

6th Feb, 2023

Learned counsel for the petitioner present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents.

It is deem ^{at a} appropriate that let the respondents be submitted a detailed reply regarding the request made in the petition. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG present in the court is directed to inform the respondents for submission of written reply on the next date positively. To come for written reply/further proceedings on 07.03.2023 before S.B at camp court Swat.

(Kalim Arshad Khan)
Chairman
Camp Court Swat

SCANNED
KPST
Peshawar

07th Mar. 2023

Petitioner alongwith counsel present. Mr. Uzair Azam Khan, Additional Advocate General for the respondents present.

Reply on behalf of the respondents not submitted. Notices be issued to the respondents for submission of detailed reply on the next date. To come up for Reply/further proceedings on 04.04.2023 before the S.B at camp court, Swat. Parcha Peshi given to the parties.

(Fareeha Paul)
Member(E)
(Camp Court, Swat)

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Peshawar

06.12.2022

Tour is hereby cancelled, therefore, the case is adjourned to 03.01.2023 for the same as before.


Reader

03rd Jan. 2023

Nemo for the petitioner.


Mr. Muhammad Riaz Khan Paindakhel for respondents No. 1 and 2 and Mian Amir Qadar, District Attorney for respondent No. 3 present.

Representative of respondent No. 3 submitted an application for exclusion of respondent No. 3 from the panel of respondents being proforma party. Application is accepted and respondent No. 3 is deleted from the panel of respondents.

After going through the judgment dated 28.04.2022 of this Tribunal, it transpires that the appeal has been dismissed being devoid of merits. A question arises that why the learned counsel for the petitioner submitted instant execution petition dated 06.10.2022 on the issue which was not under discussion in that case.

Learned counsel for the petitioner is directed to appear before the Bench on the next date to explain the point. Case is adjourned to 06.02.2023 before the S.B at camp court, Swat.

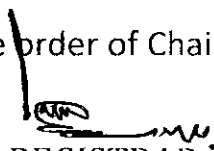

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(Fareeha Paul)
Member(E)
(Camp Court, Swat)

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 621 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.10.2022	<p>The execution petition of Dr. Mustafa submitted today by Malik Akhtar Ali Advocate. It is fixed for implementation report before touring Single Bench at Swat on <u>08.11.2022</u>. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p>By the order of Chairman  REGISTRAR</p>
	08 th Nov, 2022	<p>Petitioner in person present. Mr. Muhammad Jan, District Attorney for the respondents present.</p> <p>Respondents are directed to submit implementation report on the next date. Learned District Attorney is directed to communicate the order of this Tribunal to the respondents for compliance. To come up for submission of implementation report on 06.12.2022 before the S.B at Camp Court Swat.</p> <p></p> <p>(Kalim Arshad Khan) Chairman Camp Court Swat</p>

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Peshawar

SCANNED (Kalim Arshad Khan)
KPST Chairman
Peshawar Camp Court Swat

03rd Jan. 2023

Nemo for the petitioner.

Mr. Muhammad Riaz Khan Paindakhel for respondents No. 1 and 2 and Mian Amir Qadar, District Attorney for respondent No. 3 present.

Representative of respondent No. 3 submitted an application for exclusion of respondent No. 3 from the panel of respondents being proforma party. Application is accepted and respondent No. 3 is deleted from the panel of respondents.

After going through the judgment dated 28.02.2022 of this Tribunal, it transpires that the appeal ^{has been dismissed} being devoid of merits ~~stood dismissed~~. A question ^S would arise ^h that why the learned counsel for the petitioner submitted instant execution petition dated 06.10.2022 on the issue which was not under discussion in that case.

Learned counsel for the petitioner ^{is directed to} ~~may~~ appear before the Bench on the next date to explain the point. Case is adjourned to 06.02.2023 before the S.B at camp court, Swat.

(Fareeha Paul)
Member(E)
(Camp Court, Swat)

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

Dr. Mustafa
..... Appellant

Versus

Soult Bpk
..... Respondents

S NO	CONTENTS	YES	NO
1.	This petition has been presented by: <u>Advocate</u> <u>Court</u>	√	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
3.	Whether appeal is within time?	√	
4.	Whether the enactment under which the appeal is filed mentioned?	√	
5.	Whether the enactment under which the appeal is filed is correct?	√	
6.	Whether affidavit is appended?	√	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	√	
8.	Whether appeal/annexures are properly paged?	√	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
10.	Whether annexures are legible?	√	
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?	√	
13.	Whether copy of appeal is delivered to AG/DAG?	√	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
15.	Whether numbers of referred cases given are correct?	√	
16.	Whether appeal contains cutting/overwriting?	x	
17.	Whether list of books has been provided at the end of the appeal?	√	
18.	Whether case relate to this court?	√	
19.	Whether requisite number of spare copies attached?	√	
20.	Whether complete spare copy is filed in separate file cover?	√	
21.	Whether addresses of parties given are complete?	√	
22.	Whether index filed?	√	
23.	Whether index is correct?	√	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Masud Akhtar Ar Khan, Advocate
Mardan.

Signature:- [Signature]

Dated:- 10/10/2021

DBA Mardan

Before the service tribunal, Khyber Pakhtunkhwa,

Peshawar

Petition No. 621 /2022

SCANNED
KPST
Peshawar

In

Service Appeal No. 54/2019

Decided on **28.04.2022**

1. Dr. Mustafa Ex senior medical officer category C Hospital
Khwazakhela swat

.....Appellant/petitioner

Versus

Govt. of Khyber Pakhtunkhwa and othersRespondents

INDEX

S.NO	Description of Documents	Annexure	pages
1.	Grounds of petition with affidavit		1-2
2.	Copy of judgement in Appeal No.	A	3-8
3.	Wakalat Nama		

Dated:06.10.2022

Appellant


AKHTAR ALI KHAN

Advocate DBA Mardan .

Cell# 0302#8192993

0346#4984757

Through

1

**before the service tribunal, khyber pakhtunkhwa
Peshawar**

E. Petition no. 621 /2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1619

Dated 18-10-2022

In

Service Appeal No. 541 /2019

Dr. Mustafa medical officer Ex category hospital khwaza khela swat

.....Appellant/petitioner

Versus

Govt. of Khyber Pakhtunkhwa and othersrespondents

1. Govt. of Khyber Pakhtunkhwa through chief secretary, civil secretariat, Peshawar.
2. Secretary, Govt. of Khyber Pakhtunkhwa, Health Department, Khyber Pakhtunkhwa, Peshawar.
3. Secretary of Khyber Pakhtunkhwa law & parliamentary affairs department, civil secretariat, Peshawar.
4. Secretary to Govt. of Khyber Pakhtunkhwa, establishment department, civil secretariat, Peshawar.
Secretary to finance department, Govt. of Khyber Pakhtunkhwa, civil secretariat, Peshawar.Respondents

**RECUTION PETITION OF JUDGEMENT / ORDER IN SERVICE APPEAL
NO. 541/2019 DECIDED ON 28.04.2022 TITLED AS MUSTAFA VS.
GOVT. OF KPK**

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Respectfully sheweth

1. That the petitioner while employed as Medical Officer was appointed on contract basis on 25-11-1995 and was regularized on 01-01-2001.
2. That the petitioner challenged said order before this Hon'ble court vide Appeal No.514/2019 which was accepted on 28.04.2022 and extended the benefit of pensionary benefits for the period of contract period w.e.f 1995 to 2001 (05 years)
3. That since make then 6 months has elapsed/ passed up till now the respondents have not implemented the order / judgment rather they have refused.

It is therefore prayed that the respondents may be directed to implement the judgment in questions in letter and spirit with cost of

Dated:06-10 - 2022

Appellant



AKHTAR ALI KHAN

Through

Advocate DBA Member.

Affidavit

I, do hereby solemnly affirm and declare on oath that the contents of the petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble court.




Deponent

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 541/2019

Date of Institution ... 03.04.2019

Date of Decision ... 28.04.2022



Dr. Mustafa, Medical Officer, Category-C Hospital Khawaza Khila, Swat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary and four others.

... (Respondents)

MALIK AKHTAR ALI KHAN,
Advocate

--- For appellants.

MR. NASEER-UD-DIN SHAH,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MR. MIAN MUHAMMAD

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- This single judgment is aimed at the disposal of the instant as well as connected Service Appeals bearing No. 542/2019 titled "Mohammad Ali Jan Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 543/2019 titled "Dr. Fazal Subhan Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 544/2019 titled "Dr. Jamil Ahmad Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 545/2019 titled "Dr. Bakht Zada Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 546/2019 titled "Dr. Faridoon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 1054/2019 titled "Sardeep Kumar Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others" and 1055/2019 titled

ATTESTED

MEMBER (EXECUTIVE)
Khyber Pakhtunkhwa Services Tribunal Peshawar

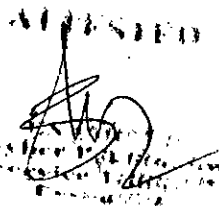


"Dr. Abdul Ghafoor Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", as common questions of law and facts are involved in all the above mentioned appeals.

2. Briefly stated the facts as alleged by the appellants in their appeals are that the appellants namely Dr. Mustafa, Dr. Muhammad Ali Jan, Dr. Fazal Subhan, Dr. Jamil Ahmed, Dr. Bakht Zada and Dr. Sardeef Kumar were appointed as Medical Officers on contract basis in the year 1995, while the appellants namely Dr. Faridoon and Dr. Abdul Ghafoor were also appointed as Medical Officers on contract basis in the year 1999. On promulgation of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, their services were regularized with effect from 01.07.2001, however the intervening period of their contract services till 01.07.2001 was not considered for the purpose of seniority, therefore, the appellants filed Writ Petition No. 3518-P/2017 before the august Peshawar High Court, Peshawar, which was dismissed vide judgment dated 30.10.2018, being not maintainable, however it was observed that petitioners may approach the Services Tribunal for redressal of their grievance, hence the instant service appeals.

3. Notices were issued to the respondents, but they failed to submit reply/comments, despite several opportunities being given to them, therefore, the appeals were fixed ultimately for arguments.

4. Learned counsel for the appellants has contended that the contract period with effect from the date of initial appointment of the appellants till 01.07.2001 is legally required to be counted towards seniority and promotion of the appellants as seniority is reckoned from the date of initial appointment; that the appellants were performing similar duties being performed by the regular appointed Medical Officers, therefore, the period of their contract service shall be counted towards seniority; that according to Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963, the period of contract service shall be counted towards pensionary benefits of the appellants; that in light of numerous judgments

ATTESTED



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of worthy apex court, contract period shall be considered for the purpose of seniority but the respondents have wrongly and illegally ignored the judgments of worthy apex court; that the contract services of the appellants were without any break, which fact has not been considered by the respondents and resultantly, juniors to the appellants have become their seniors. Reliance was placed on 2018 SCMR 380, 1998 SCMR 969, 1991 SCMR 1765, 1993 SCMR 609, PLD 1970 Quetta 115 and unreported judgment dated 23.09.2020 passed by august Supreme Court of Pakistan in Civil Appeal No. 411 of 2020 titled "Additional Chief Secretary FATA, Peshawar and others Versus Sultan Muhammad and others".

5. On the other hand, learned Assistant Advocate General for the respondents has contended that the services of the appellants were regularized with effect from 01.07.2001 vide Notification dated 17.10.2017, which has not been challenged by the appellants through filing of departmental appeals within the statutory period of 30 days, therefore, the appeals are not at all maintainable; that the departmental appeals were allegedly filed by the appellants in the year 2018 and 2019, which are badly time barred, rendering their service appeals liable to be dismissed on this score alone; that the contract period of services of the appellants could not be counted for the purpose of their seniority as their seniority shall be counted with effect from the date of regularization of their services; that the seniority of the appellants has rightly been reckoned from the date of regularization of their services, therefore, the appeals in hand may be dismissed with costs. Reliance was placed on 2022 SCMR 448 and 2019 PLC (C.S) 740.

6. We have heard the arguments of learned counsel for the appellants as well as learned Assistant Advocate General for the respondents and have perused the record.

7. A perusal of the record would show that some of the appellants were appointed as Medical Officers (BPS-17) on contract basis in the year 1995, while some were appointed as such in the year 1999. In view of sub-section 2 of Section-2 of

ATTESTED
ASSISTANT ADVOCATE GENERAL
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 and the proviso under sub-section-4 of Section-19 of Civil Servants (Amendment) Act, 2013 as well as judgment dated 18.11.2018 passed by august Peshawar High Court, Peshawar in Writ Petition No, 1510 of 2007, Government of Khyber Pakhtunkhwa Health Department issued Notification dated 17.10.2017, whereby services of the appellants were regularized with effect from 01.07.2001. The core issue requiring determination is that as to whether the period of contract service of the appellants could be counted towards their seniority or not? In order to properly appreciate the controversy in question, it would be advantageous to go through para-1 (a) and (b) of Section-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, which is reproduced as below:-

"Seniority.---(1) *The seniority inter se of civil servants [appointed to a service, cadre or post] shall be determined...*

- (a) *In the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission [or, as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and*
- (b) *In the case of civil servants appointed otherwise, with reference to the dates of their continuous regular appointment in the post; provided that civil servant selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se seniority as in the lower post".*

Explanation-I, ---.....

Explanation-II, ---.....

Explanation-III, ---.....

(2).....

[(3).....]

ATTESTED

Handwritten signature and official stamp of the Khyber Pakhtunkhwa Service Tribunal.

8. While going through clause-b of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules,

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1989, it is clear that the period of contract services of the appellants could not be counted for the purpose of seniority. Moreover, Section-8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 also 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. It is by now well settled that services rendered by an employee on ad-hoc or contract basis cannot be counted for the purpose of their seniority as the same will be counted from their regular appointment. Wisdom in this respect derived from the judgment of august Supreme Court of Pakistan reported as 2022 SCMR 448. The appellants have themselves mentioned in para-2 of their respective appeals that their appointment on contract basis was a stop gap arrangement. Furthermore, according to para (1) of offer of appointment, the appellants were appointed for a period of one year or till the availability of selectees of Public Service Commission or return of original incumbents from leave/deputation, whichever is earlier. The appellants were not even falling within the category of civil servants prior to their regularization on 01.07.2001. The appellants thus cannot claim their seniority vis-à-vis the Medical Officers, who were appointed on regular basis during the period during which the appellants were serving on contract basis. The judgments relied upon by learned counsel for the appellants are distinguishable and could not in any way foster the claim of the appellants regarding counting of their contractual period of employment for the purpose of their seniority.

9. One of the plea taken by learned counsel for the appellants is that as the period of contract service could be counted towards pensionary benefits in view of rules 2.2 and 2.3 of Pension Rules, therefore, the same has to be considered for the purpose of seniority also. Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963, are reproduced as below:-

" **2.2 Beginning of Service-** Subject to any special rules, the service of Government servant begins to qualify for pension when he

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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takes over charge of the post to which he is first appointed.

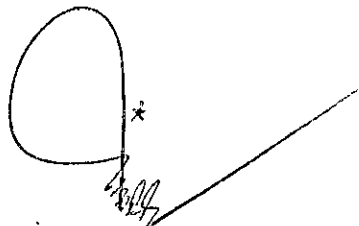
Rule 2.3 Temporary and officiating service —
Temporary and officiating service shall count for pension as indicated below:-

- (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".

10. While going through the above mentioned reproduced Pension Rules, it is evident that the period of contract employment could be considered only for the purpose of counting qualifying service for pensionary benefits and not for the purpose of seniority or any other benefits.

11. Consequently, the appeal in hand as well as connected Service Appeals bearing No. 542/2019, 543/2019, 544/2019, 545/2019, 546/2019, 1054/2019 and 1055/2019, being devoid of any merits stand dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.04.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



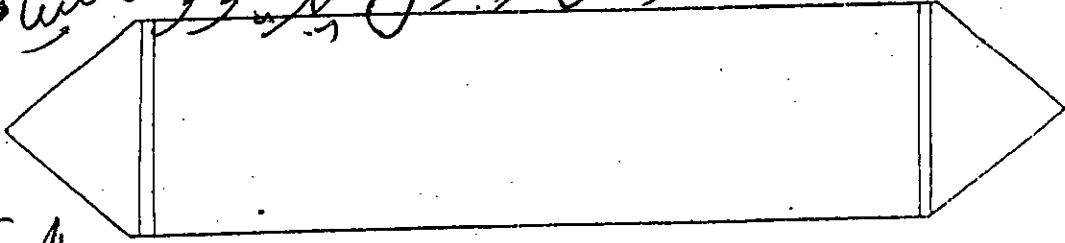
(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Date of Presentation of Application	13/8/22
Number	2400
Page No.	26/
Volume	5
Index	26/
Name of Applicant	
Date of Completion of Case	22/8/22
Date of Delivery of Copy	22/8/22

Certified to be true copy

EXCISE OFFICER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

بعد الت مروسس ٹریبونل ہندوستان کے لئے



2 جناب د. کمال

بنام حکومت ہندوستان

موزعہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کشمیر کیلئے سید احمد علی خان اور سید حرف
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار دیا گیا۔ نیز
دیکل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی بڑائی اور منسوخ
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے دہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

د. کمال
M.M.

المرتوم _____ ماہ _____ 20

بمقام کشمیر کے لئے منظور ہے۔
طوبہ احمدی
M.A.

0302-8192983
0846-4984757