

Order

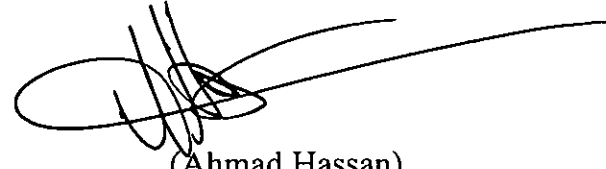
12.11.2019

Appellant with counsel present. Mr. Muhammd Riaz Khan Paindakhel, Asst: AG, Mr. Ziaullah, DDA alongwith Mr. Shairbaz, SO for respondents present. Arguments heard and record perused.

This appeal is also dismissed as per detailed judgment of today placed on file in service appeal No. 318/2018 titled "Dr. Akram Khan-vs- Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and four others." Parties are left to bear their own cost. File be consigned to the record room.

Announced:

12.11.2019



(Ahmad Hassan)
Member



(Muhammad Amin Khan Kunid)
Member

02.09.2019

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present.

Learned District Attorney stated that the present appeal was assigned to Mr. Ziaullah, Deputy District Attorney who is not available today due to death of his relative. He therefore requested for adjournment. Adjourned to 25.10.2019 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

25.10.2019

Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 12.11.2019 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

18.03.2019

Counsel for the appellant and Addl. AG for the respondents present.

Learned Counsel for the appellant requests for time to prepare the brief also in view of previous judgments of this Tribunal regarding the preposition involved in the instant appeal.

Adjourned to 08.05.2019 before the D.B.


Member


Chairman

08.05.2019

Counsel for the appellant and Addl: AG for respondents present.

Due to paucity of time, the instant matter is adjourned to 03.07.2019 for arguments before D.B.


Member


Chairman

03.07.2019

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 02.09.2019 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

12.03.2019

Counsel for the petitioner and Mr. Ziaullah,
DDA for the respondents present.

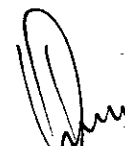
Instant application for restoration of Service
Appeal No. 845/2015 is resisted by learned DDA on
the sole ground of being barred by time.

The appeal was dismissed for non-prosecution
on 25.09.2018 while the certified copy of order
suggests that the appellant applied for the same on the
date the appeal was dismissed. The requisite copy was
prepared and delivered to the appellant on 05.10.2018.
The application in hand was filed on 12.10.2018 which
is very much within the prescribed time.

It is noted in the application that the absence of
appellant was due to the fact that he was stuck-up in
traffic due to construction of BRT Project while
learned counsel for the appellant was indisposed on the
relevant day. It is further noted that the default in
appearance was not willful on the part of the appellant
but was due to the unavoidable circumstances. The
application is duly supported by an affidavit.

In view of the above, the application is allowed
on payment of cost of Rs. 1000/- . The appeal shall be
restored to its original number and shall come up for
arguments alongwith identical appeals on 18.03.2019
before the learned D.B-II.


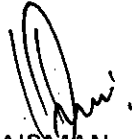



Member


Chairman

Form-A
FORM OF ORDER SHEET

Court of _____

Appeal's Restoration Application No. 372/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.10.2018	<p>The application for restoration of appeal no. 845/2015 submitted by Mr. Muhammad Ayub Shinwari Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 12/10/18</p>
2		<p>This restoration application is entrusted to D. Bench to be put up there on <u>7-2-2019</u></p> <p style="text-align: right;"> CHAIRMAN</p>
07.02.2019		<p>Counsel for the applicant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Original record is not available before the Tribunal therefore, original record be requisitioned for the next date. Adjourned. Case to come up for original record as well as replication and arguments on restoration application on 12.03.2019 before D.B.</p> <p style="text-align: center;">  (AHMAD HASSAN) MEMBER  (MUHAMMAD AMIN KHAN KUNDI) MEMBER </p>

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Restoration Application No. 372/2018

C.M No _____/2018

Khyber Pakhtunkhwa
Service Tribunal

in
In re-Service Appeal No 845 /2015

Diary No. 2609

Dated: 12-10-18

Dr Sajjad Ahmad

Versus

Govt of KP & others

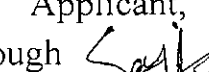
**Application for restoration of the title Service Appeal
dismissed in default vide order dated 25-09-2018**

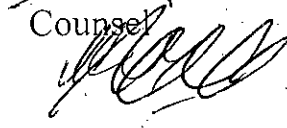
Respectfully Sheweth,

The applicant submits as follows:

1. That the title Service Appeal was pending adjudication and is dismissed in default vide order dated 25-09-2018.
2. That the non appearance of the appellant was because of the fact that he was stuck in traffic because of the construction of BRT Project and the counsel was ill. Despite illness, the counsel appeared before the court on the date fixed wherein he was informed that the title Appeal is dismissed in default.
3. That the default is neither willful nor deliberate but was due to unavoidable aforesaid reasons and the application is well within time.
4. That it is a well settled principle laid down by August Supreme Court of Pakistan and this Honorable Tribunal that the cases should be decided on merits and not on technicalities. Furthermore the applicant has got a good case and valuable rights of the applicant are involved.
5. That the applicant craves permission of this learned Tribunal to rely on other grounds and produced any document in support of the instant application at the time of arguments.

It is, therefore, prayed that on acceptance of the instant application, the order dated 25-09-2018 whereby the title Appeal is dismissed in default may kindly be set aside and the appeal may kindly be decided on merits.

Applicant,
Through 

Counsel 

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

In re service appeal No. _____/2015

Dr. Muhammad Sajjad Ahmad.....Petitioner

V E R S U S

Govt of KPK through Secty & othersRespondents

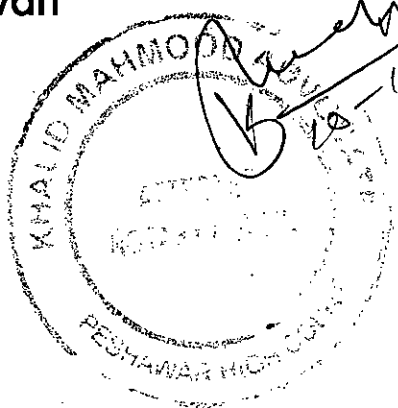
AFFIDAVIT

I, Dr. Sajjad Ahmad S/o Abdul Khaliq, (herein appellant) , do hereby solemnly affirm and declare on oath that the contents of the accompanying restoration application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

DEPONENT

Identified by:

Muhammad Ayub Khan Shinwari
Advocate, Peshawar



3

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 845



Provisional
Service Tribunal
Diary No. 885
28/7/15

Dr Sajjad Ahmad S/o Abdul Khaliq,
S.M.O, H.M.C, Peshawar

.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Department of Health, Peshawar.
3. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Department of Finance, Peshawar.
5. Secretary to Government of Khyber Pakhtunkhwa, Department of Establishment, Peshawar.

.....Respondents

Service Appeal under Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned seniority list.

[Handwritten signature]
28/7/15

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

ATTESTED

[Handwritten signature]

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

1. That the Appellant was appointed as Medical Officer (BPS-17) in the respondent Department on contract basis for a period of one year or till the availability of the Public Service Commission Selectee/return of the original incumbent from leave/deputation whichever is earlier by the competent authority in the prescribed manner after fulfilling all the codal formalities on 23-11-1995. (Copy of the appointment order is attached herewith as Annex-A)
2. That the said contract was extended from time to time without any break. Meanwhile the appellant qualified Public Service Commission exam and was appointed as Medical Officer (B-17) in the Health Department vide Notification dated 15-09-1997. (Copy of the Notification is attached herewith as Annex-B)

25.09.2018

Appellant absent. Learned counsel for the appellant absent. Mr. Muhammad Jan Learned Deputy District Attorney present. Case called time again but none appeared on behalf of the appellant. Consequently the present service appeal is dismissed in default. No order as to costs. File be consigned to the record room.

sd-

M. Hamid Mughal
member

sd-

Hussain Shah
member

Certified to be true copy
sd-
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	25-9-2018
Number of Applications	200
Copying Fee	63
Usport	()
Total	62
Name of Deputy Registrar	sd-
Date of Original	5-10-2018
Date of Delivery of Copy	5-10-2018

12.04.2018

Junior to counsel for the appellant and Addl. AG alongwith Hazrat Shah, Superintendent for the respondents present. Senior counsel for the appellant is not in attendance. Seeks adjournment. Granted. To come up for arguments on 27.06.2018 before the D.B.

(Muhammad Amin Kundi)
Member

Chairman

27.06.2018

Appellant absent. Learned counsel for the appellant and Mr. Kabirulah Khattak, Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 16.08.2018 before D.B.

(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

16.08.2018

Appellant absent. Learned counsel for the appellant absent. Mr. Usman Ghani learned District Attorney present. Adjourned. To come up for arguments on 25.09.2018 before D.B.

(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

25.09.2018

Appellant absent. Learned counsel for the appellant absent. Mr. Muhammad Jan Learned Deputy District Attorney present. Case called time again but none appeared on behalf of the appellant. Consequently the present service appeal is dismissed in default. No order as to costs. File be consigned to the record room.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

ANNOUNCED


25.09.2018

03.07.2017

Counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Counsel for the appellant seeks adjournment to produce recent judgments of the Honorable Peshawar High Court, Peshawar. ^{for assistance} Adjourned. To come up for such record and arguments on 20.10.2017 before D.B.



(Muhammad Hamid Mughal)
Member



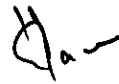
(Gul Zeb Khan)
Member

20.10.2017

Clerk to counsel for the appellant and Mr. Usman Ghani, District Attorney for respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 30.11.2017 before D.B.



Member
(Executive)



Member
(Judicial)

30.11.2017

Counsel for the appellant and Mr. Ziaullah, DDA for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 08.02.2018 before the D.B.



Member



Chairman

08.02.2018

None present for appellant and Mr. Muhammad Jan, DDA for the respondents present. To come up for arguments on 12.04.2018 before the D.B.



Member



Chairman

18.07.2016

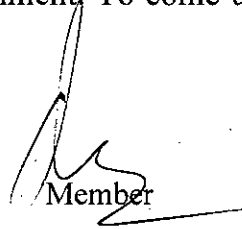
Clerk to counsel for the appellant and Mr. Amjad Ali, Assistant alongwith Mr. Ziaullah, GP for respondents present. Rejoinder submitted. To come up for arguments on 18.11.2016.


Member


Member

18.11.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 16.3.2017 before D.B.


Member


Chairman

16.03.2017

Clerk counsel for appellant and Mr. Muhammad Adeel Butt, Additional AG for respondents present. Clerk counsel for appellant requested for adjournment as learned counsel for appellant is not in attendance today. Adjournment granted. To come up for arguments on 03.07.2017 before D.B.


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AMIR NAZIR)
MEMBER

BA

12.10.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was initially employed as Medical Officer on contract basis in the year 1995 and after qualifying PSC examination appointed on regular basis in the year 1997. That one Doctor Muhammad Iqbal was appointed on contract basis in the year 1998 and was regularized in service by the Governor with effect from the date of appointment vide notification dated 9.12.2006. That the appellant is entitled to similar treatment. That the appellant preferred departmental representation on 2.4.2015 which was not responded and hence the instant service appeal on 28.7.2015.

That the appellant is entitled to be appointed on regular basis with effect from the date of his contract appointment as treatment meted out to Doctor Muhammad Iqbal referred to above.

Points urged need consideration. Admit: Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 25.01.2016 before S.B.

Appellant Deposited
Security & Process Fee

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11-00-8-11

[Handwritten signature]
Chairman

25.1.2016

Agent of counsel for the appellant, M/S Muhammad Arshed, SO and Yar Gul, Senior Clerk alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 29.3.2016 before S.B.

[Handwritten signature]
Chairman

29.03.2016

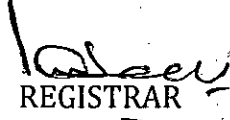



Agent of counsel for the appellant, M/S Muhammad Arshed, SO and Yar Gul, Senior Clerk alongwith Assistant A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 18.7.2016.

[Handwritten signature]
Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 845/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	28.07.2015	<p>The appeal of Dr. Sajjad Ahmad presented today by Mr. Muhammad Ayub Shinwari Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	31-7-15	<p>This case is entrusted to S. Bench ^{-II} for preliminary hearing to be put up thereon <u>4-8-2015</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	04.08.2015	<p>None present for appellatant. Notice be issued to counsel for the appellatant for 10.9.2015 for preliminary hearing.</p> <p style="text-align: right;"> Member</p>
4	10.09.2015	<p>None present for appellatant. Notice be repeated to counsel for the appellatant for <u>12-10-15</u> for preliminary hearing.</p> <p style="text-align: right;"> Member</p>

*noted per
S. Mujib*

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 845 /2015

Dr Sajjad Ahmad versus Govt of KPK through Chief Secty and others

INDEX

S. No	Description of Document	Dated	Annex	Pg No
1.	Service Appeal and affidavit			1-4
3.	Copy of Appointment Order	23-11-95	A	5-0
4.	Copy of Notification No SOH-IV/3-12/93	15-09-1997	B	6-9
5.	Appointment order of Dr M Iqbal	08-07-98	C	10-1
6.	Copy of Notification of regularization of Dr M Iqbal	09-12-06	D	11-0
7.	Copy of Departmental Appeal			12-
8.	Power of Attorney			

Appellant,

Through

Muhammad Ayub Khan Shinwari
Advocate Peshawar

Chamber:

11-A, Haroon Mansion,
Khyber Bazar, Peshawar.

Cell No 03219068514

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 845 /2015

K.W.P Province
Service Tribunal

Diary No. 885

Date 28/7/15

Dr Sajjad Ahmad S/o Abdul Khaliq,
S.M.O, H.M.C, Peshawar

.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Department of Health, Peshawar.
3. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Department of Finance, Peshawar.
5. Secretary to Government of Khyber Pakhtunkhwa, Department of Establishment, Peshawar.

.....Respondents

**Service Appeal under Section 4 of Khyber Pakhtunkhwa
Service Tribunal Act, 1974 against the impugned
seniority list.**


Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

1. That the Appellant was appointed as Medical Officer (BPS-17) in the respondent Department on contract basis for a period of one year or till the availability of the Public Service Commission Selectee/return of the original incumbent from leave/deputation whichever is earlier by the competent authority in the prescribed manner after fulfilling all the codal formalities on 23-11-1995. (Copy of the appointment order is attached herewith as **Annex-A**)
2. That the said contract was extended from time to time without any break. Meanwhile the appellant qualified Public Service Commission exam and was appointed as Medical Officer (B-17) in the Health Department vide Notification dated 15-09-1997. (Copy of the Notification is attached herewith as **Annex-B**)

- 3. That thereafter the Government of Khyber Pakhtunkhwa erstwhile NWFP promulgated NWFP Civil Servants (Amendment) Act (IX) of 2005 wherein the services of all the contract employees were regularized.
- 4. That in pursuance of the aforesaid Amendment Act, the services of all the contract employees were regularized. Similarly the services of Dr Mohammad Iqbal who was appointed on 08-07-1998 much later than the Appellant was regularized w.e.f 08-07-1998 i.e., from the date of initial appointment vide Notification dated 09-12-2006. (Copies of the referred Notification are attached herewith as **Annex-C & D** respectively)
- 5. That in the aforesaid developments, the Appellant filed a Departmental Appeal for regularizing his services with effect from the initial date of appointment i.e., 23-11-1995 and give him due seniority, pension, pay fixation and other back benefits. (Copy of the Departmental Appeal is attached as **Annex-E**)
- 6. That the statutory time for deciding the Departmental Appeal has lapsed, hence this Service Appeal on the following amongst other grounds:

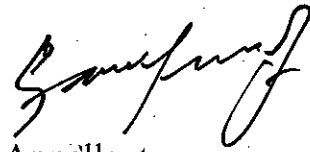
Grounds:

- a. That the treatment met to the appellant is against the law, illegal, unlawful and without lawful authority, thus calling interference of this Honorable Tribunal.
- b. That the treatment met to the Appellant is against the fundamental rights of the Appellant enshrined and protected under the Constitution of Islamic Republic of Pakistan, 1973.
- c. That the treatment met to the appellant is based on colorful exercise of powers which is not warranted under law. The appellant has not been treated at par with Dr Muhammad Iqbal, which shows the discrimination met to the appellant.
- d. That as per judgment of August Supreme Court of Pakistan reported in 2014 SCMR 1289(d), the seniority is to be reckoned from the initial date of appointment and not from the date of confirmation or regularization.
- e. That under rule 2.3(ii) of West Pakistan Civil Services Pension Rules, 1963 the service of the appellant being continuous officiating and temporary during the period of 23-11-1995 to 15-09-1997 as Medical Officer in Health Department of Khyber Pakhtunkhwa is to be counted for the purpose of pension, hence as law, rules and judgments of the apex courts the services of the appellant are to be regularized with effect from his initial date of appointment with all back benefits.
- f. That as per settled principles of interpretation of Statutes, the statute has to be read as a whole and its provisions cannot be read in isolation. In the instant case Section 2(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 and its other provisions read with its Section 19 amended by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 entitles the Appellant for fixation of his seniority, pay, pension and other preivilleges with effect from initial date of appointment.

- g. That the treatment met to the Appellant is based on discrimination, furthermore the appellant has not been treated at par with other colleagues and against the principles of natural justice and the dictums of superior Courts.
- h. That the Petitioner craves permission of this Honorable Tribunal to rely on other grounds at the time of arguments and produce any additional document if required in support of his Petition.

It is, therefore, prayed that on acceptance of this Service Appeal the respondents may kindly be directed to:

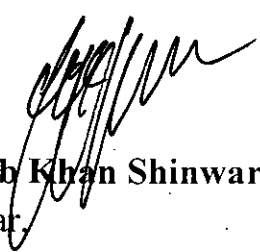
- a. Regularize the services of the appellant with effect from his initial date of appointment i.e., 23-11-1995, and give him due seniority, pension, pay fixation and other back benefits w.e.f 23-11-1995; and
- b. Treat the appellant at par with Dr Muhammad Iqbal and
- c. Any other relief deemed appropriate by this Honorable Tribunal in the circumstances of the case which has not been prayed for, may graciously be granted.



Appellant

Through

Muhammad Ayub Khan Shinwari
Advocate Peshawar.



IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No _____/2015

Dr Sajjad Ahmad versus Govt of KPK through Chief Secty and others

Affidavit

I, Dr Sajjad Ahmad S/o Abdul Khaliq, S.M.O, H.M.C, Peshawar do hereby solemnly affirm and declare on oath that the contents of the instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



Deponent

Dr Sajjad Ahmad



ANNEX A 5

AMER

L.M.O. 12/11/95

DIRECTORATE GENERAL HEALTH SERVICES, N.W.F.P. PESHAWAR.
NO _____/E.I.
DT: PESH: THE _____/_____/_____

To: Dr. Sajjad Ahmad C/O Abdul Khaliq.
Subject: OFFER OF APPOINTMENT ON CONTRACT BASIS.

Memorandum: Reference your application on the above subject for the post of Medical Officer/Women Medical Officer/Dental Surgeon.

01. The competent authority is hereby appoint you as Medical Officer/Women Medical Officer/Dental Surgeon in the Health Department, Government of NWFP, on contract basis in B-17 for a period of one year or till the availability of Public Service Commission selectee/return of original incumbent from leave/deputation whichever is earlier, on the terms and conditions laid down in the attached Agreement Deed. You shall be posted to MC SSSI Charsadda. This contract appointment is not transferable.
02. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
03. If you accept the offer of appointment on contract basis as a Medical Officer/Women Medical Officer/Dental Surgeon, the attached Agreement Deed should be filled in duly signed by you and should report at your own expense.
04. If you fail to report for duty at the station specified in Para-3 above within (10) Ten days, the offer of appointment on contract basis will be deemed to have been withdrawn automatically and no further correspondence shall be entertained in this respect.

SD/_____
(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

NO 29016-19 /E.I. DATED PESHAWAR THE 23/11/1995.

Copy forwarded to the :-

01. Secretary to Govt. of NWFP, Health Department, Peshawar for information w/r to his letter No.SO(H)IV/3-18/93, dated 16.11.1995.
02. M.S., DHO: Hospital, _____ for information and u/action.
03. Divisional Director Health Services, Peshawar.
04. District Health Officer/Agency _____ - Charsadda.
05. Accountant General, N.W.F.P. Peshawar.
06. District/Agency Accounts Officer, Charsadda.

for information and necessary action.

DI. FOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

ATTORNEY ADVISOR

P/Roll-II
MA
6/2

D-666

ANNEX B 6
DATED 15-9-1997.

NOTIFICATION.

NO. SOH-IV/3-12/93. On the recommendation of NWFP Public Service Commission, the Governor NWFP is pleased to appoint the following candidates as Medical Officer(B-17) in relaxation of ban on the Health Department on purely temporary basis with immediate effect:-

<u>S.No.</u> <u>Merit Order.</u>	<u>Name of Doctor.</u>
1.	Dr. Waqar Alam Jan S/O Alam Jan 63-D S3 Afghani Road, University Town, Peshawar.
2.	Dr. Muhammad Tufail S/O Mohammad Sarwar, Rughal Medical Hall P.O. Topi District Swabi.
3.	Dr. Izzat Khan Mohmand S/O Madad Khan Mohmand C/O Mohammad Rehman H.No. 227 Street wali Mohammad Nauthia, Jaceem Peshawar.
4.	Dr. Maroof Khan S/O Anar Gul C/O Yaqoob Khan Driver, Village Seni Gumbat Mohallah Khadr Khail, District Kohat.
5.	Dr. Farooq Ahmad S/O Gulzar Khan Village, P.O. & Tehsil Lahore Mohallah Tawas Khani Distt: Swabi.
6.	Dr. Khalid Usman S/O Taj Mohammad H.No. D-3-235, Phase-I, Hayatabad Peshawar.
7.	Dr. Shafiq Ahmad S/O Fazli Rahim Kaker, Gilla Village and PO Turangzai Tehsil & Distt: Charsadda.
8.	Dr. Arshad Hussain S/O Ghulam Sarwar Village Shewa Tehsil & Distt: Swabi.
9.	Dr. Syed Imran Shah S/O Syed Sultan Hussain Shah, 96 Saddar Road, Peshawar Cantt.:
10.	Dr. Muhammed Saqib S/O Ghulam Rabbani, C/O Jamila Qureshi Govt: Girls College, Abbottabad.
11.	Dr. Iftikhar Ahmad Khan S/O Muhammad Idrees Khan H.No. 131/L-I Phase-3, Hayatabad Peshawar.
12.	Dr. Abid Halim S/O Mian Mohammad Halim, h.No. 134, Street No. 4 Sector K.I, Phase-III, Hayatabad Peshawar.
13.	Dr. Shad Mohammad S/O Mohammadullah Khan, Village Sufaid Dheri, PO Peshawar University

*ATTACHED
BY...*

Contd: P-2.

7

- 208. Dr. Muhammad Usman S/O Muhammad Aslam Khan,
C/O Qazi Medical Centre, Main Gul Bahar Road,
Peshawar.
- 209. Dr. Wajid Ali S/O Ikrām-ud-Din, Rehman Abad Janza
Road, Nowshera Kalan Tehsil and Distt: Nowshera.
- 210. Dr. Arsala Khan S/O Chakhal Khan,
Bannu Road Thal, Distt: Kohat.
- 211. Dr. Noman Khan S/O Zafar Ullah Khan,
H.No: 423-B, Railway Road near Lady Park Tehsil
and Distt: Bannu.
- 212. Dr. Saeedullah S/O Ehsanullah Khan Village
and P.O. Maini Mohallah Irabzai, Tehsil and
Distt: Swabi.
- 213. Dr. Kalimullah Khan S/O Ali Khan Khel.
Al-Shifa Trust, C.H. Hospital Jhelum Road,
Rawalpindi.
- 214. Dr. Mohammed Ishaq Khan S/O Mohammad Younas Khan C/O
Afridi Hotel Naz Cinema Road, Chowkyadgar Peshawar.
- 215. Dr. Muhammad Naem S/O Muhammad Rahim, Phase-II
Sector-H, House No. 47, Hayatabad Peshawar.
- 216. Dr. Obaidullah Khan S/O Mohammad Ayub Khan,
Village and P.O. Phandc Payan Teh: and Distt: Peshawar.
- 217. Dr. Mohammad Arifullah S/O Shanal Khan C/O Dr. M. Shaukat
Sayyad Jamia Eid Gan North Circular Road, DIKhan.
- 218. Dr. Mohammed Azam Khan S/O Fida Mohammad Khan,
Mohallah Ruzgan Khel Mardan.
- 219. Dr. Ejaz Hussain Zaidi S/O Muhammad Mahmood Zaidi,
H.No: 19, Zaryab Colony, Peshawar.
- 220. Dr. Sajjad Ahmad Khan S/O Abdul Khaliq Khan,
H.No. 19 Street No. 1 Sector NOK 4, Phase-3
Hayatabad Peshawar.
- 221. Dr. Mushtaq Ahmad S/O Ali Gohar Khan village
and P.O. Gohar Abad Havelian Abbottabad.
- 222. Dr. Anwar Ali S/O Qamar Ali Village Dhol P.O.
Gul Munara Swabi Mardan.
- 223. Dr. Shiraz Qayyum Afridi S/O Abdul Qayyum Afridi,
214 HI St 3 Phase-II, Hayatabad Peshawar.
- 224. Dr. Mohammad Fayyaz Khan S/O Muhammad Khan
1297-B, Academy Town Near GHS for Boys Sufaid Dheri
Peshawar University.
- 225. Dr. Muhammad Ashraf S/O Khan Walidad Village and
P.O. Kameer Killa FR Bannu.
- 226. Dr. Muhammad Ishaq S/O Mohammad Dostan,
Village and P.O. Kot Tehsil and Distt:
Charsadda.
- 227. Dr. Alamzeb Khan S/O Laic Khan
Village Land, P.O. Eoya Tehsil
Datta Khel, N.W. Agency.

ATTESTE
AD No. 19/2

8

- 263. Dr. Bahadar Shah S/O Mchammad Sher Ali Khan, Village Chindakhora, P.O. Kabal Tehsil Kabal Distt: Swat.
- 264. Dr. Malik Mohammad Iqbal S/O Malik Mohammad Ismail village Banda Munir Khan P.O. Sarai Niamat Khan Tehsil and Distt: Haripur.
- 265. Dr. Abdul Mujeeb S/O Abdul Waheed, H.No. 1576 Toru Building, Abbottabad.
- 266. Dr. Munir Hussain Shah S/O Syed Masoom Shah C/O Mohammad Abbass Shah United Bank Point view Branch Abbottabad.
- 267. Dr. Abdul Hameed Khan S/O Mohammad Zareen Khan SA 1013-D Rasheed Colony Sadiqabad, Rawalpindi.

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Their appointment as Medical Officer will be subject to the following :-

- a) They will be allowed minimum of BPS-17 plus other allowances as admissible under the rules.
- b) They will be on probation initially for a period of two years extendable for a further period of one year and their services will be liable for termination without any notice, if their performance/conduct is found unsatisfactory during the said period.
- c) Even after satisfactory completion of the probation period, their services will be liable to termination at any time, if warranted on one month's notice or one month's pay in lieu thereof. In case they wish to resign from service a month's notice shall be necessary or in lieu thereof a month's pay shall be forfeited.
- d) They will be governed by the provisions of the NWFP Civil Servants Act, 1973 and rules made thereunder and Govt's instructions issued from time to time.
- e) They will join duty at their own expense.
- f) They will be liable to serve any where in NWFP including FATA.
- g) Antecedent verification/medical fitness report of any one of the above appointees if received adverse his appointment shall be treated as rescinded from the date of issue of his notification.

Shah,
ttabad.
Khan

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ADY/0/11/12

9

3. If the above terms and conditions of appointment are acceptable to the above appointees they should report to the Director General, Health Services, NWFP within a period of 30 days for further posting. The appointment order shall stand withdrawn in case one failed to report within the aforesaid stipulated period.

4. The appointment of 236 Doctors who are already working as Medical Officers on contract basis is hereby terminated from the date of their taken over the charge as Medical Officer on regular basis.

5. Their services are placed at the disposal of the Director General, Health Services, NWFP for further posting. Efforts shall be made to post all the fresh appointees at their home town/District.

SECRETARY TO GOVT OF NWFP
HEALTH DEPARTMENT

Endst: No. 3-12/93

Dated 15.2.1997.

Copy forwarded to the :-

1. Deputy Inspector General of Police, Special Branch, Peshawar.
2. Director General Health Services, NWFP, Peshawar.
3. Accountant General, NWFP, Peshawar.
4. Secretary NWFP Public Service Commission, Peshawar w/v to his letter No. 17804 Dated 10.7.1997.
5. Manager, Govt Printing Press, Peshawar.
6. All District/Agency Accounts Officer in NWFP.
7. PS to Minister for Health NWFP.
8. PS to Chief Secretary NWFP, Peshawar.
9. PS to Secretary Health NWFP.
10. PRO to Secretary Health NWFP.
11. All doctors concerned.

ATTESTED
ADVO CMTS

Z. Haider
(ZAMIR HAIDER)
SECTION OFFICER (H-IV)

DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

NO. 19530 /E-I,

DATED. 08/07 /1998.

Dr. Mohammad Iqbal S/O Amir Waiz Khan,
Vill: & P.O. Kurar, Tehsil & Distt: Bannu.

Amir C
10
Sib

SUBJECT: - OFFER OF APPOINTMENT ON CONTRACT BASIS.

Reference your applications on the above subject for the post of ~~Medical Officer/Women Medical Officer/Dental Surgeon.~~

- The Competent authority is hereby appoint you as Medical Officer/Women Medical Officer/Dental Surgeon in the Health Deptt: Govt: of NWFP. on contract basis in B-17 w.e.f. 01.7.1998 to 16.5.1999 or till the availability of Public Service Commission selectee/return of original incumbent from leave/deputation whichever is earlier, on the terms and conditions laid down in the attached Agreement Deed. You shall be posted to S.O. Gubral (Distt: Swat).
This contract appointment is not transferable.
- This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
- If you accept the offer of appointment on contract basis as a ~~Medical Officer/Women Medical Officer/Dental Surgeon~~, the attached Agreement Deed should be filled in duly signed by you and should report at your own expense.
- If you fail to report for duty at the station specified in para-3 above, within Ten(10) days, the offer of appointment on contract basis will be deemed to have been withdrawn automatically and no further correspondence shall be entertained in this respect.

(DR. HAQ-DAD)
DIRECTOR GENERAL HEALTH,
SERVICES, NWFP, PESHAWAR.

NO. 19531-39 /E-I, DATED PESHAWAR THE 08 / 07 / 1998.

Copy forwarded to the :-

- Secretary to Govt: of NWFP, Health Deptt: Peshawar, for information with reference to his letter No. SO(H)IV/3-18/93, dt: 27.6.1998
- Medical Superintendent, _____ for information and n/action
- Divisional Director Health Services, Div: Swat, Swat.
- District Health Officer/Agency Surgeon, _____
- Accountant General, NWFP, Peshawar.
- District/Agency Accounts Officer, _____

for information and necessary action please.

Amir C
10

(DR. HAQ-DAD.)
DIRECTOR GENERAL HEALTH,
SERVICES, NWFP, PESHAWAR.

27

Dated: Peshawar, the 9th December, 2006.

ANNEX D

11
12

NOTIFICATION.

No.SO(E)II-II/S-18/2006, In exercise of the powers under section 23 of the N.W.F.P Civil Servants Act, 1973 read with president order NO.10 of 1969, the Governor N.W.F.P is pleased to convert the contractual appointment of Dr.Muhammad Iqbal son of Amir Waiz Khan presently working as Medical Officer BS-17 BHU Mairagai District Swat on regular basis with effect from the date of his contractual appointment as such.

SECRETARY HEALTH.

Enclst. No. & date even.

Copy to the:-

1. Secretary to Governor N.W.F.P
2. Accountant General, N.W.F.P
3. Director General, Health Services, N.W.F.P
4. EDO (II) Swat.
5. PS to Chief Secretary N.W.F.P
6. PS to Secretary Health.
7. DAO Swat.
8. SO (Litigation) Health Department
9. Doctor concerned.

[Handwritten signature]
[Handwritten signature]

Section Officer-II.

E 12

The Secretary,
Department of Health,
Khyber Pakhtunkhwa, Peshawar

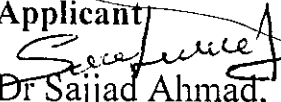
Subject: Application for regularization of services of applicant with effect from the date of contractual appointment i.e., 23-11-1995 with all back benefits.

Sir,

The applicant humbly submits as follows:

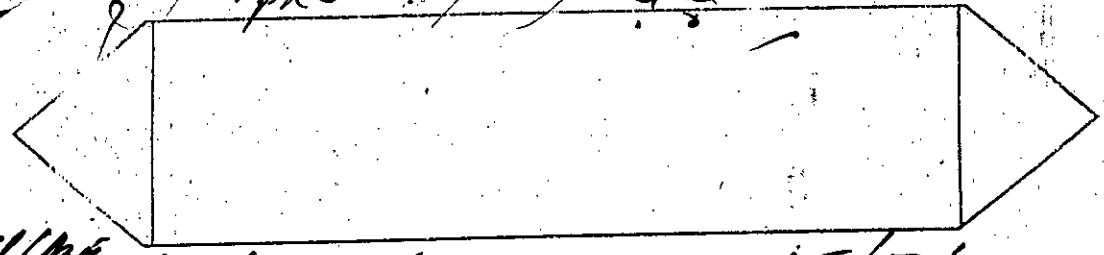
1. That I am a bonafide resident of District Peshawar and was appointed as Medical Officer in the Health Department, Govt of Khyber Pakhtunkhwa against the vacant post on 23-11-1995 on contract basis for a period of one year or till the availability of Public Service Commission selectee / return of original incumbent from leave / deputation which ever is earlier, which clearly shows that the post against which I was appointed was a permanent post. Thereafter my contractual appointment was extended from time to time without any break.
2. Later on I qualified the Khyber Pakhtunkhwa Public Service Commission exam and I was appointed as Medical Officer (BPS-17) vide order dated 15-09-1997.
3. That one of my colleagues Dr Muhammad Iqbal S/o Amir Waiz Khan who was working as Medical Officer in the Health Department filed an application for regularization of services with effect from the date of contractual appointment as such. It is pertinent to mention here that Dr Muhammad Iqbal was appointed in the year 1998 whereas I was appointed in year 1995.
4. That the above said application was considered and he was regularized from the date of contractual appointment as such vide Notification No SO(E)II-II/8-18/2006 dated 9th December, 2006.
5. That I have served in the Health Department for more than 19 years but after qualifying Public Service Commission exam in the year 1997, the concerned authority has not given me the benefits of 02 years continuous officiating service on contract basis and appointed me with immediate effect i.e., 15-09-1997.
6. That on appointing me with immediate effect i.e., 15-09-1997 I have been deprived of my 02 years i.e., 23-11-1995 to 15-09-1997 service benefits.

It is, therefore, most humbly requested that my instant application may kindly be considered and my services may be regularized with effect from date of contractual appointment i.e., 23-11-1995 with all back benefits i.e., seniority, pension, promotion etc as such as has been done in Dr Muhammad Iqbal Case.

Applicant

Dr Sajjad Ahmad,
S.M.O, H.M.C, Peshawar

Dated: 2/14/15

بعد ادا کالت خدادی و سٹریٹ پیوٹنل کال کال



Appellants
بنام حکومت فیصلہ بندی کے

ڈائریکٹر سٹیٹ

25/7/15 مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آئینکے

کے لئے منظور ہے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ
آن مقام سٹیٹ پیوٹنل کال کیلئے سٹریٹ پیوٹنل کال کے
مقررہ کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بضرورت ڈگری کرنے اجراء اور سولی چیک و روپیہ 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 برآمدگی اور منسوخی
نیز رائے کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے لئے یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پر ساختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وہیں صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا ادا کالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 25/7/15

کے لئے منظور ہے۔
ACCEPTED BY
Advocate

بمقام
Sampurn
Dr. Sood
Appellants

BEFORE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWR

APPEAL NO. 845/2015

Dr. Sajjad Ahmad s/o Abdul Khaliq, SMO, HMC, Peshawar.

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Department Health, Peshawar.
3. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Department of Finance, Peshawar.
5. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.

Respondents

PRELIMINARY OBJECTIONS:

1. That the appellant has neither cause of action nor locus standi
2. The appeal is not maintainable in its present form.
3. That the appeal is bad due to non-joinder and mis-joinder of un-necessary parties.
4. That the appellant has concealed the material facts from this Hon'ble Tribunal.
5. That this Hon'ble Tribunal has got no jurisdiction to entertain the appeal
6. That the appellant has been estopped by his own conduct to file the appeal.
7. That the appellant has not come to this Tribunal with clean hands.
8. That the appeal is badly time barred.

PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1, 2, 3, 4 & 5.

1. Pertains to the record.
2. Pertains to the record. As his service were regularized in 1998. However, he did not agitated/challenged the notification within time so the instant appeal is badly time barred.
3. Para 3 is misleading. The law with regard to appointment of persons through prescribed manner, on regular basis was abandoned and the law of contract appointment was adopted on 1.7.2001. The appointment on contract basis through prescribed manner continued till the commencement of the Khyber Pakhtunkhwa civil servant amendment Act, 2005. Section 2(2) of the Act ibid provides that a person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July 2001 till the commencement of the said Act but appointed on contract basis shall with effect from the said Act be deemed to have been appointed on regular basis. The contract appointment of the appellant was made otherwise than in accordance with prescribed manner as

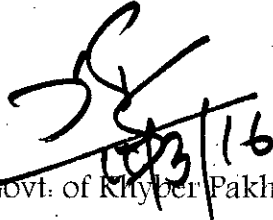
stopgap arrangement. The method with regard to appointment in prescribed manner has been envisaged in sub section (1) (a) (i) of section 7 of the Khyber Pakhtunkhwa Public Service Commission Ordinance, 1978 which inter alia provides that the Khyber Pakhtunkhwa Public Service Commission shall conduct test and examination for recruitment of persons to the civil services of the province and civil posts in connection with the affairs of the province in Basic Pay Scales 16 and above or equivalent. The services of those contract employees whose appointments were covered under section 7 of the Khyber Pakhtunkhwa Public Service Commission Ordinance 1978 were regularized with effect from the commencement day of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005.


4. Para 4 misleading. The regularization of Dr Mohammad Iqbal , Medical Officer. was an individual hardship case which was not done under the Act of 2005. Before his appointment, Dr Mohammad Iqbal was serving in an organization. A person having the same name was involved in subversive activities. However, Dr Mohammad Iqbal was arrested inadvertently. During custody, he lost his employment and his son was also paralyzed due to Polio disease. On release, the Provincial Government was desirous to compensate him due to his innocence. In the year 1998 as a special case the Governor Khyber Pakhtunkhwa erstwhile N.W.F.P approved his appointment as MO in Health Department on contract basis. He submitted an appeal praying that the Governor has never approved his appointment in Health Department on contract basis but it was appointment on regular basis. His appeal was placed before the Governor Khyber Pakhtunkhwa and was accordingly accepted as prayed for and the Governor Khyber Pakhtunkhwa under section 23 of the N.W.F.P Civil Servants Act 1973 read with president order No:10 of 1969, regularized the contractual appointment of Dr. Mohammad Iqbal s/o Amir Waiz Khan. Therefore the citation of this case as Precedence for regularization of appellants case is inappropriate.
5. Subject to proof as laid. However, in terms of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, any civil servant aggrieved by any final order whether original or appellate made by a departmental authority in respect of any of the terms and condition of his service may, within thirty days of the communication of such order to him or within six months of the establishment of the appropriate Tribunal whichever is later, prefer an appeal of the tribunal having jurisdiction in the matter. Further the representation so annexed is purely time barred neither any seniority list challenged by the appellant.
6. Para 6 is misleading. The present appeal has been filed in the hon'ble tribunal after a lapse of 10 years.


GROUNDS:-

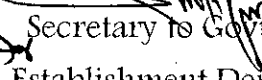
- a) Incorrect. Respondent acted as per law & rules.
- b) Incorrect. Respondent acted as per law & rules.
- c) Incorrect. As explained in replying para 4 above.
- d) Incorrect. As per law the seniority is to be reckoned from the date of regular appointment.
- e) Para 'e' of the appeal is misleading and incorrect. Rule 1.5 clearly provides that these rules shall not apply to Government servants engaged on contract basis which contains no stipulation for pension under these rules.
- f) As explained in replying para above.
- g) Incorrect. No discrimination committed by the respondent.
- h) Para 'h' needs no comments.

It is humbly prayed that the instant appeal being devoid of merit and law may graciously be dismissed with cost.


Secretary to Govt. of Khyber Pakhtunkhwa,
Health Department Respondent No. 1 & 2


Director General Health Services
Khyber Pakhtunkhwa Respondent No. 3


Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department Respondent No. 4


Secretary to Govt. of Khyber Pakhtunkhwa
Establishment Department Respondent No. 5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In re-Service Appeal No 845/2015

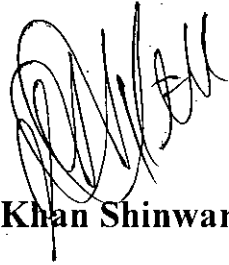
Dr Sajjad Ahmad versus Govt of KP through Chief Secty & others

INDEX

Sr No	Description of Document	Dated	Annex	Pg No
1.	Rejoinder and Affidavit			
2.	Copy of judgment			


Appellant,

Through


Muhammad Ayub Khan Shinwari
Advocate Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In re-Service Appeal No 845/2015

Dr Sajjad Ahmad versus Govt of KP through Chief Secty & others

Rejoinder on behalf of Appellant

On Preliminary Objections:

All the preliminary objections are wrong, incorrect, misleading, misconceived and formal.

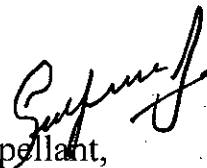
On Facts:

1. Para No "1" of the comments needs no reply.
2. Para No "2" of the comments is wrong and incorrect while that of service appeal is correct.
3. Para No "3" of the comments is wrong, incorrect, misleading and misconceived, hence denied while that of Service Appeal is correct. In fact the objection raised by the respondents in the instant Para has been resolved by this Honorable Peshawar High Court, Peshawar in case title Dr Rizwanullah and others Versus Government of NWFP through Chief Secretary and others reported in 2009 PLC (CS) 389 and was upheld by the August Supreme Court of Pakistan. (Copy of the Judgment is attached herewith as **Annex-R/1**)
4. Para No "4" of the comments is wrong, incorrect, misleading and misconceived, hence denied while that of the Service Appeal is correct. In fact the case of Appellant is at par with Dr Muhammad Iqbal, hence deserving the same treatment.
5. Para No "5" of the comments is wrong and incorrect, hence denied while that of Service Appeal is correct.
6. Para No "6" of the comments is wrong and incorrect hence denied, while that of service appeal is correct.

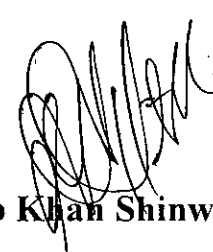
On Grounds:

- a. Para "a" of the comments is wrong and incorrect hence denied, while that of service appeal is correct.
- b. Para "b" of the comments is wrong and incorrect hence denied, while that of service appeal is correct.
- c. Para "c" of the comments is wrong and incorrect hence denied, while that of service appeal is correct.
- d. Para "d" of the comments is wrong and incorrect hence denied, while that of service appeal is correct.
- e. Para "e" of the comments is wrong and incorrect hence denied, while that of service appeal is correct.
- f. Para "f" of the comments is wrong and incorrect hence denied, while that of service appeal is correct.
- g. Para "g" of the comments is wrong and incorrect hence denied, while that of service appeal is correct.
- h. Para "h" of the comments is wrong and incorrect hence denied, while that of service appeal is correct.

It is, therefore, prayed that the title Service Appeal may kindly be allowed as prayed for.

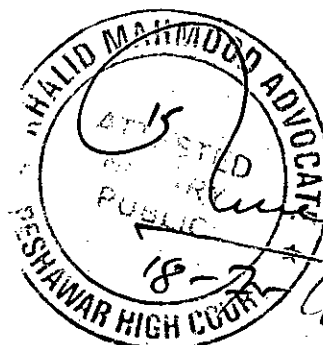

Appellant,

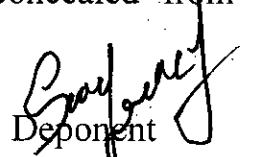
Through


Muhammad Ayub Khan Shinwari
Advocate Peshawar

AFFIDAVIT

I, Dr Sajjad Ahmad S/o Abdul Khaliq, S.M.O, H.M.C, Peshawar do hereby solemnly affirm and state on oath that the contents of the accompanying rejoinder are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Honorable Tribunal.




Deponent

IN THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No.

1901 of 2014



1. Dr. Sultan Ul Mulk, House No. 99-B, Faqirabad Peshawar City.
2. Dr. Saeed Ur Rehman, resident of House No. 113 Canal Road Afghan Colony Peshawar.
3. Dr. Akbar Hussain C at 'D' (H), Pacha, District Buner.
4. Dr. Sar Deep Kumar C/O Muhammad Saeed Butt Gur Mandi Peshawar.
5. Dr. Abdul Ghafoor C. H. Totali, District Buner.

Petitioners

VERSUS

1. Province of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa Establishment Department, Civil Secretariat, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa Law and Parliamentary Affairs Department, Civil Secretariat, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa Health Department Khyber Pakhtunkhwa, Peshawar...

Respondents

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

FILE

DEPT

ATTESTED
EXAMINER
Peshawar High Court

18 APR 2015

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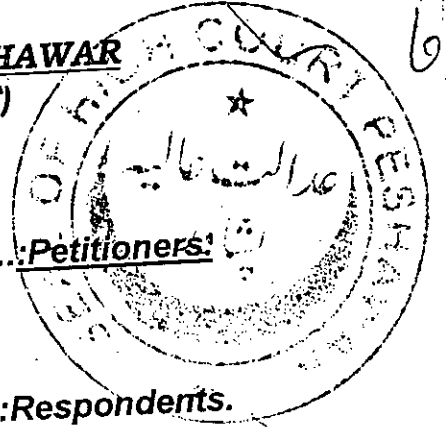
JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT)

Writ Petition No.1901-P of 2014.

Dr.Sultan-ul-Mulk and others.....Petitioners:

Versus.

Province of KPK etc.....Respondents.



JUDGMENT.

Date of hearing 31-03-2015

Appellant/Petitioner MR. Shahzada Shah PWR Jam Advoc

Respondent State by Rab Nawaz Khan AAB

WAQAR AHMAD SETH, J:- Through the

instant constitutional petition under Article 199 of the
Constitution of Islamic Republic of Pakistan 1973, the
petitioners have approached this Court with the following
relief:-

"In view of the quite anomalous
situation and circumstances of the
case, it is humbly prayed that in the
interest of justice, equity and good
conscience the respondent No.1 may
graciously be directed to place the
case of the petitioners before the
competent authority (Governor of
Khyber Pakhtunkhwa) in terms of
Section 23 of the Khyber

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Peshawar High Court

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Pakhtunkhwa Civil Servants Act, 1973 for just and equitable decision, declaring that the petitioners are entitled for regularization from the date of their initial appointment".

2- As per averments made in the writ petition the petitioners were initially appointed in the Health Department as Medical Officers in BPS-17 on contract basis by Departmental Selection Committee and their contract was extended from time to time through various notifications, meanwhile KPK, Civil Servants (Amendment) Act, 2005 came into force on 23/07/2005 on the basis of which the petitioners were entitled to be regularized; that the petitioners have submitted various applications but they were excluded from the benefit of regularization. That earlier certain officials approached this Court through Writ Petition which was allowed and their services were regularized with effect from 24/10/2009 and the same benefit was extended to the petitioners without considering their post service 1995 and onward, however, petitioner No.1 has been retired from service on 09/01/2014 on attaining the age of

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Registrar High Court

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superannuation. It is further averred in the petition that on 22/01/2013 Government of Khyber Pakhtunkhwa notified Civil Servants (Amendment) Act, 2013 which had taken effect from 30/06/2001 which provides 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. It was expected that the petitioners would also be included and covered to rectify the omission but it was also a delusive impression that the whole action was for particular class of persons who were previously omitted and the petitioners were once again met with the same fate. That all these circumstances in their totality prevent an incontrovertible chain, which when the chronological list of Acts and events are taken altogether, lead to the conclusion that the regularization of particular class of Government servants leaving the senior who were appointed in the year 1995 exhibits to flagrant violation and abuse of power under the protection of an Act. The persons of choice were picked up and were absorbed



while the same benefit was denied to the petitioners despite seniority and merit. That the Regularizations Acts 2005 and 2009 were designed to accommodate persons of choice and those were never intended to keep merit in views. The petitioners are at the verge of retirement and in their services are not regularized, they would suffer huge loss in pension and commutation and their services rendered from 1995 to 23/10/2009 would not be counted for the purpose of pension.

3- Respondent No.1 furnished his comments wherein it was stated that the petitioners were appointed as Medical Officers (BS-17) on contract basis as stopgap arrangement. The law with regard to appointment of persons, through prescribed manner, on regular basis was abandoned and the law of contract appointed was adopted on 01/01/2001. The appointment through prescribed manner on contract basis continued till the commencement of KPK Civil Servants (Amendment) Act, 2005 and section 2(2) of the said Act provides that a person though selected for appointment in the prescribed

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manner to a service or post on or after the 1st day of July, 2001 till the commencement of the said Act but appointed on contract basis shall with effect from the commencement of the Act be deemed to have been appointed on regular basis. The contract appointments of the petitioners were made otherwise than in accordance with prescribed manner, as stopgap arrangement. The method with regard to appointment through prescribed manner has been envisaged in Sub-section (1) (a) (i) of Section 7 of KPK Public Service Commission Ordinance, 1978 and the services of those employees whose appointments were covered under the aforesaid section, were regularised with effect from the commencement of the Act *ibid*. That KPK Civil Servants (Amendment) Act, 2005 is not applicable in cases of petitioners and their services were regularised under section 3 of the KPK Employees (Regularization) Act, 2009. Further stated that the prayer of the petitioners for their regularization from 1995 is an attempt to exploit the fundamental rights of those civil servants of the cadre who were appointed to

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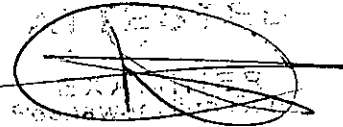
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the service in the prescribed manner from time to time since 1995 till 2009, hence the petition is liable to be dismissed.

4- Arguments heard and record perused.

5- Admittedly, petitioners services were regularized in pursuance of employees Khyber Pakhtunkhwa Regularization Act, 2009 by the Competent Authority with effect from 24.10.2009, alongwith all other employees, whereas petitioners are in services with effect from 1995, 1996 & 1999 on contract basis duly approved by the Departmental Authority upon the approval and selection of Departmental Selection Committee, notified by the then Governments. There is no break in service.

6- The plea of the petitioners seems to be genuine and reasonable, that the employees who have been regularized vide Act, No. IX of 2005 and Act, XVI of 2009, were appointed in a similar situation as that of petitioners, but they have been regularized from the date of their appointments. Since there is a discrimination on the face of it, but as the applicability of Act, 2005 & 2009 with retrospective effect to the case of petitioner would not



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come within the purview of this court as it's the competent authority who has the prerogative and right to given retrospective effect to a law and in the instant case under section 23 of the Khyber Pakhtunkhwa, Civil Servants, Act, 1973, the Governor, Khyber Pakhtunkhwa, is the Competent Authority for the particular purpose.

7- In view of the above, this writ petition is send to respondent No.1 i.e Chief Secretary Khyber Pakhtunkhwa Peshawar for placing the same before the Worthy Governor, being the Competent Authority for considering the case of petitioners for regularization with effect from the date of their initial appointment

ANNOUNCED.
Dated: 31/03/2015.

sd/ Wazir Ahmad Seth
sd/ Orshad Rais

JUDGE

JUDGE

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CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984

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Office
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