


FORM OF ORDERSHEET

Court of _____

Case No. _____ 835/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	14.04.2023	<p>As per direction of the Worthy Chairman the present appeal is fixed for preliminary hearing and decision on office objections before Single Bench at Peshawar on 17-04-2023.</p> <p style="text-align: right;"> REGISTRAR</p>

The appeal of Mr. Shahid Amin Accountant Assistant Takhtbai received today i.e. on 23.02.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Appeal has not been flagged/marked with annexures marks.
- 3- Affidavit is not attested by the Oath Commissioner.
- 4- Annexures of the appeal are unattested.
- 5- Copy of Writ Petition in respect of appellant is not attached with the appeal which may be placed on it.
- 6- Copy of representation mentioned in para-3 of the memo of appeal is not attached with the appeal which may be placed on it.
- 7- Copy of rejection order of departmental appeal in r/o appellant is not attached with the appeal which may be placed on it.
- 8- Copy of regularization order and order dated 18.1.2023 are illegible which may be replaced by legible/better one.
- 9- Certificate be furnished that whether any appeal on the subject matter has earlier been filed in this Tribunal.
- 10- In regularization order the name of appellant be highlighted.
- 11- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 695 /S.T,

DL 24-02 /2023

REGISTRAR

SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Noor Muhammad Khattak Adv.
High Court Peshawar.

Respected Sir,

Resubmitted with following observations:

- In response to objections No.1 to 5, ~~8, 9, 10, 11, 12~~, the same have been removed.
- In response to objection No.6, it is submitted that representation is not attached with the appeal, however, the writ petition was converted to representation, which was sent to the respondent/ department to decide it accordingly.
- In response to objection No.7, the issue of pay fixation of the appellant alongwith others were decided jointly vide order dated 18.01.2023 available on file at Annex "E".
- In response to objection No.8, all the documents are legible and readable one. Hence it is requested that the case in hand may graciously be entertained.


Counsel

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 835 /2023

SHAHID AMIN

VS

GOVT: of KPK & OTHERS

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1	Memo of Service Appeal with Affidavit	1-3
3	Appointment Order	A	4
4	Notification & Act 2018	B & C	5-12
5	Representation and Writ Petition No.4573-P/2019	D	13-33
6	Appellate Order dated 18.01.2023	E	34
7	Notification dated 22.05.2019 and Letter dated 06.02.2014	F & G	35-37
8	Vakalatnama	38

APPELLANT

THROUGH:

**NOOR MOHAMMAD KHATTAK,
ADVOCATE SUPREME COURT**

-1-

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 835 /2023

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

3764

Date: 23/2/2023

Mr. Shahid Amin, Account Assistant (BPS-16),
District Mardan, Tehsil Head Quarter, Takhtbhai.

.....APPELLANT

VERSUS

- 1- The Secretary, Health Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Provincial Co-Ordinator MNCH Program, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

.....RESPONDENTS

APPEAL UNDER SECTION- 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED APPELLATE ORDER DATED 18.1.2023 COMMUNICATED TO THE APPELLANT ON 24.1.2023 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR FIXATION OF PAY W.E.F. 01.07.2011 I.E. FROM THE DATE OF INITIAL APPOINTMENT HAS BEEN REJECTED WITHOUT ANY GOOD REASON.

PRAYER:

That on acceptance of this appeal the impugned appellate order dated 18.01.2023 communicated to the appellant on 24.1.2023 may very kindly be set aside and the appellant may kindly be allowed/granted pay fixation w.e.f. 01.07.2011 i.e. from the date of initial appointment with all back benefits. Any other remedy which this august Service Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:

- 1- That the appellant was initially appointed in the respondent Department as Account Assistant vide order dated 01.07.2011. Copy of the appointment order is attached as Annexure **A.**
- 2- That while performing his duty the service of the appellant was regularized vide notification dated 11.10.2018 in pursuance of K.P (Employees Regularization of Services) Act, 2018. Copy of the notification and Act, 2018 are attached as annexure **B & C.**
- 3- That in pursuance to the notification mentioned above the services of the appellant was regularized and his pay was fixed from the date of notification, feeling aggrieved the appellant preferred a representation followed by writ petition No.4573-P/2019 which was remitted to the respondents to redressed the grievances of the appellant. Copy of the

Filed on day
23/2/23

2

representation and Writ Petition No.4573-P/2019 are attached as Annexure..... **D.**

- 4- That it is very pertinent to mention that during the pendency of the Departmental appeal and writ petition various correspondence have been made between the respondents but no fruitful result was obtained.
- 5- That the representation of the appellant was disposed of/dismissed vide order dated 18.01.2023 which was communicated to the appellant on 24.1.2023. Copy of the Appellate Order dated 18.01.2023 is attached as Annexure **E.**
- 6- That feeling aggrieved from the appellate order and having no other remedy the appellant filed the instant appeal on following grounds inter alia.

GROUND:

- A- That the inaction of respondents by not allowing pay fixation to the appellant w.e.f. 01.07.2011 is against the law, facts, norms of natural justice and materials on the record.
- B- That appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and mala fide manner by not allowing pay fixation to the appellant w.e.f. 01.07.2011 i.e. from the date of appointment and as such the inaction of the respondents is violative of law and rules.
- D- That in such a situations/ similar cases pay protection was granted to the regularize civil servants by the finance department vide notification dated 22.05.2019. Similarly vide letter dated 06.02.2014 the finance department circulated a guide line wherein it has been clarified that on regularization of contract employees his previous service shall be counted for pay protection. Copy of notification dated 22.05.2019 and letter dated 06.02.2014 are attached as Annexure **F & G.**
- E- That the inaction of the respondents is discriminatory and against the norms of natural justice, therefore not tenable in the eye of law.
- F- That under Article 38 (e) of the Constitution of Pakistan, 1973 state is bound to reduce disparity in the income and earning of the individuals including persons in the various services of Pakistan, therefore in light of the above mentioned Article the appellant is fully entitle for the grant of pay fixation w.e.f. the date of initial appointment.
- G- That as per rule 2.3. of the West Pakistan Pension Rules, 1963 and FR 22 the appellant is fully entitled for the grant of pay fixation w.e.f. 01.07.2011 with all back benefits.

H- That as per finance Department Notification dated 06.2.2014 the appellat is fully entitled for the grant of pay fixation w.e.f. 01.07.2011 with all back benefits.


I- That appellat seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellat may be accepted as prayed for.

Dated: 20.02.2023


**APPELLANT
SHAHID AMIN**

THORUGH:


**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**


KAMRAN KHAN


UMAR FAROOQ


WALED ADNAN


**MUHAMMAD AYUB
ADVOCATES HIGH COURT**

AFFIDAVIT

I, Shahid Amin, Account Assistant, District Mardan, Tehsil Head Quarter, Takhtbha. , do hereby solemnly affirm and declare on Oath that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.


DEPONENT

"A" - 4



GOVERNMENT OF PAKISTAN
MINISTRY OF HEALTH



National Maternal, Newborn & Child Health
Program, Khyber Pakhtun Khwa

OFFICE ORDER

Dated: / /

16/11
2011

No. PC/MNCH/16923-28. On the recommendation of selection committee meeting held on 06-04-2011 under chairmanship of Provincial Coordinator MNCH Program Peshawar Mr. Shahid Amin S/o Mr. Gul Amin is hereby appointed as Accounts Assistant against the vacant post at District MNCH Cell, District Hangu on purely temporary basis for the period of one year (extendable on the basis of his good performance) on fixed pay at Rs. 15000/- per month with 5% annual increment on the following terms and conditions:

TERMS & CONDITIONS:

1. He is declared medically fit for service by authorized Medical Superintendent DHQ Hospitals Police and service Hospital Peshawar
2. He will be governed by the same rules and regulations as per project policy
3. If he wishes to resign, he shall resign in writing by giving prior notice of one month or deposit one month pay in lieu of one month advance notice
4. His appointment is purely on temporary basis and can be terminated without any notice or reason being assigned
5. He will not be entitled for any pension or gratuity for the services rendered.
6. He has to join duty at his own expenses.
7. If the above terms and condition are acceptable to him, should report for duty to the Executive District Officer (Health) Hangu within ten days of issuance of this Office Order, failing which the offer will be considered as withdrawn

DR. MUHAMMAD ZAMAN KHATTAK
PROVINCIAL COORDINATOR
NATIONAL MNCH PROGRAM
KHYBER PAKHTUNKHWA PESHAWAR

Copy for information and necessary action to the:-

- PS to Secretary to Govt. of Khyber Pakhtunkhwa Health Department Peshawar.
- PA to DG Health Services Govt. of Khyber Pakhtunkhwa
- Executive District Officer (Health) Hangu.
- Accounts Section, National MNCH Program (PII) Peshawar.
- Mr. Shahid Amin S/o Mr. Gul Amin.

GOVERNMENT OF PAKISTAN

NATIONAL MATERNAL, NEWBORN & CHILD HEALTH
PROGRAM KHYBER PAKHTUNKHWA

OFFICE ORDER

No.PC/MNCH/10923-28 on the recommendation of selection committee meeting held on 06.04.2011 under chairmanship of Provincial Coordinator MNCH Program Peshawar Mr. Shahid Amin S/o Mr Gul Amin is hereby appointed as Accounts Assistant against the vacant post at District MNCH Cell, District Hangu on purely temporary basis for the period of one year (extendable on the basis of his good performance) on fixed pay at Rs.15000/- per months with 5% as annual increment on the following terms and conditions';

TERMS AND CONDITIONS

1. He is declared medically fit for service by authorized Medical superintendent.
2. He will be governed by the same rules and regulations as per project policy.
3. If he wishes to resign, he will resign in writing by giving prior notice of one month or deposit one month pay in lieu of one month advance notice.
4. Her appointment is purely on contract basis, and can be terminated without any notice or reason being assigned.
5. He will not be entitled for any pension/gratuity for the services rendered.
6. He has to join duty at his own expenses.
7. If the above terms and condition are acceptable to him, he should report for duty to the Executive District Officer (Health) Hangu within then day of issuance of this Office Order positively fitting which the offer will be considered as withdrawn.

Sd/-

DR. MUHAMMAD ZAMAN, KHATTAK
PROVINCIAL COORDINATOR
NATIONAL MNCH PROGRAM
NWFP PESHAWAR

Copy for information and necessary action to the:

- PS to Secretary Health Govt: of Khyber Pakhtunkhwa Health Department, Peshawar
- PA to DG Health Services, Govt. of Khyber Pakhtunkhwa
- Executive District Officer (Health), Hangu
- Account Section, National MNCH Program (PIU), Peshawar
- Mr. Shahid Alam Son of Mr. Gul Amin

ATTACHED
to be used copy



"B" -5
GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Peshawar, Dated the 11th October, 2018

NOTIFICATION

NO. E&A/Health/2-65/2018: In pursuance of Section 4 of the Khyber Pakhtunkhwa employees (Regularization of Services) Act, 2018, the following Account Assistants of "Mother, Neonatal and Child Health (MNCII) Program in Khyber Pakhtunkhwa" appointed on adhoc/contract basis, hereby stand regularized against the posts as mentioned against each with effect from the date of commencement of Act:

S#	Employee Name	FATHER NAME	Designation-BPS
1	Abdul Hamced	Ghani Muhammad	Accountant -16
2	Inamullah	Piwand Khan	Accountant 16
3	Saeed Rasheed	Abd Ur Rasheed	Accountant 16
4	Khalid Ali	Wali Muhammad	Accountant 16
5	Abdal Khan	Muhammad Israr Khan	Accountant 16
6	Abbas Ali	Mumtaz Ahmad	Accountant 16
7	Wahab Khan	Muhammad Ayub Khan	Accountant 16
8	Mehrab Ali	Mir Dilli Khan	Accountant 16
9	Jamil Ghulam	Qader Bakhsh Bhatti	Accountant 16
10	Asad ullah	Abdullah	Accountant 16
11	Inamullah	Muhammad Zamin	Accountant 16
12	Shahid Amin	Gul Amin	Accountant 16
13	Sajid Mehmood	Muhammad Yaqoob Khan	Accountant 16
14	Muhammad Tariq	Gul Janan	Accountant 16
15	Muhammad Arshad	Muhammad Younis	Accountant 16
16	Sajid Ahmad	Sawab Badshah Khattak	Accountant 16
17	Israr Ahmad	Abdullah Jan	Accountant 16
18	Sajjad	Sher Bahadur	Accountant -16
19	Kaleem Ullah	Hanif Ullah	Accountant -16
20	Muhammad Fahcem Khan	Muhammad Tasleem	Accountant -16
21	Siyar Khan	Sar Zamin Khan	Accountant 16
22	Tahir Abbas	Abdur Rehman	Accountant 16
23	Sabir Ali	Mumtaz Ali	Accountant 16
24	Shah Usman Jehangir Khan Watozai	Muhammad Jehangir Khan Watozai	Accountant 16
25	Anjum Shehzad	Zafar Ullah Khan	Accountant 16
26	Imran Khan	Sher Bahadur	Accountant 16
27	Nadia Khan	Nadar Khan	Accountant 16
28	Muhammad Azam Khan	Muhammad Ajmal Khan	Accountant 16
29	Siraj M Jadoon	Sheraz Khan	Accountant 16

*Noted
SO MNCII/10/18*

*10/10/18
District Health Officer
Malakand at Baskhel*

**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

Peshawar, dated the 11th October 2018

NOTIFICATION

No.E&A/Health/2-65/2018: in pursuance of section 4 of the Khyber Pakhtunkhwa employees (Regularization of Services) Act, 2018, the following Account Assistants of "Mother, Neonatal and Child Health (MNCH) Program in Khyber Pakhtunkhwa" appointed on Adhoc/contract basis, hereby stand regularized against the posts as mentioned against each with effect from the date of commencement of Act:

S#	Employees Name	Father name	Designation BPS
1.	Abdul Hameed	Ghani Muhammad	Accountant - 16
2.	Inamullah	Piwand Khan	Accountant - 16
3.	Saeed Rasheed	Abd ur Rasheed	Accountant - 16
4.	Khalid Ali	Wali Muhammad	Accountant - 16
5.	Abdal khan	Muhammad Israr Khan	Accountant - 16
6.	Abbas Ali	Mumtaz Ahmad	Accountant - 16
7.	Wahab Khan	Muhammad Ayub Khan	Accountant - 16
8.	Mehtab Ali	Mir Dill Khan	Accountant - 16
9.	Jamil Ghulam	Qader Bakhsh Bhatti	Accountant - 16
10.	Asad Ullah	Abdullah	Accountant - 16
11.	Inamullah	Muhammad Zamin	Accountant - 16
12.	Shahid Amin	Gul Amin	Accountant - 16
13.	Sajid Mehmood	Muhammad Yaqoob Khan	Accountant - 16
14.	Muhammad Tariq	Gul Janan	Accountant - 16
15.	Muhammad Arshad	Muhammad Younis	Accountant - 16
16.	Sajid Ahmad	Sawab Badshah Khattak	Accountant - 16
17.	Israr Ahmad	Abdullah Jan	Accountant - 16
18.	Sajjad	Sher Bahadar	Accountant - 16
19.	Kaleem Ullah	Hanif Ullah	Accountant - 16
20.	Muhammad Faheem Khan	Muhammad Tasleem	Accountant - 16
21.	Siyar Khan	Sar Zamin Khan	Accountant - 16
22.	Tahir Abbas	Abdur Rehman	Accountant - 16
23.	Sabir Ali	Mumtaz Ali	Accountant - 16
24.	Shah Usman Jehangir Khan Watozai	Muhammad Jehangir Khan Watozai	Accountant - 16
25.	Anjum Shehzad	Zafar Ullah Khan	Accountant - 16
26.	Imran khan	Sher Bahadar	Accountant - 16
27.	Nadia Khan	Nadar Khan	Accountant - 16
28.	Muhammad Azam Khan	Muhammad Ajmal Khan	Accountant - 16
29.	Siraj M. Jadoon	Sheraz khan	Accountant - 16

HEALTH DEPARTMENT

The Controlling Officer shall verify the correctness of above mentioned information concerned Boards/Institutes and submit a complete report to the department. In case found false/information, the department shall report the concerned authorities immediately to the concerned authorities.

SECRETARY (DEVT) OFFICER IN CHARGE HEALTH DEPARTMENT

Indst. No. & Date sent

Copy forwarded to the

1. Additional Chief Secretary, P.S. Department, Khyber Pakhtunkhwa
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
3. Secretary to Government, Khyber Pakhtunkhwa
4. Secretary to Government, Khyber Pakhtunkhwa, Finance Department
5. Accountant General, Khyber Pakhtunkhwa
6. Director General, Health Services, Khyber Pakhtunkhwa
7. Project Director, Mother, Neonatal and Child Health (MNCHE) Program, Khyber Pakhtunkhwa with the request to coordinate this program with the program being held by them and submit the same to regularize post which shall be created w.e.f. the date of formal notification by the Finance Department.
8. P.S. to Chief Secretary, Khyber Pakhtunkhwa.
9. P.S. to Senior Minister for Health Khyber Pakhtunkhwa.
10. P.S. to Secretary/Spl. Secretary, Health Department.

SECTION OFFICER IN CHARGE HEALTH DEPARTMENT

	Muhammad Ali Khan	Muhammad	Accountant - 16
	Muhammad Azam Kundi	Muhammad	Accountant - 16
	Ahmad Gul	Malik	Accountant - 16

The controlling officer shall verify the credentials of above mentioned staff from concerned boards/institutes and submit a complete report to this department. In case found fake/ambiguous, the regularization shall stand cancelled automatically ab-initio

The entire seniority shall be determined as per rules.

SECRETARY TO GOVT. OF KHYBER
PAKHTUNKHWA HEALTH DEPARTMENT

Endst. No & Date even

Copy forwarded to the

1. Additional Chief Secretary, P&D Department Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
3. Secretary to Governor, Khyber Pakhtunkhwa
4. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department
5. Accountant General, Health Services, Khyber Pakhtunkhwa
6. Director General Health Service, Khyber Pakhtunkhwa
7. Director General, Mother, Neonatal & Child Health (MNCH) Program in Khyber Pakhtunkhwa with the request to continue their enrolments for Posts being held by them and staff the same to regularize post which shall stand created w.e.f the date of formal notification by the Finance department.
8. PSO to Chief Secretary, Khyber Pakhtunkhwa
9. P.S to Chief Secretary, Khyber Pakhtunkhwa
10. Police Station to Secretary/Spl. Secretary, Health Department

Sd/-
SECTION OFFICER (GENERAL)
HEALTH DEPARTMENT

AN
ACT

"C" -7-

to provide for the appointment and regularization of services of certain employees appointed on adhoc basis against civil posts and contract basis against project posts in the Province of the Khyber Pakhtunkhwa.

WHEREAS it is expedient to provide for the appointment and regularization of services of certain employees appointed on adhoc basis against civil posts and contract basis against project posts in the Province of the Khyber Pakhtunkhwa;

It is hereby enacted as follows:

1. Short title, application and commencement.--(1) This Act may be called the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018.

(2) It shall apply to all the employees as defined in clause (e) of sub-section (1) of section 2 of this Act.

(3) It shall come into force at once.

2. Definitions.--(1) In this Act, unless the context otherwise requires;

(a) "Commission" means the Khyber Pakhtunkhwa Public Service Commission;

(b) "contract appointment" means the appointment of a duly qualified person, for a specific period, made against project posts, in a prescribed manner;

(c) "Departmental Selection Committee" means a Departmental Selection Committee, constituted for the purpose of making selection for initial recruitment to civil post under a Government Department or office of Government;

(d) "Government" means the Government of the Khyber Pakhtunkhwa;

(e) "employees" mean duly qualified,-

(i) one hundred and fifty-eight (158) District Specialists of Health Department, who are appointed on adhoc basis against civil posts w.e.f. 4th July, 2017 and holding such civil posts till the commencement of this Act; and

(ii) persons, who are appointed in the projects on contract basis in accordance with the project policy;

Asstt. Secy. to Govt. of Khyber Pakhtunkhwa
Islamabad

- (f) "Government Department" means a Government Department, as defined in the Khyber Pakhtunkhwa Government Rules of Business, 1985;
- (g) "law or rule" means the law or rule, for the time being in force, governing the selection and appointment of civil servants;
- (h) "project" means a perpetual nature project, the continuation of which and conversion to regular budget is essential for service delivery duly identified by the Departments and reflected in the Schedule;
- (i) "civil post" means a civil post under Government or in connection with the affairs of Government to be filled in on the recommendation of the Commission;
- (j) "project post" means a post in the project; and
- (k) "Schedule" means a Schedule appended to this Act.

Asstt. Commr. D. J. Khan
Govt. of Khyber Pakhtunkhwa
Lahore

(2) The expression "ad hoc appointment" shall have the same meaning as is assigned to it in the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973).

3. Regularization of services of ad hoc employees.---Notwithstanding anything contained in any law or rules, the employees at sub-clause (i) of clause (e) of sub-section (1) of section 2 of this Act, appointed on ad hoc basis against civil posts and holding such civil posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis, from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department.

4. Regularization of services of project employees.---Notwithstanding anything contained in any law or rules, the employees at sub-clause (ii) of clause (e) of sub-section (1) of section 2 of this Act, appointed on contract basis against project posts and holding such project posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department:

Provided that the terms and conditions of services of employees reflected at S.No.5 of the Schedule shall further be governed under the National Disaster Management Authority Act, 2010 (Act No. XXIV of 2010) and Regulations made thereunder; and the terms and conditions of services of employees reflected at S.No.6 & 7 of the Schedule shall be governed under the Khyber Pakhtunkhwa Emergency Rescue Services Act, 2012 (Khyber Pakhtunkhwa Act No. XV of 2012).

5. General conditions for regularization.---For the purpose of regularization of the employees under this Act, the following general conditions shall be observed:

- (i) the service promotion quota of all service cadres shall not be affected;
- (ii) the employees shall possess the same qualification and experience as required for a regular post;
- (iii) the employees have not resigned from their services or terminated from service on account of misconduct, inefficiency or any other grounds before the commencement of this Act; and
- (iv) the services of such employees shall be deemed to have been regularized only on the publication of their names in the Official Gazette.

6. **Seniority.**—(1) Except the employees mentioned in the proviso to section 4 of this Act, whose services are to be regulated by their respective laws and rules, all other employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission or Departmental Selection Committee, as the case may be, made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.

(2) The seniority inter-se of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:

Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

7. **Removal of difficulties.**—If any difficulty arises in giving effect to any of the provisions of this Act, the Chief Minister may make such order not inconsistent with the provisions of this Act as may appear to it to be necessary for the purpose of removing such difficulty:

Provided that no such powers shall be exercised after the expiry of one year from the coming into force of this Act.

8. **Overriding effect.**—Notwithstanding anything to the contrary contained in any other law or rule for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rule to the extent of inconsistency to this Act shall cease to have effect.

Assist. Secretary
Govt. of Karnataka
Law Department

SCHEDULE

See section 2(1)(h)(k)

1. Capacity Building of Planning and Development Department.
2. Establishment of M&E System in Khyber Pakhtunkhwa.
3. Sustainable Development Unit, Planning and Development Department.
4. Urban Policy Unit, Planning and Development Department.
5. Provincial Reconstruction, Rehabilitation & Settlement Authority under Provincial Disaster Management Authority.
6. Establishment of Emergency Rescue Services (Rescue 1122) in 16 Districts.
7. Establishment of Planning, Monitoring & Evaluation Wing in ERS (Rescue 1122) Headquarter.
8. Roll Back Malaria Control Program.
9. Prime Minister's Program for prevention and control of Hepatitis.
10. Establishment of Financial Management Cell in Health Department.
11. Establishment of Safe Blood transfusion.
12. Strengthening of TB Control Program Khyber Pakhtunkhwa.
13. Establishment of Procurement Cell in office of DG Health Services, Peshawar.
14. Mother, Neonatal and Child Health (MNCH) Program in Khyber Pakhtunkhwa.
15. Social Health Protection Initiative for Khyber Pakhtunkhwa.
16. Establishment of Bacha Khan Medical College Mardan.
17. Integrated HIV, Hepatitis and Thalassemia Control Program.
18. Construction of Shaheed Mohtarama Benazir Bhutto Children Hospital Mardan.
19. Higher Education Management Information System (HEMIS) Cell.
20. Project Management Unit (PMU) for implementation of BS Program and Special Initiatives.
21. Computerization of Arms License.
22. Prison Management Information System.

Asstt. Secy
Govt. of Khyber Pakhtunkhwa
Law Department

23. Development of Common Application for Government Departments.
24. ICT Infrastructure for Government of Khyber Pakhtunkhwa.
- 24A. IT Support for improvement of Health Service Delivery, Khyber Pakhtunkhwa.
- 24B. IT Professional Training Centre.
25. Strengthening of Planning Cell at Elementary & Secondary Education Department.
26. Provision of free text books to all students of Khyber Pakhtunkhwa upto Intermediate level (Phase-XIV).
27. Strengthening of Planning Cell at Industries Department.
28. Establishment of Special Media Cell in the Directorate of Information.
29. Strengthening of Information Department.
30. Establishment of three FM Stations at Kohat, Swat and Abbottabad.
31. Establishment of Planning Cell at Local Government and Rural Development Department.
32. Retirement Benefit and Death Compensation Cell.
33. Automation of Pension Payment System (APPS).
34. Energy Monitoring Unit.
35. Establishment of Planning Cell in Food Department.
36. Automation of Food Department.
37. Operationalization of Redesigned Energy and Power Department.
38. Establishment of Planning Cell in Energy and Power Department.
39. Computerization of Land Record.
40. Creation of MRS Cell in C&W Department.
41. Enhancement of existing facilities in MIS/GIS for C&W Department.
42. Strengthening of Planning Cell and Monitoring of Developmental Projects of Agriculture Department.
43. Project-Coordination Unit (PCU) for implementation of Law and Order Initiative in Khyber Pakhtunkhwa.
44. Afghan Management and Repatriation Cell at Home Department.
45. Traffic Control Management System and FM Radio 693-120173.
46. Strengthening of Prosecution Directorate, PCMC and Planning Cell at Home Department.

47. Establishment of 100 Family Welfare Centers.
48. Establishment of Population and Research Training Institute and Social Mobilization.
49. Value Addition/Research and Development works on Ore Minerals in Khyber Pakhtunkhwa.
50. Establishment of Model Coal Mine at Shahkot, District Nowshera.
51. Establishment of Zoo for Peshawar Division.
52. Development and Management of National Park in Khyber Pakhtunkhwa.
53. Conservation and Management of Wildlife in Central and Northern Division.
54. Establishment of Monitoring, Evaluation, Grievance and Inquiry Cell in Administrative Department.
55. Establishment of Climate Change Cell for Multilateral Environmental Agreements.
56. Carbon Stock Assessment in Khyber Pakhtunkhwa.
57. Introduction of Range Management Initiatives in Khyber Pakhtunkhwa.
58. Establishment of Engineering Wing in Sports, Tourism, Archeology, Youth Affairs and Museums Department.

Asstt. Legat. Dyer
Govt. of Khyber Pakhtunkhwa
Lahore

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(NASRULLAH KHAN KHATTAK)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

ORDER SHEET



Date of Order or Proceedings	Order or others Proceedings with Signature of Judge
1	2
15.06.2022	<p>W.P No.4573-P/2019.</p> <p>Present: Mr. Muhammad Asif Yousafzai, Advocate, for the petitioners.</p> <p>Mr. Mujahid All Khan, AAG, for the respondents.</p> <p>*****</p> <p>MUSARRAT JILALI, J.- Through this single judgment, we intend to dispose of the instant as well as the connected writ petition No. 4907-P/2019, as the subject matter in both the petitions are one and the same.</p> <p>W.P No.4573-P/2019.</p> <p>The instant writ petition has been filed by the petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, wherein they seek the following relief:-</p> <p><i>"It is, therefore, very humbly prayed that on acceptance of this writ petition, this Hon'ble Court may very magnanimously hold, declare and order that:</i></p> <p>i. <i>Provision of Section 4 and 6 of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 to the extent of words "from the date of commencement of the</i></p>

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ATTESTED
EXAMINER
Peshawar High Court

Act" as appearing in Section 4 of the Act *ibid* and "shall rank junior to all Civil Servants belonging to the same service or cadre, or the case as may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons" appearing in section 6 of the Act *ibid*, are *ultra vires* of the Constitution and / or may be read down as is deemed suitable by this Hon'ble Court while considering the grievances of the petitioners.

- ii. The impugned action / inaction on part of the respondents instead of regularizing the petitioner from the date of their initial appointment in the respondent department and regularizing them from the date of commencement of the **KPK Employees (Regularization of Services) Act, 2018** is illegal, unlawful, without lawful authority and being violative of the law and dicta laid down by the Superior Judiciary and this Hon'ble Court and thus ineffective upon the right of the petitioners.
- iii. The respondents shall regularize the services of the petitioner at once *w.e.f.* their initial dates of appointments and shall accordingly treat the petitioners in respect of their rights to seniority, promotions and pensionary benefits etc.
- iv. Cost throughout.

W.P No.4907-P/2019.

Through the captioned petition, petitioners seek the following relief:-

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EXAMINER
Peshawar High Court

It is, therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may very graciously be pleased that;

- i. The impugned action / inaction on the part of the respondents instead of regularizing the petitioners from their initial appointment in the respondents department and regularizing them from the date of commencement of (Regularization of Services) Act, 2018 is illegal, unlawful and without lawful authority and violation of the law and dicta laid down by the superior court and this Hon'ble Court and thus ineffective upon the rights of the petitioners.*
- ii. The respondents shall be directed to regularize the services of the petitioners from their initial date of appointments and shall accordingly treat the petitioners in respect of their rights to seniority, promotions and pensionary benefits etc.*

2. So far as vires of Regularization of Service Act, 2018 is concerned, learned counsel for the petitioners has withdrawn from this part of his prayer, however, made a request at the bar that this and the connected petition be sent to respondent No.2 to decide the same in the light of judgment rendered in W.P.No. 3394-P/2016 titled Amir Zeb .Vs. District Accounts Officer, Nowshera etc. decided on 22.06.2017

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EXAMINED
Peshawar Hon Court

by the Lager Bench of this Court.

3. In the light of judgment ibid of the larger bench of this Court, this and the connected writ petition are sent to respondent No.2 i.e. Secretary Health, Government of Khyber Pakthunkhwa, Peshawar for redressal of the petitioners' grievance. Disposed of accordingly.

Iqbal
JUDGE

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JUDGE

Announced
15.06.2022

~~DECLINED TO BE TRUE COPY~~
EXAMINER
Peshawar
Article 87 of
The Constitution of Pakistan 1973

18 JUN 2022

41301

Date of Presentation of Petition 18-6-22

No of Pages 20

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Witnessed By *FCU*

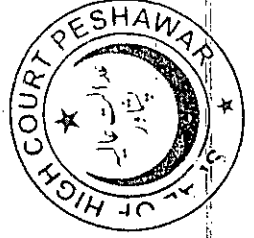
(DB) Hon'ble Justice Musarrat Hilali
Hon'ble Mr. Justice Mohammad Ibrahim Khan

Noor Shah

In the Peshawar High Court, Peshawar

Writ Petition No. 4573 -P of 2019

- 1) Khalil Muhammad Khan,
Social Organizer (BS-17), District Malakand
- 2) HasmatBadshah,
Social Organizer (BS-17), District Dir Upper
- 3) Raza Shah,
Social Organizer (BS-17), District Chitral
- 4) AttaUllah,
Social Organizer (BS-17), District Dir Lower
- 5) HameedUllahTurabi,
Social Organizer (BS-17), District Manshara
- 6) Mustafa MehmoodSaeed,
Social Organizer (BS-17), District Karak
- 7) Muhammad Saleem Khan,
Social Organizer (BS-17), District Nowshera
- 8) FazliSubhan,
Social Organizer (BS-17), District Peshawar
- 9) Muhammad Qasim,
Social Organizer (BS-17), DGHS Khyber Pakhtunkhwa Peshawar
- 10) Irfan Jamal,
Social Organizer (BS-17), District Peshawar
- 11) Noor Wahid,
Social Organizer (BS-17), District Charsada
- 12) AmanUllah Khan,
Social Organizer (BS-17), District DI Khan
- 13) Muhammad khaliq,
Social Organizer (BS-17), District Bannu
- 14) Ahmad Hussain,
Social Organizer (BS-17), District Mardan
- 15) Dr. Sarwat,
WMO (BS-17), District HariPur
- 16) Dr. Palwasha Khan,
WMO (BS-17), District Swat
- 17) Dr. NiyarMunir,
WMO (BS-17), PIU Peshawar



ATTESTED
EXAMINER
Peshawar High Court

- 18) Seema Gul,
Office Superintendent (BS-17), District Charsada
- 19) Kaleem Ullah,
Accountant (BS-16), District Malakand
- 20) Sajjad,
Accountant (BS-16), District Malakand
- 21) Shaukat Ali Khan,
Accountant (BS-16), District Swat
- 22) Inam Ullah,
Accountant (BS-16), District Dir Upper
- 23) Asad Ullah,
Accountant (BS-16), District Dir Lower
- 24) Shah Usman Jehangir Khan Watozai
Accountant (BS-16), PIU Peshawar
- 25) Abdal Khan,
Accountant (BS-16), PIU Peshawar
- 26) Kamran Ahmad Khan,
Accountant (BS-16), PIU Peshawar
- 27) Muhammad Arshad,
Accountant (BS-16), PIU Peshawar
- 28) Israr Ahmad
Accountant (BS-16), District Lakki Marwat
- 29) Shahid Amin
Accountant (BS-16), District Hangu
- 30) Khalid Ali,
Accountant (BS-16), District Bunir
- 31) Wakeel Taj,
Accountant (BS-16), District Charsada
- 32) Muhammad Azam Khan,
Accountant (BS-16), District Swabi
- 33) Jamil Ghulam,
Accountant (BS-16), District DI Khan
- 34) Siyar Khan,
Accountant (BS-16), District Mansehra
- 35) Muhammad Faheem,
Accountant (BS-16), District Mansehra
- 36) Anjum Shehzad,
Accountant (BS-16), District Peshawar

ATTESTED
EXAMINER
Peshawar High Court

- 37) Saeed Rasheed,
Accountant (BS-16), District Battagram
- 38) Imran Khan,
Accountant (BS-16), PIU Peshawar
- 39) Ikram Khan,
Computer Operator (BS-16), District Malakand
- 40) Amin Ullah,
Computer Operator (BS-16), District Malakand
- 41) Noor Ahmad,
Computer Operator (BS-16), District Chitral
- 42) Hamid Zada,
Computer Operator (BS-16), District Dir Lower
- 43) Bilal Ahmad,
Computer Operator (BS-16), PIU Peshawar
- 44) Abdul Latif Khan
Computer Operator (BS-16), District Shangla
- 45) Rameez Khan,
Computer Operator (BS-16), District Bunir
- 46) Ismail Khan,
Computer Operator (BS-16), District Charsada
- 47) Qasim Ali,
Computer Operator (BS-16), District Charsada
- 48) Iqbal Hussain,
Computer Operator (BS-16), District Shangla
- 49) Gul Jan,
Computer Operator (BS-16), District Haripur
- 50) Muhammad Arif,
Computer Operator (BS-16), District Haripur
- 51) Asim Ali,
Computer Operator (BS-16), District Nowshera
- 52) Maghfoor Zaigham,
Computer Operator (BS-16), District Mansehra
- 53) Agha Mansoor,
Computer Operator (BS-16), District Peshawar
- 54) Bushra Mumtaz,
LHV (BS-12), District Malakand
- 55) Samina,
LHV (BS-12), District Malakand
- 56) Shaleela,
LHV (BS-12), District Malakand

ATTESTED
EXAMINER
Peshawar High Court

- 57) Gul e Rana,
LHV (BS-12), District Malakand
- 58) AliaBibi,
LHV (BS-12), District Malakand
- 59) HusanBano,
LHV (BS-12), District Swat
- 60) Ishrat,
LHV (BS-12), District Swat
- 61) SaimaNawab
LHV (BS-12), District Swat
- 62) Khudija,
LHV (BS-12), District Dir Upper
- 63) WajahatBibi,
LHV (BS-12), District Dir Upper
- 64) NaziaSidiqi,
LHV (BS-12), District Dir Upper
- 65) Taj Begum,
LHV (BS-12), District Dir Upper
- 66) Shakeela,
LHV (BS-12), District Dir Upper
- 67) Nazia Begum,
LHV (BS-12), District Dir Upper
- 68) Farida
LHV (BS-12), District Chitral
- 69) BalqeesKhanam,
LHV (BS-12), District Dir Lower
- 70) KalsoomNauman,
LHV (BS-12), District Dir Lower
- 71) Shafat Begum,
LHV (BS-12), District Dir Lower
- 72) Nighat Shah,
LHV (BS-12), District Dir Lower
- 73) Zainab Begum,
LHV (BS-12), District Dir Lower
- 74) IslamiaBibi,
LHV (BS-12), District Shangla
- 75) RifaqatBibi,
LHV (BS-12), District Shangla
- 76) BakhtNazBibi,

ATTESTED
EXAMINER
Peshawar High Court

- LHV (BS-12), District Shangla
- 77) **Newsheen Bibi,**
LHV (BS-12), District Shangla
- 78) **Gul Naz,**
LHV (BS-12), District Charsada
- 79) **Nazia,**
LHV (BS-12), District Charsada
- 80) **Tasleem Begum,**
LHV (BS-12), District Charsada
- 81) **Azra Gul,**
LHV (BS-12), District Charsada
- 82) **Faizabibi,**
LHV (BS-12), District Charsada
- 83) **Kausar Begum,**
LHV (BS-12), District Charsada
- 84) **Fardous Mashahadi,**
LHV (BS-12), District Hari Pur
- 85) **Samina Karamat,**
LHV (BS-12), District Peshawar
- 86) **Nafessa Moon,**
LHV (BS-12), District Peshawar
- 87) **Ruqayya,**
LHV (BS-12), District Peshawar
- 88) **Nazeen Gul,**
LHV (BS-12), District Peshawar
- 89) **Fatima,**
LHV (BS-12), District Peshawar
- 90) **Jehan Ara,**
LHV (BS-12), District Peshawar

..... Petitioners

Versus

1. **Government of Khyber Pakhtunkhwa,**
Through Chief Secretary,
Civil Secretariat, Peshawar.
2. **Secretary Health Department KPK,**
Civil Secretariat, Peshawar.
3. **National MNCH Program Khyber Pakhtunkhwa,**
Through its Provincial Coordinator,
Peshawar.

ATTESTED
EXAMINER
Peshawar High Court

4. Secretary Establishment Department KPK,
Civil Secretariat, Peshawar.
5. Secretary Finance Department, KPK,
Civil Secretariat, Peshawar.

..... Respondents

Writ Petition under Article 199

Of the Constitution of Islamic Republic of Pakistan, 1973

May it please this Honorable Court

The Petitioners very humbly implore for permission to plead their grievances at the hands of respondents and seek solace thereto, as follows:

Facts leading to this Writ Petition:

1. That the Petitioners, being *bona fide* residents of Khyber Pakhtunkhwa, having due qualifications, were initially appointed by Respondent No. 3 as project employees from 2008 onwards, in projects namely "Mother, Neonatal and Child Health Program (MNCHP) in Khyber Pakhtunkhwa".
2. That since their appointments, the Petitioners, being hardworking and dedicated individuals are/were rendering their services in different cadres, as per their respective qualifications, with the Respondent No. 3 while achieving developmental goals in maternal and child health.

(Copies of the several appointment letters are Annexure "A")

3. That, since the Project against which the Petitioners were appointed, in essence required continuity without any break and as the Petitioners had, over the years, maintained unblemished track records and had never been reported for or complained of in respect of their duties which they had been meritoriously rendering over the years, thus the Respondents kept on retaining their services from time to time. It is pertinent to mention here that there is no break or discontinuity in their long lengthy service tenure.

ATTESTED
EXAMINER
Peshawar High Court

4. That it would be important to bring on record that while acknowledging the permanent nature of the certain Projects, Establishment Department (Respondent No.4) vide Memo. No. SO(O&M)E&AD/3/15/2016 dated 28.11.2017 directed all the Administrative Secretaries to attend a meeting regarding regularizations of those project which are permanent in nature along with the details of the project employees.

(Copy of the Memo dated 28.11.2017 is Annexure "B")

5. That the Establishment Department again on 29.12.2017 directed all the Administrative Secretaries to attend a follow-up meeting on 02.01.2018 regarding regularizations of the project employees of the projects which are permanent in nature. In the said memo, the Administrative Secretaries were requested to attend the meeting along with the attested copies of exact details of the project employees of the respective departments.

(Copy of the Memo dated 29.12.2017 is Annexure "C")

6. That, in pursuance to the above mentioned memos, list of projects were provided by Respondent No.2 to the Establishment Department (Respondent No.4) wherein the details of different projects in the Health Department were provided to the Respondent No.4, including *the Project* of the Petitioners.

7. That after receiving the wherewithal details of all such projects, the draft Khyber Pakhtunkhwa Employees (Regularization of Services) Bill, 2018 was duly presented and having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 26.02.2018 and consequently assented to, by the Governor on 07.03.2018 thus promulgated as an Act, namely, Khyber Pakhtunkhwa Employees (Regularization of Services) Act 2018 (hereinafter to be referred as "The Act, 2018" for facility of reference). The spirit of "The Act, 2018" was to regularize the employees appointed on ad-hoc basis against the posts of permanent nature and those contract employees appointed against the projects posts in the province of Khyber Pakhtunkhwa. Section 2(e)(ii) and Section 2(h) of "The Act, 2018" provide the definition of persons and that of the Project which are reproduced for facility of reference herein below;

ATTESTED
EXAMINER
Peshawar High Court

“persons, who are appointed in the projects on contract basis in accordance with the project policy”

“project means a perpetual nature project, the continuation on which and conversion to regular budget is essential for service delivery duly identified by the Departments and reflected in the Schedule”.

Stress Supplied

(Copy of the Regularization Act, 2018 is Annexure “D”)

8. That, the Petitioners who were/are performing their duties against the mentioned positions of permanent nature and have been given their prime life and youth to the Organization/Department were informed that they have been regularized from the date of commencement of Act, 2018 while completely ignoring more than a decade long services rendered by the Petitioners.

9. That, consequently vide notification No. E&A(Health)/2-65/2018(Regularization) dated 16.08.2018, and Notifications No.E&A(Health)/2-65/2018 dated 11.10.2018, Notifications No.E&A(Health)/2-65/2018 dated 01.10.2018 and Notifications No.E&A(Health)/2-65/2019 dated 24.05.2019 it was notified that under Section 4 of the KP Employees (Regularization of Services) Act, 2018 the Petitioners are regularized from the date of commencement of Act.

(Copies of Notifications are annexure “E”)

10. That consequently, the Petitioners are thereafter paid salaries as regular employees and that too while illegally and unlawfully deducting a sizeable amount in the heading of (Health) (ROP) which also clearly shows the confiscatory attitude of the Respondents.

(Copy of the Pay slips of some of the Petitioners are annexure “F”)

11. That it is a well settled principle so laid down by the apex Supreme Court of Pakistan as well as this Honorable Court that the previous service rendered by the employees on contractual basis with the department shall be counted towards seniority, retirement and pensionary benefits etc. Therefore, it can be stated with certainty that their seniority, etc. shall be reckoned from the date of

their initial appointment in the relevant department and not from the date of their regular appointment thus the exclusion of their contract period for the purpose of seniority and pensionary benefits, gratuity and leave etc. is illegal, unlawful, without lawful authority and thus violative of the law.

(Copies of 2014 SCMR 1289 and 2014 PLC CS 1068 are Annexure "G")

12. That, it is also important to place on record, at the cost of repetition that the Petitioners, being the most qualified persons, are performing their duties alongside other regular employees who are inducted much after the Petitioners but most unfortunately they have been placed senior to the Petitioners because their services are wrongly counted from the date of promulgation of the Act, 2018 instead of their appointment which dates back as 2008-09.

13. That recently a judgment has been rendered by the Abbottabad Circuit Bench of this Honorable Court while holding that:

"As there is no denial of the fact that Petitioner was initially appointed as fixed pay and subsequently his services were regularized, hence, in view of the Rule 2.3 of West Pakistan Civil Services Pension Rules, 1968, the Petitioner is to be paid pensionary benefits from the date of his first appointment. It is a well settled law, when any employee on contract is absorbed into regular employment, and there is no break in his service, then period on contract employment has to be considered for counting length of service of pensionary benefits etc. reliance is placed on 2010 PLC 354, wherein it is held that:-

When an employee was regularized, his total length of service, was to be computed from the day he joined the service that could be temporary or otherwise. Even period of an employee of daily

ATTESTED
EXAMINER
Peshawar High Court

wages would be counted for the purpose of computing pensionary benefits."

It is important to place on record that consequent to the above Judgment and Order dated 18.12.2018 passed in W.P. No. 627-A/2018, Government of Khyber Pakhtunkhwa Finance Department has issued notification No. FD(SOSR-II)4-36/2017 dated 22.05.2019 wherein they have extended the status of civil servant from the date of appointment on contract basis instead of date of regularization.

(Copy of the Judgment and consequent Notification are Annexure "H")

14. That in a case of similar nature, where similarly placed employees of Planning and Development Department Khyber Pakhtunkhwa, were constrained to approach this Honorable Court. While acknowledging the prima facie nature of case, not only comments have been called from the Respondents but they have further been restrained from making deduction from the salary of the Petitioners.

(Copy of Order-sheet in similar case by this Honorable Court is annexure "I")

15. That despite repeated requests of the Petitioners, the Respondents are still not considering the Petitioners for regularization with effect from their initial appointments in line with firm view so made by Honorable Supreme Court of Pakistan and this Honorable Court, thus in circumstances, while feeling gravely dissatisfied and aggrieved of the impugned inactions of the Respondents which are in clear violation of law, the Petitioners, while having no other efficacious and adequate alternate remedy, are constrained to invoke constitutional jurisdiction of this Honorable Court, on following grounds and reasons, amongst others:

ATTESTED
EXAMINER
Peshawar High Court

Grounds warranting issuance of appropriate writ(s):

a) Because the impugned action/inaction of the Respondents for not considering /regularizing the Petitioners with effect from the dates of their initial

appointments is illegal, unlawful, without lawful authority and thus liable to be judicially reviewed.

- b) Because the Respondents have flouted the constitutionally guaranteed rights of the Petitioner as are enshrined in the Constitution of Islamic Republic of Pakistan 1973.
- c) Because the impugned act of the Respondents is unlawful as much as the same is the result of and is the violation of the Principle of procedural propriety and rationality.
- d) Because denying the Petitioners with their right of regularization from their initial date of appointments is in sheer violation to the article 3,4,8 and 25 of the Constitution of Islamic Republic of Pakistan.
- e) Because Respondents have got no rights and authority to snatch from the Petitioners their rights of regularization from the initial dates of appointments as the Petitioners are indefatigably and continuously been rendering their services in the concerned department/fields and under the principle of "Legitimate Expectation" they are entitled and obliged to be provided with the safeguard and protection in their employment.
- f) Because, as it is abundantly been established that the Posts against which the Petitioners are serving, are of permanent nature and were thus kept on filled on regular basis by keeping the Petitioners posted against the same.
- g) Because a larger Bench of the Apex Court in case "Muhammad Aslam Awan vs. Federation of Pakistan and others" reported in 2014 SCMR 1289 has laid down a principle that "while considering the seniority of Civil Servant, the seniority was reckoned from the date of initial appointment and not from the date of confirmation or regularization.", hence Section 4 of the KPK Regularization Act, 2018 is in clear conflict with the above settled principle of Apex Court and thus liable to be read down.

ATTESTED
EXAMINER
Peshawar High Court

- h) Because, similarly it has been held in Judgment cited as 2014 PLC (CS) 1068 that regularization of service is not an initial recruitment but the confirmation of an existing employment, hence the Petitioners are under the law entitled to be regularized from the date of their initial appointment against the posts and thus their seniority is also to be counted from the date of their initial appointments.
- i) Because the acts of the Respondents in neglecting and refusing the right of regularizing the Petitioners from the date of their initial appointment is against the ordain of Allah Almighty as under the principle of Natural Justice and fundamental human rights of the Petitioners, the Respondents have usurped the rights of the human beings and have thus by-passed the divine rule of to give everyone his due right.
- j) Because once it has been established that the Petitioners were entitled to be regularized against the posts which they are holding, it has become inevitable and necessary under the law to provide the Petitioners a protective shield from deprivation and in insult which the Petitioners are facing as they have been held to be juniors from their juniors despite their long services so rendered in the Respondent Department.
- k) Because the Respondents are bound to provide the Petitioners equal protection of law and must not discriminate the Petitioners in service as it is the inviolable and jealously guarded rights of the Petitioners under the Constitution of Islamic Republic of Pakistan.
- l) Because the Petitioners cannot suffer for follies of a few uncanny government functionaries.
- m) Because the Project of the Petitioners got initially started in year 2008 and is remain in field for the past so many years with no end and has now been converted to permanent side. It is for this reason, that the Petitioners are

ATTESTED
EXAMINER
Peshawar High Court

entitled to be regularized from the date of their initial appointment as they have rendered their service against the posts which were/ are permanent in nature.

- n) Because the impugned acts of the Respondents is highly unjust and against the principle of Natural Justice and if allowed to remain in filed than the same would perpetuate more injustice and certainly result in complete deprivation of the constitutional right of the Petitioners.
- o) Because the petitioners are not being treated fairly, justly and as per principle of equality and equity because despite the permanent nature of the petitioner's project, the Petitioners are deprived from their right of regularization from the date of their initial appointment. Thus the inaction and omission on the part of respondents is against the spirit of Articles 2A, 4 & 25 of the Constitution of Islamic Republic of Pakistan.
- p) Because the denial and refusal of the Respondents is inane, smacked with malafide, unreasonableness and based on monopolistic approach always loathed by the Superior Judiciary.
- q) Because it has been numerously held by the superior judiciary that once a right stands accrued, same cannot be rescinded, withdrawn or taken back in view of the Doctrine of *promissory estoppel* and *locus poenitentiae*.
- r) Because, the Petitioners are highly trained and qualified persons who after indefatigable hard work have obtained un-matched skills and experience and by placing them in lower case from their juniors in service would not only undermine and deteriorate their capacity but certainly would also seriously affect their capabilities owing to discrimination and exploitation casted by the Respondents.
- s) Because even otherwise the impugned action and inaction are clearly based on highhandedness, whims and caprice of the Respondents.

ATTESTED
EXAMINER
Peshawar High Court

- t) Because the Respondents are bound to follow the dicta laid down by the Superior Courts in letter and spirit and the impugned provisions of the KP Regularization Act, 2018 in essence with utmost respect in not in consonance with the very judgments cited above and hence Section 4 and 6 to the extent of the words respectively "from the date of commencement of the Act" and "shall rank junior to all Civil Servants belonging to the same service or cadre, or the case as may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons." are liable to be struck down and the Petitioners are to be regularized from the date of their initial appointment and also be given proper right of seniority as such.
- u) Because the actions and inactions of the Respondents have badly affected the Petitioners thus such action of the Respondents is violative of Article 9 and 38 of the Constitution.
- v) Because the acts of Respondents are clearly smacked with malafide.
- w) Because the conduct of the official Respondents are in violation of Article 25 of the Constitution.
- x) Any other grounds, at the time of hearing.

It is therefore very humbly prayed that on acceptance of this Writ Petition, this Honorable Court may very magnanimously hold, declare and order that:

1. Provision of Section 4 and 6 of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 to the extent of words "from the date of commencement of the Act" as appearing in Section 4 of the Act ibid and "shall rank junior to all Civil Servants belonging to the same service or cadre, or the case as may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to

ATTESTED
 EXAMINED
 Peshawar High Court

such other persons." appearing in Section 6 of the Act ibid, are ultra vires of the Constitution and/or may be read down as is deemed suitable by this Honorable Court while considering the grievances of the Petitioners.

- II. The impugned action/inaction on part of the Respondents instead of regularizing the Petitioner from the date of their initial appointment in the Respondent Department and regularizing them from the date of commencement of the KPK Employees (Regularization of Services) Act, 2018 is illegal, unlawful, without lawful authority and being violative of the law and dicta laid down by the Superior Judiciary and this Honorable Court and thus ineffective upon the right of the Petitioners.
- III. The Respondents shall regularize the services of the Petitioner at once w.e.f. their initial dates of appointments and shall accordingly treat the Petitioners in respect of their rights to seniority, promotions and pensionary benefits etc.
- IV. Cost throughout.
- V. **Interim Relief:** In view of all the ingredients of interim relief the Respondents may very kindly be restrained from taking any kind of adverse action against the Petitioners and shall also not make any deduction from the monthly salaries of the Petitioners till the final disposal of this Petition.
- VI. **Any other relief,** not specifically prayed may also graciously be granted to the Petitioner, if appears just, necessary and appropriate.

PETITIONERS

Through

(Signature of Abdul Rahim Khan Jadoon)

Abdul Rahim Khan Jadoon,
Advocate High Court(s)
&

(Signature of H. Bilal Khan)

H. Bilal Khan
Advocate High Court(s)

RECEIVED BY
18 JUN 2022

-32- (16)

In the Peshawar High Court, Peshawar

W.P. No. _____ -P/2019

Khalil Muhammad Khan & Others

Versus

Government of Khyber Pakhtunkhwa & Others

CERTIFICATE

Certified that Petitioners have filed no other writ petition in this Honorable Court or in any other court on this cause of action, so agitated herein.

PETITIONERS

August 7, 2019

LIST OF BOOKS

1. Constitution of Islamic Republic of Pakistan, 1973
2. Khyber Pakhtunkhwa Employees (Regularization of Services) Act 2018
3. The Khyber Pakhtunkhwa Rules of Business, 1985
4. Judgments of the Superior Judiciary,
5. Any other Book, if need be.

PETITIONERS

Through

August 07, 2019

H. Bilal Khan,

Advocate, High Court(s)

ATTESTED
EXCER
Peshawar High Court

33-

17

In the Peshawar High Court, Peshawar

W.P. No. _____-P/2019

Khalil Muhammad Khan & Others

Versus

Government of Khyber Pakhtunkhwa & Others

AFFIDAVIT


I, Hameed Ullah Turabi, Social Organizer (BS-17), District Mansehra (Petitioner No.5), do hereby solemnly affirm and verify on oath that the contents of accompanied writ petition are true and correct to the best of my knowledge, information and belief. Neither anything stated in the petition is false nor is any information withheld from this Honorable Court.

DEPONENT

CNIC # 17301-5097419-3

0714-9085897

Identified By:


H. Bilal Khan,
Advocate High Court(s)

5657

Aug
5.0

29
Hameed Ullah
Mansehra
H. Bilal Khan

9/8/09

CERTIFIED TO BE TRUE
EXAMINED
Peshawar High Court
Authority: Section 87 of
The Oath Act, 1964

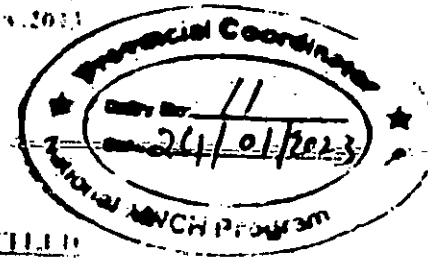
18 JUN 2022

"E"

-34-

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No. SOC/11071-2/PA-1/2023
Dated Peshawar, the 18th January, 2023



To
The Provincial Program Coordinator
MNCH, Khyber Pakhtunkhwa, Peshawar.

Subject: GUIDANCE REGARDING WRIT PETITION NO. 1573/2019 TITLED
KHALIL MUHAMMAD KILAN & WRIT PETITION NO. 4907/2019 TITLED
KILAN VS GOVERNMENT OF KHYBER PAKHTUNKHWA

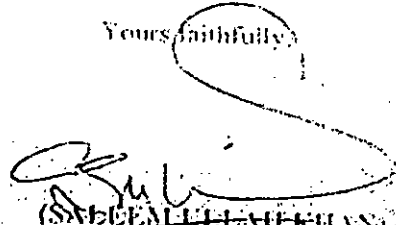
Dear Sir,

I am directed to refer to the subject noted above and state that in light of the Judgment of the Peshawar High Court, rendered in W.P No. 3394-P/2016, titled Amir Zahir - District Nazim, the case was taken up with the Law, Parliamentary Affairs and Human Rights Department, Khyber Pakhtunkhwa, Peshawar, for seeking guidance in the instant case. In response the Law Department asserted that the judgment in W.P No. 3394-P/2016 cannot be taken into account in the instant case as relief was granted to those petitioners in the said W.P under the Civil Servants (Amendment) Act, 2013 enforced on 30th June, 2001 and since those petitioners were initially appointed on contract basis on 1st July, 2001, therefore, their contractual period was counted towards pension under the shade of Act ibid. On the contrary, the present petitioners were regularized with immediate effect upon promulgation of the KP Employees (Regularization of Services) Act, 2018. Further asserted that the KP Civil Servants-Pension Rules, 2021 do not provide for counting of contractual/ temporary service towards pension (Copy enclosed).

2. The Competent Authority in Health Department has been pleased to dispose of the instant case in the above-narrated terms.

3. I am further directed to request to intimate all the concerned petitioners accordingly.

Yours faithfully,


(SYED MUHAMMAD KHAN)
SECTION OFFICER (GENERAL)
(091-9210863)

Copy is forwarded for information to the:

1. Deputy Registrar (Judicial), Peshawar High Court, Peshawar, with reference to his letter No. 54944 (1)/1356/2022/WP-MN date 30/06/2022
2. IPS to Secretary, Health Department, Khyber Pakhtunkhwa, Peshawar
3. PS to Special Secretary (E&A) Health Department Khyber Pakhtunkhwa, Peshawar
4. PA to Additional Secretary (E&A) Health Department Khyber Pakhtunkhwa, Peshawar
5. PA to Dy. Secretary (Admin/Lit), Health Department Khyber Pakhtunkhwa, Peshawar

LEGIBLE COPY

GOVERNMENT OF KHYBER PAKHTUNKHWA

HEALTH DEPARTMENT

No. SOG/HD/1-2/P&T/2023

Dated Peshawar, the 18th January 2023

To,

The Provincial Program Coordinator
MNCH, Khyber Pakhtunkhwa, Peshawar

Subject: Guidance regarding writ petitions No. 4573/2019 titled Khalil Muhammad Khan & Writ Petition No. 4907/2019 titled Khan Vs Government of Khyber Pakhtunkhwa

Dear Sir,

I am directed to refer to the subject noted above and state that in light of the Judgment of the Peshawar High Court, rendered in WP No. 3394-P/2016, titled Amir Zeb Vs DAO Nowshera, the case was taken up with the law, parliamentary affairs and Human rights Department, Khyber Pakhtunkhwa, Peshawar for seeking guidance in the instant case. In respect of the Law Department asserted that the Judgment in WP No. 3394/2016 cannot be taken into account in the instant case as relief was granted to those petitioners in the said WP under the Civil Servants (Amendment) Act 2013 enforced on 30th June, 2001 and since those petitioners were initially appointed on contract basis on 1st July 2001, therefore, their contractual period was counted towards pension under the shadow of Act *ibid.* on the contrary, the present petitioners were regularized with immediate effect upon promulgation of the KP Employees (Regularization of Services) Act 2018. Further asserted that the KP Civil Servants Pension Rules, 2021 do to provide for counting of contractual / temporary / Service towards pension. (Copy enclosed).

2. The Competent Authority in Health Department has been pleased to dispose of the instant case in the above narrated terms.
3. I am further directed to request to intimate all the concerned petitioners accordingly.

Yours faithfully

SALEEM ULLAH KHAN
SECTION OFFICER (GENERAL)

TO BE SUBSTITUTED BEARING SAME NO. & DATE.



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 22-05-2019

NOTIFICATION

No. FD/(SOSR-IT)4-36/2017. In pursuance of the judgement of Peshawar High Court Abbottabad Bench in Writ Petition No. 627-A/2018 dated: 18.12.2018 and Judgements of various Lower Courts as well as supersession of Finance Department policy letter No. BO-I/1-22/2007-08/FD dated: 29.01.2008, the Competent Authority has been pleased to accord sanction of regularization of Fixed Pay Class-IV employees appointed on the basis of policies issued vide Finance Department notifications No. B-I/2-1/92-93/1 dated: 04.11.1992 and No. B-I/1-22/94-95/FD Vci-II dated: 24.07.1999 by extending them the status of civil servant as per Civil Servant Act 1973 from the date of their first appointments instead of the date of their regularization w.e.f 01.07.2008 in their respective entities in the best of public interest.

SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Endst. No & date even

Copy for information and necessary action is forwarded to the.

1. The Additional Chief Secretary (P&D), Khyber Pakhtunkhwa.
2. The Provincial Police Officer, Khyber Pakhtunkhwa.
3. The Accountant General, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
6. All Administrative Secretaries Government of Khyber Pakhtunkhwa.
7. All Deputy Commissioners in Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. The Director Treasuries & Accounts Khyber Pakhtunkhwa.
10. The Director Local Fund Audit, Khyber Pakhtunkhwa.
11. Director, FMU, Finance Department.
12. Budget Officer-XI, Finance Department.
13. Budget Officer-I, Finance Department with reference to their letters quoted above.
14. All District Controller of Accounts Khyber Pakhtunkhwa.
15. All District Account Officers in Khyber Pakhtunkhwa.
16. PS to Chief Secretary, Khyber Pakhtunkhwa.
17. PS to Secretary Finance, Khyber Pakhtunkhwa.
18. PS to Special Secretary Finance Department, Khyber Pakhtunkhwa.
19. PA to Additional Secretary (Regulation), Finance Department.

(MOAZZAM KHAN)
Section Officer (SR-II)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

"9" "1"

-39-

-36-

NO. FD. (SOSR-1) 12-7/2014

Dated Peshawar the 6th February, 2014

To:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:

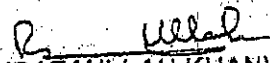
PROTECTION OF PAY OF CONTRACT EMPLOYEES ON
REGULARIZATION / APPOINTMENT ON REGULAR BASIS.

Dear Sir,

In pursuance to the Finance Division's Office Memorandum No.7(9)R-I/2012 dated 31st May, 2013, the competent authority is pleased to allow the pay protection to non-Gazetted contract employees on their regularization / appointment on regular basis with immediate effect subject to the following conditions:-

- i) That the contract appointment has been made on standard terms and conditions, circulated by this Provincial Government as amended from time to time.
- ii) That the contract employee has applied through proper channel and has been properly relieved by the appointing authority. This condition shall not apply in case of regularization on the same post.
- iii) That regularization / regular appointment has been made with the approval of competent authority.
- iv) That there is no break / interruption between contract service and regular service.
- v) That the service rendered on contract basis shall not qualify for pension / gratuity.
- vi) That in case of regular appointment in lower grade, pay shall not be protected.

Yours faithfully,


(RAZAULLAH KHAN)
Addl: Secretary (Regulation)

P.T.O

-37- -88-

Endst: No .FD (SOSR-1) 12-7 /2014

Dated 6th Feb, 2014

Copy for information & necessary action to the:-

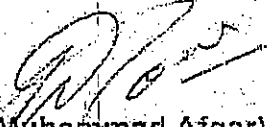
1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
2. All the District Comptroller of Accounts in Khyber Pakhtunkhwa.
3. The Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
4. The Director, FMIU, Finance Department.
5. The Treasury Officer, Peshawar.
6. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
7. All the District & Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.


(MASOOD KHAN)
Deputy Secretary (Reg-II)

Endst: No. & Date Even

Copy for information is forwarded to:-

1. All the Section Officers / Budget Officers in Finance Department, Khyber Pakhtunkhwa, Peshawar.
2. The Private Secretary to Senior Minister for Finance, Khyber Pakhtunkhwa.
3. The Private Secretary to Secretary / P.As to Special Secretary / Additional Secretaries / Deputy Secretaries in Finance Deptt.


(Wazir Muhammad Afgar)
Section Officer (SR-1)

38

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO: _____ OF 20 23

Shahid Amin

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt

(RESPONDENT)
(DEFENDANT)

I/We Appellant

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/202

[Signature]

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT
(BC-10-0853)
(15401-0705985-5)

KAMRAN KHAN

UMAR FAROOQ MOHMAND

[Signature]
WALEED ADNAN

&

[Signature]
MUHAMMAD AYUB
ADVOCATES

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)