

06.08.2019

Nemo for the applicant. Mr. Ziaullah, DDA for respondents present.

It is already past 3:45PM and no one is available to represent the applicant despite repeated calls.

Dismissed for non-prosecution. File be consigned to the record room.

Announced:  
06.08.2019

  
Member

  
Chairman

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

*Restoration Application 396/18*

CM No. \_\_\_\_\_ of 2018  
In Service Appeal No.399/2015

Khyber Pakhtunkhwa  
Service Tribunal

Page: 2086

Date: 2-11-18

Jafar Ali Son of Kashmir Khan (Lecturer Commerce  
Govt College Miran Shah).

..... Appellant

**VERSUS**

Province of Khyber Pakhtunkhwa, through Chief  
Secretary, Peshawar and others

..... Respondents

**APPLICATION FOR RESTORATION OF  
MAIN SERVICE APPEAL WHERE THE  
ABOVE SERVICE APPEAL WAS  
DISMISSED IN DEFAULT BY THIS  
HON'BLE SERVICE TRIBUNAL VIDE  
ORDER DATED 02/10/2018.**

Respectfully Sheweth:

- 1) That the above titled service appeal was fixed in this august Tribunal, which was fixed for 02/10/2018.
- 2) That the uncle of counsel of the applicant/ appellant has been died on 30/09/2018 and on the date fixed before this Hon'ble Tribunal dated 02/10/2018 in the instant appeal but on the above reason the counsel of the appellant/ applicant is unable to attend this Hon'ble Tribunal.

06/08.2019

Nemo for the applicant. Mr. Ziaullah, DDA for respondents present.

It is already past 3:45PM and no one is available to represent the applicant despite repeated calls.

Dismissed for non-prosecution. File be consigned to the record room.

Announced:  
06.08.2019

  
Member

  
Chairman

14.03.2019

Clerk of counsel for the petitioner present. Notice of present application be issued to the respondents. Adjourn. To come for reply and arguments on 07.05.2019 before D.B. Original record be also requisitioned for the date fixed.

  
(M. AMIN KHAN KUNDI)  
MEMBER

  
(M. HAMID MUGHAL)  
MEMBER

07.05.2019

Counsel for the petitioner and Addl. AG for the respondents present.

Learned counsel for the petitioner states that similar application in service appeal No. 397/2015 is pending disposal and is fixed on 18.06.2019. He, therefore, requested for adjournment of instant matter to the said date.

Adjourned accordingly.


  
Member

  
Chairman

18.06.2019

Clerk to counsel for the petitioner present. Mr. Muhammad Jan learned Deputy District Attorney present. Clerk to counsel for the petitioner requested for adjournment as learned counsel for the petitioner is not in attendance. Adjourned <sup>to</sup> 06.08.2019 before D.B.

  
Member

  
Member

Form-A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Appeal's Restoration Application No. 398/2018

S.No.	Date of order - Proceedings	Order or other proceedings with signature of judge
1	2	3
1	02.11.2018	<p>The application for restoration of appeal no. 400/2015 submitted by Mr. Muhammad Imtiaz Khalil Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 2/11/18</p>
2		<p>This restoration application is entrusted to D. Bench to be put up there on <u>12-2-2019</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
12.02.2019		<p>Counsel for the petitioner present. Notice be issued to the respondents. To come up for reply and arguments on restoration application on 14.03.2019 before D.B.</p> <p style="text-align: center;"><i>[Signature]</i> (M. Amin Khan Kundi) Member</p> <p style="text-align: center;"><i>[Signature]</i> (Muhammad Hamid Mughal) Member</p>
14.03.2019		<p><del>(Counsel for the petitioner present. Notice of restoration application be issued to the respondents. A court to come for reply and arguments on 07.05.2019 before D.B. Original record be also requisitioned for the date fixed.)</del></p> <p style="text-align: center;"><del>(AHMAD HASSAN) MEMBER</del></p> <p style="text-align: center;"><del>(M. AMIN KHAN KUNDI) MEMBER</del></p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE**

**TRIBUNAL PESHAWAR**

*Restoration Application 396/18*

CM No. \_\_\_\_\_ of 2018  
In Service Appeal No.399/2015

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 2086

Dated 2-11-18

Jafar Ali Son of Kashmir Khan (Lecturer Commerce  
Govt College Miran Shah).

... .. Appellant

**VERSUS**

Province of Khyber Pakhtunkhwa, through Chief  
Secretary, Peshawar and others

... .. Respondents

**APPLICATION FOR RESTORATION OF  
MAIN SERVICE APPEAL WHERE THE  
ABOVE SERVICE APPEAL WAS  
DISMISSED IN DEFAULT BY THIS  
HON'BLE SERVICE TRIBUNAL VIDE  
ORDER DATED 02/10/2018.**

Respectfully Sheweth:

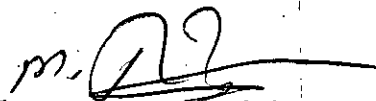
- 1) That the above titled service appeal was fixed in this august Tribunal, which was fixed for 02/10/2018.
- 2) That the uncle of counsel of the applicant/ appellant has been died on 30/09/2018 and on the date fixed before this Hon'ble Tribunal dated 02/10/2018 in the instant appeal but on the above reason the counsel of the appellant/ applicant is unable to attend this Hon'ble Tribunal.

3) That non available of the counsel of appellant on the date fixed is not willfully but due to reasons mentioned above.

It is, therefore, humbly prayed that on acceptance of this application, the main service appeal may be restored and the appeal of the applicant / appellant may be decided on merit.


Dated 02/11/2018

Applicant / appellant  
Through

  
Muhammad Imtiaz Khalil  
Advocate  
High Court, Peshawar

**AFFIDAVIT**

It is solemnly affirm and declare on oath that the contents of the above application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court/Tribunal.

Attest  
  
Muhammad Imtiaz Khalil  
Advocate  
Peshawar High Court

(1)

**IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR.**



Service Appeal No. 399 of 2015

Jaffar Ali Son of Kashmir Khan, Lecturer Commerce, Govt College of Management Sciences, Miran Shah, North Waziristan Agency.

..... Appellant

K.W.P. Proceedings  
Service Tribunal  
Duty No. 403  
Dated 23-4-2015

**VERSUS**

- 1- Province of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar.
- 2- Additional Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar.
- 3- Secretary, Industries, Commerce & Technical Education, Government of Khyber Pakhtunkhwa, Peshawar.
- 4- Director General, Technical Education & Manpower Training, Khyber Pakhtunkhwa, Benevolent Fund Building, Peshawar Saddar.
- 5- Director, Technical Education, FATA, FATA Secretariat, Wasak Road, Peshawar.

..... Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1973 FOR PAYMENT OF SALARY TO THE APPELLANT FROM 1<sup>ST</sup> JANUARY 2009 TILL THE ISSUANCE OF THE OFFICE ORDER NO. SO III(IND)TE/3-9/2012 DATED 31/12/2012, WHEREBY THE APPELLANT'S SERVICES WERE (REGULARIZED UNDER KHYBER PAKHTUNKHWA) ACT, 2009 AND THE DETERMINATION OF HIS SENIORITY AS PER SECTION 4 OF THE SAID ACT.**

Prayer in Appeal:

To treat the appellant as regularize from 1<sup>st</sup> January 2009 and to release him the salary from 1<sup>st</sup> January 2009 and seniority with all back benefits

Khyber Pakhtunkhwa Service Tribunal  
Peshawar

ATTESTED

Registered  
23/4/15

co-submitted to Govt

and filed

Registered  
8/5/15





02.10.2018

Appellant absent. Learned counsel for appellant absent.  
The present case pertains to the year 2015. Absence of appellant as well as learned counsel for appellant depicts disinterest of the appellant in the present case. Consequently the present service appeal is dismissed in default. No order as to costs. File be consigned to the record room.

*Announced*  
02-10-2018  
*sdf* *sdf*  
(*Hussain Shah*) (*M. Hamid Naghal*)  
Member Member

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation 19-10-18  
Number of Pages 800  
Copying Fee 6  
Urgency 6  
Total 6  
Name of Applicant [Signature]  
Date of Copying 25-10-18  
Date of Delivery 25-10-18

موصوف کو مقدمہ کی کارروائی

۲۵

۲۵، پنجاب

حضر علی بنام حکومت

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زر میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا لاپرواہی کے لئے

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضابطہ

مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار سے حاصل ہوں گے

اور اس کا ساختہ پرداخت منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوا مقدمہ کے

سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

20

ماہ

المرقوم

العبد گد گد العبد


کے لئے منظور ہے۔

مقام

04.04.2018


Counsel for the appellant and Addl; AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.06.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Hamid Mughal)  
Member

06.06.2018


• Learned counsel for the appellant and Mr. Zia Ullah, learned Deputy District Attorney present. Adjournment requested. To come up for arguments on 08.08.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member

07.08.2018


Clerk to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Clerk to counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 02.10.2018 before D.B

  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

02.10.2018

Appellant absent. Learned counsel for appellant absent. The present case pertains to the year 2015. Absence of appellant as well as learned counsel for appellant depicts disinterest of the appellant in the present case. Consequently the present service appeal is dismissed in default. No order as to costs. File be consigned to the record room.

  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member

ANNOUNCED.

02.10.2018

20.07.2017

Appellant in person present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 22.11.2017 before D.B.

(Gul Zeb Khan)  
Member

(Muhammad Amin Khan Kundi)  
Member

22.11.2017

Clerk to counsel for the appellant present. Mr. Riaz Khan, Assistant Advocate General for the respondents present. Clerk to counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 30.01.2018 before D.B.

(Gul Zeb Khan)  
MEMBER

(MUHAMMAD HAMID MUGHAL)  
MEMBER

30.01.2018

Clerk of the counsel for appellant and Mr. Riaz Ahmed, Pinda Kheil, Assistant AG for the respondents present. Clerk of the counsel for appellant again seeks adjournment. The present appeal pertain to the year 2015 hence, last adjournment granted at the cost of Rs. 100/-. Adjourned. To come up for arguments on 04.04.2018 before D.B.

(Muhammad Amin Khan Kundi)  
Member (J)

(Muhammad Hamid Mughal)  
Member (J)

28.07.2016

Counsel for the appellant and Addl. AG present. Written reply not submitted despite repeated adjournments including last opportunity which was further extended subject to payment of cost of Rs., 500/-. No further chance is granted. The appeal is assigned to D.B for rejoinder and final hearing for 2311.2016.

  
Chairman

23.11.2016


Counsel for the appellant and Additional AG for respondents present. Today the case was fixed for submission of rejoinder. Perusal of the previous order sheet reveals that the respondents have been placed ex-parte due to non-submission of written reply, therefore, there is no need to file rejoinder. To come up for arguments on 4.4.17 before D.B.

  
(ABDUL LATIF)  
MEMBER

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

04.04.2017

Counsel for the appellant and Mr. Adeel Butt, Addl: AG for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 20.07.2017 before D.B.

  
Chairman

22.09.2015

Counsel for the appellant present. Security and process fee not deposited. The same be deposited within a week, where-after notices be issued to the respondents for written reply/comments for 30.11.2015 before S.B.

  
Chairman

30.11.2015

Counsel for the appellant present. Security and process fee not deposited. Requested for further adjournment. Last opportunity granted. The same be deposited within a three days, where-after notices be issued to the respondents for written reply/comments for 22.3.2016 before S.B.

  
Chairman

22.03.2016

Counsel for the appellant and Mr. Zarghun Shah, AD alongwith Addl: A.G for respondents present. Written reply by respondents No. 2 and 5 submitted while learned Addl: AG requested for adjournment on behalf of respondents No. 1, 3 and 4. Last opportunity granted. To come up for written reply/comments on behalf of respondents No. 1, 3 and 4 on 23.5.2016 before S.B.

  
Chairman

23.5.2016

Counsel for the appellant and Addl. AG for the respondents present. Written reply on behalf of respondents No. 1, 3 & 4 not submitted despite last opportunity. Requested for further adjournment on behalf of respondents No. 1, 3 & 4. Last opportunity is extended subject to payment of cost of Rs. 500/- which shall be borne by respondents No. 1,3 & 4 from their own pockets. To come up for written reply/comments of respondents No. 1, 3 & 4 and costs on 28.07.2016 before S.B.

  
Chairman

Appellant Deposited  
Security & Process Fee

12.05.2015

Counsel for the appellant: Learned counsel for the appellant seeks adjournment. Adjourned to 26.05.2015 for preliminary hearing before S.B.

  
Chairman

4

26.05.2015

None present for appellant. Due to strike of the Bar adjourned for preliminary hearing to 9.6.2015 before S.B.

  
Chairman

5.

09.06.2015

Mr. Zeeshan Khalid, Advocate on behalf of counsel for the appellant present. Learned counsel for the appellant is stated indisposed. Adjourned to 23.06.2015 for preliminary hearing before S.B.

  
Chairman

6

23.06.2015

Counsel for the appellant present. Learned counsel for the appellant argued that identical service appeals No. 1071, 1074, 1075, 1076, 1077 of 2014 etc have already been admitted to regular hearing.

In view of the above, this appeal is also admitted to regular hearing. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 22.9.2015 before S.B.



  
Chairman

Form- A  
FORM OF ORDER SHEET

Court of

Case No.

399/2015

S.No.	Date of Order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	05/05/2015	<p>The appeal of Mr. Jaffar Ali resubmitted today by Mr. Muhammad simtiaz Khalil Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	11-5-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>18-5-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>




The appeal of Mr. Jafer Ali son of Kashmir Khan Lecturer Commerce Got. College of Management Sciences Miranshah received to-day i.e. on 23.04.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- ✓1- Copy of pay roll mentioned in para-7 of the memo of appeal is not attached with the appeal which may be placed on it.
- ✓2- Annexures of the appeal may be attested.
- ✓3- One copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal in file cover.

No. 627 /S.T,

Dt. 24/4 /2015

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Muhammad Imtiaz Khalil Adv. Pesh.

*Reply objection removed and Para no. 1 of objection correct & re-submitted*

*By*  
*M. [Signature]*

**IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

Service Appeal No. 399 of 2015

Jaffar Ali, Lecturer Commerce, ..... Appellant

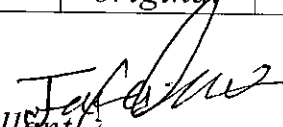
**VERSUS**

Province of Khyber Pakhtunkhwa, through Chief Secretary,  
Peshawar & others ..... Respondents


**INDEX**

<b>S.No.</b>	<b>Description of documents</b>	<b>Annexure</b>	<b>Pages</b>
1.	Memo of appeal with affidavit and memo of addresses		1-8
2.	Copy of appointment order	"A"	9
3.	Copy of Extension of Contract	"B"	10
4.	Copy of the Act 2009	"C"	11-12
5.	Copy of the judgment dated 08/03/2012	"D"	13-27
6.	Copy of Notification dated 31/12/2012	"E"	28-32
7.	Copy of Departmental appeal	"F"	33
8.	Wakalat Nama	In original	34

Dated 15/04/2015

  
Appellant

Through

  
Muhammad Imtiaz Khalil

Aziz Khan Wazir  
Advocates, High Court,  
Peshawar.

Cell # 0301-5945654

17

**IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

Service Appeal No. 399 of 2015

Jaffar Ali Son of Kashmir Khan, Lecturer Commerce, Govt College of Management Sciences, Miran Shah, North Waziristan Agency.

..... Appellant

**A.W.F. Province  
Service Tribunal**

Diary No. 403

Dated 23-4-2015

**VERSUS**

- 1- Province of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar.
- 2- Additional Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar.
- 3- Secretary, Industries, Commerce & Technical Education, Government of Khyber Pakhtunkhwa, Peshawar.
- 4- Director General, Technical Education & Manpower Training, Khyber Pakhtunkhwa, Benevolent Fund Building, Peshawar Saddar.
- 5- Director, Technical Education, FATA, FATA Secretariat, Wasak Road, Peshawar.

..... Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1973 FOR PAYMENT OF SALARY TO THE APPELLANT FROM 1<sup>ST</sup> JANUARY 2009 TILL THE ISSUANCE OF THE OFFICE ORDER NO. SO III(IND)TE/3-9/2012 DATED 31/12/2012, WHEREBY THE APPELLANT'S SERVICES WERE (REGULARIZED UNDER KHYBER PAKHTUNKHWA) ACT, 2009 AND THE DETERMINATION OF HIS SENIORITY AS PER SECTION 4 OF THE SAID ACT.**

Filed to  
Registrar  
23/4/15

re-submitted to-asp  
and filed.

Registrar  
23/4/15

Prayer in Appeal:

To treat the appellant as regularize from 1<sup>st</sup> January 2009 and to release him the salary from 1<sup>st</sup> January 2009 and seniority with all back benefits

2

*till the issuance of the notification dated 31/12/2012  
and the determination of his seniority accordingly.*

*Humbly Sheweth;*

**Facts:**

*Facts leading to the institution of the instant appeal are as under:*

- 1- That the appellant was appointed on contract vide Office Order Endst No. DTE/FATA/Admn/ Apptt./337-41(1-5) dated 26/01/2007 as Instructor by the Directorate of Technical Education FATA, FATA Secretariat in Government College of Management Sciences Miran Shah, North Waziristan Agency. (True Copy of the appointment letter is annexed herewith as Mark "A").*
- 2- That the appellant was performing his duties to the best of his abilities and the respondents extended his services on contract from time to time. It is important to mention that the appellant was holding his post on contract 31<sup>st</sup> December 2008. (True Copy is annexed herewith as Mark "B").*
- 3- That the Provincial Government of Khyber Pakhtunkhwa passed an Act NWFP Employees (Regularization of Services) Act, 2009 (NWFP Act No. XVI of 2009) whereby the services of all the employees who were holding a post "on contract or Adhoc basis and holding that post on 31/12/2008 or till the commencement of this Act shall be deemed to have been validly appoint on regular basis having the same qualification and experience for a regular post".*

3

*(True Copy of the Act is annexed herewith as Mark "C").*

- 4- *That appellant being equally entitled to benefits granted through the Act, applied to the respondents for regularization of his services under the Act. And on refusal of the respondents, the appellant filed a writ petition before the Hon'ble Peshawar High Court, Peshawar. The relief sought by the appellant from the Hon'ble Court was the regularization of his services under the beneficial provisions of NWFP Employees (Regularization of Services) Act, 2009. It would be appropriate to mention that the respondents stopped payment of salaries to the appellant since 30<sup>th</sup> June 2010 and the appellant was performing his duty without getting any salary.*
- 5- *That the appellant writ petition was allowed by the Hon'ble Court vide judgment and order dated 08/03/2012 wherein directions were given in the following words. "We therefore, issue writ in favour of the petitioners and against the respondents to the effect that the petitioners shall be deemed to be regular and permanent employees of respondent No.1 & 2 Department within the meaning of NWFP (Regularization of Services) Act, 2009 and the respondents are directed to issue notification of their regularization within a period of one month". (True Copy of Order dated 08/03/2012 are annexed as Mark "D").*

- 6- That in spite of the elapsed of one month period, respondents failed to comply with the clear directions of the Hon'ble Court. It was finally on 31/12/2012, that a notification was issued by the respondents whereby the services of the appellant were regularized under the Regularization Act of 2009. Relevant portion of the Notification is reproduced below:

**"In pursuance of the Peshawar High Court, Peshawar judgment dated 08/03/2012 announced in Writ Petition No.1289/2010 the competent authority has been pleased to regularize the service of the following employees of Technical Education Under the NWFP (Regularization of Services) Act 2009 with immediate effect." (True Copy of the notification dated 31/12/2012 are annexed herewith as Mark "E").**

- 7- That the Respondents regularize the services of the appellant under the Regularization Act of 2009 as mentioned in the Notification, however, the salary that has been given to the appellant is of fresh candidate. And except for appointment of the appellant on regular basis, the respondents have not given any benefit to the appellant to which he is entitled under the regularization Act. ~~(True Copy of the notification dated 31/12/2012 are annexed herewith as Mark "E").~~
- 8- That the appellant duly filed his Departmental Representation before the competent authority, wherein he prayed for payment of his salary as per his entitlement under the Act (from the date of the regularization of his service i.e. 1<sup>st</sup> January, 2009) as extended to other contract employees whose services were regularize under the Act and also prayed for the release of his salary from 30/06/2010 till the date of his regularization. At the same time, the appellant also requested for determination of his seniority as per mandate of Section 4 of the Act, but no heed has been paid by the respondents to his representation. (True Copy of the Departmental Appeal is annexed herewith as mark "F").

5

9- That on failure of the respondents to decide his departmental representation dated 13/12/2014 dairy No.5446, within the statutory period of ninety (90) days, the appellant being dissatisfied by the action and inaction of the respondents, approaches this Hon'ble Tribunal and challenges and seeks the release of his salary / payment as per his entitlement in view his regularization of services under the Act and accordingly his seniority inter alia on the following grounds;

**GROUND:**

- A) Because the inaction of the respondents whereby the appellant services has not been regularized in accordance with the mandate of employees Regularization Act of 2009 and the refusal of the respondents to pay him his salaries from 1<sup>st</sup> January 2009 violates the right guaranteed and secured to him under the law.
- B) Because it offends the provision of Art; 4 of the Constitution to enjoy the protection of the law and to be treated in accordance with law which is the inalienable right of every citizen, wherever he may be and of every other person for the time being within Pakistan.
- C) Because the action of the respondents is discriminatory and in blatant violation of Article of every citizen, wherever he may be, and of every other person for the time being within Pakistan.
- D) Because the action of the respondents is bad in law.
- E) Because the appellant was entitled to regularization from the commencement of the employees regularization of services Act, and also entitled to the pay and other benefits from 1<sup>st</sup> January 2009. Moreover, the appellant was not paid any salary from 30<sup>th</sup> June, 2010 till the issuance of the aforementioned notification on 31<sup>st</sup> December, 2012 though he was performing his duty in the his College, malafide is apparent.
- F) Because the seniority of the appellant has also not yet been determined in spite of the specific

6

provision provided for in the Act itself i.e. Section 4 of the Act.

- G) Because the appellant crave for leave to add further grounds at the time of his oral arguments before this Hon'ble Tribunal highlighting further contraventions of the provisions of the law which adversely affected the appellant.


**It is, therefore, most humbly prayed that on acceptance of this appeal, may be allowed and his salary and seniority with all back benefits be determined in the light of NWFP (Regularization of Services) Act, 2009.**


**Any other better relief may also kindly be granted in the circumstances of the appellant's case.**

Dated 15/04/2015

  
Appellant

Through

  
Muhammad Imtiaz Khalil

  
Aziz Khan Wazir  
Advocate, High Court,  
Peshawar.



(7)

**IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

Service Appeal No. \_\_\_\_\_ of 2015

Jaffar Ali Lecturer Commerce, ..... Appellant

**VERSUS**

Province of Khyber Pakhtunkhwa, through Chief Secretary,  
Peshawar & others ..... Respondents

**AFFIDAVIT**

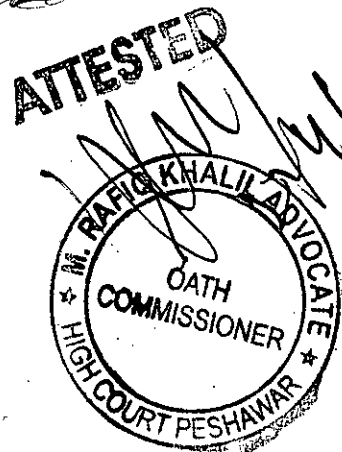
I, Jaffar Ali Son of Kashmir Khan, Lecturer  
Commerce, Govt College of Management Sciences, Miran  
Shah, North Waziristan Agency do hereby solemnly affirm  
and declare on oath that the contents of the accompanied  
appeal are true and correct to the best of my knowledge  
and belief and nothing has been concealed from this  
Hon'ble Court.

DEPONENT

*Jaffar Ali*

Identified by

*M. Imtiaz*  
Muhammad Imtiaz Khalil  
Advocate High Court,  
Peshawar



8

**IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

Service Appeal No. \_\_\_\_\_ of 2015

Jaffar Ali, Lecturer Commerce, ..... Appellant

**VERSUS**

Province of Khyber Pakhtunkhwa, through Chief Secretary,  
Peshawar & others ..... Respondents

**ADDRESSES OF THE PARTIES**

**Appellant**

Jaffar Ali Son of Kashmir Khan, Lecturer Commerce, Govt  
College of Management Sciences, Miran Shah, North  
Waziristan Agency

**Respondents**


- 1- Province of Khyber Pakhtunkhwa, through Chief  
Secretary, Peshawar.
- 2- Additional Chief Secretary FATA, FATA Secretariat,  
Warsak Road, Peshawar.
- 3- Secretary, Industries, Commerce & Technical  
Education, Government of Khyber Pakhtunkhwa,  
Peshawar.
- 4- Director General, Technical Education & Manpower  
Training, Khyber Pakhtunkhwa, Benevolent Fund  
Building, Peshawar Saddar.
- 5- Director, Technical Education, FATA, FATA  
Secretariat, Wasak Road, Peshawar.

Dated 15/04/2015

Appellant

Through

  
M. Imtiaz Khalil  
Muhammad Imtiaz Khalil

  
Aziz Khan Wazir  
Advocates, High Court,  
Peshawar.

Annexure "A"

9

2

43

DIRECTORATE OF TECHNICAL EDUCATION (FATA)  
CIVIL SECRETARIAT (FATA)  
WARSAK ROAD PESHAWAR

OFFICE ORDER.

Mr. Jaffar Ali Khan S/O Kashmir Khan is hereby appointed as Instructor (Business Administration) on fixed pay @ Rs. 8000/- P.M in Government College of Management Sciences, Miranshah (N.W. Agency) with effect from date of taking over the charge. His appointment is subject to the following terms and condition:-

TERMS AND CONDITIONS:

1. His appointment will be on fixed pay for a period of one year or till the arrival of selectees of the NWFP Public Service Commission which ever is earlier.
2. His appointment on fixed pay shall not confer on him any right of appointment on regular basis.
3. He will not be entitled for any TA/DA for joining service.
4. If he wishes to accept the post on the above terms and conditions, he should report for duty to the Principal, Government College of Management Sciences, Miranshah (N.W. Agency) immediately failing which the offer of appointment will be treated as cancelled.

Sd/-

DEPUTY DIRECTOR (TE) FATA

Endst: No. DTE/FATA/Admn/Appnt/ 357-41C1-57. Dated 26/01/2007  
Copy forwarded for information and necessary action to:-

- 1) The A.G.P.R (Sub Office), Peshawar.
- 2) The Principal, GCMS, Miranshah (N.W. Agency).
- 3) The Political Agent, Miranshah (N.W. Agency).
- 4) Mr. Jaffar Ali Khan S/O Kashmir Khan, Civil Colony Miranshah Quarter No. 136 N.W. Agency.
- 5) Personal file of the officer / official concerned.
- 6) Accounts Dept Office

Parveen

(PARVEEN AHMAD RAH) ASSISTANT DIRECTOR (TE) FATA

M. Faraz

Attested

Amir

Attested

by

M. Faraz

## Annexure "B"

DIRECTORATE OF TECHNICAL EDUCATION (FATA)  
FATA SECRETARIAT WASAK ROAD PESHAWAR.

(10)

27

## NOTIFICATION

The competent authority is pleased to re-appoint/ extend the services of the following fixed pay staff working in GTIs, and GCMS (FATA) on the existing terms and conditions w.e.f. 04-07-2009 to 30-06-2010.

S.No.	Name and Designation
1)	Government College of Management Science, Janirud (Khyber Agency)
1-	Sadat Khan, Instructor English.
2-	Mahammad Fayaz Afridi, Instructor (C.S)
3-	Rahim Dad Khan, Instructor (Comp: Science)
4-	Waqar Ahmad, Instructor (Comp: Science)
2)	Government College of Management Science, Khar (Bajuar Agency)
1-	Irfan Ullah, Instructor (B:Admn)
2-	Snageen Khan, Instructor (B:Admn)
3-	Muhammad Ibrahim, Instructor (English).
4-	Muhammad Ilyas, Instructor (Physics)
5-	Hayat Ullah, Instructor (Physics)
6-	Abdul Qadoos, instructor (Computer Science)
7-	Almad Shah, (D.P.E)
3)	Government College of Management Science, Ghallani (Mohmand Agency)
1-	Irfan Qadar, Instructor ( Comp: Science )
2-	Shaid Alam, Instructor ( Comp:Science )
3-	Itaf Hussain, Instructor(Comp: Science )
4-	Ifthikhar Ali, Instructor ( Physics)
5-	Asif Khan, Instructor (Physics).
6-	Sajjad Ahmad, Instructor ( Comp: Science )
7-	Zeenat Shah, Instructor ( B. Admn )
8-	Muhammad Iqbal, instructor ( B.Admn)
9-	Muhammad Ilyas, Instructor ( B.Admn)
10-	Khial Bahader, Instructor ( B.Admn )
11-	Sartaj Aziz, Instructor ( B.Admn )
12-	Inam Khan, Instructor ( Librarian )
13-	Rehan-ud-Din, Instructor ( D.P.E )
4)	Government College of Management Science, Parachinar (Kurram Agency)
1-	Shaukat Hussain, Instructor (B.Admn)
2-	Anjad Ali, Instructor (B.Admn)
5)	Government College of Management Science, Miranshah ( N.W.Agency)
1-	Noor Hassan, Instructor (C.Science)
2-	Jaffar Ali Khan, Instructor (B.Admn)
3-	Shafi-ur-Rehman, Instructor (B.Admn)
4-	Jamshid Alam, Instructor ( D.P.E )
5-	Muhammad Talir Shah, Insr (English)
6-	Shaid Khan Masood, instructor (Comp:Sciences).
6)	Government Technical Institute, Bara (Khyber Agency)
1-	Sajidullah, Instructor ( English )
7)	Government Technical Institute, Ekka Ghund (Mohmand Agency)
1-	Muhammad Iqbal, Instructor (Telecom)
2-	Rehmat Khan, Instructor (Telecom)
3-	Muhammad Iqbal, Instructor (English)

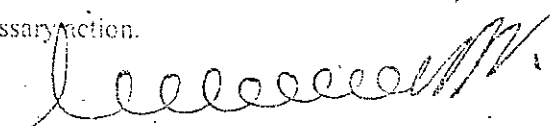
sd/-  
DIRECTOR,

INDS: MENRAL &amp; TECH: EDU: (FATA)

ENDST: No.DET/&amp;MT/P&amp;D/FATA/1-35/2102-16 Dated 1/8/2009.

Copy is forwarded for information to:-

- 1- The Accountant General, (PR), Sub-Officer, Peshawar.
- 2- P.S. to Secretary Admn & Coord FATA, Secretariat Peshawar.
- 3- All Principals, GCMS/GTIs in FATA.
- 4- Accountant H.Q. Peshawar for information & necessary action.

  
ASSISTANT DIRECTOR (TE)

Attested  
by  
107.02/10

Notifications

20th October 2010 | (N-W.F.P. ACT NO. XVI OF 2009)

**THE NORTH-WEST FRONTIER PROVINCE EMPLOYEES  
(REGULARIZATION OF SERVICES) ACT, 2009.**

NOTIFICATION

Dated Peshawar, the 24<sup>th</sup> October, 2009.

No.PA/NWFP/Bills/2009/38472.—The North-West Frontier Province Employees (Regularization of Services) Bill, 2009 having been passed by the Provincial Assembly of North-West Frontier Province on 15<sup>th</sup> October, 2009 and assented to by the Governor of the North-West Frontier Province on 20<sup>th</sup> October, 2009 is hereby published as an Act of the Provincial Legislature of the North-West Frontier Province.

THE NORTH-WEST FRONTIER PROVINCE EMPLOYEES (REGULARIZATION OF SERVICES) ACT, 2009 (N-W.F.P. ACT NO. XVI OF 2009)

*(First published after having received the assent of the Governor of the*

*North-West Frontier Province in the Gazette of the N.W.F.P. (Extraordinary),*

*Dated the 24<sup>th</sup> October, 2009).*

AN ACT

*to provide for the regularization of the services of certain employees appointed on adhoc or contract basis.*

**Preamble.** ---WHEREAS it is expedient to provide for the regularization of the services of certain employees appointed on adhoc or contract basis, in the public interest, for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. **Short title and commencement.** --- (1) This Act may be called the North- West Frontier Province Employees (Regularization of Services) Act, 2009.

(2) It shall come into force at once and shall be deemed to have been taken effect at the promulgation of the Ordinance.

2. **Definitions.** --- (1) In this Act, unless the context otherwise requires,-

(a) "Commission" means the North-West Frontier Province Public Service Commission;

(aa) "contract appointment" means appointment of a duly qualified person made on a contract basis in accordance with the prescribed method of recruitment;

(b) "employee" means an employee on contract appointed by Government on adhoc or contract basis on second shift/night shift but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies;

(c) "Government" means the Government of the North-West Frontier Province ;

(d) "Government Department" means any department constituted under rule 3 of the North-West Frontier Province Government Rules of Business, 1985;

(e) "law or rule" means the law or rule for the time being in force governing the

Attested  
by  
M. [Signature]

(2) The expressions "ad hoc appointment" and "civil servant" shall have the same meanings as respectively assigned to them in the North-West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act No. XVIII of 1973).

3. Regularization of services of certain employees.--- All employees including recommendees of the High Court appointed on contract or ad hoc basis and holding that post on 31<sup>st</sup> December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post:

Provided that the service promotion quota of all service cadres shall not be affected.

4. Determination of seniority.--- (1) The employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.

(2) The seniority *inter se* of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:

Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

4A. Overriding effect.--- Notwithstanding any thing to the contrary contained in any other law or rule for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rule to the extent of inconsistency to this Act shall cease to have effect.

5. Repeal.--- The North-West Frontier Province Employees (Regularization of Services) Ordinance, 2009 (N.-W.F.P. Ordinance No. VII of 2009) is hereby repealed.

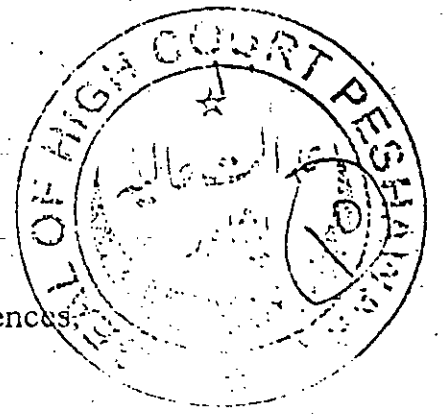
-----  
By the orders of Mr. Speaker  
Provincial Assembly of Khyber Pakhtunkhwa  
Secretary  
Provincial Assembly of Khyber Pakhtunkhwa

Attest

by  
m. [Signature]

IN THE PESHAWAR HIGH COURT  
PESHAWAR

Annexure "D" (13)  
W.P. No. 1145/2010



- 1- Noor Hasan Khan son of Gul Sher Khan,  
Instructor in Government College of Management Sciences,  
Miranshah, North Waziristan Agency.
- 2- Muhammad Fayyaz Afridi son of Shad Muhammad Afridi,  
Instructor in Government College of Management Sciences,  
Jamrud, Khyber Agency.
- 3- Waqar Ahmad son of Afsar Shah,  
Instructor in Government College of Management Sciences,  
Jamrud, Khyber Agency
- 4- Saadat Khan son of Khanan Khan,  
Instructor in Government College of Management Sciences,  
Jamrud, Khyber Agency.
- 5- Rahimdad Khan son of Waris Khan,  
Instructor in Government College of Management Sciences,  
Jamrud, Khyber Agency
- 6- Muhammad Tahir Shah son of Muhammad Subhan,  
Instructor in Government College of Management Sciences,  
Miranshah, North Waziristan Agency.
- 7- Jaffar Ali Khan son of Kashmir Khan,  
Instructor in Government College of Management Sciences,  
Miranshah, North Waziristan Agency.
- 8- Jamshaid Alam son of Shah Salam,  
Instructor in Government College of Management Sciences,  
Miranshah, North Waziristan Agency.
- 9- Shafi-ur-Rehman son of Qandahar Khan,  
Instructor in Government College of Management Sciences,  
Miranshah, North Waziristan Agency.

ATTESTED  
EXC. CLERK  
Peshawar High Court.

FILED TODAY

Deputy Registrar  
20 MAR 2010

Petitioners

Versus

1- N.W.F.P.,  
Through Chief Secretary,  
Peshawar.

Attested  
by  
M. O. J.

2- Additional Chief Secretary,  
FATA Secretariat, Warsak Road,  
Peshawar.

(14)

2

(11)

3- Secretary,  
Industries & Tech. Education,  
N.W.F.P,  
Peshawar.

4- Director,  
Technical Education and Manpower Training,  
N.W.F.P, Peshawar.

5- Director,  
Technical Education, FATA  
Governor Secretariat, FATA,  
Warsak Road, Peshawar.

6- Secretary to Governor,  
Governor Secretariat,  
Peshawar.

7- Accountant General Pakistan Revenue,  
Peshawar.

...Respondents

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

Respectfully sheweth:

- 1- That the Directorate of Technical and Manpower, Government of N.W.F.P invited applications, inter alia, for the post of Instructors (BPS-17) in various Disciplines for Government colleges in Federally Administered Tribal Areas ("FATA") vide advertisement date 31.08.2006.

(True Copy of the advertisement is annexed as marked

"A")

EXAMINER  
Peshawar M.C. Court

- 2- That the Petitioners duly applied for the said post and after going through test/interview, were declared successful and were appointed as Instructors in BPS-17 on Contract for 1 year in various

Attested  
by  
M. O. J.



(15)

(25)

JUDGMENT SHEET  
PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT.

W.P. No. 116 of Year 2010

JUDGMENT

Date of hearing: 8-3-2012

Appellant: ~~Mrs. Noor Hassan Khan ETC~~ by Mr. Jehanzeb

Respondent: ~~(G.O.T.) by Mr. Waqar Ali Khan Pasour~~

MIAN FASIHUL MULK, J.- For the reasons

recorded in our detailed judgment of even date in W.P.

No.1289/2010, this writ petition is also accepted in the

terms stated therein.

Announced  
08.03.2012

sd/ Miftakh ul Din Khan

sd/ Mian Fasih ul Mulk

CERTIFIED TO BE TRUE COPY

  
Peshawar  
Authorised  
The Court of Sessions, Peshawar, 1954

17/3/12

Attested  
by  
m. r. j.

et/nc  
14/3

JUDGMENT SHEET  
PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT.

W.P. No. 1289 of Year 2010

JUDGMENT

Date of hearing: 8-3-2012

Appellant: *(Mian Fasihul Mulik)* by Mr. *Roshid Amin Adv.*

Respondent: *(Govt NWFP)* by Mr. *Muzaf Ali DAG and Mr. Roshid Amin Advocate & respondents.*

MIAN FASIHUL MULK, J.- Petitioners, through

instant petition, seek the indulgence of this Court by issuing directions to respondents to treat the petitioners as regularized employees under the NWFP Employees (Regularization of Services) Act, 2009. The petitioners in connected Writ Petitions No. 1145/2010, 1252/2010, 2639/2010, 1870/2011, 2992/2011, 3244/2011, 3285/2011 and 46/2012, have also similar grievances against the respondents, therefore, we propose to dispose of all the writ petitions through this common judgment in W.P. No.1289/2010.

2. In these petitions the common point of law involved is whether petitioners' appointment on various posts in the respondents' department in pursuance to the advertisement made in the newspapers was on contract basis so as to attract the provisions of Section 3 of

Attested  
by  
*m. o. j.*

ATTESTED  
Peshawar High Court

17

NWFP (Regularization of Services) Act, 2009 for their regularization or not.

3. To understand the position, we would take into account the advertisement made in the press, the appointment orders of petitioners, their salary slips and relevant provisions of the Act, 2009 but before that we may give here a brief resume of the facts and circumstances leading to filing of instant petitions.

4. The Director Technical Education & Man Power Training, Peshawar (respondent No.4) advertised certain posts of Instructors, Junior Instructors, Librarians etc. in BPS 14, 16 and 17 lying vacant in various Government Colleges of Management Sciences Ghalani, Khar Bajaur, Parachinar, Miranshah and Government Technical Institutes Bara, Yakka Ghund, Sadda Miranshah and Ghaljai on contract basis for one year extendable to a further period. Petitioners having requisite qualification for the respective posts applied for appointment.

5. A Recruitment Committee was constituted comprising of Deputy Secretary (P&D), Deputy Secretary (Admn), Director Technical Education, NWFP and Deputy Director Technical Education FATA assisted by subject specialists/experts. Merit list of the candidates for each category was prepared and submitted for

Attended  
by  
M. O. J.

ATTES TED  
[Signature]

Personnel & Court

approval of Governor, which was accordingly approved and petitioners were issued the appointment orders.

6. On completion of one year term, the contract was extended from time to time without any break till the year 2009, when the NWFP (Regularization of Services) Act, 2009 was promulgated where under the employees appointed on adhoc or contract basis by the Government were given the status of regular employees. Petitioners represented against before respondent No.1 for their regularization but the same was denied to them on the ground that they were not appointed on contract basis rather their appointment was on fixed pay against the project posts; hence they were not qualifying the conditions as contained in the Act *ibid*.

7. We have heard learned counsel for the parties and have also gone through the record appended with these petitions.

*dm*

8. A look at the advertisement at Annexure:A would disclose that the posts were on contract basis. The appointment orders issued to petitioners would reveal that though their appointments were made on fixed pay but Para-2 of the terms and conditions contained in the said appointment letters was to the effect that, "their period of selection was for one year or till the creation

Attested  
by  
*m A J*

ATTESTED  
*[Signature]*  
EXAMINER  
Peshawar High Court

of regular posts/arrival of NWFP Public Service Commission nominee which ever is earlier."

(19)

From the above, no doubt remains that although appointment of petitioners was on fixed pay but the posts on which petitioners were appointed were not temporary posts rather regular one liable to be filled through regular appointment.

9. Except the bald allegation of respondents that petitioners were project employees and daily wages, nothing has been brought on record to show that their appointments were made on the posts meant for a Project. Annexure:E at Page-43 is the Summary for Governor. According to it, the Governor was pleased to upgrade the existing five Government Commercial Training Institutes in FATA to the level of College of Management Sciences so as to offer Bachelor's degree in Business Administration and Information Technology to the students. For the purpose, Schedule for New Expenditure (SNE) was prepared to recruit the regular staff and forwarded to SAFRON Division for sanction. It further reveals that recruitment of staff being a lengthy process, it was proposed that for the purpose of starting the classes staff may be recruited on contract basis till appointment of regular staff and their salaries may be paid from ADP. From the above summary, which is duly

Attested  
M. P. J.

ATTESTED

approved by the Governor, it is very much evident that  
neither the posts to be filled in were temporary nor the  
same were meant for any Project except that their  
salaries were to be paid from ADP. (20)

10. A similar question had arisen before the august  
Supreme Court of Pakistan in the case of Ali Akbar vs.  
The Government of NWFP (C.P. No.462-P of 2006)  
decided on 05.05.2009, wherein it was held as under:-

*"The petitioner's appointment by office order  
dated 04.02.1985 was as Research Officer in  
BPS-16 and according to Para-7 of the said  
order, it was a stop gap arrangement and on  
ad-hoc basis till the regular appointee. The  
petitioner's appointment order mentions  
three different terms as regard his status,  
namely, "on temporary basis", "stop gap  
arrangement" and "one ad-hoc basis".  
However, Para-7 of the order mentions his  
appointment on ad-hoc basis to continue till  
the post is filled up through regular  
appointment. It follows that the post to which  
the petitioner was appointed was not a  
temporary post but a regular post liable to be  
filled through regular appointment. The*

Attested

by  
M. [Signature]

(21)

order of appointment also does not mention anywhere that the post in question was a temporary one. Furthermore, the petitioner's appointment in a particular pay scale as Assistant Research Officer in the Directorate of Agriculture Research establishes that the petitioner's appointment was on ad-hoc basis on a regular post in the Directorate. By the same office order, the petitioner was posted against a vacancy in the Project Research on the Cultivation of Edible Mushroom in Pakistan. The order, therefore, had made a clear distinction against the petitioner's appointment and posting, whereas he was appointed in the Directorate of Agriculture Research, he was posted in a project against vacancy. It is, therefore, wrong to say that the petitioner was a project employee and termination of his service on that score cannot be maintained."

11. The objection of respondents that petitioners were appointed against project posts in view of the advertisement and summary to Governor is not sustainable.

ATTESTED  
EXAMINER  
S. I. S. Court.

Attested  
by

M. R. J.

12. — As per Section 3 of the NWFP (Regularization of Services) Act, 2009, all employees appointed on contract or ad-hoc basis and holding that post on 31<sup>st</sup> December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post. Under Section 2(b), the word "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees of project post or appointed on work charge basis or who are paid out of contingencies.

In

13. Admittedly, the posts were advertised on contract basis and petitioners were appointed on the posts having requisite qualification after going through the process of test and interview conducted by a Recruitment Committee. There is no mention in the appointment order that petitioners' appointment is against the project posts except that their appointment was made on fixed pay as against the terms of advertisement wherein the posts were clearly mentioned to be on contract basis. The salary slips of petitioners also indicate that though they were being paid fixed pay but their post is clearly written to be "contract" post. The

Attested  
by  
*[Signature]*

ATTES  
*[Signature]*  
OFFICER  
General Administration Deptt



petitioners also draw their salaries from the AGPR. The other objection of the Department that the petitioners were appointed on fixed pay, hence their services could not be regularized is, therefore, also nothing but a trick played by the respondents in the appointment orders to avoid monetary benefits of the posts to which the petitioners under the law were entitled to get. The term "fixed pay" has not been defined in service laws. As stated above, the petitioners' appointments were made in pursuance to the advertisement published in the press against the posts on contract basis and it can, therefore, be safely inferred that status of petitioners' was that of contract employees regardless of the words "fixed pay" used in their appointment letters.

14. The respondents, during the course of proceedings in these writ petitions, sought time on so many occasions that the Government has in principles decided to regularize the petitioners by proposing legislation to cater therefore, and even copy of a bill contending to be placed before the Parliament, was also produced but till to-date nothing has been done.

15. The respondents while inviting the attention of this Court to Para-3 of Appointment letters, contended that as the petitioners have accepted the terms and

*Attested*  
*M*  
*M. R. S.*

ATTESTED  
 EXAMINER  
 Public Court.

24

conditions of their appointment, wherein it is categorically mentioned that petitioners will not be considered for regularization at any stage, at any time, being employees on fixed pay, therefore; the principle of estoppel would attract to their cases. We have not been impressed by the arguments on two counts; one that there can be no estoppel against Statute and second that an employee at the time of appointment has little choice to enforce any condition of his choice on the employer. In the case of Ikram Bari and 524 others vs. National Bank of Pakistan through President and another (2005 SCMR 100) it has been held by their lordships in the following words:-

*"It is difficult to countenance the approach of the Bank that the temporary Godown staff and the daily wages employees should be continued to be governed on disgraceful terms and conditions of service for an indefinite period. In view of section 24-A of the General Clauses Act 1897, the National Bank was required to act reasonably, fairly and justly. An employee being jobless and in fear of being shown the door had no option but to accept and continue with the appointment on whatever conditions it was offered by the Bank. In the case of Pakistan v. Public at Large P.O. 1987 SC 304, it was contended before the*

Attested  
by  
*[Signature]*

ATTESTED  
*[Signature]*

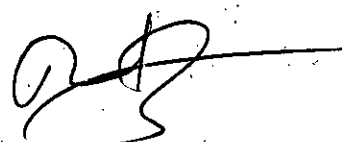
(25)

Shariat Appellate Bench of this Court that the provisions of law impugned therein amounted to a contract between the Government and the civil servant and thus they involved his consent. It was observed that in fact it was not in the nature of a free consent between the agents. On one hand, State power was projected in the form of a Statute and on the other; the civil servant had no choice of a bargain on those provisions when joining the service. He could not get it changed. In *Habibullah v. Government of the Punjab and 5 others* PLD 1980 Lah. 37, it was held that the employer being placed in a position of authority and strength could always coerce employees to waive their legal protection and accept contractual terms at the pains of losing his job.

15. We may observe here that firstly, the respondents utilized the word "fixed pay" in their appointment letters purely as a means of evading their statutory obligations in terms of the service laws and also to save money by denying them the opportunity of pension/provident fund benefits etc; although their appointments were made in accordance with the prescribed method of recruitment and through a duly constituted Recruitment Committee and secondly, when

Attested

by  
m.



ATTESTED



Registrar  
Peshawar High Court.


the right of their regularization accrued in view of the promulgation of the Act, 2009 they denied them such benefit and came up with lame excuses before this Court that they were project employees, daily wages and payee out of contingency. The petitioners, as is evident from the record, are neither project employees, nor daily wages nor receiving salary from contingency but were contract employees on regular posts and after promulgation of NWFP (Regularization of Services) Act, 2009, have now assumed the status of regular employees of the Department. The acts of respondents being reprehensible amounts to exploitation of petitioners at their own expense and are, therefore, liable to be declared as illegal and in excess of lawful jurisdiction.

26

16. We, therefore, issue writ in favour of petitioners and against the respondents to the effect that petitioners shall be deemed to be regular and permanent employees of respondents' No.1 and 2 Department within the meaning of NWFP (Regularization of Services) Act, 2009 and the

Attested

ATTESTED  


respondents are directed to issue notification of their regularization within a period of one month.

27

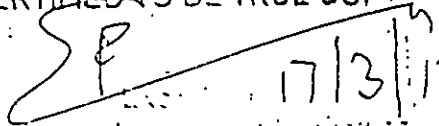
Announced  
03.03.2012

S/O - Mir Tahir Dikhan  
S/O - Mir Pasitull Mulla

efore-  
17/3


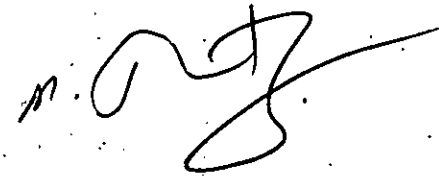
17/3/12  
S/O  
17/3/12  
E/S

CERTIFIED TO BE TRUE COPY

  
17/3/12  
Pesnawa  
Author  
The Com

12452

Application 15/3/12  
15 p  
30  
Preparation of Copy 17-3-12  
Given For Delivery 17/3/12  
Copy of Copy 17/3/12  
Copy to be 2

Attested  
  




Annexure "E"

(28)

Dated Peshawar the \_\_\_\_\_

NOTIFICATION

No. SOIII(IND)TE/3-9/2012.

In pursuance of the Peshawar High Court, Peshawar judgment dated 08-03-2012 announced in Writ Petition No.1289/2010 the Competent Authority has been pleased to regularize the services of the following employees of Technical Education under the NWFP (Regularization of Services) Act 2009 with immediate effect:-

SR#	NAME & FATHER NAME
1	Mr. Shahid Khan Masood S/o Sarfraz
2	Mr. Shahid Alam S/o Mohammad Nisar
3	Mr. Irfanullah S/o Amanullah
4	Mr. Asif Khan S/o Noor Rahim
5	Mr. Rahmat Khan S/o Gulzar Khan
6	Mr. Mohammad Iqbal S/o Ali Rehman
7	Mr. Inam Khan S/o Fazal Manan
8	Mr. Mohammad Iqbal S/o Gul Said
9	Mr. Ahmed Shah S/o Niaz Amin-
10	Mr. Iltaf Hussain S/o Maqbool Khan
11	Mr. Irfan Qadir S/o Fazal Qadir
12	Mr. Khial Bahadar S/o Bahadar Khan
13	Mr. Rehanud Din S/o Shabud Din
14	Mr. Sajjad Ahmad S/o Abdul Ghafar
15	Mr. Sartaj Aziz S/o Zarabat Khan
16	Mr. Zeenat Shah S/o Mehraban Shan
17	Mr. Iftikhar Ali S/o Mohammad Akbar
18	Mr. Ikhtiar Zada S/o Habibul Hassan
19	Mr. Hayat Ullah S/o Wahid Ullah
20	Mr. Abdul Qadoos S/o Mohammad Hazrat
21	Mr. Mohammad Ilyas S/o Khanzada
22	Mr. Mohammad Ibrahim S/o Kabal Khan
23	Muhammad Ilyas S/o Mohammad Akram
24	Mr. Sangeen Khan S/o Khair Mohammad
25	Mr. Sajjid Ullah S/o Sher Azam Khan
26	Mr. Jaffar Ali S/o Kashmir Khan
27	Mr. Jamshid Alam S/o Shah Salam
28	Mr. Shafiur Rehman S/o Qandahar Khan
29	Mohammad Tahir Shah S/o Mohammad Subhan

Attested  
by

M. O. B.

30	Mr. Noor Hassan Shah S/o Gul Sher Khan
31	Mr. Waqar Ahmed S/o Afsar Shah
32	Mr. Saadat Khan S/o Khanan Khan -
33	Mr. Rahim Dad Khan S/o Waris Khan
34	Mr. Mohammad Fayaz Afridi S/o Shad Mohammad
35	Mr. Amjid Ali S/o Shaban Ali
36	Mr. Mohammad Iqbal S/o Mohammad Hazrat
37	Mr. Shoukat Hussain S/o Gulab Hussain
38	Mr. Tahir Ayub S/o Mohammad Usman
39	Mr. Amjid Ali S/o Hussain Ali
40	Mr. Muhammad Iqbal S/o Fazal Rahim
41	Mr. Sullah Ud Din S/o Mohammad Rehman
42	Mr. Mohammad Ayub S/o Abdul Saced Jan
43	Mr. Abdul Aziz S/o Rahim Badshah
44	Mr. Mumtaz Khan S/o Zahir Shah
45	Mr. Shahan Zeb S/o Sher Bahadar
46	Mr. Fareed Ullah S/o Essar Khan
47	Mr. Ikramullah S/o Noor Nawaz
48	Mr. Mohammad Hamayun S/o Ibrahim Ali
49	Mr. Said Badshah S/o Hazrat Badshah
50	Mr. Shah Zarin Khan S/o Naurang Khan
51	Mr. Noor Zada S/o Haya Khan
52	Mr. Kashif Amin S/o Amin Ul Haq
53	Syed Athar Ali Shah S/o Syed Munawar Ali Shah
54	Syed Hussain Ali Shah S/o Kamran Ali Shah
55	Mr. Asif Ali S/o Ghulam Abbas

2. Consequent upon their regularization the following posting are hereby made as under:-

SR#	NAME & FATHER NAME	POSTING
1	Mr. Shahid Khan Masood S/o Sarfraz	As Lecturer (Computer Science), BPS-17 GCMS, D.I.Khan.
2	Mr. Shahid Alam S/o Mohammad Nisar	As Lecturer (Computer Science) BPS-17, GCMS Charsadda.
3	Mr. Irfanullah S/o Amanullah	As Lecturer (Commerce) BPS-17, GCMS Bannu.
4	Mr. Asif Khan S/o Noor Rahim	As Lecturer (Physics), BPS-17, GCT Swabi.
5	Mr. Rahmat Khan S/o Gulzar Khan	As Lecturer (Telecom) BPS-17, GTI Khair B/Agency.
6	Mr. Mohammad Iqbal S/o Ali Rehman	As Lecturer (Telecom), BPS-17, GTI Khar (B/Agency)
7	Mr. Inam Khan S/o Fazal Manan	As Librarian, BPS-17, GCT Kohat.
8	Mr. Mohammad Iqbal S/o Gul Said	As Lecturer (Commerce), BPS-17, GCMS Charsadda
9	Mr. Ahmed Shah S/o Niaz Amin	As Director Physical Education BPS-17, GCMS Chitral.

Attest  
b

M. O. R. J.

10	Mr. Iltaf Hussain S/o Maqbool Khan	As Lecturer(Computer Science), BPS-17, GCMS Nowshera
11	Mr. Irfan Qadir S/o Fazal Qadir	As Lecturer(Computer Science), BPS-17, GCMS Mardan.
12	Mr. Khial Bahadar S/o Bahadar Khan	As Lecturer(Commerce), BPS-17, GCC No.02 Mardan.
13	Mr. Rehanud Din S/o Shabud Din	As Director Physical Education(DPE) BPS-17, GFI Bara Khyber Agency.
14	Mr. Sajjad Ahmad S/o Abdul.Ghafar	As Lecturer(Computer Science), BPS-17, GCMS Sangota Swat.
15	Mr. Sartaj Aziz S/o Zarabat Khan	As Lecturer(Commerce), BPS-17, GCMS Thana
16	Mr. Zeenat Shah S/o Mehraban Shan	As Lecturer(Commerce), BPS-17, GCMS Kohat
17	Mr. Iftikhar Ali S/o Mohammad Akbar	As Lecturer(Physics), BPS-17, GPI Takht Bhai
18	Mr. Ikhtiar Zada S/o Habibul Hassan	As Lecturer(Commerce), BPS-17, GCMS Sangota Swat.
19	Mr. Hayat Ullah S/o Wahid Ullah	As Lecturer(Physics), BPS-17, GCT Nowshera.
20	Mr. Abdul Qadoos S/o Mohammad Hazrat	As Lecturer(Computer Science), BPS-17, GCMS Chitral.
21	Mr. Mohammad Ilyas S/o Khanzada	As Lecturer(Physics); BPS-17, GTI Miranshsh(NWA)
22	Mr. Mohammad Ibrahim S/o Kabal Khan	As Lecturer(English), BPS-17, GCMS Khar B/Agency.
23	Mr. Mohammad Ilyas S/o Mohammad Akram	As Lecturer(Commerce), BPS-17, GCMS Charsadda.
24	Mr. Sangeen Khan S/o Khair Mohammad	As Lecturer(Commerce), BPS-17, GCMS Charsadda.
25	Mr. Sajjid Ullah S/o Sher Azam Khan	As Lecturer(English), BPS-17, GCT Peshawar
26 ✓	Mr. Jaffar Ali S/o Kashmir Khan	As Lecturer(Commerce), BPS-17, GCMS(NWA)
27 ✓	Mr. Jamshid Alam S/o Shah Salam	As Director Physical Education BPS-17, GCMS Parachinar (K/Agency).
28 ✓	Mr. Shafiur Rehman S/o Qandahar Khan	As Lecturer(Economics), BPS-17, GCMS Lakki
29	Mr. Mohammad Tahir Shah S/o Mohammad Subhan	As Lecturer(English), BPS-17, GCMS Kohat
30	Mr. Noor Hassan Shah S/o Gul Sher Khan	As Lecturer(Computer Science), BPS-17, GCMS Bannu.
31	Mr. Waqar Ahmed S/o Afsar Shah	As Lecturer(Computer Science), BPS-17, GCMS Charsadda
32	Mr. Saadat Khan S/o Khanan Khan	As Lecturer(English), BPS-17, GCMS Kohat
33	Mr. Rahim Dad Khan S/o Waris Khan	As Lecturer(Computer Science), BPS-17, GCMS Thana
34	Mr. Mohammad Fayaz Afridi S/o Shad Mohammad	As Lecturer(Computer Science), BPS-17, GCC Hangu.
35	Mr. Amjid Ali S/o Shaban Ali	As Librarian, BPS-17, GCMS Karak
36	Mr. Mohammad Iqbal S/o Mohammad Hazrat	As Lecturer(English), BPS-17, GCT Timergara (Lower Dir)
37	Mr. Shoukat Hussain S/o Gulab Hussain	As Lecturer(Commerce), BPS-17, GCMS Parachinar
38	Mr. Tahir Ayub S/o Mohammad Usman	As Lecturer(English), BPS-17, GTI Sadda K/Agency
39	Mr. Amjid Ali S/o Hussain Ali	As Lecturer(Commerce), BPS-17, GCMS Parachinar
40	Mr. Muhammad Iqbal S/o Fazal Rahim	As Lecturer(Commerce), BPS-17, GCMS Chitral.

Attested

*[Handwritten Signature]*



(21)

41	Mr. Sallah Ud Din S/o Mohammad Rehman	As Lecturer(Commerce), BPS-17, GCTI, Wari(Dir Upper)
42	Mr. Mohammad Ayub S/o Abdul Saeed Jan	As Lecturer(English), BPS-17, GCMS Nowshera.
43	Mr. Abdul Aziz S/o Rahim Badshah	As Lecturer(Commerce), BPS-17, GCMS Chitral
44	Mr. Mumtaz Khan S/o Zahir Shah	As Lecturer(Computer Science), BPS-17, GCMS Lakki
45	Mr. Shahan Zeb S/o Shey Bahadar	As Lecturer(Commerce), BPS-17, GCMS Khar (B/Agency)
46 ✓	Mr. Fareed Ullah S/o Essar Khan	As Lecturer(Computer Science), BPS-17, GCMS D.I.Khan
47 ✓	Mr. Ikramullah S/o Noor Nawaz	As Lecturer(Computer Science), BPS-17, GCMS Lakki.
48	Mr. Mohammad Hamayun S/o Ibrahim Ali	As Lecturer(Physics), BPS-17, GCMS Parachinar.
49	Mr. Said Badshah S/o Hazrat Badshah	As Junior Instructor DAE(Telecom), BPS-14 GTI Ekkaghund
50--	Mr. Shah Zarin Khan S/o Naurang Khan	As Lecturer(Physics), GCT Tangi
51	Mr. Noor Zada S/o Haya Khan	As Lecturer(Computer Science), BPS-17, GCT Tangi.
52	Mr. Kashif Amin S/o Amin Ul Haq	As Lecturer(Computer Science), GCMS Parachinar
53	Syed Athar Ali Shah S/o Syed Munawar Ali Shah	As Lecturer(Commerce), BPS-17, GCMS Parachinar
54	Syed Hussain Ali Shah S/o Kamran Ali Shah	As Lecturer(Commerce), BPS-17, GCMS Parachinar
55	Mr. Asif Ali S/o Ghulam Abbas	As Lecturer(Computer Science), BPS-17 GCMS Parachinar.

**Terms and conditions of their Regular Appointment will be as under:-**

- a. They will get pay at the minimum of BPS-17 including usual allowances as admissible under the rules. They will also be entitled to annual increments as per existing policy.
- b. They shall be governed by the Khyber Pakhtunkhwa, Civil Servants Act, 1973, all the laws applicable to the Civil Servants and rules made there-under.
- c. They shall for all intents and purposes, be Civil Servants except for purpose of pension & gratuity. In lieu of pension and gratuity, they shall be entitled to receive such amount as would be contributed by them towards Contributory Provident Fund(CPF) alongwith the contributions made by Government to their account in the said fund in the prescribed manner.
- d. Their employments in the department in purely temporary and their services are liable to be terminated without assigning any reason at thirty(30) days notice or on the payment of 30-days salary in lieu thereof. In case they wish to resign at any time, 30-days notice will be necessary or in lieu thereof 30-days pay will be forfeited.
- e. They shall, initially, be on probation for a period of two years extendable upto 3-years.
- f. Their seniority shall be determined in accordance with relevant rules but subject to section-4 of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009.

*Accepted*  
*M. O. [Signature]*

-Sd-  
Secretary to Govt. of Khyber Pakhtunkhwa,  
Industries, Commerce & Technical Education  
Department

(32)

Endst: No. SOIII(IND)TE/3-9/2012

Dated Pesh, the 31<sup>st</sup> December, 2012

Copy of the above is forwarded to the:-

1. Additional Chief Secretary(FATA), FATA Secretariat, Worsak Road Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa Establishment Department.
3. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
5. Secretary to Governor, Khyber Pakhtunkhwa
6. Accountant General, Khyber Pakhtunkhwa, Peshawar.
7. The Director General, Technical Education & Manpower Training, Khyber Pakhtunkhwa, Peshawar.
8. Director Technical Education, FATA, Khyber Pakhtunkhwa, Warsak Road Peshawar.
9. Director Information Khyber Pakhtunkhwa for wide publicity through media.
10. Agency/Districts Accounts Officers concerned.
11. Registrar Peshawar High Court, Peshawar.
12. Director Recruitment, Khyber-Pakhtunkhwa, Public Service Commission Peshawar.
13. Section Officer(FATA), Education Wing, Governor Secretariat(FATA) Worsak Road Peshawar.
14. PS to Secretary, IC&TE Department.
15. P.A to Additional Secretary-I, IC&TE Department.
16. The Officer concerned.
17. O/O file.

  
(ANWAR-UL-HAQ)  
DEPUTY SECRETARY-I

Attested  
by  
m. a. j.

To

Annexure "F"

The Director General,  
Technical Education & Manpower Training,  
Khyber Pakhtunkhwa,  
Peshawar.

5446(a)  
(33) 13/12/14

Subject: REQUEST FOR SENIORITY, INCREMENTS & ARREARS.

R/Sir,

It is submitted that in pursuance of Peshawar High Court, Peshawar judgment dated 08-03-2012 announced in Writ Petition No. 1145/2010. My services alongwith my other colleagues were regularized under Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009, with immediate effect vide Government of Khyber Pakhtunkhwa, Industries, Commerce & Technical Education Department Notification No. SOIII(IND)TE/3-9/2012 dated 31-12-2012.

In this connection, it is stated that:-

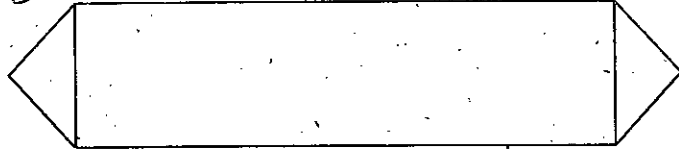
- 1- After allowing seniority from 01-01-2009, according to section-4 of Khyber Pakhtunkhwa (Regularization of Services) Act, 2009, we were regularized with immediate effect were deprived from pay benefits, seniority, annual increments and arrears thereof from the back date i.e. 01-01-2009.
- 2- While accepting the Writ petition No. 1145/2010, the Peshawar High Court, Peshawar in last Para of its judgment announced on 08-03-2012, directed the respondents to issue notification of regularization of petitioner within a period of one month.
- 3- Instead of issuing notification of our regularization within one month as per direction of the Court the respondent delayed the desired on one pretext or the other. The required notification was finally issued on 31-12-2012 with immediate effect which amounts to deprivation of the petitioners from their pay benefits, seniority, annual increments and arrears at least from the date of announcement of the judgment and in this respect various services appeals are penaling adjudication before service tribunal, Khyber Pakhtunkhwa.

In view of the above, it is humbly prayed that I may kindly be allowed pay benefits, seniority, annual increments and arrears from my actual date of regularization i.e. from 01-01-2009 according to Khyber Pakhtunkhwa (Regularization of Services) Act, 2009.

Attes  
M. O. J.

Yours Obediently,

(JAFFAR ALI)  
LECTURER (COMMERCE),  
GCMS, Miranshah (NWA).



2015ء منجانب ایبیلانٹ  
بنام ہیفا سیکرٹری

حاضر علی

موزخہ

مقدمہ

دعویٰ

جرم

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

آن مقام میٹور کیلئے حصے امتیاز خلیل ایبیلانٹ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضعی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری بیکطرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2015ء

ماہ اپریل

21

المرقوم

العبد گواہ العبد

کے لئے منظور ہے۔

مقام



Handwritten scribble or mark in the center of the page.

In Re: *Asal* P No.399/2015

Jaffar Ali Lecturer Commerce, Govt College of Management Sciences  
Miranshah.....PETITIONER

VERSUS

GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY  
CIVIL SECRETARIAT & OTHERS.....RESPONDENTS

INDEX

S.#	Description of Documents	Annex	Pages
1	Parawise Comments	-	1-3
2	Affidavit	-	4
3	Order of appointment	Annexure- A	5
4	Decision of Peshawar High Court	Annexure-B	6-10

*Jaffar Ali*  
ASSISTANT DIRECTOR TE

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Appeal No. 399 /2015**

Jafar Ali s/o Kashmir Khan, Lecturer Commerce, Govt College of Management Sciences, Miran Shah, North Waziristan Agency.

.....APPELLANT

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Additional Chief Secretary FATA, FATA Secretariat Peshawar.
3. Secretary Industries, Commerce and Technical Education Khyber Pakhtunkhwa Peshawar.
4. Director General, Technical Education and Manpower Training of Khyber Pakhtunkhwa Benevolent Fund Building, Peshawar Saddar.
5. Director, Technical Education, FATA, FATA Secretariat Peshawar.

.....RESPONDENTS

**REPLY ON BEHALF OF RESPONDENT NO.2 & 5**

**BRIEF HISTORY**

The appellant was appointed on fixed pay against the ADP/Project post in 2007. The tenure of ADP/Project was ended on 30.06.2010 and the services of the appellant were terminated on completion of the Project. Latter on, the services were regularized in compliance of the judgement dated 08.03.2012 of the Peshawar High Court Peshawar, and the appellant reported his arrival to the place of posting w.e.f 01.01.2013. The appellant has not performed any duty during the gape period from 30.06.10 (A/N) to 31.12.12. However, the appellant has claimed the pay and seniority for the gape period.

**Respectfully Sheweth**

**PRELIMINARY OBJECTIONS**

1. That the appellant has no cause of action / Locus Standi to file the instant appeal.
2. That the appellant is not civil servant within the meaning of section 2(b) of the NWFP Civil servant Act, therefore, the honourable Tribunal has no jurisdiction to entertain the present appeal.
3. The appeal is wholly **incompetent, misconceived and untenable.**
4. That the appellant has not come to this honourable tribunal with clean hands. The appeal also suffers from mis-statement and concealment of facts.
5. That the appellant is stopped to file the suit as he voluntarily accepted the terms and conditions of his service.
6. The appeal is not competent as the appellant was a project employee having no status to file the instant appeal.
7. **That the appeal is badly time barred.**

2

**FACTS:**

1. **Incorrect.** The appellant was appointed on fixed pay and not on contract (Annex-A).
2. **Incorrect.** Correct to the extent that the appellant was holding the post on fixed pay on 31-12-2008. But the rest of the para pertain to record.
3. **Correct.**
4. **Incorrect.** The appellant was basically appointed on fixed pay as is clear from his appointment order. However the Department of Technical Education, K.P.K, being the parent department, in compliance of the judgment dated 8.03.2012 of the Peshawar High Court Peshawar, has already regularized the services of the appellant and thus implemented the orders of the honourable Court in letter and spirit. On his regularization, the appellant submitted his arrival report to the place of posting and never objected to the terms and conditions of the notification. The same issue under COC No. 96-P/ 2013 and 97-P/2013 was heard by honourable Peshawar High Court, and decided in the favour of the Department. (Annexure-B)
5. **Correct.**
6. **Incorrect.** As per para-4 above.
7. **Incorrect.** The appellant was regularized in service on 31/12/2012 with immediate effect and accordingly he reported to the place of his posting without any hesitation / objection, thus accepting the terms and conditions of service. The posts were ADP posts which ended on 30/06/2010. Furthermore, the SNEs for appellant post is still under process and not yet finalized.
8. **Correct** to the extent that a departmental representation was filed before Technical Education, K.P.K but the rest of the para is denied as the appellant is not entitled to any back benefit (pay/seniority) as he did not perform any duty during the gap period.
9. **As per para 8 above.**

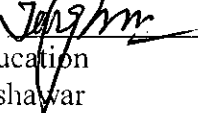
**GROUND**

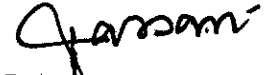

- a. **Incorrect.** The acts of the respondents are in accordance with law as the services of the petitioner have already been regularized. Furthermore, the creation of SNE for the post of the appellant is still under process and appellant has not performed any duty during the gap period.
- b. **Incorrect.** The appellant was treated as per mandate of law and there has been no violation of Article 4 of the constitution on the part of the respondent.
- c. **Incorrect.** As per para-(a) above.
- d. **Incorrect.**
- e. **Incorrect.** As per para-4 above.
- f. **Incorrect.** Seniority will be given from the date of regular appointment.
- g. **Needs no comments.**



- h. The department seeks the permission of this honourable court to argue on additional grounds at the time of hearing.

It is, therefore, requested that in view of the above facts, the instant appeal for having no force of law and facts may be dismissed with cost.

RESPONDENT No.5)   
Director Technical Education  
FATA, Secretariat, Peshawar  
**DIRECTOR**  
Technical Education  
FATA Secretariat Peshawar

  
For.   
RESPONDENT No.2) \_\_\_\_\_  
Additional Chief Secretary,  
FATA, Secretariat, Peshawar.  
Addl. Chief Secretary,  
FATA, Secretariat,  
Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Appeal No. 399 /2015**

Jafar Ali s/o Kashmir Khan, Lecturer Commerce, Govt College of Management Sciences, Miran Shah, North Waziristan Agency.

**APPELLANT.**

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Additional Chief Secretary FATA, FATA Secretariat Peshawar.
3. Secretary Industries, Commerce and Technical Education Khyber Pakhtunkhwa Peshawar.
4. Director General, Technical Education and Manpower Training of Khyber Pakhtunkhwa Benevolent Fund Building, Peshawar Saddar.
5. Director, Technical Education, FATA, FATA Secretariat Peshawar.

.....**RESPONDENTS**

**AFFIDAVIT**

I, Zarghun Shah, Assistant Director, Technical Education FATA Secretariat Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying **comments** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

  
**DEPONENT**

Annex A

5

**DIRECTORATE OF TECHNICAL EDUCATION (FATA)  
CIVIL SECRETARIAT (FATA)  
WARSAK ROAD PESHAWAR**

**OFFICE ORDER**

Mr. Jaffar Ali Khan s/o Kashmir Khan is hereby appointed as Instructor (Business Administration) on fixed pay@ Rs.8000/- P.M in Government College of Management Sciences, Miranshah (NW Agency) with effect from date of taking over the charge. His appointment is subject to the following terms and conditions:

**TERMS AND CONDITIONS**

1. His appointment will be on fixed pay for a period of one year or till the arrival of selectees of the NWFP Public Service Commission whichever is earlier.
2. His appointment on fixed pay shall not confer on him any right of appointment on regular basis.
3. He will not be entitled for any TA/DA for joining service.
4. If he wishes to accept the post on the above terms and conditions, he should report for duty to the Principal, Government College of Management Sciences, Miranshah (NW Agency) immediately failing which the offer of appointment will be treated cancelled.

Sd/-  
**DEPUTY DIRECTOR (TE) FATA**

Endst:No.DTE/FATA/Admin/Apptt/

Dated the Peshawar \_\_\_/\_\_\_/2007

Copy forwarded for information and necessary action to:

1. The AGPR (Sub Office) Peshawar.
2. The Principal, GCMS, Miranshah (NW Agency).
3. The Political Agent Miranshah (NW Agency).
4. Mr. Jaffar Ali Khan S/O Kashmir Khan Civil Colony Miranshah Quarter No.136. NW Agency.
5. Personal file of the officer/official concerned.
6. Accountant Local Office.

Sd/-  
**(PERVEZ AHMAD RAHI)**  
Assistant Director (TE) FATA

Amex B

6

THE  
PESHAWAR HIGH COURT  
PESHAWAR

Ph: No. 091-9210149-158  
Ext: No. 894

No. 15683 /Judl:  
Dated Peshawar the 9.9 2014

From

The Additional Registrar (J),  
Peshawar High Court,  
Peshawar:

To

1. Mr. Hussain Zada (Secretary),  
Industries & Technical Education,  
KPK, Peshawar.
2. Mr. Shakil Ahmad (Director General),  
Technical Education & Manpower Training,  
KPK, Peshawar.
3. Mr. Irfan Ali (Director),  
Technical Education FATA,  
FATA Secretariat, Warsak Road,  
Peshawar.

Subject: C.o.C. No. 96-P in Writ Petition No. 1289-P/2010.  
C.o.C. No. 97-P in Writ Petition No. 1145-P/2010.

Muhammad Ilyas &  
Noor Hassan Khan & others --- Petitioners


Versus

Hussain Zada & others --- Respondents

\*\*\*\*\*

Memo:

I am directed to forward herewith copies of judgments dated  
03-09-2014, passed by Division Bench of this Court in the titled cases,  
for compliance/information.

  
ADDITIONAL REGISTRAR (J)

Encl:

Copies of judgments.

PA to Director (JUDGE) FATA

L.No. 7-335

Date: 15-9-14

IN THE PESHAWAR HIGH COURT  
PESHAWAR

Contempt Application No. 98-P/2013  
in

W.P. NO. 1289/2010

- 1- Muhammad Hiyas son of Muhammad Akram,  
Lecturer In Government College of Management Sciences,  
District Charsaddah.
- 2- Muhammad Iqbal son of Gul Said, 1091  
Lecturer In Government College of Management Sciences,  
District Charsaddah.
- 3- Zahid Aiam son of Muhammad Nisar  
Lecturer In Government College of Management Sciences,  
District Charsaddah.
- 4- Waqar Ahmad son of Afsar Shah,  
Lecturer In Government College of Management Sciences,  
District Charsaddah.
- 5- Rehmat Khan son of Gulzar Khan - 1093  
Lecturer In Government Technical Institute Khar,  
Bajaur Agency.
- 6- Muhammad Iqbal son of Ali Rehman - 1086  
Lecturer In Government Technical Institute Khar,  
Bajaur Agency.
- 7- Sajidullah son of Sher Azam Khan,  
Lecturer in Government of Technology,  
District Peshawar.
- 8- Muhammad Iqbal son of Muhammad Hazrat,  
Lecturer in Government College of Technology  
Timergara, Lower Dir.
- 9- Kashif Amin son of Amin-ul-Haq,  
Lecturer In Government College of Management Sciences,  
Parachinar.
- 10- Amjad Ali son of Subhan Ali, - 1183  
Lecturer In Government College of Management Sciences,  
Parachinar.
- 11- Syed Afiar Ali Shah Son of Syed Munawar Ali Shah, - 1181  
Lecturer In Government College of Management Sciences,  
Parachinar.
- 12- Syed Hussain Ali Shah son of Kamran Ali Shah - 1180  
Lecturer In Government College of Management Sciences,  
Parachinar.
- 13- Asti Ali son of Ghulam Abbass, - 1178  
Lecturer In Government College of Management Sciences,  
Parachinar.
- 14- Altaf Hussain son of Maqbool Khan, - 1095

FILED TODAY

Registry

8

JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT

COC No. 96-P/2013 in WP No. 1289/2010(D)

JUDGMENT

Date of hearing..... 3.9.2014.....

Petitioner(s) *by Mr. Tehanzeb Mahsud, Advocate.*

Respondent(s) *by Syed. Qaiser Ali Shah, B.A. and  
Mr. Amanullah Marwat, Advocate.*

IKRAMULLAH KHAN, J.- Through this single judgment, we propose to dispose of two Contempt of Court Petitions, as common question of law and facts is involved in all the two petitions. The particulars of the same are as follows:-

1. COC No. 96-P/2013 in WP No. 1289/2010, (Muhammad Ilyas etc vs. Hussain Zada etc).

2. COC No. 97-P/2013 in WP No. 1145/2010 (Noor Hassan Khan etc vs. Hussain Zada etc).

2. On 8.3.2012, this Court while allowing Writ Petitions of the petitioners passed the following order:-

*"We, therefore, issue writ in favour of petitioners and against the respondents to the effect that petitioners shall be deemed to be*

regular and permanent employees of respondents No.1 and 2 Department within the meaning of NWFP (Regularization of Services) Act, 2009 and the respondents are directed to issue notification of their regularization within a period of one month".

9

3. The respondents were put to notice, who appeared before the Court and stated that petitioners have been regularized. Grievance of the petitioners is that they should be regularized w.e.f. 1.1.2009.

4. As the respondents have regularized the petitioners, the orders of this Court have been complied with. In case, the petitioners are still aggrieved, they may seek their appropriate remedy before the competent forum, if so advised.

5. These contempt petitions being misconceived are dismissed and the show cause notices issued against the respondents are hereby recalled.

Dt.3.9.2014.

  
JUDGE

  
JUDGE

\*Nawab Shah\*

3/9/14



JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT

COC No. 97-P/2013 in WP No. 1145/2010(D)

JUDGMENT

Date of hearing.....3.9.2014.....

Petitioner(s) *by Mr. Jehanzeb Mahard, Advocate.*

Respondent(s) *by Syed. Qaiser Ali Shah, B.A. and  
Mr. Amomullah Nawat, Advocate.*

IKRAMULLAH KHAN, J.- For reasons  
recorded in the connected C.O.C. No. 96-  
P/2013 in WP No. 1289/2010 (Muhammad  
Ilyas etc vs. Hussain Zada etc), this C.O.C. is  
dismissed.

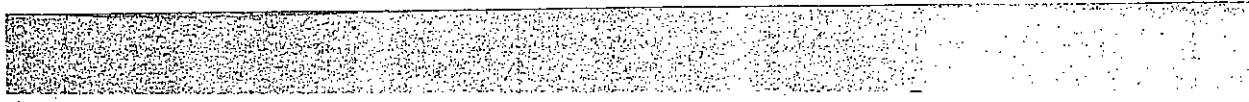
Dt. 3.9.2014.

*[Signature]*  
JUDGE

*[Signature]*  
JUDGE

\*Nawab Shah\*

*6/9/14*





IN THE PESHAWAR HIGH COURT  
PESHAWAR

Contempt Application No. 92-P/2013

in

W.P. NO. 1145/2010

- 1- Noor Hasan Khan son of Gul Sher Khan,  
Lecture in Government College of Commerce & Management Sciences,  
Bannu.
- 2- Irfanullah son of Muhammad Nisar,  
Lecture in Government College of Management Sciences,  
Timergara, District Dir.
- 3- Ikhtiar Zada son of Habib-ul-hassan, -1085  
Lecture in Government College of Management Sciences,  
Swat.
- 4- Sangeen Khan son of Khair Muhammad,  
Lecturer in Government College of Management Sciences,  
District Charsaddah.
- 5- Muhammad Ilyas son of Mohammad Akram,  
Lecture in Government Technical Institute,  
Miranshah.
- 6- Shahid Khan Mahsud son of Sarfaraz,  
Lecturer in Government college of commerce,  
Dera Ismail Khan.
- 7- Jaffar Ali Khan son of Kashmir Khan,  
Lecturer in Government College of Management Sciences,  
Miranshah, North Waziristan Agency.
- 8- Jamshaid Alam son of Shah Salam,  
Lecturer in Government College of Management Sciences,  
Parachinar.
- 9- Shafi-ur-Rehman son of Qandahar Khan,  
Lecturer in Government College of Management Sciences,  
Lakki Marwat.
- 10- Hayatullah Khan, 1089  
Lecturer in Government College of Commerce,  
District Nowshera,
- 11- Ikram ullah Khan,  
Lecture in Government College of Management Sciences,  
District Lakki Marwat.

REGISTERED  
COUNTY REGISTRAR  
PESHAWAR