


EP 133/2018

07.1.2019

Petitioner alongwith counsel and Addl. AG alongwith M/S. Fazle Khaliq, ADO and Salim Zad, Senior Auditor for the respondents present.

The representative of the respondents has submitted copy of an office order issued by District Education Officer (Male) Swabi on 18.12.2018 which is placed on file. It is noted in the order that the petitioner was allowed to retire from government service with pensionery benefits subject to condition of final decision of Apex Court in CPLA No. 03-P/2018 and 04-P/2018.


The petitioner is, at present, satisfied with the contents of order and requests for filing his Execution Petition which is accordingly consigned to record room having been completed.

Chairman 

ANNOUNCED  
07.01.2019

02.10.2018

Petitioner alongwith his counsel present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Fazle Khaliq, ADO for the respondents present. Implementation report not submitted. Learned Additional AG requested for adjournment. Adjourned. To come up for implementation report on 19.11.2018 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member





19.11.2018

Petitioner alongwith his counsel present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Fazle Khaliq, ADO and Mr. Salim Jan, Senior Auditor for the respondents present. Implementation report not submitted. Learned Additional AG requested for further adjournment. Adjourned. To come up for implementation report on 07.01.2019 before S.B.

  
Muhammad Amin Khan Kundi  
Member

FORM OF ORDER SHEET

Execution Petition No. 133 /2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	27.04.2018	<p>The Execution Petition of Mr. Wakeel Khan submitted to-day by Mr. Khair-ul-Wahab Yousafzai 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 27/4/18</p>
2-	15/05/18.	<p>This Execution Petition be put up before S. Bench on- <u>28/05/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
08.08.2018	28.05.2018	<p>Learned counsel for the petitioner present. Notice of the present execution petition be issued to the respondents for implementation report for 08.08.2018 before S.B</p> <p style="text-align: right;"> Member</p> <p>Learned counsel for the petitioner and learned AAG for the respondents present. Implementation report not submitted. Adjournment requested. Adjourned. To come up for further proceedings on 02.10.2018 before S.B.</p> <p style="text-align: right;"> Muhammad Amin Khan Kundi Member</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

*Execution Petition No. 133/2018*

Implementation No. \_\_\_\_\_ of 2018.

Khyber Pakhtunkhwa  
Service Tribunal

In Appeal No.1213/2013

Diary No. 502

Wakeel Khan Son of Amir Khan

Dated 27/4/2018

Ex-Chowkidar Govt Primary School Wakeelabad,

Lahor Sharqi District Swabi,

R/o Mohallah Taus Khani, Village Lahore, District  
Swabi.

..... Appellant

**VERSUS**

- 1) Govt of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- 2) Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- 3) Secretary, Finance Department, Govt of Khyber Pakhtunkhwa Peshawar.
- 4) Executive District Officer (Male), Elementary & Secondary Education, Swabi.
- 5) District Accounts Officer, District Swabi.

..... Respondents

**APPLICATION FOR IMPLEMENTATION  
OF JUDGMENT DATED 12/10/2017 IN  
APPEAL NO.1213/2013**

Respectfully Sheweth:

- 1- That the above noted appeal was pending adjudication in this Hon'ble Tribunal and was

decided vide judgment and order dated 12/10/2017.

- 2- That vide judgment and order dated 12/10/2017, this Hon'ble Tribunal while accepting the appeal of the appellant, directed respondents to finalize the pension case and pay pensionary benefits to him. (Copy of judgment is annexed herewith).
- 3- That the judgment and order of this Hon'ble Tribunal, was duly communicated to the respondent by the applicant for implementation. Since no response was given to his application for the implementation of the judgment, however, they are reluctant to implement the same.
- 4- That instead of implementation the judgment of this Hon'ble Tribunal the respondents are bent upon to victimize the applicant one way or the other.
- 5- That as per the spirit of the judgment and order dated 12/10/2017 of this Hon,ble Tribunal, the respondents are bound to consider the case of the applicant for payment of his pension benefits of his rendered service. However, they have not implemented the judgment and order of this Hon'ble Tribunal in its true letter and spirit so far.

6- That the respondents are legally bound to implement the judgment of this Hon'ble Tribunal in its true letter and spirit without any further delay.

It is, therefore, prayed that on acceptance of this application the judgment and order dated 12/10/2017 of this Hon'ble Tribunal be implemented in its true and spirit.

Dated 27/04/2018

وکیل خان

Applicant

Through



Khair ul Wahab Yousafzai  
Advocate, Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Implementation No. \_\_\_\_\_ of 2018  
In Appeal No.1213/2013

Wakeel Khan ..... **Appellant**

**VERSUS**

Govt of Khyber Pakhtunkhwa through Secretary  
Elementary & Secondary Education Khyber  
Pakhtunkhwa Peshawar and others

..... **Respondents**

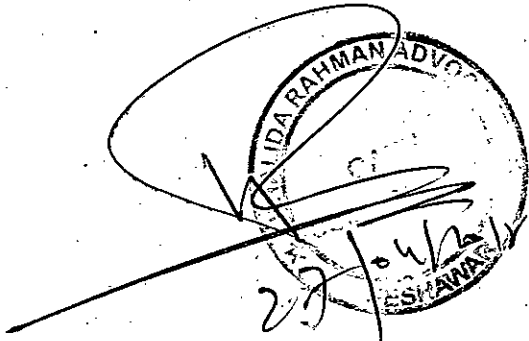
**AFFIDAVIT**

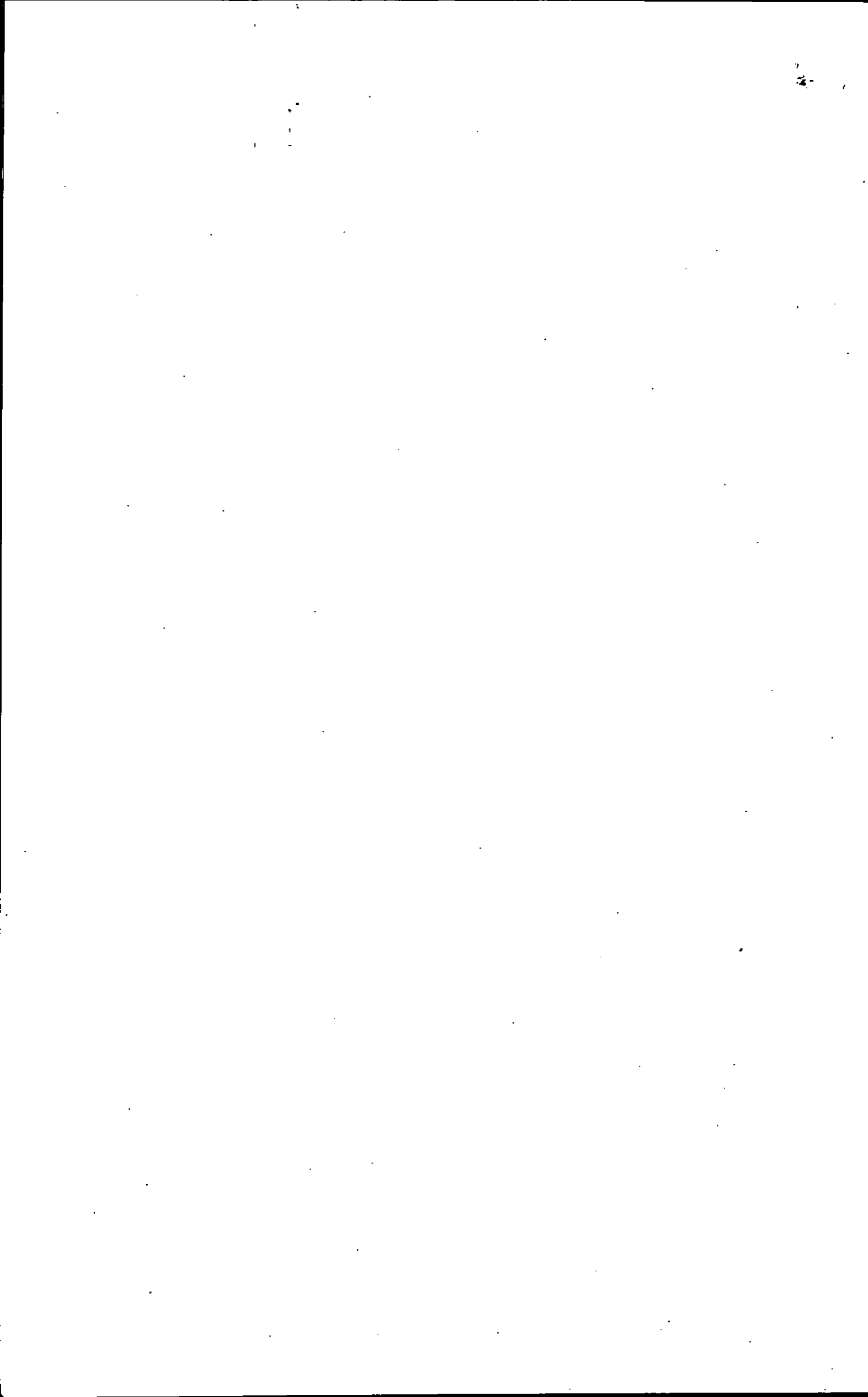
I, Wakeel Khan Son of Amir Khan Ex-Chowkidar  
Govt Primary School Wakeelabad, Lahor Sharqi  
District Swabi, R/o Mohallah Taus Khani, Village  
Lahore, District Swabi. do hereby solemnly affirm and  
declare on oath that the contents of the accompanied  
application are true and correct to the best of my  
knowledge and belief and nothing has been concealed  
from this Hon'ble Tribunal.

وکيل خان

**ATTESTED**

**DEPONENT**







1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR.**

Service Appeal No. 1243 of 2013



1248  
13-8-13

Wakeel Khan Son of Amir Khan.  
Ex-Chowkidar Govt Primary School Wakeelabad,  
Lahor Sharqi District Swabi,  
R/o Mohallah Taus Khani, Village Lahore, District Swabi.  
..... Appellant

**VERSUS**

- 1) Govt of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- 2) Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- 3) Secretary, Finance Department, Govt of Khyber Pakhtunkhwa Peshawar.
- 4) Executive District Officer (Male), Elementary & Secondary Education, Swabi.
- 5) District Accounts Officer, District Swabi.

..... Respondents

13/8/13

**APPEAL U/S 4 OF KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL ACT, 1974.**

Prayer:

On acceptance of this appeal the Respondents may graciously be directed to pay the pension and other benefits to the appellant for his rendered services from 06/03/1993 to 23/03/2012.

Any other remedy / relief deemed appropriate may also be granted to the appellant.

Kh  
wa

Appeal No. 1213/2013  
Wakeel Khan VS Govt



12.10.2017

Appellant with counsel present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Zakiullah, Senior Auditor for the respondents also present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of six pages placed in connected Service Appeal No. 1055/2014 "titled Jamroz Khan-Versus-Senior District Accounts Officer Nowshera and seven others, we also accept the present 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. Amin Khan Kundi  
Member

SD/- M. Hamid Mughal,  
Member

Certified by  
Signature copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 23-10-17  
Number of copies 800  
Copying Fee 6  
Urgent 6  
Total 6  
Name of Clerk [Signature]  
Date of Copy 23-11-17  
Date of Delivery of Copy 23-11-17

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**

  
**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

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 5<sup>th</sup> July 2005 and assented by the Governor of the Province on 12<sup>th</sup> 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 1<sup>st</sup> 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

11/12/10/2017

ATTESTED

CHIEF JUSTICE  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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**

  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

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

ATTESTED

SEAL OF THE  
JUDICIAL OFFICE  
PESHAWAR  
Khyber Pakhtunkhwa  
PESHAWAR

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. Amin Khan Kundi,  
Member*

*SD/- M. Hamid Mughal,  
Member*

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 23-10-17  
Number of Words 2450  
Copying Fee 14  
Urgent \_\_\_\_\_  
Total 14  
Name of Copyist [Signature]  
Date of Completion of Copy 23-11-17  
Date of Delivery of Copy 23-11-17





## DISTRICT EDUCATION OFFICE (MALE) SWABI

Phone & Fax NO 0938-280239, Email: emis\_swabi@yahoo.com

No. 8709 / Dated Swabi the 08/10 /2018

To,

The Director  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar



Subject: REQUEST FOR EARLY HEARING IN CPLA NO.03-P/2018, 04-P/2018, 550-P/2018, 551-P/2018 AND 552-P/2018.

Memo

With due respect, it is stated that the above stated CPLAs regarding C-IV pension for contract fixed pay period are subjudice / pending before the apex court of Pakistan. An execution petitions 133/18 and 134/18 are also filed in Service Tribunal Peshawar and pressing hard for implementation.

It is therefore requested to please approach the proper forum for early hearing of the case.

  
DISTRICT EDUCATION OFFICER  
MALE SWABI

قیمت 50 روپے	36087
ایڈوکیٹ: <u>خیدرلوہا ب۔ یوسفزئی</u>	 
بار کونسل ایسوسی ایشن نمبر: <u>BCS.No. 948</u>	
رابطہ نمبر: <u>03005952824</u>	
پشاور بار ایسوسی ایشن، خیبر پختونخواہ	

بعدالت جناب: سروس ٹریبیونل خیبر پختونخواہ پشاور

دعویٰ:	
علت نمبر:	
مورخہ:	
جرم:	
تھانہ:	
منجانب:	بنام

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ  
 آن مقام سروس ٹریبیونل خیبر پختونخواہ کو وکیل مقرر خیدرلوہا ب۔ یوسفزئی کو وکیل مقرر  
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو  
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق  
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز  
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب  
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا  
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے  
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم:

\_\_\_\_\_

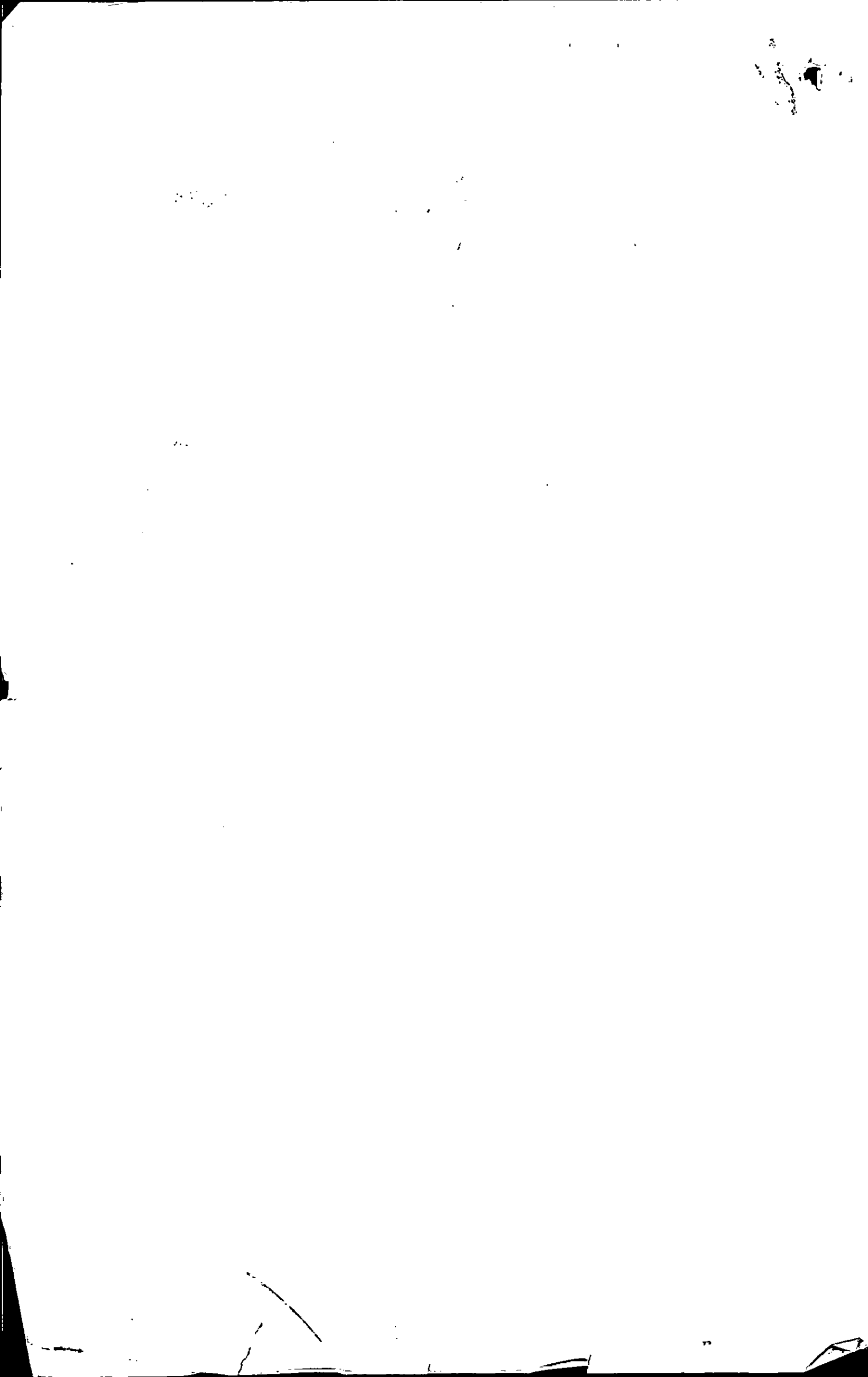
مقام سروس ٹریبیونل خیبر پختونخواہ، پشاور کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Attested and  
accepted by  
Khairul Wahab Yusufzai Adv.

وکیل خان دلہا محمد خان کمان خانہ ٹائیڈس خانی ڈگری نالہ پور الہ پور پور تحصیل الہ پور ضلع گجرات

16201-0730822-3



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.  
Execution Petition No.133/2018, in Service Appeal No.1213/2013

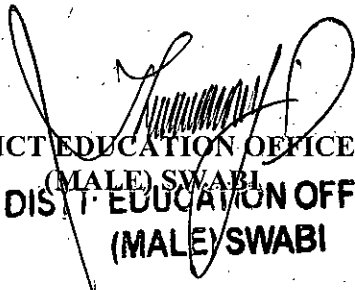
Mr. Wakeel Khan Ex- Chowkidar, Govt:Primary School Wakeel Abad Lahor Sharqi District Swabi..... Appellant.

VERSUS

1. Secretary E&SE Khyber Pakhtunkhwa Peshawar
2. Director E&SE Khyber Pakhtunkhwa, Peshawar
3. Secretary Finance Department Khyber Pakhtunkhwa Peshawar
4. Executive District Education (Male) E& SE, Swabi.
5. District Accounts Officer District Swabi.

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DISTRICT EDUCATION OFFICER  
(MALE) SWABI  
DIST. EDUCATION OFFICER  
(MALE) SWABI

C

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.  
**Execution Petition No.133/2018,in Service Appeal No.1213/2013**

Mr. Wakeel Khan Ex- Chowkidar, Govt:Primary School Wakeel Abad Lahor Sharqi District Swabi..... **Appellant** .

VERSUS

1. Secretary E&SE Khyber Pakhtunkhwa Peshawar
2. Director E&SE Khyber Pakhtunkhwa, Peshawar
3. Secretary Finance Department Khyber Pakhtunkhwa Peshawar
4. Executive District Education (Male) E& SE, Swabi.
5. District Accounts Officer District Swabi.

**Written Statement alongwith other documents from respondents**

**Respectfully Sheweth,**

The above title Execution Petition is pending before this Honourable Tribunal in which the date is fixed for hearing is 08.08.2018.

1. That admitted to the extent the service appeal was decided vide judgment order dated 12.10.2017.
2. That admitted to the extent the Honourable Service Tribunal accepted the appeal of the appellant and directed the respondents to finalize the pension case and pay pensionary benefits to him. CPLA No.03-P/2018 was filed in the Supreme Court of Pakistan against the judgment in order of Service Tribunal Khyber Pakhtunkhwa in Service Appeal No.1213/2013. The instant CPLA alongwith identical numerous CPLAs are subjudice in the August Supreme Court of Pakistan.
3. Incorrect, hence strongly denied. The applicant did not communicate the judgment order of Honourable Tribunal to the respondents for implementation. In fact., the applicant was appointed on 07.03.1993 on contract salary basis vide Government of NWFP Finance Department No.BI/2-I/92-93/FD dated Peshawar, the 04.11.1992 which states, "In future, the Non Education Cadre posts in the Education Department such as Chowkidars, Naib Qasids, Malis, Water carriers, Sweepers etc; be filled on contract basis, in order to rid the Provincial exchequer of the extra burden on account of future pensionary liabilities". Theses posts be filled in on fixed salary basis. The petitioner was appointed in Education Department and he had accepted all the terms and conditions without any agitation before taking over charge till retirement. The petitioner became civil servant w.e.f. 01.07.2008 vide Government of NWFP Finance Department No.B.O.I/1-22/2007-08/FD, dated 29.01.2008, in this regard all the previous policies/instructions shall be treated as cancelled w.e.f. 01.07.2008. According to West Pakistan Civil Services Pension rules,1963 rule No. 1.5, these rules shall not apply to:
  - i. Government Servants paid from contingencies/borne on work charged Establishment.,

- ii. Government Servants engaged on contract which contains no stipulations for pension under these rules.,
- iii. Any person for whose appointment in conditions of service, special provision is made by or under any law for the time being enforced.,
- iv. Any Government servant or Class of Government Servants who may be excluded by a competent authority from the application of these rules,
- v. Any Government Servant who holds a post which has been declared by a competent authority to be non pensionable.,
- vi. Any person whose whole time is not retained for public service but is merely paid for work done, such as Government pleaders and law officers not debarred from private practice.,
- vii. Any person who is not paid from the Provincial Consolidated fund, but is paid from a fund by Government as trustee, or a local fund or remunerated by fees for the grant of a tenure of land or of any other source of revenue or of a right to collect money.

Pension rule 2.1, the service of the Government Servant does not qualify for pension unless it conforms to the following three conditions.

- First- The service must under Government.
- Second- The service must not be non-pensionable.
- Third- The service must be paid by Government from the Provincial consolidated fund.

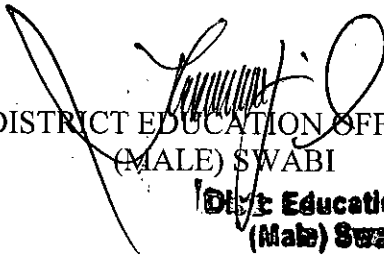
According to Finance Department Regulation Wing No:FD(SOSR-1)12-7/2014 dated Peshawar the 06th February, 2014, protection of contract employee on regularization/appointment on regular basis the condition No.5 states" the service rendered ~~on contract~~ on contact basis shall not qualify for pension/gratuity. That according to rule 4.4, after a qualifying service of not less than 10 years, full superannuation, full pension may granted. In this regard the Honourable Service tribunal in <sup>its</sup> judgment has not given any weight-age to the Govt:of Khyber Pakhtunkhwa KPK Finance Department No.BO-1/FD/1-22/2013-17, dated Peshawar the 12.07.2017.

As discussed above, the service of appellant w.e.f. 07.03.1993 to 30.06.2008 is not qualifying service for pension. His qualifying service for pension is only 03 years, 08 months and 22 days, which is much less than 10 years, hence, the petitioner is not entitled for the grant of pensionary benefits as per pension rule 1.5,2.1,2.3 & 4.4. Govt:of Khyber Pakhtunkhwa Finance Department letters and other documents are annexed as A,B,C&D.

- 4. Incorrect, hence strongly denied. The department has acted as per rules. law and policy. The applicant has never proceeded his case in the department proper has committed concealment of facts which is a serious liability on his

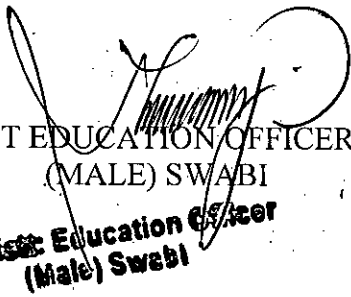
- 5. That the CPLA in this particular case is subjudice in the August Supreme Court of Pakistan. Pension rules, 1.5,2.1,2.3&4.4 do not give him right of penionery benefits.
- 6. That in this particular case, Finance Department and District Accounts Office Swabi are involved. Their opinion in this case must be asked and regarded.

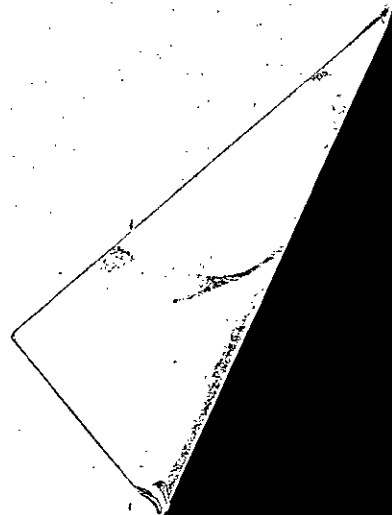
*In wake of the above submissions, it is earnestly requested that, this Honourable Tribunal may very graciouly be pleased to dismiss the instant execution petition and the appellant may be directed to wait for the final decision of the Apex Court of Pakistan..*

  
DISTRICT EDUCATION OFFICER  
(MALE) SWABI  
**District Education Officer  
(Male) Swabi**

Affidavit

**I do hereby solemnly affirm declare that the contents of the comments submitted by respondents is true and correct to the best of my knowledge and belief that nothing has been concealed from this Honourable Court.**

  
DISTRICT EDUCATION OFFICER  
(MALE) SWABI  
**District Education Officer  
(Male) Swabi**



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GOVT OF NWFP  
FINANCE DEPARTMENT  
No. BI/2-1-/92/FD  
Dated Peshawar the 4-11-1992

To

1. The Secretariat to Government of NWFP  
Education Department.
2. The Secretary to Government of NWFP  
Health & SW Department.
3. The Secretary to Government of NWFP,  
Public Health Engineering Department.
4. The Secretary to Government of NWFP,  
C&W Department.

Subject APPOINTMENTS OF SPECIFIC CATEGORIES  
OF STAFF ON FIXED SALARIES

Sir;

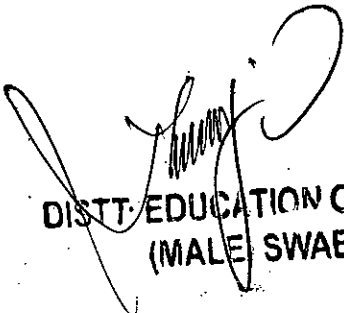
I am directed to state that the Provincial Cabinet in its meeting held on 21-05-1992 had inter-alia decided that:-

1. "In Future the non-education cadre posts in the education department such as Chowkidars, Naib Qasids, Malies, Water Carriers, Sweepers etc; be filled on contract basis, in order to rid the Provincial exchequer of the extra burden on account of future pensionary liabilities".

2. On reconsideration the Government has now decided that the cabinet decision referred to above may be applied to similar jobs in some other departments as well. Accordingly the following categories of jobs in Primary Schools, BHUs, RHCs, Water Supply Schemes and C&W Department will hence-forth be filled in on fixed salary basis:-

1. Chowkidar
2. Mali
3. Baheshti
4. Coolie in Road Gang
5. Valve Man

3. The above instructions would apply to fresh requirements for such jobs whose number would be sanctioned by the Finance Department. Budgetary provision will be made available / reflected under the commodities and services (596000-Payment to the other for services rendered) in the respective department budget on the basis of sanctioned jobs and will be spent only for the payment of salaries to these categories of employees.

  
DISTT. EDUCATION OFFICER  
(MALE) SWABI



5

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4. The monthly wages fixed for the above categories of employees will be Rs.1200/- per month.

5. The Departments / Appointing authorities are also requested to observe the following:-

- a) Maintain complete record of such appointments.
- b) Restrict the appointment of employees for seasonal, Maintenance work to the period when their services are actually required.

Yours obediently,

(Abdus Samad Khan)  
Deputy Secretary (B&C)

Endst: No. & Date even

Copy forwarded for information and necessary action to:-

1. Accountant General, NWFP, Peshawar.
2. All District Accounts Officers in the Province.
- 3.

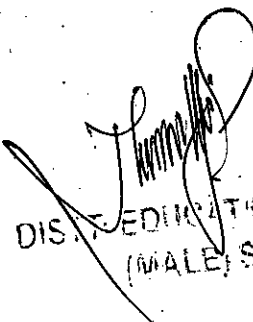
(Abdus Samad Khan)  
Deputy Secretary (B&C)

Endst: No. & Date even

Copy forwarded to :-

1. All Additional Secretaries. )
2. All Deputy Secretaries. ) Finance Department
3. All Section Officers/  
Budget Officers )

(ROOHULLAH KHAN)  
BUDGET OFFICER-1

  
DIST. BUDGET OFFICER  
(MALE) SWABI

Annexure-B (6)

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GOVERNMENT OF N.W.F.P.  
EDUCATION DEPARTMENT

No. SOG/EDU/6-147/K.C/92  
Dated Pesh: the 22-11-1992

To

1. The Director of Education (Colleges), NWFP.
2. The Director of Education (Secondary) NWFP.
3. The Director of Education (Primary) NWFP.
4. The Director of Education (FATA) NWFP.
5. The Director of Education (Technical) NWFP.
6. The Director Bureau of Curriculum Dev: & Education Extension Services, NWFP, Abbottabad.
7. All the Project Directors of Education in NWFP.

Subject: RECRUITMENTS OF THE POST OF NON-EDUCATION CADRE  
IN THE EDUCATION DEPARTMENT

I am directed to refer to this Department letter of even number dated 30<sup>th</sup> June 1992 on the subject cited above and to enclose herewith a copy of Government of NWFP, Finance Department letter No.B1/2-1/92-93 FD dated 4-11-1992 containing the revised policy of the Provincial Government to the effect that the following categories of jobs in Primary Schools, BHUs, RHCs, Water Supply Schemes and C&W Department will henceforth be filled in on fixed salary basis.

1. Chowkidar
2. Mali
3. Baheshti
4. Coolie in Road Gang
5. Valve Man

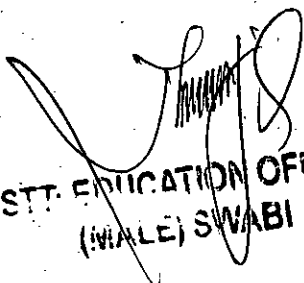
2. Budget allocation will be made available / reflected under the commodities and Services (596000-Payment to the other for the services rendered) in the respective Department's budget, on the basis of sanctioned jobs and will be spent only for payment of salaries to these categories of employees.

3. The monthly wages fixes for the above categories of employees will be Rs:1200/- per month.

4. The Departments / Appointing authorities are required to maintain respective record of these employees.

5. In view of the above, the Government of NWFP, Education Department has directed to lift the temporary ban on appointment imposed under the department letter of even number dated 30<sup>th</sup> June, 1992

(contd.....P/2)

  
DIST. EDUCATION OFFICER  
(WIALE) SWABI

07

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Page-2

6. The Director Primary Education may please submit demand for budget allocation under Commodities and Services (596000-Payment to the other for Services rendered), to meet the over-all expenditure for taking up with Finance Department on urgent basis.

(Nasrullah Jan)

Addl: Secretary Education-I

Endst: No. SOG/EDU/6-147/KC/92

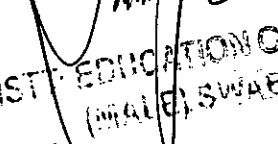
Dated 22-11-1992

Copy of the above is forwarded for information to:-

1. PS to Secretary to Govt: of NWFP, Finance Department.
2. Addl: Secretary-II, Education Department, Govt: of NWFP.
3. PS to Secretary Education, NWFP.

(Nasrullah Jan)

Addl: Secretary Education-I

  
DIST. EDUCATION OFFICER  
(MALE) SWABI

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Annexure - c

(08)

Phone No:812072

DIRECTORATE OF PRIMARY EDUCATION  
N.W.F.P (HAYATABAD) PESHWAR.  
NO.F-1/Directorate/PA/M&A/Appointment of Persons to posts  
on Contact basis  
Dated Peshawar the 7.12.1992

To.

1-35. All the District Education Officer (M&F), Primary  
36-92. All Sub-Divisional Education Officers (M&F) in N.W.F.P.

Subject:- APPOINTMENT OF PERSONS TO POSTS ON CONTRACT BASIS.

Memo:-

I am directed to enclose a photo state copy of Service and General Administration Department Government of NWFP, No:SORI (S&GAD) 4-7/86 dated 9th; April, 1988 regarding appointment of persons to posts on contact basis and a copy of Government of NWFP Education Department Memo:No:SO (G)/Edu:/6-147/KC/92 dated 22.11.1992 regarding recruitment to the post of Non-Education cadre in the Education Department and direct you to make appointments of chowkidars sanctioned for primary schools W.E.F. 1.7.1992 in the light of the instruction contained in the above referred memorandum.

Encl:- As above.

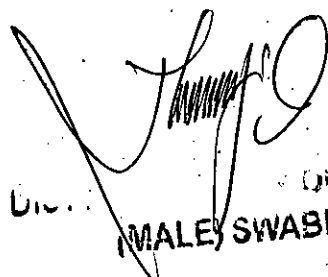
ADDITIONAL DIRECTOR -I  
PRIMARY EDUCATION NWFP

Endst.No: & date as above.

Copy forwarded to the:-

1. Secretary to Government of NWFP, Education Department
2. P. A. to Director Education (Primary) NWFP, Local Office

ADDITIONAL DIRECTOR -I  
PRIMARY EDUCATION NWFP



OFFICER

MALEY SWABI

مراسلہ نمبر پی۔ او۔ ا/081-081-2007/ایف-ڈی

مورخہ 29 جنوری 2008

بخدمت:

- 1- تمام انتظامی معتمدین حکومت صوبہ سرحد۔
- 2- معتمد برائے گورنر صوبہ سرحد، پشاور۔
- 3- پرنسپل سٹاف آفیسر برائے وزیر اعلیٰ صوبہ سرحد۔
- 4- تمام سربراہان ماتحت محکمہ جات صوبہ سرحد۔
- 5- تمام ضلعی رابطہ افسران صوبہ سرحد۔
- 6- رجسٹرار پشاور ہائی کورٹ، پشاور۔
- 7- رجسٹرار، سروس ٹریبونل، صوبہ سرحد، پشاور۔
- 8- سیکرٹری، صوبہ پبلک سروس کمیشن، صوبہ سرحد، پشاور۔
- 9- سیکرٹری بورڈ آف ریونیو، صوبہ سرحد۔

عنوان۔ بجٹ تقریر

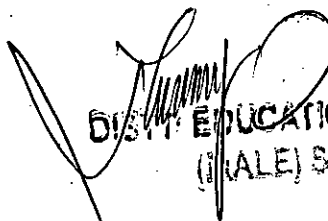
جناب عالی

مجھے ہدایت کی گئی ہے کہ عنوان بالا کا حوالہ دیتے ہوئے عرض کروں کہ صوبائی حکومت نے تمام درجہ چہارم (مقررہ تنخواہ Fixed pay) پانے والے ملازمین کو یکم جولائی 2008 سے این۔ ڈبلیو۔ ایف۔ پی سول ملازمین ایکٹ 1973 کے تحت سول ملازمین کا درجہ دیکر بنیادی سکیل-1 (BPS) دینے کی منظوری دی ہے۔

2- مذکورہ ملازمین کی تنخواہ کا تعین (Fixation of pay) ان کی بھرتی کے تاریخ (Date of Appointment) سے کیا جائے گا۔ تمام ملازمین تنخواہ اور الاونسز وغیرہ کی مد میں کسی قسم کی بقایا جات (Arrears) کے حقدار نہیں ہوں گے۔

3- اس سلسلے میں پہلے سے جاری شدہ تمام پالیسی/ہدایات یکم جولائی 2008 سے منسوخ تصور ہوں گے۔

جاری

  
DISTRICT EDUCATION OFFICER  
(IALE) SWABI

نقل برائے اطلاع:

- (1) اکاؤنٹس جنرل، صوبہ سرحد بمحہ گزارش کہ مندرجہ بالا اقدامات کی نافذ العمل کو یقینی بنایا جائے۔
- (2) جملہ ایگزیکٹو ڈسٹرکٹ آفیسرز، فنانس اینڈ پلاننگ، صوبہ سرحد۔
- (3) جملہ ضلعی آفسران حساب داری، صوبہ سرحد۔

میزانیہ افسر (1) محکمہ خزانہ

تطبیق نمبر و تاریخ ایضاً:

نقل برائے اطلاع:

- (1) سب ڈیپٹی ڈسٹرکٹ آفیسر سیکرٹری صوبہ سرحد۔
- (2) جملہ اضافی معتمدین و نائب معتمدین محکمہ خزانہ، صوبہ سرحد۔
- (3) جملہ بجٹ آفیسرز / سیکشن آفیسرز محکمہ خزانہ، صوبہ سرحد۔
- (4) ڈائریکٹر FMIU محکمہ خزانہ صوبہ سرحد۔
- (5) سب ڈیپٹی ڈسٹرکٹ آفیسر فنانس سیکرٹری صوبہ سرحد۔

میزانیہ افسر (1) محکمہ خزانہ

OFFICE OF THE EXECUTIVE DISTRICT OFFICE R(ELEM&SECONDRY EDU: SWABI.

Endst.No.175-82/ CLASS IV APPOINTMENT FILE/DATED, 9/7/08

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

1. Deputy District Officer (M/F Swabi/Lahor& Topi.
2. Principals/Headmasters, GHSS.GGHSS/GHS/GGHS (District Swabi).
3. District Accounts Officer Swabi.
4. District Officer (M&F) Local Office.
5. ADEO(Establishment)) M&F Local Office.
6. Supdt(M&F) Local Office.
7. Dealing Asstt: Concerned.

EXECUTIVE DISTRICT OFFICER  
(ELEMENTARY & SECONDARY EDUCATION SWABI

  
DISTT. EDUCATION OFFICER  
(MALE) SWABI

Annexure (11) E

ADEO (Lit)  
27/9/17

GOVERNMENT OF KHYBER PAKHTUNKHWA  
Elementary & Secondary Education Department  
Block "A" Opposite MPA's Hostel, Civil Secretariat Peshawar.

No: SO(Lit-I)/E&SE/1-1/2012  
Dated Peshawar the 30-08-2017

To  
The Director  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar.

Subject:- **1-EXECUTION PROCEEDINGS IN COURT OF CIVIL JUDGE No: III IN CIVIL SUIT MST: FARHAD BIBI VS GOVT: OF KPK.**  
**2- VARIOUS PETITIONS PENDING IN PESHAWAR HIGH COURT BANNU REGARDING ENTITLEMENT OF PENSIONARY BENEFIT TO FIXED PAY/ CONTRAT POLICY CLASS-IV.**

I am directed to refer to the subject noted above & to enclose herewith a copy of Finance Department letter No: BO-I/FD/1-22/2016-17 dated 12/7/2017 which is self explanatory for further necessary action.

Sd/-  
(Abdur Rauf Khattak )  
Section Officer (Lit: I)

Endst: No: & date even as above.

**DIRECTORATE E&SE DEPARTMENT KHYBER PAKHTUNKHWA, PESHAWAR.**

Endst: No: 3663-3707 /Lit: II(G) Civil Suit Lakki Dated Peshawar the 30 /09/2017.

- 1 Copy of the above is forwarded to All the District Education Officers(M/Female)in Khyber Pakhtunkhwa, for favour of perusal & strict compliance, please.
- 2 Section Officer (Lit: I) E&SE Department, Khyber Pakhtunkhwa, Peshawar
- 3 Section Officer (Lit: II) E&SE Department, Khyber Pakhtunkhwa, Peshawar
- 4 Deputy Director (Lit: ) local Directorate.
- 5 PA to Director, local Directorate.

*(Signature)*  
Asstt: Director (Lit: II)  
E&SE Department Khyber  
Pakhtunkhwa, Peshawar.

*(Signature)*  
DISTRICT OFFICER  
PESHAWAR



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

No. BO-I/FD/1-22/2016-17  
Dated Peshawar the 12/07/2017

12

01

To

The Accountant General,  
Khyber Pakhtunkhwa, Peshawar.

- Subject:-
- 1) EXECUTION PROCEEDINGS IN HONORABLE COURT OF CIVIL JUDGE NO.III IN CIVIL SUITE MST: FARHAD BIBI V/S GOVT: OF KPK AND OTHERS.
  - 2) VARIOUS PETITIONS PENDING IN HONORABLE PESHAWAR HIGH COURT BANNU BENCH REGARDING ENTITLEMENT OF PENSIONARY BENEFIT TO FIXED PAY/CONTRACT POLICY CLASS-IV

Dear Sir,

I am directed to refer to your letter No.H-24(110)/Lakki Marwat/2016-17/201-2 dated 19-04-2017 on the subject noted above and to state that Fixed Pay Policy was introduced in 1992 & 1999 whereunder the class-IV employees of specified Department including Education, were required to be appointed on fixed pay. Later on, the provincial Government decided to discontinue the Policy vide this Department's letter No. BO-I/1-22/2007-08/FD dated 29-01-2008, which, inter alia, provides that "All the Class-IV Fixed Pay employees have been regularized in BPS-I giving them the status of Civil Servant, with effect from 1st July, 2008 (but not from the date of their appointments). This policy still stands same and required to be followed in letter and spirit.

As far as appointment of legal advisor for the office of Treasury/Account offices is concerned, it is clarified that in each District, the Government pleaders are available for providing legal assistance to Departments. Besides, Attorney General/Advocate General and other Law Officers who are also pleading Government cases in the Peshawar High Court, Peshawar and Supreme Court of Pakistan. Therefore, creating an additional liability on public exchequer is in no way justified.

It is, therefore, advised that all Department's/offices concerned may pursue such cases regularly in compliance with laid down Law, rules and policy/instructions.

Yours faithfully,

(SAEED AHMAD KHAN)  
BUDGET OFFICER-I

Indst. No. & date even:

Copy forwarded to the:

1. All Administrative Secretaries concerned in Khyber Pakhtunkhwa for information and necessary action.
2. P.S to Finance Secretary.

2017  
2017  
DIST. EDUCATION OFFICER  
(M.A.L.E.) SWABI

BUDGET OFFICER-I

*Handwritten notes and signatures:*  
2. S.Y. agent  
19/7/17  
discuss  
19/7  
As per...  
Sent to DSE for...  
17/7/17



Annexure - F  
13

GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)

NO. FD (SOSR-1) 12-7/2014  
Dated Peshawar the 6<sup>th</sup> February, 2014

To:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Government, Khyber Pakhtunkhwa
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:

PROTECTION OF PAY OF CONTRACT EMPLOYEES ON  
REGULARIZATION / APPOINTMENT ON REGULAR BASIS.

Dear Sir,

In pursuance to the Finance Division's Office Memorandum No.7(9)R-I/2012 dated 31<sup>st</sup> May, 2013, the competent authority is pleased to allow the pay protection to non-Gazetted contract employees on their regularization / appointment on regular basis with immediate effect subject to the following conditions:-

- i) That the contract appointment has been made on standard terms and conditions, circulated by this Provincial Government as amended from time to time.
- ii) That the contract employee has applied through proper channel and has been properly relieved by the appointing authority. This condition shall not apply in case of regularization on the same post.
- iii) That regularization / regular appointment has been made with the approval of competent authority.
- iv) That there is no break / interruption between contract service and regular service
- v) That the service rendered on contract basis shall not qualify for pension / gratuity.
- vi) That in case of regular appointment in lower grade, pay shall not be protected.

Yours faithfully,

  
M. F. SYABI

  
(RAZAULLAH KHAN)  
Addl. Secretary (Regulation)



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(14)

-2-

Endst: No .FD (SOSR-1) 12-7 /2014

Dated 6<sup>th</sup> Feb, 2014

**Copy for information & necessary action to the:-**

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
2. All the District Comptroller of Accounts in Khyber Pakhtunkhwa.
3. The Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
4. The Director, FMIU, Finance Department.
5. The Treasury Officer, Peshawar.
6. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
7. All the District & Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.

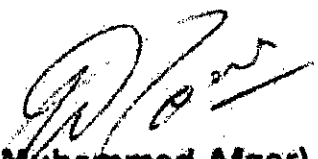


**(MASOOD KHAN)**  
Deputy Secretary (Reg-II)

**Endst: No. & Date Even**

**Copy for information is forwarded to:-**

1. All the Section Officers / Budget Officers in Finance Department, Khyber Pakhtunkhwa, Peshawar.
2. The Private Secretary to Senior Minister for Finance, Khyber Pakhtunkhwa.
3. The Private Secretary to Secretary / P.As to Special Secretary / Additional Secretaries / Deputy Secretaries in Finance Deptt.



**(Wazir Muhammad Afgar)**  
Section Officer (SR-1)

Annexure - G

15

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

CPLA NO. 03-P /2018

Govt. of Khyber Pakhtunkhwa through Secretary  
Elementary & Secondary Education Peshawar Etc

-----PETITIONERS

VERSUS

-----RESPONDENT

Wakeel Khan

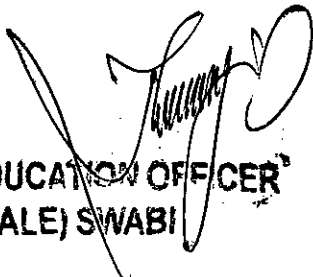
Appeal from : KPK, Service Tribunal, Peshawar  
Counsel for Petitioner : Advocate General, KPK, Peshawar  
Instituted by : Mian Saadullah Jandoli, AOR

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CERTIFIED that the paper book has been prepared in accordance with the rules  
the Court and all the documents necessary for due appreciation of the court has  
been included in it. Index is complete in all respect.

(Mian Saadullah Jandoli)  
Advocate on Record  
Supreme Court of Pakistan  
For Govt. of KPK/petitioners

  
DISTT. EDUCATION OFFICER  
(MALE) SWABI

(A)

16

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

CPLA NO. \_\_\_\_\_/2018

Govt. of Khyber Pakhtunkhwa through Secretary  
Elementary & Secondary Education Peshawar Etc

-----PETITIONERS

VERSUS

-----RESPONDENT

Wakeel Khan

CONCISE STATEMENT

- 1- Subject matter and the law Claim for Pensionary benefits
- 2- Which side has filed this petition Government / petitioners

Court / Forum	Date of a) Institution b) Decision	Who filed it and with what result
KPK Service Tribunal Peshawar	a)13/8/2013 b)12/10/2017	Respondent filed service appeal which has been accepted
Points noted in the impugned Judgment	Treatment of points in the impugned judgment	
Learned counsel for the respondent contended that the respondent 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 respondent was regularized on 30-07-2008. It was further contended that the respondent was retired from service on 04-10-2013 but benefits of pension etc was not extended to the respondent on the ground that length of the service of the respondent	In the present case the respondent was initially appointed on 12-10-1995 followed by his regularization on 30-7-2008. though the respondent 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	


DIST. JUDGE  
PESHAWAR

was less than qualifying service. 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 section- 19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended by the Khyber 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.

On the other hand the learned Assistant Advocate General Mr. Kabirullah Khattak opposed the contention of learned counsel for the respondent and contended that the respondent 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 30-7-2008 with effect from 01-07-2008. It was further contended that the respondent was retired n 04-10-2013 and the respondent served as regular employee only for five years hence, he is not entitled

the West Pakistan Civil Services Pensions rules, 1963, he was qualified the prescribed service for pensionary benefits, therefore, the objections raised by the petitioners is not tenable and not supported by any rule of regulation.

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 respondent and grant pensionary benefits to him. Parties are left to bear their own costs. File be consigned to the record room.

  
DIST. EDUCATION OFFICER  
(MALE) SWABI

for pensionary benefits.

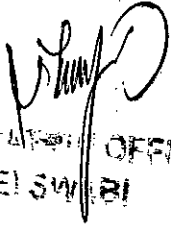
LAW/RULING ON THE SUBJECT

FOR

- 1- CONSTITUTION OF PAKISTAN, 1973
- 2- West Pakistan Pension Rules 1963

CERTIFICATE:

CERTIFICATE that I myself prepared the above concise statement which is correct.

  
DIST. EDUCATION OFFICER  
MIRANSHAPUR

(Mian Saadullah Jandoli)  
Advocate-on-Record,  
Supreme Court of Pakistan  
For Government

(1)

(18)

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

CPLA NO. \_\_\_\_\_/2018

- 1- Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
- 2- Director Elementary & Secondary Education, Dabgari Garden, Peshawar.
- 3- Govt. of Khyber Pakhtunkhwa through Secretary Finance Department, Civil Secretariat Peshawar.
- 4- Executive District Officer (Now) District Education Officer (Male) Swabi.
- 5- District Accounts Officer, Swabi.

-----PETITIONERS

VERSUS

Wakeel Khan son of Amir Khan, Ex-Chowkidar Govt. Primary School Wakeelabad, Lahore Shaqi District Swabi, R/O Mohallah Taus Khani village Lahore, District Swabi.

RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLES 212(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AGAINST THE IMPUGNED JUDGMENT/ ORDER OF LEARNED KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR DATED 12-10-2017 IN SERVICE APPEAL NO. 1213/2013

RESPECTFULLY SHEWETH

The substantial questions of law of public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment and order of Khyber Pakhtunkhwa Service Tribunal, Peshawar does not suffer from material illegality, factually incorrect and require interference by this august court?

DIST. EDUCATION OFFICER  
(MALE) SWABI

2. Whether Honourable Khyber Pakhtunkhwa Service Tribunal has properly and legally exercised its jurisdiction in this matter in hand?
3. Whether the respondent was not entitled for pensionary benefits being having less service then mature for pension?
4. Whether the respondent service was not a regular but temporary Class-IV employee on fixed pay?
5. Whether the Honourable Khyber Pakhtunkhwa Service Tribunal has properly and legally applied the law and rules in the instant case by allowing the pensionary benefits to the respondent on less service for pension.?
6. Whether under the law 25 years regular service or retirement on Superannuation entitled employee for pensionary benefits?
7. Whether the Honourable Khyber Pakhtunkhwa Service Tribunal has not legally erred by treating and counting temporary service in the regular service for pensionary benefits which is not permissible under the law.
8. Whether the Honourable Service Tribunal has properly and legally applied 2.2, 2.3 Pension rules 1963 in the instant case by extending pensionary benefits to the respondent.

### FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

1. That the respondent was appointed in Education department as Class-IV on 6/3/1993 as temporary on fixed pay.
2. That the respondent service was regularized on 30-7-2008 and served in the department for 5 years as regular employee who was not entitle for pensionary benefits being having less than the mature service for pension as retired on 4/10/2013 without pensionary benefits.



- (3)
- (21)
3. That the respondent filed service appeal No. 1213/2013 before the Khyber Pakhtunkhwa Service Tribunal Peshawar wherein parawise comments was called from the petitioners which were filed accordingly.
  4. That the Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar accepted the service appeal of respondent vide order dated 12-10-2017.
  5. That the petitioner mortally aggrieved from the impugned judgment and order of Khyber Pakhtunkhwa Service Tribunal Peshawar dated 12-10-2017 in Service Appeal No. 1213/2013 prefer this CPLA before this august court.
  6. That the petitioners seek leave to appeal against the judgment and order of Khyber Pakhtunkhwa Service Tribunal Peshawar dated 12-10-2017 in Service Appeal No. 1213/2013.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 12/10/2017 in Service Appeal No. 1213/2013 may graciously be granted.

(Mian Saadullah Jandoli)  
Advocate-on-Record  
Supreme Court of Pakistan  
For Government

**NOTE:**


Learned Advocate General, KPK/ Adml. AG /State Counsel shall appear at the time of hearing of this petition.

**ADDRESS**

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

**CERTIFICATE** Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

  
DISTT. EDUCATION OFFICER  
(MALE) SWABI

(34) (22)  
IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

CMA NO. \_\_\_\_\_/2018

IN

CPLA NO. \_\_\_\_\_/2018

Govt. of Khyber Pakhtunkhwa through Secretary  
Elementary & Secondary Education Peshawar Etc

-----PETITIONERS

VERSUS

Wakeel Khan


-----RESPONDENT

APPLICATION FOR SUSPENSION OF OPERATION OF  
THE IMPUGNED JUDGMENT/ ORDER OF THE LD.  
SERVICE TRIBUNAL, PESHAWAR PASSED IN SERVICE  
APPEAL NO.1213/2013 DATED 12-10-2017 AND TO  
MAINTAIN THE STATUS QUO TILL THE FINAL DECISION  
OF THE CASE.

RESPECTFULLY SHEWETH:-

- 1- That the respondent was appointed in Education department as Class-IV on 12-10-1995 as temporary on fixed pay.
- 2- That the respondent service was regularized on 30-7-2008 and served in the department for 5 years as regular employee who was not entitle for pensionary benefits being having less than the mature service for pension as retired on 4/10/2013 without pensionary benefits.
- 3- That the respondent filed service appeal No. 1213/2013 before the Khyber Pakhtunkhwa Service Tribunal Peshawar wherein parawise comments was called from the petitioners which were filed accordingly.


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OFFICER  
(MALE) SWABI

- 4- That the Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar accepted the service appeal of respondent vide order dated 12-10-2017.
- 5- That the impugned judgment of the Honble Service Tribunal is totally illegal against justice and having no backing of law.
- 6- That the petitioner has a good prima facie case and balance of convenience also lies in maintaining status-quo.
- 7- That if the impugned judgment and order is not suspended and status-quo is not granted the very purpose of this petition would be lost.

It is, therefore, humbly prayed that the operation of the impugned judgment/order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 12/10/2017 in Service Appeal No. 1213/2013 may graciously be suspended and to maintain status quo till the final decision of the case.

(Mian Saadullah Jandoli)  
 Advocate-on-Record  
 Supreme Court of Pakistan  
 For Government



**DIST. EDUCATION OFFICER  
 (MALE) SWABI**



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) SWABI  
OFFICE ORDER.

The undersigned is pleased to allow the following officials to retire from the Govt Service with pensionary benefits already retired without pension benefits due to less qualifying service and were appointed on fixed/contract pay in the light of judgment in the service appeal No.1213/2013 and 1214/2013 on subject to the condition of final decision of the apex court of Pakistan in CPLA No:03- P/2018 and 04-P/2018 filed against the said judgment.

S.No	Name & Designation	School	Date of Retirement
01	Mr. Wakeel Khan Ex-Chowkidar	GPS Wakeel Abad Lahor Sharqi Lahor (Swabi)	23-03-2012
02	Mr. Amir Aman Ex-Chowkidar	GPS Gujar Abad Swabi	31-03-2012

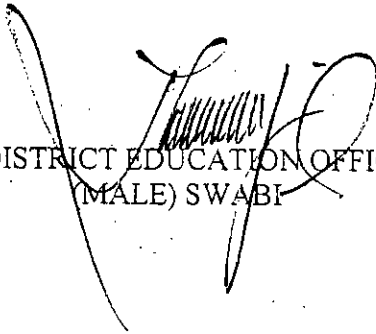
Note:- Their Previous orders of retirement from Govt service without pension benefits are hereby With drawn.

(JEHANGIR KHAN)  
DISTRICT EDUCATION OFFICER  
(MALE) SWABI

Endst No 11267-14/Rev: Rtd file No.118/C-IV/Dated 18/12/2018

Copy of the above is forwarded for information and n/a to the:-

- 1:- Registrar Supreme Court of Pakistan.
- 2:- Registrar Peshawar High Court Peshawar.
- 3:- Registrar Service Tribunal Peshawar.
- 4:- Secretary Elementary & Secondary Education Khyber Pakhtun Khawa Peshawar.
- 5:- Director Elementary & Secondary Education Khyber Pakhtun Khawa Peshawar.
- 6:- District Accounts Office Swabi.
- 7:- Sub Divisional Education Officers Concerned.
- 8:- Officials Concerned.

  
DISTRICT EDUCATION OFFICER  
(MALE) SWABI