

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

**SCANNED
KPST
Peshawar**

Service appeal No. 1642/2022

Mst Naheed Kouşar

-----Petitioner

Versus

Govt of Khyber Pakhtunkhwa & Others

-----Respondents

Khyber Pakhtunkhwa
Service Tribunal

INDEX

Diary No. 5811

Dated 5-06-23

S. No	Description of Documents	Annexure	Page No.
01	Affidavit		01
02	Parawise Comments		02-04
03	Regularization Act of LHW program	I	05-09
04	Copy of Judgment of Supreme Court	II	10-11
05	Copy of Notification	III	12
06	Decision of Council of Common Interest	IV	13
07	Copy of Letter to DGHS NO.4985/DHO/pesh	V	14
08	Copy of Letter DGHS No.SOH(Lit)12(1)3292/2022	VI	15-19

09 *Authenticity letter*

20

date of hearing

19/6/2023

in Peshawar

[Signature]
Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1642/2022.

Mst Naheed Kousar

Vs Govt: of KP (Health)


-----Petitioner

AFFIDAVIT

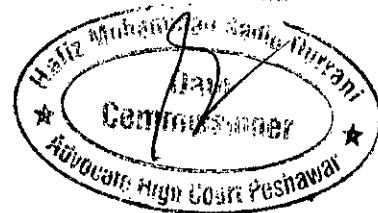
I Dr, Mubarak Zeb khan S/O Mr, Alam Zeb Khan Litigation Officer ,Office of DHO Peshawar, do hereby solemnly affirm and declare on oath that content of the instant replay are true and correct to the best of my knowledge & belief and nothing has been concealed from this honorable Court.

It is further stated on oath that in this appeal the answering respondents have neither been ex-parte nor their defense is struck off.

DEPONENT


Dr, Mubark Zeb
Litigation Officer
Office of DHO Peshawar
NIC No: 17101-6493994-5

02 JUN 2023
ATTESTED





**OFFICE OF THE DISTRICT HEALTH OFFICER
PESHAWAR
Phone No. 091-9225387**

AUTHORITY LETTER

Syed Mastan Ali Shah Litigation Assistant ,Office of DHO Peshawar,
NIC No: 17101-0365818-9 is authorized to submit parawise comments reply in the
case Service appeal NO.1642/2022 titled Mst Naheed Kousar Vs Govt of KP in
Service Tribunal ,Peshawar.

*District Health Officer,
Peshawar*

**District Health Officer
Peshawar .**

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

Service Appeal No. 1642/2022

Mst. Naheed Kousar W/O Bakht Pur Khan R/O Near Khazana Sugar Mil
Tehsil & District, Peshawar

.....Appellant

VERSUS

1. Director General Health Services, Khyber Pakhtunkhwa.
2. Secretary Health, Government of Khyber Pakhtunkhwa.
3. Accountant General Khyber Pakhtunkhwa Peshawar.
4. District Health Officer Peshawar.
5. District Account Officer, Peshawar.

.....Respondents.

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No 01,02& 04

Preliminary Objections.

- I. The appellant has got neither cause of action nor locus standi.
- II. The appeal is not maintainable in its present form.
- III. That the appellant has deliberately concealed material facts from the Hon'ble Service Tribunal Peshawar, hence liable to be dismissed.
- IV. That the appellant has filed the instant appeal with mala-fide motives.
- V. That the appeal is not maintainable in its present form and also in the present circumstance of the issue.
- VI. The appellant has not come to the Hon'ble Tribunal with clean hands and hit by laches.
- VII. That the appeal is bad due to non- joinder and mis- joinder of necessary and proper parties.
- VIII. That the appeal is barred by law and limitation.
- IX. That the appellant is not civil servant and is public servant with the meaning of S.9 of the Khyber Pakhtunkhwa Regularization of Lady Health workers program and employees (Regularization and standardization) Act 2014 and. Hence the Honourble Tribunal has no jurisdiction.

Respectfully Sheweth:

Para No 01. of the appeal pertains to record.

Para No 02. of the appeal pertains to record.

Para No 03 . of the appeal pertains to record.

Para No 04 . of the appeal pertains to record.

Para No 05 . The fact is that . appellee was regularized under the

directions of Hon'ble Supreme Court of Pakistan on 03-10-2012, in Cr. Original Petition No 15 and 73 of 2021 in Human Rights Case No 16360 of 2009 and Constitution Petition No 36 of 2112 "Bushra Arain Vs. Jahanzaib Khan,

Secretary Health and Others. As per judgment of Hon'ble Supreme Court of Pakistan and in view of The Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees(Regularization and Standardization) ACT 2014 appellant was also regularized w.e.f 1st July 2012 as her initial appointment as Lady Health Worker in BPS 05 (Annex-I),

All LHSs, LHWs Account Supervisors and Drivers will be regularized from 1st July 2012 as initial appointed and calculation of financial implication to be borne by Federal Government shall be made accordingly on the basis of employees' strength as on 30th June 2011 including cost of total cost of the project. (Annex-II).

Therefore, under the judgment of Hon'ble Supreme Court of Pakistan, appellant was regularized w.e.f 1st July 2012 as her initial appointment as Lady Health Worker in BPS 05 and as appellant served as a regular government employee only for **08 years, 7 Months (i.e from 1st July 2012 till 3rd may 2021)** therefore appellant after attaining the age of superannuation was relieved and her services were made stand retired from 01 February 2021 (**Annex III**), therefore, appellant is not entitled for any pensionary benefits on the plea that pension liability will accrue after ten years from the date of regularization i.e June 30, 2022, as prescribed in Council of Common Interest (CCI) decision.

(Annex IV).

Furthermore it is stated that as per Honourble Peshawar High Court judgment the Departmental appeal of the appellant was forwarded to the Competent Authority vide letter No.4985/DHO/Pesh dated.11-03-2022 (**Annexure-V**). In response the Competent Authority send letter No.SOH (Lit-I)3292/2022 dated Peshawar 12-09-2022 **along with judgment of Supreme Court of Pakistan(Annexure-VI).**

Para No 06 . Already explained in para No 5.(**Annexure-VI**)

Para No 07 . Already explained in para No 5.

Para No 08 . That the respondents also seek permission to raise further points at the time of arguments .

REPLY ON GROUNDS

- a) Already explained in above paras.
- b) Already explained in above paras.
- c) Already explained in above paras.
- d) Incorrect. Already explained in above paras.

PRAYER:

In the view of above, it is humbly prayed that the instant appeal being devoid of merit may very graciously be dismissed with cost.

Respondent No-01

Director General Health Services
Khyber Pakhtunkhwa Peshawar



Respondent No-02

Secretary Health
Khyber Pakhtunkhwa Peshawar



Respondent No-04

District Health Officer
Peshawar



FOR THE EXTRAORDINARY GAZETTE ISSUE OF
THE KHYBER PAKHTUNKHWA

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

Annexure-I (5)

NOTIFICATION

Dated Peshawar, the 2nd /07/2014.

No.PA/Khyber Pakhtunkhwa/Bills/2014/ 351 The Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Bill, 2014 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 24th June, 2014 and assented to by the Governor of the Khyber Pakhtunkhwa on 29th June, 2014 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

**THE KHYBER PAKHTUNKHWA REGULATION OF LADY HEALTH
WORKERS PROGRAM AND EMPLOYEES (REGULARIZATION
AND STANDARDIZATION) ACT, 2014**

(KHYBER PAKHTUNKHWA ACT NO. XXVI OF 2014)

(First published after having received the assent of the Governor of the
Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa.
(Extraordinary), dated the 02/07/2014).

(Here print as in the accompaniment).

Nun-e-el

SECRETARY,

Provincial Assembly of Khyber Pakhtunkhwa.

No. and date (as per notification above).

A copy of the above notification with the accompaniment is forwarded to the Manager, Government Stationery and Printing Department, Peshawar, with the request to publish the same in the extraordinary issue of the Khyber Pakhtunkhwa Government Gazette of today's date and distribute copies thereof immediately in accordance with the list given overleaf.

Proof should be sent to this Secretariat before publication.

Nun-e-el

SECRETARY,

Provincial Assembly of Khyber Pakhtunkhwa

E.No. PA/Khyber Pakhtunkhwa /Bills/2014/ 352-56 Dated 2/07/2014

A copy of the above is forwarded to :-

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. The Secretary to Government of Khyber Pakhtunkhwa, Health Department.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department.
4. The Director Information, Khyber Pakhtunkhwa.
- 5. The Director I.T/ Special Secretary Provincial Assembly of Khyber Pakhtunkhwa.

Nun-e-el

SECRETARY,

Provincial Assembly of Khyber Pakhtunkhwa

Nun-e-el
**District Health
Officer Peshawar**

6

AN
ACT

to regulate the status of Lady Health Workers Program in the Province of the Khyber Pakhtunkhwa and to regularize and standardize the services of employees of the said program

WHEREAS in pursuance of the Constitution (Eighteenth Amendment) Act, 2010, the subject of Health has been devolved to the Provinces and as such Lady Health Workers Program run by Federal Government for supporting the family planning and primary health care was devolved to the Provinces accordingly;

AND WHEREAS in the Lady Health Workers Program, the community based workers have a special nature of job, for the execution of which they have to remain continuously embedded with their local catchment population;

AND WHEREAS it is obligatory to maintain the original concept and design of the Lady Health Workers Program, to ensure the presence of community embedded employees for effective service delivery to the people of the area;

AND WHEREAS it is expedient to regulate the status of Lady Health Workers Program in the Province of the Khyber Pakhtunkhwa and to regularize and standardize the services of the employees of the said program.

It is hereby enacted as follows:-

1. **Short title, application and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014.

(2) It shall apply to all persons employed or to be employed in Lady Health Workers Program, in the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once except section 4, which shall come in to force on 1st July, 2012.

2. **Definitions.**---In this Act, unless there is anything repugnant in the subject or context,-

- (a) "catchment population" means the local population for which a Community Embedded Employee of the Program is appointed or posted and regularly resides therein;
- (b) "Community Embedded Employee" means a Program employee residing and working within his defined catchment population for which he was appointed or posted;
- (c) "District Program Implementation Unit" means the Management Unit of the Program at District level;
- (d) "Government" means the Government of the Khyber Pakhtunkhwa;
- (e) "prescribed" means prescribed by rules;
- (f) "Program" means the Lady Health Workers Program devolved to the Province and which was previously run by the Federal Government under the name of the National Program for Family Planning and Primary Health Care;
- (g) "Program employee" means an employee of the Program, whose service is regularized under this Act and includes persons to be appointed after the commencement of this Act;

District Health
Officer Peshawar

- (h) "Province" means the Province of the Khyber Pakhtunkhwa;
- (i) "Provincial Program Implementation Unit" means the Management Unit of the Program at Provincial level; and
- (j) "rules" mean rules made under this Act.

3. **Status of Program.**---(1) On commencement of this Act, the National Program for Family Planning and Primary Health Care, shall be deemed to be a Program of Government to be known as the Lady Health Workers Program.

(2) The purpose of the Program shall be to provide preventive, curative, rehabilitative and promotive health care services to the catchment population in the Province.

(3) The Program shall continue for such a period as Government may determine.

(4) After coming into force of this Act, Government may appoint persons to various posts in the Program on contract basis and there shall be no regular appointment in the Program.

(5) The appointment under sub-section (4) shall be made in accordance with the criteria and manner as may be prescribed.

4. **Regularization.**---(1) On commencement of this Act, all the Program employees, who were appointed in the Program on contract or fixed monthly stipend basis before 1st July 2012, and holding the said post till the commencement of this Act, shall stand regularized with effect from 1st July, 2012:

Provided that the services of such Program employees shall be deemed to have been regularized under this Act only on the publication of their names in the official Gazette:

Provided further that the posts of the Program fallen vacant on account of death, retirement, resignation, dismissal, termination or otherwise shall be filled-in on contract basis.

(2) The Program employees regularized under this Act shall be placed in the relevant Pay Scales corresponding to the civil servants or as may be determined by Government.

(3) The seniority of the Program employees regularized under this Act shall be determined in a manner as may be prescribed.

(4) A Program employee, whose services are regularized under this Act, shall retire from service, on the option of the Program employee and on such date as requested by the Program employee, after completion of twenty five years of qualifying service or on the completion of sixtieth year of age.

(5) A Program employee, whose service is regularized under this Act, shall be entitled to such pensionary and retirement benefits as may be determined by Government.

5. **Mechanism of recruitment for Community Embedded Employees.**---(1) For filling a post of Community Embedded Employee, the appointing authority shall cause to verify and ensure in the prescribed manner that person, who is to be appointed against such post, shall be a regular resident of his catchment population.

(2) The Provincial Program Implementation Unit shall oversee and monitor the process and finding of the verification, carried out by the appointing authority under sub-section (1), before a person is appointed against post of Community Embedded Employee.

(3) The Community Embedded Employee shall perform his duties within the catchment population of his residence; provided that Government may adjust a Community Embedded Employee in another area in certain circumstances to be prescribed.

District Health
Officer
Peshawar

(4) Notwithstanding anything contained in other provisions of this Act, the services of the Community Embedded Employees, whose services are regularized under this Act, or other Community Embedded Employees to be appointed after the commencement of this Act, shall be liable to termination, if the employee-

- (a) has unlawfully ceased to be a regular resident within or has become a non-resident for his catchment population; or
- (b) is involved in any other engagement or a practice which is not in accordance with the laid down and approved policy of the Program; or
- (c) has ceased to be efficient in the performance of official duties; or
- (d) has proved guilty of gross misconduct.

(5) A Community Embedded Employee, whose service is terminated under sub-clause (a) or (b) of sub-section (4) of this Act may be reinstated into service in a manner as may be prescribed:

Provided that this opportunity of reinstatement shall not be given more than once throughout the tenure of a Community Embedded Employee's service:

Provided further that-

- (a) no salary or allowances shall be paid to the re-instated employee for the period spent under termination; and
- (b) payment made, if any, to the terminated employee being re-instated, which was not allowed during or for the period spent under termination, is recovered from the employee.

6. Posting, transfer and adjustment of Program employees.---Notwithstanding anything contained in other provisions of this Act, the Program employees, except the Community Embedded Employees, may be transferred to perform duty anywhere in the Province.

7. Disciplinary action.---Disciplinary cases against the Program employees shall be dealt with in a manner as may be prescribed.

8. Application of Government rules.---The Program employees shall be dealt in accordance with the provisions of this Act and rules; provided that if no specific rules are available on any matter, the Government rules shall be applicable to such Program employees.

9. Public servants.---All Program employees shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

10. Power to make rules.---Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

11. Saving.--- Any rules, orders or instructions in respect of any terms and conditions of services of Program employees duly made or issued by an authority competent to make them and in force immediately before the commencement of this Act shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act.

12. Removal of difficulties.---If any difficulty arises in giving effect to any of the provisions of this Act, Government may make such order, not inconsistent with the provisions of this Act, as may appear to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from the commencement of this Act.

District Health
Officer Peshawar

13. **Repeal.**--- The Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Ordinance, 2014 (Khyber Pakhtunkhwa Ord. No. VI of 2014) is hereby repealed.

**BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

(AMANULLAH)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

District Health
Officer Peshawar

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Annexure - II
18

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain

Crl. Original Petition No.15 and 73 of 2012

In
Human Rights Case No.16360 of 2009

And
Constitution Petition No.36 of 2012
(Regarding the Regularization of Service
of Lady Health Supervisor/Workers)

Bushra Araen (In Crl.O.P.15/12)
Dr. Pir Ghulam Hussain and others (In Crl.O.P.73/12)

...Petitioners

Versus

Mr. Jahanzeb Khan, Secretary Health and others ... Respondents

In Attendance: Ms. Bushra Araen, LHS (Crl.O.P.15/12)
Ms. Rukhsana Anwar, LHS (in Cont. P.36/12)
Ms. Shafaq, Programme Officer
Ms. Farhat Sultana, LHS
Ms. Saeeda Shaheen, LHS
Ms. Maryam Sultana, LHS
Dr. Pir Ghulam Hussain,
Field Monitoring Coordinator (Crl.O.P.73/12)

For the Federation: Raja M. Aleem Abbasi, DAG

For Govt. of Punjab: Mr. Javed Hassan, AAG

For Govt. of Sindh: Mr. M. Qasim Mir Jat, AAG, Sindh
Mr. Saeed Qureshi,
Focal Person to Secretary Health

For Govt. of KPK: Syed Arshad Hussain Shah, AAG, KPK
Mr. Asmatullah Qureshi, S.O.

For Govt. of Balochistan: Mr. M. Azam Khan Khattak, AAG, Balochistan

Date of hearing: 03.10.2012.

ORDER

The learned DAG stated that the in pursuance of the policy funds have been released for the distribution of salaries etc. to the Provinces till the moth of September, 2012. According to his instructions on the completion of codal formalities from the Finance Ministry this amount is likely to be transferred in the shortest possible time so that the respective Provinces may reimburse the amount to the staff working in various projects relating to health. Mst. Bushra Araen, LHS and others stated that the

ATTESTED
Superintendent
Supreme Court of Pakistan

District Health
Officer Peshawar

and the Provincial Governments may take interest to disburse their salaries well in time particularly before the Eid-ul-Azha. Learned DAG stated that all efforts shall be made to do the needful. We expect that the Chief Secretaries of the respective Provinces and the Commissioner ICT shall also take steps in this behalf

2. Dr. Pir Ghulam Hussain, Field Monitoring Coordinator stated that the Officers and Staff of Programme Monitoring Units (PMUs) approximately 167 in numbers have been left at the disposal of Provinces for the purpose of confirmation yet they are working at par with the LHWs and LHSs on the Federal strength, since 1996, therefore, their services may also be regularized by the Federation. The learned DAG has stated that this decision has been taken in a meeting duly represented by the representatives of the respective Provincial Governments. He has referred to the summary sent to the Prime Minister, relevant paragraphs of the same are reproduced as under:-

- "iv. All LHSs, LHWs Account Supervisors and Drivers will be regularized from 1st July, 2012 as initial appointed and calculation of financial implication to be borne by Federal Government shall be made accordingly on the basis of employees' strength as on 30th June, 2011 including cost of medicine and operational costs not exceeding 10% of the total cost of the project.
- v. Staff of the PMUs of concerned provinces shall be regularized by the respective Provinces. The Provinces shall be responsible for the payment of liabilities accruing on this account."

We observed that if it is mutually agreed between Federal and Provincial Governments, they must undertake exercise to regularize the employees as early as possible without any discrimination. If the Lady Health Supervisors (LHSs) and Lady Health Workers (LHWs) are confirmed by the Federal Government then again another issue of discrimination in respect of regularization of PMUs Staff will arise. The Chief Secretaries of the respective Provinces and the Commissioner ICT is required to submit a progress report in this behalf on the next date of hearing. It is requested on behalf of the Federation that four weeks time may kindly be granted in order to regularize the aforesaid employees. The request is allowed. The matter shall be listed for hearing after



Islamabad,
03.10.2012.
M. Ashraf Malik

5/12

Sd/- Afkhar Muhammad Chaudhry, C.
Sd/- Jawwad S. Khawaja, J
Sd/- Kholji Arif Hussain, J

Certified to be True Copy

Supintendent

District Health
Office



Amendment - III

(12)

GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEALTH OFFICER PESHAWAR

Dated Peshawar the 14/09/2021
No. 13079-85 /DHO.DPU

NOTIFICATION

NO.PA/Khyber PakhtunKhwa/Bills/2014/351. In terms of provision of The Khyber PakhtunKhwa Regulation of Lady Health Workers Program & employees (regularization & standardization) Act, 2014 (Para (4) Sub-Para (4) & (5) if the Khyber PakhtunKhwa Civil Servants Revised Leave Rules 1981 and instructions there under issued from time to time, sanction is hereby accorded to the grant of 365 days leave encashment in lieu of LPR in respect of Mr/Mst. Naheed Kosar W/o Bakhat Pur BPS-05 as Lady Health Worker attached to BHU Khazana/District Health Officer Peshawar.

2. In terms of Section-13 of the Khyber PakhtunKhwa Civil Servants Act 1973, the official shall stand retire from service on 01/02/2021 AN on attaining the age of superannuation.

Sd/-xxxxxxxxxxxxxx
District Health Officer
Peshawar

A. Copy is forwarded to the:-

1. Accountant General Khyber PakhtunKhwa Peshawar.
 2. Provincial Coordinator LHWs Program Khyber PakhtunKhwa Peshawar.
 3. District Coordinator LHWs Program Peshawar.
 4. Litigation Officer DHO Office Peshawar.
 5. Office Assistant.
 6. Establishment section to update the retired personnel list.
 7. Account section
- For information an n/action.

District Health Officer
Peshawar

District Health
Officer Peshawar

(13)

Better Copy

Annexure - IV

Case No CCI 2/1/2013
Dated January 23,2013

REGULARIZATION OF LADY HEALTH
WORKERS ETC

DECISION

The council of Common interests considered the summary dated January 17, 2013 submitted by Ministry of inter Provincial Coordination (secretariat of CCI) on " Regularization of Lady Health Workers etc " and decided that Federal Government will keep on financing the LHWs program till June 30,2017. Pension liability which will accrue after ten years from the dated of regularization i.e June 30,2022 will be settled in a separate meeting .The Council also directed the provincial government to finalize the necessary legislation regarding their service structure and terms and conditions etc as soon as possible keeping continuity of the spirit of original scheme in-view.

District Health
Officer Peshawar



OFFICE OF THE DISTRICT HEALTH OFFICER

PESHAWAR

Phone No. 091-9225387

(14)
Annexure - V

No. 4985 /DHO/Pesh

Dated : 11 / 03 /2022

To

The Director General Health Services.
Khyber Pakhtunkhwa Peshawar.

Subject: **Writ Petition No.4537-P/2021- Mst. Naheed Kousar Vs Govt of Khyber Pakhtunkhwa**

Sir,

Enclosed please find herewith order sheet of Peshawar High Court Peshawar regarding the above mentioned writ petition which is self explanatory. Being Competent Authority your goodself is requested to implement the court Judgment dated. 23-02-2022, as the implementation of the judgment of the above mentioned writ petition is beyond the jurisdiction of the undersigned. **Being court matter, priority is requested.**

District Health Officer,

2/13

Peshawar

CC to:-

- Deputy Registrar (J) Peshawar High Court Peshawar.
- PS to Secretary Health Khyber Pakhtunkhwa Peshawar.
- Deputy Secretary (Litigation) Health Department Khyber Pakhtunkhwa Peshawar.
- Assistant Director (Lit). DGHS. Khyber Pakhtunkhwa Peshawar.
- Provincial Co-ordinator LHW program, Khyber Pakhtunkhwa Peshawar.

*District Health
Officer Peshawar*

151
15



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Annexure - VI

No. SOH(Lit-I)12(1)3292/2022
Dated Peshawar the 12-09-2022

To,

The Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

6860
21-8-22

Attention: Director Litigation

Subject:- WRIT PETITION NO. 4537-P/2021 TITLED MST. NAHEED KOUSAR VS GOVERNMENT OF KHYBER PAKHTUNKHWA & OTHERS.

I am directed to refer to your letter No. 1103-05/lit dated 24-04-2022 on the subject noted above and to state that in light of Hon'ble Supreme Court Judgment 2022 PLC (C.S) 202 of Article 371 of Civil Service Regulation (C.S.R) in similar nature cases already decided (copy attached), hence, the competent authority has regretted the appeal of the applicant regarding grant of pensionary benefits, please.

Being Court matter may please be treated as Most Urgent.

Encl: AS Above

Yours Sincerely

(SIKANDAR AFZALI)
Section Officer (Lit-I)

Copy forwarded for information to the:-

1. Registrar Peshawar High Court, Peshawar.
2. Section Officer E-III, Health Department w.r.t letter dated 14th April, 2022.
3. PS to Secretary Health Department.
4. PA to Deputy Secretary (Litigation) Health Department.

Handwritten signatures and stamps:

- ADG (Admin)
- Section Officer (Lit-I)
- Dis (Lit-I)
- Official Stamp: Peshawar

2022 P L C (C.S.) 202

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, C.J., Ijaz ul Ahsan and Sayyed Mazahar Ali Akbar Naqvi, JJ

MINISTRY OF FINANCE through Secretary and others

Versus

Syed AFROZ AKHTAR RIZVI and others

Civil Appeal No. 1496 of 2019, decided on 12th July, 2021.

(Against judgment dated 05.10.2018 of the Federal Service Tribunal, Islamabad, passed in Appeal No. 256(R)CS of 2016)

Civil Service Regulations (C.S.R.)---

---Art.371-A---Contract employees subsequently regularized in service---Pension---Conditions of qualifying service---Article 371 of Civil Service Regulations (C.S.R.) did not allow Government servants rendering temporary service in a temporary establishment for more than 5 years to be entitled for grant of pension rather such period could be counted towards calculation of pension only if otherwise entitled to pension by meeting the criteria of qualifying service---Where the services of a contractual employee were converted into regular employment the period spent in contractual employment subject to a minimum of five years could be included in calculating pensionary benefits but only and only in a situation where the employee was otherwise entitled/eligible to receive pension subject to having rendered qualifying service (10 years) in permanent employment---Unless he met the criteria of having served for the duration of the qualifying period, the period spent in contractual employment could not be added to make up for any deficiency in qualifying service for the purpose of eligibility to receive pension.

An employee who was employed on contractual basis and was subsequently regularized may be entitled to pensionary benefits provided:

- i) He was eligible for pension having served for the qualifying period (10 years) as a regular employee.
- ii) For the purpose of calculating pensionary benefits his service as a contractual employee could be factored in to provide him any financial benefit that may be due to him.
- iii) The period spent in employment as a contractual employee and as a regular employee could not be aggregated in order to determine his eligibility for entitlement to pension.
- iv) Eligibility to receive pension was directly related to rendering qualifying service as a regular employee. Unless an employee had performed services in a regular appointment for the duration of the qualifying period (10 years), he was not entitled to receive pension.

Chairman, Pakistan Railway, Government of Pakistan v. Shah Johan Shah PLD 2016 SC 534 ref.

In case, an employee had served a Government department for the duration of the period qualifying him to receive pension, the period spent as a contractual employee may be added to his regular qualifying service only and only for the purpose of calculating his pension and for no other purpose. The provisions of Article 371-A of Civil Service Regulations (C.S.R.) started with a non-obstante clause which meant that the said Article did not relate to the question entitlement or eligibility to receive pension. It was clearly and obviously restricted to counting the period of a minimum of five years which had been rendered by a temporary contractual employee to be taken into account with the object of calculating the quantum of his pension and not more. The non-obstante clause in Article 371-A of C.S.R. did not allow those who did not fulfil the requisite conditions for qualifying for pension to bypass such conditions and add up regular and contractual periods of employment for the purpose of meeting the eligibility criterion of ten years of service. Such an interpretation would create absurd situations and would render other provisions and Articles of C.S.R. redundant, unnecessary and surplus.

District Health Officer Peshawar

Therefore, Article 371 of C.S.R. did not allow Government Servants rendering temporary service in a temporary establishment for more than 5 years to be entitled for grant of pension rather such period could be counted towards calculation of pension only if otherwise entitled to pension by meeting the criteria of qualifying service.

Chairman, Pakistan Railway, Government of Pakistan v. Shah Johan Shah PLD 2016 SC 534 ref.

Sohail Mehmood, Additional AGP, Khan Hafeez, JS, Fin. Div., Abdul Ghaffar, SO, Fin. Divi. and Sajid Javed, Legal Assistant Fin. Div. for Appellants.

M. Ramzan Khan, Advocate Supreme Court, Syed B.H. Shah, Advocate-on-Record along with Respondent No. 1 in person for Respondents.

Date of hearing: 12th July, 2021.

ORDER

IJAZ UL AHSAN, J.---The appellant is aggrieved of a judgment of the Federal Service Tribunal, Islamabad ("the Tribunal") dated 05.10.2018. Through the impugned judgment, while accepting a Service Appeal bearing No.256(R)CS of 2016 filed by Respondent No.1 (Syed Afroz Akhtar Rizvi) the Tribunal directed that his last drawn pay as contract employee would stand protected on his regularization/appointment on regular basis and the Appellant should provide consequential/retirement benefits to him within h. period of three months.

2. Briefly stated the facts necessary for decision of this Appeal are that Respondent No.1 was appointed as Data Entry Operator (BS-12) in National Educational Information Management System ("NEIMS") on 11.04.1992 on contractual basis. Subsequently, the employees of NEIMS were transferred to the Academy of Educational Planning and Management ("AEPM") and were regularized with effect from 01.07.2008. After regularization, the Respondent rendered services in AEPM and retired 8 years later. He submitted an application requesting that he may be regularized with effect from his initial appointment and his services from 11.04.1992 to 30.06.2008 be counted towards determination/fixation of his pensionary benefits. Such application was rejected by the Appellant. This prompted the Respondent to file an appeal which was allowed vide judgment dated 01.02.2017. The said judgment was challenged before this Court through CPLA No. 1255 of 2017 which was converted into an appeal and allowed vide order dated 22.03.2018. The matter was remanded to the Tribunal for decision afresh. In post remand proceedings, the appeal of the Respondent was again allowed, vide impugned judgment dated 05.10.2018.

3 Leave to appeal was granted by this Court on 29.08.2018 inter alia in ire the following terms:-

"Submits that the impugned judgment of the learned tribunal dated 05.10.2018 fails to apply the principle laid down in Chairman, Pakistan Railway, Government of Pakistan v. Shah Johan Shah (PLD 2016 SC 534) and reproduced in the impugned judgment. The period of temporary service exceeding 5 years can be added towards the government service pension if he is otherwise entitled to pension. This principle contained in Article 371-A of the Civil Service Regulations (CSR) has been affirmed in the aforementioned judgment. On the other hand, the respondent fails to satisfy the condition of Article 371-A of CSR and is therefore not entitled to receive pension. Yet the Tribunal has awarded him that relief."

4. The learned Additional Attorney General for Pakistan appearing for the Appellant submits that the Respondent was appointed purely on temporary basis in NEIMS, his services were regularized on 18.08.2008 in AEPM which in essence was a fresh appointment. His application for grant of pensionary benefits was disallowed on the ground that he did not meet the criteria of qualifying service of 10 years. He maintains that the period from 1992 to 2008 cannot be counted for the purpose of determining qualifying service in view of the fact that qualifying service has to be performed in a Government Department and at least for a period of ten years. He further maintains that the Tribunal has misinterpreted and misapplied the provisions of CSR 352, 361 and 365 and has come to the conclusions which are patently erroneous. He relies on a judgment of this Court reported as Chairman, Pakistan Railway, Government of Pakistan v. Shah Jahan Shah (PLD 2016 SC 534) and submits that the Tribunal has totally misinterpreted the same. He further maintains that the Finance Division has issued policy guidelines vide Office Memorandum No.4(2)R-2/2014-237 dated 07.04.2015 for protection of pay of

District Health Officer Peshawar

7/28/2022, 1:17 PM

gazetted contract employees on their regularization/employment on regular basis. As per para 1(v) of the said OM, the services rendered on contract basis do not qualify for pension/gratuity. He further submits that benefit of pay protection is admissible to the Respondent but pensionary benefits are not admissible for the contract period. However, pensionary benefits for regular service from the date of regularization are admissible to regular employees under the Rules.

5. The learned ASC for Respondent No.1 has defended the impugned judgment of the Tribunal. He maintains that admittedly the Respondent has rendered uninterrupted and continuous contractual service in NEIMS from 1992 to 2008. That being so, the said period which comes to around 15 years is liable to be counted

towards his pensionary benefits and denial by the Department to grant him the benefit of pension was patently illegal as had correctly been held so by the Tribunal. He further submits that the correct interpretation of CSR 352, 361 and 365 is that if a contractual employee who is subsequently regularized has rendered, in aggregate, service in excess of the qualifying service as defined in the Civil Service Rules, such employee is entitled to pensionary benefits. He also relies on the judgment of this Court in the case of Shah Jahan Shah (supra).

6. We have heard the learned Additional Attorney General Pakistan as well as learned ASC for Respondent No.1 and have examined the relevant provisions of Civil Service Regulations as interpreted by this Court from time to time. An analysis of the said provisions and judgments of this Court more specifically a relatively recent judgment of this Court in Shah Jahan Shah's case shows that the following general principles apply to employees who have worked against contractual posts which were subsequently converted into regular posts for the purpose of grant and calculation of pension:

1. an employee who was employed on contractual basis and is subsequently regularized may be entitled to pensionary benefits provided;
 - i) he is eligible for pension having served for the qualifying period (10 years) as a regular employee;
 - ii) for the purpose of calculating pensionary benefits his service as a contractual employee can be factored in to provide him any financial benefit that may be due to him;
 - iii) the period spent in employment as a contractual employee and as a regular employee cannot be aggregated in order to determine his eligibility for entitlement to pension.
 - iv) eligibility to receive pension is directly related to rendering qualifying service as a regular employee. Unless an employee has performed services in a regular appointment for the duration of the qualifying period (10 years), he is not entitled to receive pension.

7. In case, an employee has served a Government Department for the duration of the period qualifying him to receive pension, the period spent as a contractual employee may be added to his regular qualifying service only and only for the purpose of calculating his pension and for no other purpose. The provisions of Article 371-A of CSR start with a non obstante clause which means that the said Article does not relate to the question entitlement or eligibility to receive pension. It is clearly and obviously restricted to counting the period of a minimum of five years which has been rendered by a temporary contractual employee to be taken into account with the object of calculating the quantum of his pension and not more. The non obstante clause in Article 371-A of CSR does not allow those who do not fulfil the requisite conditions for qualifying for pension to bypass such conditions and add up regular and contractual periods of employment for the purpose of meeting the eligibility criterion of ten years of service. Such an interpretation would create absurd situations and would render other provisions and Articles of CSR redundant, unnecessary and surplus. We are therefore in no manner of doubt that Article 371 of CSR does not allow Government Servants rendering temporary service in a temporary establishment for more than 5 years to be entitled for grant of pension rather such period can be counted towards calculation of pension only if otherwise entitled to pension by meeting the criteria of qualifying service.

8. It is not disputed that the Respondent rendered continuous service from 1992 to 2008 as Data Entry Operator in NIEMS. It is also not disputed that he was regularized in 2008 and retired in 2016 before meeting the criteria of qualifying service. That being so, the benefit of Article 371-A of CSR was

not available to him as he did not qualify for the pensionary benefits which qualification is a necessary pre-requisite for grant of pension.

9. It may also be pointed out that the earlier view taken by a three member Bench of this Court in the case of Mir Ahmad Khan v. Secretary to Government and others (1997 SCMR 1477) was declared per incuriam in a five member judgment of this Court rendered in Shah Jahan Shah's case *ibid*. As such the view consistently taken by this Court in a situation where the services of a contractual employee converted into regular employment is that although the period spent in contractual employment subject to a minimum of five years can be included in calculating pensionary benefits but only and only in a situation where the employee is otherwise entitled/eligible to receive pension subject to having rendered qualifying service (10 years) in permanent employment. Unless he meets the criteria of having served for the duration of the qualifying period, the period spent in contractual employment cannot be added to make up for any deficiency in qualifying service for the purpose of eligibility to receive pension. The Tribunal has clearly and obviously taken an incorrect and erroneous view of the law and has been unable to appreciate the essence and tenor of Shah Jahan Shah's case *ibid* which is an authoritative declaration of law on the subject by this Court. Reference of the Tribunal to selective portions of the aforementioned judgments are found to be out of context leading to incorrect and erroneous interpretation of the relevant principles of law. We therefore find that the impugned judgment of the Tribunal dated 05.10.2016 is unsustainable. It is accordingly set aside. Consequently, the listed appeal is allowed and the Service Appeal bearing No.265(R) of CS 2016 filed by Respondent No.1 (Syed Afroz Akhtar Rizvi) before the Tribunal is dismissed.

MWA/M-49/SC

Appeal allowed.

District Health
Officer Peshawar