

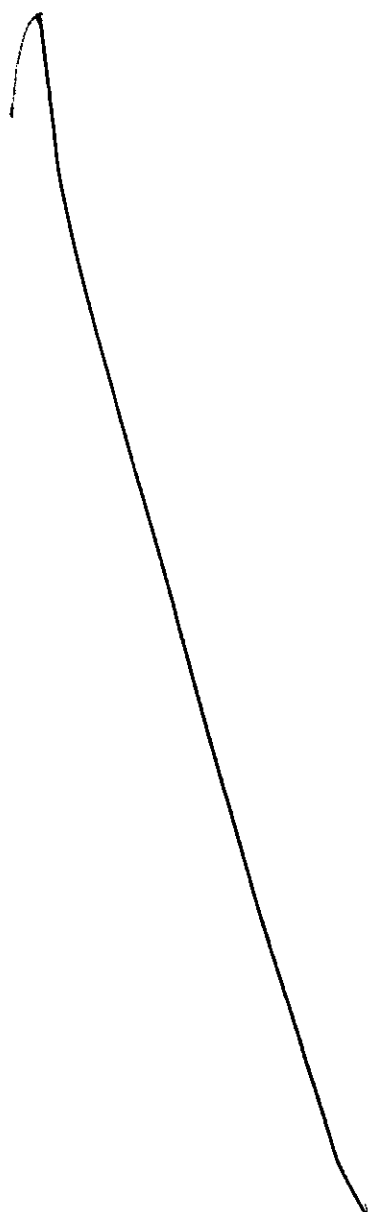


Form- A

FORM OF ORDER SHEET

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

Case No.- **5802** /2020

1S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/06/2020	<p>The appeal presented today by Mr. Khair-ul-Wahab Yousafzai 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</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>17/07/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> 

17.07.2020

Counsel for the appellant present. Preliminary arguments to some extent heard. The appellant was appointed as Muslim Sweeper/Bheshti on 14.06.1993. That on 12.07.2006 Health Department framed a policy that <sup>all</sup> Health Institution~~s~~ should promote Muslim Sweeper against the existing vacancy of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts, on the basis of seniority. That Respondent No.3 <sup>District Health Officer/Executive District Health</sup> has secretly conducted interviews for the appointment of fresh candidates violating the above promotion policy. That there are about 200 vacancies of Class-IV to be filled in the manner devised in the policy dated 12.07.2006 and duly circulated on 25.07.2006. The appellant filed writ petition No. 5032/2019 before the Peshawar High Court, Peshawar which was disposed off on 19.02.2020 treating the writ petition as representation and sent to the respondents to decide the same within thirty days, hence, the instant service appeal. The learned counsel for the appellant also quoted judgment of this Tribunal in Service Appeal No. 639/2017 dated 13.12.2018. <sup>Tehsil Lahor District Swabi)</sup>

Pre-Admission notice be issued to AAG to assist the Court on point of Law.

→ Adjourned to 28.09.2020 before S.B.

(Mian Muhammad)  
Member(E)

17.07.2020

Counsel for the appellant present. Preliminary arguments to some extent heard. The appellant was appointed as Muslim Sweeper/Bheshti on 14.06.1993. That on 12.07.2006 Health Department framed a policy that all Health Institutions should promote Muslim Sweeper against the existing vacancy of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts, on the basis of seniority. That Respondent No.3 (District Health Officer/Executive District Health, Tehsil Lahor District, Swabi) has secretly conducted interviews for the appointment of fresh candidates violating the above promotion policy. That there are about 200 vacancies of Class-IV to be filled in the manner devised in the policy dated 12.07.2006 and duly circulated on 25.07.2006. The appellant filed writ petition No. 5032/2019 before the Peshawar High Court, Peshawar which was disposed off on 19.02.2020 treating the writ petition as representation and sent to the respondents to decide the same within thirty days, hence, the instant service appeal. The learned counsel for the appellant also quoted judgment of this Tribunal in Service Appeal No. 639/2017 dated 13.12.2018. Pre-admission notice be issued to learned AAG to assist the court on point of law.

Adjourned to 28.09.2020 before S.B.

  
(Mian Muhammad)  
Member(E)

*A*

28.09.2020

Counsel for the appellant present.

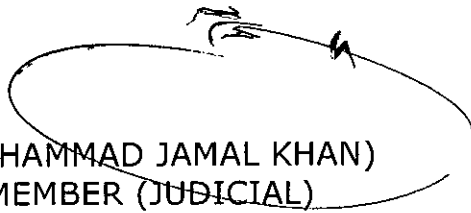
Appellant has submitted an application for amendment in Appeal No. 5795/2020. It is agitated through the application that respondent No. 2 has decided the departmental appeal after submission of service appeal, therefore, the grounds there-against were not initially included in the memorandum of appeal.

Subject to all just exceptions, the application is allowed. The appellant may submit amended appeal within two weeks. To come up for further proceedings on 25.11.2020 before S.B.

  
Chairman

25.11.2020

Junior counsel for appellant is present. He requested for adjournment that his senior counsel is not available today. Adjourned to 23.02.2021 on which date file to come up for further proceedings before S.B.

  
(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

23.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 09.06.2021.

  
Reader

09.06.2021

Counsel for the appellant present. Preliminary arguments heard.

The appellant seeks relief on the basis of policy reflected in minutes of meeting regarding problems of Class-IV Paramedics Employees which was circulated by the Government of Khyber Pakhtunkhwa Health Department vide letter No. SOH-III/1-79-06(Class-IV) dated 25.07.2006 addressed to different Authorities. It is in the prayer of the appellant that the respondents may be directed to implement the said policy and to promote him as Ward Orderly, Ward Attendant, Chowkidar, Mali or any other Class-IV posts on the basis of seniority.

In view of the peculiar nature of the policy pressed into service and relief sought there-under, some questions are very pertinent to be dealt with in accordance with law, which hereinafter follow:-

1. Whether the policy contained in minutes of meeting dated 12.07.2006 circulated by letter dated 25.07.2006 is valid under Article 8 r/w Article 25 and 27 of the Constitution of Islamic Republic of Pakistan?
2. If the first question is answered in positive, whether the present appeal is maintainable?
3. If the policy in question is held as unconstitutional, whether the judgments so far rendered by this Tribunal on the basis of above mentioned policy will have any binding effect as precedent?

In view of the above questions, the appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 29.07.2021 before the D.B.

Appellant Deposited  
Security & Process Fee  
18/6/21

  
Chairman

12.07.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.

  
Chairman

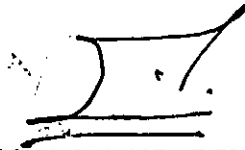
Stipulated period passed reply not submitted.

29.07.2021

Mr. Khair-ul-Wahab, Advocate, for the appellant present. Mr. Jaffar Ali, Assistant and Dr. Suleman, Medical Officer alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned Deputy District Attorney sought adjournment for arguments. Adjourned. To come up for arguments before the D.B on 24.09.2021.

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

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

24.09.2021

Appellant present through counsel.

Muhammad Adeel Butt, learned A.A.G alongwith Dr. Waleed Litigation Officer for respondents present.

File to come up alongwith connected Service Appeal No.5795/2020 titled Siraj Mehmood Vs. Health Department on 15.12.2021 before D.B.

  
(Rozina Rehman)  
Member (J)

  
Chairman

15.12.2021

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Fayyaz Ahmad, Assistant for respondents present.

Written reply/comments not submitted. Representative of the respondents seeks time to submit the same on the next date. Granted but as a last chance. To come up for written reply/comments on 28.02.2022 before S.B.

  
(MIAN MUHAMMAD)  
MEMBER (E)

28.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct. therefore, case is adjourned to 17.05.2022 for the same as before.

Reader

17.05.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

File to come up alongwith connected service appeal 5795/2020 "titled Siraj Mehmood Versus Government", on 03.06.2022 for arguments before D.B.

  
(Mian Muhammad)  
Member (E)



03.06.2022

Bench is incomplete, therefore, case is adjourned to 22.08.2022 for the same as before.

  
Reader.

22.08.2022

Learned counsel for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for the respondents present.

After hearing learned counsel for the appellant at certain length, he was asked to address arguments regarding the questions formulated in order dated 19.06.2021 passed by this tribunal, upon which he sought time for preparation. Adjourned. To come up for arguments on 29.09.2022 before the D.B.

  
(Rozina Rehman)  
Member(J)


  
(Salah-Ud-Din)  
Member(J)


29.09.2022

Junior counsel for appellant present.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

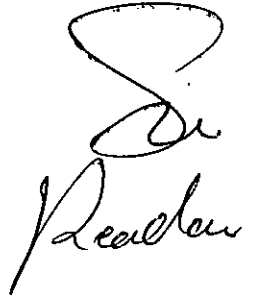
File to come up alongwith connected Service Appeal No.5795/2020 titled "Siraj Mehmood Vs. Government of Khyber Pakhtunkhwa" on 01.12.2022 before D.B.

  
(Fareeha Paul)  
Member (E)

  
(Rozina Rehman)  
Member (J)

01/12/22

Deleted from the list to  
come up on the next date  
27/2/23


  
Saad Raab

27<sup>th</sup> Feb. 2023

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned counsel for the appellant sought time for preparation of arguments. Last opportunity given. To come up for arguments on the questions formulated in order sheet dated 09.06.2021, on 25.04.2023 before the D.B. P.P given to the parties.

  
(Fareeha Paul)  
Member (E)

  
(Salah-ud-Din)  
Member (J)