

4. *That the appeal is maintainable in present form, nothing contrary stance has brought up by respondent in their reply.*
5. *That appellant has come to court with clean hands and respondent failed to brought on record any contrary stance.*
6. *That there is no mis-joinder or non-joinder of necessary parties, all the necessary parties has been arrayed as party. Nothing contrary stance has been brought up by respondent in their reply.*
7. *In response to Para No 7 of the preliminary objections, it is submitted that a similar nature cases has been decided by the Honourable Peshawar High Court, Peshawar vide order/ judgment dated 26/06/2017 in Writ Petition No 290-P/2022, titled as "Mumtaz Begum...Versus...District Health Officer, Peshawar", Writ Petition No 3394-P/2016, titled as "Amir Zeb...Versus...District Accountant Officer" & Writ Petition No 5551-P/2019, titled as "Rahim Dad... Versus... District Health Officer Nowshera" so the objection has not tenable. (Copy of judgments are attached).*

Para-Wise Rejoinder:-

- 1-3 Paras No 1 to 3 of the reply need no rejoinder. As no reply to the Paras of appeal has been contradicted. So Para of appeal still stand in field.
4. In response to Para No 4 of the reply of respondent, it is submitted that Para of appeal of the appellant is correct and the reply as stated is misleading. Moreover, that actual regularization date is 1st July, 2012, but mistakenly and inadvertently the same is written as 19/09/2014 in appeal of the appellant, which needs correction as per record of regularization of employees. It is pertinent to mention here that respondent in their reply is of view that the respondent department have no objection on pension to sanctioned with effect from regularization of appellant's employee. The appellant/employee for the purpose of pension is entitled for pension from date of appointment and this point has been answered by superior judiciary in number of authorities/ judgment that for the purpose of pension, the whole service period is to be calculated.
5. In response to reply, it submitted that Para No 5 of appeal is correct, whereas reply of respondent is incorrect.

Rely to the Grounds of Comments :-

5



All the grounds of appeal are rational, reasonable, lawful and the reply of respondents are not relevant, not reasonable and are not lawful. Therefore, the appellant rebut the same.

It is, therefore, humbly requested that appeal of appellant may please be allowed as prayed for.

Dated:- 11/05/2023

Through:-

Appellant,


Hamid Ullah
Advocate High Court

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Service Appeal No:- 1402/2022

Khan Afzal & others

Versus

Govt: of KPK & others

..... Appellant

..... Respondents



AFFIDAVIT

I, Khan Afzal S/o Fazal-e-Haq R/o Patwar Bala Ghari

Fazal-e-Haq, Peshawar, (The appellant No 1) do hereby solemnly

affirm and declare on oath that the contents of this accompanying

Rejoinder are true and correct to the best of my knowledge and

belief and nothing has been concealed from this Honourable

Court.

Identified by

Hamid Ullah
Advocate High Court

R Khan

DEPONENT

CNIC No:-

Cell No:-

11-5-23



7

1

IN THE PESHAWAR HIGH COURT PESHAWAR

W. P. No. _____ / of 2022



Mst. Mumtaz Begum daughter of Ghulam Haidar
and W/o Malik Sardar Hussain, resident of
Mohallah Kandi Khel, Village Urmar Miana,
Tehsil and District Peshawar.
Ex-Lady Health Worker, (VBFPWs), Peshawar...

... Petitioner

VERSUS

1. District Health Officer, Peshawar.

2. District Accounts Officer, Peshawar...

... Respondents

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

Respectfully Sheweth:

Brief facts giving rise to the instant Writ Petition are as under:-

1. That the petitioner was appointed LHW (Lady Health Worker) in BHU PUNDOO, in the District Health Office, of respondent No.1 on 16.02.1997 on Contract Basis, vide Office Order No. 3367-73/DHO, PIU dated 12.03.1997. (Copy of the Appointment Order dated 16.02.1997 is attached as annexure 'A').
2. That services of the petitioner were regularized with effect from 01.07.2012 vide order No. 10025-3/DHO/DPIU dated 19.09.2014 (Copy of the Order dated 19.09.2014 is attached as annexure 'B').

ATTESTED
EXAMINER
Peshawar High Court

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3. That the petitioner was granted 365 days encashment in lieu of LPR and subsequently retired from service with effect from 01.07.2021, on attaining the age of Superannuation (i.e. 60 years). (Copy of the Office Order No. 9004-10/DHO.DPIU dated 28.06.2021 is attached as annexure 'C').
4. That under the rules, the department was legally bound to finalize the pensionary papers/documents for the grant of Pension within one month but, however, more than Six months have been elapsed and pensionary papers/documents have not yet finalized.
5. That the same relief has already been granted by this Honourable Court to the other employees including the respondent Department through its worthy order dated 01.10.2020 passed in W.P. No. 5551-P/2019 titled "Rahamdad Khan Versus District Health Officer Nowshera and another" and the larger Bench of this Honourable Court vide order dated 22.06.2017 passed in W.P No. 3394-P of 2016, thus the petitioner is also entitled for the same relief. (Copies of the worthy orders dated 01.10.2020 and 22.06.2017 are attached as annexures 'D' & 'E' respectively).
6. That aggrieved with the illegal exercise of power (not finalizing the pensionary papers/documents and depriving the petitioner from the grant of pensionary benefit) by the department and having no other adequate and efficacious remedy available to the petitioner but to invoke the constitutional jurisdiction of this Honourable Court for the

ATTESTED
EXAMINER
Peshawar High Court

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3

redressal of his grievances (the grant of pensionary benefit to the petitioner) on the following grounds amongst others:-

GROUND:

- a. That the petitioner was the permanent employee of the Department, performed her duties with zeal, enthusiasm, honestly, devotedly, to the best of her ability and to the entire satisfaction of her superiors and without any complaint of whatsoever kind against her.
- b. That as per law the pensionary benefits is the vested right of the petitioner for the services rendered by her and she cannot be deprived from the same.
- c. That the petitioner is legally entitled for all kind of pensionary benefits for the rendering services on attaining the age of Superannuation i.e. 60 years.
- d. That the respondent department has misused its authority and colourful exercise of power through which the petitioner is being deprived from her pensionary benefit, is for ulterior motive and without any cogent reason and justification.
- e. That the petitioner has not been treated in accordance with law rather discriminated which is against the letter and spirit of article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

ATTESTED
EXAMINER
Peshawar High Court

f. That the petitioner craves permission of this Honourable Court to agitate/argue any other ground at the time of hearing of the instant writ petition.

It is, therefore, humbly prayed that on acceptance of this writ petition this Honourable Court may be pleased to direct the respondent department to prepare the Pensionary papers/documents of the petitioner for attaining the age of Superannuation and to submit the same to the concerned quarter and to grant the Pensionary benefit to the petitioner.

Any other relief though not specifically asked for to which the petitioner is found entitled in the circumstances of the case may also be granted to the petitioner.

Saeed
Petitioner

Through:

Kamran Khan Afridi
(Kamran Khan Afridi)
Advocate High Court,
1-C, Haroon Mansion
Khyber Bazar Peshawar
Cell # 0300-5848545

Dated: 2001.2022

CERTIFICATE:

Certified that as per instructions of my client, no such Writ Petition on behalf of the petitioner has earlier been filed in this Honourable Court on the subject matter.

Kamran Khan Afridi
Advocate

BOOKS OF LAW:

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

ATTESTED
EXAMINER
Peshawar High Court

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5

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P.No. _____/2022

Mst. Mumtaz Begum.....Petitioner

Versus

District Health Officer Peshawar and others..... Respondents

AFFIDAVIT

I, Saddam Hussain Barki s/o Sardar Hussain Barki R/o Kandi Khel, Urmar Miana, District Tehsil and District Peshawar (special attorney for petitioner), do hereby affirm and declare that the contents of the accompanying Writ Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this hon'ble court.

Identified by:

Kamran Khan Afridi
Kamran Khan Afridi
Advocate High Court

Saddam

Deponent

CNIC No. 17301-2324647-7
Cell: 0315-1994059

1274

Certified that the above was verified on solemnly affirmation before me in office, this 20 day of Jan 2022 by Saddam Hussain s/o Sardar Hussain Peshawar who was identified by Kamran Khan Afridi Who is personally known to me

[Signature]
Oath Commissioner
Peshawar High Court Peshawar

20/01/2022

CERTIFIED TO BE TRUE COPY

Peshawar High Court
Authorized Under Article 175-A
The Constitution of Pakistan

29 MAR 2023

12

1

PESHAWAR HIGH COURT, PESHAWAR
FORM "A"
FORM OF ORDER SHEET.



Court of
Case No.....

Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	25.02.2022	<p><u>WP No.290-P/2022.</u></p> <p><u>Present:-</u></p> <p style="text-align: center;">Mr. Kamran Khan Afridi Advocate, for the petitioner.</p> <p style="text-align: center;">=====</p> <p><u>S M ATTIQUE SHAH, J:-</u>Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, petitioner Mst. Mumtaz Begum has prayed for the following relief:-</p> <p style="text-align: center;"><i>"that on acceptance of this writ petition, this Hono'ble Court may be pleased to direct the respondents department to prepare the Pensionary papers/ documents of the petitioner for attaining the age of Superannuation and to submit the same to the concerned quarter and to grant the Pensionary benefit to the petitioner."</i></p> <p>2. In essence, petitioner was initially inducted in the respondent department as <i>Lady</i></p>

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Peshawar High Court

		<p><i>Health Worker (HW) at BHU, Phandu, in District Health Office, of respondent No.1, on 16.02.1997, on contract basis vide Office order No.3367-73/DHO, PIU dated 12.03.1997; who was later on regularized in the department under the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regulations and Standardization) Act, 2014 w.e.f 01.07.2012. She was retired from the service with effect from 01.07.2021, vide Office Order No.9004-10/DHO.DPIU dated 28.06.2021 but the respondents denied the pensionary benefits to the petitioner, hence the petitioner approached this Court by filing the instant writ petition.</i></p> <p>3. It is pertinent to mention here that in identical cases Hon'ble Larger Bench of this Court while deciding Writ Petition No.2246-P/2016 alongwith other writ petitions through single judgment dated 22.6.2017, has held that:-</p> <p><i>"We are not in consonance with the first argument of learned counsel for the petitioners because under section 2 (a) of the Service Tribunal Act, 1973, "civil servant" means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973. Petitioners are retired civil servants. Admittedly, dispute</i></p>
--	--	---

ATTESTED
EXAMINER
 Peshawar High Court

regarding pension of a civil servant squarely falls in terms and conditions of service of a civil servant, hence, Service Tribunal is vested with exclusive jurisdiction in such like matter. It has persistently been held by this Court as well as by the august Supreme Court of Pakistan that a civil servant, if aggrieved by a final order, whether original or appellate, passed by the departmental authority with regard of his/her terms and conditions of service, the only remedy available to him/her would be filing of appeal before the Service Tribunal even if the case involves vires of particular Rule or notification."

Similarly, it was further concluded that:-

"In view of the above, it is held that all these writ petitions are not maintainable, however, in the interest of justice, we instead of dismissing the same, transmit to the concerned Secretaries to the Government of Khyber Pakhtunkhwa to treat them as departmental appeals and decide strictly in accordance with Civil Servants Pension Rules, 1963.

10. *Before parting with the judgment, we, deem it appropriate to mention here that the concerned Secretaries while deciding the departmental appeals, may take guidance from the judgment of this Court rendered in Writ Petition No.3394-P/2016, titled, "Amir Zeb Vs District Account Officer Nowshera etc" dated 22.06.2017, wherein guideline has been provided for eligibility of a civil servant for the pension who had served on adhoc/contract and fixed pay basis.*

ATTESTED
EXAMINER
 Peshawar High Court

4. The facts as well as the legal proposition involved in this case is similar to the one already decided by Hon'ble Larger Bench of this Court in the above mentioned cases, therefore, this Court could not take a different view, hence, this writ petition is also disposed of in terms mentioned in the above Writ Petition and converted into appeal; thereby transmitting it to the concerned Secretary to the Government of Khyber Pakhtunkhwa to treat the same as departmental appeal and decide it strictly in accordance with Civil Servants Pension Rules, 1963.

Announced.
25.02.2022.

[Signature]
JUDGE

[Signature]
JUDGE

"A.Qayum PS"

(DB)

Hon'ble Mr. Justice S M Attique Shah & Hon'ble Mr. Justice Muhammad Ijaz Khan

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court Peshawar
Authenticated under Article 87 of
The Constitution of the Islamic Republic of Pakistan
The Oath of the Examining Officer Order 1984

21 MAR 2023

76228

Date of Presentation of Application 21-03-2023

No of Pages 9-8

Copying fee 36-10

Total 36-10

Date of Preparation of Copy 21-03-2023

Date of Delivery of Copy 21-03-2023

Received By *[Signature]*

(16)

IN THE PESHAWAR HIGH COURT PESHAWAR

3394-P

WRIT PETITION No. _____/2016



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

Versus

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

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

FILED TODAY

Deputy Registrar

03 SEP 2016

Respectfully Sheweth,

WP3394P2016-GROUNDS

ATTESTED
EXAMINER
Peshawar High Court

The concise facts giving rise to the present writ petition are as under:-

1. That petitioner's wife (Late) Asiya Shafi was appointed as PTC on contract basis by an office order dated 28-02-2003 (Annexed-A) passed by the Executive District Officer Nowshera. In pursuance of which she assumed the charge of her duty after completing the requisite codal formalities. The respondent No. 3 had also maintained service book of petitioner's wife therein necessary entries have been made from time to time. Copies of the extracts of service book attached as (Annexed-B).
2. That later on, the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 (IX of 2005) dated 23-07-2005 thereby Section 19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 was substituted according to which all the persons appointed in the prescribed manner to a service or post on or after the 1st day of July, 2001 till the commencement of this Amended Act but such appointments made on contract basis shall be deemed to have been appointed on regular basis. Therefore the service/appointment of deceased employee was fully covered by amended law and thus she was the regular employee of the Department.
3. That on 31-07-2015 the wife of petitioner was died during service and in this regard an office order was issued on 31-08-2015 (Annexed-C) by the respondent No. 3. In this connection a death certificate was also issued by the Secretary Union Council Kheshgi Payan (36) district Nowshera dated 10-08-2015 (Annexed-D).
4. That petitioner/widower of Asiya Shafi was the legal heir so he applied for obtaining the Certificates of Succession and

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03 SEP 2016

Guardianship which were allowed by the Competent Courts of Law after due process and then he applied for the payment of all admissible retirement amounts due against the department including leave encashment, GP fund, benevolent fund, Group Insurance, gratuity and pension etc. The amount of leave encashment, GP fund and other admissible funds were paid to him but when the papers of pension were prepared by the office of respondent No. 3 and submitted in the office of respondent No.1 that were returned by the respondent No. 2 with the objection that she was not entitled to pensionary benefits being appointed on contract basis vide letter dated 30-11-2015 (Annexed-E).

Hence Petitioner being aggrieved of the impugned letter and finding no adequate and efficacious remedy is constrained to file this petition on the following amongst other grounds:-

Grounds:

- A. That respondent No. 1 has misconceived the case of petitioner and unlawfully denied to accept the papers of pension and grant him pensionary benefits which is not sustainable under the law.
- B. That petitioner's wife was regular and permanent employee of the education department and she was entitled to pensionary benefits on her retirement but unfortunately she was died during service and now petitioner is entitled to receive such benefits which was denied on frivolous and baseless grounds by the respondent No.1 which is unfair, unjust, illegal, mala fide and not tenable under law and rules on subject.

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 03 SEP 2016

WP3394P2016-GROUNDS

ATTESTED
 EXAMINER
 Rajasthan High Court

- C. The order of refusal of respondents for not granting the pension along with other benefits is perverse and against the settled principle of law and justice and as such is liable to be set aside.
- D. That in the similar cases this Hon'ble Court has allowed the writ petitions thereby declared the legal heirs of deceased employees entitled to the pensionary benefits on the same point of law. Copies of judgments are attached as (Annexed-F & G).

It is therefore, humbly prayed that this Hon'ble Court may be pleased to:-

- (i) **Declare** the impugned letter dated 30-11-2015 as illegal, perverse, without lawful authority, of no legal effect, ineffective on the rights of petitioner, mala fide and liable to be set aside.
- (ii) **Direct** the respondents to entertain the papers of pension of the deceased wife of petitioner and release the pension and other benefits to petitioner/widower without any delay.
- (iii) Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioner.

Amir
Chh

Petitioner

Through

Khush Dil Khan

Advocate,

Supreme Court of Pakistan

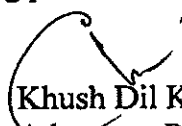
Dated: 02/09/2016

FILED TODAY
Deputy Registrar
03 SEP 2016

ATTESTED
EXAMINER
Fazal Hussain

CERTIFICATE

Certified on instruction that petitioner has not previously moved this Hon'ble Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 regarding present matter.



Khush Dil Khan
Advocate, Peshawar

List of Books

1. The Constitution of the Islamic Republic of Pakistan, 1973.
2. Services Law.

NOTE

1. Three spare copies of the Writ Petition are enclosed in a separate file cover.
2. Memo of addresses is also attached.


Khush Dil Khan
Advocate, Peshawar

FILED TODAY
Deputy Registrar
03 SEP 2016


ATTESTED
EXAMINER
Peshawar High Court

(21)

IN THE PESHAWAR HIGH COURT PESHAWAR

3394 P
W.P. No. _____/2016

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

Versus

The District Account Officer,
District Nowshera and others.....Respondents

AFFIDAVIT

I, Amir Zeb, R/o Fazal Ganj, Siace Mandi, Risalpur, District Nowshera, do hereby solemnly affirm and declare on oath that the contents of this writ petition are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.

Amir Zeb
Deponent

Identified by

Khush Dil Khan
Advocate, Peshawar

No. <u>6960</u> Certified that the contents were verified on solemnly affirmation before me on the <u>2nd</u> day of <u>Sept</u> 16 <u>Amir Zeb</u> s/o <u>Khan Badshah</u> who was identified by <u>Khush Dil Khan</u> who is personally known to me. <u>2/9/2016</u> Oath Commissioner Peshawar High Court, Peshawar.

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Deputy Registrar
03 SEP 2016

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court Peshawar
Authorized under Article 172
The Qanun-e-Shahadat Order 1984
21 MAR 2023

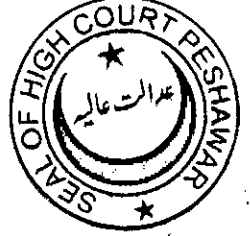
IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.3394-P/2016

Date of hearing:- 22.06.2017

Petitioner(s):- Amir Zeb Widower of Mst. Asiya Shafi by
Mr. Khush Dil Khan, Advocate.

Respondent (s):-The District Account Officer, Nowshera & 05
others by Syed Qaisar Ali Shah, AAG.



JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through this Common judgment, we, propose to decide the following Constitutional Petitions filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution), as identical questions of law and facts are involved therein and the writ sought by the petitioners is also one and the same.

1. **Writ Petition No.3394-P/2016**
(Amir Zeb Vs District Account Officers Nowshera etc)
2. **Writ Petition No.2867-P/2016**
Mst. Akhtar Bibi Vs District Education Officer (M) Kohat etc).
3. **Writ Petition No.3143-P/2014**
(Muhammad Shah Zaib etc Vs Govt of Khyber Pakhtunkhwa through Chief Secretary and others)
4. **Writ Petition No.2872-P/2014.**
Hakeem Khan through LR's Vs Govt of KPK through Sectary Elementary & Secondary Education, Peshawar etc)
5. **Writ Petition No.1339-P/2014**
(Mst. Rani Vs Sub-Division Education Officer etc).
6. **Writ Petition No.55-P/2015**
(Mst. Bibi Bilqees Vs Govt of KPK through Secretary Finance, Peshawar).

Amir Zeb

ATTESTED
EXAMINER
Peshawar High Court

2. Amir Zeb petitioner in W.P. No.3394-P/2016 is the widower of Mst. Asiya Shafi (late). His grievance is that on 28.02.2003, his wife was initially appointed as PTC on contract basis and, later on, by virtue of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, her service was regularized. On 31.07.2015, during her service, she met her natural death, therefore, he being her widower/LR applied for payment of her all admissible retirement benefits, in pursuance whereof, leave encashment, GP fund and other admissible funds were paid to him by the respondents, but his pension claim was refused by the respondents on the ground of lack of prescribed length of her regular service, excluding the period of her service on contract, hence, this petition.

3. Mst. Akhtar Bibi, the petitioner in Writ Petition No.2867-P/2016, is the widow of (late) Lal Din Class-IV employee. She has averred in her writ petition that her late husband was initially appointed as Chowkidar on 01.10.1995 on contract basis, however, later on, his service was regularized vide Notification No.BO1-1-22/2007-08 dated 05.08.2008. On 15.05.2010, the deceased died during his service, so she applied for her pension but the same was refused to her on the ground that the regular service of the deceased employee was less than the prescribed length of regular service, hence, this petition.

looked at /

4. Muhammad Shah Zaib and Muhammad Afnan Alam are the LRs of deceased Fakhar Alam. Their grievance is that their deceased father was appointed as Chowkidar on 13.01.1998 in Mother Child Health Centre Tank, who, later on, during his service was murdered, for which FIR was registered against the accused. Petitioners applied for retirement of the deceased. Vide notification dated 31.12.2013, the deceased was retired from service on account of his death w.e.f. 21.10.2013. The family pension of the deceased was prepared and processed, however, the same was refused to the petitioners, hence, this petition.

5. Petitioners in Writ Petition No.2872-P/2014, are the LRs of deceased Hakeem Khan Class-IV employee, who died during pendency of the instant writ petition. Grievance of the petitioners is that their predecessor was appointed as Chowkidar on fixed pay in Education Department on 24.04.1993. Vide order dated 29.01.2008, service of the deceased alongwith his counterparts was regularized by virtue of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 w.e.f. 30.06.2001. On attaining the age of superannuation, the deceased got retired on 31.12.2012, so petitioner applied for grant of his pension but the same was refused, hence, this petition.

6. Mst. Rani, petitioner in Writ Petition No.1339-P/2014, is the widow of Syed Imtiaz Ali Shah (late) Class-IV employee. She has averred in her writ

The learned Addl. A.G. also questioned the maintainability of the writ petitions on the ground that section 19 (2) of the Khyber Pakhtunkhwa Civil Servant Acts deal with right of pension of deceased civil servant, which squarely falls in Chapter-II, pertaining to terms and conditions of service, therefore, jurisdiction of this Court under Article 212 of the Constitution is barred.

9. Having heard the arguments of learned counsel for the parties, record depicts that undisputedly the deceased employees were the Civil Servants and instant writ petitions have been filed by their LRs qua their pensions. Since the controversy pertains to pension of the deceased employees which according to the contention of worthy Law Officer is one of the terms and conditions of a civil servant under section 19 (2) of the Civil Servants Act, 1973, hence, before determining the eligibility of the deceased employees to the pension or otherwise, we, would like to first meet the legal question qua maintainability of the instant writ petitions on the ground of lack of jurisdiction of this Court under Article 212 of the Constitution. To answer the question, it would be advantageous to have a look over the definition of "Civil Servant" as contemplated under section 2(b) of Khyber Pakhtunkhwa Civil Servants Acts, 1973 and section 2 (a) of Khyber Pakhtunkhwa Service Tribunal Act, 1974. For the sake of convenience and ready reference, definition

given in both the Statute are reproduced below one after the other

"2(b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include---

- (i) A person who is on deputation to the Province from the Federation of any other Province or other authority;
- (ii) A person who is employed on contract or on work charged basis, or who is paid from contingencies; or
- (iii) A person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VII of 1923)".

"S.2(a) "Civil Servant" means a person who is or has been a civil servant within the meaning of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.XVIII of 1973), but does not include a civil servant covered by the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991;]

As per the definitions of a "civil servant" given in the two Statutes referred to above, the petitioners neither holding any civil post in connection with the affairs of the Province nor have been remained as civil servants, thus, do not fall within the definition of "civil servant".

10. Though section 19(2) of the Khyber Pakhtunkhwa Civil Servants Acts, 1972, in the event of death of a civil servant, whether before or after retirement conferred a right of pension on his/her family who shall be entitled to receive such pension or gratuity or both as prescribed by Rules. It is also undeniable fact that pension and gratuity fall within the ambit of terms and conditions of a civil servant, but a legal question would arise as to whether the legal heirs i.e. family of a deceased civil servant would be competent to agitate his/her/their grievance regarding pension before the Service Tribunal, particularly, when

As per Statute

ATTESTED
EXAMINER
Peshawar High Court

he/she/they do not fall within the definition of Civil Servant. The Service Tribunals have been constituted under Article 212 of the Constitution for dealing with the grievances of civil servants and not for their legal heirs. The question regarding filing appeal by the legal heirs of deceased's civil servant and jurisdiction of Service Tribunal, cropped up before the Hon'ble Supreme Court in case titled, "Muhammad Nawaz Special Secretary Cabinet Division through his Legal Heirs Vs Ministry of Finance Government of Pakistan through its Secretary Islamabad" (1991 SCMR 1192), which was set at naught in the following words:-

"A 'civil servant' has been defined in section 2(b) of the Civil Servants Act, 1973. A right of appeal under the Service Tribunals Act, 1973 has been given to a civil servant aggrieved by any final order whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his serve. The appellants admittedly are the legal heirs of the deceased civil servant and there being no provision in the service Tribunals Act of 1973 to provide any remedy to the successors-in-interest of a civil servant, the learned Tribunal, in our view, was correct in holding that the appeal before it stood abated and the same is hereby maintained".

In case titled, "Rakhshinda Habib Vs Federation of Pakistan and others" (2014 PLC (C.S) 247), one Habib ur Rehman Director General in Ministry of Foreign Affairs, aggrieved by his supersession filed appeal before the worthy Service Tribunal, but unfortunately, during pendency of appeal he died, therefore, his appeal before the Federal Service Tribunal Islamabad was abated. Rakhshinda Habib, the widow of

looked at

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deceased then filed constitution petition No.1021 of 2010 before the Islamabad High Court, but the same was dismissed vide judgment dated 13.06.2013, against which she preferred aforesaid appeal before the Hon'ble Supreme Court, which was allowed and it was held by the worthy apex court that:-

“That civil servant could not be promoted after his death, however, pensionary benefits of promotion could be extended to the legal heirs of the deceased employees”.

11. Going through the law on the subject and deriving wisdom from the principles laid down by the Honble apex Court in the judgments (supra), we are firm in our view that petitioners/legal heirs of the deceased employees have locus standi to file these petitions because the pensionary benefits are inheritable which under section 19 (2) of the Khyber Pakhtunkhwa Civil Servant Act, on the demise of a civil servants, devolves upon the legal heirs. The petitioners, as stated earlier, being LRs of the deceased civil servants do not fall within the definition of “Civil Servant”, and they having no remedy under section 4 of the Service Tribunal Act to file appeal before the Service Tribunal, the bar under Article 212 of the Constitution is not attracted to the writ petitions filed by them and this Court under Article 199 of the Constitution is vested with the jurisdiction to entertain their petitions. Resultantly, the objection regarding non-maintainability of the petitions stands rejected.

12. Adverting to question of entitlement of the deceased employees to the pension, we, would like to reproduce the relevant rules of the West Pakistan Civil Services Pensions Rules, 1963 below, as these would advantageous in resolving the controversy:-

"2.2. Beginning of service- Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed."

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

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

13. The rules *ibid* reveal that the service of government servant begins to qualify for pension from the very first day of his/her taking over the charge, irrespective of the fact whether his/her appointment and entry in to service was temporary or regular. It is also clear from sub-rule (i) that continuous temporary service of a civil servant shall also be counted for the purpose of pension and gratuity and by virtue of sub rule (ii), temporary and officiating service followed by confirmation shall be counted for pension and gratuity. It is undeniable fact that the NWFP Civil Servant (Amendment Bill), 2005 was passed by the provincial assembly on 5th July 2005 and

assented by the Governor of the Province on 12th July 2005 whereby section 19 was amended and all the employees of the Provincial Government selected for appointment in the prescribed manner to the post on or after 1st day of July 2001, but on contract basis were deemed to be appointed on regular basis. They were declared Civil Servants, however, were held disentitled for the pensionary benefits. Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013. The text of section 19 (4) (proviso 1 and 2) are reproduced as below:-

"Provided that those who are appointed in the prescribed manner to a service or post on or after the 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis:

Provided further that the amount of Contributory Provident Fund subscribed by the civil servant shall be transferred to his General Provident Fund."

14. From bare reading of section 19 of Amendment Act, 2005 and 2013 respectively, it is manifest that the persons selected for appointment on contract basis shall be deemed as regular employee and subsequently were held entitled for pensionary benefits. The deceased employees have completed the prescribed length of service as their service towards pension shall be counted from the first day of their appointment and not from the date of regularization of their service.

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15. We deem it appropriate to mention here that question of interpretation and true import of the term pension was raised before the august Supreme Court of Pakistan in case titled "Government of NWFP through Secretary to Government of NWFP Communication & Works Department, Peshawar Vs Muhammad Said Khan and others (PLD 1973 Supreme Court of Pakistan 514) wherein it was held that:

"It must now be taken as well settled that a person who enters government service has also something to look forward after his retirement to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well settled that pension like salary of a civil servant is no longer a bounty but a right acquired after putting a satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."

16. In case titled "Secretary to Govt: of the Punjab, Finance Department Vs M. Ismail Tayer and 269 others" 2015 PLC (CS) 296, the august Supreme Court of Pakistan was pleased to held that the pensionary benefits is not a bounty or ex-gratia payment but a right acquired in consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant.

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17. For what has been discussed above, we by allowing these writ petitions, issue a writ to the respondents departments to pay pension of the deceased employees to the petitioners/LRs of the deceased.

Announced:
22.06.2017
Siraj Afridi P.S.

Looh Sam
JUDGE
[Signature]
JUDGE

[Signature]
JUDGE

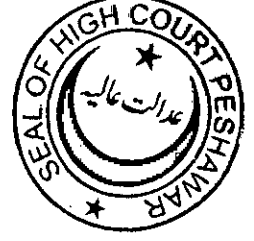
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Examiner
Peshawar High Court Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984
21 MAR 2023
[Signature]

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IN THE PESHAWAR HIGH COURT PESHAWAR

W. P. No. _____ / of 2019



Rehamdad Khan son of Sahib Khan
resident of Dagbasud Nowshera,
Ex-Driver, District Health Office,
Nowshera...

... Petitioner

VERSUS

1. District Health Officer, Nowshera.
2. District Accounts Officer, Nowshera... Respondents

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

Respectfully Sheweth:

Brief facts giving rise to the instant Writ Petition are as under:-

1. That the petitioner was appointed as Driver in the District Health Office, Peshawar on 21.09.1995 on temporary/fixed pay and served the department till his retirement from service. (Copy of the appointment order dated 21.09.1995 is attached as annexure 'A').
2. That services of the petitioner were regularized with effect from 01.07.2012 vide order dated 19.09.2014. (Copy of the Order dated 01.07.2014 is attached as annexure 'B').
3. That according to CNIC Date of Birth of the petitioner was recorded as 1959 and if Sixty years is added with 1959, then superannuation i.e. Sixty Years age comes as 2019. (Copy of the NIC of the petitioner is attached as annexure 'C').
4. That on 15.07.2019, the petitioner was relieved from service with immediate effect on attaining the age of Superannuation (i.e. 60

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EXAMINER
PESHAWAR HIGH COURT

years). (Copy of the Relieving Order dated 15.07.2019 is attached as annexure 'D').

5. That under the rules, the department was legally bound to finalize the pensionary papers/documents for the grant of Pension within one month but, however, more than three (3) months has been elapsed and pensionary papers/documents have not yet finalized.
6. That aggrieved with the illegal exercise of power (not finalizing the pensionary papers/documents and depriving the petitioner from the grant of pensionary benefit) by the department and having no other adequate and efficacious remedy available to the petitioner but to invoke the constitutional jurisdiction of this Honourable Court for the redressal of his grievances (the grant of pensionary benefit to the petitioner) on the following grounds amongst others:-

GROUND:

- a. That the petitioner was the permanent employee of the Department, performed his duties with zeal, enthusiasm, honestly, devotedly, to the best of his ability and to the entire satisfaction of his superiors and without any complaint of what-so-ever kind against him.
- b. That as per law the pensionary benefits is the vested right of the petitioner for the services rendered by him and he cannot be deprived from the same.
- c. That the petitioner is legally entitled for all kind of pensionary benefits for the rendering services on attaining the age of Superannuation i.e. 60 years.
- d. That the respondent department has misused its authority and colourful exercise of power through which the petitioner is being deprived from his pensionary benefit, is for ulterior motive and without any cogent reason and justification.

- e. That the petitioner has not been treated in accordance with law rather discriminated which is against the letter and spirit of article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.
- f. That the petitioner craves permission of this Honourable Court to agitate/argue any other ground at the time of hearing of the instant writ petition.

It is, therefore, humbly prayed that on acceptance of this writ petition this Honourable Court may be pleased to direct the respondent department to prepare the Pensionary papers/documents of the petitioner for attaining the age of Superannuation and to submit the same to the concerned quarter and to grant the Pensionary benefit to the petitioner.

Any other relief though not specifically asked for to which the petitioner is found entitled in the circumstances of the case may also be granted to the petitioner.

[Signature]
Petitioner

Through:

[Signature]
(Wali Khan Afridi)
Advocate,
Supreme Court of Pakistan
Cell # 0300-5977695
And

[Signature]
(Kamran Khan Afridi)
Advocate High Court,
1-C, Haroon Mansion
Khyber Bazar Peshawar
Cell # 0300-5848545

Dated: 15.10.2019

CERTIFICATE:

Certified that as per instructions of my client, no such Writ Petition on behalf of the petitioner has earlier been filed in this Honourable Court on the subject matter.

Advocate *[Signature]*

BOOKS OF LAW:

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

ATTESTED
EXAMINER
Peshawar High Court
[Signature]

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4

IN THE PESHAWAR HIGH COURT PESHAWAR

IN RE:
W. P. No. _____ / of 2019

Rehamdad Khan son of Sahib Khan... Petitioner

VERSUS

District Health Officer Nowshera and others... Respondents

AFFIDAVIT

I, Rehamdad Khan son of Sahib Khan, resident of Dasgbasud District Nowshera, do hereby solemnly affirm and declare that the contents of the accompanying Writ Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Handwritten signature

Deponent
NIC # 17201-2272775-7
Cell # 0322 - 8571481

IDENTIFIED BY:

Handwritten signature
(Wali Khan Afridi)
Advocate, Peshawar.

No. 10305
Certified that the above is verified on solemnly affirmation before me in office, this 15 day of Oct 2019 by Rehamdad Khan s/o Sahib Khan, Nowshera who was identified by Wali Khan Afridi who is personally known to me:
<i>Handwritten signature</i> Oath Commissioner Peshawar High Court, Peshawar.

Madam Verified

CERTIFIED TO BE TRUE COPY
Peshawar High Court Peshawar
The Oath Commissioner Order 1984

21 MAR 2023

(38)

-1-

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT
JUDICIAL DEPARTMENT.**

Writ Petition No. 5551-P of 2019

J U D G M E N T



Date of hearing : 1st October, 2020
Petitioner : By Mr. Wali Khan Afridi,
(Rahamdad Khan) Advocate.
Respondents : By Syed Sikandar Hayat Shah,
(Provincial Government etc.) Additional Advocate General

QAISER RASHID KHAN, J.- The petitioner, through

the instant writ petition, has asked for the issuance of an appropriate writ seeking directions to the respondents to grant him pensionary benefits forthwith.

2. As per averments in the petition, on 21.09.1995, the petitioner was initially appointed as a driver in the health department on temporary basis and thereafter pursuant to notification dated 19.09.2014, his services were regularized in the light of the Khyber Pakhtunkhwa Regularization of Lady Health Workers Program and Employees Act (Regularization and Standardization) Act, and on attaining the age of superannuation stood retired from service on 15.07.2019 and the reluctance of the respondents to finalize his pension papers, prompted him to file the instant writ petition.

3. Arguments heard and the available record perused.

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Peshawar High Court

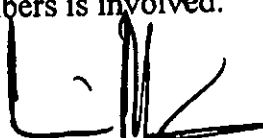
4. The moot question before us is that as to whether the petitioner is entitled to get the pensionary benefits. It is not disputed that the petitioner was initially appointed on temporary basis. It is also not disputed that his services were subsequently regularized under the Act *ibid* and stood retired from service on attaining the age of superannuation.

5. It is by now settled that, after regularization, the total continuous service of an employee is to be computed towards his pension and, in this regard, his date of first appointment, temporary or otherwise, would be reckoned as envisaged under Rule 2.2 of the West Pakistan Civil Services Pension Rules, 1963. When the case of the petitioner is seen on the touchstone of the *ibid* settled principle, then, we come to the safe conclusion that being a vested right conferred by law itself, he cannot be deprived of the pensionary benefits.

Rel. 2010 PLC 354 & 2019 PLC (CS) 1065.

6. Accordingly, we admit and allow this writ petition in terms of directing the respondents to consider the case of the petitioner for pensionary benefits and complete the entire process as early as possible in accordance with law as the bread and butter of his family members is involved.

Announced
01. 10. 2020


SENIOR PUISNE JUDGE

JUDGE

(Fayaz)

(D.B) Justice Qaiser Rashid Khan & Justice Ijaz Anwar

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Peshawar High Court Peshawar
Authorized Under Article 87 of
the Constitution of Pakistan
21 MAR 2023

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