


FORM OF ORDER SHEET

Court of _____

Appeal No. _____

1222/2023

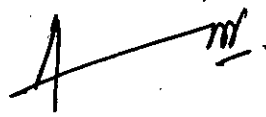
| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | 2 | 3 |
| 1- | 29/05/2023 | <p>The appeal of Mr. Niaz Rashid Qureshi resubmitted today by Mr. Kamran Khan Afridi Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on</p> <p>By the order of Chairman.</p> <p> REGISTRAR</p> |

The appeal of Mr. Niaz Rashid Qureshi son of Farzan Hussain Qureshi Ex-Driver DHO Office Nowshera received today i.e on 19.05.2023 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- Annexures of the appeal are not attested.
- 4- Affidavit be attested by the Oath Commissioner.
- 5- Memorandum of appeal is unsigned be signed by the appellant as well counsel.
- 6- Necessary party be made in the heading of appeal.
- 7- Wakalat nama in favour of appellant be placed on file.
- 8- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.


No. 1465 /S.T.

Dt. 22/5 /2023.


For REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Kamran Afridi Adv.
High Court Peshawar.

Respected Sir,
ALL the objection is removed and
Respected for re-submitted the instant
appeal


Kamran Usman Afridi
Adv.

Dt = 29/5/2023

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A No. 1222 /2023

Niaz Rashid Qureshi

Versus

Secretary & Others

I N D E X

| S.# | Description of Documents | Annex | Page |
|-----|----------------------------------------------|-------|-------|
| 1. | Memo of Appeal | | 1-4 |
| 2. | Appointment order dated 15-02-1996 | "A" | 5 |
| 3. | Regularization order dated 08-06-2015 | "B" | 6 |
| 4. | Retirement order dated 08-06-2015 | "C" | 7 |
| 5. | Similar Writ Petitions / larger Bench orders | "D" | 8-18 |
| 6. | W.P No. 1512/21 dated 30-03-21 of pett: | "E" | 19-22 |
| 7. | Order / judgment dated 11-11-2021 | "F" | 23-24 |
| 8. | Letter dated 14-12-2022 | "G" | 25 |
| 9. | Impugned order dated 02-02-2023 | "H" | 26 |
| 10. | Application dated 12-04-2023 | "I" | 27 |

Niaz Rashid
Appellant

Through

(Kamran Khan Afridi)
Advocate
C-1 Haroon Mension,
Shoba Bazar, Peshawar.
Ph: 0300-5848545

Dated 18-05-2023

Bc - 092403

KamranAfridi649@yahoo.com

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 1222 / 2023

Niaz Rashid Qureshi
S/O Farzand Hussain Qureshi,
Flat No. 228/229, Mohallah
Qureshian, Akora Khattak,
Ex-Driver District Health Office,
Nowshera Appellant

Khyber Pakhtunkhwa
Service Tribunal

Case No. 5454

Dated 19/5/2023

VERSUS

1. Secretary, Govt. of KP,
Finance Department,
Peshawar.
2. District Health Officer,
Nowshera.
3. District Health Accounts
Officer, Nowshera Respondents

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974
AGAINST OFFICER ORDER NO. SOH-VI / HD dated
14-12-2022 of R. No. 01 WHEREBY PAYMENT OF
PENSIONARY BENEFITS OF THE RENDERED
SERVICES WERE REFUSED FOR NO LEGAL REASON:**

Respectfully Sheweth:

1. That appellant was appointed as Driver in District Health Office Peshawar on 15-02-1996 on temporary / fixed pay and his services were regularized on 08-06-2015 with effect from 01-07-2012. (Copies as annex "A" & "B")

2. That on 31-08-2014, appellant was retired from service on attaining the age of superannuation vide office order dated 08-06-2015. (Copy as annex "C")
3. That it was incumbent upon the department to finalize pensionary benefits of appellant within a month but more than 05 years duration elapsed but his pension was not finalized till date.
4. That in similar circumstances the hon'ble court was pleased to direct respondents in similar like cases to finalize pension as per the judgment of the larger bench vide order dated 22-06-2017. (Copies as annex "D")
5. That on 30-03-2021, appellant filed Writ Petition for award of pensionary benefits for the rendered services which came up for hearing on 11-11-2021 and then the hon'ble court was pleased to treat the Writ Petition as departmental appeal for decision in the light of the judgments of the courts within one month positively. (Copies as annex "E" & "F")
6. That the judgment of the hon'ble court was remitted to respondents for compliance and then health department wrote letter to R. No. 01 to honor the order of the hon'ble court vide letter dated 14-12-2022. (Copy as annex "G")
7. That thereafter R. No.01 regretted the claim of appellant for payment of pensionary benefits vide order dated 02-02-2023. (Copy as annex "H")
8. That on 12-04-2023, appellant submitted application before R. No. 01 to supply copy of the order passed on the representation which was handed over to him on 27-04-2023 after expiry of Eid holidays. (Copy as annex "I")

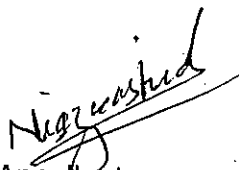
Hence this appeal, inter alia, on the following grounds:-

GROUND S:

- a. That appellant served the department till the date of superannuation with the best of his ability and without any complaint.

- b. That pension is a vested right and not a bounty, so the department was legally bound to do the needful within a month what to speak of lapse of 05/06 years.
- c. That when similar relief was extended by the hon'ble court, no justification, whatsoever, exist with the department to not pay pensionary benefits to appellant.
- d. That no reason of none paying of pensionary benefits to appellant but due to malice of the department, such delay was made in the matter.
- e. That the impugned order dated 02-02-2023 is not per the mandate of law as the department was legally bound to consider contract period half for pensionary benefits and in such a situation, appellant is entitled for award of pension.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 02-02-2023 of R. No. 01 be set aside and appellant be awarded pensionary benefits of the rendered services hence forthwith, with such other relief as may be deem proper and just in circumstances of the case.


Appellant

Through

Kamran Afridi

Advocate.

Dated 18-05-2023

AFFIDAVIT

I, Niaz Rashid Qureshi S/O Farzand Hussain Qureshi, Flat No. 228/229, Mohallah Qureshian, Akora Khattak, Ex-Driver District Health Office, Nowshera (Appellant), do hereby solemnly affirm and declare that contents of Service Appeal are true and correct to the best of my knowledge and belief.


DEPONENT

CERTIFICATE:

As per instructions of my client, no such like Service Appeal has earlier been filed by the appellant before this Hon'ble Tribunal.


ADVOCATE

A 5

Annex (A) (7)

OFFICE OF THE DISTRICT HEALTH OFFICER PESHAWER
OFFICE ORDER

1. The resignation tendered by Mr. Shah Zaman Driver attached to Bushra Niaz Supervisor PHW under the Prime Minister Programme for EP and PHC District Nowshera is hereby accepted.

2. Mr. Niaz Rashid is hereby appointed agent the vacant post of Mr. Shah Zaman Driver BS-46 Contract basis.

DISTRICT HEALTH OFFICER
PESHAWER.

No. 1511 / HIO Pesh Date 15/2/96

A copy is forwarded to the;

- 1. Provincial Coordinator PM for EP and PHC NWFP Peshawer.
- 2. Asstt District Health Officer Nowshera.
- 3. Medical Officer PHC Akora Khattak District Nowshera.
- 4. Mr. Shah Zaman Driver PHC Akora Khattak.
- 5. Mr. Niaz Rashid Driver PHC Akora Khattak.

For information and action.

DISTRICT HEALTH OFFICER
PESHAWER.

15/2

A 5 7/2

BETTER COPY No.

OFFICE OF THE DISTRICT HEALTH OFFICER PESHAWAR

OFFICE ORDER

1. The resignation tendered by Mr Shah Zaman Driver attached to Bueira Niaz Supervisor IHW under the prime Minister Programme for FP and PHC District Nowshera is hereby accepted.
2. Mr Niaz Rashid is hereby appointed against the vacant post of Mr. Shah Zaman Driver BS-04 Contract based.

**DISTRICT HEALTH OFFICER
PESHAWAR**

No.151/DHO Pesh Dated 15.02.1996

A Copy is forwarded to the:

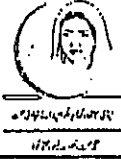
1. Provincial Coordinator PM for FP and PHC NWFP Peshawar.
2. Assitt District Health Officer Nowshera.
3. Medical Officer RHC Akora Khattak District Nowshera.
4. Mr Shah Zaman Driver RHC Akora Khattak.
5. Mr Niaz Rashid Driver RHC Akora Khattak.

For information and n/action.

**DISTRICT HEALTH OFFICER
PESHAWAR**

Annex (B) (B)

Health Department, Khyber Pakhtunkhwa
Lady Health Workers Program
Provincial Programme Implementation Unit, Peshawar



No: 1661-66

Date: 8/6/2015

NOTIFICATION

In terms of Section 4 (1) read with 1st Proviso there under, of the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act 2014, services of the following Lady Health Workers Program employees of district Nowshera Khyber Pakhtunkhwa are hereby regularized w.e.f. 1st July 2012. Their terms and conditions of service will be governed under the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014 and rules to be made there under.

| Sr. No | Name of Community Embedded Employee | Father Name | Date of Birth | Date of appointment | FLCF | Name of Catchment Area |
|--------|-------------------------------------|----------------------------|---------------|---------------------|-------------|------------------------|
| 1 | Mr. Niaz Rasheed | Farzand Hussain Qurashi | 01/09/1954 | 15 / 02 / 1996 | DPIU Nsr | |

In exercise of powers conferred under sub section (2) of the Section ibid, the above Community Embedded Employees are placed in the following pay scales as mentioned against their respective designations.

| Name of Post | Basic Pay Scale |
|--------------|-----------------|
| Driver | 4 |

S/d ---
District Health Officer
Nowshera

Annex (C) (7)



OFFICE OF THE DISTRICT HEALTH OFFICER NOWSHERA

Phone & Fax: 0923-580759

E-Mail: nowshera.edoh@gmail.com

OFFICE ORDER

Mr. Niaz Rasheed (Driver) attached to DPIU Nowshera is hereby retired from service w.e. from 31-08-2014 on attaining the age of superannuation (60-years):

Sd. _____
District Health Officer
Nowshera

No. 1655-60 / DHO NSR

Date: 8 / 6 / 2015

Copy forwarded to the:

1. Director General Health Services Khyber Pakhtunkhwa.
2. Provincial Coordinator LHWs Program Khyber Pakhtunkhwa for information with letter No. 889, dated 19-05-2015.
3. District Accounts Office Nowshera.
4. Official concerned.
5. Office record.

District Health Officer
Nowshera

F. Annex (D)

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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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Peshawar High Court

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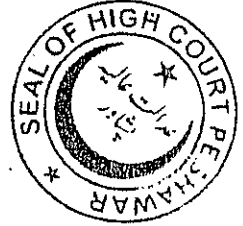
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JUDGMENT SHEET

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 (Rahamdad Khan) : By Mr. Wali Khan Afridi, Advocate.
Respondents (Provincial Government etc.) : By Syed Sikandar Hayat Shah, 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.

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ATTESTED
EXAMINER
Peshawar High Court

3. Arguments heard and the available record

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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.

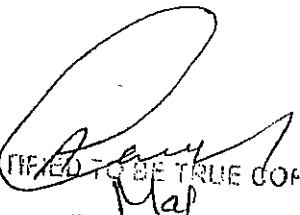
5. It is by now settled that, after regularization, the total continuous service of an employee is to be computed towards his pension and, in this regard, his date of first appointment, temporary or otherwise, would be reckoned as envisaged under Rule 2.2 of the West Pakistan Civil Services Pension Rules, 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


ESTABLISHED
Authorised Officer
The Government of Punjab
Order 108

JUDGE

30 MAR 2021



IN THE PESHAWAR HIGH COURT PESHAWAR

3394/P
WRIT PETITION No. _____/2016



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

Versus

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

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

FILED TODAY

Deputy Registrar

03 SEP 2016

Respectfully Sheweth,

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

Writ Petition No.2246-P/2016

Date of hearing:- 22.06.2017

Petitioner(s):- Rizwanullah by Mr. Khalid Rehman, Advocate.

Respondent (s):-By Syed Qaisar Ali Shah AAG.

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through this common judgment, we, propose to decide the following writ petitions as identical questions of law and facts are involved therein:-

Writ Petition No.2246-P/2016

Rizwan Ullah Vs Govt

Writ Petition No.290/2016

Haq Nawaz Vs Govt

Writ Petition No.3061-P/2015

Mehrab Gul Vs Govt

Writ Petition No.1084-P/2017

Saadullah Khan Vs Govt

Writ Petition No.1281-P/2016

Naimatullah Vs Govt.

Writ Petition No.1626-P/2015

Shafiq ur Rehman Vs Govt

Writ Petition No.1861-P/2016

Siyal Khan Vs Govt

Writ Petition No.2177-P/2016

Hamidullah Khan Vs Govt

Writ Petition No.3373-P/2016

Anderaf Gul Vs Govt

Writ Petition No.286-P/2016

Basir Azam Vs Govt

Writ Petition No.2868-P/2016

Gulistan Khan Vs Govt

Writ Petition No.3226-P/2016

Ashiq Ali Vs Govt

Writ Petition No.4623-P/2016

Said Mali Khan Vs Govt

Writ Petition No.4924-P/2016

Malik Wali ur Rehman Vs Govt

Writ Petition No.457-P/2016

Liaq Shah Vs Govt

Rooh-ul-Amin

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Peshawar High Court

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Writ Petition No.4923-P/2016

Gul Zarin Vs Govt

Writ Petition No.4086-P/2016

Hayat Hussain Vs Govt

Writ Petition No.3203-P/2016

Muhammad Rehman Vs Govt

Writ Petition No.4179-P/2015

Mian Asfandyar Vs Govt

Writ Petition No.181-D/2017

Parveen Begum Vs Govt.

Writ Petition No.2876-P/2014

Sher Ali Vs Govt

Writ Petition No.501-P/2016

Fazal Khan Vs Govt

Writ Petition No.2064-P/2016

Rahim Shah Vs Govt

Writ Petition No.4683-P/2016

Abdul Qadeer Vs Govt

Writ Petition No.3451-P/2016

Nisar Bacha Vs Govt

Writ Petition No.3071-D/2016

Shah Jehan etc Vs Govt.

Writ Petition No.3368-P/2016

Abdul Ghaffar Vs Govt.

Writ Petition No.3639-P/2016

Nadar Khan Vs Govt

Writ Petition No.3367-P/2016

Syed Muzarab Shah Vs Govt

Writ Petition No.3369-P/2016

Muhammad Faiq Vs Govt

Writ Petition No.3370-P/2016

Syed Man Shah Vs Govt

Writ Petition No.590-P/2017

Rab Nawaz Khan Vs Govt

Writ Petition No.204-P/2017

Zahir Shah Vs Govt

Writ Petition No.1072-P/2017

Noor Zada Vs Govt

Writ Petition No.337-D/2014

Ali Man Shah Vs Govt

Writ Petition No.724-D/2016

Ghulam Shabir Vs Govt

Writ Petition No.651-D/2016

Syeda Allah Wasaye Vs Govt

Writ Petition No.515-D/2016

Rab Nawaz Vs Govt

Writ Petition No.2-D/2015

Muhammad Jaffar Vs Govt

Writ Petition No.278-D/2017

Rashid Ahmad Vs Gomal University

Writ Petition No.31-D/2017

Mehmood ul Hassan Vs Govt

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Peshawar High Court

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Writ Petition No.880-D/2016

Abdul Rashid Vs Govt

Writ Petition No.94-D/2016

Rab Nawaz Vs Govt

Writ Petition No.399-D/2014

Bibi Amna Vs Govt

Writ Petition No.410-D/2016

Rehmatullah Vs Mst. Azra Bibi

Writ Petition No.1397-P/2014

Azam Khan Vs Govt

Writ Petition No.1396-P/2014

Roshan Din Vs Govt

Writ Petition No.620-P/2015

Saleem Khan Vs Govt

Writ Petition No.376-P/2015

Muhammad Ramzan Vs Govt

Writ Petition No.843-P/2015

Lachi Khan Vs Govt

Writ Petition No.4538-P/2015

Raham Khan Vs Govt

Writ Petition No.176-P/2016

Shah Nawaz Vs Govt

Writ Petition No.1167-P/2016

Muhammad Shoaib Vs Govt

Writ Petition No.599-P/2016

Abdur Rehman Vs Govt

Writ Petition No.2044-P/2016

Muhammad Aslam Khan Vs Govt

Writ Petition No.4798-P/2016

Dilfaraz Vs Govt

Writ Petition No.4799-P/2016

Muhammad Iqbal Vs Govt

Writ Petition No.3506-P/2016

Noor Muhammad Shah Vs Govt

Writ Petition No.588-P/2017

Mumtaz Khan Vs Govt

Writ Petition No.4800-P/2016

Sherullah Jan Shah Vs Govt

Writ Petition No.4801-P/2016

Muhammad Azam Khan Vs Govt

Writ Petition No.4802-P/2016

Zinda Khan Vs Govt

Writ Petition No.842-P/2015

Wakeel Khan Vs Govt

Writ Petition No.4131-P/2016

George Masih Vs Govt

has been

2. Facts in brief forming the background of the above writ petitions are that petitioners are Class-IV employees. They were initially recruited/appointed on

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contract/adhoc/temporary/ fixed pay basis in various departments of the Government of Khyber Pakhtunkhwa. By virtue of the Khyber Pakhtunkhwa Regulation Acts, their service was, later on, regularized. After their retirements, the petitioners have been refused pension by the respondents-departments on the ground of lack of prescribed length of their regular service. Grievance of the petitioner is that the respondents-departments by excluding the period of their temporary/adhoc/ contract/fixed pay service towards their regular service, have illegally deprived them from pension as under the law and rules their temporary service was to be calculated/counted with regular service, hence, these writ petitions.

3. On day before yesterday i.e. 20.06.2017, these writ petitions along with connected writ petitions in respect of family pension of deceased civil servants, were fixed for hearing. The moment, these writ petitions were taken up for hearing, learned A.A.G. raised a preliminary objection qua maintainability of the instant writ petitions on the ground that since the petitioners are retired civil servants and they claiming their right conferred upon them by section 19 of the Khyber Pakhtunkhwa Civil Servant Acts, 1973, which pertains to the terms and conditions of a civil servant, therefore, the jurisdiction of this Court is barred under Article 212 of the Constitution as the same exclusively falls in the domain of the Service Tribunal.

has been

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4. When confronted with the preliminary objection, learned counsel for the petitioners sought time to assist the Court, hence, the cases were posted for today.

5. Today, learned counsel for petitioners tried their level best to wriggle out of the situation by submitting that petitioners are no more civil servants as they have already been retired from service, hence, under section 4 of Service Tribunals Act, 1973, their appeals before the Service Tribunal would be incompetent. The next limb of their arguments was that since the petitioners have been discriminated, therefore, under Article 25 of the Constitution, this Court is vested with the powers to quash the illegal action and inaction of the respondents. Some of learned counsel for the petitioners straightaway conceded the bar on the jurisdiction of this Court in the matter of pension under Article 212 of the Constitution and requested for treating the instant petitions as Departmental Appeals and sending the same to the competent authority for onward proceeding.

6. 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 regarding pension of a civil servant squarely falls in terms and conditions of service of a civil servant, hence, Service Tribunal is vested

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ATTESTED
EXAMINER

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.

7. So far as the argument of learned counsel for petitioner with regard to discriminatory treatment and violation of Article 25 of the Constitution is concerned, we deem it necessary to clarify that a civil servant cannot bypass the jurisdiction of Service Tribunal by taking shelter under Article 25 of the Constitution in such like matter. The Service Tribunal shall have the exclusive jurisdiction in a case which is founded on the terms and conditions of service, even if it involves the question of violation of fundamental rights because the Service Tribunals constituted under Article 212 of the Constitution are the outcome of the constitutional provisions and vested with the powers to deal with the grievances of civil servants arising out from original or appellate order of the department.

8. As regards the submission of learned counsel for petitioners to treat the instant writ petitions and send the same to the concerned authority for consideration/decision, the same has weight. In this regard we are fortified by the

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judgment of the august apex Court in case titled, "I.A. Sherwani and others v Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041).

9: 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.

Announced:
22.06.2017
Sirej Afzal P.S.

[Signature]
JUDGE

[Signature]
JUDGE

[Signature]
JUDGE

No. 31720
Date of Presentation of Application 29/3/21
No of Pages 07
Copying fee 32
Total 32
Date of Preparation of Copy 29/3/21
Date of Delivery of Copy 29/3/21
Received By [Signature]

[Signature]
JUDGE
MAJ
Authorized Under Article 87 of the Constitution of Pakistan
The Ombudsman, Islamabad

"E"

19

IN THE PESHAWAR HIGH COURT PESHAWAR

W. P. No. _____ / of 2021

Haji Niaz Rashid Qureshi
son of Haji Farzand Hussain Qureshi
resident of Flat # 228/229,
Mohallah Qureshian Akora Khattak
Tehsil and District 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 15.02.1996 on temporary/fixed pay and served the department till his retirement from service. (Copy of the appointment order dated 15.02.1996 is attached as annexure 'A').
2. That services of the petitioner were regularized with effect from 01.07.2012 vide Notification No. 1661-66 dated 08.06.2015. (Copy of the Notification dated 08.06.2015 is attached as annexure 'B').

3. That the petitioner was retired from service on 31.08.2014 on attaining the age of Superannuation (i.e. 60 years), vide Office Order dated No. 1655-60/DHO NSR dated 08.06.2015. (Copy of the Office Order dated 08.06.2015 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 Five (5) years 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 Writ Petition 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 Writ Petition 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 redressal of his grievances (the grant of pensionary benefit to the

GROUNDS:

- 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

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.

Through:

Nazir Ahmad
Petitioner

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

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

Dated: 30.03.2021

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.

Wali Khan Afridi
Advocate

BOOKS OF LAW:

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

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PESHAWAR HIGH COURT, PESHAWAR

ORDER SHEET

| Date of order or proceedings | Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary. |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 2. |
| 11.11.2021 | <p><u>WP No.1512-P/2021.</u></p> <p><u>Present:</u> Mr. Wali Khan Afridi, Advocate for the petitioner.</p> <p>Mr. Muhammad Sohail, AAG for the respondents.</p> <p>*****</p> <p><u>QAISER RASHID KHAN, CJ.-</u> Through the petition in hand, the petitioner has asked for the issuance of an appropriate writ seeking directions to the respondent-department to prepare his pension papers for onward submission to the concerned quarter for the grant of the pensionary benefits to him.</p> <p>2. At the very outset, the learned counsel for the petitioner states that the latter would be satisfied, if this petition is sent to the respondent-department as his appeal / representation for decision in the light of the judgments of this court annexed with the petition. The learned AAG has no</p> |

reservations over the same.

3. Accordingly, we while disposing of this writ petition, treat it as an appeal / representation of the petitioner before the District Health Officer, Nowshera (respondent-1) and direct him to decide the same in the light of the judgment of the larger Bench of this court dated 22.06.2017 in WP No.2246-P/2016 and judgment dated 1.10.2020 in WP No.5551-P/2019 within a month positively. A copy of this petition be retained for record.

Announced.

Dated: 11.11.2021.


CHIEF JUSTICE


JUDGE



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

No. SOH-VI/HD/Misc/4-4/Niaz Qureshi/Driver-DHQ Nowshera)
Dated the 14th December, 2022

To

The Secretary to Govt of Khyber Pakhtunkhwa.
Finance Department, Peshawar.

Attention:- Section Officer (SR.II)

SUBJECT:- APPLICATION FOR PENSION AND OTHER ALLOWANCES.

Dear Sir,

I am directed to refer to your office letter No. SOSR-II/FD/1-2/2022 Dated Peshawar the 18.11.2022 on the subject noted above and to forward herewith the desired copy of Judgments, issued in favor of appellants, alongwith connected Judgments, which is self explanatory for further necessary action as per rules/policy, please.

Encl: As above.

Yours faithfully,

Section Officer-(Estab-VI)

Endst: even no & date.

Copy forwarded to the:-

1. PS to Secretary Health, Khyber Pakhtunkhwa.
2. PA to Director General Health Services, Khyber Pakhtunkhwa.
3. PA to Deputy Secretary (Admn) Health Department, Khyber Pakhtunkhwa.
4. PA to Deputy Secretary (Lit) Health Department, Khyber Pakhtunkhwa.

Section Officer-(Estab-VI)



GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

Finance Department Civil Secretariat Peshawar <http://www.finance.gkp.pk>

[facebook.com/GoKPPD](https://www.facebook.com/GoKPPD) twitter.com/GoKPPD

NO.SOSR-II/FD/1-2/2022

Dated Peshawar the 02.02.2023

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Health Department.

Subject:- APPLICATION FOR PENSION AND OTHER ALLOWANCES.

Dear Sir,

P-60/c

I am directed to refer to your letter No.SOI-VI/HD/Misc/4-4/Niaz Qureshi/Driver-DHQ Nowshera) dated 14.12.2022 on the subject noted above and to state that as the regular service of Mr.Niaz Rashid Qureshi in Health Department is 04 years and 02 months, hence he is not entitled for pensionary benefits in light of prevailing policy of the Provincial Government.

Yours faithfully,

[Handwritten signature]
6/2/23

[Handwritten initials]

SECTION OFFICER (SR.II)

I 27

To,

The District Health Officer,
Nowshera.

Subject: **APPLICATION FOR SUPPLY OF ORDER PASSED
ON THE DEPARTMENTAL APPEAL.**

Resented Sir,

1. That applicant has filed Writ Petition before the Hon'ble Peshawar High Court, Peshawar for pension and other allowance.
2. That on 11.11.2021, the Hon'ble Peshawar High Court, Peshawar while disposing-of the writ petition treated the same as an appeal/ representation of the petitioner before the authority and direct him to decide the same.
3. That it came in ~~To~~ knowledge of applicant that an order has been passed on the subject appeal.

It is, therefore, most humbly requested to grant copy of the order passed on the departmental appeal.

Thanking you.

Dated: 12.04.2023

Applicant

Niaz Rashid

Haji Niaz Rashid Qureshi
S/o Haji Farzand Hussain Qureshi
R/o Flat No.228/229, Mohallah
Qureshiah Akora Khattak,
Tehsil & District Nowshera
Ex-Driver, District-Health Officer,
Nowshera.
Cell: 0334-9449452



بعدالت حد س سٹرائٹ لسٹور

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|--------------|--|-------------|
| ایک روپیہ | | کورٹ فیس |
|--------------|--|-------------|

2023ء منجانب

29/5/2023 مورخہ

Appellant

نام سکرری فیانس و محترہ

بدراحمہ قریشی

مقدمہ

جرم

دعویٰ اپیل

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام لسٹور کے لئے ولی خان آفریدی ایڈویکیٹ سپریم کورٹ آف پاکستان کا مران خان آفریدی ایڈویکیٹ ہائی کورٹ مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زر اس پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہوں گے۔ اور اس کا ساختہ پر واختہ منظور و قبول ہوگا۔ و دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی مقام و دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں۔ لہذا وکالت نامہ لکھنا کہ سندر ہے۔

2023ء

المقوم
29
واہ شہد

Advocate Supreme Court of Pakistan

مقام لسٹور کے لئے منظور ہے۔
Accepted Man Umer Akhlaq