

02.04.2019

Petitioner in person present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Fazal Khaliq, ADO for respondents present.

Representative of the respondents produced implementation report, whereby post retirement pensionary benefits were allowed to the appellant vide order dated 02.02.2019 and the same is placed on file. Case to come up for further proceedings on 02.05.2019 before S.B.


(AHMAD HASSAN)
MEMBER

03.05.2019

Counsel for the petitioner and Mr. Usman Ghani, District Attorney alongwith Fazle Khaliq, ADO for the respondents present.

Office order dated 04.02.2019 has been issued by DEO (M) Swabi, whereby, the petitioner has been allowed to retire from Government service with pension benefits and encashment of LPR as admissible to him in the light of judgment passed by this Tribunal and presently under implementation. By virtue of the office order the previous order of retirement of petitioner without pension benefits has also been withdrawn.

The copies of office order have been endorsed, inter-alia, to the District Account Office Swabi who now has to execute the office order dated 04.02.2009 practically in compliance with the judgment of Tribunal under implementation.

Resultantly the proceedings in hand are consigned. The petitioner shall however, be at liberty to have the proceedings restored in accordance with law in case any portion of relief granted to him remained unsatisfied.

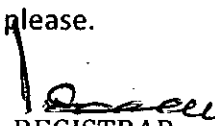



Chairman

ANNOUNCED

03.05.2019

FORM OF ORDER SHEET

Execution Petition No. 10/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1.	2	3
1	11.01.2019	<p>The Execution Petition of Mr. Syed Kamal Shah submitted to-day by Mr. Asad Zeb 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;"> REGISTRAR</p>
2-	<p>21/1/19</p> <p>26.02.2019</p>	<p>This Execution Petition be put up before S. Bench on - <u>26-2-19.</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsel for the petitioner present. Notices be issued to the respondents for implementation report on 02.04.2019 before S.B.</p> <p style="text-align: right;"> (Ahmed Hassan) Member</p>

1

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Execution/Implementation Application No. / 8 / 2019
In Service Appeal No: 1056 of 2016

SYED KAMAL SHAH

VS

SECRETARY EDUCATION AND OTHERS


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1	Execution/Implementation Application		1-3
2	Affidavit		4
3	Copy of Service Appeal & order/judgment dated: 27-03-2018 <i>and notification</i>	A & B	5-10
4	Wakalat Nama		10


Applicant

Through

Dated:-08/01/2019


ASAD ZEB KHAN
Advocate High Court
Peshawar.
Al-haaj Plaza, Yousaf Abad,
Dalazak Road, Peshawar.
0346-9800565

(2)

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Execution/Implementation Application No. 10 /2019
In Service Appeal No: 1056 of 2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 60

Dated 11-1-2019

Syed Kamal Shah S/O Ajab Shah,
R/O Imranzai Qadray, Tehsil & District Swabi.

Applicant

Versus

1. Secretary Education, Khyber Pakhtun Khwa, Peshawar.
2. Director Education, Elementary and Secondary Education, Khyber Pakhtun Khwa, Peshawar.
3. E.D.O Education, Swabi.
4. S.D.E.O (Female) Education, Topi, Swabi.

Respondents

APPLICATION FOR AND ON BEHALF OF
APPLICANT / APPELLANT FOR
IMPLEMENTATION OF ORDER/
JUDGMENT DATED: 27-03-2018 PASSED BY
THIS HON'BLE TRIBUNAL IN SERVICE
APPEAL NO. 1056/2016 AND CONTEMPT
PROCEEDINGS MAY KINDLY BE
INITIATED AGAINST RESPONDENTS FOR
WILLFULLY DISREGARDING THE
ORDERS OF THIS HON'BLE AND TO
PUNISH THEM IN ACCORDANCE WITH
LAW.

Respectfully Sheweth!

1. That the applicant filed above cited Service Appeal No. 1056/2016 before this Hon'ble Tribunal, challenging the inaction of the respondents to release/pay pension to the applicant for his services rendered in the department.

2. That the said appeal was argued at length before this august Tribunal and the same was allowed in terms of judgment rendered in Service Appeal No. 1055/2014 dated: 12-10-2017 titled: Jamroz Khan Vs Senior District Account Officer and the respondents were directed to release/pay pension to the applicant/appellants. The relevant portion of the judgment dated: 27-03-2018 is reproduced here-in-below:-

“Judgment dated: 12-10-2017 passed in service appeal No. 1055/2014 also perused and found the plea of the learned counsel for the appellant as genuine. Consequently the present service appeal is accepted in terms of judgment dated: 12-10-2017 passed in service appeal No. 1055/2014 titled: Jamroz Khan Versus Senior District Account Officer Nowshera and 7 others. Parties are left to bear their own costs. File be consigned to the record room”.

{True copy of the Service appeal and order/judgment dated: 27-03-2018 are annexed, mark as **Annex-A & B**}

3. That the applicant after passing of the above order, approached to the respondents and duly informed them about the order dated: 27-03-2018 of this Hon'ble Tribunal containing clear directions by providing attested copy of the judgment, however, the respondents paid no heed thereto. The applicant visited the office of the respondents so many times but to no avail.
4. That due to the unturned attitude of the respondents, the applicant is constrained to knock at the door of this Hon'ble Tribunal for the implementation of the order/judgment dated: 27-03-2018.
5. That the respondents despite of the clear directions, have willfully disobeyed the order of this Hon'ble Tribunal by not releasing/ paying pensionary benefits to the applicant.
6. That the respondents have blatantly disregarded the clear directions of this Hon'ble Tribunal and have in fact flouted the process of law by their naked misuse of power.
7. That the above noted contemptuous behavior of the respondents on one side made mockery of the orders of this August Tribunal and on the other side increased the agonies and miseries of the applicant.

It is, therefore, most respectfully prayed that on acceptance of this application, this Hon'ble Tribunal may be pleased to:-


- I. **Direct** the respondents to release/pay the pension and pensionary benefits to the applicant, forthwith.

- II. **Initiate** the contempt proceedings against the respondents.
- III. **To Punish** the respondents in accordance with law for failing to comply with the directions of the Hon'ble Tribunal.
- IV. **Any other relief** deemed appropriate in the circumstances of the case may also be granted.


Applicant

Through

Dated: 08.01.2019


ASAD ZEB KHAN
Advocate High Court
Peshawar.

4

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Execution/Implementation Application No. _____/2019
In Service Appeal No: 1056 of 2016


SYED KAMAL SHAH

VS

SECRETARY EDUCATION AND OTHERS

AFFIDAVIT

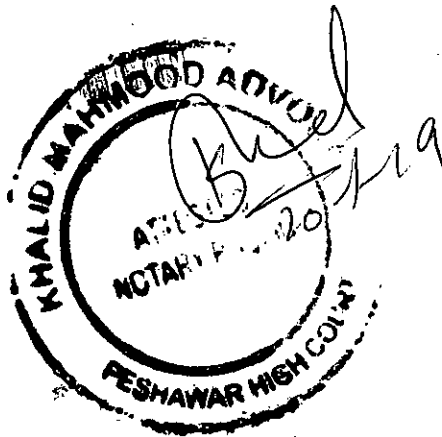
I, **Syed Kamal Shah** S/O Ajab Shah, R/O Imranzai Qadray, Tehsil & District Swabi, do hereby solemnly affirm and declare upon oath that the contents of the Application are true and correct to the best of my knowledge & belief and nothing has been concealed or withheld there from.

Identified By

ASAD ZEB KHAN
Advocate High Court

Deponent



N.I.C No.



(b)

(A)

BEFORE THE PROVINCIAL SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 1056/2016

Diary No. 1089

Syed Ksmal Shah S/o Ajab Shah

Dated 17-10-2016

R/o Imranzai Qadrsy, Teh. & Distt. Swabi.... Appellant.

Versus



1. Secretary Education, Khyber Pakhtunkhwa Peshawar. *Edu: EASE*
2. Director General, Khyber Pakhtunkhwa Peshawar
3. E.D.O Education Swabi.
4. S.D.E.O (Female) Education Topi..... Respondents.

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT 1974 DATED 30.6.2016 WHEREBY AN APPELLANT WAS RETIRED FROM SERVICE WITH NO PENSIONARY BENEFITS. APPELLANT FILED A DEPARTMENTAL APPEAL BEFORE RESPONDENT No.1 DATED ON 15.7.2016 WHICH REMAINED UNRESPONDED DESPITE OF STATUTORY PERIOD OF 90 DAYS, HENCE THUS APPEAL INTER ALIA ON THE FOLLOWING FACTS AND GROUNDS.

Respectfully Sheweth.

1. That the appellant was appointed as Chowkidar on contract basis dated on 16.4.1995. (Copy of service book and appointed order are attached as Annexure "A" & "B").
2. That, the father of the Appellant gifted his land to the Education Department in consideration for the appointment of his son. (Copy of gift mutation is attached as Annexure "C").

Filed today
[Signature]
Registrar

Contd '..... P/2.

ATTESTED

[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

6

3

(2)

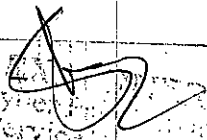
3. That, the appellant became permanent after passing the NWFP employees (Regulation of service Act 2009 by the Provincial Government dated on 24th October 2009.
4. That, the appellant qualifying his services for about 21 years 02 months and 14 days. But inspite of qualifying his service he was retired from service dated on 30.6.2016 with no pensionary benefits which is illegal against the law and facts. Hence liable to be set aside.
5. That, the appellant filed a departmental appeal against the illegal order of respondent No.3 before the respondent v No.1 dated 15.7.2016 but no remedy was granted untill now. (Copy of impugned Order No.2484-85 and Departmental Appeal are annexure "D" & "E".)
6. That feeling aggrieved of an illegal order he made a departmental appeal which was not decided uptil now and mandatory stipulated period of 90 days for waiting the decision of the authority has since been elapsed. Since the respondent authorities are not prepared to listen the genuine grievance to the appellant regarding the illegal order hence this appeal inter alia on the following grounds.

GROUNDS

- A. That the impugned order is illegal unconditional and void ab initio and is liable to be set aside it is further averred that abuse of discretion by a public functionary violates Art 4 of constitution. Appellant rights to be dealt with in accordance with law was violated which is granted in Art 4 of the constitution of Pakistan 1973.

ATTESTED

Contd'.....2/3.


 Khuzdar
 Service Tribunal,
 Peshawar

(7)

(5)

- B. That, the respondents have also violated Art 25 and 27 of the constitution of the Islamic Republic of Pakistan 1973 which guarantees equality of all citizen and safeguard against discrimination in services.
- C. That great injustice has been done in the appellant by the respondents.
- D. That after no consideration was given by the respondents to the departmental representation. Appellant has come to the Honourable Tribunal to get justice.
- E. That appellant shall urge any other points at the time of arguments with the permission of this Honourable Tribunal.

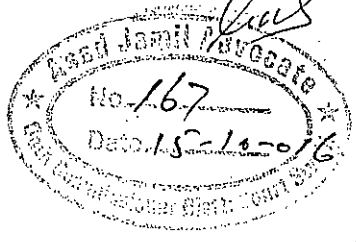
It is premise it is respectfully prayed that upon acceptance of this appeal pensionery benefits granted to the appellant.

Dated 17.10.2017.

Appellant



Syed Kamal Shah



Through Counsel

Sohrab Khan,
Advocate High Court

at Judicial Complex Swabi.

ATTESTED

MANAGER
District Tribunal,
Peshawar

9

7

BEFORE THE PROVINCIAL SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
P E S H A W A R

Appeal No. _____/2016

Syed Kamal Shah S/o Ajab Khan
R/o Imranzai Qairay, District Swabi..... Appellant.

Versus

1. Secretary Education, Khyber Pakhtunkhwa Peshawar.
2. Director General Khyber Pakhtunkhwa, Peshawar.
3. E.D.O Education Swabi.
4. S.D.E.O (Female) Education Topi..... Respondents.

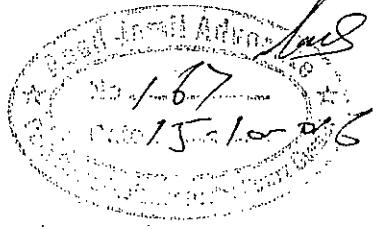
AFFIDAVIT

I, SOHRAE KHAN Advocate at Judicial Complex Swabi do hereby solemnly affirm and declare on oath that as per instructions of my client the contents of the accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Dated 17.10.2016

Deponent.

Sohrab Khan
Advocate.



Copy
Peshawar

9

Service Appeal No. 1056/2016

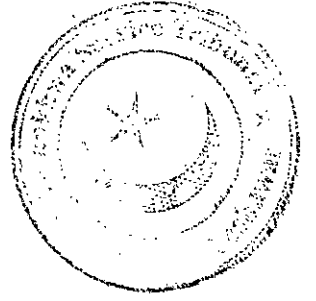
Date of Institution: 17.10.2016

Date of Decision: 27.03.2018

Syed Kamal Shah

Vs

Secretary Education Khyber Pakhtunkhwa
Peshawar & 3 Others.



Judgment/Order:

27.03.2018

MUHAMMAD HAMID MUGHAL, MEMBER (J) Learned counsel for the appellant and learned Additional Advocate General present.

Arguments heard. File perused.

Learned counsel for the appellant stated that the appellant was appointed as Chowkidar on fixed pay basis/contract basis vide order dated 16.04.1995. That the appellant was retired from service on 30.06.2016 but without any pensionary benefits hence the appellant approached this Tribunal for the grant of pensionary benefits.

Learned counsel for the appellant has taken the plea that in the identical nature cases this Tribunal has already granted relief of pensionary benefits and in this respect referred to the common judgment dated 12.10.2017 of this Tribunal in service appeal bearing No.1055/2014. Learned counsel for the appellant stressed that the appellant being similarly placed person is also entitled to the same relief.

Judgment dated 12.10.2017 passed in service appeal No.1055/2014 also perused and found the plea of the learned counsel for the appellant as genuine. Consequently the present service appeal is also accepted in terms of judgment dated 12.10.2017 passed in service appeal No.1055/2014 titled Jamroz Khan Versus Senor District Accounts Officer Nowshera and 7 others. Parties are left to bear their own costs. File be consigned to the record room.

Muhammad Amin
(Muhammad Amin Kundi)
Member

Muhammad Hamid Mughal
(Muhammad Hamid Mughal)
Member

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(10)

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

To

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)

وکالت نامہ

۱۲

بعدالت جناب: سر سید کریم علی

سرکار اسیانہ بنام حاکم

دعویٰ یا جرم

مخائب:

تاریخ

ایف آئی آر نمبر:

تھانہ

کیلئے

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام

اسرار میں جاری رہی ہوگی

کو بدیں شرط و کیل مقرر کیا ہے میں ہر پیشی پر خود یا بذریعہ مختیار خاص رو بروعدالت حاضر ہوتا ہوں اور بروقت پکارے جانے مقدمہ جانے مقدمہ و کیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کرونگا، اگر پیشی پر من مظهر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے، نیز وکیل صاحب موصوف صدر مقام پکھری سے کسی اور یا پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہونگے، اگر مقدمہ علاوہ صدر پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظهر کو کوئی نقصان پہنچے تو اس کی ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختیار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار ہونگے، مجھ کو کل ساختہ پر داختم صاحب موصوف مثل کردہ ذات خود منظور و قبول ہو گا اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء ڈگری و نظریاتی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہو گا اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کاروبار وصول کرنے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد ثالثی و راضی نامہ کو فیصلہ پر خلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہو گا اور بصورت اپیل برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم اتناعی یا ترقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا کیلیں علیحدہ مختیار نامہ پیروی کا اختیار ہو گا اور بصورت ضرورت صاحب موصوف کو اختیار ہو گا، یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا ایئر سٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہونگے جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑنے گا وہ صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں کوئی مطالبہ بھی صاحب موصوف کے برخلاف نہیں ہو گا، لہذا یہ وکالت نامہ لکھ دیا تاکہ سند رہے۔

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔ مورخہ 8/1/14

العبد

العبد

ATTESTED & ACCEPTED

Handwritten signature and stamp.

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.

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

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 than 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

12/10/2017

ATTESTED

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 P.L.C (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-

M. Amman
17.10.2017



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


 Secretary
 Service Tribunal
 Islamabad

*M. Amin
 12.10.2017*

9. 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

M. Wajihat
12.10.2017

ATTEST



Petition No. 1138-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

Muhammad Hamid Mughal

(MUHAMMAD HAMID MUGHAL)
MEMBER

Muhammad Amin Khan Kundi
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No.10/ 2019, In Service Appeal No.1056/2016

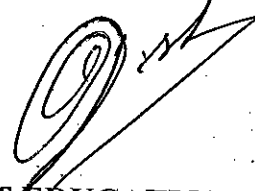
Mr.Syed Kamal Shah Ex-Chowkidar.....Appellant

VERSUS

1. Secretary (E&SE) Department Khyber Pakhtunkhwa, Peshawar
2. Director (E&SE) Khyber Pakhtunkhwa, Peshawar
3. District Education Officer (Female) Swabi
4. S.D.E.O (Female) Education Topi, Swabi..... Respondents

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DISTRICT EDUCATION OFFICER
(FEMALE) SWABI
District Edu. Officer
(Female) Swabi

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No.10/ 2019, In Service Appeal No.1056/2016

Mr.Syed Kamal Shah Ex-Chowkidar.....Appellant

VERSUS

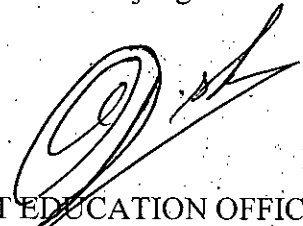
- 1. Secretary (E&SE) Department Khyber Pakhtunkhwa, Peshawar
- 2. Director (E&SE) Khyber Pakhtunkhwa, Peshawar
- 3. District Education Officer (Female) Swabi
- 4. S.D.E.O (Female) Education Topi, Swabi..... Respondents

Implementation Report regarding the Judgment/Order dated 27.03.2018 of this Honourable Tribunal in the above Title case.

Respectfully Sheweth,

- 1. That the above Title Execution Petition is fixed for hearing before the Tribunal on 02.04.2019.
- 2. That this Honourable Tribunal mentioned in its judgment that," Judgment dated 12.10.2017 passed in Service Appeal No.1055/2014 also perused and found the plea of the learned Council for the appellant as genuine. Consequently the present service appeal is also accepted and terms of judgment dated 12.10.2017 passed in service appeal No.1055/2014 titled Jamrooz Khan Versus Senior District Accounts Officer Nowshera and 07 others".
- 3. That the respondents has been implemented the judgment of this Honourable Tribunal; the petitioner was allowed to retire form Government Service with pensionery benefits subject to the condition of final decision of the Apex Court in CPLA No.548-P/2018 to 553-P/2018 (Implementation order Annexed as-A.

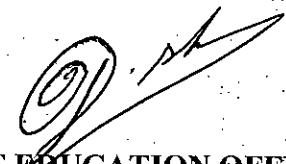
It is humbly prayed that the implementation of the judgment of this Honourable Tribunal may kindly be accepted and filed.



DISTRICT EDUCATION OFFICER
(FEMALE) SWABI
District Education Officer
(Female) Swabi

AFFIDAVIT

I do hereby solemnly affirm and declare on oath that the contents of the Implementation of judgment is true and correct to the best of my knowledge and belief, nothing has been concealed from this Honourable Tribunal.



DISTRICT EDUCATION OFFICER
(FEMALE) SWABI
District Education Officer
(Female) Swabi

(02)

Annexure - A



TO BE SUBSTITUTED WITH SAME NO. & DATE
OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) SWABI
(Office phone & Fax No.0938280239, emis_swabi@yahoo.com)
OFFICE ORDER

The undersigned is pleased to allow the following officials to retire from the Govt: service with pensionary benefits and encashment of LPR as admissible to him under revised leave-rules 1981 already retired without pension benefits due to less qualifying service and was appointed on fixed/contract pay in the light of judgment in the appeal No. 1056/2016 announced on dated 27-03-2018 Peshawar High Court Peshawar on the subject to the condition of final decision of apex court of Supreme Court of Pakistan in CPLA No. 553 P/2018 filed against the same stance judgment which is subjudiced

S.No	Name & Designation	Name of School	Period of LPR	Date of/Death Retirement
01	Mr. Said Kamal Shah Ex-Chowkidar	GGPS Palang Qadra(G) Swabi	01-07-2015 to 30-06-2016(365) days on full pay	30-06-2016

Note:

1:- Their previous order of retirement from Govt: service without pension benefits are hereby with drawn

(REHANA YASMEEN)
DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

Endst No. 648-54 Rev: Retirement File /C-IV/ Dated: 4-2-2019

Copy of the above is forwarded to the:-

- 1:- Registrar Supreme Court of Pakistan.
- 2:- Registrar Peshawar High Court Peshawar.
- 3:- Registrar Service Tribunal Peshawar.
- 4:- Secretary E&SE Khyber Pakhtun Khawa Peshawar.
- 5:- Director E&SE Khyber Pakhtun Khawa Peshawar.
- 6:- District Accounts Office Swabi
- 7:- SDEO(F) Topi a/w original Service Book.
- 8:- Official Concerned.

Attes in

District Edu. Officer
(Female) Swabi

DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

04/02/19