

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, (CAMP COURT) SWAT

Appeal No.1954 of 2022

Nawab Sher

-----Versus-----

Government of Khyber Pakhtunkhwa and other

.....Appellant

Khyber Pakhtunkhwa
Service Tribunal

Case No.

4241

Dated

13/3/23

.....Respondents

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Deponent

**Mr. Hakim Zada Superintendent
Malakand Levies**

CNIC:-

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL (CAMP COURT SWAT)

Service Appeal No.1954 of 2022

Nawab Sher

.....Appellant

-----Versus-----

Government of Khyber Pakhtunkhwa and others

.....Respondents

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS:

PRELIMINARY OBJECTION:-

1. The appellant has got no cause of action or locus standi to submit the instant petition.
2. The appeal is not maintainable in its present form.
3. The appellant has not come with clean hands to this Honorable Court.
4. Due to non-joinder/mis-joinder of necessary party the appeal is liable to be dismissed.
5. The appeal is barred by law and time.

Facts:-

1. It is correct. The petitioners were regular employee of Malakand Levies.
2. It is partially correct. The regulation of service of the petitioner was initially regulated under the Levies Force Rules 1962 called Frontier Irregular Corps Rules. But the matter regarding non-statutory is Court matter which is subject to proof by the appellant.
3. It is correct.
4. It is partially correct. The service rules 2013 was promulgated in December, 2013. It is the mandate of Government to frame or amend rules of Levies Force for the larger interest of the Force.
5. It is correct. But the same Rules were also amended on 25-08-2016, wherein tenure was fixed for (Subedar Major 37-Years Service or 03-Years Service as Subedar Major or 60-years of Age), (Subedar 35-Years Service or 05-Years Service as Subedar or 60-years of Age), (Naib Subedar 33-Years Service or 07-Years Service as Naib Subedar or 60-years of Age) **(Copy enclosed as Annexure-A).**
6. It is correct. Enacting Laws and framing rules is the domain of the Government. The Honorable Peshawar High Court Mingora Bench Dar-ul-Qaza Swat in its Judgment in W.P No.732-M/2021 held **"with bringing of amendments, on 14-07-2020 in Rules, same authority cannot be deemed divested from further amending the Rules. The age of superannuation or retirement may well be changed by an authority who has initially provided same"** **(Copy enclosed as Annexure-B).**
7. It is incorrect. On the application of petitioner via Commissioner Office, Home Department constituted anomaly committee and the anomaly were removed to great extent i.e age/service length was enhanced. Tenure were also removed/omitted **(Copy of minutes of anomaly committee enclosed as Annexure-C).**
8. The appellant alongwith others were retired from service according to Levy Rules amended from time to time. The respondent was bound to follow/implement the Laws and Rules of Government.
9. It is correct. However petitions of the petitioners were dismissed by the Honorable Peshawar High Court Peshawar **(Copy enclosed as Annexure-D).**
10. It is correct to the extent that the Levy Rules were amended by the Provincial Government on 21-10-2021.
11. It is incorrect. The appellant have not yet filed any departmental appeal to the competent forum (Home Department).

12. It is correct. But the same was dismissed by the Peshawar High Court Peshawar.
13. It is correct.
14. It is correct to the extent that act was passed pursuant to amended Rules 21-10-2021 and those Levy personnel how haven't cross upper age limit were re-instated into service.
15. It is correct. However CPLA has been filed against the Judgment of Peshawar High Court Mingora Bench Dar-ul-Qaza Swat in August Supreme Court of Pakistan (**Copy enclosed as Annexure-E**) which is under adjudication. Furthermore, the identical W.P has been dismissed by Peshawar High Court Peshawar its judgment dated: 29-11-2022. The same nature cases are under trial currently parallel at August Supreme Court of Pakistan and this Honorable Service Tribunal.
16. It is correct and status explained at para No.15 above.
17. No comments.

Grounds:-

- A. It is incorrect. It falls in the ambit of Provincial Government (Cabinet).
- B. It is incorrect. There are no bars on the Provincial Government to amend any Law/Rules which is also held by the Honorable Peshawar High Court Mingora Bench Dar-ul-Qaza Swat on its Judgment as explained in Para No.6 above.
- C. Correct to the extent of Levies & Khasadar of Ex-FATA only and not for PATA (Malakand Levies) which were not part of the said Act.
- D. No comments.

Pray:-

It is therefore, most humbly reiterated that currently the same cases are under trial at two different forum i.e. August Supreme Court and this Honorable Service Tribunal as mentioned above. It is humbly prayed that the process may be halted till decision of the apex Court of Law and the appeal in hand may very graciously be dismissed.

**DC Malakand/Commandant
Malakand levies, Malakand
Respondent No. 3**



**Deputy Commissioner /
Commandant
Malakand levies**



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, (CAMP COURT) SWAT

Appeal No.1954 of 2022

Nawab Sher

.....Appellant

-----Versus-----

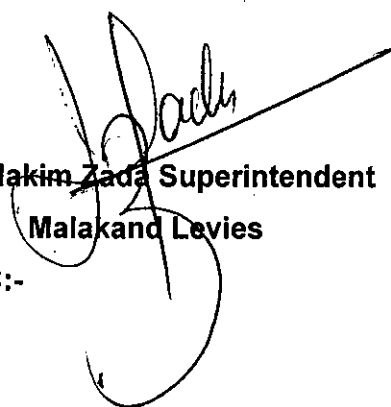
Government of Khyber Pakhtunkhwa and other

.....Respondents

AFFIDAVIT

I, Mr. Hakim Zada Superintendent Malakand Levies do hereby solemnly affirm and declare on oath that the contents of the accompanying Reply on behalf of the Respondent No.3 and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court please.

Deponent



**Mr. Hakim Zada Superintendent
Malakand Levies**

CNIC:-

Attested
Shayfa
09/03/23

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, (CAMP COURT) SWAT

Appeal No.1954 of 2022

Nawab Sher

.....Appellant

-----Versus-----

Government of Khyber Pakhtunkhwa and other

.....Respondents

AUTHORITY

Mr. Hakim Zada Superintendent Malakand Levies is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal, Camp Court Swat and submit Comments/reply regarding subject case on behalf of the undersigned as Respondent No. 3.



Deputy Commissioner/
Commandant
Malakand Levies Malakand





24.8.16
Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department
Dated Peshawar the 25.08.2016

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NOTIFICATION

No. So (Levies) HD/FLW/1-1/2013/Vol. I. Consequent upon approval of the recommendations of the anomaly committee by Secretary SAFRON received vide his letter No. F.10(5)-LK/2006-Pt dated 04.08.2016, the competent authority has been pleased to partially modify the earlier Notifications of even number dated 12.12.2013 & 17.03.2014 with the following amendments in the levies service rules with immediate effect :-

1. The service of Federal Levy Force rendered before 2012 in case of PATA, Khyber Pakhtunkhwa/Settled Districts shall be counted as pensionable.
2. As Federal Government Employees, Civil Pension Rules will be applicable for all Federal Levy Force serving in PATA/Settled Districts of Khyber Pakhtunkhwa.
3. Condonation of over stay exceeding the prescribed length of service or age limit shall be allowed on case to case basis with due approval of the competent authority i.e Secretary, SAFRON after full implications are worked out and sent to SAFRON and subsequent approval by Finance Division as the over stay was not the fault of the levy personnel.
4. The tenure of Rank and Service may be included in the Schedule-III of Service Rules for PATA/Settled Districts of Khyber Pakhtunkhwa respectively with the following amendments:-

SCHEDULE - III

Sl No	Post/Rank	For	To be read as
1	Subedar Major (BS-16)	37 years service or 60 years of age whichever is earlier.	37 years service or 03 years service as Subedar Major or 60 years of age whichever is earlier.
2	Subedar (BS-13)	35 years service or 60 years of age whichever is earlier.	35 years service or 05 years service as Subedar or 60 years of age whichever is earlier.
3	Naib Subedar (BS-11)	33 years service or 60 years of age whichever is earlier.	33 years service or 07 years service as Naib Subedar or 60 years of age whichever is earlier.

Secretary to Govt: of Khyber Pakhtunkhwa
Home & Tribal Affairs Department

Ends No. & dated of even.

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

1. The Secretary to Government of Pakistan, Ministry of SAFRON, Islamabad with reference to letters No. F.10 (5)-LK/2006/Pt dated 04.08.2016.
2. The Commissioner Hazara, Malakand, Kohat & Bannu for information.
3. The D.C /Commandant Levics, Malakand, Dir Upper, Dir Lower, Swat, Chitral, Hangu, Kohat, Karak, Lakki Marwat & Torghar.
4. Agency /District Account Officer Malakand, Dir Upper, Dir Lower, Swat, Chitral, Hangu, Kohat, Karak, Lakki Marwat & Torghar.
5. Section Officer (Budget) Home Department.
6. Section Officer (Count) Home Department.
7. PS to Secretary Home & Tribal Affairs Department.
8. The Manager Government Printing Press, Peshawar for publication in the official gazette Peshawar as an extra ordinary copy.

Section Officer (Levies)

ADW/KD
Selly
08/8/16



GOVERNMENT OF PAKISTAN
HOME & TRIBAL AFFAIRS DEPARTMENT

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MINUTES OF THE MEETING OF ANOMALY COMMITTEE HELD ON 26-04-2021 VIDE NOTIFICATION DATED 20-4-2021 UNDER THE CHAIRMANSHIP OF SPECIAL SECRETARY-II HOME DEPARTMENT REGARDING FEDERAL LEVIES RULES 2013

The subject meeting held under the Chairman Ship of Special Secretary-II Home department on 26-04-2021. The Following attended the meeting:

- i. Mr. Muhammad Amin Additional (Secretary) Security Home Department
- ii. Mr. Jehangir Azam DS (Police) Home Department
- iii. Mr. Muhammad Shoaib DC Dir Upper
- iv. Mr. Asghar Asad SO (Police) Home Department
- v. Mr. Sajid Ahmad, Secretary to Commission Kohat
- vi. Mr. Ghulam Mustafa Superintendent DC Dir Upper
- vii. Mr. Hakim Zada Superintendent DC Malakand
- viii. Mr. Razaullah Assistant DC Dir Upper

2. The chair started the meeting with the introduction of anomalies in the wake of recent amendments in levies Rules 2013. The representative of Commissioner Kohat Highlighted that 103 officials of District Hangu, Karak and Kohat have been retired since issuance of fresh notification dated 22-3-2021. While representatives of Commissioner Malakand Division stated that total 598 levies officials have been retired since recent amendments in levies Rules 2013.

3. It was decided that a consolidated list of those levies officials who have been retired may be compiled by the representative of Commissioners Malakand/Kohat and may be shared with this forum.

4. The members of the committee raised the point that basic qualifications for recruitment for levy sepoy may be considered as Matric. Secondly the forum also decided that the pay scales of the levy officials which should be Up-graded and to remove the budget anomaly which have taken place after merger of levies in FATA

5. After threadbare discussions, the following further decision has been taken by the committee which will be placed before the competent forum for consideration/approval

Schedule -III

S. No.	Name of the Post / Rank	Qualifications for Promotion	Length of Service / Age
1	Subedar Major (BS-16) Proposed (BS-16)	On the basis of Seniority-com- fitness from amongst the Subedars having Intermediate Qualification	Thirty Seven Years of service or Three Years' Service as Subedar Major or Sixty Years of age whichever is earlier

		General (BS-07)	Minimie may be considered as minimum	Twenty five years of age whichever is earlier
2	Subedar (BS-13) Proposed (BS-14)		By promotion, on the basis of Seniority Cum Fitness in the following manner, namely: (i) Fifty Percent (50%) from amongst the Naib Subedars having Intermediate qualifications; OR If no intermediate qualified candidate is available, then SSC qualified amongst the Naib Subedars on seniority cum-fitness basis (ii) Fifty Percent (50%) from amongst Naib Subedars having Secondary School Certificate	Thirty Five Years of service or Five Years of service as Subedar or Naib years of age whichever is earlier
3	Naib Subedar (BS-11) Proposed (BS-11)		By promotion, on the basis of Seniority Cum Fitness in the following manner, namely: (i) Fifty Percent (50%) from amongst the Havaldars having intermediate qualifications; OR If no intermediate qualified is available, then SSC qualified amongst the Havaldars on seniority cum-fitness basis (ii) Fifty Percent (50%) from amongst Havaldars on seniority cum-fitness basis	Thirty Three Years of Service or Seven Years of Service as Naib Subedar or Sixty Years of age whichever is earlier
4	Havaldar (BS-08) Proposed (BS-9)			Thirty One years of service as Havaldar or Fifty one years of age; whichever is earlier. Proposed amendments. Thirty one year service or Fifty one year of age whichever is earlier
5	Naik (BS-07) Proposed (BS-8)			Twenty Nine years of service or Three years of service as Naik or Forty Eight years of age; whichever is earlier. Proposed amendments. Twenty nine year of service or forty nine year of age whichever is earlier
6	L/Naik (BS-06) Proposed (BS-8)			Twenty Seven years of service or Three years of service as L/Naik or Forty Five years of age; whichever is earlier. Proposed amendments. Twenty seven year of service or forty seven year of age whichever is earlier

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S.No	Post/Rank	Eligibility for promotion	Promotion Quota	Direct Quota	Qualification
1	Subedar Major (BS-16)	02 year service as Subedar or 19 years of	100%	-	
2	Subedar (BS-13)	02 year service as Naib Subedar or 19 years of service as such	100%	-	
3	Naib Subedar (BS-11)	04 year service as Hawaldar or 17 years of service as such	100%	-	
4	Hawaldar (BS-8)	05 years of service as Naik or 13 years of service as such	100%	-	
5	Naik	03 years lance Naik or 08 years of total service as such			
6	Lance Naik	05 years of service as sepoy			
7	Sepoy (BS-7)			100%	
8	Head Armourer (BPS-5)	Five years' service as Assistant Armourer	100%	-	SSC Qualification with certificate of Armourer
9	Assistant Armourer (BPS-1)			100%	SSC Qualification with certificate of Armourer

6. The committee also observed that the length of service required for promotion is also less in each cadre which also leads to anomalies at the time of retirement.

7. The case will be sent to competent authority with consultation to law department that whether after the amendments in Federal levies rules 2013 retrospective effect can be given to benefit those officials who have been retired vide notification of even No of Home department owing to previous amendment in levies rules

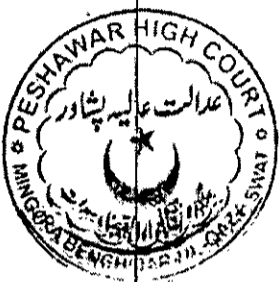
The meeting ended with vote of thanks from and to the chair

Amir
"B"

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

Court of
Case No. of

1	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
 <p>ATTESTED Examiner Peshawar High Court Bench Mingora Dar-ul-Qaza, Swat.</p>	<p>18-01-2022</p>	<p><u>Interim Relief (N) with W.P No. 732-M/2021,</u> <u>Interim Relief (N) with W.P No. 1187-M/2021,</u> <u>Interim Relief (N) in W.P No. 1206-M/2021,</u> <u>Interim Relief (N) in W.P No. 1207-M/2021,</u> <u>Interim Relief (N) in W.P No. 34-M/2022 &</u> <u>Interim Relief (N) in W.P No. 1252-M/2021</u></p> <p>Present: M/S Barrister Dr. Adnan Khan, Sabir Shah and Zia-ur-Rahman Utmankehl, Advocates for the petitioners.</p> <p>Mr. Razauddin Khan, A.A.G for the respondents.</p> <p>*****</p> <p>Arguments on interim relief as prayed for in the writ petitions were heard. It is noticeable at the outset that as per the existing Rules notified on 21.10.2021, the tenure of three years had been provided for holding the post of Subedar Major, which period has already expired on 27.11.2021, in case of the petitioner in W.P No. 732-M/2021. Petitioner in the instant writ petition has though impugned amendments in the Rules notified on 22.03.2021 but he has not impugned the latest Rules that were notified on 21.10.2021. Claim of the petitioner is basically based upon earlier amendments to the Rules brought about by same authority on</p>

Attest

(D.S)

HON'BLE MR. JUSTICE HMTAQ IBRAHIM
HON'BLE MR. JUSTICE WIQAR AHMAD

14.07.2020. His right of retirement of superannuation has not been guaranteed by any primary law enacted by competent legislation. ~~With bringing of amendments on 14.07.2020 in the Rules, same authority cannot be deemed divested from further amending the Rules.~~ The age of superannuation or retirement may well be changed by an authority who has initially provided same. Even otherwise, petitioner had entered service on same terms and conditions which are now available in the recently amended Rules. Petitioner could not establish a prima facie case of violation of any law or Rules applicable to him.

2. W.P No. 1252-M/2021 has been filed by various personnel of levies force, which included Sepoys, Carpenters, Mason, Cook, Tailors, Dhobi and Painter. All these petitioners have been apprehending their retirement on reaching the age the respective ages of retirement in the prevalent Rules. They have raised a number of objections to the prevalent Rules in their writ petition but unless and until the prevalent Rules are declared ultra-vires, null and void for any reason, they do not have a prima facie case for staying operation of the Rules and

ATTESTED

Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

(D.S)

HON'BLE MR. JUSTICE HAFIZ JUDAHIM
HON'BLE MR. JUSTICE MOHAMMAD AHMAD

increasing their age of retirement.

3. In W.P Nos. 1187-M/2021, 1206-M/2021, 1207-M/2021 and 34-M/2022, petitioners are partly aggrieved of interim orders of this Court passed in W.P No. 2210-P/2021 and ~~W.P. No. 732-M/2021~~, whereby further appointments in all the levies force ~~had been ordered to be stopped~~. To said extent, their writ petitions are not at all maintainable but they have also been seeking a restraining order against their retirement and have raised grievances against the impugned Rules as well, which are holding the field at the moment. An ad-interim injunction in one case cannot be challenged by filing a separate writ petition. So far as grievances of the petitioners arising from the prevalent Rules are concerned, such grievances may be heard by the larger Bench finally but at the moment, they were not found having a prima facie case for ~~suspending operation of the Rules and extending their age of retirement~~. In case, where rules of the law or Rules are challenged, then ~~interim relief cannot be granted~~. Reliance in this respect may be placed on judgments of the Hon'ble Supreme Court of Pakistan given in the case of Federation of Pakistan vs. Aitzaz Ahsan and

ATTESTED

Examiner
Peshawar High Court Bench
Mingora District Qaza, Swat.

another reported as *PLD 1989 Supreme Court 61* and the case of Aijaz Ali Khan Jatoi vs. Liaquat Ali Khan Tatoi reported as *1993 SCMR 2350*.

4. In light of what has been discussed, petitioners could not establish a prima facie case for grant of the interim relief. The ad-interim injunction granted in W.P No. 732-M/2021 vide order dated 24.11.2021 as well as the ad-interim injunction granted in W.P No. 1252-M/2021 vide order dated 01.01.2022, in W.P No. 1187-M/2021 vide order dated 08.12.2021, in W.P No. 1206-M/2021 vide order dated 15.12.2021, in W.P No. 1207-M/2021 vide order dated 15.12.2021 and in W.P No. 34-M/2022 vide order dated 30.12.2021, are hereby recalled.

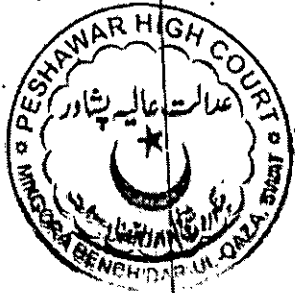
5. This Court vide its judgment dated 24.03.2021 rendered in the case of Ikramullah and another vs. Deputy Commissioner/Commandant Dir Levies Provincial District Dir Upper and others (W.P No. 528-M/2016) had held that levies personnel had been civil servants and as such jurisdiction of this Court was barred. On said issue, this Court vide order dated 30.06.2021 passed in W.P No. 367-M/2021 had requested for constitution of a

ATTESTED

Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

(D.R) HONBLE MR. JUSTICE RUMTAQ INBAH
HONBLE MR. JUSTICE WIGAR AHMAD

larger Bench for consideration of the questions involved therein, which cases have already been pending before larger Bench of this Court constituted at the Principal Seat. The question of jurisdiction in the instant cases also requires consideration of the larger Bench. Office is directed to send these connected cases to the Principal Seat for placing same before Hon'ble the Chief Justice for appropriate orders in respect of its fixation before the larger Bench constituted for determining the status of levies personnel and the forum available to them.



Certified to be true copy

[Handwritten Signature]
24-01-2022
EXAMINER

Peshawar High Court, Mingora/Dar-ul-Qazza, Swat
Authorized Under Article 177 of Qanoon-e-Shahadat Order 1984

JUDGE

JUDGE

S.No. 19
 Name of Applicant Fuyoz
 Date of Presentation of Applicant 24-01-2022
 Date of Completion of Copies do
 No of Copies 11-P
 Urgent Fee 441/-
 Fee Charged 441/-
 Date of Delivery of Copies 24-01-2022

Annexure
"D"

15



Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR.

(JUDICIAL DEPARTMENT)

W.P.No.367-M/2021 with I.R,
CM Nos.1053/2021 & 1183/2022.

JUDGMENT

Date of hearing -- 29.11.2022.

Barrister Dr.Adnan for petitioners.

Mr.Saqib Raza, A.A.G for the respondents.

=====

S M ATTIQUE SHAH, J:- Through this single judgment, we shall also decide the connected writ petitions bearing Nos.337-M/2021, 406-M/2021, 503-M/2021, 514-M/2021, 518-M/2021, 450-M/2021, 601-M/2021, 681- M/2021, 632- M/2021, 919-M/2021, 968- M/2021, 980- M/2021, 1221-M/2021, 1222-M/2021, 1252-M/2021, 2210-P/2021, 2913-P/2021, 5092-P/2021, 5423-P/2021, and 5424-P/2021 as adjudication of a common question of law and fact is involved in all the petitions wherein the petitioners have challenged the vires of notification No. SO (Police-II) HD/ MKD/Levies/Misc/2020 dated 22.03.2021 whereby on the basis of impugned office order bearing No.128/DC/CSL dated

ATTESTED
EXAMINER
Peshawar High Court

20.04.2021, they have been retired from service with further prayer that they be reinstated into service from the date of their retirement i.e. 20.04.2021 with all back benefits. In alternative, they have prayed that the respondents be directed to treat them at par with erstwhile Federal Levies of Federally Administrated Tribal Area (FATA) and; absorb them in police and; grant them full pensionary benefits.

2. Likewise in W.P.Nos.333-M/2021, 334-M/2021, 335-M/2021, 338-M/2021, 345-M/2021, 1026-M/2021, 1035-M/2021, 1187-M/2021, 1206-M/2021, 1207-M/2021, 34-M/2022, 212-M/202 and 993-P/2022 the petitioners have made the following prayer:

"On acceptance of this writ petition, the impugned Notification SO (Police-II) HD/ MKD/Levies/ Misc/2020 is against law and the fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973, may be declared illegal void ab initio and of no legal effects on the rights of the petitioners."

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EXAMINER
Peshawar High Court

Similarly, in COC Nos.38-M/2021 in W.P.No.367-M/2021 and COC No.436-P/2022 in W.P.No.1335-P/2022 petitioners seek initiation of contempt of court proceedings against the respondents for violating the order of this court dated 21.04.2021 passed in W.P.No.367-M/2021.

3. Brief facts of the case(s) are that the petitioners were appointed in the "Swat Levies Force" as Sepoys etc. and presently terms and conditions of their services are regulated by "Provincially Administrated Tribal Areas Levies Force Regulation 2012" whereunder besides PATA Levies Force Rules, 2012, PATA Levies Force Service (Amended) Rules 2013 were also framed. Rule 17 of the Amended Rules 2013, deals with the retirement of personnel of the force, which was amended vide notification dated 12.12.2013 in the manner that **"All the personnel shall retire as per Schedule-III and no extension in service beyond retirement shall be granted"**. On 14.07.2020, vide Notification No.SO

ATTESTED
EXAMINER
Peshawar High Court

(Police-II)HD/1-3, rule 17 was further amended by deleting schedule-IV as ***"All uniformed force shall retire from service on attaining the age of superannuation i.e. Sixty (60) years or they may opt for retirement after completion of twenty-five (25) years regular service"***. Thereafter once again through certain modifications rule, 17 was amended by giving life to the deleted schedule-III of the rules 2013 as under:-

"Retirement; All levy personnel shall retire as per Schedule-III and no extension in service after retirement shall be granted."

4. Being aggrieved from the ibid amendment, the petitioners have filed the instant petitions.
5. Pursuant to the directions of this court respondents have filed their parawise comments, wherein issuance of the desired writs has been opposed.
6. Learned counsel representing the petitioners vehemently argued that the

ATTESTED
EXAMINER
Peshawar High Court

Impugned Notification is arbitrary, perverse, illegal, issued without lawful authority and *mala fide* intention just to deprive the petitioners of their vested rights accrued in their favour hence violative of their fundamental rights guaranteed under the Constitution and thus not sustainable in the eye of law. That though the impugned Notification was issued under the regulation 2012. However, after the 25th Constitutional amendment, the said regulation does not hold field, therefore, the impugned Notification is liable to be set aside.

7. Conversely, worthy AAG representing the respondents opposed the arguments so advanced by learned counsel representing the petitioners at the bar while arguing that after the 25th amendment the Provincial Assembly passed the continuation of laws Act No.111 of 2019 through which the laws applicable to erstwhile PATA were allowed to continue including "Provincial Administered Tribal Areas Levies Force Regulation, 2012" and;

ATTESTED
EXAMINER
Peshawar High Court

therefore, the impugned Notification was issued per law which does not require any interference by this court in its writ jurisdiction under Article 199 of the Constitution. Further, petitioners are Civil Servants, and; matter in question revolves around the terms and conditions of their service which is the exclusive domain of the Service Tribunal as such the jurisdiction of this court is barred given the explicit provision of Article 212 of the Constitution.

8. Heard. Record perused.

9. Before discussing merits of the case we deem it appropriate to discuss the background of the matter in hand to properly comprehend the issue involved therein. It is worth mentioning that earlier the services of the *Levies Force* were dealt with under the *Frontier Irregular Corps (FIC) rules, 1962* which was substituted by the "*Provincial Administered Tribal Areas Levies Force Regulation, 2012*" (regulation) and under the said regulation "*PATA Levies*

ATTESTED
EXAMINER
Peshawar High Court

Force (service) Rules, 2012" were framed for Provincial Levies Force. While separate service rules were also framed thereunder for PATA Federal Levies Force performing duties in "PATA" known as "PATA Federal Levies Force Service (Amended) Rules 2013. Rule 17 of the ibid rules deals with the retirement of the Levies personnel which was amended from time to time. However, petitioners have become aggrieved from the impugned Notification vide which the petitioners' retirement age was altered which is challenged by them through instant petitions.

10. The main contention of the petitioners is that after 25th amendment the regulation has lost its efficacy and sanctity and has become redundant, therefore, the impugned amendment under the said regulation is illegal being void ab initio. It is worth mentioning that after the 25th amendment in 2018, both FATA & PATA were merged in the province of Khyber Pakhtunkhwa and Federal Levies Force

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working in FATA was merged into the regular police of the province. Albeit, in Malakand Division, Levies Force is still regulated by "PATA Federal Levies Force Service (Amended) Rules 2013 in view of the Khyber Pakhtunkhwa Act No 111 of 2019 through which the laws prevalent in erstwhile PATA at the time of 25th amendment were allowed to continue including regulation 2012 which still holds the field and as such the same is a valid instrument. Therefore, impugned Notification was issued by the respondents with lawful authority.

11. Moving toward the status of the petitioners it is worth mentioning that earlier this court while deciding W.P No 528-M/2016 (Ikramullah's case) determined the status of personnel of the Provincial Levies Force as that of civil servants in the following terms:-

"19. The Provincial Levies Force ("Force") was granted statutory cover through Khyber Pakhtunkhwa Regulation No.1 of

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2014 ("Regulation"). Paragraph No.3 of the Regulation envisages for constitution and establishment of the Force and its functions. For ease reference paragraph Nos. 3 and 4 of the Regulation are reproduced as under:-

"3. Power to constitute and maintain by the Force and its functions.-- (1) Government may constitute and maintain a Force for performing the following functions, namely:

- (a) ensuring security of roads in PATA;
- (b) ensuring security and manning of piquet;
- (c) guarding Government institutions and installations;
- (d) ensuring security of jails and arrested criminals;
- (e) generally maintaining law and order providing mobile escort to VIPs;
- (f) anti-smuggling activities especially timber smuggling;
- (g) destruction of illicit crops;
- (h) serving of summons or procedures;
- (i) raid and ambush; and
- (j) such other functions as Government may, by notification in the official Gazette, require the Force to perform.

(2) In discharge of their functions, officers and staff of the Force shall

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be guided in accordance with this Regulation and the rules.

(3) The head of the Force shall be Commandant in his respective jurisdiction.

(4) Secretary to Government, Home and Tribal Affairs Department shall be the competent authority of the Force.

(5) The Force shall consist of such ranks and number of officers and members and shall be constituted in such manner as may be prescribed by rules.

(6) The officers and members of the Force shall receive such pay, pension, allowances and other remunerations and shall enjoy such leave and other privileges as may be prescribed by rules.

(7) The officers and members of the Force shall wear such uniform as may be prescribed by rules or instructions.

(8) The administration of the Force shall vest in the Commandant in his jurisdiction who shall administer it in accordance with the provisions of this Regulation, rules and instructions.

(9) The Commandant shall exercise his powers and perform his functions under the general supervision and directions of Government.

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4. **Powers and duties of officers and members of the Force.**—An officer or member of the Force shall-

- (a) take effective measures for ensuring security of assigned jurisdiction and for safeguarding against acts of unlawful interference;
- (b) prevent unauthorized persons and vehicles from access to the territorial jurisdiction;
- (c) take effective measures for preventing sabotage, placement of car bombs, letter bombs, dangerous article and carriage of arms and ammunition into the restricted area;
- (d) use such arms and ammunition and equipment as may be authorized by the Commandant or an officer authorized by him;
- (e) search and arrest without warrant any person who he suspects of endangering or attempting to endanger or having endangered the safety of an installation and may use such force as may be necessary in the discharge of his aforesaid duties; and
- (f) perform such other legal functions as the competent authority may require him to perform".

20. The close perusal of the Regulation would clearly show that the Force is receiving its salary from the Provincial

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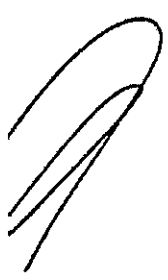
Exchequer and performs the policing service in the erstwhile PATA.

21. Having said this, we would now refer to the crucial issue as to whether the employees of the Force can be termed as a civil servants and as such they cannot maintain a constitutional petition before this Court for enforcement of the terms & conditions of their service.

22. The connotation 'civil servant' is defined and explained in respect to the Province of Khyber Pakhtunkhwa, in the Civil Servants Act, 1973 ("Act, 1973"). For ease reference, we would refer to Section 2 (b) of Act, 1973, which reads as under:-

"2. Definitions.—(1) In this act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

- (a)
- (b) *"civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include—*




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- (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
- (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
- (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923)".

23. The perusal of the definition would show that a member of a civil service of the Province or who holds a civil post in connection with the affairs of the Province is civil servant. All Pakistan Services are explained in Article 260 of the Constitution, which reads as under:-

"260.
 (1).....

"service of Pakistan" means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of [Majlis-e-Shoora



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(Parliament)] or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, [Attorney-General], [Advocate-General],] Parliament Secretary] or [Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister] or member of a House or a Provincial Assembly;

Whereas Article 240 of the Constitution envisages that:-

"240. Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined -

- (a)
- (b) in the case of the services of a Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly.

Explanation.- In this Article, "All-Pakistan Service" means a service common to the Federation and the Provinces, which was in existence immediately before the commencing

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day or which may be created by Act of [Majlis-e-Shoora (Parliament)]".

24. The Phrase "performing in connection with the affairs of Federation or for present matter Province" was elaborately explained in the case of Salahuddin and 2 others vs. Frontier Sugar Mills & Distillery Ltd., Tokht Bhal and 10 others (PLD 1975 Supreme Court 244).

In the said judgment, the Apex Court has held:

"Now, what is meant by the phrase "performing functions in connection with the affairs of the Federation or a Province". It is clear that the reference is to governmental or State functions, involving, in one form or another, an element of exercise of public power. The functions may be the traditional police functions of the State, involving the maintenance of law and order and other regulatory activities; or they may comprise functions pertaining to economic development, social welfare, education, public utility service and other State enterprises of an industrial or commercial nature. Ordinarily, these functions would be performed by persons or agencies directly appointed, controlled and financed by the State, i.e., by the

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Federal Government or a Provincial Government".

25. Admittedly, as evident from the bare reading of paragraph-3 & 4 of the Regulation, the present petitioners are performing policing service in the erstwhile tribal area, however, their terms and conditions are being regulating through Regulation No.1 of 2014 and after the omission of Article 247 from the Constitution; through a provincial statute i.e. the Khyber Continuation of Laws in the Erstwhile Provincially Administered Tribal Areas Act, 2018 (Khyber Pakhtunkhwa Act No. III of 2019), the operation of Regulation No.1 of 2014 was continued. Thus, the essential criteria for being a civil servant is that the person holding the post must perform his functions in connection with the affairs of Federation/Province and the terms and conditions of his service should be determined by or under the Act of Parliament/Provincial Assembly. The Apex Court in the case of Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others vs. RO-

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177 Ex-DSR Muhammad Nazir
(1998 SCMR 1081), while dealing with the case of an employee of Pakistan Rangers has observed that:

"7....Perusal of these rules clearly shows that they are all embracing, and therefore, under the amendment of section 1 of the Pakistan Rangers Ordinance, these rules would prevail over the Rules of 1973. The Pakistan Rangers Ordinance was promulgated to constitute a force called the Pakistan Rangers for the protection of and maintenance of order in the border areas. Since with regard to the status of the members of the force the Pakistan Rangers Ordinance is silent, therefore, it can be safely said that the employees of the Pakistan Rangers will be deemed to be civil servants as they are performing duties in connection with affairs of the Federation and hence under the Service Tribunals Act, 1973, an appeal by a member of the Pakistan Rangers regarding a matter relating to terms and conditions of his service is competent before the Federal Service Tribunal..."

26. Similarly, in the case of Commandant, Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and

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others vs. Gul Raqib Khan and others (2018 SCMR 903), the Hon'ble Apex Court has elaborately examined service structure of the employees of Frontier Constabulary, which is established under Frontier Constabulary Act (Act-XIII) of 1915. Relevant paragraphs of the said judgment are reproduced as under:-

"6. Three broad tests for establishing the status and character of a civil servant emerge from the Constitutional mandate of the afore-going Articles. Firstly, under Article 240(a) of the Constitution, appointments to and the terms and conditions of service of the persons in the "service of Pakistan" are to be determined by or under Act of Parliament. Secondly, by virtue of Article 260 of the Constitution, 'service of Pakistan' means any service, post or office in connection with the affairs of the Federation. Thirdly, under Article 212(1) (a) of the Constitution, the exclusive jurisdiction to adjudicate disputes relating to the terms and conditions of persons, who are in the service of Pakistan vests in an Administrative Tribunal, namely, the Federal Service Tribunal. These tests are mentioned in the Muhammad Mubeen-us-Salam case

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ibid (at pp. 686-689 of the law report). The definition of the term 'civil servant' in the Act adopts the Constitutional criteria given in Article 260 noted above to reiterate that a person who, *inter alia*, holds a civil post "in connection with the affairs of the Federation" including any such post connected with defence, to be a civil servant. The larger Bench has in this respect taken the logical step to incorporate the requirements under Article 240 (a) and 260 of the Constitution as the definitional criteria of the term "civil servant" (at p. 682 of the law report).

7. Having noticed the qualifying criteria of a civil servant under the law, it is appropriate now to examine the factual matrix of the present controversy. The FC was established by the NWFP Constabulary Act, (Act-XIII) of 1915 ("Constabulary Act"). Section 3 of the Constabulary Act empowers the Federal Government to maintain the FC as a force "for the better protection and administration of the external frontiers of Pakistan within the limits of or adjoining North-West Frontier or any part thereof". Section 3-A of the Constabulary Act authorises the Federal Government to employ the FC outside the limits of or adjoining the North-West Frontier Province in other parts of Pakistan for

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the better protection and administration of those parts. Section 5(1) of the Act *ibid* vests the Federal Government with power to appoint the Commandant and other persons including the District Constabulary Officers or Assistant Constabulary Officers of the force in one or more districts. Section 6 delegates to the Commandant and District Constabulary Officer the power to appoint subordinate officers in the manner prescribed by Rules made under the Act. The Federal Government exercised its power conferred by Section 21 of the Constabulary Act, to frame the NWFP Constabulary Rules, 1958 ("Constabulary Rules"), in order to provide the terms and conditions of service of the officers and men in the FC.

6. It will be observed that the matter of terms and conditions of service of the respondent-employees of the FC, are in the first place regulated by the Constabulary Act and elaborated pursuant thereto by the FC Rules. The provisions made by the Constabulary Rules are in furtherance of and in exercise of the power conferred by the Constabulary Act. Therefore, the terms and conditions of service of the employees of the FC are prescribed.



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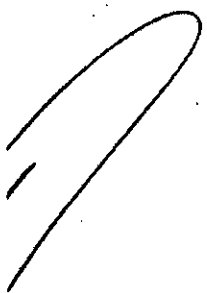
*in the Act and the Rules. The test laid down in Article 240(a) of the Constitution requires that the appointment to and the terms and conditions of service of posts in connection with the affairs of the Federation and of a service of Pakistan shall be determined "by or under an Act of" Parliament. The expression "by or under" in Article 240(a) of the Constitution authorizes the terms and conditions of service of a civil servant to be provided both by statute or by statutory rules. The provision made in the Constabulary Act and the Constabulary Rules, therefore, satisfy the Article 240(a) test. The judgment in the Muhammad Mubeen-us-Salam case *ibid* endorses this point of view:-*

"86.... The terms and conditions of service of those employees, however, are required to be specified under Article 240 of the Constitution by or under Act of the Parliament. Thus, the conclusion would be that only those persons, who are in the service of Pakistan, as discussed hereinabove, and if their terms and conditions are governed either by a statute or statutory rules, in terms of Article 240 of the Constitution, can seek remedy before the Service Tribunals.."

27. Similarly, this Court in the case of Gul Munir vs. The

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Government of Pakistan through Secretary, Ministry of States and Frontier Regions (SAFRON), Islamabad and others (2019 PLC (C.S) 645), on the basis of law laid down by the Apex Court in Commandant, Frontier Constabulary Khyber Pakhtunkhwa, Peshawar's case (2018 SCMR 903), while dealing with the case of Federal Levies Force, which was established through Federal Levies Force Regulation, 2012 having the same structure of service for its employees/force as provided in Regulation No. 1 of 2014 has held that employees of the Federal Levies Force whose terms and conditions of service are governed under Federal Levies Force Regulation, 2012 are civil servants. Keeping in view the above, the Force established under Regulation No. 1 of 2014 qualifies the criteria of being civil servant in view of its composition, functions and duties as per law laid down by the Apex Court in the cases of Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others



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vs. RO-177 Ex-DSR Muhammad Nazir (1998 SCMR 1081) and Commandant, Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and others vs. Gul Raqlb Khan and others (2018 SCMR 903), thus, the preliminary objection raised by the learned counsels for the respondents is sustained and accordingly, the present petitions in view of clear bar contained in Article 212 of the Constitution are not maintainable. The present petitioners may agitate their grievances before the Provincial Services Tribunal. However, prior to this judgment, the status of present petitioners being a civil servant was not determined and in the similar cases, the Apex Court in Gul Raqlb Khan's case (2018 SCMR 903) has held that:

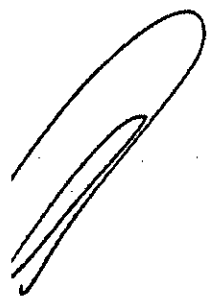
*11. It follows from the dicta laid down above that the protection of the border areas is a sovereign function belonging to and performed by the Federation. The same duty is performed equally in the present case by the FC not only on the frontiers of KPK Province but also by maintaining order in other parts of Pakistan. For discharging such functions, the

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services rendered by the FC have direct nexus with the affairs of the Federation. Therefore, the reasons given in the Muhammad Nazir case (supra) fully apply here as well and we hold that the employees of FC are civil servants. Insofar as the question of competent remedy in respect of service disputes of FC men is concerned, we hold that in a matter relating to the terms and conditions of service of the respondent-employees of the FC, an appeal before the Federal Service Tribunal is available to them as the exclusive remedy under the law. Accordingly, this remedy may be availed by them within the statutory period of limitation commencing from the date of issuance of certified copy of this judgment. All these appeals filed by the appellant-Commandant, FC are accordingly allowed in above terms".

When case of the petitioners (PATA Federal Levies Force) was examined in juxtaposition with the Provincial Levies Force and *ibid* judgment, we observed that service of both the forces is governed under the rules so framed under the provisions of "Provincial Administered Tribal Areas Levies Force Regulation,



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2012". Therefore, we believe that the status of petitioners is that of civil servants for all practical and material purposes, and as such, the matter of terms and conditions of their service squarely falls outside the ambit of writ jurisdiction of this court given the explicit bar contained in Article 212 of the Constitution. As earlier discussed service rules of the petitioners (*PATA Federal Levies Force*) and *Provincial Levies Force* both were framed under the provisions of "*Provincial Administered Tribal Areas Levies Force Regulation, 2012*" and through the *ibid* judgment, the personnel of *Provincial Levies Force* were declared as Civil Servants after exhaustively discussing the matter of *Levies Force* performing their duties in *PATA*. Therefore, on the same premise, we have no hesitation to hold that the petitioners are Civil Servants as their service fulfills the entire criteria of Civil Servants so provided by the law. Learned counsel representing the petitioners could

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not distinguish the status of petitioners (PATA Federal Levies Force) *vis a vis* Provincial Leavy Force in any manner. Both forces are performing their functions in the same area for the same object and; purpose, and both are being maintained through the provincial exchequer. Therefore, the matters arising out of the terms and; conditions of service of the petitioners are only amenable to the jurisdiction of the Service Tribunal in terms of Article 212 of the Constitution.

So far as the contention of petitioners that they have challenged the vires of the impugned Notification and as such the same are not amenable to the jurisdiction of the Service Tribunal is concerned, suffice it to state that it has long been settled that Service Tribunal has ample jurisdiction to deal with the issue of vires of the law and rules framed thereunder. **2015 SCMR 253 NATIONAL ASSEMBLY SECRETARIAT through Sectrary V. MANZOOR AHMAD and others.**

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Therefore, the contention so agitated at the bar is misconceived and as such repelled.

In view thereof, the status of petitioners has been declared as that of Civil Servants and the matter in question revolves around the terms and; conditions of their service which does fall outside the jurisdiction of this court given the baring provision of Article 212 of the Constitution and as such instant petitions are dismissed; being not maintainable. However, the petitioners may approach the worthy Service Tribunal for the redressal of their grievance if so advised. Albeit, earlier the status of petitioners being civil servants was not determined, therefore, the petitioners may avail the remedy of appeal within the statutory period of limitation commencing from the date of issuance of the certified copy of this judgment in terms of the judgment of august apex court in *Gul Raqib Khan's case 2018 SCMR 903*.

COC Nos.38-M/2021 in
W.P.No.367-M/2021 and; COC No.436-

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P/2022 in W.P.No.1335-P/2022 are dismissed for having become infructuous.

[Signature]
JUDGE
[Signature]
JUDGE
[Signature]
JUDGE

Announced.
Dt.29/11/2022.

HON'BLE MR.JUSTICE LAL JAN KHATTAK,
HON'BLE MR.JUSTICE S M ATTIQUE SHAH &
HON'BLE MR.JUSTICE SYED ARSHAD ALI

(P.R. KHAN Court Secretary)

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Case No. CPLA No. 46-P/2022

Title: Government of Khyber Pakhtunkhwa through Chief Secretary,
Peshawar & others VS Muhammad Saleem & others

SUBJECT: APPLICATION FOR EARLY HEARING & TRANSFER

CATEGORY OF CASE: Reinstatement in Service as Hawaldars, Naiks, Lance Naik,
Sepoys

BRIEF OF CASE (FROM TRIAL COURT TO IMPUGNED ORDER):

Nature of Proceeding before lower Court- (COC Petition) before the Hon'ble Peshawar High Court, Mingora Bench (Dar-UI-Qaza), Swat asking for implementation of the judgment and order dated 23-11-2022 which is impugned before this august Court in CPLA No. 46-P/2022.

Relief claimed in main case. That the impugned Judgment & Order dated 23/11/2022 passed in Writ Petition No. 1283-M/2022 be suspended and status quo be granted.

GROUND/ REASON OF URGENCY:

1. Respondent filed COC Petition before the Hon'ble Peshawar High Court Mingora Bench Dar-UI-Qaza, Swat for implementation of impugned order dated 23/11/2022. Grounds of COC No. 102-M/2022 are attached.
2. Hon'ble Peshawar High Court, Mingora Bench (Dar-UI-Qaza), Swat directed the petitioners to come up with implementation order or with Petitioner No. 1 for proceedings in the instant petition, in accordance with law.
3. That if the impugned Judgment & Order is not complied it will cause irreparable loss to the petitioners and also indulge the petitioners in multiplicity of litigations.

PROOF OF URGENCY:



Attached




Not attached

PRAYER:

It is respectfully prayed that the Petition may kindly be transfer to Principal Seat at Islamabad and be fixed in the 2nd Week of February, 2023.

UNDERTAKING:

Certified that this is 1st application by the AOR/Applicant for early fixation of instant case.


(Nilsan Saadullah Jandoll)
Advocate-on-Record
Supreme Court of Pakistan
For Government/Petitioners

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