.


Chairman

12.09.2019

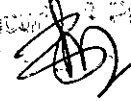
Counsel for the appellant present.

Contends that the appellant was appointed initially on contract basis on 18.12.1995. Subsequently through notification dated 17.10.2017 his service was regularized but with effect from 01.07.2001. In the said manner the intervening period between 18.12.1995 and 01.07.2001 was not counted towards the service benefits in favour of the appellant. Further contends that it has been settled by now that the period of service put in on adhoc or contract basis is to be reckoned for the purpose of seniority and other benefits upon subsequent regularization of a civil servant. Relies on judgment reported as 2018-SCMR-380.

In view of the arguments of learned counsel instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days.

Thereafter, notices be issued to the respondents. To come up for written reply/comments on 25.11.2019 before S.B.

Appellant Deposited
Security Process Fee

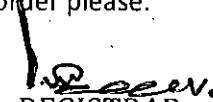



13/9/18


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. _____ **542/2019** _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/04/2019	<p>The appeal of Dr. Muhammad Ali Jan resubmitted today by Malik Akhtar Ali 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 29/4/19</p>
2-	30/04/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/06/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	12.06.2019	<p>Notice be issued to appellant/counsel for rehearing in limine on 11.07.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Dr. Muhammad Ali Jan received today i.e. on 03.04.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Address of the appellant is incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3- In the memo of appeal places have been left blank which may be filled up.
- 4- Annexures of the appeal may be attested.
- 5- Appeal has not been flagged/marked with annexures' marks.
- 6- In the memo of appeal places have been left blank which may be filled up.
- 7- Copies of Writ Petition and order passed on writ petition mentioned in para-5 of the memo of appeal are not attached with the appeal which may be placed on it.
- 8- Order dated 17.10. 2017 is incomplete which may be completed.
- 9- Copy of impugned order and departmental appeal against it are not attached with the appeal which may be placed on it.
- 10- Copy of appointment order is not attached with the appeal which may be placed on it.
- 11- Annexures of the appeal are illegible which may be replaced by legible/better one.
- 12- Appeal containing overwriting is not acceptable-Fair appeal be filed.
- 13- Seven more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

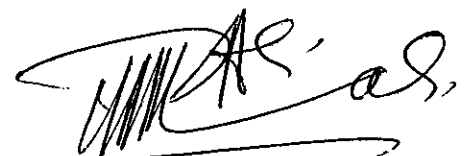
No. 584 /S.T.

Dt. 5/4 /2019.

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Malik Akhtar Ali Adv. Mardan.

Resubmitted after completion of appeal filed on 12.12.2018. Appeal this honorable court on 3.4.2019. Appeal with in time Appellant was appointed on contract basis on 18.12.1995 and were regularized on 1.7.2001. Injunctive period was not considered for security etc.


18/4/2019

PTO

objections no. 7 to 11 and 13 are still stand. Therefore, the present appeal is returned to the counsel for the appellant for completion and resubmission with 15 days.

NO. 779 / S.T.

dt. 19-4-2019

~~Registrar~~
Registrar

Resubmitted after completion of Appointment order -
Regularization Order - Departmental appeal. High
Court judgment. (7) Copies placed on file
whether
Period of Contract Service shall be considered
for Seniority or not.

AR, AR
29/4/2019

BEFORE THE PROVINCIAL SERVICE TRIBUNAL PESHAWAR

Appeal No. 542 /2018

Dr. Mohammed Aqjan

vs. Govt. of KPK Health Department

Versus

Govt. of KPK Health Department

INDEX

S. No.	Description	Page Number
1	Ground of Appeal	1-3.
2	Appointment Order "A"	4
3	Regularization Notification "B"	5-6.
4	Department Appeal "C"	7
5	Wakalatnama	8.

Deponent Md. d. Alijan

Identified by

Malak Akhtar Ali Khan

Malak Akhtar Ali Khan Advocate

Mardan

BEFORE THE PROVINCIAL SERVICE TRIBUNAL PESHAWAR

Appeal No. 542 /2018

*Dr. Mohammad Ali Jan. Senior medical officer
T.H.Q. Hospital Malla Swat.*

Khyber Pakhtunkhwa
Service Tribunal

Versus

Diary No. 513

Dated 03/4/2019

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

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

Filed to-day

Registrar

03/4/19

FACTS:

1. That the appellants No.1 were appointed on contract basis in the Health Department under supervision of Respondent No.1 Medical Officer BPS-17 in the year 18-12-1985
2. That the appointment on contract basis as stop gap arrangement.
3. That in Govt. of KPK Civil Secretariat Amendment Act 2013. The appellants were regularization W.E.F 01.07.2001.
4. That the intervening period w.e.f 18-12-1985 upto 01.07.2001 were not considered for seniority, more over. To the next grade etc.

Re-submitted to-day
and filed.

Registrar

29/4/19

5. That the appellants filed W.P No.35/8/2017 before Peshawar High Court Peshawar, whereby appellants were directed to approach service tribunal for their grievances, which may kindly be considered as department appeal.
6. That the appellants in directions of Honourable Peshawar High Court filed. This appeal on the following grounds inter alia grounds:
 1. That the acts of respondent No.1 is illegal, against wrong & clear violation of authoritative judgment of Honorable Supreme Court needs to strick down.
 2. That respondents No.1 while the intervening period of appellants w.e.f 18-12-1985 till 01.07.2001 for the purpose of seniority is unjustified; illegal as there was no break in their services no adverse remarks. As the appellants were performing the similar duty, same responsibility, same obligation no difference in their duties, responsibility obligation to that of regular employee. Doctors duly appointed by competent authority. Such ignorance of intervening period is not permissible in the eye of law reliance be placed PLD 1970 Queta 115.
 3. That in view of 2014 SMR 1289 seniority will be reckoned from the initial appointment.
 4. That in view of 2018 SMR 380 that any civil servant works on temporary adhoc contract basis for 10 years in BPS-17 shall be entitled to be promoted to BPS-18. Meaning thereby contract period shall be considered from seniority, moreover etc. but respondents No.10 rais ignored such authoritative judgment of apex court has committed gross illegalities.
 5. That the judgments of Apex court is binding on all organ of the country and are under legal obligation to follow the verdict of Apex court.
 6. That the Appellants seeks leave of this court Honorable Tribunal to agitate further grounds als.

It is therefore humbly prayed that on acceptance of this appeal, this Honorable Tribunal may be kindly considered the intervening period w.e.f 08/12/1995 till 2001 for the purpose seniority move over along with back benefits otherwise the junior most will become senior to the appellants.

Appellant: Md Ali Jan

Through

Malak Akhtar Ali Khan

Malak Akhtar Ali Khan Advocate
Mardan.

AFFIDAVIT

Mohammad Ali Jan THQ Hospital Swat for the appellant do hereby declare on oath that the contents of this review petition are correct and nothing has been concealed from this Honorable Court.

Deponent Md Ali Jan
Mohammad Ali Jan

Oath Commission
Fazal

28/3/19

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

NO: 32860 /E-I,

DATE: 18/12/1995.

To,

Dr. Mohammad Ali Jan
S/o Buzhad Jan

SUBJECT:- OFFER OF APPOINTMENT ON CONTRACT BASIS.

MEMORANDUM:-

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

1. The Competent authority is hereby appoint you as Medical Officer/ Women Medical Officer/Dental Surgeon in the Health Department, Govt. of N.F.P., on contract basis in B-17 for a period of one year or till the availability of Public Service Commission selectee/return of original incumbent from leave/deputation whichever is earlier, on the terms and conditions laid down in the attached Agreement Deed. You shall be posted to B.H.U. MANJGAL Dist. Kohistan. This contract appointment is not transferable.
2. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
3. If you accept the offer of appointment on contract basis as a Medical Officer/Women Medical Officer/Dental Surgeon, the attached Agreement Deed should be filled in duly signed by you and should report at your own expense.
4. If you fail to report for duty at the station mentioned in para-3 above, within ten (10) days, the offer of appointment on contract basis will be deemed to have been withdrawn automatically and no further correspondence shall be entertained in this respect.

(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, N.F.P., PESHAWAR.

NO 32860-64 /E.I. DATED PESHAWAR THE 18/12/1995.

Copy forwarded to the :-

1. Secretary to Govt. of N.F.P., Health Deptt. Peshawar for information with reference to his letter No. SO(H)IV/3-18/93, dated 16th Nov. 1995.
2. Medical Superintendent, Hazara for information and n/action.
3. Divisional Director Health Services, Kohistan
4. District Health Officer/Agency Surgeon, Kohistan
5. Accountant General, N.F.P. Peshawar.
6. District/Agency Accounts Officer Kohistan for information and necessary action please.

(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, N.F.P., PESHAWAR.

5



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar, the 17th October, 2017

NOTIFICATION

NO. SC(E)H-II/3-18/2016: In pursuance of Judgment of Peshawar High Court Peshawar dated 18-11-2008 in Writ Petition No. 1510 of 2007 read with sub section 2 of Section 2 of the Khyber Pakhtunkhwa, Civil Servant (Amendment) Act, 2005 (Khyber Pakhtunkhwa Act no. IX of 2005) and provision under sub section 4 of section 15 of Civil Servant (Amendment) Act 2013 coupled with the regularization order of appellants and similarly placed w-e-f 2005, the services of following doctors (appellants as well as similarly placed) are hereby regularized with effect from date as mentioned against each:

S. #	Name of Doctor	D.O.B / Domicile	Date of Initial Appointment on contract basis	Date of Regularization under Act 2005
1	Dr. Bakht Zada S/O Gul Muhammad, MBBS	01.01.1959 / Swat	23.11.1995	01-07-2001
2	Dr. Dewa Khan S/O Badshah Khan, MBBS	01.09.1951 / Swat	23.11.1995	01-07-2001
3	Dr. Haroon Nasir Khattak S/O Rab Nawaz, MBBS	Karak / 1.3.1966	23.11.1995	01-07-2001
4	Dr. Yousaf Khan S/O Said Rehman, MBBS	Mardan / 14.3.1968	23.11.1995	01-07-2001
5	Dr. Riaz Ahmed S/O Rehmatullah, MBBS	Mohmand / A15.8.1951	23.11.1995	01-07-2001
6	Dr. Alamgir Khan S/O Darwesh Khan, MBBS	16.04.1962 / Mohmand A	23.11.1995	01-07-2001
7	Dr. Muhammad Ajmal Khan S/O Zarin Khan, MBBS	Mohmand ag / 10.04.67	23.11.1995	01-07-2001
8	Dr. Fazal Rehman S/O Muhammad Amir Khan, MBBS/ MPH	28.04.1966 / Mohmand Agency	23.11.1995	01-07-2001
9	Dr. Mustafa S/O Behramand, MD	01.03.1951 / Swat	24.11.1995	01-07-2001

Secretary
Health Department
Government of Khyber Pakhtunkhwa

P.D.O. → 4

6
 Aunited
 Mumtaz
 8/4/2008



656	Dr. Abu Amirad Fayyaz s/o Muhammad Ayaz	15.04.1973	08.03.2005	08.03.2005
657	Dr. Jehanzeb s/o Abdul Samad Jan MBBS	Swat Dir (L) 3.12.1973	08.03.2005	08.03.2005
658	Dr. Adil Khan s/o Fazli Sabhar MBBS	33.12.1978 Charvadda Chirshiddar	08.03.2005	08.03.2005
659	Dr. Ayub Khan s/o Ismail Khan MBBS	25.02.1979 Dir	08.03.2005	08.03.2005
670	Dr. Farzana s/o Hussain Ahmad MBBS	07.08.1978 Swat	08.03.2005	08.03.2005
671	Dr. Muhammad Zubair s/o Muhammad Basim M.D	01.04.1976 Dir (L) 15.3.1977	08.03.2005	08.03.2005
672	Dr. Raz Muhammad s/o Khalid Muhammad M.D	Dir (L) 24.10.1978	08.03.2005	08.03.2005
673	Dr. Bushra Ahmad s/o Bakhtul Malik M.D	11.02.1977 Dir Dir (L)	08.03.2005	08.03.2005
674	Dr. Farhat Wahid s/o Khana Gul M.D	19.3.1971 Bajaur	08.03.2005	08.03.2005
675	Dr. Nazamul Din s/o Qalandar Khan MBBS	28.4.1971 Dir (L) 1.2.1971	08.03.2005	08.03.2005
676	Dr. Umar Hakeem s/o Abdul Karim Khan MBBS	My Agency 08.08.1976	08.03.2005	08.03.2005
677	Dr. Nisar Ahmad s/o Amir Muhammad M.D	01.02.1981 Swat	08.03.2005	08.03.2005
678	Dr. Sher Muhammad s/o Sakhi Murad MBBS	Swat	08.03.2005	08.03.2005
679	Dr. Naeemullah s/o Abdullah MBBS	Swat	08.03.2005	08.03.2005
680	Dr. Akhtar Ali s/o Sadaraz Khan MBBS	25.10.1977	08.03.2005	08.03.2005

Secretary
 Govt. of Khyber Pakhtunkhwa
 Health Department

Note: Any omission/error will be rectified after verification

SECRETARY HEALTH

Endt No of even and date.

1. Registrar, Peshawar High Court Peshawar
2. Accountant General, Khyber Pakhtunkhwa
3. Director General Health Services, Khyber Pakhtunkhwa
4. PSO to Chief Secretary, Khyber Pakhtunkhwa
5. Coordinator PMRU, D/O Chief Secretary, Khyber Pakhtunkhwa
6. All District Health Officers in Khyber Pakhtunkhwa

P.T.O

7

To The Secretary to Health Department
Civil Secretariat Peshawar.

Subject: DEPARTMENTAL APPEAL/REPRESENTATION

Respected Sir,

1. That the appellatant was appointed in Health Department as Medical Officer on 18-12-1995 contract basis.
2. That the appellatant served the department without any break on contract basis till dated.
3. That there is no adverse remarks are any complaint against the present appellatant.
4. That on 01-07-2001 the appellatant was regularize with effect from 01-07-2001
5. That the appellatant was serving since 18-12-1995 therefore appellatant should have been regularized from initial appointment on 01-07-2001
6. That in view of judgment of APEX Court 2014 SCMR 1289, 2018 SCMR 380 seniority will be reckoned from initial appointment whether that appointment is on adhoc basis, contract basis or temporary basis.

It is therefore humbly prayed that on acceptance on this appeal, the appellatant intervening period of contract may kindly be consider for seniority and other benefits available under the law to the petitioner.

Appellant Md Ali Jan
To: Md Ali Jan - SMO
THO Hospital Maita
Swat
=

6

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT) عدالت عالیہ پشاور

WP No. 3518-P/2017

Dr. Hanif Afzal and others

Versus

Province of KPK through Chief Secretary Peshwar and others

JUDGMENT.

Date of hearing: 30.10.2018

Petitioner (s): *By: Malik Raza Ali Khan Odhena*

Respondent (s): *By: Mr. Waqar Ahmed Qazi*

WAQAR AHMAD SETH, CJ:- Through the

instant Writ Petition, petitioners have prayed for issuance of an appropriate writ with the following prayer:-

"It is therefore humbly prayed that by acceptance of this W.P. respondent No.4 be directed to consider the intervening period (1995-2001) for seniority, promotion movers after approval of Governor KPK to give retrospective effect to their regularization 2001 & it is further prayed that respondent No.4 be restrained from the preparation of Seniority list U/S 8 of Civil Servant Act 1973. Any further relief may deem fit may please be granted"

2. Brief facts of the case are that the petitioners were appointed in Health Department on contract basis in the year, 1995, however, subsequently, when Civil Servant (Amendment) Act, 2005 was promulgated, services of the

ATTESTED
EXAMINER
Peshawar High Court

07 JAN 2019

petitioners were regularized from 2001. According to the petitioners, respondent No.4 is trying to prepare seniority list, in which, their intervening period in between 1995 to 2001 has been ignored for seniority purpose, which will result the junior most will become senior to them although their services are without break. Moreover, the act of respondent No.4 is based on discrimination as Dr. Muhammad Iqbal was appointed on regular basis w.e.f. date of his initial appointment; hence, feeling aggrieved, the petitioner has filed the instant Writ Petition.

3. Arguments heard and record perused.

4. Admittedly, the grievance of petitioners relates to '*terms and conditions*' of their service, the appropriate remedy for seeking their redressal, would surely be the Services Tribunal.

5. This Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 to take cognizance of any matter relating to '*terms and conditions*' of service of a civil servant. The Apex Court in Ali Azhar Khan Baloch's case (2015 SCMR 456), has again laid down that

ATTESTED
EXAMINER
Peshawar High Court

JAN 2019

the issue relating to the 'terms and conditions' of service cannot be entertained by a High Court either in its constitutional jurisdiction or in its original civil jurisdiction being barred under Article 212 of the Constitution.

6. In view of the above, this Writ Petition being not maintainable is hereby dismissed. However, the petitioners may approach the Services Tribunal for redressal of their grievance.

ANNOUNCED.
Dated: 30.10.2018

Chief Justice

Justice

=====

CERTIFIED TO BE TRUE COPY

Notarized Under Rule 67 of
The Qanun-e-Shahada Order 1984

07 JAN 2019

No.	376
Date of Preparation	5-1-19
No of Pages	4/7
Copying Fee	
Urgent Fee	
Total	16/-
Date of Preparation	07-1-19
Date of Delivery of Copy	07-1-19
Received By	[Signature]

(8)

بعدالت صوبائی سروس ڈیپوٹنٹ ایس ایس اے

کورٹ فیس

20 منجانب اسٹینٹ

مورخہ:

صوبائی عدالت

ڈاکٹر محمد علی خان

مقدمہ:

دعویٰ:

جرم:

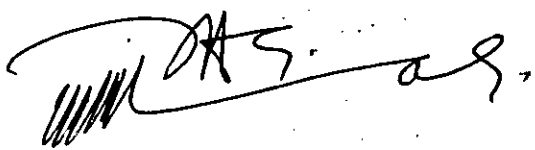
باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی کا متعلقہ آن مقام سید احمد علی خان اور وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زراس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمد ہوگی اور منسوخ دائر کرنے کی اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مذکور کے عمل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برداشت منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم _____ ماہ _____ 20ء

العبد گواہ شہادہ العبد

بمقام: _____ کے لئے منظور ہے۔



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

NO: 32860 /E-I,

DATED: 18/12/1995.

To,

Dr. Mohammad Ali Jan
S/o Buzgild Jan

SUBJECT:- OFFER OF APPOINTMENT ON CONTRACT BASIS.

MEMORANDUM:-

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

1. The Competent authority is hereby appoint you as Medical Officer/Women Medical Officer/Dental Surgeon in the Health Department, Govt: of N.F.P, on contract basis in B-17 for a period of one year or till the availability of Public Service Commission selectee/return of original incumbent from leave/deputation whichever is earlier, on the terms and conditions laid down in the attached Agreement Deed. You shall be posted to B.H.U. MANJGAL Dist. Kohistan. This contract appointment is not transferable.
2. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted.
3. If you accept the offer of appointment on contract basis as a Medical Officer/Women Medical Officer/Dental Surgeon, the attached Agreement Deed should be filled in duly signed by you and should report at your own expense.
4. If you fail to report for duty at the station specified in para-3 above, within Ten (10) days, the offer of appointment on contract basis will be deemed to have been withdrawn automatically and no further correspondence shall be entertained in this respect.

(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, N.F.P., PESHAWAR.

NO 32860-64 /E.I. DATED PESHAWAR THE 18/12/1995.

Copy forwarded to the :-

1. Secretary to Govt: of N.F.P, Health Deptt: Peshawar for information with reference to his letter No. SO(H)IV/3-18/93, dated 16th Nov: 1995.
2. ~~Superintendent,~~ for information and n/action.
3. Divisional Director Health Services, Hezara,
4. District Health Officer/Agency Surgeon, Kohistan,
5. Accountant General, N.F.P. Peshawar.
6. District/Agency Accounts Officer Kohistan,
for information and necessary action please.

(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, N.F.P., PESHAWAR.

TO BE SUBSTITUTED FOR THE NOTIFICATION BEARING THE SAME NO. AND DATE



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 17th October, 2017

NOTIFICATION

No. SO(EH-II/3-18/2016): In pursuance of Judgment of Peshawar High Court Peshawar dated 18-11-2008 in Writ Petition No. 1510 of 2007 read with sub section 2 of Section 2 of the Khyber Pakhtunkhwa, Civil Servant (Amendment) Act, 2005 (Khyber Pakhtunkhwa Act No. IX of 2005) and provision under sub section 4 of section 19 of Civil Servant (Amendment) Act 2013 coupled with the regularization order of appellants and similarly placed w.e.f 2005, the services of following doctors (appellants as well as similarly placed) are hereby regularized with effect from dates as mentioned against each:

S.#	Name of Doctor	D.O.B / Domicile	Date of Initial Appointment on contract basis	Date of Regularization
1.	Dr. Shuja Ahmad S/o Shoukat Ali	16-04-1961 Chitral	21-11-1995	01-07-2001
2.	Dr. Munawar S/O Maulvi Hassan	07.01.1968/ Kohistan	21.11.1995	01.07.2001
3.	Dr. Taj Muhammad S/O Jan Muhammad	06.03.1966/ Kohistan	21.11.1995	01.07.2001
4.	Dr. Ibrahim Iqbal S/O Saleh Khan, MBBS	03.09.1961/ Bannu	22.11.1995	01.07.2001
5.	Dr. Sheikh Muhammad Farooq Azam S/O Sheikh Muhammad Bashir Gohar	07.05.1964/ D.I.Khan	22.11.1995	01.07.2001
6.	Habib ur Rehman S/O Abdul Aziz Khan	15.06.1960/ D.I.Khan	22.11.1995	01.07.2001
7.	Saad Ullah Khan S/O Ayub Khan	10.04.1963/ Bannu	22.11.1995	01.07.2001
8.	Dr. Manzoor Ahmad S/O Haji Mir Sahib Khan	05.01.1958/ Bannu	22.11.1995	01.07.2001
9.	Dr. Rabia Mehar (Waheed) D/O Mehar Dil Khan	01.03.1968/ FR Tank	22.11.1995	01.07.2001
10.	Dr. Surai Khan S/O Mardan Shah	01.05.1960/ Orakzai Agency	23.11.1995	01.07.2001
11.	Dr. Bakht Zada S/O Gul Muhammad	01.01.1959/ Swat	23.11.1995	01.07.2001
12.	Dr. Dawa Khan S/O Badshah Khan	01.09.1951/ Swat	23.11.1995	01.07.2001
13.	Dr. Haroon Nasir Khattak S/O Rab Nawaz MBBS	1.3.1966/ Karak	23.11.1995	01.07.2001
14.	Dr. Yousaf Khan S/O Said Rehman MBBS	14.3.1968/ Mardan	23.11.1995	01.07.2001
15.	Dr. Riaz Ahmed S/O Rehmatullah MBBS	15.8.1951/ Mohmand A	23.11.1995	01.07.2001
16.	Dr. Alamgir Khan S/O Darwesh Khan, MBBS	16.04.1962/ Mohmand A	23.11.1995	01.07.2001
17.	Dr. Muhammad Ajmal Khan S/O Zarin Khan MBBS	10.04.1967/ Mohmand A	23.11.1995	01.07.2001
18.	Dr. Fazal Rehman S/O Muhammad Amir Khan MBBS/ MPH	28.04.1966/ Mohmand A	23.11.1995	01.07.2001

188.	Dr. Jamshed Qadar S/O Majid Qadar Gul	17.01.1965 / Nowshera	4.12.1995	01.07.2001
189.	Dr. Khanzad Gul (Late) S/O Masoom Khan	21-03-1956/ Dir	8-12-1995	01-07-2001
190.	Dr. Sardeep Kumar s/o Hukumchand M.D	Swat/ 02.1963	18-12-1995	01-07-2001
191.	Dr. Usman Khan S/O Zard Ali	13.04.1963/ Khyber Agy	18.12.1995	01-07-2001
192.	Dr. Akbar Hussain S/O Miskeen	02-01-1955/ Bunner	18-12-1995	01-07-2001
193.	Dr. Azam Khan Afridi S/O Abdul.Aziz. MBBS.	02/04.1959/ Khy Agency	18-12-1995	01-07-2001
194.	Dr. Niaz Muhammad S/O Muslim Khan Ex-Member of Services	15-05-1956/ Mardan	18-12-1995	01-07-2001
195.	Dr. Muhammad Azhar Shah S/O Israrul Arifeen, MD	20.08.1963 / Nowshera	19.12.1995	01-07-2001
196.	Dr. Muhammad Jaseem S/O Muhammad Quresh, MD	10.10.1956 / Swabi	19.12.1995	01-07-2001
197.	Dr. Inayatullah S/O Karimullah	21.04.1961 / Mardan	20.12.1995	01-07-2001
198.	Dr. Syed Shaida Hussain Bukhari S/O Fida Hussain Shah	28.01.1964/ Peshawar	20.12.1995	01-07-2001
199.	Dr. Muhammad Riaz S/O Ghulam Rasool M.D	Mardan/ 06.06.1959	20.12.1995	01-07-2001
200.	Dr. Muhammad Ayaz S/O Zakirullah, MD	08.02.1962 / Mardan	20.12.1995	01-07-2001
201.	Dr. Ajmal Khan s/o Zulqadar Khan, MD	1.1.1960/ Swabi	20.12.1995	01-07-2001
202.	Dr. Bakht Zamin S/O Wali Dad, MD	08.12.1959 /Swabi	20.12.1995	01-07-2001
203.	Dr. Nasreen Begum D/O Ghulam Farid Khan	05.12.1964/ Kurram Agy	21-12-1995	01-07-2001
204.	Dr. Noor Muhammad s/o Ahmad Saeed, MD	10.8.1962/ Bajaur Agy	21.12.1995	01-07-2001
205.	Dr. Zubaida Taj D/O Taj Muhammad MBBS	Mohmand Agy/ 01.08.1968	21.12.1995	01-07-2001
206.	Dr. Shamsur Rehman S/O Haji Faqir Muhammad,	06.11.1963 / Swabi	21.12.1995	01-07-2001
207.	Dr. Muhammad Ghayas S/O Muhammad Fayyaz	28.05.1958/ Mardan	21.12.1995	01-07-2001
208.	Dr. Firdos Jabeen D/O Muhammad Aslam	10-09-1969/ Bannu	21.12.1995	01-07-2001
209.	Dr. Abdul Karim s/o Fazal Karim M.D	Malakand/ 3.3.1965	23.12.1995	01-07-2001
210.	Dr. Noshaba Naheed D/O Manzoor Ahmed MBBS	Bannu/ 05.01.1969	23.12.1995	01-07-2001
211.	Dr. Farooq s/o Haji Ashiq Muhammad, MD	01.05.1959/ Bajaur Agy	23.12.1995	01-07-2001
212.	Dr. Gohar Zaman S/O Minhajuddin, MD(K)	11.04.1966/ Malakand.	23.12.1995	01-07-2001
213.	Dr. Zaffar Ali S/O Amir Ghawas, MBBS	01.03.1968 / Swabi	24.12.1995	01-07-2001
214.	Dr. Riaz Ali S/O Sher Bahadar, MD	07.02.1962 / Swabi	24.12.1995	01-07-2001
215.	Dr. Muhammad Ali Jan S/O Baghdadi Jan, MBBS	16.04.1964/ Swat	24.12.1995	01-07-2001
216.	Dr. Shehla Saeed D/O Saeed Ahmad	12.03.1969/ FR DIK	24.12.1995	01-07-2001
217.	Dr. Azra Sarwar D/O Sarwar Jan, MBBS.	09.05.1967/ Bannu.	24.12.1995	01-07-2001
218.	Dr. Zaib Khan S/O Bakht Biland, MD	20.1.1963 /Charsadda	24.12.1995	01-07-2001
219.	Dr. Aziz Khan s/o Jaffar Khan, MBBS	14.8.1961/ Mardan	24.12.1995	01-07-2001
220.	Dr. Mumtaz Ali S/O Ashraf Khan	03.03.1967/ Mohmand A	24.12.1995	01-07-2001
221.	Dr. Sultan-UI-Mulk S/O Amir Nawab MBBS	Bunir/ 10.01.1954	25.12.1995	01-07-2001

Not Res

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To The Secretary to Health Department
Civil Secretariat Peshawar.

Subject: - DEPARTMENTAL APPEAL/REPRESENTATION

Respected Sir,

1. That the appellant was appointed in Health Department as Medical Officer on 18-12-1995 contract basis.
2. That the appellant served the department without any break on contract basis till dated.
3. That there is no adverse remarks are any complaint against the present appellant.
4. That on 01-07-2001 the appellant was regularize with effect from 01-07-2001
5. That the appellant was serving since 18-12-1995 therefore appellant should have been regularized from initial appointment on 01-07-2001
6. That in view of judgment of APEX Court 2014 SCMR 1289, 2018 SCMR 380 seniority v be reckoned from initial appointment whether that appointment is on adhoc basis, contract basis or temporary basis.

It is therefore humbly prayed that on acceptance on this appeal, the appellant intervening period of contract may kindly be consider for seniority and other benefit available under the law to the petitioner.

Appellant

Md. Ali Jan
Dr. Moid Ali J - SMC
T.H.O Hospital M.A.I.T.
Sialkot
=

VAKALATNAMA

NO. S42 /2019

IN THE COURT OF KP Justice Faizul Rasid

Dr. Muhammad Ali Jan

Appellant
Petitioner
Plaintiff

VERSUS

Govt of KP

Respondent (s)
Defendants (s)

I/WE Dr. Muhammad Ali Jan

do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI Advocate High Court** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE _____ /20

Md. Ali Jan

(CLIENT)

ACCEPTED

[Signature]

**SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT**