


05.03.2019

Clerk to counsel for the appellant present. Mian Amir Qadir, District Attorney alongwith Mr. Obaid Ur Rehman, ADO for respondents present. Clerk to counsel for the appellant seeks adjournment on the ground that counsel for the appellant was busy before the High Court, Swat Bench. Case to come up for further proceedings on 06.03.2019.


Member
Camp Court, Swat

06.03.2019

Counsel for the appellant present. Mian Amir Qadir, District Attorney for respondents present. Counsel for the appellant submitted an application for withdrawal of the instant appeal. As such application is allowed and the instant appeal is hereby withdrawn. File be consigned to the record room.

Announced:
06.03.2019



Member
Camp Court, Swat

04.12.2018 Appellant absent. Learned counsel for the appellant absent. Mr. Usman Ghani learned District present. Written reply not submitted. No one present on behalf of respondents. Notice be issued to the appellant as well as to the respondents for 09.01.2019. Adjourn. To come up for written reply/comments on the date fixed before S.B at Camp Court Swat.


Member
Camp Court, Swat.

09.01.2019

Clerk of the counsel for appellant present. Mr. Obaid-ur-Rehman, ADO on behalf of respondent No. 3 alongwith Mr. Mian Ameer Qadir, District Attorney for the respondents present. Written reply on behalf of respondents not submitted. Learned District Attorney requested for further adjournment. Adjourned. Case to come up for written reply/comments on 05.03.2019 before S.B at Camp Court Swat.


(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

04.07.2018

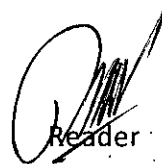
Mr. Shamsul Hadi Advocate counsel for the appellant present. Mr. Usman Ghani learned District Attorney for respondents present. Written reply not submitted. Adjourned. To come up for written reply/comments on 07.08.2018 before S.B at camp court Swat.



Chairman
Camp Court, Swat

07.08.2018

Clerk to counsel for the petitioner present. Due to summer vacations, the case is adjourned. To come up for the same on 05.09.2018 at camp court Swat.



Reader

05.09.2018

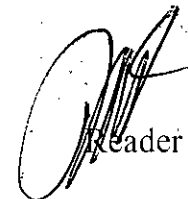
Clerk of counsel for the appelnat present. Mr. Usman Ghani, District Attorney for respondents present. Written reply not submitted. Requested for adjournment to submit the same on the next date of hearing. Granted. Case to come up for written reply/comments on 05.11.2018 before S.B at camp court Swat.



Member
Camp Court Swat

05.11.2018

Due to retirement of the Hob'ble Chairman Service Tribunal is incomplete. Tour to Camp Court Swat has been cancelled. To come up for the same on 04.12.2018 at camp court Swat.



Reader

09.03.2018

Counsel for the appellant present. Preliminary arguments heard. Vide my detailed order of today in connected service appeal No. 209/2018 entitled "*Shamsher Vs. DEO (F) Baunir and others*", this appeal is also admitted to 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 05.04.2018 before S.B at camp court, Swat.

Appellant Deposited
Security & Process Fee

Chairman

Camp Court, Swat.

05.04.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith for the respondents present. Written reply not submitted. Learned District Attorney seeks adjournment. Granted. To come up for written reply/comments on 10.05.2018 before S.B at Camp Court, Swat.

Chairman

Camp court, Swat

09.05.2018

The Tribunal is non-functional due to retirement of the Worthy Chairman. To come up for the same on 09.06.2018 before the S.B at camp court, Swat.

Reader

07.06.2018

Neither appellant nor his counsel present. None is present on behalf of the respondents. However, Mr. Usman Ghani, District Attorney put appearance on behalf of the respondents. Adjourned. To come up for written reply/comments on 04.07.2018 before S.B at Camp Court, Swat.



Chairman

Camp Court, Swat

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 215/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15/02/2018	<p>The appeal of Mr. Muhammad Zarin presented today by Mr. Shamasul Hadi Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	26-2-18	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on <u>09-03-18</u></p> <p> CHAIRMAN</p>

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. 215 /2018.

Mohd Zarin.....Appellant

V E R S U S

District Education Officer (M) Bunir and others.....Respondents

INDEX

S.N	Description of Documents	Annex	Pages
1.	Memo of Appeal.		1--- 3
2.	Affidavit.		4
3.	Addresses of the Parties.		5
4.	Copies of Appointment letter	A	6
5.	Copy of regularization notification of 2008.	B	7- 10
6.	Copy of impugned office order dated:22.08.2011	C	11
7.	Copies of Judgment dated:04.10.2017 and application.	D	12-30
8.			
7.	Wakalat Nama		31

Appellant

Through


Shams ul Hadi

Advocate, Peshawar.

Office: Near Al-Falah Mosque, Hayat
Abad, Mingora.

Cell No. 0347-4773440.

Dated: 12/02/2018.

1

BEFORE THE KHYBER PAKHTOON KHWA SERVICES
TRIBUNAL, PESHAWAR.

Service Appeal No. 215 /2018.

Muhammad Zarin S/o Musafar

(Ex-Chowkedar GPS Ambela Bala, Bunir)

R/o Village Ambela, District Bunir.....Appellant.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 223

Dated 15-2-2018

VS

1. District Education Officer(male) Bunir.
2. Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Account Officer, Bunir.
4. Accountant General Khyber Pakhtunkhwa, Peshawar.
5. The Government of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat, Peshawar.....(Respondents)

**APPEAL UNDER SECTION 4 OF KHYBER
PUKHTUNKHWA SERVICES TRIBUNAL ACT 1974
AGAINST THE IMPUGNED OFFICE ORDER
DATED:22.08.2011.**

PRAYER IN APPEAL:

Filed to-day On acceptance of this appeal the impugned order :22.08.2011

Registrar
15/2/18

regarding non sanctioning after retirement benefits i-e pension and gratuity of appellant may kindly be set aside and the appellant may kindly be awarded pension and gratuity etc of appellant of his service with all back benefits of after retirement of service.

Respectfully Sheweth:

1. That the appellant served as Class-IV Employee in the Education Department Bunir and as such got his retirement on the said post. (Copies of Appointment letter are annexure "A").

2. That keeping in view the agonies and the financial constrains of the family of the low grade retiring employees, the provincial government was pleased to regularized the services/Posts of the appellants in the year 2008 and as such they were declared civil servants and further the said order was confirmed according to "Regularization Act,2010" and as such the appellant performed his duties as permanent employees of Education Department in Bunir, till date of their retirement.(Copy of notification is annexure-B)
3. That the appellant keeping in view of the above circulation was hopeful to get pension benefits etc after his retirement and as such waited for the same when they were taken by surprise when the Respondents No.1 informed the appellant, that they are not qualifying for pension benefits and others benefits after retirement.(Copy of impugned office order dated:22.08.2011 is annexure-C)
4. That against the illegal actions of the respondents, the appellant finally approached Peshawar High court Mingora Bench as in similar nature issues pension benefits of the others similar placed employees were awarded by the Honrable high court through various judgments, but finally the a larger bench was constituted in the issue in hand, where writ petitions of the appellant and others treated as departmental appeals respondents were directed to decide the same in accordance with law and rules and in light of the judgment delivered in Amir Zeb's case.
5. That the judgment was communicated to the respondents in shape of departmental appeal but the same was not decided within the statutory period.(Copy of application and judgment are annexure-D)

That being aggrieved the appellants prefer this appeal on the following grounds amongst others inter-alia.

GROUND:

- A. That actions and inactions of the respondents are violative of the constitution and the relevant laws laid down for the purpose, hence needs interference of this august Court.
- B. That the appellant has a poor financial background and served the department for long considerable period with the hopes of further benefits after retirement but the respondents did not observe the prescribed rules, regulations and denied the benefits in shape of pension to the appellant.
- C. That the issue in hand has now already been decided by this august court through a similar nature cases hence the appellant deserve for the same treatment.

It is, therefore, humbly prayed that *On acceptance of this appeal the impugned Orders dated:22.08.2011 regarding non sanctioning after retirement benefits i-e pension and gratuity of appellant may kindly be set aside and the appellant may kindly be awarded pension and gratuity etc of appellant of his service with all back benefits of after retirement of service.*

Or

Any other relief which this august Court deems appropriate may kindly be awarded to meet the ends of justice.

Appellant


Mohd Zarin

Through


Shams ul Hadi

Advocate, Peshawar.

Dated: 12/02/2018

4

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2018.

Mohd Zarin.....Appellant

V E R S U S

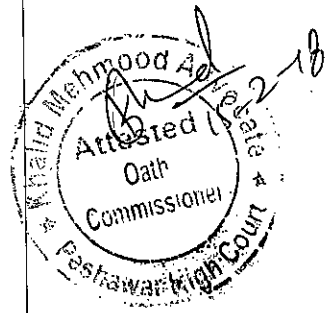
District Education Officer (M) Bunir and others.....Respondents

AFFIDAVIT

I, **Shams ul Hadi**, Advocate, Peshawar do hereby as per information conveyed to me by my client solemnly affirm and declare that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



A D V O C A T E



BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____/2018.

Khan Said.....Appellant

V E R S U S

District Education Officer (M) Bunir and others.....Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Muhammad Zarin S/o Musafar
(Ex-Chowkedar GPS Ambela Bala, Bunir)
R/o Village Ambela Bala District Bunir
Cell No.

RESPONDENTS:

1. District Education Officer(male) Bunir.
2. Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Account Officer, Bunir.
4. Accountant General Khyber Pakhtunkhwa, Peshawar.
5. The Government of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat, Peshawar.

Appellant

Through

Shams ul Hadi

Advocate, Peshawar.

Dated: 12/02/2018

Annex A 6

OFFICE OF THE SUB-DIVL: EDUCATION OFFICER (M) PRY: EDUCATION DAGGAR AT SOWARI

OFFICE ORDER/ APPOINT: Chow:

Consequent upon the Taking Over of Ambila Bal District of G.M.P.S Ambila Bal Under the Schem" Accelerated Programs Under G.O. Directives 1995-96"

Mr. Mohammad Zarin S/O Musiaz R/O Ambila Bal Distt: Buner is hereby Appointed against Unskilled Post at G.M.P.S Ambila Bal Distt: Buner on Contract base Rs, 1200/- P.M. fixed; w.e.f. 24/9/97 with the following terms and Conditions in the interest of Public Service.

TERMS AND CONDITIONS.

1. His Appointment is purely temporary and liable to Termination dismissal at any Time With out any Notice and reason.
2. In case of resignation he will have to submit one Month prior notice to department or one month Pay lien there of.
3. He will produce health and age Certificate from the Medical Superintende Concerned.
4. His age Should not exceed 45 Years.

(Mr, Sher Zada Khan)

Sub; Divl; Education Officer (M),
Pry; Edu: Daggat at Sowari Distt Buner.

Enclust:- NO. 4/10-14 Contract Clow; Dated. 24-9-97

Copy of the above is forwarded to the:-

1. Director/Pry; Education EWFP Dabgusai Gardens Peshawar
2. Distt; Education Officer (M) Pry; Edu; Daggat At Sowari
3. Distt; Account Officer Daggat.
4. Head Teacher G.M.P.S Ambila Bal Daggat.
5. Official Concerned.

[Handwritten signature]

[Handwritten signature]
Sub; Divl; Education Officer (M)
Pry; Education Daggat at Sowari

برائے سہ ماہی - اے - ۱۱ - ۲۲ - ۰۸ - ۲۰۰۷ - ۲۰۰۷ ایف - ڈی
بموضوعہ ۲۹ جنوری، ۲۰۰۸ء

- ۱- تمام انتظامی و مقتدرین حکومت صوبہ سرحد۔
- ۲- سیکرٹری برائے گورنر صوبہ سرحد، پشاور۔
- ۳- پرنسپل سٹاف آفیسر برائے نئے وزیر اعلیٰ صوبہ سرحد۔
- ۴- تمام سربراہان ماتحت نکلے جات صوبہ سرحد۔
- ۵- تمام ضلعی رابطہ افسران صوبہ سرحد۔
- ۶- رجسٹرار پشاور ہائی کورٹ، پشاور۔
- ۷- رجسٹرار، سرحدی ٹریبیونل، صوبہ سرحد، پشاور۔
- ۸- سیکرٹری، صوبائی پبلک سروس کمیشن، صوبہ سرحد، پشاور۔
- ۹- سیکرٹری بورڈ آف ایجوکیشن، صوبہ سرحد۔

رہبر
مختار
۱۱/۱/۰۸

ATTESTED

[Signature]

Head Master
Govt. High School
Burb Malakand

بجٹ تقریر ۰۸ - ۲۰۰۷ - ۲۰۰۷ میں درجہ چہارم کے مقررہ تنخواہ ہانے والے (Fixed pay) ملازمین کے لئے کیا جائے۔ فنڈ کا اعلان۔

مخبر:

جناب عالی!

نئے حدایت کی گئی ہے کہ عنوان بالا کا حوالہ دیتے ہوئے عرض کروں کہ صوبائی حکومت نے تمام درجہ چہارم (مستمرہ تنخواہ Fixed pay) ہانے والے ملازمین کو یکم جولائی ۲۰۰۸ء سے این ڈبلیو ایف پی سول ملازمین ایکٹ ۱۹۷۳ء کے تحت سول ملازمین کا درجہ دیکر بنیادی سکیل - ۱ (BPS-1) دینے کی منظوری دی ہے۔

۲- مذکورہ ملازمین کی تنخواہوں کا تعین (Fixation of pay) ان کی بھرتی کے تاریخ (Date of Appointment) سے کیا جائے گا۔ تاہم یہ ملازمین تنخواہوں اور بالادستز وغیرہ کی مد میں کسی قسم کی بقایا جات (arrears) کے متدار نہیں ہونگے۔

۳- اس سلسلے میں پہلے سے جاری شدہ تمام پالیسی ہدایات یکم جولائی ۲۰۰۸ء سے منسوخ تصور ہونگے۔

۸۸

آپ کا مخلص

شریف خان (رہبر)

[Signatures]

(8)

نقل برائے اطلاع:

- (۱) اکاؤنٹ جنرل، صوبہ سرحد، بیورو گزارش، مکہ مندرجہ بالا اقدامات کی نافذ العمل کو یقین دلانے کے لئے۔
- (۲) جملہ ایگزیکٹو ڈسٹرکٹ آفیسرز، فنانس اینڈ پلاننگ، صوبہ سرحد۔
- (۳) جملہ ضلعی آفیسران حساب داری، صوبہ سرحد۔

فنانس سیکشن

میزانیہ افسر (۱) محکمہ خزانہ

تظہر نمبر و تاریخ الضمان:

نقل برائے اطلاع:

- (۱) سبھی معتمد برائے چیف سیکرٹری صوبہ سرحد۔
- (۲) جملہ اضافی معتمدین و نائب معتمدین محکمہ خزانہ، صوبہ سرحد۔
- (۳) جملہ ہیڈ آفیسرز ریکیشن آفیسرز محکمہ خزانہ، صوبہ سرحد۔
- (۴) ڈائریکٹر، FMIU، محکمہ خزانہ صوبہ سرحد۔
- (۵) سبھی معتمد برائے فنانس سیکرٹری صوبہ سرحد۔

فنانس سیکشن
میزانیہ افسر (۱) محکمہ خزانہ

OFFICE OF THE ACCOUNTANT GENERAL NWFP PESHAWAR.
No.H-24(113)/RBPs-2006-07/Prov: Central Corresponds filed 736 Dated: 20-02-2008

Copy of the above is forwarded for information and necessary action to all concerned.

- 1. All DAOs/AOs in NWFP.
- 2. All Payrolls Section (L)
- 3. PAs to DAGs.

Asstt. Accounts officer (R&E),
NWFP, Peshawar

A.L.

A.L.

9



Office of the
Accountant General
Khyber Pakhtunkhwa Peshawar
Phone: 091- 9211915

Dated: 24-01-2012

No-HAD/Fixed Employees / Corp:/2011-12/ 773

The Secretary,
to Govt. of Khyber Pakhtunkhwa,
Finance Department (Regulation Wing).

[Handwritten initials]

01 FEB 2012

Subject: AWARD OF REGULAR BPS-I TO CLASS -IV

Kindly refer to your office letter in Urdu vide No. B.O-I/1-22/80-2008/FD dated: 29/01/2008 and letter containing clarification vide No. FD(SR-I)Miss/2008 dated: 13/07/2009 on the above subject.

Policy for appointment of class -IV on fixed salary was introduced w.e.f. 04/11/1992, hence several class-Iv were working against the contract post on fixed salary, till in the refer letter they first were regularized from the date of their first appointment without any arrears.

In light of policy 2008, their pay was fixed just like a regular employee from the date of initial appointment without any arrears of pay prior to 01/07/2008, however while fixing their salary the following points need clarification, that whether,

- 1) The employees appointed prior to 31/12/2001, having qualification over and above the prescribed qualification are entitled for advance increments in light of para-5 pay Revision 1991.
- 2) The Employees regularized in the refer letter from the date of initial appointment and appointed prior to 01/07/2007 are entitled for up-gradation in light of General up-gradation order vide your office letter No. FD/SO(FR)7-2/2007 dated: 01/07/2007.

This office is of the view that as the employees have been regularized from the date of their initial appointment hence they are entitled for the benefit of increments, revisions and up-gradation allowed from time to time as general on notional basis but no arrears is admissible prior to 01/07/2008.

The views of this office if correct may kindly be confirmed.

ACCOUNTS OFFICER (BAD)

[Handwritten signature]
c.t.c

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ACCOUNTS OFFICER (BAD)

[Handwritten signature]
c.t.c

[Handwritten signature]
c.t.c

(10)

Better copy of page No. 12

Office of the
Accountant General
Khyber pakhtunkhwa Peshawar
Phone : 091-9211915



Dated: 24-01-2012.

No-Had/Fixed Employee/Corrp:/2011-12/

To,

The Secretary
To. Govt of Khyber pakhtunkhwa,
Finance Department (Regulation Wing)

Subject: AWARD OF REGULAR BPS-1 TO CLASS.

Kindly refer to your office letter in urdu vide No. B.O-I/1-22/80-2008/FD dated: 29/01/2008.
And letter containing clarification vide FD/SR-I) Miss/2008 dated 13/07/2009 on the above subject.

Policy for appointment of class-IV on fixed salary was introduced w.e.f 04/11/1992, hence several class-IV were working against the contract post on fixed salary, till in the refer letter they first were regularized from the date of their first appointment without any arrear.

In the light of policy, 2003, their pay was just like a regular employee from the date of initial appointment without any arrear of pay prior to 01/07/2008, however while fixing their salary the following points need clarification that whether.

- 1) The employee appointed prior to 31/12/2001 having qualification over and above the prescribed qualification are entitled for advance increments in light of para-5 pay Revision-1991.
- 2) The Employee, regularized in the refer letter from the date of initial appointment and appointed prior to 01/07/2007 are entitled for up-gradation in light of General up-gradation order vide your office letter No. FD/SO (FR)7-2/2007 dated: 01/07/2007.

This office is of the view that as the employee have been regularized from the date of their initial appointment hence they are entitled for the benefits of increments, revisions and up-gradation allowed, from time to time as general on national basis but no arrear is admissible prior to 01/07/2008.

The views of this office if correct may be confirmed.

ACCOUNTS OFFICER (HAD)

cte

cte

Amex

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e

(11)

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EXECUTIVE DISTRICT OFFICER ELEM: & SECONDARY EDUCATION BUNER

Sanction is hereby accorded to the grant of retirement from service on attaining the age of superannuation in R/O Muhammad Zarin Contract Chowkidar GPS Ambela Bala with effect from 30/06/2011 A/N.

NOTE: Sanction of retirement with out pension and gratuity, only CPF etc.

**(SHAMAS KHAN SHAMS)
EXECUTIVE DISTRICT OFFICER
ELEMENTARY & SECONDARY
EDUCATION BUNER**

Endst: N 6070-72 /F.No 23/DA No.6 Dated 22/8 /2011.
Copy forwarded for information to the;

1. Dy: District Officer (M) Pny; Buner w/r to his office memo No.1830 dated 12/07/2011.
2. District Accounts Officer Buner.
3. Official Concerned.

[Handwritten signature]

**DISTRICT OFFICER
ELEMENTARY & SECONDARY
EDUCATION BUNER**

[Handwritten signature]

[Handwritten signature]

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Amir D

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH.

C.m No. _____/2017

In

W.P No. -M/201.

Gul Zamin Khan and others.....Petitioners.

VS

District Education Officer(M) Bunir and others...Respondents.

Application for impleadment, to array the applicant namely:

i) Muhammad Zarin S/o Musafar.

ii) Shamsheer S/o Akram Khan.

iii) ~~Shamir Zaid S/o~~

as petitioners in the titled Writ petition.

Respectfully Sheweth:

1. That the captioned Writ petition is pending for adjudication before of this august court with date fixed as 26.09.2017.
2. That the applicants have also the same grievances against the respondents and wants the same relief from this august court like other petitioners of the title writ petition.(Copies of relevant record are attached)

It is, therefore, humbly prayed that on acceptance of this application, the above named applicant may kindly be arrayed as petitioners in the titled writ petition.


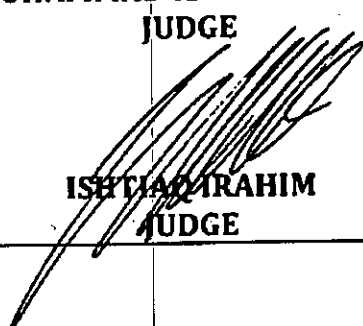
Through

Petitioners

Shams ul Hadi
Advocate


PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT
FORM OF ORDER SHEET

Court of
 Case No. of

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
	26.09.2017	<p><u>W.P 618-M/2017 with Interim Relief</u></p> <p>Present: Mr. Shams-ul-Hadi, Advocate for Petitioners.</p> <p style="text-align: center;">***</p> <p>Adjourned to 03.10.2017.</p> <p>To come up alongwith connected W.P 22-M/2017.</p> <p><u>C.M 1130-M/2017</u></p> <p><u>MOHAMMAD IBRAHIM KHAN, J.-</u> By way of this C.M, the Applicants are seeking their impleadment in the panel of Petitioners.</p> <p>As the grounds advanced in the Application seem to be reasonable besides learned A.A.G, present in the Court, has no objection on impleadment of the Applicants, therefore, this C.M is allowed and the Applicants are ordered to be impleaded in the panel of Petitioners. Office is directed to enter their names in the panel of Petitioners with green ink accordingly.</p> <p><u>Announced</u> 26.09.2017</p> <p style="text-align: right;">  MOHAMMAD IBRAHIM KHAN JUDGE </p> <p style="text-align: right;">  ISHAQ IBRAHIM JUDGE </p>

27/8

etc



(14)



**BEFORE THE PESHAWAR HIGH COURT (MINGORA BENCH
AT SWAT.**

W.P. No. 618-M/2017.

1. Gul Zamin Khan S/o Ajmal Khan
R/o Village Koz kalay Tehsil Mandanr , Bunir.
2. Piro S/o Shah Muham Jan
R/O Village Bikand Gokand, Tehsil Daggar District Bunir.
3. Shams ul Islam S/o Madash
R/o Village Bagra Tehsil Daggar, Bunir.
4. Shah Baros Khan S/o Madash
R/o Village Bazar Kot Chagharzay, Bunir.
5. Malang S/o Ummat Shah
R/o Village Giro Bagra, Bunir.
6. Shir Ghulam S/o Jumaraaz
R/o Village Shapalo Tehsil Daggar Bunir.
7. Sahib Zada S/o Amir Nawab
R/o Village Ashezo Mera Tehsil Daggar Bunir.
8. Shirullah Khan S/o Sahib Khan
R/o Sharshamo Tangay Tehsil Daggar, Bunir.
9. Aurang Zeb S/o Yaqoob
R/o Village Sharifay Nagray Tehsil Mandanr, Bunir.
10. Khan Said S/o Shamas Khan
Mohalla Usmani Khail Dagai Tehsil Mandanr, Bunir.
11. Nabi Ullah, S/o Gharib Shah
R/o Tari Khail Dagai Bunir.
12. Taluq Said S/o Said Ahmad Khan
R/o Rasool Banda Chagarzay Bunir.
13. Safarash Khan S/o Hakim Khan
R/o Village Hall Tehsil Mandanr Bunir.
14. Sahi Lal Shah S/o Ghulam Shah
R/o Ashezo Newkalay Bunir.
15. Sahi Muhammad S/o Ghani
R/o Village Daggar Bunir.
16. Amroz Khan S/o Saidat Khan

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- R/o Village Tangora Chagharzay Bunir.
- 17. Gul Hussain S/o Hazrat Ghulam
R/o Village Mian Dand Chamla Bunir.
- 18. Umar Dad S/o Bazmir
R/o Village Barjo Bayamdara Tehsil Daggar District Bunir.
- 19. Bakht Nasib S/o Abdul Wahid
R/o Village Dewana Baba Bunir.
- 20. Ihsanullah S/o Muhammad Taj
R/o Village Dhand Amazay Bunir.
- 21. Miraj Muhammad(late) through Bakht Zamina Bi Bi(widow)
R/o Durmai Kowga Bunir.
- 22. Bakhtawar Shah(late) through Said Mar Jan(widow)
R/o Village Marogay Tehsil Mandanr Bunir.
- 23. Shirin Zada
Ex- Chowkedar GPS Daggar No.1 Bunir.(Petitioners)

V E R S U S

- 1. District Education Officer(male) Bunir.
- 2. District Education Officer (Female) Bunir.
- 3. District Account Officer, Bunir.
- 4. Accountant General Khyber Pakhtunkhwa, Peshawar.
- 5. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.....(Respondents)

*note: Writ Petition
is Declared
to be
deposited*

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

Respectfully Sheweth:

Brief facts giving rise to the instant Writ Petition are as under:

FACTS:

- 1. That the petitioners served as Class-IV Employees in the Education Department Bunir and such got their retirement on the said posts. (Copies of Appointment letters and relevant record are annexure "A").
- 2. That keeping in view the agonies and the financial **constraints** of the family of the low grade retiring

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**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

**W.P No. 618-M/2017
With Interim Relief**

Gul Zamin Khan and 22 others

(Petitioners)

Versus

District Education Officer (Male), Buner and 04 others.

(Respondents)

Present:

Mr. Shams-ul-Hadi, Advocate for the petitioners.

Date of hearing:

04.10.2017

JUDGMENT

ISHTIAQ IBRAHIM, J.- Vide our detailed judgment in the connected W.P No. 22-M/2017, this writ petition bearing W.P No. 618-M/2017 is admitted and partially allowed to the extent of Petitioners No. 21 & 22 in the light of judgment dated 22.06.2017 in W.P No. 3394-P/2017. The respondents are directed to pay pension of the deceased employees to their legal heirs within two months positively after receipt of this judgment.

**Announced
04.10.2017**

11/10
**Mohammad Ibrahim Khan
JUDGE**

11/10
**Ishtiaq Ibrahim
JUDGE**

*Ahica
11/10*

Tajamu/PS*

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(17) 1-

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P No. 22-M/2017
With Interim Relief

Hazrat Ghulam and 01 other
(Petitioners)

Versus

District Education Officer (Male), Buner and 03 others.
(Respondents)

Present: *Mr. Shams-ul-Hadi, Advocate for the petitioners.*

W.P No. 218-M/2017
With Interim Relief

Sher Afzal and 02 others
(Petitioners)

Versus

Executive Engineer Public Health Engineering Division,
Dir Lower at Timergara and 03 others.
(Respondents)

Present: *Mr. Shams-ul-Hadi, Advocate for the petitioners.*

W.P No. 618-M/2017
With Interim Relief

Gul Zamin Khan and 22 others
(Petitioners)

Versus

District Education Officer (Male), Buner and 04 others.
(Respondents)

Present: *Mr. Shams-ul-Hadi, Advocate for the petitioners.*

Date of hearing: **04.10.2017**

JUDGMENT

ISHTIAQ IBRAHIM, J.- Through this single judgment, we intend to decide this petition bearing W.P No. 22-M/2017 as well as the connected W.P Nos. 218-M & 618-M of 2017 as common questions of law and facts are involved in all these petitions.

2. Petitioners through these petitions crave the indulgence of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 with the following prayer:

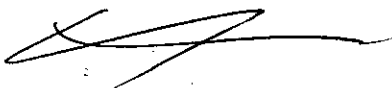
“It is, therefore, humbly prayed that on acceptance of this writ petition, the respondents may kindly be directed to grant after retirement benefits to the petitioners in shape of pension and others for which the petitioners deserve. Any other relief which this august Court deems appropriate may kindly be awarded to meet the ends of justice”.

3. Most of the petitioners in W.P No. 22-M/ 2017 and 618-M/2017 have served as Class-IV employees in Education Department Buner and got retirement on their

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19

respective posts except Petitioners No. 21 & 22 in W.P No. 618-M/2017 who are the widows of deceased employees namely Miraj Muhammad and Bakhtawar Shah respectively. Likewise, petitioners in W.P No. 218-M/2017 have also performed their duties as Class-IV employees till their retirement in Public Health and Engineering Department, Dir Lower. As per contentions of the petitioners, their services were regularized in 2008 and the order was further confirmed in view of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 whereafter the petitioners performed their duties as regular employees till their retirement. The petitioners were hopeful that they will get pension benefits after their retirement but astonishingly they were informed by the concerned departments that the petitioners were not qualified for pension as well as other benefits after retirement. The petitioners submitted applications before the concerned authorities for redressal of their

c.t.c



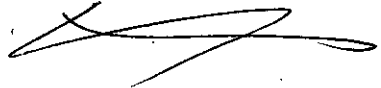
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grievances but in vain, hence, these writ petitions.

4. Learned counsel for the petitioners, *inter alia*, contended that family pension of the petitioners has been denied by respondents without any legal justification and the same action and inaction, if not set aside, would cause serious miscarriage of justice to petitioners and LRs of the deceased employees. Further contended that the same issue has already been resolved by this Court through various judgments even a larger bench of this Court has delivered a judgment on the questions involved in these writ petitions whereby several contract employees have been awarded the benefit of family pension on their regularization. Learned counsel concluded that the petitioners, being at par with those employees, are also entitled to the same relief.

5. Learned Assistant Advocate General, present in Court in connection with


etc


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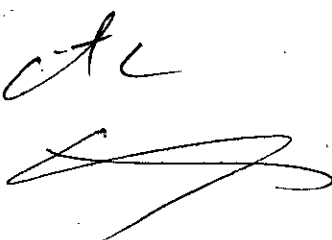
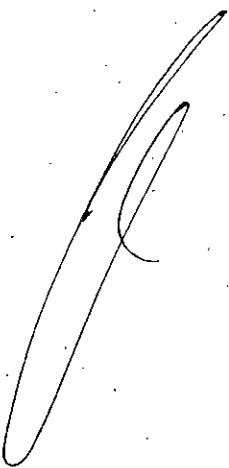
some other cases, was put on notice of these writ petitions and he was confronted with the judgments of this Court especially the judgment passed by the larger bench at the principal seat of this Court. Learned A.A.G. opposed the contention of petitioners and submitted that the petitioners are not entitled to the benefit of family pension under the relevant rules.

6. Respondent No.1 in W.P No. 22-M/2017 and 218-M/2017 filed their Para-wise comments whereby they denied the claim of petitioners and contended that the petitioners were serving on fixed pay besides, they have not served as regular employees for the period prescribed under the relevant rules, therefore, they are not entitled to get the benefits they have prayed for.

7. We have considered the submissions of learned counsel for the petitioners as well as of the learned A.A.G. and have gone through the available record.


22

8. No doubt, the petitioners as well as predecessor of some of the petitioners had been appointed as Class-IV employees in the Education Department and Public Health and Engineering Department on contract basis and were retired on attaining the age of superannuation but it is also an admitted fact that services of contract/adhoc employees have been regularized in view of Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009 and a proper notification has been issued by the Provincial Government to this effect. The question for resolution before this Court is whether the petitioners and LRs of the deceased employees are entitled to family pension in view of the Act *ibid* or not, this question has been resolved by the larger bench vide judgments dated 22.06.2017 in W.P No. 3394-P/2016 and W.P No. 2246-P/2016 however, a preliminary objection regarding maintainability of the writ petitions was raised by learned A.A.G before the said bench. It is noteworthy, that there were two sets of petitioners i.e the retired



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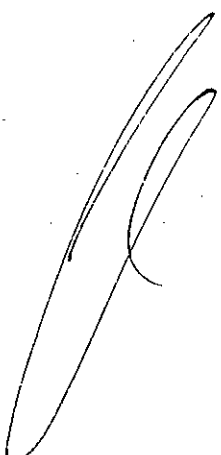
employees who moved the petitions in personal capacity which were decided by the larger Bench vide judgment dated 22.06.2017 in W.P No. 2246-P/2016 whereas the remaining petitioners were legal heirs of the deceased employees who sought the benefit of family pension on the strength of regular service performed by their respective predecessors whose writ petitions were decided vide judgment dated 22.06.2017 in W.P No. 3394-P/2016.

9. Whether the writ petitions filed by retired employees/civil servants in personal capacity are maintainable before this Court or not, this question was adjudged by the larger bench in judgment dated 22.06.2017 in W.P No. 2246-P/2016. The relevant part of the judgment is reproduced herein below:-

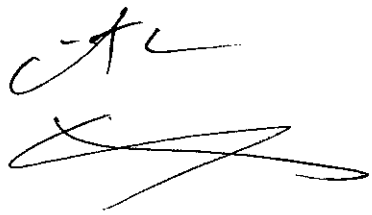
“We are not in consonance with the first argument of learned counsel for the petitioners because under Section 2(a) of the Service Tribunal Act, 1973, “civil servant” means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973. Petitioners are retired civil servants. Admittedly, dispute regarding pension of a civil

 24

servants squarely falls in terms and conditions of service of a civil servant, hence, Service Tribunal is vested with exclusive jurisdiction in such like matter. It has persistently been held by this Court as well as by the august Supreme Court of Pakistan that a civil servant, if aggrieved by a final order, whether original or appellate, passed by the departmental authority with regard of his/her terms and conditions of service, the only remedy available to him/her would be filing of appeal before the Service Tribunal even if the case involves vires of particular Rule or notification”.

 The larger bench in the above referred judgment also discussed the point of alleged discrimination and violation of Article 25 of the Constitution and held that:-

“We deem it necessary to clarify that a civil servant cannot bypass the jurisdiction of Service Tribunal by taking shelter under Article 25 of the Constitution in such like matter. The Service Tribunal shall have the exclusive jurisdiction in a case which is founded on the terms and conditions of service, even if it involves the question of violation of fundamental rights because the Service Tribunals constituted under Article 212 of the Constitution are the outcome of the constitutional provisions and vested with the powers to deal with the grievances of civil




25

servants arising out from original or appellate order of the department”.

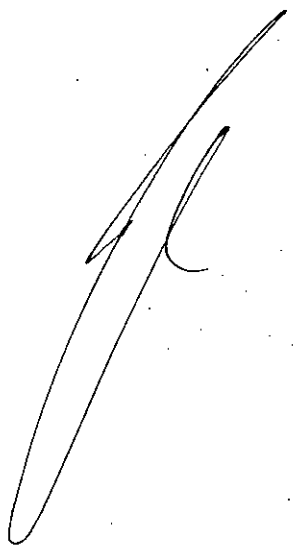
In light of the above observations of the larger bench, the writ petitions filed by retired civil servants in personal capacity are not maintainable before this Court in view of the bar under Article 212 of the Constitution and we have no other option except to transmit such writ petitions to the concerned quarters to treat the same as departmental appeals.

10. Adverting to the maintainability of writ petitions to the extent of legal heirs of the deceased civil servants, in this regard too we rely on another judgment of the same date i.e 22.06.2017 rendered by the larger bench in W.P No. 3394-P/2016 wherein it was observed that:-

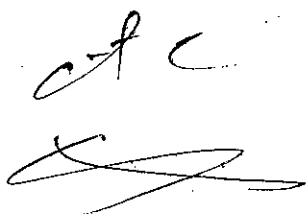
“11. Going through the law on the subject and deriving wisdom from the principles laid down by the Hon'ble apex Court in the judgments (supra), we are firm in our view that petitioners/legal heirs of the deceased employees have locus standi to file these petitions because the pensionary benefits are inheritable which



under section 19(2) of the Khyber Pakhtunkhwa Civil Servants Act, on the demise of a civil servant, devolves upon the legal heirs. The petitioners, as stated earlier, being LRs of the deceased civil servants do not fall within the definition of "Civil Servant", and they having no remedy under Section 4 of the Service Tribunal Act to file appeal before the Service Tribunal, the bar under Article 212 of the Constitution is not attracted to the writ petitions filed by them and this Court under Article 199 of the Constitution is vested with the jurisdiction to entertain their petitions. Resultantly, the objection regarding non-maintainability of the petitions stands rejected".



In light of the above observations recorded by the larger bench, W.P No. 618-M/2017 to the extent of Petitioners No.21 & 22, being legal heirs of the deceased civil servants, is maintainable before this Court in exercise of its powers under Article 199 of the Constitution.



II. Now adverting to merits of W.P No. 618-M/2017 to the extent of legal heirs of the deceased civil servants, while referring to Rules 2.2 and 2.3 of the West Pakistan Civil Services Pensions Rules, 1963 the larger



27

bench in its judgment dated 22.06.2017 in
W.P No. 3394-P/2016 held that:-

“The rules *ibid* reveal that the service of government servant begins to qualify for pension from the very first day of his/her taking over the charge, irrespective of the fact whether his/her appointment and entry into service was temporary or regular. It is also clear from sub-rule (i) that continuous service of a civil servant shall also be counted for the purpose of pension and gratuity and by virtue of sub-rule (ii), temporary and officiating service followed by confirmation shall be counted for pension and gratuity”.

As per contention of the petitioners/LRs, the respondents have refused their family pension on the ground that their predecessors have not completed the prescribed length of service after regularization. This point has also been discussed by the larger bench in the afore referred judgment in the light of Section 19 of the NWFP Civil Servant (Amendment) Act, 2005 and Khyber Pakhtunkwa Civil Servants (Amendment) Act, 2013 and it was held that:-

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

The similar relief sought by legal heirs of deceased civil servants through W.P No. 618-M/2017, has been granted by the larger bench to similarly placed persons, therefore, Petitioners No. 21 & 22 in W.P No. 618-M/2017 are also entitled to the same relief on the ground of parity.

12. In the backdrop of the above, this writ petition i.e W.P No. 22-M/2017, W.P No. 618-M/2017 to the extent of Petitioners No. 1 to 20 & 23 as well as the connected W.P No. 218-M/2017, being not maintainable before this Court, are transmitted to the concerned Secretaries to the Government of Khyber Pakhtunkhwa to treat them as

29

departmental appeals and decide strictly in accordance with Civil Servants Pension Rules, 1963. The concerned Secretaries while deciding the departmental appeals, may take guidance from the judgment of the larger bench referred to above. W.P No. 618-M/2017 is admitted and partially allowed to the extent of Petitioners No. 21 & 22 in the light of judgment dated 22.06.2017 in W.P No. 3394-P/2017. The respondents are directed to pay pension of the deceased employees to their legal heirs. Respondents are further directed to do the needful within two months positively after receipt of this judgment.

Announced
04.10.2017

Mohammad Ibrahim Khan
JUDGE

Ishfaq Ibrahim
JUDGE

Office
11/10

Certified to be true copy

EXAMINER
Peshawar High Court, Mingora/Bar-ul-Qaza, Swat.
Authorized Under Article 07 of Qanun-e-Sikahadat Order 1984

13/10/17

S.No. 5277
Name of Applicant
Date of Presentation of Applicant 12/10/17
Date of Completion of Copies 13/10/17
No of Copies 150
Urgent Fee
Fee Charged 200/-
Date of Delivery of Copies 13/10/17

بخدمت جناب ڈسٹرکٹ آفیسر محکمہ تعلیم (میل) ضلع بونیر۔

30

مضمون:- درخواست بمراہ عمل درآمد بروئے فیصلہ عدالت برائے عطا نیگی پینشن۔

جناب عالی:- (1) گزارش کی جاتی ہے کہ سائیل نے محکمہ تعلیم میں ڈیوٹی انجام دے کر مدت ملازمت مکمل کر کے ریٹائرمنٹ حاصل کی۔

(2) یہ کہ بعد میں سائیل کو پینشن کا حق دار نہیں ٹھرایا گیا بدین وجہ سائیل نے پشاور ہائی کورٹ میں گورنمنٹ میں رٹ پینشن نمبر 2017/618 دائر کی۔ جس نے سائیل کے حق میں فیصلہ کر کے آپ صاحبان کو ہدایت دی گئی ہیں کہ سائیل کو پینشن جاری کیا جائے اور تمام کارروائی عرصہ دو سالوں میں مکمل کیا جائے۔

لہذا آپ صاحبان سے گزارش ہے کہ ہائی کورٹ کے فیصلے مورخہ 04-10-2017 کی روشنی میں پینشن دینے کے مناسب احکامات جاری کر لے تو بندہ تا عمر دعا گو رہے گا۔
کورٹ کا فیصلہ منسلک ہے۔

تابع دار

[Handwritten Signature]

محمد زین امجدی لا

مورخہ 12.10.17

کاپی برائے اطلاعیابی و ضروری کارروائی۔

1- سیکریٹری محکمہ تعلیم خیبر پختون خواہ پشاور۔

2- ڈائریکٹر محکمہ تعلیم خیبر پختون خواہ پشاور۔



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