


FORM OF ORDERSHEET

Court of _____

Case No. 1308/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.06.2023	As per direction of the Worthy Chairman the present appeal is fixed for decision on office objection before Single Bench at Peshawar on <u>14-06-2023</u>  REGISTRAR

Respected Sir,

It is submitted that the present appeal was received on 08.05.2023 after thoroughly scrutinizing the same many deficiencies were found in it which was returned to the counsel for the appellant for completion and resubmission within 15 days which was to be resubmitted on 24-05-2023 but counsel for the appellant re-filed the same today on 05.06.2023 late by 11 days.

The appeal is submitted to your Honour under rule-7(c) of Khyber Pakhtunkhwa Service Tribunal rules 1974 for appropriate order please.

A
REGISTRAR *9/6/23*

Worthy Chairman


be fixed
17/06/23
0/0

The appeal of Mr. Dawood Shah Ex-PST son of Saddar udd Din r/o GPS Said Khan Kor District Mohmand received today i.e. on 08.05.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days

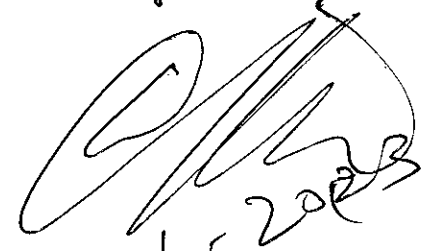
- 1- Affidavit be got attested by the Oath Commissioner.
- 2- Annexures of the appeal are unattested.
- 3- Copy of Writ Petition in respect of appellant mentioned in the memo of appeal is not attached with the appeal be placed on it.
- 4- Annexures-A, B, D, E and judgment dated 26.3.2019 attached with appeal are illegible which may be replaced by legible/better one.
- 5- *The authority to whom the departmental appeal was made has not been arrayed a necessary party.*

No. Q/1385/S.T.

Dt. 9/5/2023.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Kabir Ullah Khan Adv.
High Court Peshawar.

*objections has
been removed*

5-6-2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 1308 of 2023

Dawood Shah Ex-PST S/o Saddar Ud-Din R/o GPS Said
Khan Kor 02 District Mohmand

..... Appellant

VERSUS

1. Director Education New Merge Area KPK Peshawar.
2. District Education Officer at Ghalanai District Mohmand.
3. District Account Officer District Mohmand.

..... Respondents

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Appellant

Through

Kabir Ullah Khattak

Rozeeda Khan

Advocates, High Court, Peshawar.

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

Appeal No. _____ of 2023

Dawood Shah Ex-PST S/o Saddar Ud-Din R/o GPS
Said Khan Kor 02 District Mohmand.

..... Appellant

VERSUS

1. Director Education New Merge Area KPK Peshawar.
2. District Education Officer at Ghalanai District Mohmand.
3. District Account Officer District Mohmand.

..... Respondents

**APPEAL UNDER SECTION 4 OF THE KPK
SERVICE TRIBUNAL ACT, 1974, AGAINST
THE IMPUGNED ORDER DATED 04.10.2022
WHEREBY THE SERVICE OF THE
APPELLANT HAS BEEN WITHDRAWN
AGAINST WHICH THE APPELLANT FILED
DEPARTMENTAL APPEAL ON 03.11.2022
WHICH HAS NOT BEEN DECIDED WITIN
THE STATUTORY PERIOD.**

Prayer:

On acceptance of the instant service appeal the impugned order dated 04.10.2022 may kindly be set aside and the appellant may kindly be reinstate on his service OR pensionary benefits may kindly be granted in favor of the appellant alongwith all back benefits.

Respectfully Sheweth:

FACTS

The appellant respectfully submits as under:

- 1) That the appellant was appointed as PST (BPS-07) on 06/03/2003 as community base school teacher after recommendation of Selection Committee and also fulfillment the required criteria for the said post. (Copy of appointment order is attached as Annexure-A).
- 2) That after appointment the appellant performed his duty with full devotion and hard work and no complaint whatsoever has been made against the appellant.
- 3) That the appellant performed his official duty till 31/12/2010 with respondent Department and after that due to closer of community school the service of the appellant has been dispensed vide the impugned notification dated 13/12/2010. (Copy of order is attached as Annexure-B).
- 4) That the appellant submitted Writ Petition No. 2498/2012 for reinstatement and regularization of his service which has been accepted on 15.06.2016. (Copy of Judgment is attached as Annexure-C).

- 5) That non-implementation of Judgment passed in Writ Petition No. 2498/2012 the appellant filed COC No. 330-P/2016 on response of which the appellant has been reinstated on 19/04/2017 by the respondent Department on community project for a period of one year. (Copy of reinstatement order is attached as Annexure-D).
- 6) That the appellant has been adjusted on permanent post and has been regularized on 30.04.2018 and performed his duty with respondent Department on regular basis. (Copy of order is attached as Annexure-E).
- 7) That the respondent Department filed CPLA No 450-P/2016 against the said Judgment dated 15/06/2016 whereby the Judgment dated 15.06.2016 are set aside on 28/11/2018 and the matter is remanded to the learned High Court for decision a fresh of the Writ Petition filed by the respondent. (Copy of Judgment dated 28/11/2018 of the Supreme Court of Pakistan is attached as Annexure-F).

- 8) That after remand the case to learned High Court Writ Petition No. 2498/2012 dated 22.01.2019 the verdict of the Judgment of Peshawar High Court Peshawar Para No 21 of the Judgment accordingly, this end all the connecting petitions are allowed and respondent are issued writ directing them to treat the Petitioners of this end of all the connecting petitions as regular permanent employees from the law came into force, as discuss above or from the date of officiating service as stated and the relevant provision of law. (Copy of the Judgment of the Writ Petition No. 2498/2012 dated 22/01/2019 is attached as Annexure-G).
- 9) That the respondent Department filed CPLA against the Judgment order dated 22.01.2019 which was rejected on 28.01.2022. (Copy of Judgment dated 28.01.2022 is attached as Annexure-H).
- 10) That on 04.10.2022 the impugned order has been whereby the appointment order of the appellant has been withdrawn without full filing the codal formalities. (Copy of impugned order is attached as Annexure-I).
- 11) That the appellant filed a Departmental Appeal against the impugned order dated 04/10/2022 on 03/11/2022 which is not been decided within the statutory period. (Copy of Departmental Appeal is attached as Annexure-J).

12) That feeling aggrieved the appellant prepares the instant Service Appeal before this Hon' able Tribunal inter alia on the following grounds.

GROUND

- A) That the impugned order dated 04/10/2022 is come under the definition of void order because it has been passed without fulfilling the codal formalities.
- B) That no charge sheet and statement of allegation has been issued or served to the appellant.
- C) That no show cause notice has been issued to the appellant.
- D) That no Departmental or regular inquiry has been conducted against the appellant.
- E) That no opportunity of personal hearing and defense has been provided to the appellant.
- F) That there is no illegality on part of the appellant
- G) That similar nature Service Appeal No. 1371/2017 has been accepted by this Hon' able Tribunal on 26/03/2019 as well as in Service Appeal No. 4904/2021 which has already been accepted by this Hon' able tribunal on 31/01/2022. (Copy of Judgments are attached as Annexure-K).
- H) That according to the Judgment of Supreme Court reported on 2009 SCMR page 1 if a tribunal or the

- 6

supreme Court decide a point of law relating to the terms and condition of a civil service who litigated and there were other civil servant, who may not have taken any legal proceeding, in such a case, the dictates of justice and rules of good governance demand that the benefit of the said decision be extended to the other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the tribunal or any other legal forum. All citizen are equal before law if entitled to equal protection of law as per Article 25 of the constitution. (Copy of Judgment of Supreme Court is attached as Annexure-L).

- I) That any other, will be raised at the time of arguments with the prior permission of this Hon' n

It is therefore most humbly prayed that On acceptance of the instant service appeal the impugned order dated 04.10.2022 may kindly be set aside and the appellant may kindly be reinstate on his service OR pensionary benefits may kindly be granted in favor of the appellant alongwith all back benefits.

Any other remedy which this august tribunal deems fit that may also onward granted in favor of appellant.

دروغیان

Appellant

Through


Kabir Ullah Khattak

 &
Roeda Khan

Advocates, High Court,
Peshawar.

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

Appeal No. _____ of 2023

Dawood Shah Ex-PST S/o Saddar Ud-Din R/o GPS
Said Khan Kor 02 District Mohmand

..... Appellant

VERSUS

1. Director Education New Merge Area KPK Peshawar.
2. District Education Officer at Ghalanai District Mohmand.
3. District Account Officer District Mohmand.

..... Respondents

ADDRESSES OF THE PARTIES

Appellant

Dawood Shah Ex-PST S/o Saddar Ud-Din R/o GPS
Said Khan Kor 02 District Mohmand


Respondents

- 1) The Additional Chief Secretary New Merge Area Secretariat Peshawar.
- 2) Director Education New Merge Area Peshawar.
- 3) District Education Officer District Khyber
- 4) Political Agent District Khyber.

دود شاه
Appellant

Through


Kabir Ullah Khattak


&
Rooeda Khan
Advocates, High Court,
Peshawar.

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

Appeal No. _____ of 2023

Dawood Shah Ex-PST S/o Saddar Ud-Din R/o GPS
Said Khan Kor 02 District Mohmand

..... Appellant |

VERSUS

1. Director Education New Merge Area KPK Peshawar.
2. District Education Officer at Ghalanai District Mohmand.
3. District Account Officer District Mohmand.

..... Respondents

AFFIDAVIT

I, Dawood Shah Ex-PST S/o Saddar Ud-Din R/o GPS Said Khan Kor 02 District Mohmand do hereby solemnly and oath that the contents of the instant appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon' able Court.

دایرہ
Deponent



BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Appeal No. _____ of 2023

Dawood Shah Ex-PST S/o Saddar Ud-Din R/o GPS
Said Khan Kor 02 District Mohmand

..... Appellant

VERSUS

1. Director Education New Merge Area KPK Peshawar.
2. District Education Officer at Ghalanai District Mohmand.
3. District Account Officer District Mohmand.

..... Respondents

APPLICATION FOR CONDINATION OF DELAY
IF ANY

Respectfully Sheweth:

Petitioner submits as under:-

1. That the above mentioned appeal is filing before this Hon' able Court in which no date is fixed for fixed for hearing so far.
- 2) That the appellant was appointed as PST (BPS-07) on 06/03/2003 as community base school teacher after recommendation of Selection Committee and also fulfillment the required criteria for the said post.

- ~~10~~
3. That after appointment the appellant performed his duty with full devotion and hard work and no complaint whatsoever has been made against the appellant.
 4. That on 04.10.2022 the impugned order has been whereby the appointment order of the appellant has been withdrawn without full filing the codal formalities.
 5. That there is no number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.
 6. That any other grounds will be raised at the time of arguments with the prior permission of this Hon'able court.

It is therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.

Appellant
Through
Kabir Ullah Khattak
&
Roceeda Khan
Advocates, High Court, Peshawar

(4)

2003

3/1/2003 (A) Amr

A (111)

(4)

OFFICE OF THE AGENCY EDUCATION OFFICER, MOHMAND AGENCY, GHALLANAI
OFFICE DER

Consequent upon the recommendation of the selection committee and nomination of Political Agent Mohmand Agency vide his office No.1085 '89 Dated. 20/02/2003, the following candidates are here by appointed against P.T.C. Posts in the community schools under president special development package in Khwaizai / Baizai inaccessible areas in BPS. 7 plus Usual allowances as admissible under the rules on contract base for the project period in the schools noted against their names with immediate effect.

S.//	Name of candidate with Father name	School where appointed
1	Mohammad Shah S/O Musa Yar Khan	C.S Bad Manai Ghafoor
2	Munir Khan S/O Ali Rehman	C.S Sham Shah Yousaf Khan
3	Noor Ullah Khan S/O Mukaram Khan	Do
4	Dawood Shah S/O Sudrud Din	C.S Shah Mir Kore Khan Abad
5	Qadar Khan S/O Shah Jehan	Do
6	Syyar Khan S/O Amir Zada Khan	C.S Badmanai Gulzar
7	Ajmal Khan S/O Pir Ghulam	C.S Ghair Dhand Akram
8	Fazal-I- Subhan S/O Abdul Latif	C.S Manzari Cheena Faqir
9	Mohammad Israr S/O Mir Zada Khan	C.S Badmanai Ghafoor
10	Abdul Samad S/O Mohammad Rafiq	C.S Lakhkar Kiji Gul Wali
11	Abdul Malik S/O Feroz Khan	C.S Lundi Shah Zarin
12	Bashir Ahmad S/O Said Akram	C.S Lakhkar Kiji Gul Wali
13	Shad Ali Khan S/O Hasham Khan	C.S Bad Manai Gul Zar
14	Saadullah S/O Haji Dawa Jan	C.S Mama Zai Sekandar
15	Nazir Gul S/O Nawab Khan	Do
16	Zauna Khan S/O Khan Syed	C.S Manzari Cheena Shinwari
17	Tajawal Khan S/O Fazal Mohammad	C.S Jarobai Fazal
18	Ahmad Khan S/O Miaz Din	C.S Masti Kore Gulab
19	Hazrat Shah S/O Sanib Jamal	C.S King Mehrab Gul
20	Ali Akbar S/O Nazim Mohammad	C.S Jaha Jewara Naik Mohd
21	Sajjad S/O Manzad Gul	C.S King Mehrab Gul
22	Sultan Mohammad S/O Haji Mohammad Shah	C.S Khan Baig Kore Ijazat
23	Haleem Khan S/O Zarif Khan	Do
24	Samar Ahmad S/O Ahmad Gul	C.S Kuzu Kass Ghulam Bashir
25	Daftar Khan S/O Mohammad Akbar	C.S Khan Baig Kore Fazlai Manan
26	Khaista Zar S/O Ihsanullah	C.S Khan Baig Kore Fazlai Mannan

S.//	Name of Candidate with Fathers Name	School where appointed
27	Jamil Shah S/O Hakeem Khan	C.S Nazar Kore Aslam
28	Islam Khan S/O Hazrat Mohammad	C.S Ucha Jewara Naik Mohd
29	Mohammad Quraish S/O Mohammad Akbar	C.S Nazar Kore Aslam
30	Mohammad Khan S/O Ghulam Sakir	C.S Soor Dagi Yaqub Khan
31	Ijaz Mohammad S/O Shah Rasool	C.S Kaka Kore Hunar Jan
32	Gul Nabi S/O Lal Said	C.S Soor Dagi Yaqub
33	Awwaz Shamim S/O Ahmad Gul	C.S Kuzu Kass Ghulam Bashir
34	Chal Zar S/O Khan Said	C.S Sam Ghakhat Siraj Khan
35	Fida Mohammad S/O Arsala Khan	Do
36	Saz Mohammad S/O Shah Rasool	C.S Kaka Kore Hunar Jan
37	Niqab Khan S/O Khan Sharif	C.S Kung Subzali
38	Saddi Khan S/O Maweez Khan	Do
39	Khyali Jan S/O Joor Jan	C.S Spinki Tangi Nadar
40	Amir Khan S/O Hamid Khan	Do
41	Shah Nazir S/O Arsala Khan	C.S Spinki Tangi Sikandar
42	Sultan Mural S/O Gula Dad	Do
43	Tahir Ali S/O Gula Khan	C.S Bad Manai Bakht Jamal
44	Mawad Gul S/O Hayat Gul	C.S Toora Khwa Sherin
45	Mohd Raz S/O Zarghun Shah	Do
46	Siyar S/O Dost Mohammad	C.S Gulma Haji Almas
47	Azmat Gul S/O Rahat Gul	Do
48	Liaqat Ali S/O Mumtaz Khan	C.S Atam Killi Ghulam Sarwar
49	Khuzair Khan S/O Noor Jamal	C.S Atam Killi Mohdi Gul
50	Jamal Shah S/O Habib Khan	C.S Bad Manai Bakht Jamal
51	Khanadan S/O Wazir Khan	C.S Atam Kili Ghulam Sarwar
52	Azaz Ullah S/O Ibar Khan	C.S Sham Shah Biland
53	Issa Dad Khan S/O Dula Dad	C.S Atam Kili Mohdi Gul
54	Akbar Khan S/O Sher Jan	C.S Landi Shah Zarin Khan
55	Ijaz Ali S/O Wazir Khan	C.S Badmanai Yad Mohd
56	Hussain Shah S/O Syed Mastan Shah	C.S Manzari Chena Faqir
57	Janat Gul S/O Zulfan	C.S Ghair Dhand Akram
58	Mazullah S/O Najecmi Khan	C.S Baidmani Yad Mohd
59	Sajid Ahmad S/O Mohammad Afzal	C.S Manzari Chena Shinwari
60	Mohammad Khan S/O Mohammad Wali	C.S Toor Khel Ahmad Noor
61	Irfan Ullah S/O Alqash Khan	Do
62	Pazeer Khan S/O Mohammad Hanif	C.S Khanjar Killi Malik Abid
63	Ali Gohar S/O Ajmir Khan	C.S Yara Khel Haji Madar
64	Zahir S/O Bashir Khan	C.S Khanjar Killi Malik Abid
65	Sakhi Jan S/O Izzat Gul	C.S Jarobi Fazal
66	Zalim Ullah S/O Najcem Khan	C.S Sham Shah Biland
67	Charam Said S/O Noor Siad	C.S Jarobi Abdullah
68	Baqir Shah Hassan S/O Ibrahim Shah	Do
69	Shah Jehan S/O Shamroz Khan	C.S Shamrad Khel Noor Zada
70	Liaqat Ali S/O Ikram Khan	Do
71	Abul Hasan S/O Jamal Khan	C.S Maim Khel Malik Islam Bacha

- 13 -

S./#	Name of Candidate with Fathers Name	School where Appointed
72	Saddar Shah S/O Mir Zaman Khan	C.S Maim Khel Malik Islam Bacha
73	Sartaj S/o Mahboob Khan	C.S Yara Khel Haji Madar
74	Mohammad Naseer S/O Ghani Khan	C.S Mula Khel Toora Fangi Ayub
75	Asal Khan S/O Saidan Khan	Do
76	Fayaz Khan S/O Badam Khan	C.S Shakar Khel Khatam Jan
77	Ajmal Khan S/O Harifullah	Do
78	Darwaish Khan S/o Gul Said	C.S Ughazado khel Farooq
79	Mustafa Khan S/O Wasil Khan	Do
80	Arif Shah S/O Rahil Shah	C.S Abdul Khel Hingar M.Amin
81	Shah Bad Shah S/O Hazrat Bad Shah	Do
82	Mohammad Hazoor S/O Hazrat Bad Shah	C.S Sana Khel Yaqub
83	Sulbat Shah S/O Amir Khisro	Do
84	Ihsan Ullah S/O Gul Alam	C.S Abdul Khel Saeed Ullah
85	Kiramat Shah S/O Musharaf Shah	Do
86	Dawood Shah S/O Sulman Shah	C.S Matina Malik
87	Fazlai Dayan S/O Sadrud Din	C.S kankar Killi M.Farid Ullah
88	Muzafar Khan S/O Zaman Khan	C.S Dag Killi Syed Qahar
89	Fazlai Subhan S/O Mirza Hakeem Sadrud Din	C.S Masti Kore Masahib Khan
90	Yousaf Khan S/O Syed Rahman	C.S Zoor Killi
91	Abdul Malik S/O Said Mohammad Shah	C.S Lakhka Killi Faiz Ali

TERMS/CONDITIONS:-

- 1:- The appointments of the Teachers are made on temporary basis and liable to termination without any notice/assigning any reasons.
- 2:- They should produce their Health and Age certificates from the Agency Surgeon Mohmand Agency at Ghallanai.
- 3:- Change report should be submitted to this office in duplicate within a specific period.
- 4:- If the candidates/Teachers failed to report of their arrival to the concerned schools within fifteen days(15) their orders will be automatically considered as cancelled.
- 5:- Academic qualification is must to be verified.

(HAJI GUL RAHMAN)
Agency Education Officer
Mohmand Agency at Ghallanai.

Endst No. 4993-5089 Dated. 06/02/2003.

Copy of the above is forwarded to the:-

- 1 Director of Education, FATA, NWFP, Peshawar.
- 2 Political Agent Mohmand Agency at Ghallanai w/r his office memo No. as cited.
- 3 Agency Surgeon Mohmand Agency at Ghallanai.
- 4, Asstt: Political Agent (Upper Mohmand) at Ghallanai.
- 5, Agency Accounts Officer, Mohmand Agency at Ghallanai.
- 6, Acct/Pay Clerk in local office.
- 7-97 Candidates concerned.

Agency Education Officer,
Mohmand Agency at Ghallanai.

Hakim Khan (D.E.O)
Mohmand Agency at Ghallanai

'B' -14-

Amr (A)

5/9



FATA SECRETARIAT
DIRECTORATE OF EDUCATION
WAZIRABAD, WAZIRABAD, PESHAWAR, PAKISTAN
NO. 2573-87
D.O. PESHAWAR 13/12/2010

To: All the Agency Education Officers in FATA
S. No.: CLOSURE OF ALL COMMUNITY SCHOOLS IN FATA W.E.F. 31.12.2010

Memo: I am directed to convey the policy decision of the competent authority on the above noted subject and to advise to close all the community schools in FATA w.e.f 31.12.2010. The teachers and class-IV working in these schools should be given a notice to the effect that their services will be discontinued with effect from 31.12.2010. However, they may be given preference for recruitment against regular posts by giving experience marks for the service rendered in community schools as per policy. The regular vacant posts be advertised immediately and recruitment process completed as per prescribed procedure on priority.

Amr

[Signature]
Director (P&M)

- Encl: No. _____
Copy to: the
1. Additional Secretary, FATA.
 2. Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
 3. Secretary, A&C, FATA Secretariat, Peshawar.
 4. Secretary P&M, FATA Secretariat, Peshawar.
 5. Secretary Law & Order, FATA Secretariat, Peshawar.
 - 6-12. All Political Agents in FATA.
 - 13-18. District Coordination Officers Peshawar, Kohat, Bannu, D.I. Khan, Tank, Mardan, D.I. Khan.
 19. ACPN Job Office Peshawar.
 - 20-26. All Agency Accounts Officers.
 - 27-32. District Accounts Officers Kohat, Bannu, Luki, Tank, D.I. Khan.
 33. P.A to Director Education FATA.

Director (P&M)

TERMINATION.

On the basis of letter received from Directorate of Education (FATA) vide No.8878-87 dated 13.12.2010, Services of the following teachers/chowkidars of community schools are hereby terminated with effect from 31.12.2010.

S No	Personal No	Name	Post	Remarks
1	354187	HASMAT ARA	P.T.C.TEACHER	
2	354188	PALWASHA BIBI	P.T.C.TEACHER	
3	354992	ZUHRA BIBI	P.T.C.TEACHER	
4	355168	SAMINA GUL	P.T.C.TEACHER	
5	355182	SHAZIA BEGUM	P.T.C.TEACHER	
6	355198	SEEMA GUL	P.T.C.TEACHER	
7	355202	NIGAT PARVEEN	P.T.C.TEACHER	
8	355220	SANOOBAR KHAN	P.T.C.TEACHER	
9	355330	LIAQAT ALI	P.T.C.TEACHER	
10	356588	SHENAIR SHANAZ	P.T.C.TEACHER	
11	356679	SAIDA BEGUM	P.T.C.TEACHER	
12	359864	SADAQAT BEGUM	P.T.C.TEACHER	
13	359868	BUSHRA BEGUM	P.T.C.TEACHER	
14	360122	SHAMIM ARA	P.T.C.TEACHER	
15	360124	SALIHA TAJ	P.T.C.TEACHER	
16	360246	SHANZIA BEGUM	P.T.C.TEACHER	
17	361858	RASHIDA BIBI	P.T.C.TEACHER	
18	362000	SHAMIM BEGUM	P.T.C.TEACHER	
19	362003	SHAGUFTA BEGUM	P.T.C.TEACHER	
20	362017	RAHILA ZIA	P.T.C.TEACHER	
21	367533	BUSHRA BEGUM	P.T.C.TEACHER	
22	373973	NEGATE BANO	P.T.C.TEACHER	
23	373996	WASKAT BIBI	P.T.C.TEACHER	
24	393168	MUSLIMA BEGUM	P.T.C.TEACHER	
25	394812	SHAHIDA BIBI	P.T.C.TEACHER	
26	401355	AISHAH BIBI	P.T.C.TEACHER	
27	402521	NAURINA	P.T.C.TEACHER	
28	402641	NASIRA	P.T.C.TEACHER	
29	402652	ZENAB	P.T.C.TEACHER	
30	435756	SHAHIDA BIBI	P.T.C.TEACHER	
31	444190	SAIMA	P.T.C.TEACHER	
32	354955	SAJAD KHAN	P.T.C.TEACHER	
33	355164	SAFIA BEGUM	P.T.C.TEACHER	
34	355208	NAGINA BEGUM	P.T.C.TEACHER	
35	360123	HIKMAT ULLAH	P.T.C.TEACHER	
36	362020	MINA GUL	P.T.C.TEACHER	
37	362021	TAHIRA GUL	P.T.C.TEACHER	
38	377350	UMMI KALSOOM	P.T.C.TEACHER	
39	381793	ABIM KHAN	P.T.C.TEACHER	
40	354798	ANWAR KHAN	P.T.C.TEACHER	
41	354812	NIGAB KHAN	P.T.C.TEACHER	
42	354822	AZIZ ULLAH	P.T.C.TEACHER	
43	354857	MOHAMMAD SADIQ	P.T.C.TEACHER	
44	354880	ABDULAH KHAN	P.T.C.TEACHER	
45	354891	RUBBAIN KHAN	P.T.C.TEACHER	
	354920	MORAMMAD RAZ	P.T.C.TEACHER	
		IFTIKHAR KHAN	P.T.C.TEACHER	

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48	354325	FANNIRIAH MUHAMMAD NAJIBOR	P.T.C TEACHER
49	354332	BALQISMI	P.T.C TEACHER
50	354333	RAZ MOHAMMADI	P.T.C TEACHER
51	354334	LIQAT ALI KHAN	P.T.C TEACHER
52	354336	DAQIEM KHAN	P.T.C TEACHER
53	354337	ASLAM KHAN	P.T.C TEACHER
54	354338	ISSA DAU KHAN	P.T.C TEACHER
55	354339	AJMAL KHAN	P.T.C TEACHER
56	354340	ASGHAR KHAN	P.T.C TEACHER
57	354341	HAZIM GUL	P.T.C TEACHER
58	354342	JAMIL SHAH	P.T.C TEACHER
59	354345	SHAH JEHAN	P.T.C TEACHER
60	354346	IRFAN ULLAH	P.T.C TEACHER
61	354349	DILAWAR KHAN	P.T.C TEACHER
62	354350	AMIR KHAN	P.T.C TEACHER
63	354351	GHULAM SAID	P.T.C TEACHER
64	354352	MAZ ULLAH	P.T.C TEACHER
65	354353	SHAH NAZAR	P.T.C TEACHER
66	354356	SAD ULLAH	P.T.C TEACHER
67	354359	FAYAZ KHAN	P.T.C TEACHER
68	354362	DAWOOD SHAH	P.T.C TEACHER
69	354366	ASIF KHAN	P.T.C TEACHER
70	354369	SIHAT BADSHAH	P.T.C TEACHER
71	354370	BADSHAH HUSSAIN	P.T.C TEACHER
72	354371	SAMANDAR KHAN	P.T.C TEACHER
73	354372	ALI HASSAN	P.T.C TEACHER
74	354375	SHAD ALI	P.T.C TEACHER
75	354376	HUSSAIN SHAH	P.T.C TEACHER
76	354378	MOHAMMAD NADAR	P.T.C TEACHER
77	354379	NICOLAB KHAN	P.T.C TEACHER
78	354380	MURAD ALI	P.T.C TEACHER
79	354381	SHAHID NASEEM	P.T.C TEACHER
80	354385	GUL ZAR	P.T.C TEACHER
81	354387	SAYAR KHAN	P.T.C TEACHER
82	354388	MOHAMMAD SHAFIQ	P.T.C TEACHER
83	354390	NADIA BEGUM	P.T.C TEACHER
84	355127	NAJEEDA GUL	P.T.C TEACHER
85	355133	ROSHAN BIBI	P.T.C TEACHER
86	355137	MUNTAHA BIBI	P.T.C TEACHER
87	355149	RAEIA	P.T.C TEACHER
88	355175	SHAGUFTA NAWAZ	P.T.C TEACHER
89	355176	SHAZIA QAMAR	P.T.C TEACHER
90	355178	WAJEEDA BIBI	P.T.C TEACHER
91	355180	FATMA BIBI	P.T.C TEACHER
92	355181	EUSHRA BIBI	P.T.C TEACHER
93	355185	ROZI GUL	P.T.C TEACHER
94	355187	RABIHAT BEGUM	P.T.C TEACHER
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101	355205	NIZAKAT BEGUM	P.T.C TEACHER
102	355207	SAMINA ANWAR	P.T.C TEACHER
103	355260	TAJMOHAMMAD	P.T.C TEACHER
104	355264	KHARO KHAN	P.T.C TEACHER
105	355313	KHAYALI JAN	P.T.C TEACHER
106	355314	NIJAZ MOHAMMAD	P.T.C TEACHER
107	355317	MURAD ALI	P.T.C TEACHER
108	355320	HUZAIR KHAN	P.T.C TEACHER
109	355327	HAZRAT SHAH	P.T.C TEACHER
110	355328	GULAAZ KHAN	P.T.C TEACHER
111	355331	IKRAK ULLAH	P.T.C TEACHER

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198	360168	ASMA KHAN	P.T.C. TEACHER
199	360169	ASMA KHAN	P.T.C. TEACHER
200	360170	ASMA KHAN	P.T.C. TEACHER

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BEFORE PESHAWAR HIGH COURT PESHAWAR

W.P.No. 2498/2012

1. Nazir Gul S/O Nawab Khan R/O village Lakary uppar Mohmand Agency.
2. Tahir Ali S/O Gula Khan R/O Tangi District charsadda.
3. Muhammad Israr S/O Mir Zada Khan R/O Ghazi Kor P.O. Ghalanai Tehsil Halim Zai Mohmand agency.
4. Muhammad Khan S/O Muhammad Wali R/O Yousaf Khel Tehsil Uppar Mohmand Mohmand Agency.
5. Muhammad Hozoor Badshah S/O Hazrat Badshah R/O Gari Sher dad Warsak Road Peshawar.
6. Sehat Badshah S/O Ameer Khysro R/O Shaghaly Bala Tehsil & District Peshawar.
7. Jamal Shah S/O Habib Khan R/O Ghazi Beg Uppar Muhmand Mohmand Agency.
8. Syed Ahmad Shah S/O Muhammad Afzal R/O Ghalanai Halimi Zai Mohmand Agency.
9. Mazullah S/O Najeem Khan R/O Ghalanai Muhmand Agency.
10. Fayyaz Khan S/O Badam Khan R/O zarif Kor Yaka Ghund Mohmand Agency.
11. Hussain Sbah S/O Sayed Mastan Shah R/O Mian gan Halim Zai Tehsil Uppar Mohmand Mohmand agency.
12. Hazrat Wali S/O Sher Wali Shahgai Khyber Agency.
13. Gulab Khan S/O Sher Wali Khan R/O Yakka Toot Peshawar City.
14. Asghar Khan S/O Feroz Khan R/O Akram Abad Sarki Gate Peshawar City.
15. Samandar Khan S/O Khatam Jan R/O Beroon Yakka Toot Peshawar.
16. Zinat Khan S/O Zar Bat Khan R/O Shar Khel Koki Khel Sarkai Jamrud Khyber Agency.
17. Muhammad Ilyas S/O Noor Muhammad Koki Khel Jamrud Khyber Agency.
18. Abdul Jalil S/O Lal Zarin R/O Koki Khel Karon Khel Jamrud Khyber Agency.
19. Tikka Khan S/O Gul. Baz R/O Koki Khel Ghondi Khyber Agency.
20. Murad Ali S/O Ali Rehman Mosa Khel uppar Mohmand, Mohmand Agency.
21. Taj Muhammad S/O Haji Lal Marjan R/O Yaka Toot Zargar Abad Peshawar.
22. Nasrullah S/O Zerat Gul R/O Mohallah Khan Mast Colony Peshawar.
23. Bakhtiar Gul S/O Muhammadi Gul R/O Zargar Abad Peshawar City.
24. Sanobar Khan S/O Sarkari Khan P.O. Hoti District Mardan.
25. Wali Khan S/O Jan Abad R/O Mohallah Shenmankhel Shinwari Landi Kotal Khyber Agency.
26. Mukamil Shah S/O Hazrat Muhammad R/O Yaka Ghund Ghalanai Mohmand Agency.
27. Hikmat ullah S/O Abdur Rahim R/O Lakary Uppar Mohmand, Mohmand Agency.

ATTESTED

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- 28. Dilawar Khan S/O Hakim Khan R/O Ghalani Uppar Mohmand Mohmand Agency.
- 29. Fazal Amin S/O Fida Muhammad R/O Koki Khel Jamrud Khyber Agency.
- 30. Attah Ullah S/O Rozi Khan R/O Mola Ghori Khyber Agency.
- 31. Akhtar Munir S/O Janas Khan R/O Kpki Khel Jamrod Khyber Agency.
- 32. Khyal Zada S/O Aslam Khan R/O Yar Gul Khel Bara Khyber Agency.
- 33. Mst. Samina Anwar D/O Anwar Khan H.No.160 Street No.3 Muhallah, majeedAbad District Mardan.
- 34. Mst. Hashmat Ara W/O Qabel Shah R/O Sawal Dher District Mardan.
- 35. Mst. Shah Niar Shehnaz W/O Shkir Ullah R/O Shah thi Kor Halim Zai Muhammad Agency
- 36. Niaz Muhammad S/O Noor Muhammad R/O Haji Takht Bai District Mardan.
- 37. Muatter S/O Sher Rahman R/O Post office Mian Mandi Tehsil Haleem Zai District Mohmand Agency
- 38. Navid Ullah S/O Muhammad Ullah Khan R/O Sher Khan Malak Abad P.O. Jamrod Khyber Agency.

39. *Khaista Zai S/O Ghisomullah R/O Nushki Sharif Teh*
Yakka Ghazal Mohmand Agency (PETITIONERS)

40. *Fazal Dargan S/O*
 41. *Dawal Shah Kpki* **VERSUS** *Qaimul Ahmad S/O*
Oppet Mohmand, Mohmand Agency

- 1. The Additional Chief Secretary FATA Secretariat Peshawar
- 2. Director Education FATA Peshawar
- 3. Agency Education Officer Mohmand Agency
- 4. Agency Education Officer Khyber Agency
- 5. Political Agent Mohmand Agency
- 6. Political Agency Khyber Agency

(RESPONDENTS)

Writ Petition Under Article 199 of
Constitution of Islamic Republic of
Pakistan, 1973 As Amended Upto Date

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 Peshawar High Court
 27 JUN 2016

Respectfully Sheweth :

Brief facts of the case giving rise to the instant writ petition are as under :

TODAY That Petitioners are loyal citizens of Pakistan and belong to tribal area.
 Register That Petitioners had been appointed as the Project Posts (Community base
 AUG 2012 School BPS-07) in FATA (Mohmand and Khyber Agency).

Judgment.
BEFORE PESHAWAR HIGH COURT,
PESHAWAR.

Judicial Department.



Writ Petition 2498-P of 2012.

Nazir Gul & another.....Petitioners.

Vs

Additional Chief Secretary FATA and others.....Respondents.

Date of hearing.....15th June, 2016.....

Petitioner(s) by M.s Ijaz Anwar & Muhammad Asif, advocates.

Respondent(s) by Mr. Lateef Khan standing counsel &

WAQAR AHMAD SETH, J:- This single

judgment shall also disposed of connected writ petition bearing
No. 2515-P of 2013, as common question of law and facts are
involved therein.

Nazir Gul & others, hereinafter called the petitioners,
have knocked the door of this Court, under Article 199 of the
Constitution of Islamic Republic of Pakistan, 1973, for issuance
of an appropriate writ directing the respondents to re-instant
and regularize their services alongwith outstanding salaries.

2. The genesis of the case is that, petitioners were appointed
as Primary School Teacher (PST) BS-07 on contract basis for

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27 JUN 2016

project period in the Community base Schools after the recommendation of Selection Committee and nomination of concerned political agent at Mohmand & Khyber Agencies in the years 2003, 2004, 2006 & 2007 respectively. That initially petitioners were appointed on project post, and after initial appointment on contract basis their contract were renewed till the promulgation of (N-W.F.P) now Khyber Pakhtunkhwa, Civil Servants (Amendment) Act, 2005 (NWFP Act No. IX of 2005) and (N-W.F.P) now Khyber Pakhtunkhwa, Employees (Regularization of Services) Act, 2009 (NWFP Act No. XVI of 2009) whereby all contractual & adhoc employees have been regularized by operation of law, but despite it, respondents vide impugned notification dated 13.12.2010, terminated their services with effect from 31.12.2010. Hence, having no other adequate & efficacious remedy petitioners have approached this Court through the instant writ petition.

3. Comments were called from respondents which they furnished accordingly, denied the assertion of petitioners and stated that they were appointed as PTC project teachers in community based project schools in FATA, and all community school teachers were terminated on 31.12.2010 by the

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Passing Commission

Competent Authority through letter No. 8878-87 dated 13.12.2010. Further stated that at all FATA level in each agency, a scrutiny committee was constituted by the competent authority to carry out meaningful scrutiny verification of community schools all over the FATA. The scrutiny committee has identified functional and non functional i.e ghost schools in FATA. The teachers of non functional / ghost schools were ordered as closed and services of teachers of those schools were stand dispensed with. All petitioners in Khyber and Mohmand agencies were project employees and their services stand dispensed with on 31.12.2010, after expiry of project period and closure of community schools. It is pertinent to mention here that only those community schools were ordered to be re-opened which were functional and in the area where schooling were required and possible after scrutiny verification of scrutiny committee. A notification has been issued by FATA Secretariat wherein the Governor Khyber Pakhtunkhwa being competent authority has approved the re-appointment of community school teachers, who qualify to be passed against regular available posts of PST.

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2016

4. We have heard learned counsel for the petitioner and learned AAG appearing on behalf of respondents and perused the available record.

5. Record is suggestive that petitioners were appointed in the prescribed manner after observing all codal formalities, such as test and interview, recommendations of the Departmental Selection Committee and appointment order by the competent authority. Admittedly the appointment orders placed on record reflects that petitioners were appointed on contract basis for the project period in the schools. These appointment letters are for the years ranging from 2001 to 2009. It is also an admitted fact that since their initial appointment their contracts were renewed from time to time and till the promulgation of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 (Act No. IX of 2005) and similar legislation made by Khyber Pakhtunkhwa, employees (Regularization of Services) Act 2009 (KPK Act No. XVI of 2009) vide which the services of all adhoc and contractual employees were regularized by the Provincial Legislature, the petitioners were in service. The petitioners services were terminated allegedly due to closure of all community schools in

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Peshawar High Court

FATA with effect from 31.12.2010 and the reasons given in the said closure order is ghost schools in FATA and the scrutiny committee, so constituted has identified functional and non functional community schools.

6. One thing is admitted and clear from record that before termination no notice was given to the petitioners and all other employees whose services were terminated. Nothing is on record to show that the scrutiny committee check which record and from where they declared functional and non functional schools and as to whether any student, may be just one student, was studying in that school are not, at that time. One thing is more clear than crystal that once a school has been established that can never be a project nor it can be closed down, if even a single student is studying over there.

7. There is nothing on record showing that after the so called revival of 67 community schools wherein 68 male and 66 female community teachers were adjusted vide order No. 6048-619 dated Ghallani 9th December, 2011, whether all the terminated employees were given notices for interview before the said scrutiny committee or not. In the case of Fiaqat

NOTED

Hussain and others Vs Federation of Pakistan, reported inPLD, 2012 SC-224, (a) (b) (c) & (d) it has been held as under:

a) ---Art. 25-A---Right to education---Education plays an important role in the successful life of an individual---Generally, education is considered to be the foundation of society which brings economic wealth, social prosperity, political stability and maintaining health population---Further progress of society is stopped in case of deficit of educated people---Educated people enjoy respect among their colleagues and can effectively contribute to the development of their country and society by inventing new devices and discoveries---Islam is a scientific religion emphasizing on the need of scientific inquiry---Need, purpose and kinds of education and as under the mandate of Quran and Ahadith, elucidated.

b) ---Arts. 270AA(8), (9), 25-A, 7, 37(a) & 184(3)---Constitutional petition---Right to education---Duty of State---Definition---By virtue of Art. 270AA(8)(9) of the Constitution as substituted by Constitutional (Eighteenth Amendment) Act, 2010 the current Legislative list was omitted in pursuance whereof projects being run by the federal Government in the Provinces, including Basic Education Community Schools were decided to be wound up while assailing the proposal of such winding up prayer of the petitioners (fathers of students and employees of the projects) was that the proposed action on the part of authorities of closing down "Establishment and Operation of Basic Education community Schools be

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Federal Shariat Court
27 JUN 2012

declared to be without lawful authority and of no legal effect and be also declared to be in violation of Art. 25-A of the Constitution and the proposed act of winding up of the National Commission of Human Resources may be held to be entirely unconstitutional and of no legal effect so as to allow basic human rights to be citizens of Pakistan, under Art. 7 of the Constitutional and that the State including the Federal and the provincial Government therefore, under Ar. 25-A of the Constitution and parliament in view of the definition of the State had not absolved the Federal Government from conferring the Fundamental rights upon the children --State in terms of Art. 37(a) of the Constitution, shall form such policies on the basis of which state shall promote, with special care, the educational and economic interest of backward classes or areas--Held, under Art. 29 read with Art. 25-A of the Constitution the Fundamental Rights were required to be enforced by the State-- Especially in view of Art. 25-A of the Constitution, it had been made mandatory upon the State to provide the education to the children of the age of 5 to 16 years.

- c) --Preamble--National Commission for Human Development Ordinance (XXIX of 2002), preamble--Constitution of Pakistan Arts. 270AA, 25-A, 29, 7 & 184(3)-- Constitutional : petitions--Rights to education--Principles of policy--Winding up of Basic Education Community Schools established under National Education Foundation Ordinance, 2001 and the Commission under Human Development Ordinance, 2002 and the Commission--

Validity---National Education Foundation Ordinance, 2002 and national Commission for Human Development Ordinance, 2002, having been promulgated much prior to the introduction of Constitution (Eighteenth Amendment) Act, 2010, whereby Art. 270AA was substituted in the Constitution in pursuance whereof the Concurrent legislative list containing entries relating to education were abolished were protected--- Education was Fundamentals Rights of an individual, therefore, the Directive Principles of States policy being subsidiary to the Fundamental Rights guaranteed under the Constitution were required to be protected under the law, which were holding the field--
 -In presence of said two laws, and for the reasons that the Basic Education Community Schools were functioning under the control of Government agencies and by the NGOs despite repealing of Concurrent legislative list, the Government of Pakistan and Technical Training Division, which had been authorized to deal with all the matters reliant to NCHD and NEF---Provision which had brought protection to both the Ordinance, could only be repealed by the repealing statute and merely by issuing any letter or the order as in the present case to close down the project of establishment and operation of basic education community schools was contrary to laws.

- d) ---Preamble---National Commission for Human Development Ordinance (XXIX of 2002), Preamble---Constitution of Pakistan, Arts. 270AA, 25-A, 29, 7, 70 read with Federal Legislative list part-1, entry 16 & 184(3)---Constitutional petitions---Right to

education---Principles of Policy---Winding up of Basic Education Community Schools established under National Education foundation Ordinance, 2002 and the Commission under Human Development Ordinance, 2002---Question for consideration was whether or not after abolishing the concurrent legislative List, the Federation was empowered to make legislation relating to the matters directly, indirectly or ancillary to the subject to educational particularly by introducing informal education, as presently was being imparted through Basic Education Community Schools in the country established under National Education Foundation Ordinance, 2002 and National Commission for Human Development Ordinance, 2002---Under Article 70 read with Entry 16 of part-1 of the Federal Legislative List of the Constitution and the Constitutional Amendments, both the Ordinances were fully protected and shall remain operative unless repealed in accordance with the Constitution and so long both the Ordinances were holding the field, the Basic Education Community Schools providing informal education to the backward classes or the areas shall continue to function---Proposed action on the part of authorities of closing down establishment and Operation of Basic Education Community Schools was without lawful authority and of no legal effect and was in violation of Article 25-A of the Constitution--
 -Proposed act of winding up of the Commission was unconstitutional and of n legal effect and the Commission was allowed

ATTESTED
 EXAMINER
 Peshawar High Court
 27 JUN 2016

to continue to perform the positive duty of providing basic human rights to the citizens of Pakistan---order accordingly.

8. This Court in its judgment delivered in writ petition No. 3157 of 2009 decided on 15.9.2011, has held that regularization Act No. IX of 2005 and Act No XVI of 2009 are applicable to the FATA employees. The said judgment was upheld by the apex Court as well and in view of the said judgment all the petitioners are regular employees of the community schools which under no law can be closed down and be termed as a project, if a single student was studying there. There is nothing on record showing that the scrutiny committee who declared functional and non functional community schools had taken into account that by that time students were there or not.

9. The Governor, Khyber Pakhtunkhwa, issued a notification No. SO (E)/SSD/CSTR/99-108 dated 11.5.2012, which reads as under:-

The Governor Khyber Pakhtunkhwa, in his capacity as the Competent Authority has been pleased to approve the re-appointment of Community School Teachers who qualify to be posted against the regular posts of PST (BS-7) in phased manner at the respective Agencies & FRs, purely on merit basis in accordance with the existing recruitment criteria but in relaxation of upper age limit with immediate effect as specified below;

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- i. The available regular vacant PST (BS-7) posts in the Primary / Middle Schools in FATA will be filled up from amongst the community school teachers and no fresh candidate considered for recruitment till all the eligible community Schools Teachers are absorbed against regular posts in their respective Agencies / FRs.
- ii. The non local eligible Community School Teachers shall be considered for re-appointment against the regular vacant posts of PST (BS-7) after adjustment of local qualified teachers.
- iii. The services of the un-qualified teachers shall be dispensed with.
- iv. The Community Schools whose teachers are appointed and shifted to other schools against regular posts, would be closed down.
- v. The respective Community Schools students would be shifted to nearby regular schools and no further recruitment of Community School teacher will be made.

10. Record suggests that even this notification was not implemented. There are plethora of judgments of the apex Court confirming that no employee could be terminated without issuing proper show cause and regular inquiry. Reliance is placed on 1997 SCMR-1552 (b) which reads as under:-

---Termination of service---Misconduct---
 Civil Servant's services were on temporary basis liable to be terminated on 30 days' notice or pay in lieu thereof on either side---
 Service of civil servant were to be governed by statute and Rules/Instruction/Regulations framed thereunder---If a person is employed on contract basis and terms of employment provide the manner of termination of his services the same can be terminated in terms thereof---Where, however, a person is to be

condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or probationer, he is entitled to a fair opportunity to clear his position which means that there should be a regular enquiry in terms of Efficiency and discipline Rules before condemning him for the alleged misconduct.

Likewise in the case of Director General Pakistan

Rangers Sindh and another Vs Abdul Rashid, reported in 2000.

SCMR-643 it has been held that:-

---S.4---Constitution of Pakistan (1973), Art. 212(3)---Termination of service---Service of civil servant was terminated without issuing him any show cause notice and assigning any reasons for such termination---Civil servant whose services were being governed by Service Rules had completed probation period of four years---Service Tribunal in the circumstances, had rightly found that termination of service of civil servant without issuing him any show cause notice and without holding inquiry against him, was illegal and thus had rightly directed re-instatement of civil servant treating intervening period from date of termination to his re-instatement as extraordinary leave without pay.

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 Federal High Court
 7 JUN 2016

11. In the instant case, as per the closure order, it reflects that there are allegations against the petitioners that they did not

perform their duties as the community schools were ghost schools and as such when there is an allegation, the law demands show cause notice which is lacking in the instant case, admittedly. On the other hand when 67 community schools were made functional whether any notices were issued to the locals, previous employees as per notification dated 11.5.2012 of the worthy Governor KPK. Since, all the petitioners are the locals therefore, they have been discriminated.

12. In view of above, this writ petition is allowed and respondents are directed to adjust the petitioners in the community schools by revival of the non functional schools by making the circumstances, so that the Education flourishes in the tribal area. The exercise be done within one month after receipt of the judgment. Since petitioners have not worked against the posts, therefore, they are not entitled to the wages for intervening period and their said period be treated as leave without pay.



Announced.
15th June, 2016
Tariq Jan

Ed - Waqar Muneer Setar

JUDGE

CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Constitution of Pakistan Order 1994
27 JUN 2016

JUDGE



RE-APPOINTMENT OF MALE EX COMMUNITY SCHOOL TEACHERS

Consequent upon recommendation of Scrutiny committee constituted in compliance of Directorate of Education FATA letter No 6854-15 dated 27.3.2017 for conditional implementation of Peshawar high Court order dated 15-6-2016 in COC No 330-P/2016 in w/p No 2498/2012 subject to final decision in CPLA No 450-p/2016 filed by department in supreme court of Pakistan. The following Ex-community-schools teacher of non functional community schools are hereby re-appointed with immediate effect in schools mentioned against their names on project basis subject to the terms and conditions mentioned therein.

S.No	Name	Father's Name	Place of posting where re-appointed
1	Nazir Gul	Nawab khan	CS Mamazai Mir Alam
2	Tahir Ali	Gula khan	-do-
3	Muhammad Israr	Amir Zad khan	CS Ghafor Bedmanai
4	Muhammad Khan	Mohammad Wali	-do-
5	Muhammad Hizzor Badshah	Hazrat Bad shah	CS Sana khel Shandarra
6	Sehat Bad shah	Amir Kaisra	-do-
7	Jamal shah	Habib khan	CS Shahje Bedmanai
8	Syed Ahmad shah	Muhammad Alzal	-do-
9	MaazUllah	Najeem khan	CS Khalim Jan Jarobe Darra
10	Fayaz khan	Badam khan	-do-
11	Hussain shah	Syed Mastan shah	CS Mateena Kodakhel
12	Samandar khan	Khatam Jan	-do-
13	Murad Ali	Ali Rahman	CS Jarobi Darra Abdullah
14	Bakhtiar Gul	Mohammad Gul	-do-
15	Sanobar khan	Sarkar khan	CS Golono sheikh Bab
16	Mukamil shah	Hazrat Mohammad	CS Anargai Payan
17	Hikmatullah	Abdur Rahim	CS Golono sheikh Bab

18	Dilwar khan	Hakim khan	CS Anargai Payan
19	Hashmat Ara	Qabill shah	FCS Zanawar China
20	Niaz Muhammad	Noor Mohammad	CS Yarkhel Bedmanai
21	Muattar	Sher Rahman	-do-
22	Khaista Zar	IhsanUllah	CS Siraj Kor Samghaha
23	Fazal Dayan	Sadaru Din	CS Shahmir khan Abad shamsha
24	Dawood shah	Sadaru Din	-do-
25	Asif khan	Jamal	CS Siraj Kor Samghahi

TERMS & CONDITIONS

1. The re-appointment order shall be made purely on project basis for project period
2. The appointment order will be subject to further verification of their educational and professional testimonials from concerned boards/institutions.
3. Their salaries will be paid after approval of revised PCI or under the approved scheme by competent forum titled Re-opening of non functional community schools in Mohmand agency.
4. In case the decision in above titled CPLA turned out to be otherwise their regularization will be subject to Notification dated 11-5-2012.
5. Attested copies of Charge report & testimonials shall be submitted to the quarter concerned in prescribed period of time in triplicate

(Khaista Rahman)

Agency Education Officer,

Mohmand Agency

Endst: No. 30983-89 / Estab: II/Re-appt/Cm: T(M/F) dated Ghallanai 19/04/2017

Copy to:-

1. Director Education FATA Secretariat Peshawar.
2. Political Agent Mohmand Agency.
3. PS to secretary SSD FATA Secretariat.
4. AAEO (Dev) local office.
5. AAEO Female local office
6. Accountant local office.
7. Teachers concerned.

Note: Unattested photocopies of relevant documents are not acceptable.

Attested
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Agency Education Officer
Mohmand Agency

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**AGENCY EDUCATION OFFICER
MOHMAND AGENCY AT GHALLANAI**

Tel.#.0924-290180/FAX.#.0924-290180

CONDITIONALLY SERVICES REGULARIZATION/ADJUSTMENT ORDER

In compliance with decision made by worthy Director of Education FATA bearing Endst No. 2531 dated 26/02/2018 and Notification No. SO (B) /SSD/CSIR-99-108/dated 11/05/2012, the following 25 Number of Communal PST Male Teachers are hereby regularized with the condition to submit an affidavit worth Rs-40 duly attested by the three principals and countersigned by the undersigned, by each below mentioned teacher that if Supreme Court of Pakistan under CPLA No. 450-P/2016, decided to set aside the decision made by Honorable High Court Peshawar. This regularization order will stand cancelled and these teachers will neither file Departmental Appeal nor appeal in any court of Pakistan against the order and authority in BPS-12 (15520-960-42120) plus usual allowances as admissible under the rule with immediate effect in the interest of public services.

#	Name/Fathers	Name of Community Teacher	Posting at Regular School	Remarks
1	Dilawar Khan S/O Hakeem Khan	CS Anargi Payan	GPS Shamsha Guno	AVP
2	Jamal Shah S/O Habib Khan	CS Shaji Bedmanai	GPS Qari Kili Kamali	AVP
3	Nazir Gul S/O Nawab Khan	CS Mamazai Mir Alam	GPS Zabri Jowar	AVP
4	Darwood Shah S/O Saddru Din	CS Shamaji Khan Abad Shamsha	GPS Said Khan Kor 02	AVP
5	Hussain Shah S/O Saeed Mastan Shah	CS Matina Koda Khel	GPS Aito Khel No. 1	AVP
6	Muhammad Khan S/O Muhammad Wali	CS Ghafoor Baidmanai	GPS Mittai	AVP
	Tokmat Ullah S/O Abdur Rahim	CS Gulonai Sheikh Baba	GPS Chamarkand No. 2	AVP
8	Sanobar Khan S/O Sarkari Khan	CS Gulonu Sheikh Baba	GPS Matta Ghuzim	AVP
9	Niaz Muhammad S/O Noor Muhammad	CS Yara Khel Bedmanai	GPS Khairi Kor	AVP
10	Shehat Badshah S/O Amir Husro	CS Sana Khel Shandara	GPS Faiz Ali Mirgat	AVP
11	Saeed Ahmad Shah S/O Muhammad Afzal	CS Shaji Bedmanai	GPS Khadi Kas	AVP
12	Muhammad Huzoor Badshah S/O Hazrat Badshah	CS Sana Khel Shanzara	GPS Rahman Wali	AVP
	Muhter Khan S/O Sher Rahman	CS Yara Khel Bedmanai	GPS Sook Tangi	
14	Fazal Dayan S/O Saddru Din	CS Shamir Khan Abad Shamsha	GPS Gurbaz Sali	AVP
15	Samandar Khan S/O Khatim Jan	CS Matina Koda Khel	GPS Kogpand	AVP
16	Bakhtiar Gul S/O Muhammadi Gul	CS Jarobi Dara Abdullah	GPS Said Rahman Gurbaz	AVP

(Signature)

17	Khaista Zar S/O Ihsanullah	CS Samghakhi	GPS Ali Zaman	AVP
18	Fayaz Khan S/O Badaam Khan	CS Khatim Jan Jarobi Dara	GPS Turangzai Baba G	AVP
19	Murad Ali S/O Ali Rahman	CS Jarobi Dara Abdullah	GPS Malkana	AVP
20	Asif Khan S/O Jamal	CS Samghakhi	GPS Adam Saaz	AVP
21	Mukannil Shah S/O Hazrat Muhammad	CS Anargi Payan	GPS Atam Kili	AVP
22	Zahir Shah S/O Abdul Wahid	CS Sheikh Baba	GPS Navi Kili	AVP
23	Tahir Ali S/O Gula Khan	CS Mamazai Mir Alan	GPS Chamarkund No.01	AVP
24	Mazullah S/O Najeem Khan	CS Khatim Jan Jarobi Dara	GPS Banda Zjarat	AVP

TERMS CONDITIONS

1. Charge report should be submitted to all concerned.
2. Appointment of the candidates is made purely on temporary basis and is liable to termination at any time without assigning any reason.
3. All kinds of documents would be verified from the concerned Boards/University before the drawl of their salaries if found fake/bogus the order will be considered as cancelled.
4. All those candidates who are matriculated should pass their F.A within 2 years after the issuance of this order.
5. They should produce their Health and Age certificates from the Agency Surgeon Mohmand.
6. If they failed to report of their arrival within 15 days, after the issuance of this Appointment Order will be automatically considered as cancelled.
7. If any technical legal flaw is pointed out, the appointment will stand as cancelled.
8. Their age should be according to the Govt. Policy.

(Farid Ullah Mehsood)
Agency Education Officer,
Mohmand Agency

Endst: No. 2619-28 / (Community File) Dated/30/07/2018

Copy to the:-

1. Director of Education (FATA) FATA Secretariat Peshawar.
2. Political Agent Mohmand Agency.
3. PS to Additional Chief Secretary FATA for perusal of the Additional Chief Secretary FATA
4. PS to Secretary SSD FATA Secretariat.
5. Agency Account Officer Mohmand Agency at Ghallanai.
6. Agency Surgeon Mohmand Agency.
7. AAEO Concerned.
8. Accountant/Pay Clerk Local Office.
9. Officials Concerned.

~~(Farid Ullah Mehsood)~~
Agency Education Officer,
Mohmand Agency

(7)

(3)

SUPREME COURT 450

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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MUNIB AKHTAR

Civil Petitions No. 624-P, 661-P/15, 264-P to
266-P/16, 446-P, 450-P, 527-P to 530-P of 2016.
(On appeal from the order dated 22.9.2015, 27.10.2015,
14.4.2016, 15.6.2016, 5.10.2016, passed by Peshawar High
Court, Peshawar in W.P.No.3766-P/14, W.P.No.1601-P,
W.P.4062-P-4264-P/15, W.P.2515-P/13, W.P.2498-P/12,
W.P.No.4110-P/15, W.P.4162-P/15, 4165-P-4206-P/15)

C.P.No.624-P of 2015 Additional Chief Secretary FATA, FATA
Secretariat, Warsak Road Peshawar Vs. Mr. Ijaz
Hussain and others.

C.P.No.661-P of 2015 Govt. of KPK through Additional Chief Secretary
FATA, FATA Secretariat, Warsak Road Peshawar
Vs. Syed Zahid Hussain and another.

C.P.No.264-P of 2016 Additional Chief Secretary FATA, FATA
Secretariat, Warsak Road Peshawar Vs. Alipur
Khan.

C.P.No.265-P of 2016 Additional Chief Secretary FATA, FATA
Secretariat, Warsak Road Peshawar Vs. Qimat
Khan.

✓ C.P.No.266-P of 2016 Additional Chief Secretary FATA, FATA
Secretariat, Warsak Road Peshawar Vs. Sher Alam
and others.

✓ C.P.No.446-P of 2016 Additional Chief Secretary FATA, FATA
Secretariat, Warsak Road Peshawar Vs. Mst.
Nargas and others.

Sanjiv
Mishra

✓ C.P.No.450-P of 2016 Additional Chief Secretary FATA, FATA
Secretariat, Warsak Road Peshawar Vs. Nazir Gul
and others.

C.P.No.527-P of 2016 Additional Chief Secretary FATA, FATA
Secretariat, Warsak Road Peshawar Vs. Naikdar
Khan.

C.P.No.528-P of 2016 Additional Chief Secretary FATA, FATA
Secretariat, Warsak Road Peshawar Vs. Yousf
Khan and another.

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Conf. Associate
Supreme Court of Pakistan
Islamabad

C.P.No.529-P of 2016 Additional Chief Secretary FATA, FATA Secretariat, Warsak Road Peshawar Vs. Wali Khan

C.P.No.530-P of 2016 Additional Chief Secretary FATA, FATA Secretariat, Warsak Road Peshawar Vs. Saifur Khan and another

For the Petitioner (s) : Mr. Zahid Yousuf Qureshi, Addl. A.G. KPK
(in all cases) a/w Mr. Saifullah, ADEO and Javed, CTO.

For the Respondent (s) : Mr. Khalid Rehman, ASC.
Mr. Ghulam Nabi, ASC.

Date of hearing : 28.11.2018

ORDER

Umar Ata Bandial, J.- C.P.No.624-P of 2015 is barred by 30 days. The delay is condoned as the questions raised in this petition are the same as in the connected petitions which are filed within the time allowed. Reference is made to the case of Mehreen Zaibun Nisa Vs. Land Commissioner, Multan and others (PLD.1975 SC 357).

2. Learned Additional Advocate General, KPK states that the impugned judgment was rendered by the learned High Court without considering the jurisdictional objection to the maintainability of the Writ Petitions under Article 247 of the Constitution. The said objection is not pressed presently in view of the 25th Amendment to the Constitution whereby Article 247 has been omitted. As a result the learned Peshawar High Court now is vested with jurisdiction in relation to the matters that arise in the erstwhile FATA territory. In this behalf he has also placed on record an order by a Larger Bench of this Court dated 10.7.2018 passed in C.Ps.No.253-P and 134-P of 2017. Accordingly, learned Additional Advocate General and learned counsel for the respondents pray that the impugned judgments be set aside and the matter be

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Court Associate
Supreme Court of Pakistan
Islamabad

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remanded to the learned High Court for decision afresh in the Writ Petitions filed by the respondents.

3. Accordingly by consent the impugned judgments are set aside, the petitions are converted into appeals and allowed and the matter is remanded to the learned High Court for decision afresh of the Writ Petitions filed by the respondents which shall be deemed to be pending. In case the respondents are still in service, their service rights shall not be affected adversely under the action by the respondents until decision is rendered by the learned High Court in the pending Writ Petitions.

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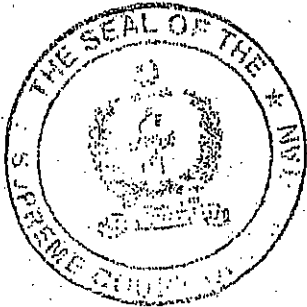
Certified to be True Copy

Islamabad
November 28, 2018
Saeed Aslam

Chief Justice
Supreme Court of Pakistan
Islamabad

Not approved for reporting.

13/12/18



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پسر احمد لیا اور باقی وارث
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**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)**

W.P.No.2498-P of 2012.

Date of hearing: 22.01.2019.

M/s Ghulam Nabi and Mr.Muhammad Asif,
advocates for petitioners.

Mr.Mujahid Ali Khan, AAG for respondents.

JUDGMENT

MUHAMMAD AYUB KHAN, J.- This judgment in the instant petition shall also dispose of W.P.No.2515-P of 2013, W.P.No.3766-P of 2014, W.P.No.1601-P of 2015, W.P.No.4062-P of 2015, W.P.No.4063-P of 2015, W.P.No.4064-P of 2015, W.P.No.4110-P of 2015, W.P.No.4162-P of 2015, W.P.No.4165-P of 2015 and 4206-P of 2015 as common question of law and fact is involved in all these petitions.

2. Petitioners in all the petitions were appointed on contract basis against against the posts of PST, PTC, Instructors, Chowkidars and Field Cattle Attendants through different orders by the respondent-department in the erstwhile FATA. In W.P.No.2498-P of 2012 (instant petition)

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and W.P.No.2515-P of 2013, petitioners have sought reinstatement/regularization whereas in the remaining writ petitions only regularization of service has been sought. In W.P.No.2515-P of 2013, after serving for some time, petitioners received a notice vide which their services have been terminated since 31.12.2010 and instead respondents; No.7 to 12 have been appointed without any advertisement. This court vide judgments/orders dated 29.09.2015, 27.10.2015, 14.04.2016, 15.06.2016 and 05.10.2016 allowed the said writ petitions as prayed for. The above judgments/orders of this court were assailed by the Government/ respondents before the Hon'ble apex Court in Civil Petitions No.624-P, 611-P/2015, 264-P to 268-P/2016, 446-P, 450-P, 527-P to 530-P of 2016. Said petitions were allowed on 28.11.2018 by setting aside the above judgments/orders and the matter was remanded back to this court for decision afresh.

3. In view of changed circumstances introduced in 25th amendment, Article 247 of the Constitution was omitted and this court

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is vested with the powers/jurisdiction to entertain matters relating to erstwhile FATA.

4. Through sub-section (2) of Section 2 of the (Amendment) Act of 2005, vide proviso added thereto, it was directed that a person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July 2001 till the commencement of the said Act but appointed on contract basis, shall with effect from the commencement of the said Act, be deemed to have been appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner, after the commencement of the said Act, shall, for all intents & purposes, be a civil servant except for the purpose of pension or gratuity. Such a civil servant in lieu of pension & gratuity be entitled to receive such amount contributed by him towards the Contributory Provident Fund along with contribution made by Government to his account in the prescribed manner. Further provided that in the event of death of such civil servant, whether before or after the retirement, his family shall be entitled to receive the said

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amount, if it has already not been received by such deceased civil servant.

5. Once again, through the then NWFP now KPK (Regularization of Services) Act No.XVI of 2009, on the strength of provisions of Section 3 thereof, all employees including the recommendee of the High Court appointed on contract or adhoc basis holding that on 31st December, 2009 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification & experience for a regular post subject to exception that the service/promotion quota of all service cadres shall not be affected.

6. Through the provision of Section 4-A of the Amendment Act, overriding effect was given to the provision of this Act over all other laws & rules for the time being enforced and it was further provided that any law or rule, coming in conflict with the provision of Amendment Act or inconsistent thereto, shall cease to have effect. This clause of overriding & superimposing nature has equipped the provision of Amendment

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Act No.XLI of 2009, with ever lasting effect over all other laws & rules then in vogue.

7. Learned counsel for the petitioners invited attention of the Court to the earlier judgments of the Bench involving same & similar issues, which were rendered in the case of Dr.Rizwanullah etc Vs. Government of NWFP etc (W.P.No.1510/1997) and in many other writ petitions, who contractual services were regularized by the strength of the said judgment, elaborately dealing with each & every provision of law relevant to the subject matter promulgated from time to time and it was further stated at the bar that this judgment of the Court was accepted and acted upon by various departments of the Provincial Government and services of contractual employees were duly regularized, issuing office orders at different occasions and no grudge or grievance was shown against it by the Government to take the matter to the Hon'ble Apex Court.

8. Learned counsel for the petitioners further invited our attention to different office orders, issued in light of the judgment cited above by various Heads of the Institutions/Administrative Secretaries of the

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Provincial Government complying with the said judgment in full.

9. The learned counsel also invited the Court attention to the case of Mst. Shagufta Syed Vs. Government of KPK etc W.P.No.1731/2006 alongwith W.P.No.475/2006 dated 11.09.2007, extending the benefit of the provision of Regularization of Service (Amendment) Act 2005 to various employees, who were appointed on contract basis. The learned counsel produced copy of the judgment of the Hon'ble apex Court given in Civil Appeals No.150-P & 151-P of 2009 decided on 24.03.2011 where the above mentioned judgment of this court was impugned. The Hon'ble apex Court after elaborately & extensively dealing with each & every legal & factual aspect of the case, not only upheld the view taken by this Court but also referred to its own judgment given in Civil Appeals No.834-P to 837-P of 2010 decided on 01.03.2011, wherein, it was held that the cases of contractual employees though appointed on project are squarely covered by the provision of Section 19 (2) of NWFP Civil Servants Act, 1973. Accordingly, both

Review

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the appeals filed by the Government in the said case were dismissed.

10. Confronted with the above ironclad legal position, the learned Additional Advocate General was repeatedly asked to draw line of distinction between the case of the petitioners and of those to whom benefit of the said provision of law was extended and their contractual services were regularized, however, he was found defenseless having no answer much less plausible to offer. We have on record the copies of the appointment orders issued by the Competent Authority appointing the petitioners at different occasions on different dates as contract employees against the posts in question.

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11. An ironclad proof in the shape of documentary record is available on file that the petitioners were appointed on contract basis by the Competent Authority, which is a fact undeniable in nature and their contractual services were renewed and extended from time to time.

12. The undeniable legal position is that the petitioners are contract employees because they have not been absorbed

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06 FEB 2019

permanently in the departments concerned where they have been appointed after adopting procedure, therefore, they are entitled to protection of the beneficial provision of sub-section (2) of Section 2 of the then NWFP now Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 and their rights are further protected in a more effective manner by provisions of Section 3 of the then now Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 to which superimposing & overriding effect was given on all the rules & law to the contrary. The latest enactment came into force on 24th October, 2009 when it was published in the official gazette of the Province extra ordinary.

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13. Vide Notification No.SO(E)/SSD/CSTR/99-108 dated 11.05.2012, protection was extended to employees of Community School Teachers. For convenience said Notification is reproduced as under.

"No.SO(E)/SSD/CSTR/99-108/- The Governor, Khyber Pakhtunkhwa in his capacity as the Competent Authority has been pleased to approve the re-appointment of Community School Teachers who qualify

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to be posted against the regular posts of PST (BS-7) in phased manner at the respective Agencies & FRs, purely on merit basis in accordance with the existing recruitment criteria but in relaxation of upper age limit with immediate effect as specified below.

1. The available regular vacant PST (BS-7) posts in the Primary/Middle Schools in FATA will be filled up from amongst the Community School Teachers and no fresh candidate considered for recruitment till all the eligible Community School Teachers are absorbed against regular posts in their respective Agencies/FRs.
2. The non-local eligible Community School Teachers shall be considered for re-appointment against the regular vacant posts of PST (BS-7) after adjustment of local qualified teachers.
3. The services of the un-qualified teachers shall be dispensed with.
4. The Community Schools whose teachers are appointed and shifted to other schools against regular posts, would be closed down.
5. The respective Community Schools students would be shifted to nearby regular schools and no further recruitment of Community School teachers will be made.

Amir Khan
Amir Khan

SKM

MM

Sd
Secretary
Social Sectors Department,
FATA Secretariat,
Peshawar

14. Question is whether petitioners are governed by the provisions of the North West Frontier Province (now Khyber Pakhtunkhwa) Employees (Regularization of Services) Act, 2009 (hereinafter referred to as the Act). It would be relevant to reproduce Section 3 of the Act:

"3.Regularization of Services of certain employees.-All employees including recommendees of the High Court appointed on contract or adhoc basis and holding that post on 31st December, 2008, or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience."

15. The aforesaid Section of the Act reproduced hereinabove clearly provides for the regularization of the employees appointed either on contract basis or adhoc basis and were holding contract appointments on 31st December, 2008 or till

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the commencement of this Act. Admittedly, the petitioners were appointed on contract basis, which period of their appointments was extended from time to time and were holding their respective posts on the cut-off date provided in section 3 ibid as they (petitioners of W.P No. 2498-P/2012 & 2515-P/2013) were terminated from service on 31.12.2010.

16. Moreover, the Act contains a non obstante clause in section 4-A which reads as under:

"4-A. Overriding effect. - Notwithstanding anything to the contrary contained in any other law or rule for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rule to the extent of inconsistency to this Act shall cease to have effect."

17. The above Section expressly excludes the application of any other law and declares that the provisions of the Act will have overriding effect, being a special enactment. In this background, the cases of the petitioners squarely fall within the ambit

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of the Act and their services were mandated to be regulated by the provisions of the Act. Furthermore, relevant to the subject is letter No. 8878-87 dated 13.12.2010 (Annex D/1 in W.P No.2515-P/2013) it has been mentioned in it that regular vacant posts be advertised immediately and recruitment process be completed as per prescribed procedure on priority. It shows that there are regular posts against which the petitioners were working. Some appointments have been made by the respondents in pursuance of the above letter which are mentioned as respondents in WP No. 2515-P/201.

18. Providing cause of action/grievance to the petitioners, the Government of NWFP (now Khyber Pakhtunkhwa) presented a bill in the Provincial Assembly through which Section 19 of the NWFP Civil Servants Act was to be amended. The said bill was passed by the Provincial Assembly of NWFP on the 5th July, 2005 and assented to by the Governor of NWFP on 12th July, 2005, which was notified/published in the Gazette of NWFP, extra ordinary on 23rd July, 2005.

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Sub-section 2 of Section 2 of the Amendment Act IX of 2005 is to the following effect:-

"2. Amendment of Section 19 of N.W.F.P. Act No.XVIII of 1973.- In the North-West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act No.XVIII of 1973) for section 19, the following shall be substituted:-

19 (1). Pension and gratuity.----Not relevant.

(2) A person though selected for appointment in the prescribed manner to service or post on or after the 1st day of July, 2001 till the commencement of the said Act but appointed on contract basis, shall, with effect from the commencement of the said Act be deemed to have been appointed on a regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, alongwith the contributions made by Government to his account in the said fund, in the prescribed manner".

19. Through the above provision of law, the employees appointed on contract basis

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but in the prescribed manner were provided protection by regularizing their services. The proviso added thereto states that a person, who is selected for appointment in the prescribed manner to a service or post but appointed on contract basis, shall with effect the commencement of this Ordinance or from the date of his continuous appointment, whichever may be later, be deemed to have been appointed on regular basis in the department concerned. Such employee shall, for all intents & purposes, be regular employees of the institution concerned except for the purpose of pension or gratuity. All such employees shall, in lieu of pension & gratuity, be entitled to the benefits of the Contributory Provident Fund scheme in the prescribed manner.

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20. For the detailed reasons discussed above, we entertain no amount of doubt that the petitioners are entitled to the prayed relief because services of similarly placed employees of different institutions/ departments, who were appointed on contract basis, were held to have been regularized through the provision of various

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enactments, discussed above, moreso, when the main judgment of this Court was not impugned before the Hon'ble apex Court by the Provincial Government, therefore, no distinction can be drawn between the case of the petitioners and of those to whom the same and similar benefit was extended by this Court. Even otherwise, once the law has been interpreted in the earlier judgments of this Court in favour of the employees, then the subsequent Division Bench, in view of the long chain of authorities/dictas of the Hon'ble apex Court, cannot deviate from the previous view, moreso, when we have no reason to differ with the earlier view.

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21. Accordingly, this and all the connected petitions are allowed and respondents are issued a writ directing them to treat the petitioners of this and of all the connected petitions as regular/permanent employees from the law came into force, as discussed above or from the date of officiating service as stated in the relevant provisions of law. Formal office order be immediately issued in this regard by the competent authorities in regard to the above

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Peshawar High Court
06 FEB 2019

legal position, the service books/record of all the petitioners be duly arranged and prepared, however, their inter se seniority be determined by the competent authorities in accordance with law and rules on the subject.

22. It is added that as respondents No.7 to 12 have been appointed when services of the petitioners in W.P.No.2515-P of 2013 were terminated, therefore, the matter is left to the respondents to deal with the fate of respondents No.7 to 12 in accordance with law and rules on the subject.

[Signature]
JUDGE

Announced
22.01.2019.

[Handwritten mark]

Under Seal, O.S. 2003, New 14, 20, Justice (Honnorable) Khan and New 16, 20, Justice (Honnorable) Khan

[Signature]

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 97 of
the Constitution of Pakistan Order 1982

06 FEB 2019

No. 5266

Date of Presentation of Application 06/2/19

No of Pages 22

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Urgent Fee 887-

Total 887-

Date of Payment 06/2/19

Date of Receipt 06/2/19

Received By Umar

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12/22

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR

AFK (D.J)
CIVIL APPEALS NO. 231, 233, 235, 236, 238, 241, 242,
243, 256, 260, 262, 263, 264, 266, 278, 279, 281, 286,
287, 290, 291, 292, 293, 294, 295, 296, 297, 299, 300,
304 & 306 OF 2020
AGAINST JUDGMENT DATED 14.10.2014 OF PESHAWAR
HIGH COURT, PESHAWAR, PASSED IN WRIT PETITIONS
NO.390-P OF 2012, ETC.

Deputy Director, Finance & Administration FATA through Additional Chief Secretary, FATA Peshawar & others : (in CA 231/2020)

Additional Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar & others : (in CA 233/2020)

Secretary, Govt. of K.P. Agriculture, Livestock & Dairy Development Cooperatives & Fisheries, Peshawar & others : (in CA 235/2020)

Govt. of KPK through Chief Secretary, Civil Secretariat, Peshawar and others : (in CA 236/2020)

Govt. of K.P. through Chief Secretary, Peshawar & others : (in CA 238/2020)

Province of KPK through Secretary Health Department Peshawar & others : (in CA 241/2020)

Govt. of KPK through Secretary Health, Peshawar and others : (in CA 242/2020)

Govt. of KPK through Secretary Health, Peshawar and others : (in CA 243/2020)

Govt. of KPK through Chief Secretary, Peshawar : (in CA 256/2020)

Govt. of KPK through Secretary Higher Education, Peshawar & others : (in CA 260/2020)

Additional Chief Secretary FATA, FATA Secretariat, Peshawar & others : (in CA 262/2020)

Govt. of KPK through Chief Secretary Peshawar & others : (in CA 263/2020)

Additional Chief Secretary FATA, FATA Secretariat Peshawar & others : (in CA 264/2020)

Govt. of KPK through Chief Secretary Peshawar & others : (in CA 266/2020)

Directorate of Livestock & Dairy Development FATA through its Director, FATA Secretariat, Peshawar & others : (in CA 278/2020)

Additional Chief Secretary FATA, FATA Secretariat, Peshawar & others : (in CA 279/2020)

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Additional Chief Secretary FATA, FATA : (in CA 281/2020)
Secretariat, Peshawar & others
Govt. of K.P. through Chief Secretary, : (in CA 286/2020)
Peshawar & others
Govt. of KPK through Chief Secretary : (in CA 287/2020)
Peshawar & others
Additional Chief Secretary, FATA , FATA : (in CA 290/2020)
Secretariat, Peshawar & others
Additional Chief Secretary, FATA , FATA : (in CA 291/2020)
Secretariat, Peshawar & others
Additional Chief Secretary, FATA , FATA : (in CA 292/2020)
Secretariat, Peshawar & others
Additional Chief Secretary, FATA , FATA : (in CA 293/2020)
Secretariat, Peshawar & others
Additional Chief Secretary, FATA , FATA : (in CA 294/2020)
Secretariat, Peshawar & others
Additional Chief Secretary, FATA , FATA : (in CA 295/2020)
Secretariat, Peshawar & others
Additional Chief Secretary, FATA , FATA : (in CA 296/2020)
Secretariat, Peshawar & others
Additional Chief Secretary, FATA , FATA : (in CA 297/2020)
Secretariat, Peshawar & others
Additional Chief Secretary FATA, FATA : (in CA 299/2020)
Secretariat, Peshawar & others
Govt. of KPK through Secretary Health : (in CA 300/2020)
Department Peshawar & others
Secretary Health Service, FATA Secretariat : (in CA 304/2020)
Warsak Road, Peshawar & others
Govt. of KPK through Chief Secretary, : (in CA 306/2020)
Peshawar and others

... Appellants

VERSUS

Dr. Lal Marjan & another : (in CA 231/2020)
Sher Farooq : (in CA 233/2020)
Barkat Ali & others : (in CA 235/2020)
Lal Rehman & others : (in CA 236/2020)
Syeda Humaira Sultan & others : (in CA 238/2020)
Muqadar Shah & others : (in CA 241/2020)
Nazeerullah and others : (in CA 242/2020)
Muhammad Farooq and others : (in CA 243/2020)
Muhammad Waris Khan : (in CA 255/2020)
Umar Muhammad Farooq & others : (in CA 260/2020)
Gul Wali Shah & others : (in CA 262/2020)
Salih Shah & another : (in CA 263/2020)
Riaz & another : (in CA 264/2020)
Irshad Hussain & others : (in CA 266/2020)
Dr. Sajjad ur Rehman & others : (in CA 278/2020)
Farzan Ullah & others : (in CA 279/2020)
Zaher Ud Din : (in CA 281/2020)
Saida Rehman : (in CA 285/2020)
Muhammad Tahir Afridi : (in CA 287/2020)
Ijaz Hussain & another : (in CA 290/2020)
Alipur Khan : (in CA 291/2020)
Qimat Khan : (in CA 292/2020)

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Sher Alam & another : (in CA 293/2020)
Naikdar Khan : (in CA 294/2020)
Yousaf Khan & another : (in CA 295/2020)
Wali Khan : (in CA 296/2020)
Saifur Khan & another : (in CA 297/2020)
Nazir Gul & others : (in CA 299/2020)
Nadeem Ahmad & others : (in CA 300/2020)
Muhammad Zada & another : (in CA 304/2020)
Mst. Saeeda Rehman : (in CA 306/2020)
... Respondents

For the Appellants : Mr. Shumail Ahmad Butt, Advocate
General Khyber Pakhtunkhwa.
Mr. Alif Ali Khan, Addl. A.G. KPK
Barrister Qasim Wadood, Addl.A.G. KPK
with Erum Shahcen, DD, HED
Mr. Asif Khan, Litigation Officer, HED.
Mr. Amin Jan, AD, Fisheries
Mr. Gulzar Mahmood, AD Fisheries-KPK.
Engr Falak Niaz, AD(Dost)
Rajbrir Khan, SDO, PHE, KPK
Mr. Sadullah, Asstt. Secretary, BOR, KPK
Mr. Bahim Ullah Khan, Sr. Law Officer,
KPPSC
Mr. Assad Ullah Khan, SO, P&D
Department.
Mr. Amanat Ullah Qureshi, Dy. Secy.,
Finance Deptt. KPK

For the Respondents : Mr. Khalid Rahman, ASC
(in CA 286/2020)
R-2 in Person
(in CA 331/2020)
Haji Muhammad Zahir Shah, AOR
(in CA 333/2020)
Mr. Anan Karim Kundi, ASC
Syed Rifaqat Hussain Shah, AOR
(in CA 335/2020)
Mr. Laquat Ali Tareen, ASC
Syed Rifaqat Hussain Shah, AOR
(in CA 341 and 300/2020)
Mr. Saleem Ullah Ranazai, ASC
(in CA 342/2020 and 243/2020)
Mr. Nasir Mehmood-P, ASC
(in CA 344/2020)
Mr. Muhammad Asif Yousafai, ASC
(in CA 352/2020 and CA282/2020)
Mr. Waseem ud Din Khattak, ASC
(in CA 378/2020 and CA.279/2020)
Mr. Mazammil Khan, ASC
Syed Haziq Ali Shah, ASC
(in CA 360/2020)
R-1 in Person (w/o enter appearance)

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SR

(In CA. 263/2020)
Mr. Muhammad Asif, ASC
(In CA. 266/2020)

Mr. Muhammad Munir Paracha, ASC
Syeed Rifaqat Hussain Shah, AOR
CA. 287/2020

Mr. Asad Jan, ASC
CA. 299/2020

N.R.
CA. 236/2020, CA. 238/2020, CA. 281/2020, CA. 296-297/2020,
CA. 304/2020 and CA. 306/2020.

Date of Hearing : 25.11.2020


JUDGMENT

IJAZ UL AHSAN, J. Through this single judgment, we intend to decide Civil Appeals No. 231, 233, 235, 236, 238, 241, 242, 243, 256, 260, 262, 263, 264, 266, 278, 279, 281, 286, 287, 290, 291, 292, 293, 294, 295, 296, 297, 299, 300, 304 & 306 of 2020, as they involve a common question of law.

2. Through the instant Appeals, the Appellants have challenged the impugned Judgments dated 14.10.2014 passed in Writ Petitions No. 890-P Of 2012, etc by the Peshawar High Court, Peshawar. The Respondents had, through the Constitutional Petitions, sought the regularization of their services, which was allowed.

3. The brief facts giving rise to this lis are that the Respondents were appointed on contract basis against different posts in the erstwhile FATA. The Respondents on different dates received termination notices and, certain others were appointed in their place. The said steps were assailed before the Peshawar High Court by way of

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Constitutional Petitions which were allowed vide order of the High Court dated 05.10.2016. The said judgment of the High Court was challenged before this Court. This Court set aside the judgment of the High Court and remanded the matter back to the High Court for decision afresh vide order of this Court dated 28.11.2018. The High Court vide the impugned judgment allowed the Constitutional Petition of the Respondents. As a result, the Appellant-Department was ordered to regularize the services of the Respondents

4. Leave to appeal was granted by this Court vide order dated 09.03.2020 in the following terms: -

"The learned Additional Advocate General, Khyber Pakhtunkhwa contends that all the Respondents in these petitions were employed either on project posts or on contract basis or were employees under Section 42 of the Companies Act, 2017 and in no circumstances their services were to be regularized. He further contends that in all impugned judgments, the learned High Court has merely allowed writ petitions on basis of similarly placed persons, but without at all advertent to the facts and circumstances of each and every case separately and without applying its mind to the same. He adds that even the laws under which their appointments were made were not advertent to. He submits that the Respondents who are employees on projects or contract employees or Section 42 employees were not liable to be regularized and thus their regularization by the learned High Court through the Impugned Judgment in these petitions was altogether illegal. In support of the contentions, the learned law officer has referred to a three-member judgment of this Court dated 24.06.2014 passed in Civil Appeal No.687 of 2014 (Government of Khyber, Agriculture, Livestock

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and Cooperative Department through its Secretary and others v Ahmad Din and another).

2. We note that some of the petitions are time barred and in one of the petitions even no condonation of delay has been filed. The learned Law Officer states that such will be done by the petitioners.

3. The contentions raised by the learned Additional Advocate General, Khyber Pakhtunkhwa need consideration. Therefore, subject to limitation, leave to appeal is granted in these petitions to consider *inter alia* the same.

5. The learned Additional Advocate General, Khyber Pakhtunkhwa (hereinafter referred to as "KP") submits that the Respondents were employed on contract basis against project posts, hence, their employment was dependant on the life of the project. He further contends that the learned High Court erred in law by extending the application of the KP Employees (Regularization of Services) Act, 2009 (hereinafter referred to as "2009 Act") to the Respondents who were employees of different departments in FATA and hence were not covered by the provisions of the 2009 Act in terms of Article 247(3) of the Constitution of the Islamic Republic of Pakistan (hereinafter referred to as "Constitution"). Further, that the jurisdiction of the High Court was specifically barred to deal with the controversy considering the provision of Article 247 of the Constitution as it existed at the relevant time and was then a part of the Constitution. He adds that the Presidential Order No. 13 of 1972 relied upon by the learned Counsel for the Respondents only provides relief to a specific class of employees, which was different and distinct

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from the class under which the Respondents fell. Further, the High Court has erred in law by misapplying Section 19 of the Civil Servants (Amendment) Act, 2005.

6. Learned Counsel for the Respondents mainly argued that the Respondents ought to be treated at par with other employees who have been regularized. He further contends that under the 2009 Act, the Respondents should be regularized as they were employed before the commencement date of the 2009 Act. Further, the High Court was vested with jurisdiction to adjudicate upon matters related to FATA in light of the 25th Amendment. It has been further contended that the Respondents were regularized because of certain letters of the Government which allowed regularization of certain employees, hence, on the same score, the Respondents ought to be regularized as of right. Moreover, most of the Respondents have been serving the Appellant-Department satisfactorily, hence, they deserve to be regularized on that score too.

7. The questions which are before this Court for determination are as follows:-

- i. *Could the High Court apply the 2009 Act on FATA/PATA?*
- ii. *Could the High Court exercise jurisdiction in matters related to FATA?*
- iii. *What was the effect of Presidential Order No.13 of 1972?*

COULD THE HIGH COURT APPLY THE 2009 ACT ON FATA/PATA?

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8. The learned High Court has held in the impugned judgments that all the Respondents were employed before the cut-off date of the 2009 Act. Further, that, Section 3 of the 2009 Act provides a mechanism of regularization of employees' subject to the fulfilment of certain conditions. In this regard, the Preamble of the 2009 Act is reproduced below for ease of reference as:-

"WHEREAS it is expedient to provide for the appointment and regularization of services of certain employees appointed on ad-hoc basis against civil posts and contract basis against project posts in the Province of the Khyber Pakhtunkhwa" (Underlining is ours)

The aforementioned preamble provides this Court with an insight of what the legislature intended when it promulgated the 2009 Act. The said preamble provides an insight into the purpose and scope of the object of regularization of certain categories of employees of the Province of Khyber Pakhtunkhwa. Nowhere in the said preamble does it provide that the 2009 Act shall be applicable on FATA/PATA. The provision which addresses the question of applicability of the 2009 Act relates to employees of KP and not of FATA/PATA. Section 2 provides definitions which must be taken into consideration while applying the 2009 Act. Section 2(d) specifically defines "Government" as the Government of KP. Therefore, we are unable to agree with the learned High Court in its application of the 2009 Act to FATA/PATA and resultantly, to the Respondents.

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9. Even otherwise, it is worth noting that at the time when the Respondents were employed and subsequently when they were relieved; the 25th Amendment to the Constitution was not in force. As such, the applicable provision of the Constitution was Article 247 which provided an elaborate mechanism for the Parliament on the extension of the law to FATA/PATA. In this regard, Article 247(3) is reproduced as:-

"(3) No act of [Majlis-e-Shoora (Parliament)] shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of [Majlis-e-Shoora (Parliament)] or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situate, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction."

It is nobody's case that the provisions of the 2009 Act were extended to FATA / PATA by following the aforementioned provisions of the Constitution. As such, the learned High Court could not have extended the application of the 2009 Act, or any Act of Parliament or the Provincial Assembly for that matter, to FATA/PATA on the touchstone of the principle of *casus omissus*. The said principle categorically provides that, where the legislature has not provided something in the language of the law, the Court cannot travel beyond its jurisdiction and read something into the law as the same

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would be *ultra vires* the powers available to the Court under the Constitution and would constitute an order without jurisdiction. The same would also be against the principle of Trichotomy of Powers upon which the State functions. All three organs of the State have been given specific powers under the law and as such, the said powers cannot be overstepped. We are therefore inclined to hold that the learned High Court in the impugned judgments has travelled beyond its jurisdiction in applying the 2009 Act to the Respondents which action is *ex facie* erroneous, beyond lawful authority and without jurisdiction.

COULD THE HIGH COURT EXERCISE JURISDICTION IN MATTERS RELATED TO FATA/PATA?

10. The 25th Amendment was passed in the National Assembly on 24.05.2018 and subsequently by the Senate on 25.05.2018. Section 9 of the Constitution (Twenty-Fifth Amendment) Act, 2018 omitted Article 247 of the Constitution with effect from 04.06.2018 and, *inter alia*, merged FATA/PATA in the province of KP. The Respondents were employed before the incorporation of the 25th Amendment in the Constitution and cannot be given retrospective effect. As such, Article 247 applies to the matter at hand because the Respondents were appointed at a time when the said Article was in force and had not been omitted from the Constitution. It has not even been argued and indeed could not be argued that the 25th amendment to the Constitution has retrospective effect.

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11. Article 247 of the Constitution, *inter alia*, provided that the High Court or the Supreme Court could not exercise jurisdiction in a Tribal Area i.e. FATA/PATA unless the Parliament provided otherwise. The only exception provided in the said sub-article is that nothing would affect the jurisdiction of the High Court or Supreme Court in relation to a Tribal Area immediately before the commencing day. The said exception does not apply in the instant controversy, therefore, the main focus of our scrutiny will be Article 247(7) inasmuch as it provides for an ouster of jurisdiction. For ease of reference, Article 247(7) (as it was then) is reproduced below as:-

"(7) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless [Majlis-e-Shoora (Parliament)] by law otherwise provides:

Provided that nothing in this clause shall affect the jurisdiction which the Supreme Court or a High Court exercised in relation to a Tribal Area immediately before the commencing day."

A bare perusal of the abovementioned Article of the Constitution makes it clear that the lawmakers had specifically ousted the jurisdiction of the Supreme Court and the High Court in the exercise of jurisdiction under the Constitution in relation to FATA/PATA. The learned High Court in the impugned judgments has placed reliance on the 25th Amendment and exercised jurisdiction concerning the controversy which is before this Court. As stated above, the Respondents were appointed before the said Amendment was introduced. As such, the 25th Amendment could not have

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been given retrospective application. Consequently, the learned High Court, instead of examining the merits of the cases of the Respondents on the touchstone of Article 247, went beyond its powers and applied the 25th Amendment retrospectively. Giving the 25th Amendment retrospective application would open a floodgate of unnecessary legal and constitutional complications which can and should be avoided by giving effect to the letter and spirit of the Constitution and the intent and purpose of Article 247 and its subsequent omission by way of the 25th amendment to the Constitution. Reliance in this regard is placed on the case of Hidayat Ullah v. Muhammad Yunus and Others [PLD 2020 SC 362] the relevant part of which is reproduced below as:-

"5. Learned Advocate General has supported those submission with the adjoined ground that the orders passed by the relevant fora under the FCR are all dated prior to the 25th Constitutional Amendment which came to effect on 31.05.2018. Thus, the recommendations of the Council of Elders dated 15.12.2015 until the decision of the review by the PATA Appellate Tribunal on 24.04.2018 predate the said Constitutional Amendment. Consequently, at the relevant time when the judgment was delivered, the provisions of Article 247(7) of the Constitution were in force.

"6. The ouster of jurisdiction of the High Court under Article 199 of the Constitution is specific for the reason that cause of action for civil relief of such Sersaya as well as the residence of the parties and the locus of the corpus of the dispute, namely, the Coal mines are located within the Kohat Frontier Region. Consequently, the High Court had no jurisdiction to entertain the writ petition. Indeed, the aspect of the case has not been considered in the impugned judgment at all."

12. It may also be noted that the Supreme Court and High Court (Extension of Jurisdiction to Federally

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Administered Tribal Areas) Act, 2018 was to be made applicable from a date which was to be notified by the Federal Government. However, no such date had been notified at the time the High Court took cognizance of the matter and in any event, it did not consider or apply its judicial mind to this material aspect of the *lis* before it. Even otherwise, if the said Act is taken to be applicable from the date of its promulgation, the Respondents cannot take the benefit of its provisions because the Respondents were admittedly employed before the said Act was promulgated while Article 247 of the Constitution still held the field. As such, the learned High Court did not have jurisdiction to entertain the petitions in question. We note that, in one of the impugned judgments, the learned High Court has candidly conceded that it is unaware whether the 2009 Act has been made applicable to FATA/PATA or not. Given this, we are unable to see how and on what basis the learned High Court proceeded to apply the said Act to the case of the Respondents.

WHAT WAS THE EFFECT OF PRESIDENTIAL ORDER NO. 13 OF 1972?

13. We note that some of the Respondents seek the benefit of the Centrally Administered Tribal Areas (Employees' Status) Order, 1972 ("Presidential Order No. 13 of 2012"). In essence, the learned Counsel for the said Respondents has claimed that since all the employees recruited in FATA are deemed to be employees of the Provincial Government on deputation with the Federal Government, thus, the benefit of the 2009 Act should automatically extend to them. In this

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regard, the Respondents have placed reliance on Paragraph 3 of the Presidential Order which reads as follows:-

"3. Status of the employees of the Centrally Administered Tribal Areas:- Notwithstanding anything contained in their conditions of service, the employees shall, as from the appointed day, be employees of the Provincial Government and shall work under the overall administrative control of the Provincial Government, on the same terms and conditions of service as respects remuneration, leave and pension and the same rights as respects disciplinary matters or tenure of office as were applicable to them immediately before that day."

A bare perusal of the aforementioned paragraph shows that the Presidential Order was applicable to those employees who were already in service on the appointed day. What this means, in essence, is that the said Presidential Order was specific, and, as such, its application could not be extended to cover the Respondents. The matter of interpretation of a Presidential Order has already been dealt with by this Court. In this regard, we find substance in the stance taken by the learned AAG that the Respondents were appointed at a time which is beyond the applicability of the Presidential Order which was applicable only to those who were in service at the time of promulgation of the said Order. The learned AAG has placed reliance on this Court's Order dated 22.06.2010 to conclude that the Respondents were not in service at the time of promulgation of Presidential Order No. 13 of 1972, therefore, the same is inapplicable to them. We find that the learned High Court has erred in law in applying the said Presidential Order to the Respondents in a universal manner. Even otherwise, employees of FATA as such cannot be treated

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as provincial employees as the same came under the control of the Federal Government and not the Provincial Government. For the said reasons, we are unfortunately unable to agree with the learned High Court in its findings to the effect that the Respondents were under the control of the Provincial Government and as such, came under the umbrella of the 2009 Act.

14. The learned High Court has in the impugned judgments held that, by not regularizing the Respondents and by regularizing others, the Appellants have committed discrimination. The said finding is not based on any legal or factual basis. Firstly, even when others have been regularized, the circumstances and terms and conditions of their employment were different. If some have illegally been regularized, the petitioners cannot claim equal treatment with them. If and when the question of legality and validity of their regularization comes before us, we will pass appropriate orders after considering the facts, circumstances and merits of each case. It has been repeatedly held by this Court that regularization is not a vested right but requires a statutory basis which is admittedly absent in the instant case. As such, the present Respondents merely rely on the fact that others have been regularized and so should they, which is not a legal ground per se. Where a contractual employee wishes to be regularized, he must demonstrate statutory basis for such a claim, in the absence of which, relief cannot be granted solely on the principle of "similarly placed". Such a course of

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action would tantamount to making one right out of two wrongs which is not permissible in the law.

CAN THE RESPONDENTS, BEING PROJECT EMPLOYEES, CLAIM REGULARIZATION BASED ON LONG SERVICE?

15. It is trite that long service is no ground for regularization. As stated above, regularization has to be supported by legislation and is not an automatically accruing right. Even if we agree with the findings of the learned High Court that the Respondents have been serving efficiently for many years, it is worth noting that the fact that the Respondents were project employees has not been controverted. As such, Section 3 in its plain language excludes project employees from the benefit of regularization under the provisions of the 2009 Act. Therefore, keeping in view the language of the 2009 Act itself, there appears no lawful basis for the Respondents to claim beneficial interpretation of the 2009 Act as the Court cannot overstep its powers to add language to a statute which the legislature has not provided.

16. The Impugned Judgments of the learned High Court proceed on an incorrect actual and legal premise and have erroneously applied the law, rules and regulations to the facts and circumstances of the cases before it. A clear legal and jurisdictional error in exercise of jurisdiction by the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan is floating on the surface of the record which makes the judgments unsustainable.

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17. Therefore, for reasons recorded above, we allow the titled Appeals and set aside the Impugned Judgments of the Peshawar High Court passed in Writ Petition No.390-P of 2012, etc. —

Prof. H.G.
Prof. S
Prof. S

Certified to be True Copy

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Senior Court Associate
Supreme Court of Pakistan
Islamabad

Announced in Court on 28.01.22 at
Islamabad

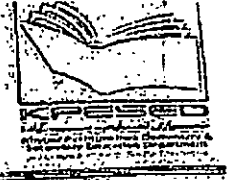
Sayyid
Judge



CR No:	<u>2614/22</u>	Civil/Criminal
Date of Presentation:	<u>29-1-22</u>	
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No of Folios:	<u>50</u>	
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Court Fee Stamp:	<u>36.62</u>	
Date of Completion of Copy:	<u>31-1-22</u>	
Date of Delivery of Copy:	<u>1/2/2022</u>	
Compared by/Prepared by:	<i>[Signature]</i>	
Received by:	<i>[Signature]</i>	



OFFICE OF THE DISTRICT EDUCATION OFFICER
DISTRICT MOHMAND (Male)
Ph. No. 0924-290180
FAX 924290180
Email: omohmand@gmail.com



NOTIFICATION.

- a. WHEREAS the following twenty (20) PSTs' services were conditionally regularized by the Director of Education, FATA bearing Endst No. 2532 dated 26/02/2018 and Notification No. SO (E) /SSD/CSTR-99-108 dated 11/05/2012.
- b. AND WHEREAS in compliance with the decision the then Agency Education Officer conditionally regularized the services of the following twenty (20) teachers against PST post BPS 12 vide No. 2619-28/(Community File) dated 30/05/2018.
- c. AND WHEREAS the then AEO clearly mentioned in the adjustment order that if the Supreme Court of Pakistan under CPLA No. 450-P/2016 decided to set aside the decision made by Honorable High Court Peshawar, this regularization will stand cancelled and these teachers will neither file Departmental Appeal nor appeal in any court of Pakistan against the Appointing Authority.

AND NOW THEREFORE, in compliance with the judgment of the Honorable Supreme Court CPLA No (in CA 300/2020), announced on 28/01/22, the competent authority, Mr. Sheraz Ahmad, District Education Officer District Mohmand is pleased to withdraw the adhoc/contract order of the following twenty (20) PSTs issued vide this office under Endst No. 2619-28/(Community File) dated 30/04/2018 in respect of the following PSTs with immediate effect.

S #	Name/Fathers	Name of Community Teacher	Posting at Regular School
1	Dilwar Khan S/O Hakeem Khan	CS Anargi Payan	GPS Shamsha Guno
2	Jamal Shah S/O Habib Khan	CS Shaji Bedmanai	GPS Qari Kili Kamali
3	Nazir Gul S/O Nawab Khan	CS Mamazai Mir Alam	GPS Zabri Jowar
4	Dawood Shah S/O Saddru Din	CS Shamir Khan Abad Shamsha	GPS Said Khan Kor 02
5	Hussain Shah S/O Saeed Mastan Shah	CS Matina Koda Khel	GPS Atto Khel No. 1
6	Muhammad Khan S/O Muhammad Wali	CS Ghafoori Baidmanai	GPS Mittai
7	Hikmat Ullah S/O Abdur Rahim	CS Gulonu Sheikh Baba	GPS Chamarkand No. 2
8	Sanobar Khan S/O Sarkari Khan	CS Gulonu Sheikh Baba	GPS Matta Ghulam
9	Niaz Muhammad S/O Noor Muhammad	CS Yara Khel Bedmanai	GPS Khajli Kor
10	Sehat Badshah S/O Amir Husro	CS Sana Khel Shandara	GPS Faiz Ali Mirgat
11	Saeed Ahmad Shah S/O Muhammad Afzal	CS Shaji Bedmanai	GPS Khadi Kas
12	Muhammad Huzoor Badshah S/O Hazrat Badshah	CS Sana Khel Shanzara	GPS Rahman Wali

-74-

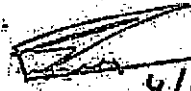
13	Muather Khan S/O Sher Rahman	CS Yara Khel Bedmanai	GPS Spinki Tangi
14	Fazal Dayan S/O Saddru Din	CS Shamir Khan Abad Shamsha	GPS Gulbaz Safi
15	Samandar Khan S/O Khatim Jan	CS Malina Koda Khel	GPS Kogpand
16	Bakhtiar Gul S/O Muhammad Gul	CS Jarobi Dara Abdullah	GPS Said Rahman Gurbaz
17	Fayaz Khan S/O Badaam Khan	CS Khatim Jan Jarobi Dara	GPS Turangzai Baba G
18	Asif Khan S/O Jamal	CS Samghakhi	GPS Adam Saaz
19	Mukammil Shah S/O Hazrat Muhammad	CS Anargi Payan	GPS Atam Kili
20	Zahir Shah S/O Abdul Wahidi	CS Sheikh Baba	GPS Navi Kili

(SHERAZ AHMAD)
District Education Officer,
(M) District Mohmand.

Endst No. ²⁰3824- Dated 4/10/2022

Copy forwarded to the:

1. P.A to Deputy Commissioner Mohmand
2. DMO Mohmand Tribal District
3. P.A to District Account Officer District Mohmand.
4. P.A to Director E & SE Khyber Pakhtunkhwa Peshawar.
5. Pay Clerk Local Office District Mohmand.
6. SDEO/ADEO concerned for stoppage of their salaries and necessary entry to this effect should be made in the service books.
7. Office Record


4/10/22
District Education Officer (M)
District Mohmand

To

15

75

The Director Elementary and Secondary Education
KPK Peshawar

**Subject: Departmental Appeal against the order dated 04.10.2022
whereby appointment order dated 26.02.2018 of the
appellant has been withdrawn.**

Prayer

On acceptance of instant Departmental Appeal the pensionary benefits may kindly be granted in favor of the appellant alongwith all back benefits.

Respected Sir

1. That initially the appellant has appointed as PST BPS-07 on 13/04/2007 as community base school teacher after recommendation of Selection Committee and after fulfilling of the codal formalities for the said post.
2. That after appointment the appellant performed his duty with full devotion and hard work and no complaint whatsoever has been made against the appellant.
3. That the appellant performed his duty till 31.12.2010 with respondent Department and after that due to closer of community school the service of the appellant has been

To

76)

The Director Elementary and Secondary Education
KPK Peshawar

**Subject: Departmental Appeal against the order dated 04.10.2022
whereby appointment order dated 26.02.2018 of the
appellant has been withdrawn.**

Prayer

On acceptance of instant Departmental Appeal the pensionary benefits may kindly be granted in favor of the appellant alongwith all back benefits.

Respected Sir

1. That initially the appellant has appointed as PST BPS-07 on 13/04/2007 as community base school teacher after recommendation of Selection Committee and after fulfilling of the codal formalities for the said post.
2. That after appointment the appellant performed his duty with full devotion and hard work and no complaint whatsoever has been made against the appellant.
3. That the appellant performed his duty till 31.12.2010 with respondent Department and after that due to closer of community school the service of the appellant has been

- (77)
- C. That no Departmental Appeal inquiry has been conducted against the appellant.
- D. That no opportunity of defense and personal hearing provided to the appellant.
- E. That it is a well settled principle of law that no one can be condemn unheard.
- F. That similar nature Service Appeal No. 4904/2021 has already been accepted by this Hon' able Tribunal on 31.01.2022.

It is therefore most humbly prayed that on acceptance of instant Departmental Appeal the appellant may kindly be reinstate in service OR compulsory retirement from service alongwith pensionary benefits may kindly be granted in favor of the alongwith all back benefits.

Dated 03.11.2022

Your Sincerely


Daud Khan

"K" (78)

(5) (1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.



Khyber Pakhtunkhwa Service Tribunal Peshawar

In Re S.A No. 4404 of 2021

Diary No. 4541

Dated 25/4/2021

Abdul Malik s/o Nasrullah Jan R/o Qayyum Khel, Bar
Qamber Khel, Khajori Tehsil Bara District Khyber,
..... Appellant

VERSUS

- 1) Director Education FATA Secretariat Warsak Road Peshawar.
 - 2) District Education Officer Kuram District Kuram Para Chinar.
 - 3) Additional District Education Officer Lower and Central Kuram Sadda.
 - 4) District Education Officer District Khyber at Jamrud.
- Respondents

Filed to-day

Registrar

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 30/12/2020 WHEREBY THE SERVICE OF THE APPELLANT HAS BEEN CANCELLED AGAINST WHICH THE APPELLANT FILED DEPARTMENTAL APPEAL ON 01/01/2021 WHICH HAS NOT BEEN DECIDED WITHIN THE STATUTORY PERIOD 90 OF DAYS.

Re-submitted to-day and filed.

Registrar 16/4/2021

PRAYER

ON ACCEPTANCE OF THIS APPEAL THE IMPUGNED ORDERS DATED

ATTESTED

[Signature]
Registrar
Khyber Pakhtunkhwa Service Tribunal
Peshawar

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 4904/2021

Date of Institution ... 05.04.2021

Date of Decision ... 31.01.2022



Abdul Malik S/o Nasrullah Jan R/o Qayyum Khel, Bar Qamber Khel, Khajori Tehsil Bara District Khyber ... (Appellant)

VERSUS

Director Education FATA Secretariat Warsak Road Peshawar and others. ... (Respondents)

Roeda Khan, Advocate ... For Appellant

Muhammad Adeel Butt, Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQU-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- This single judgment

shall dispose of the instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein:-

1. 4905/2021 titled Irfan Ullah ✓
2. 4906/2021 titled Salamat Ullah
3. 4907/2021 titled Zaheer Zada
4. 4908/2021 titled Saqlb Khan
5. 4909/2021 titled Kheyal Muhammad
6. 4910/2021 titled Sher Alam
7. 4911/2021 titled Azim Ullah ✓
8. 4912/2021 titled Mst. Zalida

ATTESTED

(Signature)
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

9. 4913/2021 titled Syed Rehman

02. Brief facts of the case are that the appellants were appointed as PTC Teacher in Communal School in BPS-7 in the year 1998 to 2004 at erstwhile Khyber Agency (Now District Khyber). Being un-trained, services of the appellants were terminated vide dated 31-12-2012, but such order was rescind vide order dated 03-01-2013, as the competent authority vide order dated 05-04-2013 circulated the decision to consider appointment of all those un-trained/un-qualified local community school teachers for re-appointment against the available sanctioned posts of PST with the existing recruitment criteria subject to the condition that they will acquire the prescribed professional and academic qualification for the post within 24 months after their re-appointment against the regular PST post. Upon appointment against regular posts, the appellant failed to acquire the same, hence were terminated from service vide order dated 31-07-2015, against which the appellant filed departmental appeal followed by Writ Petition No. 3682-P/2015, which was dismissed vide judgment dated 28-09-2016. The appellant challenged the decision of the High Court in the Supreme Court of Pakistan vide CPLA No. 3464-P/2016, which was disposed of vide judgment dated 27-04-2017 on the terms that let the petitioners submit applications to the respondents and we are confident that they will look into this matter sympathetically in view of the facts and circumstances of the case, obviously, anybody already legally appointed, should not be disturbed. In pursuance of the judgment, the appellants submitted applications to the respondents but they were not appointed and such decision was communicated to the appellants vide order dated 27-09-2017, hence they again filed Writ Petition No. 4283-P/2017, which was accepted vide judgment dated 28-06-2018. In pursuance of the judgment, the appellant were re-appointed vide order dated 22-06-2019 subject to decision of the supreme court in CPLA already filed. The august Supreme Court of Pakistan decided the case in favor of the petitioners (the present respondents) vide

ATTESTED

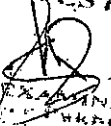
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

judgment dated 28-06-2018 and in pursuance of the judgment the re-appointment order dated 22-06-2019 was cancelled vide order dated 30-12-2020; Feeling aggrieved, the appellants filed departmental appeals, which were not responded, hence the instant service appeal with prayers that the impugned order dated 30-12-2020 may be set aside and the appellants may be re-instated in service with all back benefits or any other remedy which this tribunal deems fit may also be granted in favor of the appellants.

03. Learned counsel for the appellants has contended that the appellants has not been treated in accordance with law, hence their rights secured under the Constitution has badly been violated; that the impugned order dated 30-12-2020 is void ab initio as it has been passed without fulfilling the codal formalities; that services of the appellants were dispensed with, without observing the procedure as prescribed in law; that the appellants are having services of almost 20 years at their credit and it would not be just on part of the appellants to ignore their services rendered so far; that the appellants were initially project employees but later on were regularized, hence they are entitled to pensionary benefits, as the apex court in various judgments has already granted relief in similar nature cases; that cases of the appellants may also be considered on the same footings on the principle of consistency and they may be granted pensionary benefits keeping in view their length of service.

04. Learned Additional Advocate General for the respondents has contended that the appellants were initially appointed on project posts PST Communal School Teachers for the project period only; that the appellants were terminated from service on 31-12-2012 for the reason that they were un-trained; that the appellants were re-appointed subject to the condition to acquire the prescribed academic and professional qualifications within 24 months after their appointments, otherwise their re-appointment orders would stand cancelled; that the appellant failed to acquire the required qualification, hence they were again

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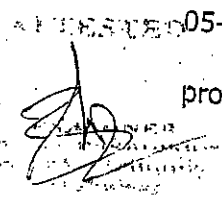
ATTESTED

 EXAMINER
 TRIBUNAL
 PESHAWAR

4 (9)

terminated vide order dated 31-07-2015, against which the appellant filed WP No 3682-P/2015, which was dismissed vide judgment dated 28-09-2016; that the appellants filed CPLA No 3464-P/2016, which was also disposed of on 27-04-2017 with the remarks that the petitioners will submit application before respondents; that upon submission of applications, their requests were examined but were found devoid of merit, hence were rejected; that in compliance with judgment dated 28-06-2018 of Peshawar High Court the appellants were re-instated again with the condition of decision of supreme court in CPLA already filed; that the supreme court of Pakistan decided in favor of the appellants (the present respondents) vide judgment dated 28-06-2018, hence they were again terminated from service vide order dated 30-12-2020; that cases of the appellants had already been decided by the Apex Court, hence the present appeals being devoid of merit may be dismissed.

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that the appellants were appointed as PTC teachers/communal school teachers (BPS-7) on contract basis in communal schools in erstwhile Khyber agency (now district Khyber) in the year, 1998 to 2004. In the year 2006, three months PTC short-term training courses were offered to all such teachers and nominated 57 un-trained PTC teachers, while the appellants were dropped by informing them that they will be selected in the next available training course in the near future. The appellants were performing their duties to the entire satisfaction of their high ups and when they shocked that vide order dated 31-12-2012, their services were terminated on the ground of being un-trained, however the above said termination order was cancelled and the appellants were re-appointed against regular posts under the policy letter dated 05-04-2013, subject to the condition that they will acquire the prescribed professional training within 24 months. Record is silent as to whether any such


APPEARED


(16)

training was offered to the appellants within the prescribed period or otherwise, as the appellants themselves were unable to acquire such qualification, rather it was responsibility of the respondents to arrange such training for them. After expiry of the period, the appellants were again terminated vide order dated 31-07-2015, against which the appellants filed departmental appeals followed by writ petition No. 3682-P/2015, which was dismissed vide judgment dated 28-09-2016 on the grounds that the appellants failed to acquire the prescribed qualifications. It however was responsibility of the respondents to equip them with the required qualification, as it was beyond control of the appellants to select themselves for such training, rather it was upon discretion of the respondents to select candidates by turn for such trainings. The appellants probably found such opportunity at a belated stage, but during the course of litigation, the appellants failed to convince the honorable court on the point that professional trainings are conducted by respondents and they must not suffer for follies of the respondents, hence they lost their case before the court, against which the appellants filed CPLA No. 3464/2016, which was decided vide judgment dated 27-04-2017 on sympathetic terms that let the appellants submit applications to respondents as they have worked for quite some time against regular posts and we are confident that respondents will look into this matter sympathetically in view of the facts and circumstances of the case, obviously, anybody already legally appointed, should not be disturbed. In pursuance of the judgment, the appellants filed applications before the respondents but their requests were turned down, against which the appellants again filed writ petition No 4283-P/2017, which was decided in favor of the appellants vide judgment dated 28-06-2018 and in pursuance of the judgment, the appellants were re-appointed vide order dated 22-06-2019 subject to decision of supreme court in CPLA already filed. The august Supreme Court of Pakistan decided the case in favor of the petitioners (the present respondents) and in compliance, the order of their appointment dated 22-06-2019 was cancelled vide order dated 30-12-2020,

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ATTESTED


 EXAMINER
 Member Pakhukhwa
 Service Tribunal
 Islamabad

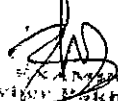
6 (11)

against which the appellants filed departmental appeals, which were not responded, hence the instant service appeals.

07. We have observed that the appellants worked against the PTC posts on contract against project posts for quite some time, thereafter, they were appointed against regular posts under the policy devised by the government that all un-trained/un-qualified local community teachers will be re-appointed against available sanctioned posts of PST with the existing recruitment criteria subject to the condition that they will acquire the prescribed qualification within 24 months. The appellants, however, were penalized for not acquiring the prescribed qualification within the stipulated timeframe, which however was responsibility of the respondents to arrange such training for them well within time and the appellants were not supposed to suffer for lapses of the respondents. While relying on judgment in Writ Petition No. 4657-P/2016, the honorable High Court Peshawar decided in their favor vide judgment dated 28-06-2018. It is pertinent to mention that in Writ Petition No. 4657-P/2016 decided on 29-03-2018, the petitioners were also similarly placed employees being PTC teachers in communal schools and in pursuance of that judgment, their services were regularized. The only difference between the present appellants and the appellants in that case was that they had acquired the prescribed qualifications but the present appellants did not find opportunity to acquire such training, hence they lost the opportunity on this single point inspite of the fact that it was not their responsibility to select themselves for such training, rather it was mandatory upon the respondents to select and send them for such training.

08. The appellants contested their case for quite longer time but they did not succeed due to technicalities of not acquiring the prescribed qualification. They however served the department for a period of almost 20 years and there is no single complaint against them. The appellants, even otherwise has become overage to get their jobs elsewhere. Equity and fair play demands that the long

ATTESTED


Attestor
Nyir Bakhtkwa
Service Tribunal
Peshawar

7 (12)

services rendered by the appellants against the posts shall not go in waste and it would be un-just to ignore their long and un-blemished service. It is also an admitted fact that the appellants served initially on contract but later on they were appointed against regular posts. We are of the considered opinion that they deserve to be treated sympathetically on the issue of grant of pensionary benefits. Regarding the question of entitlement of the appellants to the pension, we would like to reproduce the relevant rules of the pension rules, 1963 as under:

2.2. *Subject to any special rules, the services of the government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.*

2.3. *Temporary and officiating service shall count for pension as indicated below-*

(i) *government servant borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and*

(ii) *Temporary and officiating service followed by confirmation shall also count for pension or gratuity.*

The rules ibid reveals that service of the government servant begins to qualify for pension from the very first day of his/her taking over charge, irrespective of the fact whether his/her appointment and entry into service was temporary or regular. It is also clear from sub-rule-(i) that continuous temporary service of a civil servant shall also be counted for the purpose of pension or gratuity and by virtue of sub rule- (ii) temporary and officiating service followed by confirmation shall be counted for pension or gratuity.

09. The august Supreme Court of Pakistan in its judgment reported as PLD 1973 SC 514 has held that "it must now be taken as well settled that a person who enters government service has also something to look forward after his retirement to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well settled that pension like salary of

ATTESTED

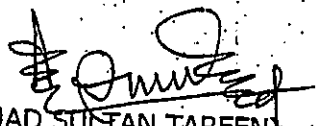
EXAMINER
Siyah Pakhtunkhwa
Service Tribunal
Peshawar


8 (13)

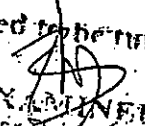
a civil servant is no longer a bounty but a right acquired after putting in satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."

10. In the instant case, the appellants served continuously for almost 20 years, initially on contract and followed by regular service and as per pension rules, 1963 the appellants has qualified the prescribed service for pensionary benefits. In view of the foregoing discussion, the instant appeal as well as the connected service appeals are partially accepted by modifying the impugned order dated 30-12-2020 into compulsory retirement for the purpose of pensionary benefits alongwith ancillary benefits, with direction to the respondents to finalize the pension cases of the appellants for the entire period of their service. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
31.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQU-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 02/03/22
Number of Words 3600
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Date of Delivery of Copy 02/03/22

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 1371/2017

Date of institution ... 12.12.2017
Date of judgment ... 26.03.2019



(Appellant)

Mr. Far Rehman,
Jama Masjid Community School, Zaukai,
Central Kurram Agency.

VERSUS

Director Education FATA Secretariat, Warsak Road Peshawar.
Agency Education Officer, Kurram Agency, Para Chinar.
Additional Agency Education Officer, Lower & Central Kurram, Sadda.
(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
ORDER DATED 05.05.2016 WHEREBY THE SERVICES OF THE
APPELLANT WAS DISMISSED WITH W.E.F. 1ST JULY 2016 AGAINST
WHICH HE FILED DEPARTMENTAL APPEAL ON 19.08.2016
BEFORE THE RESPONDENT NO. 1 WHICH WAS REJECTED BY
THE APPELLATE AUTHORITY ON 27.09.2017 WHICH WAS
COMMUNICATED TO APPELLANT ON 28.11.2017 BY THE
RESPONDENT NO. 3 VIDE LETTER NO. 2925/Edu.

For appellant.
For respondents.

Mr. Khush Dil Khan, Advocate
Mr. Ziaullah, Deputy District Attorney

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

MR. MUHAMMAD AMIN KHAN KUNDI
MR. HUSSAIN SHAH

JUDGMENT

MR. MUHAMMAD AMIN KHAN KUNDI, MEMBER - Counsel for the

Appellant present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Daud
Jan, Senior Scale Stenographer for the respondents present. Arguments heard
and record perused.

ATTESTED

[Signature]
Secretary

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Brief facts of the case as per present service appeal are that the appellant was serving in Education Department as Primary School Teacher in Male Community School. His service was dispensed with w.e.f 01st July 2016 due to lack of prescribed qualification i.e (Untrained PST) vide order dated 05.08.2016 by the Additional Agency Education Officer Lower and Central Kurram Sadda. The appellant filed departmental appeal before Director Education FATA on 18.08.2016 but the same was rejected vide order dated 27.09.2017 and communicated to the appellant vide letter No: 2925/Edu dated 28.11.2017 hence, the present service appeal on 12.12.2017.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was appointed as Primary School Teacher vide order dated 27.06.2013 by the competent authority but his service was dispensed with on the ground of lack of prescribed professional qualification i.e PST Certificate. It was further contended that the appellant was having higher qualification of M.A. Political Science and was also having B.Ed Degree but the respondent-department has ignored the said qualification of the appellant and his service was dispensed with without any show-cause notice and affording opportunity of hearing therefore, the impugned order is illegal and liable to be set-aside. It was further contended that the appellant was also granted PST Certificate on 20.01.2017 therefore, the appellant is fully qualified.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was appointed as Primary School Teacher vide order dated 27.06.2013 but later on his service was dispensed by the competent authority,

(VX)

(12) - 89 -

with effect from 1st July 2016 due to lack of prescribed professional qualification on the basis of letter No. 9822-35 dated 02.08.2016 as well as verbal direction and S S D notification No. SO (E)/SSD/CSTR/99-108. It was further contended that since the PST Certificate was necessary but the appellant was not having the PST Certificate at the time of his appointment therefore, the competent authority has rightly dispensed with his service and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was appointed as Primary School Teacher vide order dated 27.06.2013. The record further reveals that the appellant has having M.A Political Science Degree. The record further reveals that the appellant was also having B.Ed Degree issued on 26.12.2013. Meaning thereby that at the time of impugned order dated 05.08.2016, the appellant was having B.Ed Degree. The record also reveals that PST Certificate has also been issued to the appellant on 20.01.2017 and the appellant was having more than three years service at the time of impugned order. It is also well settled law that if any adverse order is passed against anyone than he should be given opportunity of hearing, show-cause notice as to why such adverse order may not be passed against him on such and such grounds. Record reveals that the respondent-department has dispensed the service of the appellant without any show-cause notice or giving opportunity of personal hearing therefore, the respondent-department has violated the principle of natural justice which has rendered the impugned order illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order with the direction to the respondent-department to issue show-cause notice to the appellant that why his service may not be dispensed with on such and such grounds and after replying the show cause notice ~~same~~ and giving opportunity of personal

6/20/17

ATTESTED

(Signature)

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earing. pass order deem appropriate to the respondents. However, the reinstatement of the appellant will be subject to the outcome of decision of show-cause notice. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
26.03.2019

Muhammad Amin Khan Kundi
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Hussain Shah
(HUSSAIN SHAH)
MEMBER

Certified to be true copy
[Signature]
Secretary, In-charge
Roshanwar

27-3-19
Number of Pages 1600
Copying Fee 10/-
Stamp 10/-
Date of Receipt 17-4-18
Date of Disposal 17-4-18

ED

2009 S C M R 1

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C.J., Ijaz-ul-Hassan Khan, Muhammad Qaim Jan Khan
and Ch. Ejaz Yousaf, JJ

**GOVERNMENT OF PUNJAB, through Secretary Education, Civil Secretariat, Lahore and
others---Petitioners**

Versus

SAMEENA PARVEEN and others---Respondents

Criminal Petitions Nos.71-L and 72-L, Civil Petitions 215-L, 216-L, 217-L, 218-L, 224-L to 236-L of
2006, decided on 29th April, 2008.

(On appeal from the judgment, dated 29-1-2008 of the Lahore High Court, Lahore passed in Cr.O.P.
No.370/W and 561/W of 2007. Writ Petitions Nos.11525, 11263, 11516, 11662, 11663, 11766, 11881,
11835, 12136 and 12185 of 2007, 86, 123, 274, 345, 599, 643 and 11619 of 2008).

Civil service---

---Administration of justice---If a Tribunal or the Supreme Court decides a point of law relating to
the terms and conditions of a civil servant who litigated, and there were other civil servants, who may
not have taken any legal proceedings, in such a case, the dictates of justice and rule of good
governance demand that the benefit of the said decision be extended to other civil servants also, who
may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other
legal forum---All citizens are equal before law and entitled to equal protection of law as per Art.25 of the
Constitution.

Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996
SCMR 1185 and Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005
SCMR 499 fol.

Mst. Muqqadas Akhtar and another v. Province of Punjab through Secretary Education Department,
Government of Punjab and another 2000 PLC (C.S.) 867 ref.

Ms. Afshan Ghazanfar, A.A.-G., Punjab and Rana Abdul Qayyum, D.S. (Education) Punjab for
Petitioners.

S.M. Tayyab, Senior Advocate Supreme Court for Respondents (in Cr.Ps. Nos.71-L, 72-L and C.P.224-L
of 2008).

Nemo for other Respondents.

ORDER

ABDUL HAMEED DOGAR, C.J.---Through this order we intend to dispose of above captioned
petitions filed against common judgment, dated 29-1-2008 passed by learned Judge in Chambers of
Lahore High Court, Lahore whereby Cr.O.P. No.370/W and 561/W of 2007, Writ Petitions Nos.11525,
11263, 11516, 11662, 11663, 11766, 11881, 11835, 12136 and 12185 of 2007, 86, 123, 274, 345, 599, 643
and 11619 of 2008 filed by respondents were allowed and the impugned orders passed by

tioner/authority were set aside.

Briefly, stated facts giving rise to the filing of instant petitions are that respondents were appointed as PTC Teachers during the year 1995/1996 after completion of all legal requirements and they joined their respective place of posting. After sometime, their appointments were cancelled being bogus vide order No.277/E-1, dated 3-4-1998. This order was assailed before learned Lahore High Court, Lahore and same was declared to be without lawful authority in the case reported as Mst. Muqqadas Akhtar and another v. Province of Punjab through Secretary, Education Department, Government of Punjab and another 2000 PLC (C.S.) 867. The relevant paragraph is reproduced as under:--

"Consequently, the petitioners are declared to be in service and the action of the Headmasters/Incharge of the Schools stopping the petitioners from performance of their duties as PTC Teachers on the basis of the above said impugned order, is declared to be without lawful authority. It is, however, clarified that the department is at liberty to proceed against petitioners, if so desired, on individual basis under the relevant law and under the Punjab Civil Servant (Efficiency and Discipline) Rules, 1975."

In view of above judgment, the respondents were absolved of the charges of bogus appointments. But later on once again the services of respondents were terminated vide order, dated 3-8-2005, which order was challenged before learned Lahore High Court, Lahore through Writ Petition No.16864 of 2005. The said writ petition was allowed vide judgment, dated 11-12-2006 and the impugned order, was declared as illegal and without lawful authority. Similarly, one of the teachers namely Mst. Naseem Akhtar assailed the order, dated 3-8-2005 before Punjab Service Tribunal, Lahore through Appeal No.903 of 2006 which was also allowed vide judgment, dated 4-9-2006. The said judgment was maintained by this Court in Civil Petition No.1960-L of 2006 vide judgment, dated 2-11-2006. On 26-9-2007 once again the services of respondents were terminated. Feeling aggrieved they filed above mentioned petitions before the learned Lahore High Court, Lahore which were allowed vide impugned judgment as stated above.

3. It is mainly contended by learned A.A.-G. Punjab appearing on behalf of petitioners that the jurisdiction of the learned High Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 in matters involving determination of terms and conditions of civil servants. She further contended that the appointments of the respondents were bogus and fake as they were never selected by the competent authority, therefore the orders of dismissal passed by departmental authority were in accordance with law, which did not call for any interference by this Court.

4. On the other hand, Mr. S. M. Tayyub, learned Senior Advocate Supreme Court appearing on behalf of some of the respondents supported the impugned judgment and contended that appointments of respondents had taken place in accordance with rules and prescribed procedure. They submitted their applications in pursuance of advertisement of the posts of PTC Teachers. They passed the required test and were appointed by the competent authority. According to him, the respondents were in service for about 9-10 years and during this period no objection was raised, and subsequently on vague allegations they were dismissed from service. He further contended that cases of respondents were at par with Mst. Naseem Akhtar which was decided by this Court in Civil Petition No. 1960-L of 2006 vide judgment, dated 2-11-2006.

5. We have considered the arguments of both the parties and have gone through the record and proceedings of the case in minute particulars. The matter has already been decided by this Court in the case of Mst. Naseem Akhtar (supra), and it has been held that the appointment orders of the respondents as PTC Teachers were genuine. It was held by this Court in the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 that if a Tribunal or this Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation instead of compelling them to approach the Tribunal or any other legal forum. This view

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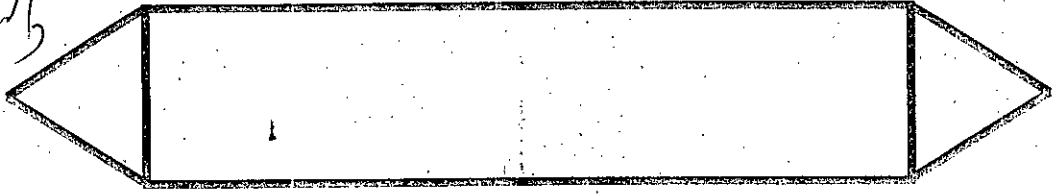
reiterated by this Court in the case of Tara Chand and others v. Karachi Water and Sewerage Board; Karachi and others 2005 SCMR 499 and it was held that according to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 all citizens are equal before law and entitled to equal protection of law.

6. In this view of the matter, we are of the view that no ground for interference in the impugned judgment is made out. Accordingly, the petitions being devoid of force are dismissed and leave to appeal refused.

M.B.A./G-13/SC

Petitions dismissed

بعدالت ہما۔ حیرت میں سر میں نہ رہوں
دکٹر انجمن ہون



2023ء منجانب
حکومت ہما بنام عدالت

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے
سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔
کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

2023ء

ماہ

المرقوم

العبد

وہ العبد