

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.

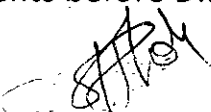
Learned District Attorney stated that the present appeal was assigned to Mr. Ziaullah, Deputy District Attorney who is not available today due to death of his relative. He therefore requested for adjournment. Adjourned to 25.10.2019 for arguments before D.B.


(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.


(Hussam 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. 371/2018

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. 847/2015 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

C.M No 371 /2018

in
In re-Service Appeal No 847 /2015

Khyber Pakhtunkhwa
Service Tribunal

2003

Date 12-10-18

Dr **Muhammad Humayun**

Versus

Govt of KP & others

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

Respectfully Sheweth,

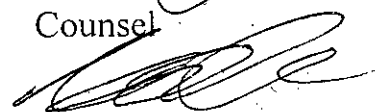
The applicant submits as follows:

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



22

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

In re service appeal No. _____/2015

Dr. Mohammad Hamayun.....Petitioner

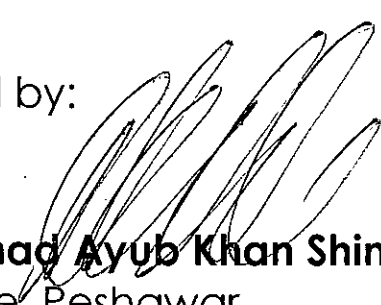
VERSUS

Govt of KPK through Secty & othersRespondents

AFFIDAVIT

I, Dr. Muhammad Hamayun S/o Abdul Jabbar, (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.

Identified by:



Muhammad Ayub Khan Shinwari
Advocate, Peshawar

DEPONENT



IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

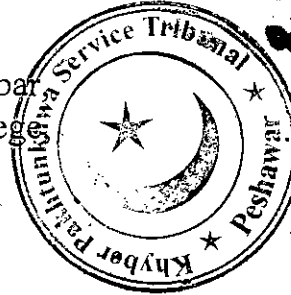
Service Appeal No 847 /2015

K.W.F. PROVINCE
Service Tribunal

Diary No 883

Dated 28/7/15

Dr Mohammad Hamayun S/o Abdul Jabbar
Asstt Professor, Nowshera Medical College 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.

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

[Signature]
28/7/15
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 21-11-1995. (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 his services were regualrized as Medical Officer (B-17) in the Health Department w.e.f 27-11-1998. (Copy of the Notification is attached herewith as **Annex-B**)

4

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.

ms.

Sd-1

Mr. Hamid Mughal
member

Sd-


Hussain Shah
member


Certified to be true copy
E. J. Khan
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	25-9-2018
Number of Pages	800
Copy	6-5
Urgency	
Total	6-5
Name of	Sd-
Date of Completion	5-10-2018
Date of Delivery of Copy	5-10-2018

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

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

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.



Member


Chairman

27.06.2018

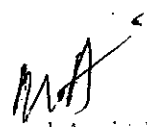
Appellant absent. Learned counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 16.08.2018 before D.B.


(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

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.

Handwritten mark

Hamid
(Muhammad Hamid Mughal)
Member

[Signature]
(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.

[Signature]
Member
(Executive)

[Signature]
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 08.12.2017 before the D.B.

[Signature]
Member

[Signature]
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.

[Signature]
Member

[Signature]
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 AAMIR NAZIR)
MEMBER

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 1998. 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.

Appellant Deposited
Security & Process Fee



1100-80-15
II-

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.


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.




Chairman

29.03.2016 - 51

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.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 847/2015

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. Muhammad Hamayun 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;"><i>[Signature]</i> REGISTRAR</p>
2	31-7-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>04-08-2015</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
3	04.08.2015	<p>None present for appellant. Notice be issued to counsel for the appellant for 10.9.2015 for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> Member</p>
4	10.09.2015	<p>None present for appellant. Notice be repeated to counsel for the appellant for <u>12-10-15</u> for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> Member</p>

*referred
S. P. Khan*

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 847 /2015

Dr Muhammad Hamayun 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	21-11-95	A	5-0
4.	Copy of Notification	27-11-98	B	6-0
5.	Appointment order of Dr M Iqbal	08-07-98	C	7-0
6.	Copy of Notification of regularization of Dr M Iqbal	09-12-06	D	8-0
7.	Copy of Departmental Appeal			
8.	POWER OF ATTORNEY			

Through

Appellant,

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 847 /2015

1
P.W.F. Province
Service Tribunal
Diary No 883
Date 28/7/15

Dr Mohammad Hamayun S/o Abdul Jabbar,
Asstt Professor, Nowshera Medical College,

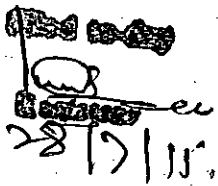
.....Appellant

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.**


28/7/15

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 21-11-1995. (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 his services were regualrized as Medical Officer (B-17) in the Health Department w.e.f 27-11-1998. (Copy of the Notification is attached herewith as **Annex-B**)

- 2
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., 21-11-1995 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 temporary and officiating during the period of 21-11-1995 to 27-11-1998 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 pre-privileges with effect from initial date of appointment.

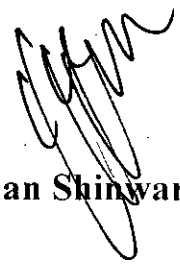
- 31
- g. That the treatment met to the Appellant is based on discrimination, furthermore the appellant has not been treated at par with other colleagues and against the principles of natural justice and the dictums of superior Courts.
- h. That the Petitioner craves permission of this Honorable Tribunal 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., 21-11-1995, and give him due seniority, pension, pay fixation and other back benefits w.e.f 21-11-1995; 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.

4
IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No _____/2015

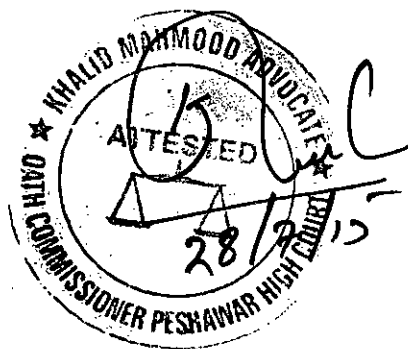
Dr ~~M. Hamayun~~ versus Govt of KPK through Chief Secty and others

Affidavit

I, Dr Mohammad Hamayun S/o Abdul Jabbar, Asstt Professor, Nowshera Medical College 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 Mohammad Hamayun



4. 3

H.M.V.

DIRECTORATE GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

NO. 27487 /E-I,

DATED: 21/11 /1995.

To,

Dr. Muhammad Hamayun
Sr. Abdul Jabbar

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.

1. The Competent authority is hereby appoint you as Medical Officer/ Women Medical Officer/ Dental Surgeon in the Health Department, Govt. 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 M.O S.H.S. Timurgara. This contract appointment is not transferable.
2. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
3. 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.
4. 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. Azmat Khan Afridi
(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

NO. _____/E-I, Dated Peshawar, the _____/1995.

Copy forwarded to the :-

1. Secretary to Govt. of NWFP, Health Deptt: Peshawar for information with reference to his letter No. SO(H)IV/3-18/93, dated 16th Nov. 1995.
2. Medical Supdt: _____ for information & n/action.
3. Divisional Director Health Services Mulakand
4. District Health Officer/Agency Surgeon Dis.
5. Accountant General, NWFP, Peshawar.
6. District/Agency Accounts Officer Dis. for information and n/action please.

Dr. Azmat Khan Afridi
(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

KHUSHDIL

OFFICE OF THE DG, HEALTH SERVICES, NWFP, PESHAWAR.

EXPERIENCE/PERIPHERY CERTIFICATE.

It is certified that Dr. Mohammad Humayun S/O Abdul Jabbar joined the Health Department as M.O. (BPS-17) on contract basis on 25.11.1995 and his services were regularized by the NWFP PSC on 27.11.1998.

His history of service is as under:-

<u>S.NO.</u>	<u>NAME OF INSTITUTION</u>	<u>FROM</u>	<u>TO.</u>
01.	MO SHS, Dir at Timergara (attached to PGMI as TMO).	25.11.1995.	31.12.98.
02.	MO, BHU, Daman Shabqadar Charsadda.	01.01.1999	19.4.1999.
03.	MO, SHS, Mohmand Agency	20.4.1999.	31.12.2000.
04.	TMO PGMI LRH, Peshawar.	1.1.2001	17.1.2002
05.	Medicolegal Officer Forensic Medicine KMG, Peshawar.	17.1.2002	to-date.

He has completed his periphery service.

FOR DIRECTOR GENERAL HEALTH SERVICES, NWFP PESHAWAR.

ISHAQ KHAH.
14.12.2002.

DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

NO. 19530 /E-I,

DATED. 08/07 /1998.

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

SUBJECT:- OFFER OF APPOINTMENT ON CONTRACT BASIS.

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

1. 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 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 SDO, Gahral (Distt: Swat).
This contract appointment is not transferable.
2. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
3. 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.
4. 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 :-

1. 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
2. Medical Superintendent, _____ for information and n/action
3. Divisional Director Health Services, Distt: Div: Sidu Sharif, Swat.
4. District Health Officer/Agency Surgeon, _____
5. Accountant General, NWFP, Peshawar.
6. District/Agency Accounts Officer, Swat.

for information and necessary action please.

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

Handwritten notes and signatures on the right margin, including a large number '7' and some illegible scribbles.

Dated: Peshawar, the 9th December, 2006.

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.

Endst. 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.

Section Officer-II.

ANNEX D
108

The Secretary,
Department of Health,
Khyber Pakhtunkhwa, Peshawar

9

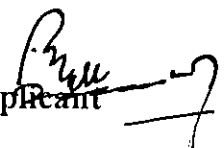
Subject: Application for regularization of services of applicant with effect from the date of contractual appointment i.e., 21-11-1995 with all back benefits.

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 21-11-1995 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 my services were regularized w.e.f 27-11-1998.
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 1998, 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., 27-11-1998.
6. That on appointing me with immediate effect i.e., 27-11-1998 I have been deprived of my 02 years i.e., 21-11-1995 to 27-11-1998 service benefits.

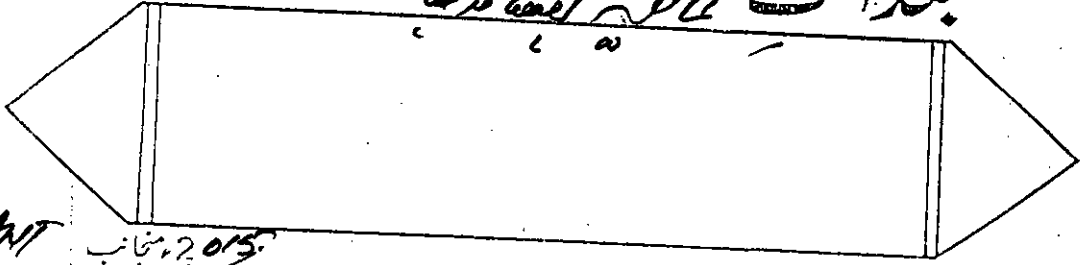
It is, therefore, most humbly requested that my instant application may kindly be considered and my services may be regularized with effect from date of contractual appointment i.e., 21-11-1995 with all back benefits i.e., pay fixation, seniority, pension, promotion etc as such as has been done in Dr Muhammad Iqbal Case.


Applicant

Dr Mohammad Hamayun S/o Abdul Jabbar,
Asstt Professor, Nowshera Medical College

Dated: 21/04/15

بعد الت مالک احمد مدہا



Appellant 2015ء

موزنہ 45/2/15

بنام حکومت ضلعی عدالت

ڈائریکٹوریٹ

Service App

جزم

باعث تحریر آئینک

کے لئے منظور ہے۔

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی وکل کاروائی متعلقہ آن مقام محمد رفیق خان کیلئے محمد رفیق خان کیلئے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار دیا گیا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالت ہ فیصلہ بر حلف دیے جواب دی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیہ ارضی 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 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 5/2/15ء

جولائی 2015ء

واہ العی

کے لئے منظور ہے۔

بمقام محمد رفیق خان ڈائریکٹوریٹ

ATTESTED -
ATTESTED
BY

Advocate

BEFORE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWR

APPEAL NO. 847/2015

Dr. Muhammad Hummayun s/o Abdul Jabbar, Assistant Professor , Nowsehra
Medical College, Nowsehra.

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 abundant 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.

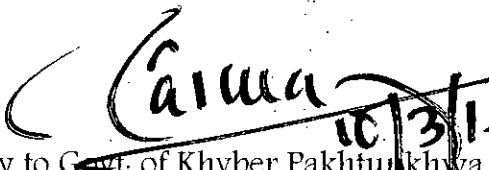
The services of those contract employees whose appointments were covered under section 7 of the Khyber Pakhtunkhwa Public Service Commission Ordinance 1978 were regularized with effect from the commencement day of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005.


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 appellant's 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 announced 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.


GROUND:-

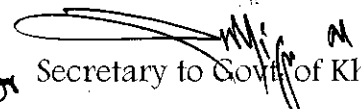
- a) Incorrect. Respondent acted as per law & rules.
- b) Incorrect. Respondent acted as per law & rules.
- c) Incorrect. As explained in replying para 4 above.
- d) Incorrect. As per law the seniority is to be reckoned from the date of regular appointment.
- e) Para 'e' of the appeal is misleading and 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 3 above.
- g) Incorrect. No discrimination committed by the respondents.
- 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 847/2015

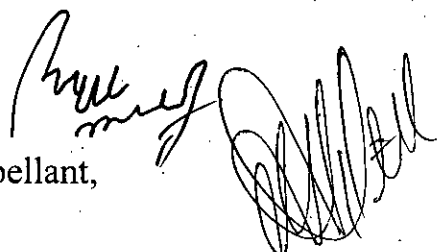
Dr Muhammad Humayun versus Govt of KP through Chief Secty & others

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 847/2015

Dr Muhammad Humayun 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.

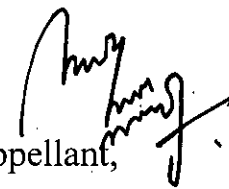
On Facts:

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.

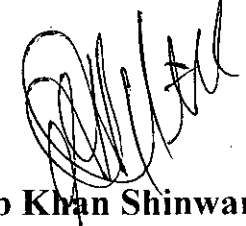
On Grounds:

- 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.

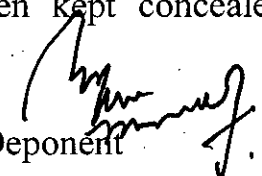
Appellant, 

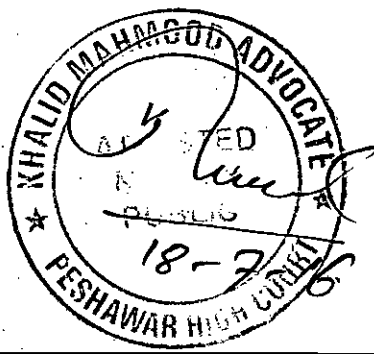
Through


Muhammad Ayub Khan Shinwari
Advocate Peshawar

AFFIDAVIT

I, Dr Muhammad Humayun S/o Abdul Jabbar, Asstt Prof, Nowshera Medical College 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

8

Writ Petition No.

1970 / 11 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 Kurnar 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

Dep.

ATTESTED
EXAMINER
Peshawar High Court.

18 APR 2015

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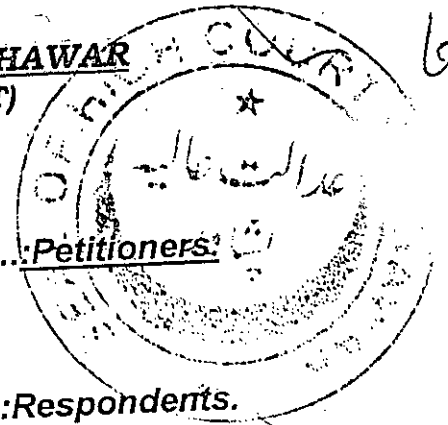
JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT)

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 Pur Jan Adroo

Respondent State by Pabnawaz 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

~~APPEALED~~
EXAMINER
Peshawar High Court
18 APR 2015

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".

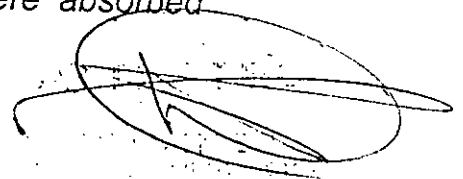
2- As per averments made in the writ petition the petitioners were initially appointed in the Health Department as Medical Officers in BPS-17 on contract basis by Departmental Selection Committee and their contract was extended from time to time through various notifications, meanwhile KPK, Civil Servants (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

ADMITTED
EXAMINER
JUDICIAL HIGH COURT

18 APR 2014

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

6/15



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

ATTESTED
EXAMINER
Peshawar High Court

18 APR 2015

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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

~~ATTESTED~~
EXAMINER
Pasir Dar High Court

1-8 APR 2015

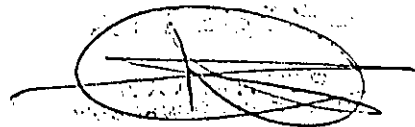
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the service in the prescribed manner from time to time since 1995 till 2009, hence the petition is liable to be dismissed.

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



18 APR 2010

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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.

s/d Wazir Ahmad Seth
s/d Orshad Raiser

[Signature]
JUDGE

=====

off-ee
9/8/15

CERTIFIED TO BE TRUE COPY

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

18 APR 2015

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No 371 /2018

in
In re-Service Appeal No 847 /2015

Dr **Muhammad Humayun** Versus Govt of KP & others

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

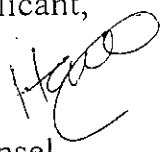
Respectfully Sheweth,

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

2/

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

In re service appeal No. _____/2015

Dr. Mohammad Hamayun.....Petitioner

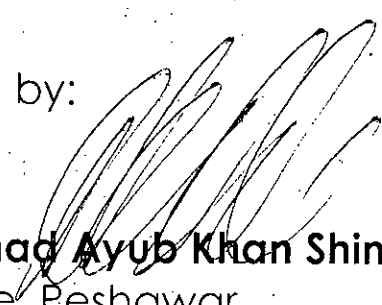
V E R S U S

Govt of KPK through Secty & othersRespondents

AFFIDAVIT

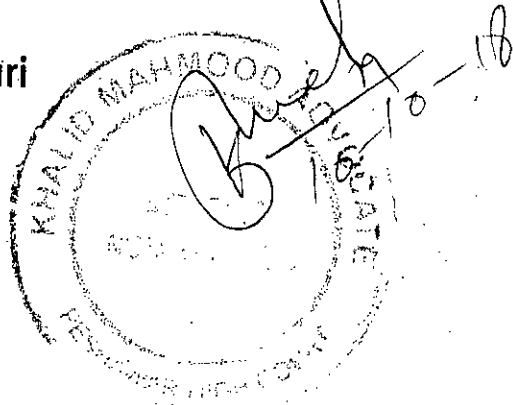
I, Dr. Muhammad Hamayun S/o Abdul Jabbar, (herein appellant), do hereby solemnly affirm and declare on oath that the contents of the accompanying restoration application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified by:



Muhammad Ayub Khan Shinwari
Advocate, Peshawar

DEPONENT



3
IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

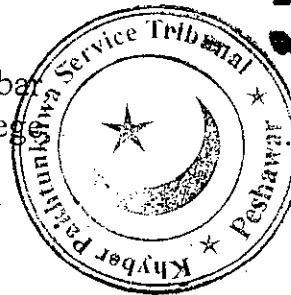
Service Appeal No 847 /2015

K.W.P. Province
Service Tribunal

Diary No. 883

Dated 28/7/15

Dr Mohammad Hamayun S/o Abdul Jabbar
Asstt Professor, Nowshera Medical College



.....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 21-11-1995. (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 his services were regularized as Medical Officer (B-17) in the Health Department w.e.f 27-11-1998. (Copy of the Notification is attached herewith as **Annex-B**)

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

4

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-

sd-

Mr. Hamid Mughal
member

sd-

Hussain Shah
member

Certified to be true copy
E.A. Peshawar
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of application	25-9-2018
Number of copies	800
Copy	6
Ur	
To	6
Name of	sd-
Date of Completion	5-10-2018
Date of Delivery of Copy	5-10-2018