

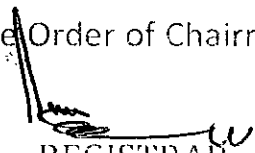
Form- A

FORM OF ORDER SHEET

Court of _____

Case No. _____

628 /2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	22/03/2023	<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 06.03.2023 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 _____.</p> <p style="text-align: right;">By the Order of Chairman</p> <p style="text-align: right;"> REGISTRAR.</p>



The
PESHAWAR HIGH COURT
Peshawar

Ph: No. 091-9210149-58

No. 69451 (1)/2725/2023/WP-MN

Dated. 20-March-2023

From

Deputy Registrar (J),
Peshawar High Court,
Peshawar.

~~Khyber Pakhtunkhwa~~
~~Service Tribunal~~

Diary No.

4508

To

Dated

22/3/2023

✓ The Chairman, Khyber Pakhtunkhwa, Service Tribunal, Peshawar.

Subject: Writ Petitions W.P 4841/2022 Title: Mrs Farhat Faraz VS Govt of KP & others

Memo,

I am directed to send herewith the titled case in original alongwith all annexures and judgment of this Honble Court dated 06.03.2023 for compliance.


Deputy Registrar (J)

Encl: As above.

(2)

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.4841-P/2022

Mrs. Farhat Faraz

Vs.

**Government of Khyber Pakhtunkhwa through Secretary
Health, Khyber Pakhtunkhwa Peshawar and others**

Date of hearing **06.03.2023**

Petitioner(s) by: **M/S. Zafeer Gul Daudzai and
Muhammad Adnan Khan, Advocates.**

Respondent(s) by: **Mr. Mubashir Manzoor, AAG.**

JUDGMENT

IJAZ ANWAR, J. This writ petition has been filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer:-

“It is, therefore, most humbly prayed that on acceptance of this writ petition, the respondent be issued direction to grant pensionary benefits to grant pensionary benefits and all other privileges of retirement to the petitioner by counting the services of the petitioner from the date of her initial appointment.

Any other relief which has not been asked specifically for which the petitioner is entitled may also be granted”.

2. In essence, the petitioner was initially appointed as Lady Health Worker in the year, 1996 and in the year, 2014, she was regularized in service on the promulgation of the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014. Later, in the year, 2019, she submitted an application to the respondents to refer her case to the Medical

Board, however, the said application was considered by the respondents as her resignation from service and was allowed vide Office Order dated 25.11.2019. Through this petition, she is seeking counting of her contract service with regular service for the purpose of pensionary benefits.

3. Arguments heard and record perused.

4. Perusal of the record reveals that the petitioner has claimed counting of her contract service with regular service for the purpose of pension. Admittedly, the services of the petitioner were regularized w.e.f. 01.07.2012 vide Notification dated 19.09.2014, thus, on her regularization, she attained the status of civil servant and was retired from service on 25.11.2019 when she was having seven (07) years of regular service.

5. Grant of pension purely relates to the terms and conditions of a civil servant regarding which the jurisdiction of this Court is expressly barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. The petitioner has filed this writ petition on the analogy of the judgment of the Larger Bench of this Court rendered in Writ Petition bearing No.3394-P/2016 decided on 22.06.2017; however, in those cases, the writ petitions were brought by the legal heirs of the deceased civil servants while in the instant writ petition, the petitioner is a civil servant.

6. In the given circumstances, we, instead of dismissing the instant writ petition, treat it as Service Appeal

24
3
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and transmit it to the Khyber Pakhtunkhwa Service Tribunal for its decision in accordance with law. Office shall retain copies of the memo of this writ petition for the purpose of record.

Announced
Dt:06.03.2023



JUDGE



JUDGE

(DB) Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Shakeel Ahmad

Mahamudullah

Before the Peshawar High Court Peshawar

CHECK LIST. .

Case Title:Versus.....	
1.	Case is duly signed.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
2.	The law under which the case is preferred has been mentioned.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
3.	Approved file cover is used.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
4.	Affidavit is duly attested and appended.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
5.	Case and annexure are properly paged/ numbered according to index.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
6.	Copies of annexure are legible and attested. If not, then better copies duly attested have been annexed.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
7.	Certified copies of all the requisite documents have been filed.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
8.	Certificate specifying that no case on similar grounds was earlier submitted in this court, filed.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
9.	Case is within time.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
10.	The value for the purpose of court fee and jurisdiction has been mentioned in the relevant column.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
11.	Court fee in shape of stamp paper is affixed. (for writ Rs.500, for other was required).	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
12.	Power of attorney is in proper form.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
13.	Memo of addresses filed.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
14.	List of books mentioned in the petition.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
15.	The requisite number of spare copied attached. (writ Petition-3 Nos, Civil Appeal (SB-1, DB-2) Civil Revision (SB-1, DB-2).	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
16.	Case (Revision/appeal/petition etc.) is filed on the prescribed form.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
17.	Power of attorney is attested by jail authority (for jail prisoner only).	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

It is certified that formalities/documents as requires in column 2 to 18 above, have been fulfilled.

Signature. _____



Date: ___/___/20__



Advocate Peshawar.

For office use only.

Case No. _____

Case received. _____

Complete in all respect; Yes/No (if No the grounds) _____

Date in court. _____

Signature. _____

(Reader)

Countersigned _____

Date. _____
(Deputy Registrar)

BEFORE THE HON'ABLE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No: 4847 /2022

Appeal no 628/2023

MRS. Farhat Faraz,

W/O Gul Faraz,

R/O Sharif Abad Muqam Mandi Tehsil & District Mardan.

VERSES

1. Government of Khyber pukhtunkhwa through Health KPK Peshawar.
2. Director General Health Services KPK Peshawar.
3. District Health Officer Mardan.

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S/No	Description of Documents	Annexure	Page No's
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3	Copies of Appointment Order + better copy -	"B"	5-5(A)
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5	Copy of application for medical board and order which considered resignation on 26/10/2019.	"D" & "E"	8-99
6	Copy of application for medical board on 30/12/2019	"F"	10
8	Copy of similar writ Petition along with Judgment & Order is attached as Annex "G".	"G"	11-33
9	Affidavit + Certificate + Court Fee + Mukhtiar Nama		34-37
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RE-FILED TODAY

Deputy Registrar
Through:-
06 DEC 2022

Dated: 1 / 12 / 2022

Accused/Petitioner

Zafeer Gul Daudzai

FILED TODAY

Deputy Registrar

01 DEC 2022

Scanned USB Received

01 DEC 2022

Signature

&

Muhammad Adnan Khan

Advocates High Court

Peshawar

Scanned USB Received

06 DEC 2022

IN THE PESHAWAR HIGH COURT, PESHAWAR
OPENING SHEET FOR WRIT PETITION

Date of Filing: 01.12.2022
District: Peshawar

Case Type: Writ Petition

Nature of Original proceeding:

Category Code:

5 0 7 1 0

(Categories & Sub Categories are given at the back of the opening sheets)

Review/ contempt of Court in respect of

Writ of:

Haabus Corpus Probation Mandamus Quo Warranto Certiorari

If Certiorari

Case pertains to

Forum	Date	Interlocutory Final Order

S.B
 D.B

Petitioner Name	MRS. Farhat Faraz
Mobile No.	0311-9186835
Address	Sharif Abad, Muqam Mandi, Tehsil & District Mardan
CNIC No.	16101-14266965
Email Address	<u>umercomputerphc@gmail.com</u>

Counsel for Petitioner (s)	Zafeer Gul Daduzai Advocate High Court
Mobile	0334-9207486
Address	Liberty Mall, Office No.25, Ground Floor, Tahkal, Peshawar
Counsel CNIC	17301-3271342-1
Email Address	NIL

Respondents	Govt. of Khyber Pakhtunkhwa through Secretary Health Khyber Pakhtunkhwa, Peshawar and others
Address	Govt. of Khyber Pakhtunkhwa through Secretary Health Khyber Pakhtunkhwa, Peshawar and others

Original order/Action/Inaction Companioned of

PRAYER:

It is, therefore, most humbly prayed that on acceptance of this instant Petition, the Respondents issued direction to grant pensionary benefits to grant pensionary benefit and all other privileges of requirements to the petitioner by counting the services of the petitioner from the date of their initial appointment

Law/Rules/governing the original proceedings/action/inaction

1. Constitution of Islamic Republic of Pakistan, 1973
2. Any other law book as per needs

Signature

Adnan

RE-FILE TODAY
Deputy Registrar
06 DEC 2022

FILED TODAY
Deputy Registrar
01 DEC 2022

①

BEFORE THE HON'BLE HIGH COURT PESHAWAR

Writ Petition No : 4847 /2022

MRS. Farhat Faraz,

W/O Gul Faraz,

R/O Sharif Abad Muqam Mandi Tehsil & District Mardan.

Appeal No 628/2023

.....Petitioner

VERSES

1. Government of Khyber pukhtunkwa through Health KPK Peshawar.
2. Director General Health Services KPK Peshawar.
3. District Health Officer Mardan.

.....Respondents

**WRIT PETITION UNDER SECTION 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN.**

Respectfully Sheweth:

Petitioners submit as under:

1. That the petitioner is the law abiding citizens of Pakistan and permanent resident of mardan.

(Copy of CNIC is annexed "A")

2. That the Petitioner was initially appointed as Lady Health Worker by the Respondents on contract basis in the year 1996 and served in the department till 2019.

(Copies of Appointment Order are Attached as Annex "B")

3. That the petitioner had performed her duty with great zeal & zest for more than 23 years and no complaint was ever made by the respondents against the petitioner.

4. That after the promulgation of Khyber Pakhtunkhwa Regulation of Lady Health Worker Program and Employees (Regularization and Standardization) Act 2014, the service of all the contract employees were regularized, therefore the service of the petitioner was automatically regularized by operation of law and thus the petitioner was the regular employee of the Department.

(Copy of Regularization Order is Attached as Annex "C")

5. That on 26.10.2019 petitioner moved an application for medical board but the same was consider as her resignation.

(Copy of application and order are annexed "D" & "E")

FILED TODAY

Deputy Registrar

01 DEC 2022

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Deputy Registrar

06 DEC 2022

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6. That petitioner moved an application on dated: 30/12/2019 to the respondent that petitioner had moved application for medical board and not for resignation, but no reply was given to the petitioner till date.

(Copy of application is annexed "F")

7. That after moving application for medical board the petitioner approached to the respondents to process their paper for pension and all the benefits admissible to them after retirement under the law but the same was refused on the pretext that the service rendered by the petitioner does not qualified for pension therefore the petitioner not entitled for pensionary benefits etc.

8. That the petitioner being aggrieved from the impugned action/inaction of respondents by not granting the pension along with other benefits of service to the petitioner having no other adequate remedy approaches this honorable court for issuance of appropriate directions/ writ to the respondents to grant pension along with all allied benefits of the service to the Petitioner being regular employee of the department on the following grounds:

GROUND:

A. That non granting pensionary benefits and other privileges to the petitioner by the Respondents is illegal, unwarranted, unjustified, against the law and against the provision of Constitution, therefore of no legal effect.

B. That the inaction of respondents by not granting the monthly pension along with other benefits to the petitioner is the result of malafide intension and ulterior motive and also against the service law & pension rules 1963.

C. That the Petitioner had perform her services in the Department for more than 20 years and the same is qualified and mature for pensionary benefits, therefore the Petitioner has vested right of pension and is entitled to the pensionary benefits of her services.

D. That the Petitioner has earned the regularization right by Operation of law which entitles the Petitioner for pensionary Benefits.

E. That according to the west Pakistan Civil Services Pension Rules 1963 (Rule 2.3) Temporary and officiating service Temporary and officiating service shall count for pension as indicate below:

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Deputy Registrar

01 DEC 2022

i. Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity and

ii. Temporary and officiating service followed by confirmation shall also count for pension or gratuity".

F. That similarly placed employees/colleagues of the Petitioner Were Allowed pensionary benefits etc and the petitioner is also entitled and deserve of similar treatment which had denied to the petitioner in disregard of Law and

3

constitutional provision, therefore the Respondent has violated Article 4 & 2 of the Constitution of Islamic Republic of Pakistan 1973.

(Copy of similar writ Petition along with Judgment & Order is attached as Annex "G").

- G. That it is the mandate of law as it is enunciated by the August Supreme Court of Pakistan that whenever any question of Law pertaining to Service matter has been determined and decided by Supreme court or High Court or Service Tribunal the benefits of that will be extended to the non-litigated party but that benefit has not been extended to the petitioner despite of so many requests to the respondent by the petitioner.
- H. That the Petitioner has not been treated in accordance with Law nor extended equal protection of law which is inalienable Right of the Petitioner.
- I. That the Petitioner seeks leave of this Honorable Court to raise any other grounds at the time of arguments.

Prayer:

It is therefore most humbly prayed that on acceptance of this writ petition, the respondent be issued direction to grant pensionary benefits to grant pensioary benfits and all other privileges of requirements to the petitioner by counting the services of the petitioner from the date of their initial appointments.

Any other relief which has not been asked specifically for which the petitioner are entitled may also be granted.

Dated: \ / / 2022

Petitioner

Through:

Zafeer GullDaudzai

&

Muhammad Adnan Khan
Advocates High Court
Peshawar.

FILED TODAY
Deputy Registrar
01 DEC 2022

CERTIFICATE:

As per instruction of my client no such writ petition has earlier been filed by the Petitioner before this August Court.

LAW BOOKS:

1. Constitution of Islamic Republic Of Pakistan, 1973.
2. Case Law according to need.

(14)

PAKISTAN National Identity Card
 ISLAMIC REPUBLIC OF PAKISTAN

Name: Farhat Faraz

Husband Name: Gul Faraz

Gender: F Country of Stay: Pakistan

Identity Number: 16101-3187350-0 Date of Birth: 02.02.1967

Date of Issue: 06.10.2017 Date of Expiry: 06.10.2027

Holder's Signature

16101-3187350-0

101721126033
 179-47-418157

Uman 4, Matam
 Republic General of Pakistan

گشده کارڈ نے پرقری لیو بکس میں ڈال دیں

ATTESTED
 Adnan

وزیراعظم کا پروگرام برائے نانہالی منسوسہ بندی اور بنیادی صحت

آرزو برائے انتخاب نیشنل ہیلتھ ورکرز

نمبر شمارہ 4572755 تاریخ 19/4/2006 ای ایچ او آفس مردان
 سرکار فیڈرل
 محلہ گاون ایشور
 تحصیل مردان
 بنیادی مرکز صحت / ذہنی مرکز صحت / تحصیل ہیڈ کوارٹر ہسپتال / ضلع ہیڈ کوارٹر ہسپتال
 کی سلیکشن کمیشن کی سلاش پر بطور نیشنل ہیلتھ ورکر برائے ٹریٹنگ سادائی
 بنیاد پر تھ کر لیا گیا ہے۔

شرائط برائے انتخاب

- 1- آپ کو انتخاب ابتدائی طور پر بروہہ علاقے میں لایا گیا ہے۔
- 2- اس وقت بارہ ہفتے میں مختلف ٹریٹنگ سٹرکچر آپ کو ٹریٹنگ دے گا، ٹریٹنگ ہفتے میں پانچ دن (اتوار، سوموار، منگل، بدھ اور جمعرات) کو ہوگی۔
- 3- ٹریٹنگ کے بعد اس کے بارے میں آپ کو اپنی مختلف علاقہ میں کام کرنا ہوگا۔ ہر ماہ تین ہفتے کام کرنے کے بعد ہوتے ہفتے مختلف ٹریٹنگ سٹریٹس میں رپورٹ کرنا ہوگا۔
- 4- آپ کو بارہ ہفتے کی ٹریٹنگ کے دوران پیمانہ 1-50/1 روپے پر مبنی اور اس کے بعد ہر ماہیادہ سو (1200) روپے ماہوار اجراء دیا جائیگا۔
- 5- آپ کو انتخاب ٹپ کے مستحق رہائش علاقہ کیلئے ہے اور دوران ٹریٹنگ و کام آپ کی کسی تبدیلی یا اثر افزا نہیں ہوگی۔
- 6- دوران ٹریٹنگ و کام مختلف اجراء بنیادی مرکز صحت / ذہنی مرکز صحت / تحصیل ہیڈ کوارٹر ہسپتال، آپ کی کارکردگی کو برسرِ محاسبہ کرنا ہوگا۔ جن کی رپورٹ دو وقتاً دو وقتاً دیکھنا پڑے گی۔
- 7- انتخاب کے بعد جب بھی پتہ چلا کہ آپ کے انتخاب کے کوٹک صحیح نہیں ہیں یا پورا گروہ کے دوران کسی وقت بھی آپ کی کارکردگی خیر نہیں تھی ہوتی تو آپ کو بغیر کسی نوٹس کے فارغ کر دیا جائیگا۔ اس سلسلے میں آپ کسی قسم کی قانونی چارہ چلانی کی حوصلہ نہیں ہوگی۔
- 8- اگر آپ کی کارکردگی خیر نہیں رہتی تو آپ کے انتخابی معاہدہ میں توسیع ہونا روکتے گی جو 1998 تک روکا گیا ہے۔
- 9- آپ کو پروگرام کے دوران ہفتے بھرے جاری ہونے والی تمام ہدایات پر عمل کرنا ہوگا۔
- 10- آپ کو ہدایت کی بنیاد ہے کہ آپ ہر روز کوئی بھی وقت کو صبح 8:30 بجے ٹریٹنگ سٹرکچر بنیادی مرکز صحت میں پیش ہونا چاہیے۔ ہر ماہ ہر ماہ کریں۔ اگر آپ متروک وقت پر حاضر ہونے سے قاصر رہیں تو آپ کا انتخاب ختم سمجھا جائیگا۔

ڈاکٹر ایچ اے ایف سردان

کاپی برائے اطلاع

- 1) ڈائریکٹر جنرل ہیلتھ سروسز (صوبہ سرحد) پشاور
- 2) انسپکٹر جنرل ہیلتھ سروسز (صوبہ سرحد) پشاور
- 3) ایڈیکل آفیسر انچارج - سول ڈسپنسری / ایم - سی - ایچ سنٹر / بنیادی مرکز صحت ایڈیٹیو ہیلتھ ورکرز - ڈی ایچ ایچ / سول ہسپتال / ضلع ہیڈ کوارٹر ہسپتال
- 4) ایسٹ / ایچ - فیڈرل ٹریٹنگ سٹرکچر / ذہنی مرکز صحت / بنیادی مرکز صحت

ATTESTED

ڈاکٹر محمد حیات - ایم خان
ڈی ایچ ایچ - بنیادی مرکز صحت - مردان

(A) 5

Better Copy

آرڈر برائے انتخاب نیشنل ہیلتھ ورکرز

نمبر شمار 4512-5 مورفہ 15/4/1996 ڈی ایچ ادا آفس مردان

سماہ فرقت فراز زوبیر گل فراز

گاؤں شریف آباد بغدادہ

تحصیل مردان ضلع مردان صوبہ سرحد کی بنیادی مرکز اہت
تحصیل ہیڈ کوارٹر اسپتال اضلعی ہیڈ کوارٹر اسپتال، بغدادہ کی سلیکشن
کمیٹی کی سفارشی پر بطور نیشنل ہیلتھ ورکرز برائے ٹریننگ معاداتی
بنیاد پر منتخب کر لیا گیا ہے۔

شرائط برائے انتخاب

- (1) آپ کو انتخاب اثنے اسی طور پر پندرہ ماہ کیلئے عمل میں لایا گیا ہے۔
- (2) پہلے بارہ ہفتے میں متعلقہ ٹریننگ سنٹر کا عملہ آپ کو ٹریننگ دے گا
ٹریننگ ہفتہ میں پانچ دن (اتوار، سوموار، منگل، بدھ اور جمعرات) کو ہوگی۔
- (3) ٹریننگ کے بعد اگلے بارہ ماہ آپ کو اپنے متعلقہ علاقہ میں کام کرنا ہوگا
ہر ماہ تین ہفتہ کام کرنے کے بعد چوتھے ہفتہ متعلقہ ٹریننگ سنٹر
میں رپورٹ / سرٹیفکیٹ کیسے آنا ہوگا۔
- (4) آپ کو بارہ ہفتہ کی ٹریننگ کے دوران چھ ماہ - 50 روپے یومیہ اور اس کے
بعد ہر ماہ بارہ سو - 1200 روپے ماہوار اعزاز یہ دیا جائیگا۔
- (5) آپ کا انتخاب آپ کا مستقل رہائشی علاقہ کیلئے ہے اور دوران ٹریننگ
کام آپ کی کہیں تہہ بلی (ٹرانسفر) نہیں ہوگی۔
- (6) دوران ٹریننگ اور کام متعلقہ اخراجات بنیادی مرکز اہت / اضلعی ہیڈ کوارٹر
اسپتال آپ کی کارکردگی کو زیرِ نظر رکھے گی۔ جس کی رپورٹ وقتاً فوقتاً
پہنچائے گا۔
- (7) انتخاب کے بعد یہ بھی پتہ چلے کہ آپ کے انتخاب کے کوئی

P.T.O

صحیح نہیں ہیں یا پروگرام کے دوران کسی وقت بھی آپ کی
کارکردگی غیر تسلی بخش ہوگی تو آپ کو بغیر کسی نوٹس کے قارج
کر دیا جائیگا۔ اس سلسلہ میں آپ کسی قسم کی قانونی چارہ
چوٹی کی حقدار نہیں ہونگی۔

(8) اگر آپ کی کارکردگی تسلی بخش رہی تو آپ کے انتہائی معاہدہ میں
توسیع ہوتی رہے گی جو 1998 تک رہ سکتا ہے۔

(9) آپ کی پروگرام کے دوران جاری ہونے والی تمام ہدایت پر عمل کرنا
ہوگا۔

(10) آپ کی ہدایت کی جاتی ہے کہ آپ مورفہ 11/4/1996 کو صبح 8:30
بے ٹریننگ نٹز بنیادی مرکز تحت بغدادہ لائبرٹریس آف آرٹس مقررہ
وقت پر حاضر ہونے سے قائل ہے تو ایک کا انتخاب خود بخود ضمن
سمجھا جائے گا۔

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Amended
cc C

District Health Department - Mardan
DISTRICT HEALTH OFFICER
 Mardan (Khyber Pakhtunkhwa)
 Ph: # (0937) 9230030 Fax: # (0937) 9230349
 Email: edohmr@yahoo.com

No. 13823 /DHO Mardan Dated 19/09/2014

NOTIFICATION

In terms of Section 4 (1) read with 1st Proviso there under, 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 Mardan 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.

Sr. No	Name of Community Embedded Employee	Father Name	Husband Name	Designation	Date of appointment	FLCF	Name of Catchment Area
1	Lunbna Sherin		Akhtar Zeb	LHS	14/05/1996	CD Bughdada	Bughdada
2	Ruzina Naz	Aslam Khan		LHW	03/07/1995	CD Bughdada	Koz kandy
3	Nigar Nahced		Liqat Ullah	LHW	03/07/1995	CD Bughdada	Bara kandy
4	Shaheen Iqbal		Mohamamd Ayaz	LHW	03/07/1995	CD Bughdada	Muqam mandy
5	Bibi Nakees	Said Munawar Shah		LHW	29/11/1995	CD Bughdada	Mianz kandy
6	Sabia Naz		Zahoor	LHW	29/11/1995	CD Bughdada	Koz kandy
7	Riyasat Begum		Mohammad Fayaz Khan	LHW	26/06/2000	CD Bughdada	Tafheem colony
8	Zahida	Afreen		LHW	01/03/2001	CD Bughdada	Moh: Abdullah itehad
9 ✓	Farhat Faraz		Gul Faraz	LHW	30/04/2001	CD Bughdada	Sharif abad
10	Fazilat Bagam	Gulam Mohamad		LHW	03/12/2001	CD Bughdada	Ashoq Haji koroona
11	Sumina Khan		Momin Khan	LHW	03/12/2001	CD Bughdada	Aziz abad
12	Nabia		Asghar Ali	LHW	01/07/2004	CD Bughdada	Gulbahar
13	Azra Subhan	Fazal Subhan		LHW	01/08/2005	CD Bughdada	Moh: Muhammad abad
14	Tasleem	Waheed Gul		LHW	01/04/2006	CD Bughdada	Moh: Juma gul
15	Sarnina Zarnoosh		Mukhtar Ali	LHW	01/04/2006	CD Bughdada	Dr. Naeem haji koroona
16	Nargis Bibi	Shamshir Khan		LHW	01/04/2006	CD Bughdada	Center koroona
17	Fozia Zareen	Shah Zareen		LHW	02/04/2007	CD Bughdada	Moh: Shash
18	Asma Begum	Tamraiz		LHW	02/04/2007	CD Bughdada	New bughdada 4
19	Tasleem Begum	Hamayum		LHW	01/07/2009	CD Bughdada	Center koroona

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20	Rezia Zahoor	Khan Zahoor Muhammad		LHW	01/07/2009	Bughdada CD Bughdada	Center koroona
21	Farhat	Fazal Ghani		LHW	01/07/2009	CD Bughdada	nazar bostan baba
22	Lubna Ali	Ali Akbar		LHW	01/07/2009	CD Bughdada	Pohan colony
23	Khalida Begum		Said Gul	LHW	01/07/2009	CD Bughdada	Moh: Pasham gul
24	Asma Ghani	Rahmat Ghani		LHW	01/07/2009	CD Bughdada	Saeeda abad 1
25	Bakht Mina		Syed Sikandar Shah	LHW	01/07/2009	CD Bughdada	Dagai koroona
26	Muhammad Arif	Haji Zarif Gul		Driver	29/07/2009	CD Bughdada	Bughdada

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


District Health Officer
Mardan

Copy forwarded to,

1. provincial coordinator LHWs Program, Khyber Pakhtunkhwa
2. All concerned.

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Annexure
" D "

To,

The Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

Through: - **PROPER CHANNEL.**

Subject: - **APPLICATION FOR MEDICAL BOARD.**

Respected Sir,

With due respect I beg to say that I am performing my duties as a Lady Health Worker at Sharif Abad Chak Baghdada Civil Dispensary Baghdada Mardan since 1996 & later on regular/permanent since 01-07-2012.

Now I am ill and Doctor diagnose that there is severe defect in my backbone. I am unable to walk by foot and therefore I am unable to continue my services further. Due to this disease I want that you refer my case to the Medical Board.

Therefore, it is, requested that I may please be referred to the Medical Board for examination to consider me further services or unfit & obliged.

Thanks.

Dated 26-10-2019.

Your's Obediently

Farhat

(MRS. FARHAT FARAZ)
LADY HEALTH WORKER
C.D. BAGHDADA (MARDAN)

Recommend & forwarded to the District Coordinator for Lady Health Worker Programmer Mardan for information & necessary action please.

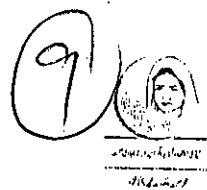
LHS

Lubna Sherin
C.D. Baghdada

Lubna Sherin
LADY HEALTH SUPERVISOR
C.D. BAGHDADA (MARDAN)

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[Signature]



No: 169/10-4/3 /DHO Mardan

Dated: 25-11-2019

Annexure
E

OFFICE OF DISTRICT HEALTH OFFICER MARDAN

OFFICE ORDER

The resignation of Ms Farhat Faraz W/O Gul Faraz (duly forwarded by M/O Incharge and LHS concerned) having Personal No.796304, Account Number 23193-8 HBL Main Branch resident of Sharif Abad Muqam Mandi Tehsil & District Mardan attached to FLCF CD Bughdada and working as Lady Health Worker (LHW) with LHWs Program of this District is hereby accepted with immediate effect.

She is directed;

To immediately deposit back all the assets of LHWs Program in her custody to this office.

District Health Officer
Mardan

Cc:

1. Deputy Director, (Technical LHWs) Khyber Pakhtunkhwa Peshawar.
2. District Comptroller of Account Mardan.
3. Accountant DHO Office Mardan.
4. LHS concerned.

District Health Officer
Mardan

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Annexure F

To,

The D.G Health,
Health Department,
Khyber Pakhtunkhwa.

**Applicant: Mst. Farhat Faraz W/O Gull Faraz R/O Sharif Abad Muqam Mandi Tehsil
and District Mardan.**

Respected Sir:

Through Proper Channel

I have moved an Application for Medical Board to Department on Dated: 26/10/2019 but surprisingly the same was considered my resignation through letter/Office Order No: 16940-43/DHO Mardan Dated: 25-10-2019 which is illegal as I have been appointed on contract basis on Dated: 01/05/1996 and my service was regularized on Dated: 01/07/2012.

Therefore it is requested that I am entitled for Medical Board and the Office Order regarding resignation may kindly be declared illegal & may kindly be withdrawn.

Thank You

Regards

Mst. Farhat Faraz W/O Gull Faraz

Dated: 30/12/2019

[Signature]
District Health Officer
Mardan
[Signature]
Decided by
02-01-2020

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Annexure
G

IN THE PESHAWAR HIGH COURT PESHAWAR

3394/P

WRIT PETITION No. _____ /2016

Amir Zeb,
Widower of Asiya Shafi,
R/o Fazal Ganj, Siace Mandi,
Risalpur, District Nowshera.....Petitioner

Versus

- 1. The District Account Officer,
District Nowshera.
- 2. The Accountant General,
Khyber Pakhtunkhwa, Peshawar.
- 3. The District Education Officer (Female),
District Nowshera.
- 4. The Director,
Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.
- 5. The Secretary,
Govt: of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department,
Peshawar.
- 6. The Secretary,
Govt: of Khyber Pakhtunkhwa,
Finance Department, Peshawar.....Respondents

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

FILED TODAY

Deputy Registrar

03 SEP 2016

Respectfully Sheweth,

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WP3394P2016-GROUNDS

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Peshawar High Court

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**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 & 05
others by Syed Qaisar Ali Shah, AAG.

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).

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Peshawar High Court

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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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EXAMINER
Peshawar High Court

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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

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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.

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 Newshera 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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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.

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

"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

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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

Rakhshinda Habib

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Peshawar High Court

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:-

"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 Saqib

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EXAMINER
Peshawar High Court

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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:-

"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

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Peshawar High Court

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:-

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.

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EXAMINER
Peshawar High Court

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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:

"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.

Look Sir

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Peshawar High Court

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Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Constitution of Pakistan Order 188
04/NOV/2021

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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.

Announced:
22.06.2017
Sriaj Afzal P.S.

Edl Roohul Amin Khan
JUDGE

Edl Balandur Ali Khan
JUDGE

Edl S.M. Attiqur
JUDGE

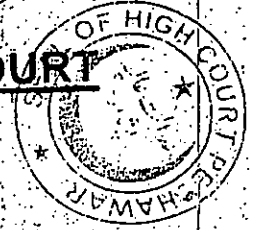
No. 12237
Date of Presentation of Application 4/11/2021
No of Pages 17-18
Copying fee 68/-
Date of Preparation of Copy 9/11/2021
Date of Delivery of Copy 4/11/2021
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Magistrate High Court, Patna
Registered under Article 27 of
the Constitution of India
04 NOV 2021

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BEFORE THE PESHAWAR HIGH COURT
PESHAWAR

Writ Petition No: 157 P/2021



1. Jehan Bano W/O Nizam Ud Din R/O Nihar Kinara Gulibagh Mardan
2. Dilshad Begum W/O Diar Khan R/O Mohallah Gate Cantt. Tehsil Mardan
3. Mst. Nageen Iqbal W/O Ghafoor Shah R/O Mian Gano Kalay Kati Ghari Mardan
4. Tajamul W/O Muslim Shah R/O Gul Bahar Kas Korona Mardah
5. Yasmeen Begum W/O Shams Ur Rehman R/O Mohallah Ghulam Dasta Toru Road Tehsil Mardan District Mardan
6. Dil Ara W/O Haji Hijab Gul R/O P/O Dakkhana Hoti Sirai Bari Cham District Mardan

(Petitioners)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health KPK Peshawar
2. Director General Health Services KPK Peshawar
3. District Health Officer Mardan

(Respondents)

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

Respectfully Sheweth:

The brief facts leading up to the filing of this writ petition are as under:-

ATTESTED

FILED TODAY
Deputy Registrar
09 JAN 2021

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EXAMINER
Peshawar High Court

1. That the Petitioners were initially appointed as Lady Health Worker by the Respondents on contract basis in the year 1995, 1997, 1998 and served in the department till their retirement from service. (Copy of Appointment Order are Attach as Annex "A")
2. That the Petitioners had performed their duty with great zeal & zest for more than 20 years and no complaint was ever made by the Respondents against the petitioners.
3. That after the promulgation of Khyber Pakhtunkhwa Regulation of Lady Health Worker Program and Employees (Regularization and Standardization) Act 2014, the services of all the contract employees were regularized, therefore the service of the Petitioners was automatically regularized by operation of law and thus the petitioners were the regular employees of the Department. (Copy of Regularization Order is Attach as Annex "B")
4. That upon attaining the age of superannuation, the Petitioners were retired from service in 2019, 2020 from the Respondent department (Copy of Retirement orders are Attach as Annex "C")
6. That after retirement the Petitioners approached to the Respondents to process their paper for pension and all other benefits admissible to them after retirement under the law but the same was refused on the pretext that service rendered by the Petitioners does not qualified for pension therefore the Petitioners are not entitle for pensionary benefits etc. (Copy of Applications are Attach as Annex "D")

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 Peshawar High Court

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That the Petitioners being aggrieved from the impugned action/ inaction of Respondents by not granting the pension along with other benefits of service to the Petitioners having no other adequate remedy approaches this Honorable Court for issuance of appropriate directions / writ to the Respondents to grant pension along with all allied benefits of the services to the Petitioners being regular employees of the department on the following grounds:-

GROUNDS

- A. That non granting pensionary benefits and other privileges to the petitioners by the Respondents is illegal, unwarranted, unjustified, against the law and against the provision of Constitution, therefore of no legal effect.
- B. That the inaction of Respondents by not granting the monthly pension along with other benefits to the Petitioners is the result of malafide intention and ulterior motive and also against the service law & pension rules 1963.
- C. That the Petitioners had performed their services in the department for more than 20 years and the same is qualified & mature for pension benefits, therefore the Petitioners have vested right of pension and are entitle to the pensionary benefits of their services.
- D. That the Petitioners have earned the regularization right by operation of law which entitles the Petitioners for pensionary benefits.

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Roshawar High Court

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E. That according to the west Pakistan Civil Services Pension Rules 1963 (Rule 2.3)

"Temporary and officiating service:-Temporary and officiating service shall count for pension as indicate below:

- i) Govt servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity and
- ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity"

F. That similarly placed employees/colleagues of the Petitioners were allowed pensionary benefits etc and the Petitioners are also entitled and deserve of similar treatment which had denied to the Petitioners in disregard of law & constitutional provision, therefore the Respondents have violated Article 4 & 2 of the Constitution of Islamic Republic of Pakistan 1973. (Copy of similar Writ Petition along with Judgment & Order is Attach as Annex"E")

G. That it is the mandate of law as enunciated by the August Supreme Court of Pakistan that whenever any question of law pertaining to service matter has been determined and decided by Supreme Court or High Court or Service Tribunal the benefits of that will be extended to the non-litigated party but that benefits has not been extended to the Petitioners despite of so many request were made to the Respondents by the Petitioners.

H. That the Petitioners have not been treated in accordance with law nor extended equal protection of law which is inalienable right of the Petitioners

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Punjab High Court

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I. That the Petitioner seeks leave of this Honorable Court to raise any other grounds at the time of arguments.

Prayer

It is therefore most humbly prayed that on acceptance of this Writ Petition, the Respondents be issued direction to grant pensionary benefits and all other privileges of retirements to the petitioners by counting the services of petitioners from the date of their initial appointments

Any other relief which has not been asked specifically for which the Petitioners are entitled may also be granted.

Petitioners Jehan Bano & Others
Through

Muhammad Irshad Mohmand
Advocate High Court
Peshawar

Dated: -07-01-2021

CERTIFICATE

As per instruction of my client no such writ petition has earlier been filed by the Petitioner before this August Court.

LAW BOOKS:-

1. Constitution of Islamic Republic of Pakistan, 1973
2. Case Law according to need.

Advocate

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Peshawar High Court, Peshawar
Authorized Under Article 175
of the Constitution of Pakistan

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MOST IMMEDIATE
COURT MATTER.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No. SOH(Lit-I)12(1)2845/2021(W.P 157/2021 Jehan Bano)
Dated the Peshawar 24th November, 2021

To

The Director General,
Health Services, Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: WRIT PETITION NO. 157-P/2021 TITLED JEHAN BANO & OTHERS V/S
GOVT. OF KHYBER PAKHTUNKHWA.

I am directed to refer to the subject noted and to state that the instant petitioner is entitled only for counting of her temporary/contractual service for the purpose of pension and gratuity on the same principle laid down by the Hon'ble Court in Writ Petition No. 3394-P/2016 dated 22-06-2017 titled "Amir Zaib V/s District Accounts Officer, therefore, the instant Departmental Appeal/Representation has been accepted by the Appellate Authority (Secretary Health) to the extent of counting of her temporary/contractual service for the purpose of pension and gratuity, please.

Being Court matter may be treated as Most Urgent.

(Naseer Ahmad)
Section Officer-III

Endst: even no & date.

Copy forwarded to the:-

1. Registrar, Peshawar High Court, Peshawar.
2. Section Officer (Lit-I), Health Department.
3. PA to Deputy Secretary (Litigation), Health Department.
4. PS to Secretary Health, Khyber Pakhtunkhwa.

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Section Officer-III

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IN THE PESHAWAR HIGH COURT
PESHAWAR
[Judicial Department]



Writ Petition No.157-P/2021

Jehan Bano w/o Nizam ud Din,
r/o Nihar Kinara Gulibagh Mardan and others.

Petitioner (s)

VERSUS

Government of Khyber Pakhtunkhwa,
Through Secretary Health Peshawar and others.

Respondent (s)

For Petitioner (s) :-
For Respondents :-
Date of hearing:

Mr. Muhammad Irshad Mohmand, Advocate
Mr. Muhammad Riaz Khan AAG
03.11.2021

JUDGMENT

ROOH-UL-AMIN KHAN, J:-By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Jehan Bano and five others, the petitioners seek issuance of an appropriate writ to the effect that the respondents be directed to consider period of their temporary/contractual service towards their regular service for the purpose of pension and they may be allowed the pensionary benefits.

2. As per averments in the writ petition, initially in the year 1995, the petitioners were appointed as Lady Health Workers (LHWs) in the respondents' department on contract basis. On promulgation of the Khyber Pakhtunkhwa Regulation of Lady Health Worker Program and Employees (Regularization and Standardization) Act, 2014, services of the petitioners were

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Peshawar High Court

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service for the purpose of pension or gratuity, and

(ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

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 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:-

"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."

From bare reading of section 19 of Amendment Act, 2005 and 2013 respectively, it is manifest that the persons

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 Examiner
 Peshawar High Court

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.

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:

"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."

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"

For the same

4. It has been held by the Hon'ble Supreme Court of Pakistan in case titled, "Government of Punjab through

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Peshawar High Court

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Secretary Education Lahore & others Vs. Sameena Parveen and others" (2009 SCMR 1), that:-

"If a Tribunal or the supreme Court decide 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 the justice and rule of good governance demand that the 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".

5. Admittedly, the petitioners fall within the definition of civil servant and the relief sought by them pertains to the terms and conditions of their service. Jurisdiction of this Court in such like matters is exclusively barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. In this view of the matter, this writ petition is not maintainable, however, we instead of dismissing the same convert it into service/departmental appeal and remit it to the worthy Secretary Health Khyber Pakhtunkhwa, Peshawar/respondent No.1 for decision in light of the law settled by the Hon'ble Apex Court, referred in the judgment (supra) of this court.

Announced:
03.11.2021
M. Siroj Afridi PS.

Senior Puisne Judge

JUDGE

DE of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judges; and Hon'ble Mr. Justice Ijaz Anwar

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EXAMINED
Peshawar High Court Peshawar
Authorised Under Article 177
of the Constitution of Pakistan

04 NOV 2021

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BEFORE THE HON'ABLE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No: _____/2022

MRS. Farhat Faraz,
W/O Gul Faraz,
R/O Sharif Abad Muqam Mandi Tehsil & District Mardan.

.....Petitioner

VERSES

- 1. Government of Khyber pukhtunkwa through Health KPK Peshawar.
- 2. Director General Health Services KPK Peshawar.
- 3. District Health Officer Mardan.

AFFIDAVIT

I, Muhammad AsadUllah Faraz S/O Gull Faraz, do hereby solemnly affirm and declare that contents of this Writ PETITION are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.

to Sharif Abad, Mardan

me
Asad Ullah Faraz

AsadUllahFaraz

CNIC.16101-114266965 ✓

Mob: 0311-9186835

Identified by

*M. Adnan
AHC*

Adnan

No. 22057

Certified that the above was verified on solemn affirmation before me in office, this 29 day of Oct 2022 at Mardan s/o Gul Faraz who was identified by M. Adnan Who is personally known to me:

Oath Commissioner
Peshawar
29/10/22

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IN THE HON'ABLE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition: _____/2022

MRS. Farhat Faraz,
W/O Gul Faraz,
R/O Sharif Abad Muqam Mandi Tehsil & District Mardan.

.....Petitioner

VERSES

1. Government of Khyber pukhtunkwa through Health KPK Peshawar.
2. Director General Health Services KPK Peshawar.
3. District Health Officer Mardan.

CERTIFICATE

I, Muhammad Asad Ullah Faraz S/O Gull Faraz, do hereby affirm and declare that no such like bail petition has been filed earlier before this honorable court.

Dated: 1/12/2022


Asad Ullah Faraz