

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 515/2023

Mrs. Maryam Bibi, Retired Lady Health Worker (BPS-05) W/O Matta Khan R/O Said Ali Banda P/O Takht Nasrati Mianki Banda, Tehsil Takht Nasrati District Karak.

Appellant

VERSUS

Diary No.

5943

Dated


13/6/2023

District Health Officer Karak & others.....

Respondents

INDEX

S. No	Description of Documents	Annexures	Pages
1	Para-wise Comments	A	1-2
2	Affidavit	B	3
3	Copy of the Khyber Pakhtunkhwa, Regularization of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014	C	4-8
4	Copy of Lady Health Worker Program Employees Service, Rules Notified on 29 th January, 2015	D	9-14
5	Copy of regularization of Service order	E	15-16
6	Copy of Retirement order	F	17
7	Copy of Judgment Sheet in the Peshawar High Court Mingora Bench (Dar-ul-Qaza), Swat in W.P No. 289-M/2021 (Muhammad Saeed Vs Govt	G	18-28
8	Authority	H	29


Deponent

Annex-A P-1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 515/2023

Mrs. Maryam Bibi, Retired Lady Health Worker (BPS-05) W/O Matta Khan R/O Said Ali Banda P/O Takht Nasrati Mianki Banda, Tehsil Takht Nasrati District Karak.

Appellant

VERSUS

- 1 The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
- 2 The District Health Officer Karak
- 3 The District Accounts Officer, District Karak.

Respondents

JOINT PARA-WISE COMMENTS OF RESPONDENTS NO.1 TO 2

PRELIMINARY OBJECTIONS;

- 1 That the Appellant has got no cause of action and locus standi, hence the titled Appeal is not maintainable on this sole legal ground.
- 2 That the Appeal of Appellant is wrong baseless, against the Law & facts.
- 3 That the Appeal is not maintainable.
- 4 That the Appeal of Appellant is hit by Principal of Mis-Joinder & non Joinder.
- 5 That the Appeal of Appellant is liable to be dismissed the grounds that, she has not arrayed the Provincial Govt: in the Colum of the respondents which is mandatory.

RESPECTFULLY SHEWTH:-

FACTS:-

1. Correct. That the Appellant was initially appointed as Lady Health Worker on contract basis during the year on dated. 19-10-1998 by the respondent No. 2 & the service of the Appellant was regularized w.e.f 01-07-2012 vide Khyber Pakhtunkhwa, Regularization of Lady Health Worker Program and employees (Regularization and Standardization) Act, 2014 & accordingly the Appellant has been retired from service on superannuation basis on 31.05.2019 as per service book record & NIC of the Appellant (completing of 06-years 10-months & 30-days length of service which is less than 10-year (required service for pension benefit).
2. Correct. As explained in Para-1
3. Pertain to record.
4. Incorrect. As explained in Para-1 that the Appellant has been retired from service on superannuation basis on 31.05.2019 after the completing minimum service of 06-years 10-months & 30-days from her regularization of service date i.e. 1st July, 2012 which is less than 10-years (required service for pension benefit).
5. No comments, law point.

6. Incorrect, however the appeal of the Appellant is under process not yet decided by the concern authority while on the other hands as stated in para-1 that, the Appellant was initially appointed as Lady Health Worker on contract basis during the year on 19-10-1998 by the respondent No. 2 & the service of the Appellant was regularized w.e.f 01-07-2012 vide Khyber Pakhtunkhwa, Regularization of Lady Health Worker Program and employees (Regularization and Standardization) Act, 2014 & accordingly the Appellant has been retired from service on superannuation basis on 31.05.2019 as per service book record & NIC of the Appellant (completing of 06-years 10-months & 30-days length of service which is less than 10-year (required service for pension benefit)).
7. The appellant has got no cause of action to file instant appeal.

GROUND:-


- A. Incorrect. As stated in Para-1 that the appellant has been retired from **service on superannuation basis on 31.05.2019 after completing minimum service of 06-years 10-months & 30-days, from her regularization of service date i.e 1st July, 2012 which is less than 10-year (required service for pension benefit).**
- B. Incorrect. That para- 1 of the facts is self-explanatory.
- C. Incorrect. That para-1 of the facts is self-explanatory.
- D. Incorrect. That the Appellant has been treated as per pension rules of the Govt.
- E. Incorrect. That the Appellant has been treated as per pension rules of the Govt.
- F. Incorrect. That the Appellant has been treated as per Khyber Pakhtunkhwa, Regularization of Lady Health Worker Program and employees (Regularization and Standardization) Act, 2014 & accordingly the Appellant has been retired from service on superannuation basis on 31.05.2019 as per service book record & NIC of the Appellant (completing of 06-years 10-months & 30-days length of service which is less than 10-year (required service for pension benefit)).
- G. No comment that, the respondents may be allowed to arise additional grounds at the time of arguments.

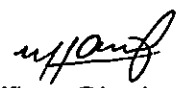

PRAYER

In light of the above submission, it is humbly prayed that as the Appellant has been retired from **service on superannuation basis on 31.05.2019 after completing minimum service of 06-years 10-months & 30-days, from her regularization of service date i.e 1st July, 2012 which is less than 10-year (required service for pension benefit), so** the Appeal is devoid of merits and has no legal value, therefore, may graciously be dismissed.

(Respondent No-1)

Respondent No-2)


Director General Health Services
Khyber Pakhtunkhwa, Peshawar


District Health Officer District Karak


Annex-B P-3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 515/2023

Mrs. Maryam Bibi, Retired Lady Health Worker (BPS-05) W/O Matta Khan R/O Said Ali Banda P/O Takht Nasrati Mianki Banda, Tehsil Takht Nasrati District Karak.

Appellant

VERSUS

District Health Officer Karak & Others.....Respondents

AFFIDAVIT

I Dr. Asad Zahoor Public Health Coordinator (BS-17) office of the District Health Karak, do hereby solemnly affirm and declare that the contents of the para-wise comments at page 1 & 2 submitted on behalf of Respondent No. 1 to 2 is true and correct to the best of my knowledge, belief and that nothing has been concealed from this Hon'ble Tribunal.

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

Asad Zahoor

(Dr. Asad Zahoor)
Public Health Coordinator (BS-17)
District Health Office Karak



THE KHYBER PAKHTUNKHWA

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

Annex 1-4

NOTIFICATION

Dated Peshawar, the 2/07/2014.

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).

Nuneez

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.

Nuneez

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.

*Munir
Almatin*

Nuneez

SECRETARY,

Provincial Assembly of Khyber Pakhtunkhwa

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.

Attended
Shirathur

(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.

Amir
Amir

P-6

(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.

*Amended
Strength*

D-8

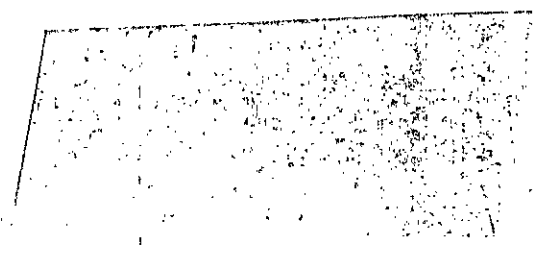
Repeal--- The Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Ordinance, 2014 (Khyber Pakhtunkhwa Ord. No. VI of 2014) is hereby repealed.

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

(AMANULLAH)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

*Amir
Amir*

Amir
SECRETARY,
Provincial Assembly of Khyber Pakhtunkhwa



GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

NOTIFICATION

Peshawar, dated the 29TH January, 2015

No. SO (H&E)/2-65/2014.-In exercise of the powers conferred by section 10 of the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014 (Khyber Pakhtunkhwa Act No. XXVI of 2014), the Government of Khyber Pakhtunkhwa is pleased to make the following rules, namely:

THE KHYBER PAKHTUNKHWA REGULATION OF LADY HEALTH
WORKERS PROGRAM EMPLOYEES SERVICE RULES, 2015

CHAPTER-1

1. **Short title, application and commencement.**---(1) These rules may be called the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program Employees Service Rules, 2014.

(2) It shall apply to all the Program employees of the Program.

(3) They shall come into force at once.

2. **Definitions.**---In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say,-

- (a) **“Act”** means the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014 (Khyber Pakhtunkhwa Act No. XXVI of 2014);
- (b) **“Provincial Coordinator”** means Head of the Program appointed by government from amongst member of service, Health Department.
- (c) **“Appointing Authority”** means an authority specified in Rule.3.
- (d) **“Provincial Program Implementation Unit”** means the

*Annex
D*

Management Unit of the Program at Provincial level.

CHAPTER- 2
RECRUITMENT AND OTHER TERMS AND CONDITIONS OF SERVICE
OF EMPLOYEES

3. **Method of appointment.**---(1) There shall be Selection Committees for the purpose of making selection for initial appointment on contract basis to the posts of the Program, on the recommendations of which the appointing authority shall make appointment.

(2) The candidates applying for the various posts in the Program shall possess same qualification and age limit, as provided in the original Program.

4. **Selection criteria for appointment of Lady Health Supervisor.**---(1) There shall be a Selection Committee for the appointment of Lady Health Supervisors comprising of the following:

- | | |
|--|--------------------------|
| (a) District Coordinator,
Lady Health Worker Program; | Chairman |
| (b) a representative of District Health
Officer; | Member |
| (c) a representative of the Provincial
Program Implementation Unit not
below the rank of BPS-17; and | Member |
| (d) Field Program Officer of
the concerned area. | Member-cum-
Secretary |

(2) The posts shall be advertised in two News papers or electronic media.

(3) Test and interview of the short listed candidates at District level shall be conducted.

(4) The Selection Committee shall place the list of recommended candidates, alongwith record of written test, before the District Health Officer.

(5) The District Health Officer shall nominate an officer who shall not be a member of the selection committee to re-verify the documents, residential status of the candidates and to ensure that the recommendations have been made in accordance with the laid down criteria.

(6) On receipt of verification, the District Health Officer will accord final approval and will issue appointment orders of the selected/approved candidates and record of written test of the selected candidate be kept in her personal.

(7) Female, who shall apply for the post of Lady Health Supervisor should preferably married and must be permanent resident of the area for which she is to be appointed.

5. Selection criteria for appointment of Lady Health Workers.---(1) Female preferably married and must be permanent resident of the area for which she is to be appointed.

(2) There shall be a Selection Committee comprising of the following:

(a) Medical Officer/Incharge, First Level Care Facility; Chairman

(b) a female representative to be nominated by the District Health Officer from amongst Women Medical Officer or Lady Health Visitor or Female Medical Technician or Medical Technician or Dispenser posted at the same Facility; Member

(c) Lady Health Supervisor. Member-cum-Sectary

(5) Married females/women with past experience in community development, having the required qualification, will be given preference.

(6) Candidate should be willing to carry out the services from her home which will be designated a "Health House" ensuring effective linkage between the community and the public health care delivery system.

(7) In specific/difficult/uncovered areas the District Health Officer in consultation with District Program Implementation unit, may substitute the members of the Selection Committees to meet the desired objective.

*Amud
Dhathun*

6. **Selection Criteria for Driver for the vehicle of Lady Health Supervisor.**---The candidate must be permanent resident of the area for which he is to be appointed. He shall have written consent of the Lady Health Supervisor with whom he has to perform duty.

7. **Selection criteria for the post of provincial program implementation unit in bps-1 to bps-16.**---(1) There shall be a Selection Committee comprising of the following:

(a)	Deputy Provincial Coordinator;	Chairman
(b)	Training Coordinator;	Member
(c)	A representative nominated by the Director General Health Services not below the rank of BPS-17;	Member

(2) The Provincial Coordinator shall be the appointing authority for the post of Provincial Program Implementation Unit.

(3) The posts shall be advertised in two News papers/electronic media by the Provincial Coordinator.

(4) Test and interview of the short listed candidates at provincial level shall be conducted.

(8) The Selection Committee shall place the list of recommended candidates alongwith record of written test, before the Provincial Coordinator.

(9) The Provincial Coordinator shall nominate an officer, who shall not be a member of the selection committee to re-verify the documents, residential status of the candidates and to ensure that the recommendations have been made in accordance with the laid down criteria.

(10) On receipt of verification, the Provincial Coordinator shall accord final approval and will issue appointment orders of the selected candidates and record of written test of the selected candidates be kept in her/their personal files.

8. **Selection criteria for the post of BPS-17 in the Provincial Program Implementation Unit.**---(1) There shall be a Selection Committee comprising of the following:

(a) Director Public Health; Chairman

D-11

- (b) Provincial Coordinator; and Member
- (c) Section Officer Health Department. Member

(2) The Secretary Health shall be the appointing authority for the post of Provincial Program Implementation Unit in Basic Pay Scale 17.

(3) The posts shall be advertised in two News papers/electronic media by the Health Department.

(4) Test and interview of the short-listed candidates at provincial level shall be conducted.

(5) The Selection Committee shall place the list of recommended candidates alongwith record of written test, before the Secretary Health.

(6) The Secretary Health shall nominate an officer, who shall not be a member of the selection committee to re-verify the documents, residential status of the candidates and to ensure that the recommendations have been made in accordance with the laid down criteria.

(7) On receipt of verification, the Secretary Health shall accord final approval and will issue appointment orders of the selected candidates and record of written test of the selected candidates be kept in her/their personal files.

9. Recommendation of the Selection Committee.--- When an appointing authority does not accept the recommendation of Selection Committee, it shall record its reasons and obtain order of the next higher authority.

10. Functions of the Lady Health Supervisor.---(1) To carryout extensive supervision and monitoring of the field activities of Lady Health Workers. Lady Health Supervisor shall visit the Health House of every Lady Health Worker under her supervision at-least twice a month.

(2) Lady Health Supervisor shall provide supportive supervision, on job training, verbal and written feedback to her Lady Health Workers.

(3) Lady Health Supervisor may act as trainer in the refresher training as and when required by the District Program Implementation Unit.

(4) Lady Health Supervisor shall attend the Continued Education Sessions in all the relevant health facilities.

Handwritten signature:
Aruna
Aruna

(5) Lady Health Supervisor shall carryout verbal autopsy of infant deaths reported by her Lady Health Worker.

(6) Lady Health Supervisor shall assist the District Program Implementation Unit in the preliminary scanning/verification of candidates for the positions of Lady Health Workers.

(7) Lady Health Supervisor shall liaise between District and First Level Care Facility (FLCF) for the effective coordination of activities of the program.

(8) Lady Health Supervisor shall attend the District Program Monthly Review (DPMR).

(9) Lady Health Supervisor shall ensure regular maintenance of vehicle and its movement registers, if allotted.

11. Functions of the Lady Health Workers---(1) The Lady Health Worker shall provide Primary Health Care services to the community at their doorstep in her catchment area.

(2) The Lady Health Worker shall register all family members in the catchment area especially the eligible couples (married women age 15-49 years) in her respective area and maintain upto date information about her catchment area's population.

(3) The Lady Health Worker shall organize community by developing women groups in health committees in her area.

(4) The Lady Health Worker will arrange meetings of these groups in order to effectively involve them in primary health care, family planning and related community activities.

(5) The Lady Health Worker shall keep close liaison with influential women of her area including lady teachers, community midwives, traditional birth attendants and clients.

(6) The Lady Health Worker shall pay visit 6 to 8 household every day to ensure that all registered households are visited once every month.

(7) The Lady Health Worker shall discuss with the community, issues related to better health, hygiene, nutrition, sanitation and family planning emphasizing their benefits towards quality of life.

(8) The Lady Health Worker shall coordinate with local community midwives or other skilled birth attendants and local health facilities for appropriate antenatal, natal and postnatal services. She will also conduct antenatal, natal and postnatal care as described in her training.

(9) The Lady Health Worker shall act as liaison between formal health system and her community as well as ensure coordinated support from Non Governmental Organizations (NGOs) and other departments.

(10) As part of their tasks, the Lady Health Worker shall undertake nutritional interventions such as anemia control, growth monitoring, assessing common risk factors causing malnutrition and nutritional counseling. They shall be able to treat iron deficiency anemia among all women specially pregnant and lactating mothers as well as anemic young children.

(11). The Lady Health Worker shall promote nutritional education with emphasis on early initiation and exclusive breast feeding for six months and weaning practices, maternal nutrition and macronutrient malnutrition.

(12) The Lady Health Worker shall coordinate with Expanded Program on Immunization (EPI) of mothers against Tetanus and children against communicable diseases. The Lady Health Workers trained in routine EPI, will ensure timely vaccinations (in her catchment area only) with support from the local health facility/EPI staff. The Lady Health Workers (LHWs) will also participate in various campaigns for immunization against EPI target diseases e.g Polio, MNT, Measles etc in her catchment area only. The Lady Health Workers will be involved in the surveillance activities in her catchment area only.

(13) The Lady Health Worker shall motivate and counsel clients for adoption and continuation of family planning methods. She will provide condoms, oral pills and administer injectable contraceptives, as per define protocols to eligible couples in the community inform them about proper use and possible side effects.

(14) The Lady Health Worker shall carry out prevention and treatment of common ailments e.g. diarrheal diseases, acute respiratory infections, tuberculosis, intestinal parasites, malaria, primary eye care, scabies, first aid for injuries and other minor diseases using basic essential drugs. She will refer cases to nearest centers as per given guidelines. For this purpose a kit of certain inexpensive basic drugs will be provided to Lady Health Worker/Senior Lady Health Worker. The Lady Health Worker/Senior Lady Health Worker will also be involved in T.B, AIDs, Hepatitis and Malaria prevention/control.

*Ames Ted
Almadun*

(15) The Lady Health Worker shall disseminate health education messages on individual and community hygiene and sanitation as well as information regarding preventive measures against spread of AIDs, Hepatitis etc.

(16) The Lady Health Worker shall attend monthly continuing education sessions at her base facility to share progress regarding all activities carried out by her including the home visits, number of family planning acceptors by methods and stock position of contraceptives with Incharge of Facility. She will also attend education sessions, submit her monthly report and collect one month supplies from Health Facility.

(17) The Lady Health Workers will not be involved in any other activity without the prior permission/guidelines from the Provincial Program Implementation Unit.

12. Training of the Lady Health Supervisor.—Total duration of training for the Lady Health Supervisor will be one year. The Lady Health Supervisor will start field activities after the initial three months training. The training will be carried out in two phases.

- (a) Three months (Initial training)
- (b) Nine months (Field/on job training)

13. Training of Lady Health Workers.—(1) The training of Lady Health Workers will be conducted in two main phases for a total of twelve months (03 months basic training at classroom and 09 months task based training in the field) using program training manuals and curriculum. This will be followed by continued training at the health facility alongwith refresher trainings.

(2) In health facilities where 10 or more Lady Health Workers or under basic training, there shall be three trainers.

(3) In health facilities where less than ten Lady Health Workers are under basic training, there should be two trainers.

(4) One of the trainers shall be a female to facilitate training in areas such as family planning, maternal health.

(5) The number of trainees per session may not be less than five and more than fifteen.

(6) In case where less than five candidates for training are selected in one First Level Care Facility and they cannot be attached with other facility, approval for training of less than five trainees shall be sought from Provincial Program Implementation Unit.

14. **Catchment area for Lady Health Worker.**---(1) One Lady Health Worker will be selected to serve on average a catchment area with a population of 1,000 to 1,500 residents depending on the density of and accessibility to the population. In urban/densely populated areas the minimum catchment population will be 1200/LHW and in areas where population per Lady Health Worker is less, in case of dropouts/termination, the catchment population will be readjusted to ensure the above mentioned population coverage instead of new recruitments.

(2) In hard hilly terrain where the population tends to be scattered, the population in the catchment area of the Lady Health Worker can be low up to 1,000. The catchment area of Lady Health Workers will be such that it takes approximately an hour to walk to the farthest house in the catchment area. There should be only one Lady Health Worker in a cluster of 150 to 200 households.

15. **Seniority.**---The appointing authority shall cause a inter-se-seniority list of the following cadres on yearly basis.

- (a) Community Embedded Employees;
- (b) Logistics Officer of the Provincial Program Implementation Unit;
- (c) Field Program Officers of the Provincial Program Implementation Unit;
- (d) Management Information System Coordinator, of the Provincial Program Implementation Unit; and
- (e) Ministerial Staff of the Provincial Program Implementation Unit.

16. **Posting/ Transfer.**---Every Program employee, other than Community Embedded Employee, shall be liable to serve anywhere in the Province against the cadre post in the Program.

17. **Pension, General Provident Fund, Benevolent Fund and Group Insurance.**---(1) Rules made by Government, regulating Pension, General Provident Fund, Benevolent Fund and Group Insurance shall apply for regulating the matters of Pension, General Provident Fund, Benevolent Fund and Group Insurance for those employees of Program whose services have been regularized under this Act.

18. **Shuhada package.**---Shuhada package as admissible to civil servants of the Government shall be applicable mutatis mutandis to the program employees other than the clause of appointment of the package.

*Attested
Dusadhu*

19. Retirement from Service.--- (1) A program employee working on regular basis, shall retire from service-

- (a) On such date after he/she has completed twenty years of service qualifying for pension or other retirement benefits as the competent authority may in public interest, direct; or
- (b) Where no direction is given under sub rule (a), on the completion of sixtieth year of his age.

(2) No direction under sub-rule: (1)(a) shall be made until the program employee has been informed in writing of the grounds on which it is proposed to make the direction, and has been given a reasonable opportunity of showing cause against the said direction.

CHAPTER-3
MISCELLANEOUS

20. Performance Evaluation Report.---The Performance Evaluation Reports of the Community Embedded Employees will be initiated by in the following manner;

S.No.	Designation.	Reporting Officer.	Countersigning Officer.
1.	Lady Health Supervisor	District Coordinator, LHW Program.	District Health Officer.
2.	Lady Health Worker.	Lady Health Supervisor, as the case may be.	District Coordinator, LHW Program.

21. Conduct.---The Khyber Pakhtunkhwa Government Servant (Conduct) Rules, 1987 and auxiliary instructions issued from time to times shall be applicable mutatis mutandis to the program employees.

22. General provisions.---In all other matters not expressly provided for in these rules, the rules, if any, made by Government, so far as may be practicable, shall be applied for disposal of such matters.

**SECRETARY TO GOVT. OF KHYBER PAKHTUKHWA
HEALTH DEPARTMENT**

Endst: No & date even.

Copy of above is forwarded to:

1. The Registrar, Supreme Court of Pakistan. Islamabad.
2. All Administrative Secretaries, to Govt. of Khyber Pakhtunkhwa.
3. The Accountant General Khyber Pakhtunkhwa.
4. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
5. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. The Advocate General, Khyber Pakhtunkhwa.
7. The Director General, Health Services Khyber Pakhtunkhwa
8. PSO to Chief Secretary Khyber Pakhtunkhwa.
9. The Manager, Government Printing Press & Stationary Department Peshawar
for publication in the Government t Official Gazette after publication 10
copies may be forwarded to this Department.
10. The Director Information Khyber Pakhtunkhwa Peshawar
11. The Deputy Director (IT) Health Department for uploading in the official
website.
12. PS to Secretary Health Department.

(Kashif Iqbal Jillani)
Section Officer (E.II)

Annex E P-15

دفتر دسترگت ہیلتھ آفیسر

نمبر 95-8891

مورسہ 9-2-2012

خیبر پختونخوا ریگولیشن آف ایڈمیٹیو ہیلتھ ورکرز پر انٹرمیڈیٹ ایسپائنز (ریگولیشن آف ایڈمیٹیو ہیلتھ ورکرز) ایکٹ 2012 کی
 شیڈ نمبر 1(1) کے تحت معاہدہ کی بنیاد پر کام کرنے والے درج ذیل ملازمین کی ملازمت کی مورٹینیٹیم جولائی 2012 سے مستقل
 بنیاد پر باقاعدہ تصور کیا جاتا ہے۔ انکی ملازمت کی قید وشرانظاندکورہ بالا ایکٹ اور اسکے تحت بنائے جانے والے قواعد کے
 مطابق ہوں گی۔

نمبر شمار	نام ملازم	شوہر کا نام / والد کا نام	عہدہ	تاریخ تقرری	مرتبہ و صحت کا نام	متعلقہ علاقہ کا نام
Type-C Takht e Nasrati						
1	Nasim Ara	H: Feroz Khen	LHS	01/07/2003	Ch Takht-e-Nasrati	Takht e Nasrati
2	Shazia Noor	F: Noor Khan	LHS	20/10/2004	Ch Takht-e-Nasrati	Takht e Nasrati
1	Farhat Begam	H: Naz Wali	LHW	17/07/1995	Ch Takht-e-Nasrati	Jhand Banda
2	Asmat Pari	H: Zafar Iqbal	LHW	17/07/1995	Ch Takht-e-Nasrati	Qureshan
3	Dilawar Jana	H: Sardar Khan	LHW	17/07/1995	Ch Takht-e-Nasrati	Takht-e-Nasrati
4	Kishwar Sultana	H: Muhammad Umer	LHW	17/07/1995	Ch Takht-e-Nasrati	Bogara
5	Nelofar Begum	H: Quaid Azam	LHW	17/07/1995	Ch Takht-e-Nasrati	Khada banda
6	Rafia Naz	H: Amanullah	LHW	12/03/1996	Ch Takht-e-Nasrati	Khada banda
7	Razia Begum	H: Nasir Ali	LHW	12/03/1996	Ch Takht-e-Nasrati	Lakarka
8	Said Khobana	H: Rashid	LHW	12/02/1996	Ch Takht-e-Nasrati	Takht-e-Nasrati
9	Shahida Khanum	F: Shah Zari Dnr	LHW	12/03/1996	Ch Takht-e-Nasrati	Jhand Banda
10	Jamsheda Begum	H: Habibullah	LHW	12/03/1996	Ch Takht-e-Nasrati	Gandheri Khattak
11	Nasreen Begum	H: Umer Hayat	LHW	12/03/1996	Ch Takht-e-Nasrati	Khada banda
12	Zuhra Begum	H: Abid Ullah	LHW	13/04/1998	Ch Takht-e-Nasrati	Payala
13	Maryam Bibi	H: Mutla Khan	LHW	20/10/1998	Ch Takht-e-Nasrati	Payala
14	Sabiha Khanum	H: Sabir Nawaz	LHW	20/10/1998	Ch Takht-e-Nasrati	Wanki
15	Noreen	F: Abdul Subhan	LHW	20/10/1998	Ch Takht-e-Nasrati	Sacedabad
16	Neger Syra	F: Muhammad Shazi Khan	LHW	02/04/2001	Ch Takht-e-Nasrati	Said Ali
17	Zakia Minhas	H: Mansoor Ali	LHW	27/03/2001	Ch Takht-e-Nasrati	Faqeer abad
18	Tasleem Begum	F: Mir Shada Khan	LHW	27/03/2001	Ch Takht-e-Nasrati	Masti Khel
19	Fazilat Sultana	H: Mohammed Iqbal	LHW	14/02/2002	Ch Takht-e-Nasrati	Gandheri Khattak

Mushtaq Ahmad Khan

20	Naheed Akhtar	H:	Muhammad Farooq	LHW	14/02/2002	Ch Takht-e-Nasrati	Sarobi
21	Shakila Begum	H:	Mohd Ibrar	LHW	14/02/2002	Ch Takht-e-Nasrati	Alwar
22	Nasreen Akhtar	H:	Abdul Nawaz	LHW	14/02/2002	Ch Takht-e-Nasrati	Bogara
23	Shamshad	H:	Aurangzeb	LHW	14/02/2002	Ch Takht-e-Nasrati	Mir gul Khel
24	Amil Khobana	H:	Zahoor Shah	LHW	29/06/2004	Ch Takht-e-Nasrati	Gharang
25	Fajwar Hatoun	H:	Eid Nawaz	LHW	29/06/2004	Ch Takht-e-Nasrati	Wanki
26	Mehnaz Begum	F:	Mir Zaman	LHW	29/06/2004	Ch Takht-e-Nasrati	Wanki
27	Rukhsana Naz	H:	Pio Dad	LHW	29/06/2004	Ch Takht-e-Nasrati	Nusratabad
28	Rehana Adil	H:	Anwar Ali Shah	LHW	29/06/2004	Ch Takht-e-Nasrati	Shadi Khel
29	Nusrat Yasmeen	F:	Awal Nawaz	LHW	12/07/2005	Ch Takht-e-Nasrati	Chand Khel
30	Tabbasum Begum	H:	Khalid Usman	LHW	12/07/2005	Ch Takht-e-Nasrati	Mollayan
31	Zainab Sultan	H:	Abdullah	LHW	12/07/2005	Ch Takht-e-Nasrati	Patangan
32	Mehtab Jehan	F:	Razi Khan	LHW	01/03/2006	Ch Takht-e-Nasrati	Gandheri Khattak
33	Farhat Taj	F:	Sultan Badshah	LHW	02/04/2007	Ch Takht-e-Nasrati	Chatha Banda
34	Shamshad Khana	F:	Mir Sanat Shah	LHW	02/04/2007	Ch Takht-e-Nasrati	Shadi Khel
35	Firdus Akhtar	H:	Daria Khan	LHW	15/06/2009	Ch Takht-e-Nasrati	Sarki Lawaghert
36	Nasreen Bibi	F:	Awal Din	LHW	15/06/2009	Ch Takht-e-Nasrati	Gharang
37	Anar Gula	F:	Akhtar Mohammad	LHW	15/06/2009	Ch Takht-e-Nasrati	Gandheri Khattak
1	Reham Dad	F:	Niaz Gul	Driver	16/09/2005	Ch Takht-e-Nasrati	Takht e Nasrati
2	Ahmad Fawad	F:	Mohammad Feroz	Driver	05/05/2006	Ch Takht-e-Nasrati	W. S. Khel

درج بالا کیٹ کی شرح نمبر میں تلویش کروہ اختیار مارت کو بروئے کار لاتے ہوئے کیٹیجی سے مشنگ ان ما از تین گومند چہ ذیل بنیا دیں بخواہ کے سکیل میں رکھا جاتا ہے۔

نمبر شمار	عہدہ کا نام	بنیا دیں بخواہ کا سکیل
1	لیڈی ہیلتھ پیروانر	7
2	لیڈی ہیلتھ ورکر	5
3	ڈرائیور	4

Ahmed
Muhammad

شرکت ہیلتھ آفیسر
کرک

بمعاہ اطلاع:-

جو ریکرٹمنٹل پلیننگ سروسز خیبر پختون خواہ۔

رہی پی آئی یو اے ایچ ڈی بیو پروگرام خیبر پختون خواہ۔

شعبہ اکاؤنٹ آفیسر کرک

متعلقہ انچارج

شرکت ہیلتھ آفیسر
کرک



Annex F

D-317

**OFFICE OF DISTRICT HEALTH OFFICER
KARAK**
(Khyber Pakhtunkhwa)
Phone ☎ # Fax ☎ #: 0927-290537

OFFICE ORDER

On the attaining the 60 years of age on 31/05/2019 (date of birth is 01/06/1959), **Mst Maryam Bibi LHW BPS-05** attached to the office of the undersigned (LHW Program) is hereby allowed to proceed on superannuation from the above date and also struck off from the strength of Health Department Karak. Total length of service is Six years, ten Months & thirty days. (After the regularization of her service i.e 01-07-2012)

She is allowed 365 days encashment of Pay.

-----sd-----
District Health Officer
Karak

No 498-03 /Admn/KK

Dated: 31/05/2021

Copy for information and necessary action:

1. District Accounts Officer Karak for information and necessary action.
2. LHW Coordinator Karak for information.
3. Account Supervisor LHWs Program Karak.
4. Mrs. Maryam Bibi LHW, LHWs Program Karak.
5. Office Record.
6. Personal File.

Attended
[Signature]

[Signature]
District Health Officer
Karak

Annex-G-P-18

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

W.P No.289-M/2021

**Muhammad Saeed Vs. Govt. of Khyber Pakhtunkhwa
through Chief Secretary and others**

Present: *Petitioner in person.*

Khwaja Salah-ud-Din, A.A.G for official Respondents.

Date of hearing: **04.04.2023**

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- Muhammad Saeed, the widower/ husband of late Mst. Saeed Bibi, by invoking the writ jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has filed the instant petition with the prayer that the respondents may be directed to grant and provide all back benefits of late Mst. Saeeda Bibi in the shape of family pension etc. on the ground that his late wife Mst. Saeeda Bibi was incipiently appointed as LHW in Health Department on 06.10.2010 on contract basis/fixed pay, however, her services were later on regularized vide office order dated 20.09.2014 but w.e.f. 1st July, 2012 and then she died during service on 20.09.2020.

2. Though Mr. Momin Khan, Advocate who is representing the petitioner has submitted an application for adjournment, however, the petitioner present in person before the Court stated at the bar that he has not only submitted written arguments but will also assist the Court in accordance with the directions of this Court incorporated in order sheet dated 27.09.2022. He submitted that his deceased wife Mst. Saeeda Bibi was on the role of Health

Sabr Ali/ (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR
HON'BLE MR. JUSTICE DR. KHURSHID IQRAT

Attested
Muhammad

department in permanent establishment under the Government of Khyber Pakhtunkhwa and continuously served w.e.f. 06.10.2010 till 30.06.2012 (01-year 08-months and 21-days) and after her regularization till her death for 08-years 02-months and 14-days, hence, the total length of service of the deceased employee from her initial appointment till her death was 09-years 11-months and 14-days. He added that in accordance with the provisions of rules 2.2 & 2.3 of the West Pakistan Civil Service Pension Rules, 1963, he is entitled for pensionary benefits of deceased Mst. Saeeda Bibi, being her husband/widower. He further added that under Family Pension Rules, article 358, 361, 361-A and 423 (i) of Civil Service Regulation (CSR) in juxtaposition with judgment titled "Sher Afzal Khan Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education and others" (PLC 2019 CS 1065), W.P No.269-M/2019, "Secretary Ministry of Finance, Islamabad and others Vs. Tayyaba Halim Subhani and others" (2022 SCMR 77), "WAPDA through Chairman and another Vs. Mst. Parizada" (2018 SCMR 1542), "Amir Zeb widower of Mst. Asia vs. The District Account Officer Nowshera and 5 others" (Writ Petition No. 3394-P of 2016) decided on 22.06.2017 and LHW Regularization Act, 2014 and Rules 2015, the status of the deceased employee was of a regular/confirmed employee. Lastly, he submitted that for the purpose of pensionary benefits, the period for which Mst. Saeeda Bibi served on contractual side/ fixed pay shall be counted towards her regular

Sabz Ali/* (D.O)

HON'BLE MR. JUSTICE MUHAMMAD NAZEM ANWAR
HON'BLE MR. JUSTICE Dr. KHURSHID IQBAL

Ali
Shad

services for completing the eligibility criteria of 10 years qualifying service as held by this Court in numerous cases.

3. On the other hand, the learned A.A.G representing the official respondents submitted that since the deceased has rendered 08-years 02-months and 19-days service after her regularization and having not crossed the eligibility criteria of qualifying service for pension under the pension rules, thus, was not entitled for pensionary benefits. He prayed for dismissal of the instant petition, being not maintainable.

4. Arguments heard and record perused.

5. During the course of arguments, on 27.09.2022, this Court has framed certain points/ issues and directed both the parties to assist this Court in consonance with the law as reflected in the said order sheet. The questions and law, on which, the assistance of the parties was required in the matter in hand, are reproduced as under:

- 1) Whether without completion of 10 years qualifying service, the service on fixed pay or contract followed by regularization could be counted for pensionary benefits?
- 2) Whether the provisions of pension rules or Article 371-A of Civil Service Regulations (C.S.R.) would be beneficial only if the employee was otherwise entitled for pensionary benefits on completion of qualifying service?
- 3) Whether the word "count" could be interpreted to add the length of qualifying service to hold entitled a civil or Government servant for pensionary benefit when he otherwise has not completed qualifying service?

Learned counsel for petitioner and learned Advocate General are directed to assist this Court in the light of the principle

Amir
Almuth

enunciated by the Hon'ble Supreme Court as well as by this Court in the cases of:

- (i) Muhammad Nawaz Special Secretary Cabinet Division through his legal heirs vs. Ministry of Finance Government of Pakistan through its Secretary Islamabad (1991 SCMR 1192);
- (ii) Mst. Rashida Khatoon and 2 others Vs. District Education officer (Male) and 3 others (2016 PLC(CS) 308).
- (iii) Mudassar Termizi and others vs. Peshawar High Court through Registrar, Peshawar and others (2021 PLC(CS) 441);
- (iv) Secretary, Ministry of Finance, Islamabad and others vs Tayyaba Halim Subhani and others (2022 SCMR 77) & 2022 P L C (C.S.) 514;
- (v) Ministry of Finance through Secretary and others Vs Syed Afroz Akhtar Rizvi and others [2022 PLC (CS) 22, Peshawar];
- (vi) Mst. Islam-Bibi Vs. Government of Pakistan through Secretary State and Frontier Regions Division, Islamabad and 3 others [2022 PLC (CS) 1196 of the Larger Bench of this Court]; and
- (vii) Amir Zeb widower of Mst. Asia vs. The District Account Officer Nowshera and 5 others (Writ Petition No. 3394-P of 2016) dated 22.06.2017.

Office is directed to issue notice to the petitioner, Mr. Momin Khan, Advocate & learned AAG for 20th of December 2022."

6. Insofar as the question of maintainability of the instant petition filed by the widower/husband of namely Mst. Saeeda Bibi, who was a regular civil servant is concerned, in the case of "Muhammad Nawaz Special Secretary Cabinet Division through his legal heirs vs. Ministry of Finance Government of Pakistan

Sabir Ali/* (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEMANWAR
HON'BLE MR. JUSTICE Pt. KHURSHID IQBAL

*Attested
Saeed Khan*

through its Secretary Islamabad" (1991 SCMR 1192), it was held by the apex Court that:

"A right of appeal under the Service Tribunals Act of 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 service. 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, of the learned Tribunal, in our view, was correct in holding that the appeal before it stood abated and the same is hereby maintained."

Thus, the petitioner, being the husband/legal heir of deceased civil servant could not seek his remedy from the Tribunal constituted under the provisions of Khyber Pakhtunkhwa Services Tribunal Act, 1974 and as such, the petition in hand was rightly filed before this Court. In the case of "Mst. Islam Bibi Vs. Government of Pakistan through Secretary State and Frontier Regions Division, Islamabad and 3 others" [2022 PLC (CS) 1196], this Court has held that: "legal heirs of civil servant can validly file a writ petition before the High Court for pensionary benefits of his/her predecessor in interest, who was a civil servant". Reliance may also be placed on the case of "Mst. Rashida Khatoon and 2 others Vs. District Education officer (Male) and 3 others [2016 PLC(CS) 308]. Hence, the objection of the learned A.A.G regarding maintainability of the instant writ petition before this Court being filed by husband of late Mst. Saeeda Bibi, the civil servant, is misconceived and accordingly, it

Saba Ali/ (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAZEEM ANWAR
HON'BLE MR. JUSTICE DR. KHURSHID JOBAL

Attended
Saeeda Bibi

is held that the instant petition was competently filed by the petitioner before this Court for the relief claimed therein.

7. The pivotal question for determination in the instant petition is as to whether in accordance with rules 2.2 & 2.3 of the Pension Rules in juxtaposition article 371-A of CSR, the services rendered on contractual side/ fixed pay by the late civil servant could be calculated towards her regular service for completing qualifying service for the purpose of pensionary benefit. In order to determine the above formulated question, at first instance, the matter was heard by the apex Court in the case of "Mir Ahmad Khan Vs. Secretary to Government and others" (1997 SCMR 1477), wherein it was held that:

"Admittedly, the appellant put in more than ten years' temporary service before his services were terminated, he was, therefore, entitled to pensionary benefits under Regulation 371-A(i) of Civil Service Regulations. It appears that this provision of the Civil Service Regulation was not cited before the Tribunal otherwise the observation to the contrary could not have been made in the impugned judgment. Resultantly, the appellant and similarly placed other employees of the Afghan Refugees Organization, being Government civil servants, are held entitled to pensionary benefits if their cases are covered by Regulation No. 371-A of Civil Service Regulations. We allow this appeal, set aside the impugned judgment of the Federal Service Tribunal with no order as to costs."

The afore-mentioned principle laid down in Mir Ahmad Khan' case (*supra*) was revisited by a five-member Bench of the apex Court in the case of "Chairman Pakistan Railway

Mir Ahmad Khan

Government of Pakistan Islamabad and others Vs. Shah Jehan Shah" (PLD 2016 SC 534), where the judgment in the case of Mir Ahmad Khan (*supra*) has been declared as *per incuriam* by holding that:

"7. It is not disputed that the respondent rendered continuous temporary service and that his length of service was continuous and for more than five years. However, the question that needs to be answered is whether he was working in a "temporary establishment" or not. "Temporary establishment" has not been defined in the CSR, the Fundamental and Supplementary Rules issued by the Government of Pakistan, the ESTA Code or the Compendium of Pension Rules and Orders. In this context Article 369 of the CSR mentions temporary establishment but only explains what it is not and thus is not very helpful. Therefore, as mentioned earlier in the opinion, as per the settled rules of interpretation, the dictionary meaning of the words has to be resorted to. The Concise Oxford Dictionary (6th Ed.) has defined "temporary" as "lasting, meant to last, only for a time", and "establishment" as an "organized body of men maintained for a purpose". Chambers 21st Century Dictionary defines "temporary" as "lasting, acting or used, etc for a limited period of time only", and "establishment" as "a public or government institution". Oxford Advanced Learner's Dictionary of Current English (7th Ed.) defines "temporary" as "lasting or intended to last or be used only for a short time; not permanent" and "establishment" as "an organisation, a large institution..." In light of the above dictionary meanings, "temporary establishment" can be said to mean an organisation or institution which is not permanent, rather effective for a certain period only. Admittedly the respondent was serving in Pakistan Locomotive Factory Risalpur, Pakistan Railways, which does not in any way fall within the meaning and purview of "temporary establishment". Thus, the respondent could not rely upon Article 371-A of the CSR. Besides, if hypothetically speaking Pakistan Locomotive Factory Risalpur was a temporary establishment,

Saba Ali/* (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAHEEM ANWAR
HON'BLE MR. JUSTICE DR. KHURSHEED JALAL

*Amir
Shah Khan*

even then the respondent would not be able to take the benefit of Article 371-A (supra) as he otherwise does not qualify for pensionary benefits having not been subsequently taken into permanent employment, which is sine qua non for the grant thereof.

8. Adverting to the law laid down in the case of Mir Ahmad Khan (supra) wherein it was held: -

"Admittedly the appellant put in more than ten years' temporary service before his services were terminated, he was, therefore, entitled to pensionary benefits under Regulation 371-A(i) of Civil Service Regulations."

In light of the discussion in paragraph No.6, the judgment delivered in Mir Ahmad Khan's case (supra) is declared to be per incuriam."

Thus, the Hon'ble Supreme Court in explicit terms has held that without completion of 10 years qualifying service, the services rendered by an employee on contract/fixed pay could not be counted for pensionary benefits. It was also ruled that a civil servant has to complete 10-year regular qualifying service for pension and thereafter, his services whatever it may be, on contract or daily wages or fixed pay, shall be counted for determination of pensionary benefits but without completion of 10-years qualifying service, the service of an employee rendered on contract or fixed pay could not be added to the service after regularization to complete qualifying 10-year regular service. Since, there were judgments of Division Bench of this Court, whereby the services rendered on contract basis or fixed pay were held to be counted for pensionary benefits in order to complete the qualifying service i.e., eligibility criteria for pensionary benefits and in the series of those

Sabz Ali/* (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAJEM ANWAR
HON'BLE MR. JUSTICE DR. KHURSHID JORAL

*Atulid
Sundhar*

cases, a larger Bench was constituted by this Court and in the case of W.P No.3394-P/2016 titled "Amir Zeb Vs. The District Accounts Officer Nowhsera and 05 others" decided on 22.06.2017, while interpreting proviso 2 & 3 of section 19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 as added by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013, it was held by this Court that:

"It is manifest that the person 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."

However, in the case of "Ministry of Finance through Secretary and others Vs. Syed Afroz Akhtar Rizvi and others" (2021 SCMR 1546), it has been held by the apex Court that:

"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

Sabir Ali/ (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAZEEM ANWAR
HON'BLE MR. JUSTICE DR. KHURSHID JOBAL

Amir Zeb
Amir Zeb

those who did not fulfill 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. 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."

More-so, this Court in the case of "Inayat Khan Vs. Government of Khyber Pakhtunkhwa through Secretary Frontier Education and others" (W.P No.833-M/2018) decided on 14.02.2023 has held that:

"Being based upon the interpretation of Article 371-A of C.S.R made by the apex Court; it is concluded that the service rendered on contract followed by regularization could only be counted for pensionary benefits provided the civil servant has completed qualifying ten years' service independently. Thus, the contention of learned counsel for petitioner for addition of service of the petitioner rendered on contractual side in the service rendered by him after his regularization for pensionary benefits is misconceived."

8. Admittedly, the deceased wife of the petitioner has not fulfilled the eligibility criteria i.e., 10 years qualifying service for pensionary benefits independently till her death after her regularization, therefore, for fulfilling the threshold of 10-years qualifying service for pensionary benefits, the services rendered by her on contractual side/ fixed pay, could not be added to her

Sabz Ali/* (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR
HON'BLE MR. JUSTICE DR. KHURSHID JOBAL

Muhammad
Ali Sabz

regular service, as such, contention of the petitioner that there are judgments of this Court, whereby the benefits were extended to those who have not completed 10-years independent service on regular side by addition of services rendered on contract, after the decision of the apex Court in supra case reported as 2021 SCMR 1546, is of any help to the petitioner.

2. Thus, for the reasons discussed above and in view of the principle laid down by the apex Court, it is held that:

- i. Mst. Saceda Bibi, the deceased wife of petitioner has not completed 10-years qualifying service for pensionary benefits from the date of her regularization till her death;
- ii. Services rendered by the deceased employee on contract/ fixed pay without independently qualifying the eligibility criteria of 10-year service could not be added to her regular service for pensionary benefits; and
- iii. Article 371-A of CSR and rules 2.2 & 2.3 of the Pension Rules shall be interpreted and followed by the Courts in terms of dicta laid down by 2021 SCMR 1546 in juxta position with article 189 of the Constitution of Islamic Republic of Pakistan 1973.

10. When so, the instant petition, being devoid of force, stand dismissed.

Announced.
04.04.2023.

[Signature]
JUDGE

[Signature]
JUDGE

Office
6/4/2023
7/4/2023
Sabz Ali/ (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAREEM ANWAR
HON'BLE MR. JUSTICE DR. KHURSHID JOBAL

[Signature]
[Signature]

Annex-H-P-29

OFFICE OF THE DISTRICT HEALTH OFFICER, KARAK

AUTHORITY

Certified that Dr. Asad Zahoor Public Health Coordinator (BS-17) Office of the undersigned is hereby authorized to submit para-wise comments in the Court of Khyber Pakhtunkhwa, Service Tribunal Peshawar in Service Appeal No. 515/2023 (Title Maryam Bibi LHW) VS District Health Officer Karak & others) on behalf of the undersigned.



District Health Officer Karak

District Health Officer
Karak 

02/01/2023
S