

S.A No.177/2019

Dr. Kamran Yousaf

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary & 4 others.

Judgment/order

11.03.2020

Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney for the respondents present.

2. Arguments heard. File perused.

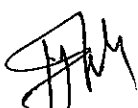
3. Appellant, appointed as Medical Officer on contract basis vide order dated 25.11.1995 got regularization of his service and his colleagues in the year 2005 under the Khyber Pakhtunkhwa Civil Servants (Amendment) Act (IX) 2005. Government of Khyber Pakhtunkhwa further amended Section-19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 vide Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 wherein it is provided that those appointed in the prescribed manner to a service or post on or after 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis. Ultimately vide Notification dated 17.10.2017 the appellant were regularized w.e.f 01.07.2001. Not contended with the said Notification dated 17.10.2017, the appellant has filed the present service appeal for regularization of his service from initial date of appointment and consequential service benefits.

4. Learned counsel for the appellant conceded that identical nature service appeals have already been dismissed by this Tribunal vide common judgment dated 12.11.2019 passed in Service Appeal No.318/2018 filed by Dr. Akram Khan. Learned counsel for the appellant however raised objection that during the course of arguments in the identical service appeals, he vehemently contested/agitated the case of Dr. Muhammad Iqbal however Para-11 of the common judgment speaks otherwise.

11.3.2020

5. Objection raised by learned counsel for the appellant is found misconceived in as much as it is not mentioned in Para-11 of the common judgment that the learned counsel for the appellant has not contested/agitated the case of Dr. Muhammad Iqbal rather this Tribunal has given the findings that the case of Dr. Muhammad Iqbal was dealt with U/S 23 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and this fact was not contested by the learned counsel for the appellant. Copy of Notification No.SO(E)II-II/8-18/2006 dated 09.12.2006 annexed by the appellant, with the memo of appeal, reflects that the services of Dr. Muhammad Iqbal were regularized in exercise of powers U/S 23 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with President Order No.10 of 1969.

6. As a sequel to above the present service appeal is also rejected in terms of common judgment dated 12.11.2019 passed in Service Appeal No.318/2018 filed by Dr. Akram Khan. Parties are left to bear their own costs. File be consigned to the record room.



(Hussain Shah)
Member (E)



(Muhammad Hamid Mughal)
Member (J)

ANNOUNCED.

11.03.2020

28.02.2020

Learned Assistant Advocate General present. Due to rush of work, further proceedings in the case in hand could not be conducted. Adjourn. To come up for order on 11.03.2020 before D.B.



Member



Member

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23.12.2019 Clerk to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Clerk to counsel for the appellant seeks adjournment. Learned DDA stated that identical nature service appeals have already been rejected vide common judgment passed in Service Appeal Filed by Dr. Alaf Khan. Adjourned by way of last chance. To come up for arguments on 31.01.2020 before D.B.


Member


Member

31.01.2020 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 24.02.2020 before S.B.


Member


Member

24.02.2020 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Dr. Salim Javid Litigation Officer present. Arguments heard. To come up for order on 28.02.2020 before D.B.


Member


Member

09.07.2019

Counsel for the appellant and Addl: AG alongwith Mr. Hazrat Shah, Supdt and Mr. Sajid, Supdt for respondents present.

Representative of the respondents states that the reply has been prepared but is yet to be signed by the respondents. He, therefore, requests for a short adjournment.

Adjourned to 18.07.2019 before S.B.


Chairman

18.07.2019

Counsel for the appellant, Mr. Muhammad Riaz Khan Pindakhel, Assistant A.G alongwith Hazrat Shah, Superintendent, Saleem Khan, Litigation Assistant and Sajid Superintendent for the respondents present.

The respondents failed to submit their respective written reply/comments despite on 12.06.2019 last opportunity was granted to them. The matter is, therefore, posted for arguments before the D.B on 10.10.2019.


Chairman

10.10.2019

Due to official tour of Hon'ble Members to Camp Court Swat, the instant matter is adjourned to 23.12.2019 for the same.


Reader

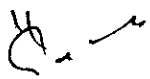
20.03.2019

Clerk to counsel for the appellant and Mr. Kabirullah Khattak learned Addl; AG for the respondents present. Written reply not submitted. ~~Learned AG~~ *Seeks time to file written reply.* adjourned. To come up for written reply/comments on 18.04.2019 before S.B.


(Hussain Shah)
Member

18.04.2019

Clerk to counsel for the appellant present. Written reply not submitted. M/S Rehmat Khan Superintendent representative of the respondent No.4 and Jafar Ali for respondent No.5 present and seek time to furnish written reply/comments. M/S Saleem Khan Superintendent representative of respondent no.3 and Amjid Ali Assistant representative of respondent No.2 absent. They be summoned with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 12.06.2019 before S.B.


Member

12.06.2019

Mr. Riaz Akhtar, Advocate present on behalf of counsel for the appellant. Addl: AG alongwith Mr. Jafar Ali, Assistant for respondents present. Written reply not submitted. Requested for adjournment. Granted but as a last chance. Case to come up for written reply/comments on 09.07.2019 before S.B.


(Ahmad Hassan)
Member

08.03.2019

Counsel for the appellant Dr. Kamran Yousaf present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was appointed as Medical Officer on contract basis vide order dated 13.11.1995. It was further contended that in the year 2005 section-19 of the Civil Servants Act was amended whereby the contract employees were regularized but the department was reluctant to implement the same therefore, the appellant alongwith others filed Writ Petition in this respect before the Worthy Peshawar High Court which was decided on 18.11.2008 ~~which was allowed~~ and the department was directed to regularize their services as per rules. It was further contended that the department implemented the judgment of the Worthy High Court and the appellant was regularized with effect from 2005 but later on Khyber Pakhtunkhwa Civil Servants Amendment Act, 2013 was enforced whereby the contract employees were regularized with effect from 19.06.2001 but the respondent-department was reluctant to regularize the appellant from the said date therefore the appellant again filed Writ Petition before the Worthy High Court which was disposed of by the Worthy High Court vide judgment dated 03.01.2016 and the respondent-department was directed to constitute committee and the appellant was directed to file departmental appeal with the direction to said committee to dispose of the departmental appeal and thereafter the department has issued notification dated 17.10.2017 wherein the appellant was shown at serial No. 36 and regularized the appellant with effect from 01.07.2001. It was further contended that under 2.3 West Pakistan Pension Rules, 1963 contract period followed by regular shall be counted towards pensionary benefits but the respondent-department was reluctant to count the contract/temporary period of the appellant for pensionary benefits, the appellant filed departmental appeal but the same was not responded hence, the present service appeal. It was further contended that as per rule 2.3 of West Pakistan Pension Rules, 1963 contract/temporary period followed by regular service will be counted towards pensionary benefits therefore, the respondent-department is bound to count the same.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 20.03.2019 before S.B.



Appellant Deposited
Security & Process Fee

(Muhammad Amin Khan Kundi)
Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 177/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/2/2019	<p>The appeal of Dr. Kamran Yousaf presented today by Mr. Muhammad Ayub Shinwari Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 6/2/19</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>8-3-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 177 /2019

Dr Kamran Yusaf

.....Appellant


Versus

Government of KPK through Chief Secretary & others


.....Respondents

INDEX

S. No	Description of Document	Dated	Annex	Pg No
1.	Service Appeal and Affidavit			1-6
2.	Condonation application and affidavit			7-8
3.	Copy of Appointment order of Appellant		A	9
4.	Copy of the Directives	10-08-05	B	10-12
5.	Copy of the judgment		C	13-29
6.	Appointment and Regularization order of Dr M Iqbal		D & E	30-31
7.	Copy of Directives	27-02-13	F	32-33
8.	Copy of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013		G	34-36
9.	Copy of Judgment	12-04-16	H	37-40
10.	Copy of Impugned Notification	17-10-17	I	41-44
11.	Copies of Departmental Appeal		J	45-46
12	NAKALAT NAMA			47


Appellant,

Through


Muhammad Ayub Khan Shinwari
Advocate Peshawar

Chamber:

7-A, Haroon Mansion,
Khyber Bazar, Peshawar.
Cell No 03219068514

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 177 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 157

Dated 06/2/2019

Dr Kamran Yusaf S/o Yusaf Khan,
M.S, RHC,
Akora Khattak, Noshera

.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Department of Health, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
5. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

Filed to-day

Service Appeal Under Section 4 of Khyber
Pakhtunkhwa Service Tribunal Act, 1974 against
Notification dated 17-10-2017

Registrar

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

1. That the appellant was appointed as Medical Officers (BPS-17) in the respondent Department on contract basis by the competent authority in the prescribed manner after fulfilling all the codal formalities vide appointment order dated 25-11-1995. (Copy of the appointment order is filed herewith and attached as **Annex-A**)
2. That the said contract was extended from time to time. Meanwhile the Government of Khyber Pakhtunkhwa erstwhile NWFP promulgated NWFP Civil Servants (Amendment) Act (IX) 2005 whereby Section 19 of the NWFP (now Khyber Pakhtunkhwa) Civil Servant Act, 1973 was amended and the services of all the contract employees were regularized.
3. That thereafter respondent No 3 i.e., Secretary, Establishment and Administration Department, Regulation Wing, Khyber Pakhtunkhwa,

2

Peshawar issued a directive dated 10-08-2005, wherein all the administrative Secretaries of the province were directed to the effect that all the Government employees whose services are regularized under the NWFP (now Khyber Pakhtunkhwa) Civil Servant (Amendment) Act, 2005 shall be for all intents and purposes be Civil Servants except pension as laid down in NWFP (now Khyber Pakhtunkhwa) Civil Servant Act, 2005, meaning thereby that they are civil servants with effect from the date of appointment under Section 2(2) read with Section 19 of Khyber Pakhtunkhwa Civil Servant Act, 1973. (Copy of the directive is attached herewith as **Annex-B**)

4. That after the promulgation of the aforesaid NWFP Civil Servants (Amendment) Act (IX) 2005, the respondents were reluctant to regularize the services of the Appellant falling in the ambit of the aforesaid Act, the colleagues filed various Writ Petitions including Writ Petition No 1510/2007 before the Honorable Peshawar High Court, Peshawar which were allowed vide Judgment and order dated 18-11-2008 wherein an elaborate findings have been given on the prescribed manner of appointment for contract employees and other related issues falling in the ambit of NWFP Civil Servants (Amendment) Act, 1973. (Copy of the Judgment and Order is attached herewith as **Annex-C**)
5. That in pursuance of the aforesaid Judgment and Order of this Honorable Court in the said Writ Petitions, the Respondents regularized the services of the Appellant and his colleagues but with effect from the date of promulgation of NWFP Civil Servants (Amendment) Act (IX) 2005 i.e., 23-07-2005 whereas one of the colleagues of Petitioners namely Dr Muhammad Iqbal S/o Amir Waiz Khan who was much junior than the Appellant, was initially appointed on contract basis vide Office Order 08-07-1998 has been regularized with effect from the date of his contractual appointment. (Copy of Appointment and Regularization order of Dr M Iqbal are filed herewith and annexed as **Annex-D & E**)
6. That the Government of Khyber Pakhtunkhwa further amended the section 19 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 vide Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 wherein it is clearly mentioned that those who are appointed in the prescribed manner to a service or post on or after 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis and the respondent No 4 has also issued direction to implement it. (Copy of the directives and Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 are attached herewith as **Annex-F & G**)
7. That after the promulgation of the aforesaid Act, the Appellant was again under legitimate expectancy that his revised regularization order will be issued by the respondents under Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 with effect from initial date of appointment but all in vain.

8. That the Appellant approached the respondents several times for redressing his grievance, to issue their revised regularization order under Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 with effect from the initial date of appointment but all in vain. Hence, the colleagues of the appellant filed Writ Petition No 3960-P/2014 before the Peshawar High Court, Peshawar. The said Writ Petition was disposed off vide Judgment and Order dated 20-12-2016 with the following directions:

“Arguments were heard at length. It has been clearly mentioned in clause-5 of substituted Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 that in case any difficulty arises in giving effect to any of the provisions of this section, the secretary to Government, Establishment Department shall constitute a Committee comprising of Secretary to Government, Finance Department, Secretary to Government Law Department and Accountant General, Khyber Pakhtunkhwa for removal of the difficulty. When the learned AAG was confronted with the aforesaid clause of Act, he conceded the same.

In view of the concurrence of learned AAG, we direct the respondents to constitute a Committee in light of clause-5 of Act (Ibid) with fifteen (15) days. The Petitioners are directed to file their Departmental appeals before the said committee, who is directed to dispose of the same within next one month by giving explicit reason”

(Copy of the judgment is filed herewith and attached as **Annex-H**).

9. That in pursuance of the aforesaid Judgment, the respondents have issued the impugned Notification whereby the services of the Appellant have been regularized with effect from 01-07-2001. (Name of the appellant is at serial No 36 of the impugned Notification) (Copy of the impugned Notification is filed herewith and annexed as **Annex-I**)
10. That feeling aggrieved of the aforesaid Notification, the appellant filed Departmental Appeal which has not been decided yet and the statutory period for deciding the Departmental Appeal has lapsed. (Copy of the Departmental Appeal is filed herewith and annexed as **Annex-J**)

Hence, the instant Service Appeal on the following amongst other grounds:

Grounds:

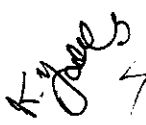
- a. That the impugned Notification of respondent Department is against the law, illegal, unlawful and without lawful authority.
- b. That the treatment met to the Appellant is against the fundamental rights of the Petitioners enshrined and protected under the Constitution of Islamic Republic of Pakistan, 1973.

- c. That both the NWFP Civil Servants (Amendment) Act (IX) 2005 and Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 are regularization laws whereby the services of the contract employees are regularized, both the Acts have not made *de novo* appointments or creating a new job on regular basis of contract employees. Both the Acts are promulgated for an uninterrupted continuation of the service of the previous contract employees till the completion of their normal tenure and making their employment status equal to their contemporaries appointed on regular basis and as such the respondents are duty bound to regularize the service of the Appellant with effect from initial date of appointment by issuing amended regularization Notification.
- d. That Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 is a beneficial legislation as it had regularized the services of all the contract employees falling in its ambit. The said Act has substituted Section 19 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 by a deeming clause and created a legal fiction by laying down that those who are appointed in the prescribed manner to a service or post on or after the 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis. It is a well settled principle of interpretation of statutes, that the interpretation of statute should be beneficial, and one which would advance the object of legislation, suppress the mischief and advance the remedy and not one which would lead to its frustration. In the instant case, the respondents are duty bound to implement the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 in its letter and spirits and issue revised regularization orders of the Appellant.
- e. That as per settled principles of interpretation of Statutes, the statute has to be read as a whole and its provisions cannot be read in isolation. In the instant case Section 2(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 and its other provisions read with its Section 19 amended by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 entitles the Appellant for regularization with effect from initial date of appointment.
- f. That under the rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, the service of the Appellant with effect from dates of appointment till date of regularization i.e., 03-12-1995 to 01-07-2001 shall be counted for pension or gratuity.
- g. That the treatment met to the Appellant is against the dictums of August Supreme Court of Pakistan and this Honorable Court.
- h. That the treatment met to the Appellant is not only based on discrimination but also the same is based on colorful exercise of powers which is not warranted under law.
- i. That the treatment met to the Appellant is not only against the principles of natural justice but also against the settled principles of administrative law.


- 5
- j. That the Appellant crave permission of this Honorable Tribunal to rely on other grounds at the time of arguments and produce any additional document if required in support of his Service Appeal.

It is, therefore, prayed that on acceptance of the title Service Appeal, the impugned Notification may kindly be set aside and the respondents may kindly be directed to issue revised regularization order of the Appellant with effect from initial date of appointment and also be granted graded pay and seniority and other pension benefits with effect from the initial date of appointment and making his employment status equal to his contemporaries appointed on regular basis.

Any other relief, deemed fit and appropriate by this Honorable Tribunal, in the circumstances of the service appeal which has not been prayed for, may graciously be granted.


Appellant,

Through


Muhammad Ayub Khan Shinwari
Advocate Peshawar.

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No _____/2019

Dr Kamran Yusaf

.....Appellant

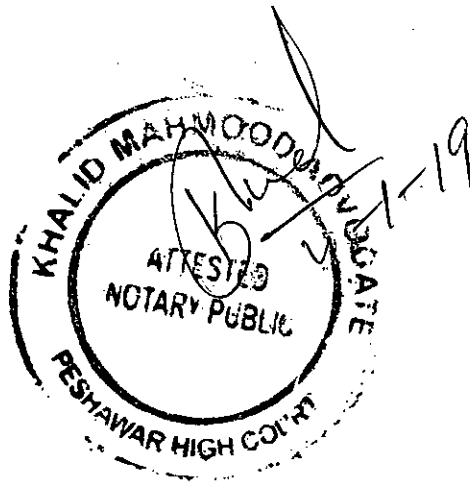
Versus

Government of KPK through Chief Secretary & others

.....Respondents

Affidavit

I, Dr Kamran Yusaf, M.S, RHC, Akora Khattak, Nowshera do hereby solemnly affirm and declare on oath that the contents of the accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.




Deponent

Z

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No _____/2019
in

Service Appeal No _____/2019

Dr Kamran Yusaf

.....Appellant

Versus

Government of KPK through Chief Secretary & others

.....Respondents

Application for condonation of delay

Respectfully Sheweth,

The appellant submits as follows:

1. That the title Service Appeal is pending adjudication before this Honorable Tribunal, wherein no date of hearing is fixed yet.
2. That identical Service Appeals with the same facts and prayer against the impugned Notification are filed by the colleagues of the appellant and are pending adjudication before this Honorable Court wherein notices are issued to the respondents, hence the title Service Appeal being against the same impugned Notification may kindly be admitted and clubbed with aforesaid service appeals and the delay in filing may kindly be condoned.
3. That the Appellant crave permission of this Honorable Tribunal to rely on other grounds at the time of arguments and produce any additional document if required in support of his Service Appeal.

It is, therefore, prayed on acceptance of the instant application the delay in filing the title service appeal may kindly be condoned and be decided on merits.


Appellant,

Through

Muhammad Ayub Khan Shinwari
Advocate Peshawar.

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No _____/2019
in

Service Appeal No _____/2019

Dr Kamran Yusaf

.....Appellant

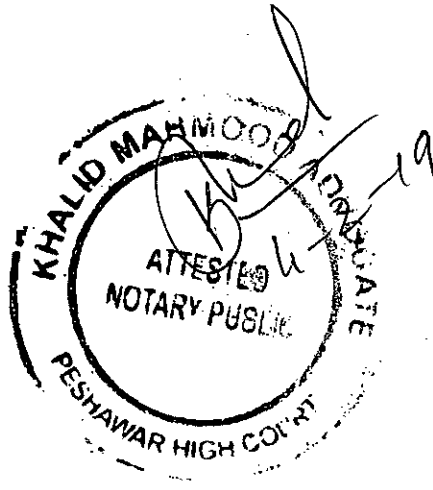
Versus

Government of KPK through Chief Secretary & others

.....Respondents

Affidavit

I, Dr Kamran Yusaf, M.S, RHC, Akora Khattak, Nowshera do hereby solemnly affirm and declare on oath that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



[Handwritten Signature]
Deponent

DIRECTORATE GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

NO. 9969/E-I,

DATED: 25/11/1995.

To,

Dr. Kamran Yousuf
S/o Muhammad A. Yousuf

SUBJECT:- OFFER OF APPOINTMENT ON CONTRACT BASIS.

MEMORANDUM:-

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

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

(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

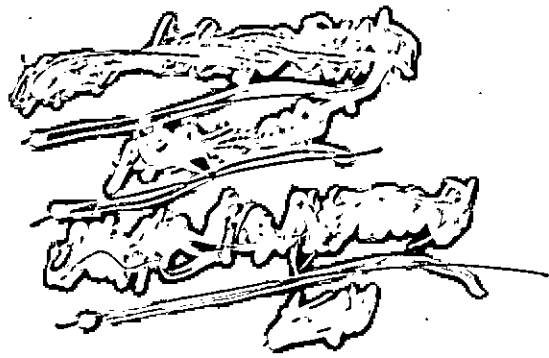
NO. _____/E-I, Dated _____ Peshawar, the _____/1995.

Copy forwarded to the :

- Secretary to Govt. of NWFP, Health Deptt: Peshawar for information with reference to his letter No. SO(H)IV/3-12/93, dated 16th Nov. 1995.
- Medical Supdt: _____ for information & n/action.
- Divisional Director Health Services Abbottabad
- District Health Officer/Agency Surgeon A. Bad
- Accountant General, NWFP, Peshawar.
- District/Agency Accounts Officer A. Bad for information and n/action please.

(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

ATTESTED



ANNEX B

حکومت صوبہ سرحد

سٹیبلشمنٹ اینڈ ایڈمنسٹریشن ڈیپارٹمنٹ
(ریگولیشن ونگ)

سورجہ پٹا ورہ ۱۱ اگست ۲۰۰۵ء

نمبر افسر صوبہ ضوابط (ای اینڈ اے ڈی) ۱۳/۲۰۰۵ء

بخدمت

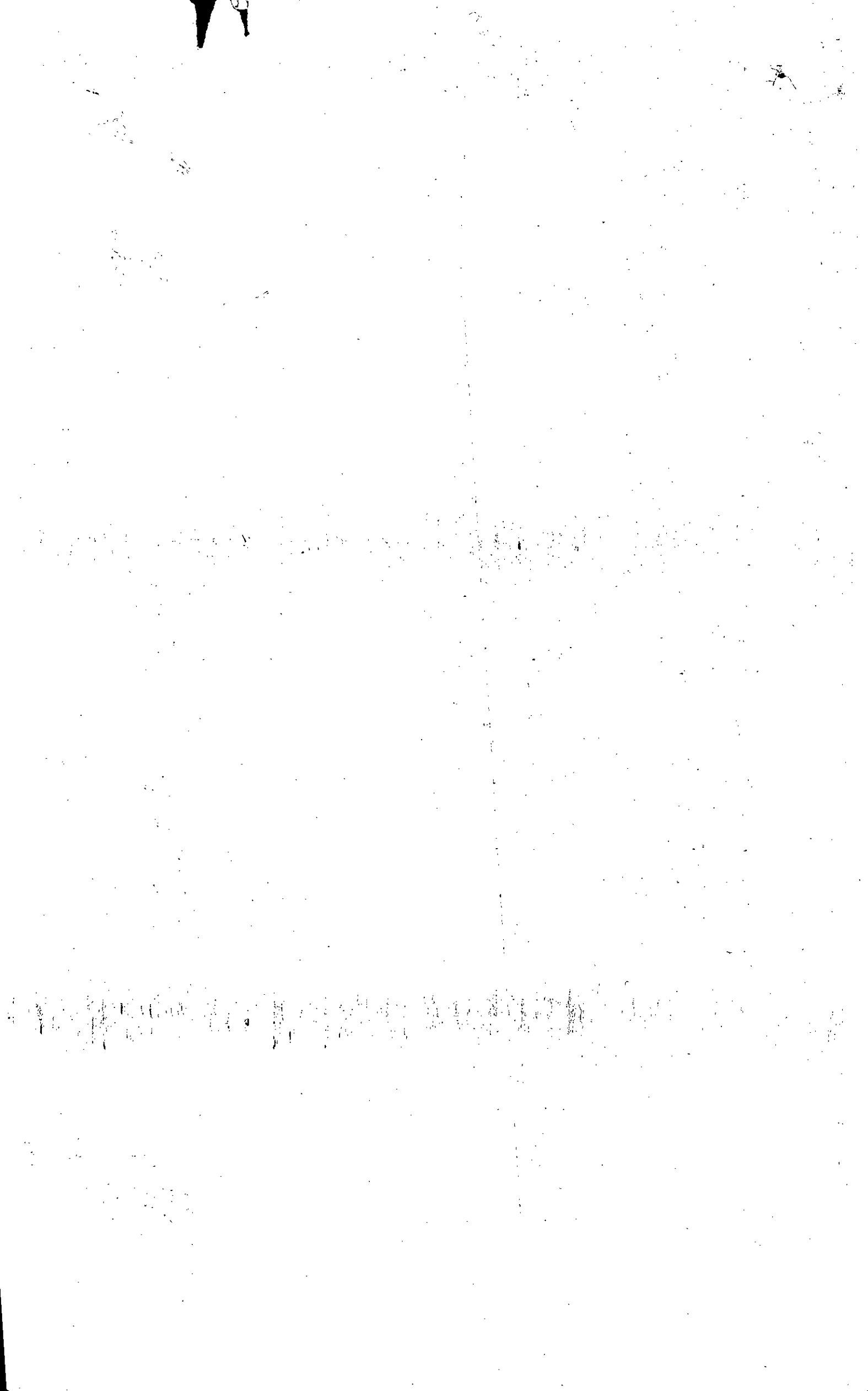
- ۱۔ تمام انتظامی مستندین حکومت صوبہ سرحد
- ۲۔ مستند برائے گورنر صوبہ سرحد
- ۳۔ مستند برائے وزیر اعلیٰ صوبہ سرحد
- ۴۔ مستند صوبائی اسپل سکرٹریٹ
- ۵۔ تمام ڈسٹرکٹ و سیشن جج، صوبہ سرحد
- ۶۔ رجسٹرار پٹا ورہ ہائی کورٹ پٹا ورہ
- ۷۔ مستند پبلک سروس کمیشن صوبہ سرحد
- ۸۔ رجسٹرار سروسز ٹراپول پٹا ورہ
- ۹۔ اکاؤنٹنٹ جنرل صوبہ سرحد پٹا ورہ
- ۱۰۔ تمام سربراہان ملحقہ محکمہ چارج صوبہ سرحد
- ۱۱۔ تمام سربراہان خود مختار / ٹیم خود مختار ادارہ جات صوبہ سرحد
- ۱۲۔ تمام ضلعی رابطہ افسران ریٹائر ان سیاسی صوبہ سرحد

عنوان:- شمال مغربی سرحد کی صوبہ کی سول ملازمین بھرتیہ ۱۹۷۳ء تا ۱۹۸۳ء میموریکٹ ۲۰۰۵ء کا نفاذ

۵۱-۵۲

صوبائی کابینہ نے سال ۲۰۰۱ء کا بجٹ منظور کرتے ہوئے فیصلہ کیا کہ آئندہ تمام باقاعدہ آسامیوں پر تعیناتی بذریعہ کنٹریکٹ کی جائے گی۔ تاکہ پنشن کی مد میں بڑھتے اخراجات سے چھٹکارا پایا جائے۔ واضح رہے کہ پراجیکٹ پرسنوں، تھوڑے عرصے والے آسامیوں انتظامی مضاف (Contingent paid staff) سے نکلنے والے تنخواہ پر تعینات افراد دوبارہ تعیناتی اور کمیشن کے ذریعے زیر التوا آسامیوں پر تعیناتی پہلے بھی بذریعہ کنٹریکٹ کی جاتی تھی اور آئندہ بھی جاری رہے گی۔ کم جولائی ۲۰۰۱ء سے تین سہ ماہیہ پر تعیناتی پیک سروس کمیشن سے داخراہہ ہٹا دیں گے۔ پیک سروس کمیشن سے روٹوں میں لایم سے ذریعے آئیں یہ اختیار دیا گیا۔

ATTESTED





۲۔ محکمہ خزانہ صوبہ سرحد نے بحوالہ مراسلہ نمبر FDI/(SOSR-II)12-1/2002 مورخہ ۲۶ اکتوبر ۲۰۰۲ء کو صوبائی حکومت میں تمام باقاعدہ آسامیوں کو پُر کرنے کیلئے کنٹریکٹ پالیسی جاری کی۔ کنٹریکٹ پالیسی پر تفصیلی جائزہ لیا گیا۔ اور صوبائی کابینہ کی منظوری سے سول سرونٹ ایکٹ بحریہ ۱۹۷۳ء کی شق نمبر ۱۹ میں ترمیم کی منظوری دی۔ ترمیمی ایکٹ ۲۰۰۵ء میں منسلک ہے۔ مذکورہ ترمیم کے مطابق یکم جولائی ۲۰۰۵ء سے لیکر اس قانون کے نافذ ہونے تک مجوزہ طریقہ کار کے مطابق مجاز فورم کی سفارشات پر وہ تمام افراد جو باقاعدہ منظور شدہ آسامیوں پر تمام قانونی لوازمات پوری کرنے کے بعد کنٹریکٹ پر تعینات کیئے گئے تھے سول سرونٹ تصور کیے جائیں گے۔ اور وہ تمام مراعات کے حقدار ہونگے جو کہ سول سرونٹ ایکٹ میں پہلے سے موجود ہیں ماسوائے پنشن کے۔ یہ افراد پنشن کی بجائے شراکتی کفایت شعاری فنڈ (CP FUND) کے حقدار ہونگے جس کے لیے متعلقہ ملازم اور حکومت دونوں بحساب دس فیصد ادائیگی کریں گے۔

۳۔ وہ تمام ملازمین جو باقاعدہ سول سرونٹ تعینات ہیں وہ بدستور پنشن کے حقدار ہونگے۔ وہ تمام کنٹریکٹ ملازمین جو کہ مجاز فورم کی سفارشات یا مجوزہ طریقہ کار کے مطابق بھرتی نہیں ہوئے یا پراجیکٹ پوسٹوں، عارضی آسامیوں یا اتفاقی منہ پارف سے فکسڈ تنخواہ پر تعینات افراد جو کنٹریکٹ کی بنیاد پر تعینات کیئے گئے تھے وہ بدستور کنٹریکٹ ملازمین رہیں گے اور ان کی ملازمت کے شرائط و قواعد وہی ہونگے جنکی بنیاد پر انکی بھرتی کی گئی تھی۔ واضح رہے کہ مجاز فورم سے مراد صوبائی پبلک سروس کمیشن اور حکمانہ چناؤ کمیشیاں ہیں۔ جبکہ ذریعہ تعیناتی کی سفارشات کی جاتی ہیں۔ جو آسامیاں پبلک سروس کمیشن کے دائرہ اختیار میں آتی ہیں ان کے لیے پبلک سروس کمیشن ہی مجاز فورم ہے۔ اور جو آسامیاں پبلک سروس کمیشن کے دائرہ اختیار میں نہیں آتی ہیں ان کے لئے حکمانہ چناؤ کمیشیاں مجاز فورم ہیں۔ بشرطیکہ دیگر تمام لوازمات کو ملحوظ خاطر رکھا گیا ہو۔

۴۔ مندرجہ بالا قانون کے نفاذ کے بعد آئندہ تمام باقاعدہ منظور شدہ آسامیوں پر مجوزہ طریقہ کار کے مطابق اور مجاز فورم کی سفارشات پر باقاعدہ بھرتی بحیثیت سول سرونٹ کی جائیگی۔ تاہم پیشکش ملازمت (Offer of appointment) میں یہ واضح طور پر لکھا جائے گا کہ یہ افراد پنشن کی بجائے حکومت کے مقرر کردہ شراکتی کفایت شعاری فنڈ کے حقدار ہوں گے۔ لہذا تمام محکمہ جات کو ہدایت کیجاتی ہے کہ یکم جولائی ۲۰۰۵ء سے لیکر مندرجہ بالا قانون کے نفاذ تک باقاعدہ آسامیوں پر مجاز فورم کی سفارشات اور مجوزہ طریقہ کار کے ذریعے بھرتی کیئے گئے کنٹریکٹ ملازمین کی ریگولر ازیشن کیلئے متعلقہ مجاز حکام سے منظوری حاصل کی جائے۔ نلاحظہ جات میں اس بات کی تصدیق کی جائے کہ مذکورہ آسامی ایک باقاعدہ آسامی ہے۔ اور اس پر بھرتی مجوزہ طریقہ کار اور مجاز فورم کی سفارشات پر تمام قانونی تقاضے پورے کرنے کے بعد لائی گئی تھی۔

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مندرجہ بالا ہدایات پر سختی سے عمل درآمد کی درخواست کیجاتی ہے۔ اس خط کی موصولی کی تصدیق کی جائے۔

محمد ہمالیون
(محمد ہمالیون)
معتقدہ خصوص (ضوابط)

نقل برائے اطلاع:-

- ۱- حساب دار عمومی صوبہ سرحد
- ۲- تمام ضلعی ڈائریکٹری افسران حساب داری صوبہ سرحد
- ۳- ذاتی معتقد برائے وزیر اعلیٰ صوبہ سرحد
- ۴- ذاتی معتقد برائے گورنر صوبہ سرحد
- ۵- ذاتی معتقد برائے معتقد اعلیٰ صوبہ سرحد
- ۶- ذاتی معتقد برائے سینئر وزیر صوبہ سرحد
- ۷- تمام ذاتی معتقدین برائے صوبائی وزراء۔

حسین شاہ
(حسین شاہ)
نائب معتقد (ضوابط)

تقریر نمبر تاریخ انشا:-

نقل برائے اطلاع:-

- ۱- تمام انسانی معتقدین برائے نائب معتقدین گلگت ایشیائیٹ اور ایڈمنسٹریشن صوبہ سرحد پشاور
- ۲- ناظم سٹاف ٹریننگ ایشیائیٹ بینڈولیت فنڈ بلڈنگ پشاور صدر
- ۳- تمام سیکشن آفسران اسٹیٹ آفسر گلگت ایشیائیٹ اور ایڈمنسٹریشن صوبہ سرحد پشاور۔
- ۴- ذاتی معتقد برائے معتقد گلگت ایشیائیٹ صوبہ سرحد پشاور
- ۵- اسٹٹ معتقد بینڈولیت فنڈ ایشیائیٹ اور ایڈمنسٹریشن صوبہ سرحد پشاور
- ۶- مہتمم کتب خانہ گلگت ایشیائیٹ اور ایڈمنسٹریشن صوبہ سرحد پشاور

محمد فقیر
(ستار محمد فقیر)
افسر صیغہ (ضوابط - ۶)

ATTESTED

Annex C 13

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT
Writ Petition No.1510 of 1997.
JUDGMENT.

Date of hearing.....18-11-2008.....

Petitioners (Dr. Rizwanullah and others) By Mr. Rasool Amin, Advocate
Respondents (Govt. etc.) By Mr. S. Qureshi, Rasheed Akbar, M. S. Dr. Alam
D. A. Asst. Director Health & Family Welfare
S. O. Health.

DOST MUHAMMAD KHAN, J.- This single

judgment shall also decide the following connected writ
petitions:-

- (i) Writ Petition No. 1509/07,
Dr. Aziz Khan and others
Versus
Government of NWFP and others;
- (ii) Writ Petition No: 1059/07,
Mohammad Khalid and another
Versus
Province of NWFP through Secretary Zakat
and others;
- (iii) Writ Petition No. 1742/07,
Dr. Mumtaz Hussain and another
Versus
Government of NWFP and others;
- (iv) Writ Petition No. 739/08,
Dr. Mansoor Ahmand and others
Versus
Government of NWFP and others;

ATTESTED
EXAMINER
Peshawar High Court

ATTESTED
EXAMINER
Peshawar High Court

ATTESTED

(v) Writ Petition No. 1741/07,
Dr. Ali Muhammad and others
Versus
Government of NWFP and others;

(vi) Writ Petition No. 1721/07,
Dr. Tchmina Jalil
Versus
Government of NWFP and others;

(vii) Writ Petition No. 1677/07,
Dr. Mustafa and others
Versus
Government of NWFP and others;

(viii) Writ Petition No. 1842/07,
Dr. Muhammad Jawad
Versus
Government of NWFP and others;

(ix) Writ Petition No. 1846/07
Dr. Farkhanda Jabeen
Versus
Government of NWFP and others;

(x) Writ Petition No. 2088/07,
Dr. Hamidullah
Versus
Government of NWFP and others;

(xi) Writ Petition No. 1682/07
Dr. Shah Wali Khan
Versus
Government of NWFP and others;

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EXAMINER
Peshawar High Court

ATTESTED

(xii) Writ Petition No. 27/2008,
Fida Muhammad Khan
Versus
Government of NWFP and others;

(xiii) Writ Petition No. 365/08,
Dr. Saleem Qasim and others
Versus
Government of NWFP and others;

(xiv) Writ Petition No. 460/08,
Abdur Rashid Pharmacist
Versus
Government of NWFP and others;

(xv) Writ Petition No. 908/08,
Dr. Aurangzeb
Versus
Government of NWFP and others;

(xvi) Writ Petition No. 2090/07,
Dr. Shahida Begum
Versus
Government of NWFP and others;

(xvii) Writ Petition No. 242/07
Dr. Abdul Qasim
Versus
Government of NWFP and others;

(xviii) Writ Petition No. 2002/07,
Tauseef Aman
Versus
Government of NWFP and others;

ATTESTED
EXAMINER
Peshawar High Court

ATTESTED

because identical questions of law having decisive force are involved in all these petitions.

2. Before taking for discussion the law points involved herein, it is deemed proper to mention here that during hearing in the case of Dr. Farmanullah vs. Chief Secretary, Government of NWFP and others (Civil Appeal No. 504/2008) before the Honourable Supreme Court, the learned Additional Advocate General, NWFP made a statement that Writ Petition No. 1510/2007 (the present one) involving similar questions of law was pending before this Court, thus, made a prayer that as a rule of propriety, the above Civil Appeal No. 504/2008) shall be kept pending so that the ibid Writ Petition No. 1510/2007 (of the present petitioner) is disposed of and the Apex Court was pleased to order accordingly. The Registrar of this Court was directed to place the said Writ Petition No. 1510/2007 before the Honourable Chief Justice for expeditious disposal. After receipt of the said order, the Honourable Chief Justice directed listing of all these cases for early disposal.

3. Today preliminary arguments were heard and because 2 judgments of this Court delivered in the case of Miss Shagufta Sayed and others vs. Government of N.W.F.P. Writ Petition No. 1731/2006

ATTESTED decided on 11.9.2007 and the other given in the case of Mst. Naveed Yousaf, PST and 21 others vs. E.D.O. and others Writ Petition No. 1648/07 dated 24.9.2008 was cited at the Bar, therefore, this petition along with the above connected writ petitions were admitted to full

EXAMINER
Khyber Pakhtunkhwa High Court

ATTESTED

17
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hearing. The learned Additional Advocate General and the learned counsels representing the petitioners in the above petitions agreed that let all be decided today because of the directions given by the Apex Court and with the consent of the learned Additional Advocate General, the para-wise comments filed in this petition were treated as comments in all the above writ petitions because he did not want to add any thing to the already submitted comments in this case. The learned counsels were directed to address the Court after the break.

4. Arguments heard and available record/documents annexed with the said petitions were perused and the admitted position in all these cases on factual side is that all the petitioners in these petitions were initially appointed on contract basis by the departmental heads/departmental selection committees and their appointments were duly notified by the Government.

5. Some of the petitioners were appointed way back in 1995, others in 1999 and their contract period was duly renewed/extended from time to time through various notifications issued by the competent departmental authority. The last one in the series in some cases was issued in the year 2004 while in other cases, the last notifications were

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BY
MUNIR HANIF
Clerk

issued in the year 2007. Thus the learned Additional Advocate General did not dispute that the present petitioners were holding posts in the Health and other departments as employees appointed on contract basis when the NWFP Civil Servants (Amendment) Act (IX) of 2005 came

ATTESTED

into force on 23rd July, 2005. He also did not controvert that after the notification of the Act in the extra ordinary gazette of N.W.F.P., some of the petitioners were still kept as contract employees by their respective departments, extending the tenure of their contract employment vide different notifications issued from time to time. Thus, it is an established fact that the petitioners in this writ petition and all those in the connected writ petitions, were contract employees working on their respective posts at the time when the NWFP Civil Servants (Amendment) Act (IX) 2005 came into effect.

6. The learned counsel for the petitioners, in all these petitions, raised the following points of law which, may be summed up as follows:-

- "(i) this Court in the case of Miss Shagufta Saved and others vs. Government of N.W.F.P. and others, vide judgment given in Writ Petition No. 1731/2006 dated 11.9.2007 had conclusively decided all the law points involved herein. Thus a subsequent D.B. cannot hold a different opinion from the one already formed;
- (ii) that admittedly the petitioners in all these petitions were contract employees under the Government of NWFP and were serving in different departments when the Amendment Act (IX) of 2005 came into effect. Thus in view of the amendments introduced in S.19 of the NWFP Civil Servants Act XVIII of 1973 on the strength of subsection (2) of Section 2 of the Amendment Act 2005, the contract services of all the petitioners ipso facto stood regularized but the respondents, putting unreasonable and irrational construction on the above provision of law, have refused to regularize their services which is, an act ab initio void and coram non iudice;

ATTESTED
EXAMINER
Pachuwair High Court

ATTESTED

- (iii) that all these petitioners were duly selected and appointed in the prescribed manner on contract basis by the competent authority and all of them have successfully undergone written test/interview taken by the departmental selection committees/competent authorities; and
- (iv) The contract employment of the petitioners was extended from time to time till the date when they earned the benefit of the provision of the Amendment Act (IX) 2005 and because the Provincial Government has regularized similar contract employees in different Provincial Departments, simply through executive orders/notifications but the petitioners herein, are given discriminatory treatment which has been forbidden by the constitutional command contained in Articles 4, 8 and 25 of the Constitution, 1973.

7. The learned Additional Advocate General, raised three-fold contentions with regard to the legal propositions involved herein, which are briefly cited below:-

- (i) that all the petitioners were appointed on contract basis under a written agreement as stopgap arrangement and they were supposed to quit the posts they were holding, on the arrival of the selectees of the NWFP Public Service Commission;
- (ii) that the petitioners are estopped by their conduct because even after the promulgation/coming into force of the Civil Servants (Amendment) Act (IX) 2005, they sat quiet and did not agitate their grievance with regard to non-regularization of their services. Thus they cannot avail any relief from this Court.
- (iii) that rule (4) of the N.W.F.P. Public Service Commission (Functions) Rules, 1983 amended vide Notification No. SOR-1(E&AD)1-99/73 dated 2.11.2002 has impliedly brought the selection of civil servant on contract for BPS-11 and above, within jurisdiction/powers of Public Service Commission, therefore, the petitioners herein were not appointed in the "prescribed manner". Hence, they are not entitled to avail the beneficial provision of subsection (2) of Section 2 of the Amended Act (IX) 2005 because they were selected/appointed by the departmental heads/Selection committees and not by the Provincial Public Service Commission.

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 Provincial High Court

ATTESTED

8. The learned Additional Advocate General has laid considerable stress on the amended rule (4) *ibid*, therefore, we have to take up the same for discussion in the first instance as it has incisive and decisive role in determining the eligibility of all the petitioners under the provision of subsection (2) of Section 2 of the Amendment Act (IX) 2005.

9. Under the provision to Section 2 (1) (b) of NWFP Civil Servants Act 1973 civil servant has been defined and under clause (ii), those employed on contract, or on work charged basis, or those paid from contingencies are excluded from the said definition. Similarly Section 25 of the N.W.F.P. Civil Servant Act (NWFP Act No. XVIII of 1973), has conferred powers on the Governor of the Province or any person authorized by him to appoint persons on contract basis. The same is reproduced below:-

"25. Appointment of persons on contract etc: The Governor or any person authorized by the Governor in that behalf may, on such terms and conditions as he may specify in each case, appoint persons on contract basis, or on work charged basis or who are paid out of contingencies:

Provided that all such employees who were working in any such capacity immediately before the commencement of this Act shall continue to be so employed on the same terms and conditions on which they were appointed."

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S. K. PALNIER
Public Service High Comm

10. The plea of the learned Additional Advocate General that due to amendment in rule-4 of the NWFP Public Service Commission

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(Functions) Rules 1983; in 2002, the appointments of persons on contract basis has also been brought within the fold of NWFP Public Service Commission is absolutely untenable in law because firstly the said rule contained a non obstante clause and it has clarified in clauses (i) to (iii) that certain posts shall be outside the purview of the Commission. Even if it is construed in the way, the learned Additional Advocate General desires, it would come in conflict with the clear and explicit provisions of subsection (2) of Section 2 and Section 25 of the N.W.F.P. Civil Servant Act 1973 wherein appointment of persons on contract basis has been taken out of the purview of Provincial Public Service Commission being not regular civil servants and the Governor or a person authorized by him in this behalf shall be the authority for appointment of persons on contract basis:

11. It is an ironclad principle with regard to the interpretation of Statute that when any rule/regulation or executive order made/passed by any authority under delegated powers of legislation comes in conflict with the Statute made by the legislature, then it shall be void to that extent and shall give way to the parent Statute which shall have overriding and superimposing effect. In the case of GATRON (INDUSTRIES) LIMITED VS. GOVERNMENT OF PAKISTAN

ATTESTED
 EXAMINER
 Peshawar High Court

and others (1999 SCMR 1072), it was held by the Apex Court that rights created by a Statute cannot be taken away through executive order of rule making authority. The object of delegation of rule making powers is always aimed at to carry out and achieve the objects and purposes of an

ATTESTED

22

Act of legislature. Thus a rule making authority cannot enact a rule to override or render the main Statute ineffective. Therefore, the view of the learned Additional Advocate General being based on misconception, cannot prevail. Amended rule (4) even if construed the other way as was suggested, is ultra vires being in direct clash/conflict with the main Statute. Section 26 of the NWFP Civil Servants Act 1973 also clearly explains the above position which admits of no doubt nor it suffers from any ambiguity to be debated upon.

12. Under the provision of Section 25 of the NWFP Civil Servants Act, 1973, the Provincial Government, through different notifications/orders/circulars has authorized the administrative secretaries/heads of the attached departments as competent authority for the appointment of persons on contract basis and the table given there under, was not contested by the learned counsel for the Government.

13. The posts which the petitioners are/were holding on contract basis, were duly advertised in the prescribed manner by the competent authority, the petitioners applied for the same, they appeared before the Selection Committees/Departmental Authority in due course and have successfully undergone the tests and interviews thus, were selected on merits but on contract basis. Their contractual services were consistently renewed from time to time and they retained the said posts till the time

when the NWFP Civil Servants (Amendment) Act (IX) 2005 came into force on 23rd July, 2005.

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14. To understand the relevant provisions i.e. subsection (2) of Section 2 of the Amendment Act.(IX), the same is reproduced below:-

"Subsection (2). A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act but appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on a regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act shall, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the contributory provident fund, along with the contributions made by Government to his account in the said fund, in the prescribed manner."

15. The language of the above provision is plain and well conceivable, therefore, leave nothing in doubt with regard to the regularization of contractual services of the petitioners. The deeming phrase used therein has put a seal of endorsement on this view. Second part of the above provision has almost conclusively determined the matter in controversy because the two terms used therein i.e. "all such persons and the persons appointed on regular basis to a service or post in the prescribed manner" clearly lays down that the employees on contract basis now regularized and those appointed on regular basis (through Public Service Commission) for all intents and purposes be civil servant except for the purposes of pension and gratuity. A clear line of demarcation has been drawn by the legislature between the two categories of civil servants, the one who are taken on contract basis but regularized through the above provision and those appointed on regular

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basis through the Public Service Commission both have been referred to with clear intents but for the purposes of pensionary benefits. If the legislature intention was that only those persons appointed on regular basis shall be deemed to be a civil servant, then it would have never employed the words all such persons which has direct nexus with the petitioners. Thus the view of the learned counsel for the Government is absolutely misplaced and untenable in law.

16. A bare look at the history of legislation on this subject in the past further reinforced the above view that the petitioners' services have been duly regularized by the legislature and nothing has been left for the executive to notify their names in the official gazette or to pass any executive order. In this regard, the NWFP Adhoc Civil Servants (Regularization of Services) Act-II of 1987 is much relevant wherein a proviso was added to Section 3 thereof to the following effect:-

"Provided that—

- (i) the services of such civil servants shall be deemed to have been regularized under this Act only on the publication of their names in the official Gazette;"

In the NWFP Employees on contract basis (Regularization of Services) Act VIII of 1989, S.4 is couched in the following words:-

"S.Regulation of services of certain Civil Servants: (I) Notwithstanding anything contained in any law for the time being in force, any Civil-Servant, who is or has been

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EXAMINER
Peshawar High Court

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19. The above discussion and the reproduction of different legislation made from time to time by the Provincial Assembly lead one to a definite conclusion which shall go without any fear of rebuttal that the petitioners' contractual services were duly regularized and the phrase "prescribed manner" so used in the former and for those who are regularly appointed (repeated) would lead to an inference that the Act (IX) has drawn a clear distinction between the petitioners and those who are appointed on regular basis otherwise there was no need to mention both the categories of employees tagged with the words "prescribed manner". Thus the impression given by the learned counsel for the Government is absolutely fallacious and does not stand to reason. As already discussed in the earlier para, the appointment of employees on contractual basis have been taken away from the purview and domain of NWFP Public Service Commission and for such appointments, the above statutory provision has authorized the Governor of the Province or those authorized/appointed by him to be the competent authorities for appointment of contract employees. Therefore, if the amended rule-4 of the NWFP Public Service Commission (Functions) Rules, 1983 is construed in the way adopted by the said counsel, then in that case the rule can be held to be ultra vires because it has been framed/issued by the Government under the delegated powers of legislation is for all intents and purposes must remain subordinate and subservient to the statutory law and the latest shall override the same for all purposes and intentions.

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20. The two categories of employees i.e. contract employees and regularly appointed employees are thus placed under the domain of two different authorities i.e. the Governor or persons authorized by him and the Provincial Public Service Commission. Thus the statutory law has provided two different channels for appointment of the above two categories of employees. Hence, the appointment of contract employees by the authorities/departmental heads/selection committees etc. authorized by the Governor is an appointment in the "prescribed manner" and similarly for regular appointment of civil servants through Public Service Commission to a post in civil service of the Province is another mode of appointment in the "prescribed manner". Both the matters/channels on no yardstick or legal basis can be intermingled for the purpose of holding the contrary view because both have been placed by the statutory law poles apart. Both the authorities i.e. the one authorized/appointed by the Provincial Government and the Provincial Public Service Commission, under the statutory law have domain over the appointment/selection of two different types/categories of employees. However, to be more clear the appointments of the petitioners were made by the above referred authorities in the "prescribed manner" by the departmental authorities/administrative secretaries in the manner prescribed by the statutory law i.e. in the "prescribed manner". Therefore, the petitioners on the strength of subsection (2) of Section 2 of the Act (IX) 2005 are undoubtedly entitled to regularization of their services and they have been duly regularized under the above provision of law and no executive authority

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within the Province has been left with any powers or authority to undo what is intended by the legislature. They have no role to play in the matter except to determine the inter se seniority of such contractual employees/the petitioners on the strength of length of their service.

21. The above discussion and findings would also answer the points raised by the learned Additional Advocate General shown as (i) and (ii) because it is a century old principle of law that no estoppel shall operate against a Statute which aspect is otherwise not established in view of the admitted facts on record. Government and the Authorities concerned can be held responsible in this regard for not complying with the requirements of the Amendment Act (IX) 2005 and the petitioners cannot be blamed for the inaction of the former.

22. This Bench cannot form a different opinion on the law point from the one which has already been enunciated by the former Division Bench of this Court in the earlier cited two cases as the Honourable Supreme Court has consistently held that a subsequent Division Bench cannot differ with the opinion of the earlier Bench on the same point of law and in case it wishes to do so, it may ask the Chief Justice to constitute a larger Bench or to leave the matter for the decision of the Honourable Supreme Court. On this point, the following case law of the Apex Court is relied upon:

- (a) The Province of East Pakistan vs. Dr. Azizul Islam (PLD 1963 Supreme Court 296 at page-308);
- (b) The Province of East Pakistan vs. Sirajul Haq Patwari (PLD 1966 Supreme Court 854 at page-920).

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Provincial High Court

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71
© Multiline Associates vs. Ardeshir Cowasjee and others
(1995 SCMR 423);

(d) Haji Ali Khan and Company, Abbottabad vs. M/s Allied Bank of Pakistan Limited
(PLD 1995 Supreme Court 362)

and the other view held by the Supreme Court of India in the case of Sidheswar Ganguly vs. State of West Bengal (PLD 1958 Supreme Court (India) 337).

23. During the course of hearing, the Court was informed that amongst the petitioners many have appeared in the screening test/interview held by the NWFP Public Service Commission for the same posts they are holding and have remained successful but could not be appointed either for insufficient zonal quota seats or other reason. This assertion was not controverted/disputed by the learned Additional Advocate General at the Bar.

24. The Court has gone through the comments and the other documents annexed therewith and there is nothing on record to show that the petitioners at any stage were found inefficient or were complained against by their superiors in office almost majority of the petitioners have rendered services in the field for 4 to 10 years continuously. Thus, in all probabilities the petitioners have acquired rich experience in the relevant field and may deliver significant services on this score. Therefore, they would be of much worth in their respective field as compared to the new entrants/scadtees of the Provincial Public Service Commission not possessed of such long experience. Therefore,

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this factor is an additional ground, worth consideration in favour of the petitioners.

25. For what has been discussed above and in view of the conclusions drawn after interpreting all the provisions of law relevant to the subject, it is held that all the petitioners have been duly regularized in view of the provision of Section 2 subsection (2) of the NWFP Civil Servants (Amendment) Act (IX) 2005, all these petitions are allowed in the above terms and as a mere formality and for the purpose of preparing their service books/record, the appointing authorities/administrative secretaries of the petitioners may issue formal order/orders with regard to their inter se seniority and other relevant particulars required to be entered therein. The needful be done by all concerned by keeping in view the two dates i.e. terminus ad quem and terminus a quo, within a period of a month positively. The authorities/administrative Secretaries/departmental heads of the petitioners shall also create a contributory funds and gratuity funds as is required by the above provision of law and the petitioners shall be directed to contribute towards that besides the Government own share/liability of contribution towards the said fund.

All petitions are allowed.

sd: Dost Mohammad Khan — J
sd: Zia-ud-Din Khattak — J

CERTIFIED TO BE TRUE COPY

S. Amin
Peshawar High Court Peshawar
Authorized Under Section 15-A of the Act

17-10-09

ATTESTED

NO. 19530 /E-I,

DATED. 08/07 /1998.

Annex B

Dr. Mohammad Iqbal B/O Amir Waiz Khan,
Vill: & P.O. Murar, Tehsil & Distt: Banou.

SUBJECT:- OFFER OF APPOINTMENT ON CONTRACT BASIS.

MEMO:

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

1. The Competent authority is hereby appoint you as Medical Officer/Women Medical Officer/Dental Surgeon in the Health Deptt: Govt: of NWFP. on contract basis in B-17 W.a.f. 01.7.1998 to 16.5.1999 or till the availability of Public Service Commission selects/return of original incumbent from leave/deputation whichever is earlier, on the terms and conditions laid down in the attached Agreement Deed. You shall be posted to DCO, Gabrai (Distt: Swat).
This contract appointment is not transferable.
2. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
3. If you accept the offer of appointment on contract basis as a ~~Medical Officer/Women Medical Officer/Dental Surgeon~~, the attached Agreement Deed should be filled in duly signed by you and should report at your own expense.
4. If you fail to report for duty at the station specified in Para-3 above, within Ten(10) days, the offer of appointment on contract basis will be deemed to have been withdrawn automatically and no further correspondence shall be entertained in this respect.

(DR. HAQ-DAD)
DIRECTOR GENERAL HEALTH,
SERVICES, NWFP, PESHAWAR.

NO. 19531-39/E-I, DATED PESHAWAR THE 08 / 07 / 1998.

Copy forwarded to the :-

1. Secretary to Govt: of NWFP, Health Deptt: Peshawar, for information with reference to his letter No. SO(H)IV/3-18/93, dt: 27.6.1998
2. Medical Superintendent, _____ for information and n/actio
3. Divisional Director Health Services, Head Qtr: Saigra Sharif, Swat.
4. District Health Officer/Agency Surgeon, _____
5. Accountant General, NWFP, Peshawar.
6. District/Agency Accounts Officer, _____

for information and necessary action please.

(DR. HAQ-DAD.)
DIRECTOR GENERAL HEALTH,
SERVICES, NWFP, PESHAWAR.

ATTESTED

GOVERNMENT OF NWFP
HEALTH DEPARTMENT

ANNEX 31

Dated: Peshawar, the 9th December, 2006.

NOTIFICATION.

No.SO(E)II-II/S-18/2006, In exercise of the powers under section 23 of the N.W.F.P Civil Servants Act, 1973 read with president order NO.10 of 1969, the Governor N.W.F.P is pleased to convert the contractual appointment of Dr.Muhammad Iqbal son of Amir Waiz Khan presently working as Medical Officer BS-17 B11U Mairagai District Swat on regular basis with effect from the date of his contractual appointment as such.

SECRETARY HEALTH.

Enclst. No. & date even.

Copy to the:-

1. Secretary to Governor N.W.F.P
2. Accountant General, N.W.F.P
3. Director General, Health Services, N.W.F.P
4. EDO (II) Swat.
5. PS to Chief Secretary N.W.F.P
6. PS to Secretary Health.
7. DAO Swat.
8. SO (Litigation) Health Department
9. Doctor concerned.

Section Officer-II.

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W. A.
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GOVERNMENT OF KHYBER PAKHTUNKHWA

FINANCE DEPARTMENT
(REGULATION WING)

No.SOSR-III/FD/12-1/2005
Dated Peshawar, the 27.02.2013

1. All the Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. All the Divisional Commissioners in Khyber Pakhtunkhwa.
7. All the Head of attached Departments in Khyber Pakhtunkhwa.
8. The Registrar, Khyber Pakhtunkhwa, Public Service Commission.
9. The Registrar, Khyber Pakhtunkhwa, Service Tribunal, Peshawar.
10. The Registrar, Peshawar High Court, Peshawar.
11. All the Deputy Commissioner/ Political Agents/ District and Session Judge in Khyber Pakhtunkhwa.

Subject: DEDUCTION OF GENERAL PROVIDENT FUND FROM THE
PROVINCIAL CIVIL SERVANTS REGULARIZED UNDER KHYBER
PAKHTUNKHWA CIVIL SERVANTS (AMENDMENT) ACT-2013

Dear Sir,

The Khyber Pakhtunkhwa Civil Servants (Amendment) Bill 2013- passed by the Provincial Assembly on 15th January 2013 and assented to by the Governor of Khyber Pakhtunkhwa on 17th January, 2013- has been published as an Act of the Provincial Assembly of Khyber Pakhtunkhwa. Under the said Act, all Civil Servants appointed to a service or post on or after 1st July 2001 shall be deemed to have been appointed on regular basis and will be eligible for pension/ deduction of G.P.Fund. Accordingly the following instructions/ guidelines are issued for compliance of all concerned Departments/ Organizations.

- a. Deductions on account of General Provident Fund at prescribed rates from all the Civil Servants, who have become eligible for pension under the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 should be started forthwith.
- b. All deductions/ subscription in respect of Contributory Provident Fund made before the commencement of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 from such Civil Servants, excluding Government counterpart share, shall immediately be transferred to their respective General Provident Fund Accounts. However, such Civil Servants will be entitled to markup on so declared G.P.Fund as announced on yearly basis from the date the C.P.Fund deductions/ subscriptions were made.
- c. Markup on prescribed rates, as notified by the Provincial Government from time to time, may be added to the General Provident Fund Accounts of concerned Civil Servants/ Subscribers as per prescribed mechanism for maintenance of such accounts.
- d. CNIC/ Personal Numbers allotted to the subscribers will be used as General Provident Fund Account Numbers for such subscribers.
- e. Similar action/ treatment may be afforded to all those Provincial Civil Servants posted in FATA/ PATA on deputation basis.

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- f. Existing arrangements for deduction of C.P.Fund from employees of Autonomous Medical Institutions appointed under Medical and Health Institutions and Regulation of Health care Services Ordinance as amended in 2006 shall continue.

Note; The above guidelines/ instructions are not applicable to those employees who are not Civil Servants as defined in Section 2 (b) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, like those on deputation to the Provincial Government or working on contract/ work charge/ contingent basis.

Endst: No. & date even

Copy is forwarded for information and necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director Finance, Lady Reading Hospital, Peshawar
3. Director Finance, Khyber Teaching Hospital, Peshawar
4. Accountant General (PR) Sub Office, Peshawar.
5. Director, Local Fund Audit Department, Khyber Pakhtunkhwa, Peshawar
6. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
7. Director General, Provincial Disaster Management Authority, Khyber Pakhtunkhwa, Peshawar.
8. Director FMIU, Finance Department.
9. All Autonomous/ Semi Autonomous Bodies in Khyber Pakhtunkhwa.
10. District Comptroller of Accounts Peshawar, Mardan, Kohat, Bannu, D.I.Khan Abbottabad and Swat.
11. All District/ Agency Accounts Officers in Khyber Pakhtunkhwa/ FATA
12. Treasury Officer, Peshawar.

With reference to meeting held in Finance Dept on 12.02.2013

(RAEES KHAN AFRIDI)
Deputy Secretary (Reg-I)

Endst No. & date even

Copy is forwarded for information and necessary action to the:-

1. P.S to Minister for Finance Khyber Pakhtunkhwa
2. P.S to Chief Secretary, Khyber Pakhtunkhwa
3. P.S to Additional Chief Secretary, Khyber Pakhtunkhwa
4. P.S to Finance Secretary Khyber Pakhtunkhwa
5. P.A to Special Secretary Finance Khyber Pakhtunkhwa
6. P.As to all Additional Secretaries and Deputy Secretaries in Finance Department.
7. All the Section Officers/ Budget Officers in Finance Department.

(NAZMA SHAHEEN)
Section Officer (SR-III)

ATTESTED



Annex G-3
(1/1/13)

34

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)
No. SOR-VI/E&AD/1-13/2009
Dated Peshawar, the 13th February, 2013

To

1. Addl: Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Department.
2. Addl: Chief Secretary (FATA), FATA Secretariat Peshawar.
3. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
4. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
5. The Secretary to Governor, Khyber Pakhtunkhwa.
6. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.

Subject:- KHYBER PAKHTUNKHWA CIVIL SERVANTS (AMMENDMENT ACT, 2013 KHYBER PAKHTUNKHWA ACT, 2013)

Dir Sir,

I am directed to refer to the subject noted above and to enclosed herewith a copy of Gazette Notification bearing No. PA/ Khyber Pakhtunkhwa/ Bills/ 2013/ 2048 dated 22-01-2013 from Provincial Assembly Secretariat Khyber Pakhtunkhwa regarding Khyber Pakhtunkhwa Civil Servant, (Amendment) Act, 2013 (Khyber Pakhtunkhwa Act No. III of 2013) for information, necessary action and further dissemination among all concerned.

Yours faithfully,

naizam
(NAJ-MUS-SAHAR)
SECTION OFFICER (REG-VI)

Endst. No. of even & date.

1. All Divisional Commissioners in Khyber Pakhtunkhwa.
2. All Heads of Attached Departments in Khyber Pakhtunkhwa.
3. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
4. All Deputy Commissioners Khyber Pakhtunkhwa and Political Agents in FATA.
5. The Registrar Peshawar High Court, Peshawar.
6. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
7. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
8. All Additional Secretaries, Deputy Secretaries and Section Officers in Establishment & Administration Department.

naizam
SECTION OFFICER (REG-VI)

Civil servants posted in FATA/PATA on deputation basis.

ATTESTED

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. RIII
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 22ND JANUARY, 2013.

PROVINCIAL ASSEMBLY SECRETARIAT KHYBER
PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 22nd January 2013.

No. PA/Khyber Pakhtunkhwa/Bills/2013/2048.— The Khyber Pakhtunkhwa Civil Servants (Amendment) Bill, 2013 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 15th January, 2013 and assented to by the Governor of the Khyber Pakhtunkhwa on 17th January, 2013 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA CIVIL SERVANTS
(AMENDMENT) ACT, 2013

(KHYBER PAKHTUNKHWA ACT NO. III OF 2013)

(First published after having received the assent of the Governor of the
Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa
(Extraordinary), dated 22nd January, 2013).

AN
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further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973.

Preamble. WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. Short title and commencement.— (1) This Act may be called the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013.
(2) It shall come into force at once and shall be deemed to have taken effect from 30th day of June, 2001.

505

Civil servants posted in FATA/PATA on deputation basis.

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2. Substitution of section 19 of Khyber Pakhtunkhwa Act No. XVIII of 1973.---In the Khyber Pakhtunkhwa Civil Servants Act (Khyber Pakhtunkhwa Act NO. XVIII of 1973), for section 19, the following shall be substituted, namely,-

"19 Pension and gratuity.--- (1) On retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed.

(2) In the event of death of a civil servant, whether before or after retirement, his family shall be entitled to receive such pension or gratuity, or both, as may be prescribed.

(3) No pension shall be admissible to a civil servant who is dismissed or removed from service for reasons of discipline; but government may sanction compassionate allowance to such civil servant, not exceeding two-third of the pension or gratuity which would have been admissible to him had he been invalided from service on the date of such dismissal or removal.

(4) If the determination of the amount of Pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualifies for pension or gratuity, and any over payment on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family:

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

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

(5) In case any difficulty arises in giving effect to any of the provisions of this section, the Secretary to Government, Establishment Department shall constitute a Committee comprising of the Secretary to Government, Finance Department, Secretary to Government Law Department and Accountant General, Khyber Pakhtunkhwa for removal of the difficulty."

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMANULLAH)
Secretary,
Provincial Assembly of Khyber Pakhtunkhwa.

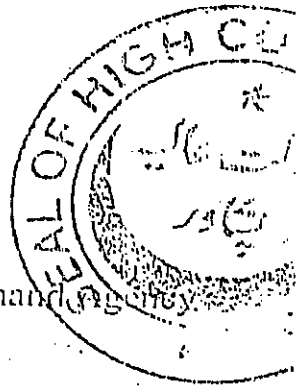
Printed and published by the Manager,
Staty. & Ptg. Dept., Khyber Pakhtunkhwa, Peshawar

Civil servants posted in FATA/PATA on deputation basis.

ATTACHED

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. 3760 P/2014



1. Dr Yusuf Khan S/o Said Rehman, M.O, ATO, Mohmand Agency
2. Dr Alif Jan S/o Amir Jan, M.O, RHC Darra
3. Dr Rabnawaz S/o Haji Said Jan, M.O, Civil Hospital, Jamrod
4. Dr Akram Khan S/o Arbab Khan, M.O, LRH, Peshawar
5. Dr Rawesh S/o Ahmad Jan, M.O, SHS, Mohmand
6. Dr Munawar, M.O, THQ Bisham, Shangla
7. Dr Taj Muhammad S/o Jan Mohammad,
M.O, Distt Coordinator, National Program/LHW, Kohistan.
8. Dr Yusuf Khan S/o M Ibrahim, LRH, Peshawar
9. Dr Aurangzeb S/o Ghulam Hussain, M.O, Khyber Agency
10. Dr M Shafiq S/o Raza Khan,
M.O, Mian Rashid Hussain Shaheed Hospital, Pabbi
11. Dr Khan Akbar Afridi S/o Zafar Shah Afridi,
Medical Officer, Civil Dispensary, Peshawar
12. Dr Syed Ameen Shah S/o Abdullah Shah,
M.O, Hayatabad Medical Complex, Peshawar
13. Dr Wali Khan S/o Mamin Khan, M.O, LRH, Peshawar
14. Muhammad Hanif S/o Gul Sahib Khan, Dental Surgeon Karak
15. Dr Said Zaman Khattak S/o Sheikh Payo,
Dental Surgeon, E.D.O (H) Karak
16. Dr Mehboob Shah S/o Muhammad Taqi, Dental Surgeon, RHC
Shinkyari, Manshra
17. Dr Sultan un Nisa D/o Mohabbat Khan,
Women Medical Officer, DHQH Chitral

ATTESTED
EXAMINER
Peshawar High Court
24 DEC 2014

FILED TODAY
20 DEC 2014

ATTESTED

38/00

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

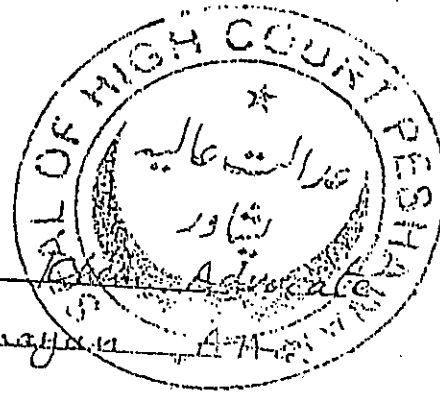
WP No. 3960-P/2014

JUDGMENT.

Date of hearing: 20.12.2016

Petitioner (s): by Mr. Muhammad Ayub

Respondent (s): by Mr. Motajuddin Hussain



WAQAR AHMAD SETH, J:- Through this single

judgment, we propose to dispose of instant Writ Petition as well as connected Writ Petitions No. 2107-P, 1184-P/2015, 1345-P & 2005-P/2016 as common questions of law and facts are involved therein.

2. The petitioners, in all the Writ Petition, have sought the following common prayer:-

"It is, therefore, prayed that on acceptance of this Writ Petition an appropriate Writ may kindly be issued to direct the respondents to the effect.

- a. To implement Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 and NWFP Civil Servants (Amendment) Act (IX) 2005 in a uniform manner in its letter and spirits and
- b. To direct the respondents to issue revised regularization orders of the Petitioners under Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 with effect from initial date of appointment and also be granted graded pay and seniority and other pension benefits

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EXAMINER
Peshawar High Court

24 DEC 2016

ATTESTED

with effect from the initial date of appointment and making their employment status equal to their contemporaries appointed on regular basis and

- c. *To direct the respondents to treat the Petitioners at par with Dr. Muhammad Iqbal and Dr. Farmanullah and similarly placed other employees whose services have been regularized with effect from initial date of appointment and*
- d. *Any other relief deemed appropriate by this Honorable Court in the circumstances of the case which has not been prayed for, may graciously be granted".*

3. Arguments were heard at length. It has been clearly mentioned in clause-5 of substituted Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 that in case any difficulty arises in giving effect to any of the provisions of this section, the Secretary to Government, Establishment Department shall constitute a Committee comprising of the Secretary to Government, Finance Department, Secretary to Government Law Department and Accountant General, Khyber Pakhtunkhwa for removal of the difficulty. When the learned AAG was confronted with the aforesaid clause of Act, he conceded the same.

4. In view of the concurrence of learned AAG, we direct the respondents to constitute a Committee in light of clause-5 of the Act (ibid) within fifteen (15) days. The petitioners are directed to file their departmental appeals

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EXAMINER
Bachawal High Court

40

before the said Committee, who is directed to dispose of the same within next one month by giving explicit reason.

5. All these Writ Petitions are disposed of in the above terms.

ANNOUNCED.

Dated: 20.12.2016

Sd/Muhammad Ghous of secth
Sd/Muhammad Ghous

Nawab Shah



CERTIFIED TO BE TRUE COPY
Peshawar Examiner
Peshawar High Court, Peshawar
Authorized Under Article 07 of
The Wajud-e-Mahkamat Order 1944
24 DEC 2016

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Date of Preparation of Copy 24/12/16
Date Given For Delivery 24/12/16
Date of Delivery of Copy 24/12/16
Received By

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 17th October, 2017

NOTIFICATION

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

S. #	Name of Doctor	D.O.B / Domicile	Date of Initial Appointment on contract basis	Date of Regularization under Act 2005
1.	Dr. Bakht Zada S/O Gul Muhammad, MBBS	01.01.1959 / Swat	23.11.1995	01-07-2001
2.	Dr. Dawa Khan S/O Badshah Khan MBBS	01.09.1951 / Swat	23.11.1995	01-07-2001
3.	Dr. Haroon Nasir Khattak S/O Rab Nawaz MBBS	Karak / 1.3.1966	23.11.1995	01-07-2001
4.	Dr. Yousaf Khan S/O Said Rehman MBBS	Mardan / 14.3.1968	23.11.1995	01-07-2001
5.	Dr. Riaz Ahmed S/O Rehmatullah MBBS	Mohmand / 15.8.1951	23.11.1995	01-07-2001
6.	Dr. Alamgir Khan S/O Darwesh Khan, MBBS	16.04.1962 / Mohmand A	23.11.1995	01-07-2001
7.	Dr. Muhammad Ajmal Khan S/O Zarin Khan MBBS	Mohmand / 10.04.67	23.11.1995	01-07-2001
8.	Dr. Fazal Rehman S/O Muhammad Amir Khan, MBBS/ MPH	28.04.1966 / Mohmand Agency	23.11.1995	01-07-2001
9.	Dr. Mustafa S/O Behramand, MD	01.03.1961 / Swat	24.11.1995	01-07-2001

Secretary
Health Department
Government of Khyber Pakhtunkhwa

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42

10.	Dr. Jamil Ahmad S/O Abdullah, MD	24.04.1967 Swat	24.11.1995	01-07-2001
11.	Dr. Rizwanullah s/o Amanullah Khan, MBBS	20.12.1962 / Peshawar	25.11.1995	01-07-2001
12.	Dr. Munir Hussain S/O Manzoor Hussain	28.06.1968 / Peshawar	25.11.1995	01-07-2001
13.	Dr. Zaffar Iqbal S/O Muhammad Amin	26.02.1964 / Peshawar	25.11.1995	01-07-2001
14.	Dr. Nazir Ahmad Khalil S/O Jan Muhammad Khan	08.04.1960 / Peshawar	25.11.1995	01-07-2001
15.	Dr. Javed Iqbal S/O Muhammad Qasim	01.03.1964 / Kohat	26.11.1995	01-07-2001
16.	Dr. Muhammad Zahid s/o Qaiser Ahmad, MBBS	18.5.1964/ Charsadda	26.11.1995	01-07-2001
17.	Dr. Rafiullah S/O Haji Khan Zada	31.12.1960 / Charsadda	26.11.1995	01-07-2001
18.	Dr. Anwar Saeed S/O Noor Muhammad	27.05.1968 / Charsadda	26.11.1995	01-07-2001
19.	Dr. Muhammad Ikram S/O Haji Abdul Hanan		26.11.1995	01-07-2001
20.	Dr. Zarshad Ahmad S/O Pir Muhammad	24.03.1966 / Charsadda	26.11.1995	01-07-2001
21.	Dr. Imtiaz Ahmad S/O Fazal Karim	23.12.1965 / Charsadda	26.11.1995	01-07-2001
22.	Dr. Shakir Ullah S/O Faqr Hussain M.D	Peshawar/ 11.02.1959	24.12.1995	01-07-2001
23.	Dr. Ali Shah S/O Fazli Ghafoor	01.04.1962 / Charsadda	26.11.1995	01-07-2001
24.	Dr. Amjad Ali Shah S/O Mian Muhammad Ali Shah	06.05.1960 / Charsadda	26.11.1995	01-07-2001
25.	Dr. Shabir Ahmad S/O Juma Khan	01.04.1963 / Kohat	26.11.1995	01-07-2001
26.	Dr. Habibullah Khan S/O Hamidullah Khan	10.06.1963 / Kohat	26.11.1995	01-07-2001

Section Officer-II,
Govt. of Khyber Pakhtunkhwa,
Health Department.

ANNEXED

27.	Dr. Abdul Hameed Khan S/O Abdul Majeed Khan	08.05.1959 / Kohat	26.11.1995	01-07-2001
28.	Dr. Muhammad Islam Khan S/O Hawaldar Gulab Noor	Karak/ 12.05.1957	26.11.1995	01-07-2001
29.	Dr. Masood Jalal S/O Khushlim Khan	28.04.1963 / Karak	26.11.1995	01-07-2001
30.	Dr. Shabir Ahmad S/O Gulistan Khan	08.01.1968 / Moh. Ag	26.11.1995	01-07-2001
31.	Dr. Wazir Akbar S/O Gul Akbar,	03.04.1968 / Kohat	26.11.1995	01-07-2001
32.	Dr. Alif Khan S/O Sajjan Khan, MBBS	01.01.1957 / Orakzai A	26.11.1995	01-07-2001
33.	Dr. Jehanzeb Khan S/O Inayatullah		26.11.1995	01-07-2001
34.	Dr. Syed Riaz Hussain S/O Syed Sajjad Hussain	12.12.1957 / Orakzai Ag	26.11.1995	01-07-2001
35.	Dr. Muhammad Karim S/O Samiullah Khan, MBBS	01.06.1965 / Bajaur Agy	27.11.1995	01-07-2001
36.	Dr. Kamran Yousaf s/o Yousaf Khan, MBBS	20.4.1960/ Nowshera	27.11.1995	01-07-2001
37.	Dr. Mumnoon Elahi S/O Muhammad Khurshid	Pesh./ 10.03.1965	27.11.1995	01-07-2001
38.	Dr. Abdul Wahab S/O Abdul Ghafoor, MBBS.	UDA, Haza/ 26-11-69	27.11.1995	01-07-2001
39.	Dr. Spin Gul S/O Haji Lal Baz, MBBS	20.01.1961 / FR Kohat	27.11.1995	01-07-2001
40.	Dr. Zaffar Ali Shah s/o Said Badshah, MBBS	20.4.1961/ Mardan	27.11.1995	01-07-2001
41.	Dr. Shahab Khan S/O Wali Khan	10.01.1966 / FR Kohat	27.11.1995	01-07-2001
42.	Dr. S. Luqman Shuaib s/o Muhammad Shuaib, MBBS	13.6.1965/ Mardan	27.11.1995	01-07-2001
43.	Dr. S. Luqman Shuaib s/o Muhammad Shuaib, MBBS	13.6.1965/ Mardan	27.11.1995	01-07-2001

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Health Department.

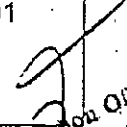
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44.	Dr.S.M.Taimur Shah s/o Pir Feroz Shah, MBBS	25.10.1962 / Mardan.	27.11.1995	01-07-2001
45.	Dr.Misbah Ul Haq S/O Israr Uddin MBBS	Charsadda / 11.03.1968	27.11.1995	01-07-2001
46.	Dr.Bin Yamin Khan Afridi S/O Khaista Khan MBBS	Khyber Ag. 1.1.1967	27.11.1995	01-07-2001
47.	Dr. Taza Khan S/O Said Rahman	Bajour Agency	27.11.1995	01-07-2001
48.	Dr.Abdul Wahab S/O Gula Khan MBBS	Mardan/ 02.04.1959	27.11.1995	01-07-2001
49.	Dr. Muhammad Quresh S/O Mehraban Shah.	04.02.1957 / Mardan	27.11.1995	01-07-2001
50.	Dr. Muhammad Ali S/O Khair Muhammad, MBBS	01.05.1956 / Swabi	27.11.1995	01-07-2001
51.	Dr. Muhammad Rehman S/O Bacha Khan	01.01.1968 / Bajuar Ag	27.11.1995	01-07-2001
52.	Dr. Fazal Subhan S/O Ghulam Nabi, MBBS	04.06.1959 /Bajaur Agy	27.11.1995	01-07-2001
53.	Dr .Hanif Afzal S/O Sher Afzal, MD	15.04.1965 /Dir	27.11.1995	01-07-2001
54.	Dr. Ghulam Hazrat S/O Ghulam Sadiq	Upper Dir	21.12.1995	01-07-2001
55.	Dr. Sajjad Ahmad S/O Waheedullah	06.04.1962 / Mardan	27.11.1995	01-07-2001
56.	Dr. Zahir Shah S/O Sarwar Khan	08.05.1963 / Mardan	27.11.1995	01-07-2001
57.	Dr. Muhammad Abid S/O Abdul Karim, MBBS	01.05.1954 / FR Kohat	27.11.1995	01-07-2001
58.	Dr.Alif Jan S/O Amir Jan MBBS	FR Pesh /02.04.196 0	27.11.1995	01-07-2001
59.	Dr.Muhammad Farid Afridi s/o Ghazi Khan MBBS	FR Kohat /4.7.1955	27.11.1995	01-07-2001
60.	Dr.Muhammad Ayub Khan s/o Badshah Gul, MBBS	1.5.1965/ Bajaur Agy	28.11.1995	01-07-2001
61.	Dr. Muhammad Tariq S/O Wazir Jang, MBBS	01.01.1961 / Bajaur Agy	28.11.1995	01-07-2001


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 Health Department.

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Annex J
45

To

The Most Respected
Secretary Health Department
Government of Khyber Pakhtunkhwa
Peshawar

Subject:- **DEPARTMENTAL APPEAL AGAINST NOTIFICATION DATED 17/10/2017 WHEREBY THE SERVICES OF THE APPELLANT ARE REGULARIZED WITH EFFECT FROM 01/07/2001 INSTEAD FROM INITIAL DATE OF APPOINTMENT.**

Respected Sir,

applicant most humbly submits as below:

1. That I was appointed as Medical Officer (BPS-17) in the Health Department on contract basis by the competent authority in the prescribed manner in the year 1995.
2. That the said contract was extended from time to time. Meanwhile the government of Khyber Pakhtunkhwa erstwhile NWFP Promulgated NWFP Civil Servants (Amendment) Act (IX) 2005 wherein the services of all the contract employees were regularized.
3. That after the promulgation of the aforesaid Act, I have been regularized with effect from 01/07/2001.
4. That the government of Khyber Pakhtunkhwa again amended the section 19 of the Khyber Pakhtunkhwa civil servant Act, 1973 vide Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013.

ATTESTED

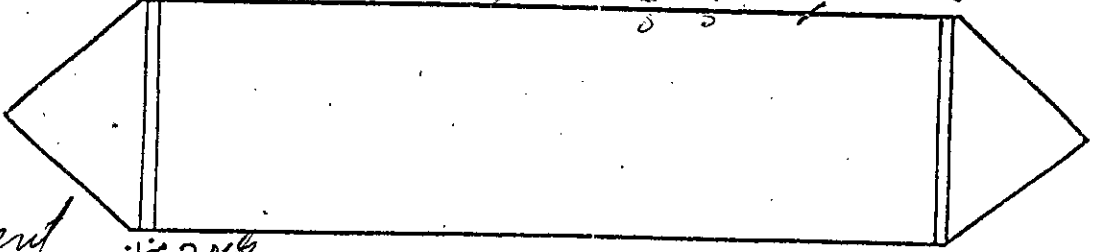
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5. That after the promulgation of the aforesaid Act, I was under legitimate expectancy that my revised regularization order will be issued with effect from initial date of appointment but in vain, my colleagues filed a writ petition No. 3960-P/2014, 2107-P, 11184-P/2015, 1345-P & 2005-P/2016. in pursuance of which my services are regularized with effect from 01/07/2001 instead of initial date of appointment.
 6. That my colleagues are regularized with effect from the initial date of appointment whereas I have been regularized w.e.f 01/07/2001 which is against the law, rules and policy.
 7. That the notification dated 17/10/2017 is against the K.P Civil Servant Act, 1973 the rules framed there under the dictums of the superior courts of Pakistan, hence needs rectification.

It is, therefore, requested that keeping in view the law, rules, policy and dictums of the superior courts of Pakistan, the notification dated 17/10/2017 may kindly be amended to the effect that the services of the applicant be regularized with effect from the initial date of appointment i.e. 27/11/1995 with all back benefits.


Applicant.

ATTESTED


بعدالت صناد



Appellant 2019ء مخناب

ڈاکٹر کا صوابی بوش بنام حنف کٹر و دیگر

19-2-4
Security App
دعوی
جرم

باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ سرکار کے آج مقام سرکار نے پہنچا کیلئے محمد ایوب شیواری اور دیگر کے مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو رضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعوی اور بصورت ڈگری کرنے اجراء اور صولی چیک دروپیا عرضی دعوی اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار 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 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جاندا تووائے مقدمہ کے سبب سے وہ 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 سند ہے۔

المرقوم 4
ماہ 9 2019
واہ الع

ATTESTED
By
Advocate

بمقام
Dr. Karam Hashat