

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 3316/2020

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Mrs. Nasim Begum D/O Muhammad Razaq, Charge Nurse BPS-16,  
SGTH, Swat. .... (Appellant)

Versus

1. Secretary Government of Khyber Pakhtunkhwa, Health Department,  
Civil Secretariat, Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
3. The District Health Officer, District Swat. .... (Respondents)

Mr. Zahid Gul,  
Advocate

... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney,

... For respondents

Date of Institution.....	18.03.2020
Date of Hearing.....	29.05.2023
Date of Decision.....	29.05.2023

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for regularization of the services of the appellant from 23.10.2003 till 20.08.2013 on the basis of equality and equal protection of law in the light of judgment rendered by the Hon'ble Peshawar High Court in Writ Petition No. 1662/2007, 1166/2008 & 1160/2008 decided on 14.01.2010 and upheld by the august Supreme Court of Pakistan vide Civil Petitions No. 170-P to 172-P & 668-P of 2010. It has been prayed that on acceptance of the instant appeal



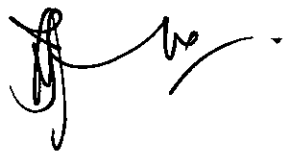
appropriate directions be given to the respondents to regularize the services of the appellant from 23.10.2003 till 20.08.2013 with all back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that in the year 2003 advertisement was floated through press, inviting applications for the posts of charge nurse. Appellant, being qualified in terms of advertisement, applied for the same and after going through the selection process, the Departmental Selection Committee on 18.09.2003 recommended her and finally she was appointed as Charge Nurse (BPS-14) by the Director Health Services, FATA, Peshawar vide order dated 23.10.2003. The appellant assumed the charge of her duties at the office of Agency Surgeon, Kurram Parachinar and started performing her duties. In the year 2002, the government introduced a contract policy and all the appointments were made under the said policy. The appellant was also appointed under the same contract policy. In the year 2005, the government decided to grant regularization to all those employees who were appointed under the contract policy of 2002 and the Provincial Assembly passed an Act in 2005, whereby Section 19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 was substituted and accordingly all those employees who were appointed in the prescribed manner to a service post on or after the 1st day of July, 2001 till the commencement of said Act, were declared to be regular civil servants. All the employees, selected and appointed on contract basis, stood automatically regularized by operation of law. Another advertisement was floated by the Chief Executive, Lady Reading Hospital and the appellant again applied for the post of Charge Nurse (BPS-14). She was again appointed as Charge Nurse BPS-14 on contract basis for a



period of three years by the Chief Executive Lady Reading Hospital Peshawar vide order dated 19.12.2006. Some posts of Charge Nurse BPS-16 were advertised by the Khyber Pakhtunkhwa Public Service Commission and the appellant was compelled to apply for the same and after undergoing the selection process, she was recommended and appointed as Charge Nurse (BPS-16) vide order dated 20.08.2013. The appellant was transferred to SGIH Swat vide letter dated 19.12.2013. Some male/female Nurses of District Dir Lower and Malakand who were terminated under the ground of project employment and who were similarly appointed in 2003 & 2004, approached the Honourable Peshawar High Court in Writ Petition No. 1662/2007 and 1160/2008 which were allowed vide judgment dated 14.01.2010 on the strength of similar other judgment in Writ Petition No. 475/2006 titled "Miss Shagufta Sayed Vs The Government of Khyber Pakhtunkhwa and others" decided on 11.07.2007 and the same was subsequently upheld by the August Supreme Court of Pakistan vide C.P No. 170-P/2011. Accordingly all the terminated Male/Female Nurses were not only reinstated into service but also declared regular employees under the Act of 2005 and they were also allowed back benefits by the department. As the case of the appellant was identical in nature, therefore, when she came to know about the decision, she also preferred departmental appeal to respondent No. 1 which was not disposed of within the statutory period, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant



as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, contended that the appellant had not been treated in accordance with law, rules and policy on the subject and the respondents acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully refused to regularize her services. He further argued that as the case of the appellant was identical to other employees of the department who were granted relief by the Honourable Peshawar High Court, she was also entitled to the same relief under the principle of consistency and equality as laid down by the august Supreme Court of Pakistan in the case reported as 1996-SCMR-1185. He argued that the appellant was appointed on contract basis under the Contract Policy of 2002 and stood regularized by the operation of law and therefore, she was entitled for regularization of her previous service. He requested that the appeal might be accepted as prayed.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant argued that departmental appeal was filed by the appellant on 29.08.2013, while instant service appeal was filed on 18.03.2020, hence the appeal was badly time barred and not maintainable in the eyes of law. He further argued that the appellant was an institutional employee of LRH and hence did not qualify for regularization under the Act of 2005. He requested that the appeal might be dismissed.



6. Arguments and record presented before us clearly indicate that the appellant was first appointed Charge Nurse (BPS-14), in the erstwhile FATA, on contract basis for a period of three years in 2003. Record is silent on the regularization of her services. She is trying to gain strength from the Regularization Act of 2005 passed by the Provincial Assembly of Khyber Pakhtunkhwa but failed to produce any order of regularization of her services issued by her appointing authority under the Act. In 2006 she was appointed Charge Nurse (BPS-14) in the Lady Reading Hospital, Peshawar. The office order dated 19.12.2006 annexed with the service appeal indicates that the order was issued by the Chief Executive of LRH, Peshawar. Terms and conditions of her appointment clearly mention that she will not be considered as government servant. Later on, in the year 2013, on the recommendation of Khyber Pakhtunkhwa Public Service Commission, she was appointed as Charge Nurse (BPS-16) on regular basis. After that appointment, she submitted an appeal for regularization of her service from 2003 onwards.

7. Now the point here is why she is claiming regularization from 2003 onwards? It is evident that she was initially appointed on contract in 2003 and never regularized by her appointing authority, as no such order is available on record or produced during hearing. Subsequently, she was appointed by the Chief Executive of LRH, Peshawar, clearly declaring that she will not be a government servant. The departmental representative of Health Department has further clarified that she was an institutional employee of LRH, Peshawar, hence she did not qualify for regularization under the Act of 2005. Lastly, the appellant is referring to the judgment of the Hon'ble Peshawar High Court in

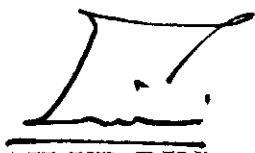


Writ Petition No. 1160 of 2008 which was a case of employees of Provincial Government who were appointed by the District Coordination Officer, Buner in an ADP Scheme and were later on working against regular posts. Their case of regularization does not fit on the matter under reference here because from 2003 to 2013, the appellant served under different offices, first on contract under erstwhile FATA which was a federal agency, and later in LRH, which was an institutional arrangement.

8. In view of the foregoing, the service appeal in hand is dismissed. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 29<sup>th</sup> day of May, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)