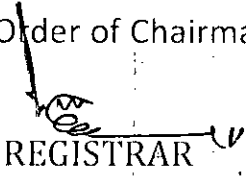


Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 512/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	08/03/2023	<p>The present appellant initially went in Writ Petition before the Hon'ble Peshawar High Court Peshawar and the Hon'ble High Court vide its order dated 27.02.2023 while treating the Writ Petition into an appeal and has sent the same to this Tribunal for decision in accordance with law. This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put up there on <u>21.03.2023</u>.</p> <p style="text-align: right;">By the Order of Chairman  REGISTRAR</p>

IN THE PESHAWAR HIGH COURT
PESHAWAR

In Re: Writ Petition No. _____/2022

Mst. Rehana Parveen w/o Muhammad Aslam
R/o Raisan, Tehsil & District Hangu.

Khyber Pakhtunkhwa
Services Tribunal

Diary No. 4174

Dated 8/3/2023

..... *Petitioner*

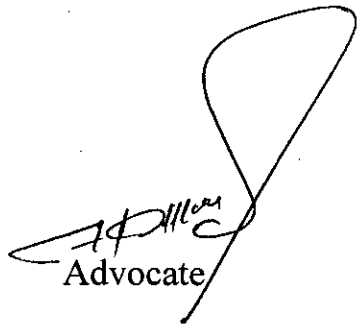
Versus

Government of Khyber Pakhtunkhwa and Four Others

..... *Respondents*

1. Will you kindly treat the accompanying Writ Petition as urgent and in accordance with the provision of Rules 9, Chapter 3-A, Rules order of the High Court, Lahore Volume V.
2. The **GROUND OF URGENCY** is that to save the Court time and valuable rights of the Applicant, it is humbly prayed that Petitioner is in struggle since her retirement however Respondents completely failed to redress her grievances due to which Petitioner is facing extreme financial hardships in daily life.

Petitioner
Through


Advocate

**IN THE PESHAWAR HIGH COURT PESHAWAR
OPENING SHEET FOR WRIT BRANCH**

Date of Filing: __.04.2022.
District: Peshawar

Case Type: Writ Petition Nature of Original Proceeding _____

Category Code:

--	--	--	--	--	--

(Categories & Sub Categories are given the back of opening sheet)

Review./ contempt of court in respect of:

--

Writ of.

Heabus Corpus		Prohibition		Mandamus		Quo Warranto		Certiorari	
------------------	--	-------------	--	----------	--	-----------------	--	------------	--

If Certiorari:

Forum	Date	(I)nterlocutory / (F)inal Order

Case Pertains to:

SB
 DB

Petitioner Name	Mst. Rehana Parveen w/o Muhammad Aslam
Mobile No	
Address	R/o Raisan, Tehsil & District Hangu.
CNIC	
Email Address	

Counsel for Petitioner (s)	Mr. Hakeem Khan, AHC
Mobile No.	0313-9500035
Address	12,-K-3, Phase III, Hayatabad, Peshawar
CNIC No.	14301-8044901-3
Email Address	hakeem.khan.adv@gmail.com

Respondents	<ol style="list-style-type: none">1. Government of Khyber Pakhtunkhwa Through Secretary Finance Civil Secretariat Peshawar, Khyber Pakhtunkhwa.2. Accountant General Khyber Pakhtunkhwa Fort Road, Peshawar Cantt, Peshawar.3. District Account Officer Hangu Hangu, Khyber Pakhtunkhwa.4. Director General Health Services PTCL Colony, Peshawar, Khyber Pakhtunkhwa.5. District Health Officer Hangu Old DHQ Hospital, Main Bazar, District Hangu.
Address	

FILED TODAY
Deputy Registrar
30 APR 2022

Original Order / Action./inaction Complained of:

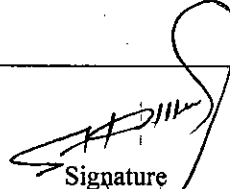
Prayer: It is therefore, respectfully prayed that on acceptance of this Writ Petition, Respondents may please be directed to count pre-regularization period of Petitioner service for pension.

The Respondents may kindly also be directed to sanction and grant pensionary benefits to Petitioner.

Any other relief, may kindly also be granted which this honourable court deemed just and appropriate in the circumstance, not specifically prayed for.

Law / Rules / governing the original proceedings / action / Inaction :

1. The Constitution of Islamic Republic of Pakistan, 1973
2. Service laws & etc.


Signature

IN THE PESHAWAR HIGH COURT

PESHAWAR

Service Appeal no. 512/2023

In Re: Writ Petition No. _____/2022

Mst. Rehana Parveen w/o Muhammad Aslam

R/o Raisan, Tehsil & District Hangu.

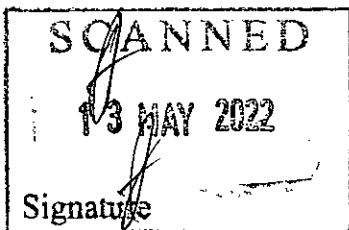
..... *Petitioner*

Versus

Government of Khyber Pakhtunkhwa & Four Others

..... *Respondents*

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III.	Copy of Service Book of Petitioner	10-16
IV.	Copy of Appointment Order dated 19.06.2004	17
V.	Copy of Notification dated 19.09.2014	18
VI.	Copy of Petitioner Retirement Order dated 01.07.2019	19
VII.	Copy of Petitioner Application dated 15.02.2022	20
VIII.	Copy of Respondent-3 Letter dated 03.03.2022	21
IX.	Copy of Judgement dated 22.06.2017	22-33
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FILED TODAY
Deputy Registrar
12 MAY 2022

Hakeem Khan
Hakeem Khan
Advocate
12, K-3, Phase-III, Hayatabad, Peshawar
Mobile: 03139500035

①

**IN THE PESHAWAR HIGH COURT
PESHAWAR**

In Re: Writ Petition No. 16768 /2022

Service Appeal NO. 512/2023

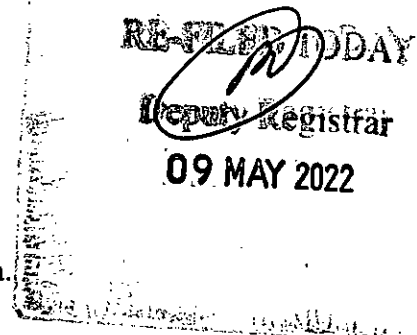
Mst. Rehana Parveen w/o Muhammad Aslam

R/o Raisan, Tehsil & District Hangu.

..... *Petitioner*

Versus

1. **Government of Khyber Pakhtunkhwa**
Through Secretary Finance
Civil Secretariat Peshawar, Khyber Pakhtunkhwa.
2. **Accountant General Khyber Pakhtunkhwa**
Fort Road, Peshawar Cantt, Peshawar.
3. **District Account Officer Hangu**
Hangu, Khyber Pakhtunkhwa.
4. **Director General Health Services**
PTCL Colony, Peshawar, Khyber Pakhtunkhwa.
5. **District Health Officer Hangu**
Old DHQ Hospital, Main Bazar, District Hangu.



..... *Respondents*

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

FILED TODAY

Deputy Registrar

30 APR 2022

Respectfully Sheweth,

1. That Petitioner is a respectable citizen of Pakistan and is entitled to all the rights enshrined in the Constitution of Islamic Republic of Pakistan, 1973. That Petitioner is permanent resident of District Hangu and is filing this Petition through Mr. Mudassir Shehzad s/o Altaf Pervaiz, who is authorized through special power of attorney and is competent and well acquainted with facts of the case and can depose the same on oath.

Copy of Petitioner CNIC at Annexure-I

Copy of Special Power of Attorney at Annexure-II

2. That cause of this petition is that Respondents are reluctant to extend pensionary benefits to Petitioner on the ground that Petitioner was regularized w.e.f. 01.07.2012 and her time period of regular service is less than 10 years. Despite of several requests verbally as well as through a written application Respondents categorically refused, by overlooking numerous judgements of this honourable court and of the honourable Supreme Court of Pakistan, wherein it was hold that the term of service should be considered from the date of initial appointment (i.e. 01.07.2004) for the purpose of pensionary benefits, hence this petition.

3. That **Brief Facts** leading to this petition are that Petitioner was appointed as Lady Health Worker (LHW) on contract basis *vide* Office Order No. 2626-30/ASSTT dated 19.06.2004 and reported at BHU Ibrahimzai on 01.07.2004 by the then Executive District Officer Hangu. Later on in 2012 after successful completion of 8 years services she was regularized w.e.f. 1st July 2012 *vide* Notification No. 197-220 dated 19.09.2014.

FILED TODAY

Deputy Registrar

30 APR 2022

Copy of Service Book of Petitioner at Annexure-III

Copy of Appointment Order dated 19.06.2004 at Annexure-IV

Copy of Notification dated 19.09.2014 Annexure-V

3

4. That thereafter in 2019 Petitioner was retired from service on attaining the age of superannuation *vide* Officer Order No. Ref # 3541-45/DPIU/HANGU/PF dated 01.07.2019. At the time of retirement Petitioner completed total 16 years of service, however, pensionary benefits was not extended to her on the ground that her post-regularization service is less than 10 years.

Copy of Petitioner Retirement Order dated 01.07.2019 at Annexure-VI

5. That afterwards Petitioner requested concerned authorities time to time to redress her grievances, however of no avail. Finally Petitioner through a written application dated 15.02.2022 requested the District Health Officer Hangu, in light of the judgements of this honourable court as well as the honourable Supreme Court, for providing pensionary benefits. In response the Petitioner request was refused by Respondent-3 *vide* Letter No. 137DHO/Hangu/Pension Audit dated 03.03.2022, hence this petition.

Copy of Petitioner Application dated 15.02.2022 at Annexure-VII

Copy of Respondent-3 Letter dated 03.03.2022 at Annexure-VIII

6. That feeling aggrieved Petitioner having no other adequate remedy, approached this honourable Court *inter alia* on the following grounds:

Grounds:

- I. That impugned refusal on part of the Respondents to grant pensionary benefit to Petitioner is illegal, unlawful and is in violation of the judgements of this honourable court as well as of the judgement of the honourable Supreme Court of Pakistan.

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30 APR 2022

4

II. That this honourable court has categorically established *vide* Judgement dated 22.06.2017 in Writ Petition No. 3394-P/2016 that pre-regularization service period has to be counted toward length of service for the purpose of pension, thus Respondents are under obligation to extend benefit of the aforesaid judgement to Petitioner.

Copy of Judgement dated 22.06.2017 at Annexure-IX

III. That on the basis of aforesaid judgement this honourable court also allowed two other writ petitions *vide* [i] Order dated 12.02.2019 in Writ Petition No. 114-M/2019 and [ii] Order dated 15.04.2021 in Writ Petition No.4086-P/2019; wherein the Respondents were directed to decide entitlement of the petitioners by counting their service rendered by them on contract.

Copy of Judgement dated 12.02.2019 at Annexure-X

Copy of Judgement dated 15.04.2021 at Annexure-XI

IV. That by the aforesaid judgements it is now established law that pre-regularization service period has to be counted towards length of service for the purpose of pension, thus Respondents are under legal obligations to count contract service, rendered by Petitioner, in total length of service for the purpose of pension.

V. That keeping in view the administration of justice the honourable Supreme Court of Pakistan has laid down law in judgement reported as 2009 SCMR 1 and 1996 SCMR 1185 that "*If a Tribunal or the Supreme Court decides a point of law relating to the term and conditions of a civil servants who litigated, and there*

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Deputy Registrar
30 APR 2022

5

were other civil servants, who may not taken any legal proceeding, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum."

Copy of Judgement 2009 SCMR 1 at Annexure-XII

Copy of Judgement 1996 SCMR 1185 at Annexure-XIII

VI. That in view of the above established law laid down by this honourable court and as well as by the August Supreme Court Petitioner is entitled to pensionary benefits for the service she rendered, however, Respondents are reluctant to get this benefit to Petition.

VII. That Petitioner service, including contract service, is more than 10 years and as per Section 3(1)(a) of the Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021, a civil servant rendered more than 10 years service is entitled for pension, thus Petitioner is entitles for pension.

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Deputy Registrar
30 APR 2022

VIII. That as per first Proviso of Sub-Section 4 of Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973, those civil servants who are appointed in the prescribe manner to a service or post on or after 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis.

6

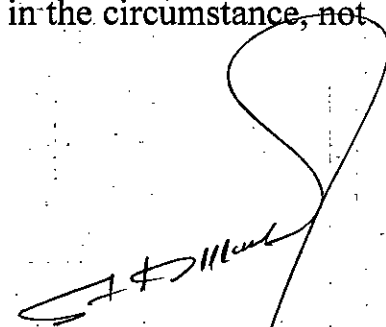
IX. That Petitioner, however, reserves the right with due permission to present further arguments verbally or in writing and to present evidence to prove their case etc.

Prayer: It is therefore, respectfully prayed that on acceptance of this Writ Petition, Respondents may please be directed to count pre-regularization period of Petitioner service for pension.

The Respondent kindly also be directed to sanction and grant pensionary benefits to Petitioner.

Any other relief, may kindly also be granted which this honourable court deemed just and appropriate in the circumstance, not specifically prayed for.

Petitioner
Through

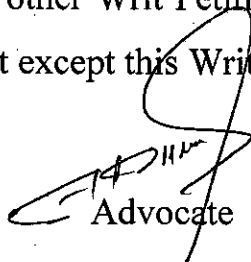


Hakeem Khan

Advocate High Court
12, K-3, Phase-III, Hayatabad, Peshawar
Mobile: 03139500035
Email: hakeem.khan.adv@gmail.com

Certificate

It is certified that no other Writ Petition has been filed on the subject before this honourable court except this Writ Petition.



Advocate

FILED TODAY

Deputy Registrar

30 APR 2022

7

**IN THE PESHAWAR HIGH COURT
PESHAWAR**

In Re: Writ Petition No. 16761 /2022

Mst. Rehana Parveen w/o Muhammad Aslam
R/o Raisan, Tehsil & District Hangu.

..... *Petitioner*

Versus

Government of Khyber Pakhtunkhwa & Four Others

..... *Respondents*

Affidavit

I, Mudasir Shehzad s/o Altaf Pervaiz, authorized attorney of the Petitioner, solemnly affirm on oath that contents of this Petition are true and correct to the best of knowledge and belief and nothing has been concealed intentionally from this honourable Court.

FILED TODAY
Deputy Registrar
30 APR 2022

Deponent

(CNIC # 14101-9045680-7) ✓

Identified by:

Hakeem Khan
Advocate

6669

Certified that the above was verified on solemnly affirmation before me in office, this 25 day of March 2022 by Mudasir Shehzad s/o Altaf Pervaiz r/o Peshawar who was identified by Hakeem Khan Who is personally known to me:

Oath Commissioner
Peshawar High Court Peshawar

25/03/2022

Annexure-I

8

PAKISTAN National Identity Card
 Federal Government of Pakistan

Name: **Rehana Parveen**

Husband Name: **Muhammad Aslam**

Gender: **F** Country of Stay: **Pakistan**

Identity Number: **14101-0757653-8** Date of Birth: **01-01-1959**

Date of Issue: **20.08.2020** Date of Expiry: **Lifetime**

Holder's Signature

14101-0757653-8

QR Code

کندہ کاروں کے برقراری کے لیے اس میں ڈال دیں

J

A513035

Annexure-II

9



SPECIAL POWER OF ATTORNEY

We, [i] Ms. Rehana Zaman w/o Altaf Pervez (CNIC 14101-2153593-4) resident of Mohallah Bahadur Garhi, Tehsil And District Hangu, [ii] Ms. Jawaria d/o Anwar Baig Khan (CNIC 14101-9565279-8) resident of Muslim Abad Hangu and [iii] Ms. Rehana Parveen w/o Muhammad Aslam (CNIC 14101-0757653-8) resident of Bajran, Tehsil & District Hangu, (hereinafter referred to as the Executants), do hereby jointly and severally appoint, nominate and constitute Mr. Mudasir Shezad s/o Altaf Pervez, (NIC No. 14101-9045680-7) resident of Bahadur Garhi, Shaboo Road, Hangu, "hereinafter referred to as Special Attorney" as our Special Attorney in respect of litigation regarding pension/regularization issue before the honourable Peshawar High, Civil Services Tribunal and such other courts if required:

The above mentioned Special Attorney is authorized to do all acts, deeds and things on behalf of the Executants:-

1. To attend and represent us before all the honourable courts including Civil Court, District Courts, High Court and Supreme Court in connection with pension/regularization.
2. To appoint an advocate, agent on our behalf in respect of above said Suit/Petition/Review Appeal before the Court of Competent jurisdiction.
3. To accept the services of summons, notices and writ issued by any court and office against us, to purchase court fee, stamp paper or to refund it, to defend us in all suit(s) and pursue the matters in all respects.
4. To sign, verify, execute, submit all sorts of Applications, Statements, Agreements, Petition, Appeal, Plaints, Receipts, to Swear Affidavits etc.
5. The Special Attorney is further authorized to sign all the papers, deeds and other documents up to the extent of Courts and the Cases in respect of our self-relating to aforementioned case / suit.

Generally to do each and every thing requisite in respect of and in relating to the cases of the aforesaid suit and to do the purposes and are to be done in their name and on our behalf.

All the acts, deeds and things done by the said Special Attorney shall constitute as having been done by us jointly or severally personally and I do hereby agree to ratify and confirm the same.

In witness whereof, the Executant have signed this deed on the day, month and year mentioned above.

EXECUTANTS

- i. Rehana Zaman
Signature: [Handwritten Signature]
CNIC # : 14101-2153593-4
- ii. Jawaria
Signature: [Handwritten Signature]
CNIC # : 14101-9565279-8
- iii. Rehana Parveen
Signature: [Handwritten Signature]
CNIC # : 14101-0757653-8

ACCEPTED BY

[Handwritten Signature] Mudasir Shezad
Signature: [Handwritten Signature]
CNIC # : 14101-9045680-7

WITNESS-1

Signature: [Handwritten Signature]
Name: [Handwritten Name]
CNIC: [Handwritten CNIC]

WITNESS-2

Signature: [Handwritten Signature]
Name: [Handwritten Name]
CNIC: [Handwritten CNIC]



1. Name (پ) Rehana Parveen (10)
2. Nationality and Religion Pakistani (Islam)
(قومیت اور مذہب)
3. Residence Village Ruisan District Hangu
(ستقل رہائش)
4. Father's Name and Residence Fazle Khalig
(والدگان نام اور پتہ)
5. Date of birth Christian era as nearly as can be ascertained 1959
(تاریخ پیدائش مطابق سن عیسوی)
6. Exact height by measurement 5-2"
(قد و قامت)
7. Personal mark of identification Scar on Rt hand
(نشان شناخت)

8. Left hand/right hand thumb and finger impressions of (Non-gazetted officer)

(مرد کی صورت میں بائیں اور عورت کی صورت میں دائیں ہاتھ کی انگلیوں کے نشانات)

Little Finger (چھٹیا)

Ring Finger (چھٹکلیا کے ساتھ کی انگلی)

Middle Finger (انگشت میاں)

Fore Finger (انگشت شہادت)

Thumb (انگوٹھا)

9. Signature of Govt. Servant (سرکاری ملازم کے دستخط)

Rehana

10. Signature and designation of the Head of the Officer or other Attesting Officer

(تعمیراتی کنندہ افسر کے دستخط اور مہر)

Fazl Mankhali
DISTRICT HEALTH
OFFICER, HANGU

Note: The entries in this page should be renewed or re-aggested at least every five years and the signatures in lines 9 and 10 should be dated. Finger prints need not be taken after every 5 years under this rule.

اس صفحہ کے دستخط کم از کم پانچ سال بعد تازہ بنائے جانا ضروری ہیں اور نمبر 9 اور 10 میں دستخطوں کے نیچے تاریخ لکھنی چاہیے۔
انگلیوں کے نشانات کے لئے پانچ سال کے بعد تصدیق کی ضرورت نہیں۔

H

1	2	3	4	5	6	7	8
Name of Post	Whether Substantive of officiating any whether permanent or temporary	It officiating state. (1) substantive appointment of (ii) whether service counts for pension under rule 3-20 C.S.R. (Pb) Volume ii	Pay in substantive position	Additional pay for officiating	Other emoluments falling under the term pay	Date of appointment	Signature of government servant
		ار عارضی ہے تو رول کے مطابق پیشکش کا مستحق ہے؟	تحتویہ بطور عارضی ملازمت	زائد تحتویہ بطور قائم مقام	ماسوائے تحتویہ دیگر الاؤنس	تاریخ تقرری	دستخط سرکاری ملازم
			Rs. Ps.	Rs. Ps.			
L.H.W Fixed Pay			Rs 1600/-			1/2/2004	
L.H.W BPS-05 5400-260-13200			Rs 5400/-			1/2/2012	
			-do- 5400/-			1/12/12	
			-do- 5660/-			1/12/13 FN	
			-do- 5920/-			1/12/14 FN	
Revised BPS-05 6925-340-17185			Pay Rs	7665/- PM		1-7-15	

11

H

9	10	11	12	13	14	15
Signature and Designation of the Head of the office or other attesting officer in all station of column 1 to 8.	Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal etc.)	Signature of the head of the officer or other Attesting Officer	Nature and duration of leave taken	Signature of the Head of the office other attesting officer	Reference to any recorded punishment of censure, or reward, or praised of the Government servants
دستخط افسر مجاز	تاریخ انقطاع ملازمت	وجوہات انقطاع ملازمت ترقی تبادلہ یا برطرفی	دستخط افسر مجاز	رضعت کی امیت معیار پارہاتک کی رضعت کے لے اوسط نوادگان Period Government to which delectable	دستخط افسر مجاز	سزا یا جزا غیر مناسب کارکردگی کا ریکارڈ
Appointed as <u>PHW</u> in the <u>PHW</u> Programme vide D.O Hangu office order No. <u>226-1/11/12</u> Dated <u>21-07-2004</u> and accordingly submitted <u>PHW</u> report at <u>PHU, Hangu</u> for Duty						
Service verified up to <u>30-5-2012</u>						
<p style="text-align: center;"><u>Zohman Khalil</u> DISTRICT HEALTH OFFICER, HANGU</p>						
Service regularized w.e.f 1st July 2012 vide DHO Hangu Notification <u>197-220</u> Dated <u>19/9/2014</u> in view of approval granted by the PHW Programme						
KPK vide letter NO 1340/PC Dated 22.03.2014						
Service verified up to <u>30/11/2012</u>						
<p style="text-align: center;"><u>Zohman Khalil</u> DISTRICT HEALTH OFFICER, HANGU</p>						
<p>30-11-14 IN ANN. INC GRANTED Service verified up to <u>30-11-2014</u></p>						
<p style="text-align: center;"><u>Zohman Khalil</u> DISTRICT HEALTH OFFICER, HANGU</p>						
<p>30-11-14 IN ANN. INC GRANTED Service verified up to <u>30-11-2014</u></p>						
<p style="text-align: center;"><u>Zohman Khalil</u> DISTRICT HEALTH OFFICER, HANGU</p>						
<p>Revised Pay Scale vide Govt. of KPK Finance Department Notification No ED(PRC) 1-1/15 Dated 27-07-2015</p>						
<p style="text-align: center;"><u>Zohman Khalil</u> DISTRICT HEALTH OFFICER, HANGU</p>						

1	2	3	4	5	6	7	8
Name of Post	Whether Substantive of officiating any whether permanent or temporary	It officiating state. (1).substantive appointment of (ii) whether service counts for pension under rule 3-20 C.S.R. (Pb) Volume ii	Pay in substantive position	Additional pay for officiating	Other emoluments falling under the term pay	Date of appointment	Signature of government servant
		اگر عارض ہے تو بدل کے مطابق پیشکش کا مستحق ہے؟	تختواہ بلوچ عارضی ملازمت	زائد تختواہ بطور قائم مقام	ماسوائے تختواہ دیگر الاؤنس	تاریخ تقرری	دستخط سرکاری ملازم
			Rs. Ps.	Rs. Ps.			
درجہ ملازمت	عارضی مستقل قائم مقام						
Revised BPS-05 6985-340-17185				Pay Rs 8005/P.M		1-12-15 FN	
Revised BPS-05 8590-420-21190				Pay Rs 9850/P.M		1-7-16	
				Pay Rs 10270/PM		1-12-16 FN	
Revised BPS-05 10260-500-25260				Pay Rs 12260/PM		1-7-17	
				Pay Rs 12760/PM (Stage 5)		1-12-17 (FN)	

13

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9 Signature and designation of the Head of the office or other attesting officer in attestation of column 1 to 8	10 Date of termination or appointment	11 Reason of termination (such as promotion, transfer, dismissal etc.)	12 Signature of the head of the office or other Attesting Officer	13 Nature and duration of leave taken	13 Allocation of period of leave of average pay up to four months (or deemed leave not exceeding 120 days) to which leave salary is payable to another Government	14 Signature of the Head of the office other attesting officer	15 Reference to any recorded punishment of censure, or reward, or praised of the Government servants
30-11-15 (AN) <i>Zehman Khaliq</i> DISTRICT HEALTH OFFICER, HANGU	تاریخ انعقاد ملازمت	وجوب انصراف ملازمت پر طرقتی	<i>Zehman Khaliq</i> DISTRICT HEALTH OFFICER, HANGU	رخصت کی نوعیت و معیار	چار ماہ کی رخصت کے لئے اسلئے فراہم کیا گیا ہے Period: 6 مہ Government to which debtable: کوئٹہ	<i>Zehman Khaliq</i> DISTRICT HEALTH OFFICER, HANGU	14 سزا یا جزا یا غیر مناسب کارکردگی کا ریکارڈ
Revised Pay Scale vide Govt of KPK Finance Department Notification No FD (PR) 1-1/2016 Dated 19-07-2016		ANN. INC GRANTED	<i>Zehman Khaliq</i> DISTRICT HEALTH OFFICER, HANGU	Service verified up to	30-11-15	<i>Zehman Khaliq</i> DISTRICT HEALTH OFFICER, HANGU	
30-11-16 (AN) <i>Zehman Khaliq</i> DISTRICT HEALTH OFFICER, HANGU		ANN. INC GRANTED	<i>Zehman Khaliq</i> DISTRICT HEALTH OFFICER, HANGU	Service verified up to	30-11-2016	<i>Zehman Khaliq</i> DISTRICT HEALTH OFFICER, HANGU	
Revised Pay Scale vide Govt of KPK Finance Department Notification No FD/SD (SR-1) 1-1/2017 Dated 17-07-2017		ANN. INC GRANTED	<i>Zehman Khaliq</i> DISTRICT HEALTH OFFICER, HANGU	Service verified up to	30-11-2017	<i>Zehman Khaliq</i> DISTRICT HEALTH OFFICER, HANGU	
30-11-17 (AN) <i>Zehman Khaliq</i> DISTRICT HEALTH OFFICER, HANGU		ANN. INC GRANTED	<i>Zehman Khaliq</i> DISTRICT HEALTH OFFICER, HANGU	Service verified up to	30-11-2017	<i>Zehman Khaliq</i> DISTRICT HEALTH OFFICER, HANGU	
Paid arrears on account of pay & allowances w.e. 01-07-2012 to 30-11-2015 amounting to Rs. 163,866/-							
				Finance Officer LHW Program Peshawar			

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9 Signature and designation of the head of the office or other attesting officer in attestation of column 8 & 8	10 Date of termination or appointment	11 Reason of termination (such as promotion transfer, dismissal etc.)	12 Signature of the head of the office or other Attesting Officer	Nature and duration of leave taken	13 Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debitable to another Government Period Government to which debitable	14 Signature of the Head of the office other attesting officer	15 Reference to any recorded punishment of censure, or reward, or praised of the Government servants
<p>30-11-18 (AN)</p> <p><i>[Signature]</i> DISTRICT HEALTH OFFICER, HANGU</p>	<p>30-11-18 (AN)</p>	<p>ANN. INC. GRANTED</p>	<p><i>[Signature]</i> DISTRICT HEALTH OFFICER, HANGU</p>	<p>Service certificate up to 30-11-2018</p>	<p>30-11-2018</p>	<p><i>[Signature]</i> DISTRICT HEALTH OFFICER, HANGU</p>	<p>سزا یا جزا یا غیر مناسب کارکردگی کا ریکارڈ</p>
<p>TR-368 01/12/21</p>							
<p>bill paid for Rs=39480/- less zakat = 287 Net= 38497/- as GP fund final payment</p>							
<p><i>[Signature]</i> District Accountant Hangu 29/11/21</p>							

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Annexure-IV

17

OFFICE OF THE EXECUTIVE DISTRICT OFFICER HEALTH HANGU
OFFICE ORDER

As recommended by the Provincial Coordinator National Programme for Family Planning & Primary Care NWFP Peshawar vide his letter No 738/Pc dated 04/6/2004: Miss Rehana Perveen D/O Fazal Khaliq of Village Raisan is hereby appointed as LIHW on the following terms and conditions.

1. The appointment will be purely on contract basis.
2. Lumpsum Salary will be paid on monthly basis @1600/-per month.
3. The appointment will be cancelled at any time without any reason or notice.
4. The appointment will be initially for one year renewable subject to satisfactory performance.
5. In case appointee wished to resign she will have to serve one-month notice or will have to deposit one-month salary in lieu of notice.
6. No TA/DA will be allowed on account of joining the service.
7. She will have to produce the certificate of her medical fitness from the Medical Superintendent THQ Hospital Hangu.
8. She will have to observe instruction of this office issue from time to time.

If she accepts the offer on the above terms and condition she is directed to Report for Training At BHU Ibrahim Zai on 1/7/2004// with in three days, in case of failing the offer will be treated as withdrawn.

She will have to work in the health Units where she is selected for one year and for which she will have to give surety bond of Rs.30 at the time of joining duty.

SD/-

**EXECUTIVE DISTRICT OFFICER
HEALTH HANGU**

No 2626-30 /ASST:

Dated Hangu the 17.6 /04

Copy forwarded to: -

1. The provincial Coordinator National Programme for Family Planning and primary Health Care NWFP, Peshawar.
2. The District Coordinator National Programme for Family Planning and Primary Health Care Hangu
3. Incharge of Health Institution Ibrahim Zai
4. Office Assistant for information
5. Official Concerned.

**EXECUTIVE DISTRICT OFFICER
HEALTH HANGU**

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OFFICE OF THE DISTRICT HEALTH OFFICER DISTRICT HANGU
DISTRICT PROGRAM IMPLEMENTATION UNIT
 Phone: 0925-624621. Fax: 0925-623773
 Email: dpimhangu@yahoo.com

*Attacker
D. Iqbal*

No 197-220/DPIUHGU

Dated: 19/09/2014

NOTIFICATION

In terms of Section 4 (1) read with 1st Proviso thereof, of the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act 2014, services of the following Lady Health Workers Program employees of district Hangu Khyber Pakhtunkhwa are hereby regularized w.e.f. 1st July 2012. Their terms and conditions of service will be governed under the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014 and rules to be made there under.

Annexure-V
18

Sr. No	Name of Community Embedded Employee	Father Name	Husband Name	Date of appointment	FLCF	Name of Catchment Area	Desig:
1.	Saira Parveen	Nuroz Ali		01/09/1998	BHU Ibrahimzai	Ibrahimzai Payan	LHW
2.	Naureen Taj	Naimat Ali	Hussain Mer	22/11/2001	BHU Ibrahimzai	Raisan Mohallah Shah Hassan Meya	LHW
3.	Fahil Zuhra	Israr Hussain	Syed Zahid Hussain	01/06/2002	BHU Ibrahimzai	Ibraheemzai Bala	LHW
4.	Naveeda Naz	Ghilaf Ali	Haider Abbas	01/06/2002	BHU Ibrahimzai	Mohallah Ghulane Ibrahimzai	LHW
5.	Nacema Begum	Insar Ali		01/06/2002	BHU Ibrahimzai	Ibrahimzai Esare Bala	LHW
6.	Zurriyat Begum	Khair Ali	Tahir Ali	01/06/2002	BHU Ibrahimzai	Ibrahimzai	LHW
7.	Umme Salma	Nazir Ali	Nijat Hussain	01/06/2002	BHU Ibrahimzai	Lodi Khel	LHW
8.	Naurine	Miqdud Ali	Muhammad Saeed	01/06/2002	BHU Ibrahimzai	Lodi Khel	LHW
9.	Rehana Perveen	Fazle Khaliq	Muhammad Aslam	01/07/2004	BHU Ibrahimzai	Raisan	LHW
10.	Qaiser Shahab	Gul Hasan	Mujahid Hussain	01/07/2004	BHU Ibrahimzai	Lodi Khel	LHW
11.	Saima Naz	Abdul Ali	Asif Ali	01/07/2004	BHU Ibrahimzai	Jawzara	LHW
12.	Zubaida	Malook Khan		01/07/2004	BHU Ibrahimzai	Lodi Khel	LHW
13.	Sarwat Parveen	Jumma Khan	Raza Ali	12/07/2002	BHU Ibrahimzai	Raisan	LHW
14.	Razia Begum	Hasham Ali	Munsif Ali	15/07/2005	BHU Ibrahimzai	Ibrahimzai	LHW
15.	Nighat Sultan	Akbar Ali		22/07/2004	BHU Ibrahimzai	Lodi Khel	LHW
16.	Nighat Sultan	Ali Majan	Anjad Ali	01/08/2006	BHU Ibrahimzai	Lodi Khel	LHW
17.	S Nusrat Bibi	Shabir Hussain	S. Shah Hussain	01/08/2006	BHU Ibrahimzai	Jawzara	LHW
18.	Mahwish Begum	Rehman Ali		15/07/2009	BHU Ibrahimzai	Ibrahimzai	LHW

In exercise of powers conferred under sub section (2) of the Section ibid, the above Community Embedded Employees are placed in the following pay scales as mentioned against their respective designations.

Name of Post	Basic Pay Scale
Lady Health Supervisor	7
Lady Health Worker	5
Driver	4

... S/d ...
DISTRICT HEALTH OFFICER
HANGU

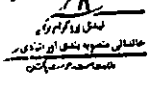
C.c:

1. The Registrar Supreme Court of Pakistan, Islamabad
2. The Director General Health Services Khyber Pakhtunkhwa.
3. The Director Health Services, Health Directorate, Peshawar.
4. PS to Secretary Health, Govt. of Khyber Pakhtunkhwa Peshawar
5. Provincial Coordinator LHWs Programme Khyber Pakhtunkhwa Peshawar

Zohman Khalid
DISTRICT HEALTH OFFICER

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OFFICE OF THE DISTRICT HEALTH OFFICER DISTRICT HANGU
DISTRICT PROGRAM IMPLEMENTATION UNIT

Phone: 0925-624621. Fax: 0925-623773.

Email: dpiuhangu@yahoo.com

Annexure-VI
Dated: 01/07/2019

No: 3541-45 /DPIU/HANGU/PF

19

OFFICE ORDER

Consequent upon attendance the age of superannuation, Mst Rehana Parveen D/O Fazle Khaliq LHW attached to BHU Ibrahimzai is hereby retired from Govt: services w.e.f 30-06-2019 (AN). She is struck off from the strength of Health Department w.e.f 01-07-2019 (AN)

-----SD-----
DISTRICT HEALTH OFFICER
DISTRICT HANGU

Copy to

1. Provincial Coordinator LHW's Programme Khyber Pakhtunkhwa for information
2. District Account Officer Hangu for information and necessary action
3. Incharge Type BHU Ibrahimzai for information.
4. LHS concerned for information.
5. Official concerned for information.

Pr.
Nandhawan
DISTRICT HEALTH OFFICER
DISTRICT HANGU

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Annexure-VII
20

District Health Officer

Hangu.

Khyber Pakhtunkhwa.

Subject: Application for Granting Pensionary Benefits to Rehana Perveen d/o Fazl e Khaliqe (Retired LHW).

Respectfully Sir,

It is humbly stated that that Applicant was appointed as leady health worth (LHW) in health department, Hangu on 01.07.2004. After successful completion of 8 years' service Applicant was regularized w.e.f 1st of July 2012 vide Notification No. 197-220 dated 19.09.2014. That as Applicant has now been retired on 30.06.2019, however, the pensionary benefits has not been extended despite Applicant applied through Form-3 (PEN).

It may kindly be noted that beside statutory provisions it is the consensus view of the honourable higher judiciary that for the purpose of pensioner benefits regularization is to be considered from the dated of appointment, however, despite of several visits and requests Applicant has not been considered for pensioner benefits.

In view of the above it is therefore requested that Applicant regularization may kindly be considered from the dated of appointment and pensionary benefits may please be extended to Applicant.

Applicant

Rehana Perveen d/o Fazl e Khaliqe
Retired LHW

Annexure-VIII

(21)

OFFICE OF THE DISTRICT ACCOUNTS OFFICER HANGU

NO 137 DAO/HANGU/PENSION AUDIT

DATED 3-3-2022

To,

The District Health Officer
Hangu.

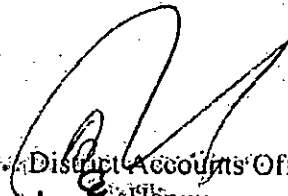
SUBJECT: RETIREMENT PENSION CASES.


Mémo,

With reference to your letter No.871/PF, No.873/PF No.875/PF dated 15-02-2022 to the subject noted above.

As per Khyber Pakhtunkhwa Civil Servant Pension rules 2021 chapter II Para No.3 (a). The qualifying service required more than 10 years. The applicant's service is less than 10 year which is not eligible for pension benefits. However the cases for gratuity will be process accordingly whose detail are given below.

S.NO	NAME	DESIGNATION	LETTER NO
1	Yasmin Akhtar	Lady Health Worker	9627/PF DATED 17-11-2021
2	Jaweria	Lady Health Worker	9934/PF DATED 30-11-2021
3	Rehana Parween	Lady Health Worker	9935/PF DATED 30-11-2021


District Accounts Officer,
Hangu.
3/3



**IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].**

Writ Petition No.3394-P/2016

Date of hearing:- 22.06.2017

Petitioner(s):- Amir Zeb Widower of Mst. Asiya Shafi by
Mr. Khush Dil Khan, Advocate.

Respondent (s):- The District Account Officer, Nowshera & OS
others by Syed Qaisar Ali Shah, AAO.

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through this Common judgment, we, propose to decide the following Constitutional Petitions filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution), as identical questions of law and facts are involved therein and the writ sought by the petitioners is also one and the same.

1. **Writ Petition No.3394-P/2016**
(Amir Zeb Vs District Account Officers Nowshera etc)
2. **Writ Petition No.2867-P/2016**
Mst. Akhtar Bibi Vs District Education Officer (M) Kohat etc).
3. **Writ Petition No.3143-P/2014**
(Muhammad Shah Zaib etc Vs Govt of Khyber Pakhtunkhwa through Chief Secretary and others)
4. **Writ Petition No.2872-P/2014.**
Hakeem Khan through LRs Vs Govt of KPK through Sectary Elementary & Secondary Education, Peshawar etc)
5. **Writ Petition No.1339-P/2014**
(Mst. Rani Vs Sub-Division Education Officer etc).
6. **Writ Petition No.55-P/2015**
(Mst. Bibi Bilqees Vs Govt of KPK through Secretary Finance, Peshawar).

ATTESTED
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Peshawar High Court

2. Amir Zeb petitioner in W.P. No.3394-P/2016 is the widower of Mst. Asiya Shafi (late). His grievance is that on 28.02.2003, his wife was initially appointed as PTC on contract basis and, later on, by virtue of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, her service was regularized. On 31.07.2015, during her service, she met her natural death, therefore, he being her widower/LR applied for payment of her all admissible retirement benefits, in pursuance whereof, leave encashment, GP fund and other admissible funds were paid to him by the respondents, but his pension claim was refused by the respondents on the ground of lack of prescribed length of her regular service, excluding the period of her service on contract, hence, this petition.

3. Mst. Akhtar Bibi, the petitioner in Writ Petition No.2867-P/2016, is the widow of (late) Lal Din Class-IV employee. She has averred in her writ petition that her late husband was initially appointed as Chowkidar on 01.10.1995 on contract basis, however, later on, his service was regularized vide Notification No.BO1-1-22/2007-08 dated 05.08.2008. On 15.05.2010, the deceased died during his service, so she applied for her pension but the same was refused to her on the ground that the regular service of the deceased employee was less than the prescribed length of regular service, hence, this petition.

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23

ATTESTED
EXAMINER
Peshawar High Court

4. Muhammad Shah Zaib and Muhammad Afnan Alam are the LRs of deceased Fakhar Alam. Their grievance is that their deceased father was appointed as Chowkidar on 13.01.1998 in Mother Child Health Centre Tank, who, later on, during his service was murdered, for which FIR was registered against the accused. Petitioners applied for retirement of the deceased. Vide notification dated 31.12.2013, the deceased was retired from service on account of his death w.e.f. 21.10.2013. The family pension of the deceased was prepared and processed, however, the same was refused to the petitioners, hence, this petition.

5. Petitioners in Writ Petition No.2872-P/2014, are the LRs of deceased Hakeem Khan Class-IV employee, who died during pendency of the instant writ petition. Grievance of the petitioners is that their predecessor was appointed as Chowkidar on fixed pay in Education Department on 24.04.1993. Vide order dated 29.01.2008, service of the deceased alongwith his counterparts was regularized by virtue of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 w.e.f. 30.06.2001. On attaining the age of superannuation, the deceased got retired on 31.12.2012, so petitioner applied for grant of his pension but the same was refused, hence, this petition.

6. Mst. Rani, petitioner in Writ Petition No.1339-P/2014, is the widow of Syed Imtiaz Ali Shah (late) Class-IV employee. She has averred in her writ

petition that on 15.01.1996 her late husband was appointed as Chowkidar in the respondents department on adhoc basis/fixed pay, whose service was, later on, regularized on 30.07.2008. During his service, the deceased met his natural death on 15.01.2012, hence, the petitioner applied for her pensionary benefits, but the same was refused on the ground that though service of the deceased was regularized but without pension gratuity, hence, this petition.

25

7. Mst. Bibi Bilqees, petitioner in Writ Petition No.55-P/2015, is the widow of Saif ur Rehman deceased. Her grievance is that her deceased husband was initially appointed as Chowkidar on 09.07.1995 in Public Health Department Nowshera on contract basis, however, his service was regularized on 01.07.2008. The deceased died during his service on 05.05.2012, so when petitioner applied for his pensionary benefits, the same was refused to her on the ground that the deceased was lacking the prescribed length of regular service, hence, this petition.

8. Respondents in the above writ petitions have filed their respective Para-wise comments, wherein they have admitted the fact that the pensions have been refused to the petitioners/LRs of the deceased employees because they were lacking the prescribed length of their regular service, whereas period of adhoc or contract service cannot be counted towards regular service for the purpose of pension.

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WP3394P2016-Judgements

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Peshawar High Court

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The learned Addl. A.G. also questioned the maintainability of the writ petitions on the ground that section 19 (2) of the Khyber Pakhtunkhwa Civil Servant Acts deal with right of pension of deceased civil servant, which squarely falls in Chapter-II, pertaining to terms and conditions of service, therefore, jurisdiction of this Court under Article 212 of the Constitution is barred.

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9. Having heard the arguments of learned counsel for the parties, record depicts that undisputedly the deceased employees were the Civil Servants and instant writ petitions have been filed by their LRs qua their pensions. Since the controversy pertains to pension of the deceased employees which according to the contention of worthy Law Officer is one of the terms and conditions of a civil servant under section 19 (2) of the Civil Servants Act, 1973, hence, before determining the eligibility of the deceased employees to the pension or otherwise, we would like to first meet the legal question qua maintainability of the instant writ petitions on the ground of lack of jurisdiction of this Court under Article 212 of the Constitution. To answer the question, it would be advantageous to have a look over the definition of "Civil Servant" as contemplated under section 2(b) of Khyber Pakhtunkhwa Civil Servants Acts, 1973 and section 2 (a) of Khyber Pakhtunkhwa Service Tribunal Act, 1974. For the sake of convenience and ready reference, definition

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given in both the Statute are reproduced below one after the other

27

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

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

"S.2(a) "Civil Servant" means a person who is or has been a civil servant within the meaning of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.XVIII of 1973), but does not include a civil servant covered by the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991;]

As per the definitions of a "civil servant" given in the two Statutes referred to above, the petitioners neither holding any civil post in connection with the affairs of the Province nor have been remained as civil servants, thus, do not fall within the definition of "civil servant".

10. Though section 19(2) of the Khyber Pakhtunkhwa Civil Servants Acts, 1972, in the event of death of a civil servant, whether before or after retirement conferred a right of pension on his/her family who shall be entitled to receive such pension or gratuity or both as prescribed by Rules. It is also undeniable fact that pension and gratuity fall within the ambit of terms and conditions of a civil servant, but a legal question would arise as to whether the legal heirs i.e. family of a deceased civil servant would be competent to agitate his/her/their grievance regarding pension before the Service Tribunal, particularly, when

for the Service

ATTESTED
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he/she/they do not fall within the definition of Civil Servant. The Service Tribunals have been constituted under Article 212 of the Constitution for dealing with the grievances of civil servants and not for their legal heirs. The question regarding filing appeal by the legal heirs of deceased's civil servant and jurisdiction of Service Tribunal, cropped up before the Hon'ble Supreme Court in case titled, "Muhammad Nawaz Special Secretary Cabinet Division through his Legal Heirs Vs Ministry of Finance Government of Pakistan through its Secretary Islamabad" (1991 SCMR 1192), which was set at naught in the following words:-

"A 'civil servant' has been defined in section 2(b) of the Civil Servants Act, 1973. A right of appeal under the Service Tribunals Act, 1973 has been given to a civil servant aggrieved by any final order whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his serve. The appellants admittedly are the legal heirs of the deceased civil servant and there being no provision in the service Tribunals Act of 1973 to provide any remedy to the successors-in-interest of a civil servant, the learned Tribunal, in our view, was correct in holding that the appeal before it stood abated and the same is hereby maintained".

In case titled, "Rakhshinda Habib Vs Federation of Pakistan and others" (2014 PLC (C.S) 247), one Habib ur Rehman Director General in Ministry of Foreign Affairs, aggrieved by his supersession filed appeal before the worthy Service Tribunal, but unfortunately, during pendency of appeal he died, therefore, his appeal before the Federal Service Tribunal Islamabad was abated. Rakhshinda Habib, the widow of

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deceased then filed constitution petition No.1021 of 2010 before the Islamabad High Court, but the same was dismissed vide judgment dated 13.06.2013, against which she preferred aforesaid appeal before the Hon'ble Supreme Court, which was allowed and it was held by the worthy apex court that:-

29

"That civil servant could not be promoted after his death, however, pensionary benefits of promotion could be extended to the legal heirs of the deceased employees".

11. Going through the law on the subject and deriving wisdom from the principles laid down by the Honble apex Court in the judgments (supra), we are firm in our view that petitioners/legal heirs of the deceased employees have locus standi to file these petitions because the pensionary benefits are inheritable which under section 19 (2) of the Khyber Pakhtunkhwa Civil Servant Act, on the demise of a civil servants, devolves upon the legal heirs. The petitioners, as stated earlier, being LRs of the deceased civil servants do not fall within the definition of "Civil Servant", and they having no remedy under section 4 of the Service Tribunal Act to file appeal before the Service Tribunal, the bar under Article 212 of the Constitution is not attracted to the writ petitions filed by them and this Court under Article 199 of the Constitution is vested with the jurisdiction to entertain their petitions. Resultantly, the objection regarding non-maintainability of the petitions stands rejected.

Justice Saeed

ATTESTED
EXAMINER
Peshawar High Court

12. Adverting to question of entitlement of the deceased employees to the pension, we, would like to reproduce the relevant rules of the West Pakistan Civil Services Pensions Rules, 1963 below, as these would advantageous in resolving the controversy:-

(30)

"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.

13. 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 confirmation shall be counted for pension and gratuity. It is undeniable fact that the NWFP Civil Servant (Amendment Bill), 2005 was passed by the provincial assembly on 5th July 2005 and

looked

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 day of July 2001, but on contract basis were deemed to be appointed on regular basis. They were declared Civil Servants, however, were held disentitled for the pensionary benefits. Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013. The text of section 19 (4) (proviso 1 and 2) are reproduced as below:-

31

"Provided that those who are appointed in the prescribed manner to a service or post on or after the 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis:

Provided further that the amount of Contributory Provident Fund subscribed by the civil servant shall be transferred to his General Provident Fund."

14. From bare reading of section 19 of Amendment Act, 2005 and 2013 respectively, it is manifest that the persons selected for appointment on contract basis shall be deemed as regular employee and subsequently were held entitled for pensionary benefits. The deceased employees have completed the prescribed length of service as their service towards pension shall be counted from the first day of their appointment and not from the date of regularization of their service.

ATTESTED
EXAMINER
Peshawar High Court

15. We deem it appropriate to mention here that question of interpretation and true import of 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:

32

"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."

16. 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.

Latif

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ATTESTED
 EXAMINER
 Peshawar High Court

17. For what has been discussed above, we by allowing these writ petitions, issue a writ to the respondents departments to pay pension of the deceased employees to the petitioners/LRs of the deceased.

33

Announced:
22.06.2017
Sudrajat P.S.

JUDGE
JUDGE

CERTIFIED TRUE COPY
18 JUL 2019

Mr. Ramesh Kumar
Mr. G. S. M. Attigum Srinivas

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Annexure-X

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

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W.P. No. 114-M/2019

JUDGMENT

Date of hearing: 12.02.2019

Petitioners:- (Zaib-un-Nisa & another) by
Khwaja Salah-ud-Din, Advocate.

Respondents:- (Govt. of KPK & others) by Mr.
Wilayat Ali Khan A.A.G. for the official
respondents.

SYED ARSHAD ALI, J.- Through the instant
writ petition, the petitioners seek constitutional
jurisdiction of this Court with the following
prayer:-

It is, therefore, humbly prayed, that
on acceptance of this writ petition, the
respondents may kindly be directed to
grant after retirement benefits to the
petitioners, in shape of pension and other
after retirement benefits for which the
petitioners deserve

AND

Any other relief which this August
Court deems appropriate may kindly be
awarded to meet the ends of justice.

2. In essence, the grievance of the
petitioners is that although they were appointed as

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the Health Department District Dir Lower vide appointment orders dated 29.10.1997 and 28.07.1998, however, later their services were regularized, therefore, their period of employment on contract should be counted towards their entitlement for pension.

3. At the very outset, learned counsel for the petitioners has argued that the similar issue has been decided by this Court in W.P. No. 3394/P of 2016 dated 22.6.2017, alongwith other connected matters wherein this Court had declared that the period of contract appointment of a civil servant followed by his regular appointment is countable towards his/her pension.

4. In view of the above coupled with the law laid down by the august Supreme Court of Pakistan in 2009 SCMR 1 titled "Government of Punjab through Secretary Education Bahore & others vs Sameena Parveen and others", wherein it has been held: "If a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any

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benefit of the said decision be extended to the other civil servants also, who may not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum." This petition is disposed of in terms that we direct the respondents to decide entitlement of the petitioners for their pension by counting their service rendered by them on contract and thereafter decide their entitlement to pension strictly in accordance with pension rules.

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Annexure - XI
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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No. 4086/2019 with IR

Mausam Khan
Vs
Vice Chancellor, Shaheed Benazir Bhutto Women
University, Peshawar and others

Date of hearing 15.04.2021

Petitioner (by) Mr. Muhammad Ijaz Khan Sabl
Advocate

Respondent (by) Mr. Waseem-ud-Din Khattak Advocate

JUDGMENT

MUSABBAT HILALI, 1. Through the instant petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner (Mausam Khan) seeks direction to the respondents to count the pre-regularization period i.e. from 2008 to 21.12.2013 toward the length of pensionable service and consequently they may be directed to sanction and grant pensionary benefit to the petitioner.

2. In essence, it is the petitioner's case that he was initially appointed as Driver on contract basis in

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Shaheed Benazir Bhutto Women University, Peshawar and, later on, the syndicate on 08.11.2014 approved the appointment of Class-IV employees of university including the petitioner on regular basis with retrospective effect i.e. 21.12.2013. In May, 2015, the respondents changed the status of petitioner from "regular" to "fixed pay" employee, therefore, he alongwith others employees felt aggrieved of their change of status, filed W.P No.2085/2016 in this Court which was allowed vide judgment dated 03.10.2018. On attaining the age of superannuation, the petitioner got retired on 11.09.2018, so he approached the respondents-university for grant of pension and counting his pre-regularization service period from 2008 till 20.12.2013, but his pension claim was refused by the respondents on the ground of lack of prescribed length of his regular service, hence, this petition.

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Argument heard and appended record gone through.

3. Normal rules are that when a particular set of employees are given relief by a Court in a particular

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question of law, then all other identically situated persons need to be treated alike by extending that benefit to them as well and by not doing so would amount to violation of constitutional safe guards. Indeed, the controversy regarding the qualifying service for entitlement to pension has since been laid to rest by the Judgment delivered by this Court in case title "*Amir Zeb widower of Mst. Asia Shafi .vs. The District Account Officers, Nowshera*" decided on 22.06.2017, wherein it is held that *from bare reading of section 19 Amendment Act, 2005 and 2013 respectively, it is manifest that the person selected for appointment on contract basis shall be deemed as regular employee and subsequently held entitled for pensionary benefits.*

In the instant case, too, the petitioner was appointed as driver on contract basis. Later on, the Syndicate approved the appointment of the petitioner on regular basis with effect from 21.12.2013, afterward in May, 2014, the status of petitioner was changed from regular employee to fixed pay employee which was challenged before this Court in W.P No. 2085/2016. The

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writ petition of petitioner was allowed on 03.10.2018.

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During pendency of the writ petition, the petitioner

retired on attaining the age of superannuation. The

judgment delivered by this Court in W.P No. 3394-

P/2016 equally applies to the case in hand.

4. In view thereof, by allowing the instant writ

petition, we direct the respondents to favourably consider

the case of petitioner in the light of the Judgment

rendered in case titled "*Amir Zeb Vs. The District*

Account Officers, Nowshera" decided on 22.06.2017 in

W.P No., 3394-P/2016, preferably within 30 days on

receipt of this Judgment.

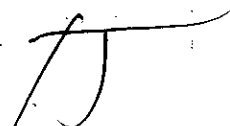
Announced
15.04.2021


JUDGE


JUDGE

(DB) Hon'ble Justice Musarrat Hilal
Hon'ble Mr. Justice Syed Arshad Ali

Noor Shah



[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C.J., Ijaz-ul-Hassan Khan, Muhammad Qaim Jan Khan and Ch. Ejaz Yousaf, JJ

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GOVERNMENT OF PUNJAB, through Secretary Education, Civil Secretariat, Lahore and others---Petitioners

Versus

SAMEENA PARVEEN and others---Respondents

Criminal Petitions Nos.71-L and 72-L, Civil Petitions 215-L, 216-L, 217-L, 218-L, 224-L to 236-L of 2006, decided on 29th April, 2008.

(On appeal from the judgment, dated 29-1-2008 of the Lahore High Court, Lahore passed in Cr.O.P. No.370/W and 561/W of 2007, Writ Petitions Nos.11525, 11263, 11516, 11662, 11663, 11766, 11881, 11835, 12136 and 12185 of 2007, 86, 123, 274, 345, 599, 643 and 11619 of 2008).

Civil service---

---Administration of justice---If a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum--- All citizens are equal before law and entitled to equal protection of law as per Art.25 of the Constitution.

Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 and Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005 SCMR 499 fol.

Mst. Muqqadas Akhtar and another v. Province of Punjab through Secretary Education Department, Government of Punjab and another 2000 PLC (C.S.) 867 ref.

Ms. Afshan Ghazanfar, A.A.-G., Punjab and Rana Abdul Qayyum, D.S. (Education) Punjab for Petitioners.

S.M. Tayyab, Senior Advocate Supreme Court for Respondents (in Cr.Ps. Nos.71-L, 72-L and C.P.224-L of 2008).

Nemo for other Respondents.

ORDER

ABDUL HAMEED DOGAR, C.J.---Through this order we intend to dispose of above captioned petitions filed against common judgment, dated 29-1-2008 passed by learned Judge in Chambers of Lahore High Court, Lahore whereby Cr.O.P. No.370/W and 561/W of 2007, Writ Petitions Nos.11525, 11263, 11516, 11662, 11663, 11766, 11881, 11835, 12136 and 12185 of 2007, 86, 123, 274, 345, 599, 643 and 11619 of

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2008 filed by respondents were allowed and the impugned orders passed by petitioner/authority were set aside. 42

2. Briefly, stated facts giving rise to the filing of instant petitions are that respondents were appointed as PTC Teachers during the year 1995/1996 after completion of all legal requirements and they joined their respective place of posting. After sometime, their appointments were cancelled being bogus vide order No.277/E-1, dated 3-4-1998. This order was assailed before learned Lahore High Court, Lahore and same was declared to be without lawful authority in the case reported as Mst. Muqqadas Akhtar and another v. Province of Punjab through Secretary Education Department, Government of Punjab and another 2000 PLC (C.S.) 867. The relevant paragraph is reproduced as under:--

"Consequently the petitioners are declared to be in service and the action of the Headmasters/Incharge of the Schools stopping the petitioners from performance of their duties as PTC Teachers on the basis of the above said impugned order, is declared to be without lawful authority. It is, however, clarified that the department is at liberty to proceed against petitioners, if so desired, on individual basis under the relevant law and under the Punjab Civil Servant (Efficiency and Discipline) Rules, 1975."

In view of above judgment, the respondents were absolved of the charges of bogus appointments. But later on once again the services of respondents were terminated vide order, dated 3-8-2005, which order was challenged before learned Lahore High Court, Lahore through Writ Petition No.16864 of 2005. The said writ petition was allowed vide judgment, dated 11-12-2006 and the impugned order, was declared as illegal and without lawful authority. Similarly, one of the teachers namely Mst. Naseem Akhtar assailed the order, dated 3-8-2005 before Punjab Service Tribunal, Lahore through Appeal No.903 of 2006 which was also allowed vide judgment, dated 4-9-2006. The said judgment was maintained by this Court in Civil Petition No.1960-L of 2006 vide judgment, dated 2-11-2006. On 26-9-2007 once again the services of respondents were terminated. Feeling aggrieved they filed above mentioned petitions before the learned Lahore High Court, Lahore which were allowed vide impugned judgment as stated above.

3. It is mainly contended by learned A.A.-G. Punjab appearing on behalf of petitioners that the jurisdiction of the learned High Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 in matters involving determination of terms and conditions of civil servants. She further contended that the appointments of the respondents were bogus and fake as they were never selected by the competent authority, therefore the orders of dismissal passed by departmental authority were in accordance with law, which did not call for any interference by this Court.

4. On the other hand, Mr. S. M. Tayyub, learned Senior Advocate Supreme Court appearing on behalf of some of the respondents supported the impugned judgment and contended that appointments of respondents had taken place in accordance with rules and prescribed procedure. They submitted their applications in pursuance of advertisement of the posts of PTC Teachers. They passed the required test and were appointed by the competent authority. According to him, the respondents were in service for about 9-10 years and during this period no objection was raised, and subsequently on vague allegations they were dismissed from service. He further contended that cases of respondents were at par with Mst. Naseem Akhtar which was decided by this Court in Civil Petition No. 1960-L of 2006 vide judgment, dated 2-11-2006.

5. We have considered the arguments of both the parties and have gone through the record and proceedings of the case in minute particulars. The matter has already been decided by this Court in the case of Mst. Naseem Akhtar (supra), and it has been held that the appointment orders of the respondents as PTC Teachers were genuine. It was held by this Court in the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 that if a Tribunal or this Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the

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dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation instead of compelling them to approach the Tribunal or any other legal forum. This view was reiterated by this Court in the case of Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005 SCMR 499 and it was held that according to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 all citizens are equal before law and entitled to equal protection of law.

6. In this view of the matter, we are of the view that no ground for interference in the impugned judgment is made out. Accordingly, the petitions being devoid of force are dismissed and leave to appeal refused.

M.B.A./G-13/SC

Petitions dismissed



Annexure-XIII

[Supreme Court of Pakistan]

Before Ajmal Mian, Saiduzzaman Siddiqui and Mukhtar Ahmad Junejo, JJ

(44)

HAMEED AKHTAR NIAZI---Appellant

versus

THE SECRETARY, ESTABLISHMENT DIVISION, GOVERNMENT OF PAKISTAN and others---Respondents

Civil Appeal No.345 of 1987, decided on 24th April, 1996.

(On appeal from the judgment dated 11-12-1986 of the Federal Service Tribunal, Islamabad, passed in Appeal No. 124(L) of 1980).

Per Ajmal Mian, J.; Saiduzzaman Siddiqui, J. agreeing---

(a) Civil Servants Act (LXXI of 1973)---

----S. 8(4)---Constitution of Pakistan (1973), Art. 212(3)---Establishment Secretary's D.O. Letter No.2/4 /75-AVI, dated 2-10-1975---Seniority---Merger of four occupational groups of civil servants---Leave to appeal was granted to consider the questions as to whether the seniority list of 1979 was properly prepared in accordance with law and what was the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976; whether when preparing the list of 1979, S. 8(4) of the Civil Servants Act, 1973 and other related provisions of law had been kept in view; whether a civil servant could be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post; if not whether the fact that the respondents in appeal belonged to the different civil services of Pakistan would make any difference; whether one uniform principle of seniority would apply to all members of the Secretariat Group or the officers joining the Group from different sources/cadres would have to be treated differently; if so, whether such treatment with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of Civil Servants Act, 1973 and in that context what was the effect of the abolition of C.S.P. Cadre; whether the eligibility of civil servant for appointment to a selection post conferred any right of seniority in that post and cadre without issuance of a formal promotion/appointment order in accordance with the prescribed procedure and whether in that context a civil servant belonging to ex C.S.P. Cadre was entitled to ' automatic promotion to the post of Deputy Secretary after he had completed eight years of service but without the requirement of being actually selected/promoted or appointed; and what was the effect of the Supreme Court judgment in Khizar Haider Malik ad others v Muhammad Rafiq Malik and another 1987 SCMR 78 on the case.

(b) Civil Servants Act, (LXXI of 1973)---

----Ss. 8 & 23---Seniority---Merger of C.S.P and P.S.P cadres and creation of APUG---Seniority of such an officer, who was working in province or elsewhere, could not be distorted/disturbed to his detriment on account of the merger of said groups and creation of APUG and junior of such civil servant could not be made senior to him nor a junior to his junior could be made senior to him but this has to be done within the framework of the rules of reorganization of services---If the case of any civil servant does not fall within the ambit of said re-organisation rules, S. 23 of the Civil Servants Act, 1973 can be pressed into

service by the President of Pakistan to oblivate the inequitable and unjust result arising out of the merger of the two cadres in respect of seniority of any of the civil servants.

ES/ACODE, 1989 Edn., pp. 1014, 1096 and 1097 ref.

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(c) Service Tribunals Act (LXX of 1973)---

----S. 4---Constitution of Pakistan (1973), Art.212---Appeal to Service Tribunal or Supreme Court---Effect---If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum.

Per Mukhtac Ahmad Junejo, J.---

(d) Service Tribunals Act (LXX of 1973)---

----S. 4---Appeal to Service Tribunal, scope and extent.

M. Bilal, Senior Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellant.

Raja Muhammad Bashir, Deputy Attorney-General and Ch. Akhtar Ali, Advocate-on-Record for Respondents.

Dates of hearing: 7th and 8th April, 1996.

JUDGMENT

AJMAL MIAN, J.---This is an appeal with the leave of this Court against the judgment dated 11-12-1986 passed by the Federal Service Tribunal, Islamabad, hereinafter referred to as the Tribunal, passed in Appeal No.124(1)

of 1980, filed by the appellant, praying for the following reliefs:--

"16. In view of the above, the appellant (who was eventually promoted with effect from 28-8-1980) humbly prays that this honourable Tribunal may kindly direct the respondent No. 1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be allowed to the appellant from the date on which he would have been promoted if his name had been put up for the consideration of the C.S.B. according to his seniority. Cost may also graciously be allowed,"

dismissing the same for the reasons recorded in Appeal NO. I 16(R) of 1981, filed by one M. Ramizul Haq.

2. Leave to appeal was granted to consider inter alia the following questions:--

(a) Whether the seniority list of 1979 was properly prepared in accordance with law and what is the effect

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of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976? (46)

(b) Whether when preparing the list of 1979, section 8(4) of the Civil Servants Act, 1973 and other related provisions of law, have been kept in view?

(c) Whether a civil servant can be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post; if not, whether the fact that the respondents belonged to the defunct Civil Service of Pakistan will make any difference?

(d) Whether one uniform principle of seniority will apply to all members of the Secretariat Group or the officers joining the Group from different source/cadres would have to be treated differently; if so, whether such treatment whether with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of the Civil Servants Act, 1973, and in this context what is that effect of the abolition of the C.S.P. Cadre? and

(e) Whether the eligibility of a civil servant for appointment to a selection post confers any right of seniority in that post and cadre without issuance of a formal promotion/appointment order in accordance with the prescribed procedure and whether in this context a civil servant belonging to ex-C.S.P cadre is entitled to automatic promotion to the post of Deputy Secretary after he completes eight years of service but without the aforesaid requirement of being actually selected/promoted or appointed? and

(f) What is the effect on this case of the judgment of this Court in Khizar Haider Malik and others v. Muhammad Rafiq Malik and another 1987 SCMR 78.?

3. It may be observed that the order of granting leave was recalled on 10-2-1992, but upon review, the same was set aside through an order dated 14-2-1994 and thereby the aforesaid leave granting order was restored.

4. The brief facts are that the appellant joined Pakistan Military Lands and Cantonments Service on the basis of the results of competitive examination held in June, 1960. It is the case of the appellant that in 1967, he proceeded to U.S.A. on study leave and obtained a Master's Degree in Public Administration from the Maxwell School of Public Affairs and Citizenship, Syracuse University. It is also his case that in June/July, 1972, the Planning Division recommended him for promotion to the post of Deputy Secretary to the Government of Pakistan. It is his further case that pending approval of the Establishment Division, Planning Division promoted him as Deputy Secretary by an order dated 9-8-1972. The above order reads as follows:--

"OFFICE ORDER

It has been decided that Mr. Hameed Akhtar Niazi, PML & CS will look after the work of Deputy Secretary (Administration) with immediate effect. He will be designated as Officer on Special Duty (Administration).

Mr. Zafar Iqbal is posted as Deputy Secretary, Programming."

It has also been averred by the appellant that he was promoted as Deputy Secretary on regular basis on 9-4-1973 and posted in the Establishment Division.

5. It seems that in August, 1973, C.S.P. and P.S.P. cadres were merged into All Pakistan Unified Grades, hereinafter referred to as APUG. It further seems that after the aforesaid merger, four occupational groups were created, namely, Tribal Areas Group, District Management Group, Secretariat Group and Police

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Group. The appellant opted for the Secretariat Group. It is the case of the appellant that the Gradation List of Deputy Secretaries i.e. of the Secretariat Group was prepared in accordance with the provision of section 8(4) of the Civil Servants Act, 1973, hereinafter referred to as the Act, which provides that "Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post". According to the appellant, the above Gradation List was circulated in June, 1976, wherein the appellant's name appeared at Serial No. 69. However, the appellant learnt in August, 1979, that civil servants belonging to erstwhile Civil Service of Pakistan (C.S.P.), whose names appeared much below the appellant in the aforesaid Gradation Lists of 1976, were being promoted to the rank of Joint Secretary (Grade-20) and his name had not been put up for promotion to the General Selection Board for consideration. He first made efforts to get redress from the department, but eventually, he filed the aforementioned service appeal in the Tribunal, which was dismissed as stated above. After that he filed a petition for leave to appeal in this Court, which was granted to consider the above questions.

6. It may be pertinent to observe that in the above appeal, besides the Federation, 14 civil servants were arrayed as respondents. It may further be observed that, in addition to the above respondents, 7 other civil servants were impleaded pursuant to an application dated 4-1-1988. Dr. Sh. Aleem Mehmood was impleaded as a respondent (respondent No. 23 in the present appeal) on his own application, whereas the applications of Muhammad Aslam and Tariq Junejo for being impleaded, remained pending till today: However, they were heard. One, Malik Zahoor Akhtar, has also appeared though he had not filed any application for getting himself impleaded in the aforesaid appeal.

7. Be that as it may, in support of the above appeal, Mr. M. Bilal, learned Sr. A.S.C. for the appellant, has vehemently contended that after the merger of the two cadres, namely, C. S. P. and P. S. P. and creation of APUG, the Gradation List of the Deputy Secretaries prepared in 1976 could not have been disturbed and that certain civil servants could not have been given seniority over the appellant from a date prior to their regular appointments as the Deputy Secretaries in the above cadre. To reinforce the above submission, reliance has been placed by him inter alia on section 8(4) of the Act and para. 8 of ESTACODE, 1989 Edition, under the caption "Secretariat Group" at Serial No. 19 incorporated on the authority of O.M.No.2/2/75-ACR, dated 12-4-1976.

The aforementioned newly added respondent supports Mr. Bilal's contention.

On the other hand, Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, has contended that seniority inter se of the civil servants belonging to C.S.P. cadre obtaining prior to its merger could not have been distorted to the detriment of any of the above civil servants and, therefore, if C.S.P. officers, who were not actually posted as Deputy Secretaries but were deputed to various Provinces on account of public exigencies, could not have been made junior to civil servants who were junior to them prior to the merger of aforesaid two cadres and who were working as Deputy Secretaries and were senior inter alia to the appellant.

8. It appears that the Tribunal proceeded on the premises as urged by learned Deputy Attorney-General. It may be advantageous to reproduce the relevant portion of the impugned judgment, which reads as follows:--

"It appears that the question of seniority was not examined when persons not being Members of the Service were appointed to APU J with the approval of the President vide Notification No.1/1/73-ARC, dated 14-9-1973. Nevertheless, the seniority lists were prepared of the Deputy Secretaries and Joint Secretaries, etc. and they included only those officers of the former C.S.P. who at the relevant time were serving against these posts. At that time, the Rule for appointment of the Deputy Secretaries was that a C.S.P. Officer who had completed 8 years' service could be appointed as Deputy Secretary. No doubt,

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subsequently by Office Memo. No.3/7/74-AR.II, dated the 20th May, 1974, 12 years period was provided for Grade-19 and for horizontal movement of Grade-18 Officers to the post of Deputy Secretary vide para. 3 of Office Memo. No. 2/2/75-ARC, dated 21-2-1975, but this deviation in the length of service is immaterial as far as C.S.P. Officers are concerned. Their names already existed as Members of C.S.P. and subsequently of APUG. Their seniority was to be changed in accordance with some principle and not by making any, rule affecting their vested right. All Rules made under the Civil Servants Act or the Civil Servants Ordinance have to be construed with prospective operation and not with retrospective operation. All those Rules which affect the former Officers of the C.S.P. have to be applied for the situations existing after the enactment of the Civil Servants Ordinance, 1973, and the Rules made thereunder. The seniority of the C.S.P. Officers in APUG could not, therefore, be distorted. Any seniority to which a Member of the Cadre was entitled before the constitution of Secretariat Group, could not be affected by the provisions of section 8(4) of the Civil Servants Act, 1973. In other words, the seniority of such, a person cannot be destroyed by any subsequent change in the principles of seniority. By making a provision in the relevant Officer Memorandum that seniority shall count from the date when an officer becomes Deputy Secretary or is promoted to Grade-19, whichever is earlier, the distortion in the seniority of other Federal Services was removed, but in case of C.S.P. Officers this formula could not work as there was no scale comparable to Grade-19 (Junior Administrative Grade) and the C.S.P. Officers used to be promoted to the Joint Secretary's grade from Senior C.S.P. Scale which is comparable with Grade-18, and the post of Deputy Secretary was never a promotion post in the cadre. Thus, in our opinion, if after the coming into force of the Civil Servants Act, an officer of former C.S.P. who was senior to his colleagues working as Deputy Secretary in the Secretariat, but an officer who was working, in the Province or elsewhere would, when brought to the Secretariat later, retain his seniority vis-a-vis his own colleagues. In other words, if an officer of the former C.S.P. is appointed as Deputy Secretary in the Secretariat Sub-Group, within APUG, he would count his seniority from the date he completes 8 years of service if any of his colleagues junior to him had already been promoted. It is this principle, which the Establishment Division has applied and we think that this is a proper course by which the distortion in the seniority can be removed."

9. In this regard, it may be pertinent to refer to page 1014 of the ESTACODE,, 1989 Edition, in which under the caption "Reorganisation of APUG in to four Occupational Groups Seniority of members of the Group" at Serial No. 17 has provided as under on the basis of Establishment Secretary's D.O. Letter No.2/4/75-AVI, dated 2-10-1975:--

"Sl. No. 17:

Kindly refer to Establishment Secretary's Circular D.O. Nos.5/1/73ARC, dated the 7th September, 1973, 2/2/73-AVI, dated the 26th November, 1973, and 2/1/74-AVI, dated the 29th May, 1974, alongwith which the combined seniority lists of officers of All-Pakistan Unified Grades in various grades were circulated.

2. In the meantime, the All-Pakistan Unified Grades has been organised into four Occupational Groups--- the Secretariat Group, the District Management Group, the Police Group and the Tribal Areas Group. The rules and procedures etc. governing the administration of each of these Groups have already been issued and sent to you vide the Establishment Division's Office Memoranda No.2/2/75-ARC, dated 21st February, 1975 (Secretariat Group) No.2/2/74-ARC, dated 23rd February, 1974 (District Management Group), No.3/2/75-ARC, dated 31st May, 1975 (Police Group) and D.O. No. 1/6/73-ARC, dated 20th October, 1973 (Tribal Areas Group). Consequently the seniority lists have now been drawn up separately in respect of each Group.

3. As already indicated, each group will henceforth be managed under the respective rules quoted above. A member of a particular Group will be governed by prospects of promotion and advancement available

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within the Group. While entry into other Groups by horizontal movement is possible with the approval of Central Selection Board, there will be no automatic mobility from one Group to the other. In other words, officers shown in any particular Group will now belong to that Group once for all unless specifically selected and approved for movement to another Group.

4. You may now kindly inform the officers under your administrative control accordingly. Officers shown in the Secretariat Group but belonging originally to some other Group may let this Division know finally as to whether they would like to remain in the Secretariat Group or go back to their parent Group. Option once exercised will- be final. Such option should reach us not later than 31st October, 1975. Failure to exercise option by that date will be presumed to be an option for the Group where the name appears presently.

5. In the meantime, these lists may be treated as provisional and in case there are any omissions or discrepancies, these may please be communicated to us immediately for rectification."

10. Reference may also be made to paras. 3 and 8 of the ESTOCODE, 1989 Edition, at pages 1096 and 1097 thereof under the caption "Secretariat Group" at Serial No. 19 and which read as under:--

Para. 3 of the ESTACODE: 3. Deputy Secretary.--Appointment to the post of Deputy Secretary will be made in accordance with the following methods: --

(i) By promotion of Grade-18 Officers of Office Management Group and the Secretariat Group on the recommendations of the Central Selection Board.

(ii) By horizontal movement from other Occupational Groups of Grade 19 Officers who have been recommended by the Ministries/Divisions, Departments or Provincial Governments and have been found fit by the Central Selection Board.

(iii) By direct appointment or the recommendations of the Federal Public Service Commission of persons possessing such qualifications and experience etc., as may be prescribed.

Para. 8 of the ESTACODE: 8. Deputy Secretary.--Seniority would be determined from the date of continuous regular officiation as Deputy Secretary, or in a post in Grade-19, whichever is earlier."

11. We may observe that in the present case, section 8(4) of the Act is relevant as it will be covered by the rules framed for regulating APUG. It is evident from afore-quoted para. 4 of ESTACODE, 1989 Edition, at page 1014 that after the creation of Secretariat Group, the civil servants were given the option to opt the above Group or any other Group by 31-10-1975. Whereas above quoted para. 3 of the ESTACODE at page 1096 under the caption " Secretariat Group" at Serial No.19, indicates as to how the appointment to the post of Deputy Secretary will be made i.e. by promotion of Grade-18 Officers by horizontal movement and by direct appointment on the recommendation of the Federal Public Service Commission.

12. It may further be noticed that para. 8 of the above ESTACODE at page 1097 provides that seniority would be determined from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

13. The Tribunal has not taken into consideration that above relevant provisions of the ESTACODE while dilating upon the controversy in issue. It should have decided, whether the respondents had exercised the options in terms of aforesaid para. 4 of the above ESTACODE at page 1014, by 31-10-1975 and whether the seniority list was prepared as per aforequoted para. 8 of the ESTACODE, i.e. from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

14. There is no doubt that the seniority of an officer, who is working in a Province or elsewhere, cannot be distorted/disturbed to his detriment on account of the merger of above two cadres of C.S.P. and P.S.P. and creation of APUG. His junior cannot be made senior to him nor a junior to his junior can be made senior to him. But, this is to be done within the framework of the rules of reorganisation as given in the above ESTACODE. If the case of any civil servant does not fall within the ambit of the above rules, section 23 of the Act can be pressed into service by the President to oblivate the inequitable and unjust result arising out of the above reorganisation in respect of seniority of any of the civil servants.

15. It was also contended by Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, that since that appellant has already been promoted to Grade-20, the above appeal has become in fructuous. However, this contention was refuted by Mr. Bilal and it was urged by him that the appellant is entitled to get his seniority restored according to the rules.

16. In our view, it will be just and proper to remand the case to the Tribunal with the direction to re-examine the above case after notice to the affected persons and to decide the same afresh in the light of above observations. We may observe that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings; in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum.

17. The above appeal stands disposed of in the above terms, with no order as to costs.

(Sd.)
Ajmal Mian, J.

(Sd.)
Saiduzzaman Siddiqui, J.

MUKHATAR AHMAD JUNEJO, J.--My learned brother Ajmal Mian, J. was kind enough to send me draft of the judgment proposed to be delivered by him in Civil Appeal No.345 of 1987 (Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan etc.) With due 'respects to my learned brother, I am unable to agree with' him that this matter be remanded to the Federal Service Tribunal with some directions including the direction to re decide the case.

The facts of the case have already been given by my learned brother and they need not be reiterated. In the context of the facts given in para.4 of the draft judgment, appellant Hameed Akhtar Niazi filed his appeal before the Federal Service Tribunal under section 4 of the Service Tribunals Act with prayer in the following words:--

"In view of the above the appellant who was eventually promoted with effect from 28-8-1980 humbly prays that this Honourable Tribunal may kindly direct the respondent No.1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be allowed to the appellant from the date on which he would have been promoted if his name had been put up for the consideration of the C.B.S. according to his seniority. Cost may also graciously be allowed. "

Perusal of the prayer shows that the appellant seeks his promotion from a date earlier than the dates of promotion of certain officers termed by him to be ineligible and junior. According to section 4 of the

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Service Tribunals Act, a civil servant can invoke jurisdiction of the Tribunal in respect of any of his terms and conditions of service. However, no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade, vide clause (b) of the proviso to section 4 of C the, said Act. By asking the Tribunal to direct his promotion on a date earlier than the promotion of ineligible and junior officers, the appellant wanted the Tribunal to determine him to be fit for promotion and to determine the other officers to be ineligible for promotion by labelling them as ineligible. As regards the claim for salary and monetary benefits, the same is again based on the presumptive promotion of the appellant. Since the main relief of promotion cannot be given to the appellant by the Tribunal, the consequential relief can also not be given to him.

In my humble view appellant's appeal before the Federal Service Tribunal was not maintainable and it required to be rejected. In my humble view this appeal merits dismissal.

(Sd.)

Mukhtar Ahmad Junejo, J.

ORDER OF THE COURT

By majority judgment this appeal is allowed, .The case is remanded to the Tribunal in terms of the majority view.

(Sd.)

Ajmal Mian, J.

(Sd.)

Saiduzzaman Siddiqui, J.

(Sd.)

Mukhtar Ahmad Junejo, J.

M.B.A./H-251/S

Appeal allowed

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IN THE PESHAWAR HIGH COURT
PESHAWAR

In Re: Writ Petition No. _____/2022

Memo of Addresses

Mst. Rehana Parveen w/o Muhammad Aslam

R/o Raisan, Tehsil & District Hangu

..... *Petitioner*

Versus

- 1. Government of Khyber Pakhtunkhwa**
Through Secretary Finance
Civil Secretariat Peshawar, Khyber Pakhtunkhwa.
- 2. Accountant General Khyber Pakhtunkhwa**
Fort Road, Peshawar Cantt, Peshawar.
- 3. District Account Officer Hangu**
Hangu, Khyber Pakhtunkhwa.
- 4. Director General Health Services**
PTCL Colony, Peshawar, Khyber Pakhtunkhwa.
- 5. District Health Officer Hangu**
Old DHQ Hospital, Main Bazar, District Hangu.

..... *Respondents*

FILED TODAY

Deputy Registrar

30 APR 2022


Advocate

IN THE PESHAWAR HIGH COURT
PESHAWAR

(53)

In Re: Writ Petition No. _____/2022

Mst. Rehana Parveen w/o Muhammad Aslam
R/o Raisan, Tehsil & District Hangu.

..... *Petitioner*

Versus

1. **Government of Khyber Pakhtunkhwa**
Through Secretary Finance
Civil Secretariat Peshawar, Khyber Pakhtunkhwa.
2. **Accountant General Khyber Pakhtunkhwa**
Fort Road, Peshawar Cantt, Peshawar.
3. **District Account Officer Hangu**
Hangu, Khyber-Pakhtunkhwa.
4. **Director General Health Services**
PTCL Colony, Peshawar, Khyber Pakhtunkhwa.
5. **District Health Officer Hangu**
Old DHQ Hospital, Main Bazar, District Hangu.

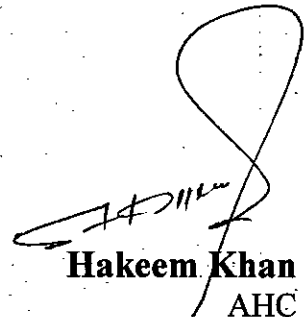
..... *Respondents*

Subject: Notice for Filing of Writ Petition.

Respected Sir,

Please take notice that I am going to file a Writ Petition before Peshawar High Court, Peshawar on __.04.2022, you are hereby informed regarding the filing of Writ Petition. Copy attached.

Petitioner
Through


Hakeem Khan
AHC

12, K-3, Phase-III, Hayatabad, Peshawar
Mobile: 03139500035

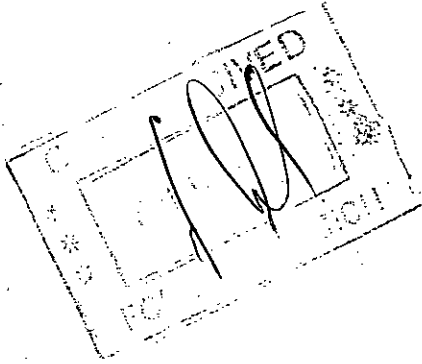
Mst.Rehana ParveenPETITIONER.

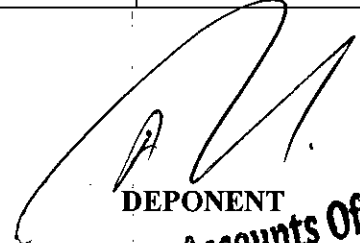
Versus

Government of Khyber Pakhtunkhwa, through Secretary Finance Peshawar & Others.....RESPONDENTS


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DEPONENT
District Accounts Officer
Hangu



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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. 1676-P/2022

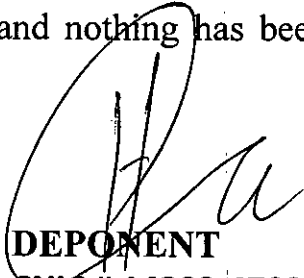
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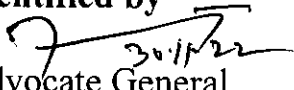
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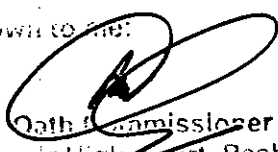
Government of Khyber Pakhtunkhwa, through Secretary Finance Peshawar & Others.....RESPONDENTS

AFFIDAVIT

I HaleemUllah Assistant Accounts Officer Hangu BPS-17 do hereby solemnly affirm that the contents of this **parawise comments/reply** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


DEPONENT
CNIC # 14202-4793533-3 ✓
03339712819

Identified by

Advocate General
Khyber Pakhtunkhwa
Peshawar.

NO:.....24746
Certified that the above was verified on solemnly affirmation before me in office, this.....30..... day of.....Nov..... 2022 by.....Haleem Ullah s/o.....AAO..... Hangu who was identified by.....A.G..... Who is personally known to me:

Oath Commissioner
Peshawar High Court, Peshawar.
30/11/22

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No: 1676-P/2022

Mst.RehanaParveenPETITIONER.

Versus

Government of Khyber Pakhtunkhwa, through Secretary Finance Peshawar &
Others.....RESPONDENTS

(Para wise reply on behalf of Respondent No.3)

Preliminary Objections:

- 1) *That the Petitioner has no cause of action.*
- 2) *That the Petitioner has no locus standi.*
- 3) *That the Petitioner has not come to this Court with clean hands.*
- 4) *That the instant Petition is barred by Law/rules.*
- 5) *That under Article 212 of the Constitution of Islamic Republic of Pakistan 1973, the Petitioner is required to come through a right forum i.e. Services Tribunal KP.*

Respectfully Sheweth:

1. Relates to record, however, liable to be proved by the Petitioner
2. That Respondent No. 3 is bound to follow the rules and instructions issued by the Provincial Govt: of KP from time to time.Hence it is pertinent to mention here that as the Petitioner was regularized w.e.f 01.07.2012 and her time period of regular service is less than Ten years, she is not entitled for pension under the pension rules.
3. Correct to the extent that after to Promulgation of an Act of 2012, the Petitioner was regularized w.e.f 01.07.2012 and after her regular service till the age of superannuation i.e. 30.06.2019 (AN) according to the office order hereby No3541-45/DPIU/HANGU/PF, dated 01-07-2019 issued by DHO Hangu is less than Ten years. Hence she is not entitled for pension under the rules.
4. Incorrect as mentioned in Para No. "3" above.
5. The action taken by DHO Hangu is correct and under the rules.
6. No Comments.


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Grounds:

- I. That respondent No. 3 is bound to follow the rules and instructions issued by the Provincial Govt. of KP from time to time and not violated any rule of Laws.

- II. Incorrect as mentioned in Para No. 3 above
- III. As mentioned in Para No. "3" above.
- IV. As mentioned in Para No. "3" above.
- V. As mentioned in Para No. "3" above.
- VI. As mentioned in Para No. "I" above
- VII. Incorrect to the extent as mentioned in Para No. "3"
- VIII. Retain to the Respondent No. 1, 4 & 5 and they are in the better position to redress the grievances of the Petitioner
- IX. No Comments.



District Account Officer
Hangu
District Accounts Officer
Hangu


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AUTHORITY LETTER

Certify that Mr. HaleemUllah Khan Assistant Accounts Officer BPS-17 of this office is hereby authorized to submit Para wise Comments/reply in the Honorable Peshawar High Court in Writ Petition No.1676-P/2022 in r/o MstRehanaParveen.


District Account Officer
Hangu
District Accounts Officer
Hangu