

11.09.2018

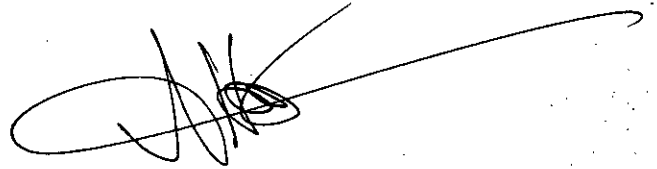
Petitioner Jamroaz Khan in person alongwith his counsel Mr. Zafar Ali, Advocate present. Mr. Kabirullah Khattak, Addl: AG for respondents present. The petitioner stated that the respondents have promised to start his pension w.e.f 01.10.2018. In case his grievance is redress then he will withdraw the present execution petition on next date of hearing. Case to come up for further proceedings on 17.10.2018 before S.B.

Chairman

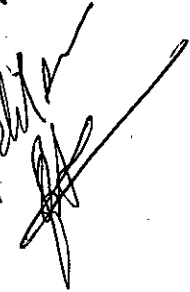
17.10.2018

Appellant with counsel present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Counsel for the appellant requested for withdrawal of the instant appeal. In this respect his signature also obtained on the margin of the order sheet. Request accepted and the appeal in hand is therefore, dismissed as withdrawn . File be consigned to the record room.

Announced:
17.10.2018



(Ahmad Hassan)
Member

I want to
withdraw my
petition


22.03.2018

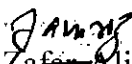

Petitioner in person and Mr. Kabirullah Khattak, Additional AG for the respondents present. Implementation report not submitted. Learned Additional AG seeks adjournment. Adjourned. To come up for implementation report on 31.05.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

31.05.2018

Petitioner in person present. Learned Additional Advocate General alongwith Inayat Ullah ADO for the respondents present and seeks time to furnish implementation report. Further stated that the petitioner should attend his department alongwith service book so that his pension case could be processed. Petitioner stated that he shall attend the respondent department for doing the needful. Adjourned. To come up for further proceedings on 31.07.2018 before S.B.

31.07.2018


Petitioner ~~Zafar Ali~~ in person alongwith his counsel Mr. 
Zafar Ali, Advocate present: Mr. Zakiullah, Senior Auditor alongwith Mr. Kabiraullah Khattak, Addl: AG for respondents present. Representative of the respondents submitted reply which is placed on file. Due to general election in the country the petitioner ^{though} goes to approach the respondents but meeting could not be arranged for the above stated reason. As such petitioner is again directed to approach the department alongwith his service book. Further directions to the respondents to look at his case and process the same to the quarter concerned. Case to come up for implementation report on 11.09.2018 before S.B.


Chairman

FORM OF ORDER SHEET

Execution Petition No. 18/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	16.01.2018	<p>The Execution Petition of Mr. Jamroz Khan submitted to-day by Mr. Zafar Ali Khan Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"><i>S. S. Sethi</i> REGISTRAR</p>
2-	19/01/18	<p>This Execution Petition be put up before S. Bench on <u>29/01/18.</u></p> <p style="text-align: right;"><i>(Signature)</i> MEMBER</p>
29.01.2018		<p>Counsel for the petitioner and Asst: AG for respondents present. Notices be issued to the respondents for submission of implementation report. To come up for implementation report on 22.03.2018 before S.B.</p> <p style="text-align: right;"><i>(Signature)</i> (Ahmad Hassan) Member(E)</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Execution Petition no 18/18

Service Appeal No. _____/2014

Jamroz Khan.....Appellant

VERSUS

Senior District Accounts Officer & others.....Respondents

INDEX

S#	Description of Documents	Annex	Pages
1.	Application for implementation		1-3
2.	Copy of the ground and judgment	A	4-9
3.	Wakalatnama		10

Appellant

Through



Zafar Ali Khan

Advocate High Court

Cell No.0333-9349442

Dated 13.01.2018

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Execution Petition No. 18/18

Service Appeal No. _____/2014

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 46

Dated 16-1-2018

Jamroz Khan Son of Momin Khan,

R/o Lakrai, Tehsil & District, Nowshera.....**Appellant**

V E R S U S

1. Senior District Accounts Officer, Nowshera
2. Executive District Officer, Nowshera *Edu.*
3. Sub Divisional Education Officer (Female) District Nowhere
4. District Education (Female) Dabgari Garden, Peshawar
5. Director of Education (Female) Dabgari Garden, Peshawar

Filed to-day

Registrar

6. Govt. of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat, Peshawar.
7. Govt. of Khyber Pakhtunkhwa Secretary Finance, Civil Secretariat, Peshawar
8. Accountant General, Accountant General Office, Govt. of Khyber Pakhtunkhwa, Peshawar

.....Respondents

**APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED 12.10.2017 IN SERVICE
APPEAL NO.1055 AN ACCORDANCE WITH
LAW.**

Respectfully Sheweth:

1. That the judgment dated 12.10.2017 passed by this Hon'ble Tribunal. (Copy of the judgment is attached).
2. That the respondents are not implementing the judgment above is against the law and facts hence, tenable in the eye of law.
3. That the respondents are bound to implement the judgment of this Hon'ble Tribunal.
4. That the petitioner was served in the department honestly and according to law, he is entitled pension and the respondents are not issuing pension are clearly violating this Hon'ble Tribunal judgment.
5. That the petitioner is poor man and no other source of income except the pension.
6. That any other ground would be raised at the time of arguments in this case.

It is, therefore, requested that on acceptance of this implementation application the respondents may kindly be directed to implement the judgment dated 12.10.2017 and issue the petitioner pensionary benefit on accordance with law.

[Handwritten signature]

Appellant

Through

[Handwritten signature]

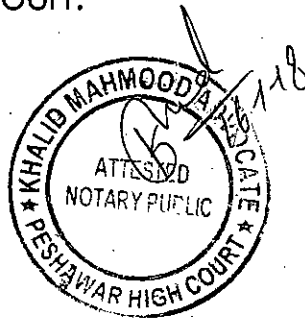
Zafar Ali Khan

Advocate High Court

Dated 13.01.2018

AFFIDAVIT

It is stated on oath that the contents of the Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



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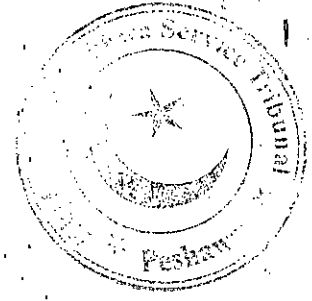
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DEPONENT

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 1055/2014

Date of institution ... 19.08.2014
Date of judgment ... 12.10.2017



Jamroz Khan Son of Momin Khan
R/o Lakrai, Tehsil and District Nowshera

(Appellant)

VERSUS

1. Senior District Accounts Officer Nowshera.
2. Executive District Education Officer Nowshera.
3. Sub-Divisional Education Officer (Female) District Nowshera.
4. District Education Officer (Female) Primary District Nowshera.
5. Director of Education (Female) Dabgari Garden, Peshawar.
6. Govt. of KPK through Secretary Education, Civil Secretariat, Peshawar.
7. Govt. of KPK through Secretary Finance, Civil Secretariat, Peshawar.
8. Accountant General, Accountant General Officer, Govt. of KPK, Peshawar.

(Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE RESPONDENTS WHEREBY THE DEPARTMENTAL REPRESENTATION OF THE APPELLANT HAS NOT BEEN DECIDED AND THE STIPULATED PERIOD HAS BEEN PASSED.

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Mr. Iftikhar Ali, Advocate.
Mr. Kabirullah Khattak, Additional Advocate General

For appellant.
For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. MUHAMMAD HAMID MUGHAL

MEMBER (JUDICIAL)
MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Our this single judgment shall also dispose of service appeal titled Wakeel Khan-Versus-Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar and others bearing No. 1213/2013 and service appeal titled Amir Aman-Versus-Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar and others bearing

ATTESTED
[Signature]

5

no. 1214/2013. being identical nature arising out from the same law, facts and circumstances.

2. This appeal has been filed under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 4.10.2013 whereby the appellant was retired from service on superannuation but without extending the benefits of pension. The appellant also filed departmental appeal on 14.05.2014 but the same was not responded. hence, the present service appeal on 19.08.2014.

3. Learned counsel for the appellant contended that the appellant was appointed as Class-IV Chowkidar on pay of Rs. 1200/- per month on (fixed) on 12.10.1995 in Education Department. It was further contended that later on the service of the appellant was regularized on 30.07.2008. It was further contended that the appellant was retired from service on 04.10.2013 but benefits of pension etc was not extended to the appellant on the ground that length of the service of the appellant was less then qualifying service. It was further contended that the appellant filed departmental appeal for issuance of pension, gratuity and other benefits but the same was not responded. It was further contended that according to Rule 2.2 of West Pakistan Civil Services Pension Rules, 1963 the service of the government servant begin to qualify for pension when he takes over charge of the post to which he is first appointed. It was further contended that according to Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963 temporary and officiating service shall count for pension if he has rendered more than five years continuous temporary service for the purpose of pension or gratuity and temporary and officiating service followed by confirmation shall also count for pension or gratuity. It was further contended that the NWFP Civil Servant (Amendment Bill), 2005 was passed by the Provincial Assembly on 5th July 2005 and assented by the Governor of the Province on 12th July 2005 whereby section 19 was amended and all the employees of the Provincial Government selected for appointment in the prescribed manner to the post on or after 1st July 2001 but on contract basis were deemed to be appointed on regular basis. However, they were held disentitled for the pensionary benefits. It was further contended that section- 19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended by the Khyber

ATTESTED

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal

6

Pakhtunkhwa Civil Servants (Amendment) Act, 2013 and the person selected for appointment on contract basis were declared to be deemed as regular employ and subsequently were held entitled for pensionary benefits. Therefore, it was contended that the service of the appellant will be considered from the date of appointment i.e 12.10.1995 and the same will be counted for pension and gratuity etc. The learned counsel for the appellant also relied unreported judgments of the Worthy Peshawar High Court in Writ Petition No. 1188 of 2014 decided on 09.09.2014 titled Baghi Shah-Versus-The State etc, Writ Petition No. 1590 of 2014 decided on 11.09.2014 titled Mst. Wajihat W/o Nisar Muhammad-Versus-Senior District Accounts Officer & others, Writ Petition No. 1659-P/2014 decided on 27.11.2014 titled Yaqoob Khan S/o Abdul Manan-Versus-Government of Khyber Pakhtunkhwa etc and Writ Petition No. 3394-P/2016 decided on 22.06.2017 titled Amir Zeb-Versus-The District Account Officer, District Nowshera etc. It was further contended that in the present service appeal the departmental appeal was filed after some delay but since the service appeal pertains to the matter of pay, pension and other emolument therefore, the limitation does not fore closed the right of the appellant accrued to him, in such like matter the limitation does not run and relied in this regard on 2002 PLC (C.S) 1388 Punjab Service Tribunal and prayed that the appeal may be accepted and the department may be directed to consider the length of service of the appellant from the date of his appointment and pay pensionary benefits to the appellant.

4. On the other hand, the learned Assistant Advocate General Mr. Kabirullah Khattak opposed the contention of learned counsel for the appellant and contended that the appellant was appointed as Class-IV Chowkidar on pay of Rs. 1200/- per month on adhoc relief on (fixed) vide order dated 12.10.1995 and he was regularized vide order dated 30.07.2008 with effect from 01.07.2008. It was further contended that the appellant was retired on 04.10.2013 and the appellant served as regular employee only for five years hence, he is not entitled for pensionary benefits. In this regard he also relied on unreported judgment of the Worthy Peshawar High Court passed in Writ Petition No. 23-P/2015 decided on 24.06.2015 titled Sher Badshah S/o Amir Badshah-

ATTESTED

BY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

[Handwritten signature]

Versus- Senior District Accounts Officer Nowshera etc and PLD 1990 Supreme Court page 719 and prayed for dismissal of appeal.

5. We have heard the arguments and gone through the record available on file.
6. Perusal of the record reveals that the appellant was appointed as Class-IV Chowkidar on pay of Rs. 1200/- per month on fixed pay under relevant rules on 12.10.1995. The record further reveals that the service of the appellant was regularized on 30.07.2008. The record further reveals that the appellant was retired from service on 04.10.2013 but pension and gratuity was not extended to the appellant.
7. Regarding the question of entitlement of the appellant to the pension, we, would like to reproduce the relevant rules of the West Pakistan Civil Services Pensions Rules, 1963 below, as these would be advantageous in resolving the controversy:-

"2.2. Beginning of Service-

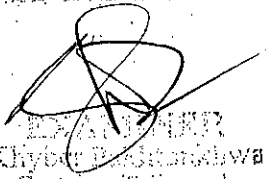
Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.

Rule 2.3 Temporary and officiating service Temporary and officiating service shall count for pension as indicated below:-

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

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

ATTESTED


 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

ATTESTED

8

We deem it appropriate to mention here that question of interpretation and true import to the term 'pension' was raised before the august Supreme Court of Pakistan in case titled "**Government of NWFP through Secretary to Government of NWFP Communication & Works Department, Peshawar Vs Muhammad Said Khan and others (PLD 1973 Supreme Court of Pakistan 514)**" wherein it was held that:

"It must now be taken as well settled that a person who enters government service has also something to look forward after his retirement to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well settled that pension like salary of a civil servant is no longer a bounty but a right acquired after putting a satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."

10. In case titled "**Secretary To Govt: of the Punjab, Finance Department Vs M. Ismail Tayer and 269 others**" 2015 PLC (CS) 296, the august Supreme Court of Pakistan was pleased to held that the pensionary benefits is not a bounty or ex-gratia payment but a right acquired in consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant:

11. In the present case the appellant was initially appointed on 12.10.1995 followed by his regularization on 30.07.2008. Though the appellant has rendered temporary service for a continuous period of more than 12 years and 9 months service and regular service of more than 5 years and 2 months meaning thereby that as a whole he has more than 17 years service at his credit. By virtue of rule 2.3 as well as Chapter-IV rule 4.4 of the West Pakistan Civil Services Pensions Rules, 1963, he has qualified the prescribed service for pensionary benefits, therefore, the objections raised by the respondents is not tenable and not supported by any rule or regulation. Judgment of hon'ble Peshawar High Court in Mst. Wajihat case (Writ Petition No. 1590-P/2014), Baghi Shah's case (Writ

ATTESTED

ATTESTED

9

Petition No. 1188-P/2014, Yaqoob Khan case's (Writ Petition No. 1659-P/2014) and in Amir Zeb case's (Writ Petition No. 3394-P/2016) may be quoted as a reference.

12. In the light of the above discussion we are constrained to accept the appeal and direct the respondent-department to finalize the pension case of the appellant and grant pensionary benefits to him. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
12.10.2017

SD/- M. Amish Khan Kund's
Member

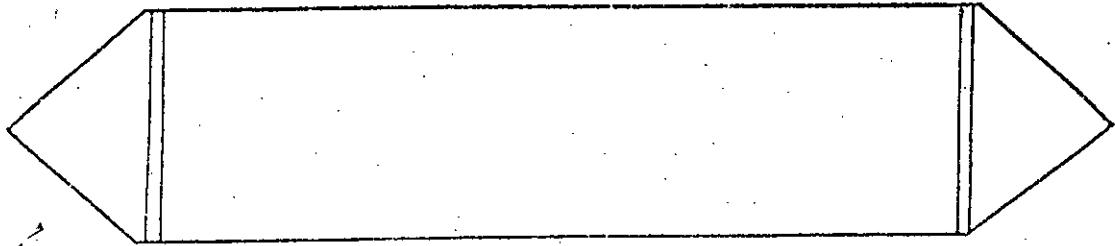
SD/- M. Hamid Nughal
Member

Certified to be true copy
12/10/2017
Muzaffar Khan
Secretary
Service Tribunal,
Peshawar

Date of Presentation of Petition: 16-10-17
Number of Copies: 2400
Copies of Petition: 14
Urgent: 14
Total: 14
Name of Officer: [Signature]
Date of Completion of Work: 28-11-17
Date of Delivery of Copy: 28-11-17

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بعدالت



2018ء منجانب سائل

محمد رضا بنام حکومت

Service Apad

موزخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

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

آن مقام پشاور کیلئے طیغ علی خان ریدہ کھیل

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ 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 یا اختیارات حاصل ہوں گے اور اس کا ساختہ

پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائے التوائے مقدمہ کے سبب سے ہوگا۔

کوئی تارتخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی

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

المرقوم

20

ماہ

واہ

بمقام

کے لئے منظور ہے۔

(محمد رضا)

GOVERNMENT OF KHYBER PAKHTUNKHWA

Elementary and Secondary Education Department

Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar

NO.S.O (LIT-I)/E&SE/1-1/2012/

Dated Peshawar the 17-5 -2018

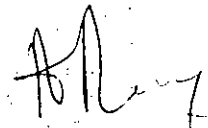
POF
To
21-5-2018

1. Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa Peshawar
2. All District Education officers(M/F)
Khyber Pakhtunkhwa.

SUBJECT: IMPLEMENTATION OF PESHAWAR HIGH COURT
JUDGEMENTS REGARDING GRANT PENSIONARY BENEFITS
TO CLASS IV EX FIXED PAY EMPLOYEES

I am directed to refer to the subject noted above and to state that all the subject cases may be disposed off in light of para 13 of the judgement of Peshawar High Court dated 22-6-2017(copy enclosed). It is further stated that all such cases may be examined in light of prevailing pension rules and the employees who have rendered minimum length of service, which is 25 years in normal cases and ten years in special /family pension cases. Service rendered by officials under contract, adhoc etc shall be counted towards pension provide such officials were regularized at later stage and pension was denied to them on the ground of not fulfilling criteria of minimum time as regular employee.

However, this Department may be kept informed of the day to day proceedings.


Section officer (Lit-I)

Endst.NO & date as above.

Copy to:-

1. Advocate General KPK
2. Addl Registrar Peshawar High Court.
3. P.A to Spl: Secretary (Legal).


Section officer (Lit-I)

Before the Khyber Pakhtunkhwa Services Tribunal Peshawar

Exection Petition No.18/2018

In

Appeal No. 1055/2014

Jamroz Khan.....Appellant.

V/S

Senior District Accounts officer, Nowshera and others.....Respondents.

(Joint para wise reply on behalf of respondent No. 1 & 8)

Preliminary Objections:

- 1) That the appellant has no cause of action.
- 2) That the appellant have no locus standi.
- 3) That the appeal in hand is not maintainable.
- 4) That the instant petition is time barred.
- 5) That the identical case Writ petition No.1224-P/2015 Habib ur Rehman V/s Provincial Government of Khyber pakhtunkhwa , has already been dismissed by the Peshawar High Court Peshawar (Annex-A).
- 6) That the writ petition No.1188-P/2014, tittled Baghi Shah V/s Provincial Government of Khyber pakhtunkhwa has filed CPLA in the Apex court (Annex-P).

Respectfully Sheweth:-

- Para 1. That the administrative Department of the appellant has already ~~been~~ filed C.P.L.A in the Apex court against the judgment of this court Dated: 12/10/2017 (Annex-C).
- Para 2. That an identical writ petition No. 1224-P/2015 Habib-Ur-Rehman V/s Provincial Government of Khyber Pakhtunkhwa , has already been dismissed by the Peshawar High Court Peshawar.
- Para 3. That respondent No.1 & 8 are bound to follow the rules and instructions issued by the provincial Government of Khyber Pakhtunkhwa from time to time.
- Para 4. That as mentioned in para 1 & 2 above and in light of Finance Department letter No.1301/FD/1-22/2008-09, Dated: 30.07.2008, the appellant is not entitled for any pension.

 2/4/18

Para 5. No Comments.

Para 6. No Comments.

Keeping in view the above mentioned facts, it is therefore, humbly prayed that the appeal in hand having no merits may be dismissed with costs.



DISTRIC ACCOUNTS OFFICER
NOWSHERA



2.4.18
ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA

**POWER OF ATTORNEY
IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)**

Govt of KPK

PETITIONER(S)

Vs

Jamroz Khan

RESPONDENTS

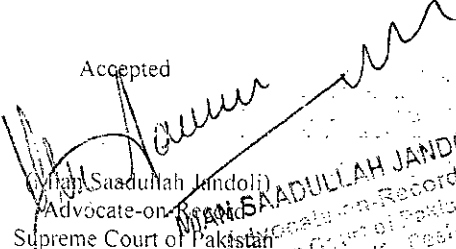
I, through Petitioner (Govt. of KPK) in the above Petition, do hereby appoint and constitute Mian Saadullah Jandoli, Advocate-on-Record, Supreme Court, for Govt. of Khyber Pakhtunkhwa the Attorney for the aforesaid Petitioner(s) to commence and prosecute appear and defend this action/appeal/suit/petition/reference on my/our behalf and all proceeding that may be taken in respect on any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take back documents, to accept the proceeds of the Court, to appoint and instruct Counsel, to represent the aforesaid Petitioner(s) in the above matter and to do all things incidental to such acting for the aforesaid Petitioner(s).

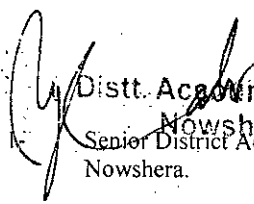
Aforesaid Petitioner(s) hereby agrees/agree to ratify all acts done by the aforesaid Attorney in pursuance of this authority.

In witness whereof I/we do hereunto set my/our hand/hands

Signed with Official seal stamp

Accepted


Mian SAADULLAH JANDOLI
Advocate-on-Record
Supreme Court of Pakistan
(for KPK) Advocate-General's Office
Office KPK, High Court Building, Peshawar.
Office Tel. # 091-9210312, 9210119


Distt. Accounts Officer
Senior District Accounts Officer,
Nowshera.

2-4 District Education Officer, Nowshera
Distt. Education Officer (E) Nowshera

3- Sub-Divisional Education Officer
(Female) District Nowshera.

5- Director Elementary & Secondary
Education Khyber Pakhtunkhwa,
Peshawar.
Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

6- Secretary Elementary & Secondary
Education Govt. of KPK, Peshawar.
SECRETARY
Elementary and Secondary Education
Department, Govt. of K.P.K.

7- Secretary Finance Department,
Govt. of KPK, Peshawar.

8- Accountant General,
Khyber Pakhtunkhwa, Peshawar.

SECRETARY
Govt. of Khyber Pakhtunkhwa
Finance Deptt.

Accountant General
Khyber Pakhtunkhwa
Peshawar.

Issue date: 01-01-2018

Judgment Sheet

PESHAWAR HIGH COURT
PESHAWAR

(Judicial Department)

Writ Petition No. 1224-P/2015

Habib ur Rehman

Versus

Chief Secretary to Govt: of KPK and others.

Date of hearing. 10.01.2018

Petitioner By *Shahid Khan Advocate*

Respondents. By *Optichar add in Fousaf 200 AA 9*

JUDGMENT

MUSARR AT HILALI:- The instant writ

petition has been filed by the petitioner under Article 199 of the Islamic Republic of Pakistan, 1973 praying that a writ may be issued to respondents to release the pension and pensionery benefits to the petitioner without any further delay.

2. Brief facts, as per averments of the writ petition are that the petitioner worked as Chowkidar in the Education Department from 1.09.1998 to 11.5.2012

ATTESTED
EXAMINER
Peshawar High Court

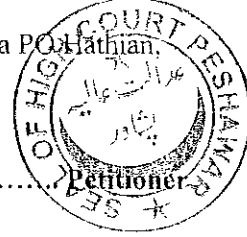
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BEFORE THE HON'BLE PESHAWAR HIGH COURT, PESHAWAR

W.P.No. 1224-P /2015

Habib ur Rahman S/O Mahabat Khan R/O Libas Khan Koroona PO Hathian,

Tehsil Takht Bhai, District Mardan



VERSUS

*6 & 7
AO Impacted
AO Respects
in case of
the order
reg. 22-10-15*

1. Chief Secretary to Govt. of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Education Department, Govt. of Khyber Pakhtunkhwa Peshawar.
3. Divisional Education Officer Mardan.
4. Executive District Education Officer, Mardan
5. Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. *Secretary Finance Govt. of K.P.K. Peshawar* Respondents.
7. *Districts Accounts Officer Mardan*

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

PRAYER IN WRIT.

**ON ACCEPTANCE OF THIS PETITION, THE AN APPROPRIATE
DIRECTION BE ISSUED TO RESPONDENTS TO issue/ RELEASE THE
PENSION AND PENSIONERY BENEFITS TO THE PETITIONER
WITHOUT ANY FURTHER DELAY.**

FILED TODAY
Deputy Registrar
15 APR 2015

ATTESTED
EXAMINER
Peshawar High Court
23 JAN 2018

and at the age of 60, a sanction letter regarding his retirement from Executive District Office (E&S) Education Mardan was issued on 01.05.2012. That despite of fulfillment of all the codal formalities, the respondents are reluctant to release the pension and pensionary benefits to the petitioner. Feeling aggrieved with the actions of respondents, the instant writ petition has been filed.

Arguments of learned counsel for the parties heard and record perused.

3. The case of petitioner is that he served the respondent department from 01.09.1998 till 11.5.2012, however, on his retirement, he was not paid pension till date. Comments were called from the respondents which were accordingly submitted wherein they have submitted that since the petitioner was a fix pay employee, therefore, he is not entitled to the pension/pensionary benefits as per the relevant rules/policy. The same has been clarified by the letter of Government of NWFP Finance Department No. BO

Oran

ATTESTED
EXAMINER
Peshawar High Court
23 JAN 2018

1/FD/1-22/2008-09 dated 30.07.2008 addressed to the Accountant General, NWFP, Peshawar in the following terms:-

"all the Class-IV fixed Pay Employees have been regularized in BPS-1 giving them the status of Civil Servant, with effect from 1st July, 2008 (but not from the date of their appointments) as per provision of Section 10 of the Civil Servant Act, 1973 (read with Civil Servants (Amendment) Act, 2005). Under the Act *ibid*, these employees are entitled for Contributory Provident Fund (C.P Fund) instead of Pension/Gratuity and G.P Fund."

4. In view of the above, the petitioner being fix pay employee is not entitled to the relief prayed for i.e. release of pension and pensionary benefits. In the circumstances, the instant writ petition being devoid of merit stands dismissed.

(M. Waqar Ahmed Seth)

JUDGE

(Musarrat H. Hilal)

JUDGE

Announced on;
Dated. 10.01.2018



D.B Hon'ble Mr. Justice Waqar Ahmed Seth and Hon'ble Justice Musarrat Hilalji
Amir

No. 6619
Date of Presentation of Application 11/1/18
No of Pages 4-7
Copying Fee 16-00
Urgent Fee 03/1/18
Total 03/1/18
Date of Preparation of Copy 03/1/18
Date of Filing 03/1/18
Accountant General

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan Order 1985
23 JAN 2018

GOVERNMENT OF NWFP
FINANCE DEPARTMENT

No: BO1/FD/1-22/2008-09/
Dated Peshawar, the 30/7/2008

To: The Accountant General,
NWFP, Peshawar

Subject: BUDGET SPEECH 2007-08 CONVERSION OF FIXED PAY CLASS-IV
INTO REGULAR BPS-1 CP FUND SCHEME

Dear Sir,

I am directed to refer to your letter No.H:24(65)/Kohistan/Vol-11/851 dated 18/6/2008 on the subject noted above and to clarify that all the Class-IV Fixed Pay Employees have been regularized in BPS-1 giving them the status of Civil Servant with effect from 1st July, 2008 (but not from the date of their appointments) as per provision of Section 19 of the Civil Servant Act, 1973 (read with Civil Servants (Amendment) Act, 2005). Under the Act/ibid, these employees are entitled for Contributory Provident Fund (C.P. Fund) instead of Pension/Gratuity and G.P. Fund. Since length of service of the employees was at variance; therefore, in order to meet the demand of natural justice, fixation of pay has been allowed to them with effect from the dates of appointment bringing their salaries at par with the respective length of service. However, they shall not be entitled for arrears of pay and allowances as clarified in the instructions. So it is confirmed that they are entitled for CP Fund instead of Pension/Gratuity and GP Fund, unless otherwise provided in the relevant Rules/Regulations.

Yours faithfully,

(Fida Muhammad)
Budget Officer-1

Encls. No. & Date even:

Copy is forwarded w/r to Finance Dept's circular letter No. BO1/1-22/2007-08/FD dated 29/1/2008, for information & necessary action to:

- 1) All Administrative Secretaries to Government of NWFP
- 2) Secretary to Governor, NWFP, Peshawar
- 3) Principal Secretary to Chief Minister, NWFP, Peshawar
- 4) All District Coordination Officers in NWFP
- 5) All Heads of Attached Departments in NWFP
- 6) The Registrar, Peshawar High Court, Peshawar
- 7) The Registrar, NWFP Service Tribunal, Peshawar
- 8) The Secretary Provincial Assembly, NWFP, Peshawar
- 9) The Secretary, Board of Revenue, NWFP, Peshawar
- 10) All District Accounts Officers in NWFP
- 11) All Budget/Section Officers in Finance Department, Peshawar

ASSTT. ACCOUNTS OFFICER
O/o A.G. Khyber Pakhtunkhwa

GOVERNMENT OF NWFP
FINANCE DEPARTMENT
No. BO1/FD/1-2/2007-08
Dated Peshawar, the 30/07/2008

To:

The Accountant General,
NWFP, Peshawar.

Subject:- BUDGET SPEECH 2007-08 CONVERSION OF FIXED PAY CLASS-IV INTO REGULAR
BPS-1 CP FUND SCHEME.

Dear sir,

I am directed to refer to your letter No. H.24(85)/ Kohistan /Vol-II/851 dated 18.06.2008, on the subject noted above and to clarify that all the class-IV Fixed Pay Employees have been regularized in BPS-1 giving them the status of Civil Servant, with effect from 1st July, 2008 (but from the date of their appointments) as per Provision of Section 19 of the Civil Servant Act, 1973 (read with Civil Servants (Amendment) Act, 2005): Under the Act ibid, these employees are entitled for Contributory Provident Fund (CP Fund) instead of Pension / Gratuity and GP Fund. Since length of service of the employee was at variance, therefore, in order to meet the demand of natural justice, fixation of pay has been allowed to them with effect from the dates of appointment bringing their salaries at par with the respective length of service. However, they shall not be entitled for arrears of pay and allowances as clarified in the instructions. So, it is confirmed that they are entitled for CP Fund instead of Pension / Gratuity and GP Fund, unless otherwise provided in the relevant Rules / Regulations.

Yours faithfully,

(Fida Muhammad)
Budget Officer-1

Endst:No. & Date even:

Copy is forwarded w/r to Finance Department Circular letter No. BO1/1-22/2007-08/FD dated 29.01.2008, for information & necessary action to:-

- 1). All Administrative Secretaries to Government of NWFP.
- 2). Secretary to Governor, NWFP Peshawar.
- 3). Principal Secretary to Chief Minister, NWFP Peshawar.
- 4). All District Coordination Officers in NWFP.
- 5). All Heads of Attached Department in NWFP.
- 6). The Registrar, Peshawar High Court, Peshawar.
- 7). The Registrar, NWFP Service Tribunal, Peshawar.
- 8). The Secretary Provincial Assembly NWFP, Peshawar.
- 9). The Secretary, Board of Revenue NWFP Peshawar.
- 10). All District Accounts Officers in NWFP.
- 11). All Budget / Section Officer in Finance Department Peshawar.

SECTION OFFICER-1

ASSTT. ACCOUNTS OFFICER
O/o A.G. Khyber Pakhtunkhwa

**PENSION ROLL DATA SHEET
NOT A PAYMENT ADVICE**

Date of issue : 05.09.2018
 PPO Type: FRESH
 PPO Number : 00379497-01
 Pensioner ID : 00379497
 Pension Register No: MINIMUM PENSION
 Pensioner's Name : JAMROZ KHAN
 Father / Husband name : MOMEEN KHAN
 Designation: CHOWKIDAR
 NIC No.: 1720120949359
 Grade / Scale : 02
 Department, Min: Education Schools
 Pensioner's Type: SELF
 Pension Type: SUPERANNUATION
 Date of Birth : 01.07.1953
 Date of appointment: 13.12.1995
 Date of retirement: 30.06.2013
 Date of Death:
 Date of commence :
 Date of Restoration :
 Accounts office ID : NR
 Accounts office Name : Nowshera
 Federal / Province : Khyber Pakhtunkhwa
 Length of Qualifying Service : 17 years, 6 months, 17 days
 No. and Date of sanction of pension / Letter No. :
 and the date, of the other Audit and Accounts officer authorising
 the Pension/Gratuity/Commutation
 Permanent Address: KHAESARI, NOWSHERA

Note : MINIMUM PENSION
 Age : 60 years
 Last Drawn pay/Emoluments(Rs.): 7960.00
 Gross Pension(Rs.) : 3343.20
 1/4th Surrendered Portion (Rs.) :
 Commuted Portion (Rs.) : 1170.12
 Net Pension (Rs.) : 6000.00
 Net Family Pension (Rs.) : 0.00
 Amount of Commutation(Rs.) : 173719.00
 With Held Amount (Rs.) : 0.00
 Life Time Arrears (Rs.) : 0.00
 Arrears Of Pension (Rs.) : 0.00
 Special Additional Pension (Rs.) : 0.00
 Commutation Percentage : 35.00
 Commutation Table value : 12.37
 Recovery on A/C of
 Debitable to Govt : Khyber Pakhtunkhwa

PROPOSED PENSION SLIP

Payment details

Wage Type	Wage Type Text	Amount
0100	Monthly Pension - Self	6000.00
0101	Pension Increases - Self	4000.00
1599	Medical Allow - Pensioner	750.00
1600	Med. All. 2015 Pensioner	187.50

He/She is also entitled to the following increases

Sl No	Period	Increase % or amount	Increase Amount	W.E.F.
1	JUL.2015	10.00 %	600.00	01.09.2018
2	JUL.2016	10.00 %	660.00	01.09.2018
3	JUL.2017	10.00 %	726.00	01.09.2018
4	JUL.2018	Rs. 2014.00	2014.00	01.09.2018
5	0.	Rs. 0.00	0.00	
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Bank Details

Bank Account Number: 11155-1
 Bank Branch : SADDAR BAZAR NOWS.
 SADDAR BAZAR NOWS
 Payment Mode : NATIONAL BANK OF PAKISTAN

ACCOUNTS OFFICER
(Pension)

OFFICE OF THE
DISTRICT ACCOUNTS OFFICER
NOWSHERA

No. PN- NO/DAO/NSR/PEN

Dated 05.09.2018

To

The Drawing & Disbursing Officer,
DISTRICT EDUCATION OFFICER (FEMALE)
NOWSHERA

Sub:- COMMUTATION SEALED AUTHORITY IN F/O
JAMROZ KHAN S/O MOMIN KHAN EX-CHOWKIDAR

Please refer to your letter No. 4243
Dated 06.08.2018 forwarding there in pension case in respect
of above named officer / official.

2. You are hereby authorized to submit a bill for Rs.173719.00
(Rupees: ONE HUNDRED SEVENTY-THREE THOUSAND SEVEN HUNDRED NINETEEN)
at the counter of this office for issuance of cross cheque in favour
of Mr. Mrs. Miss. Mst. JAMROZ KHAN S/O MOMIN KHAN EX-CHOWKIDAR
(Per.No : 00379497)
NIC.NO 1720120949359 on account of Commutation of pension.

Bank Name : NATIONAL BANK OF PAKISTAN
A/c No : 11155-1

3. The amount involved in charged / other than charged
and debit to the Federal Govt. under the following head
of accounts:-

01 - General Administration.	A04 - Transfer payment.
0112 - Fiscal administration.	A041 - Pensionary benefits.
011210 - Pension.	A04102 - Commuted value of pension.
	A04103 - Gratuity value of pension.

Withheld amount

Amount Payable:	173,719.00
Amount With Held:	0.00
Amount Paid:	173,719.00

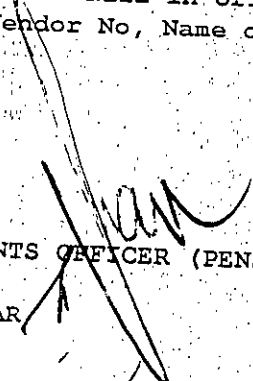
Recoveries

Note:- This authority letter may please be attached with the bill in original
along with the Office order/notification of retirement. Vendor No, Name of Bank
and A/c No of payee may also be recorded on the bill

Remarks:-

Copy for information to :-

Mr. Mrs. Mst. Miss. JAMROZ KHAN S/O MOMIN KHAN EX-CHOWKIDAR
KHAIRSARI, NOWSHERA


ACCOUNTS OFFICER (PENSION)

ACCOUNTS OFFICER (PENSION)