

ORDER

6th July, 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.

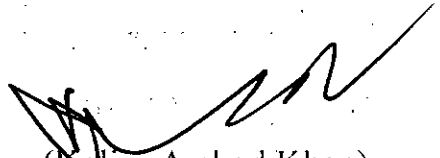
2. Vide our order of today placed in service appeal No. 5795/2020 titled "Siraj Mehmood -vs- Government of Khyber Pakhtunkhwa through Secretary Health, Khyber Pakhtunkhwa, Peshawar and others" (copy placed in this file), this appeal is also disposed of. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 6th day of July, 2023.*

SCANNED
KPST
Peshawar



(Rashida Bano)
Member(Judicial)



(Kalim Arshad Khan)
Chairman


Adnan Shah, PA

01/12/22

Deleted from the list
to come up on the next
date 27/2/23

S.
Reader

27th Feb. 2023


Learned counsel for the appellant present. Mr. 

Muhammad Adeel Butt, Additional Advocate General for the
respondents present.

SCANNED
KPST
Peshawar

Learned counsel for the appellant sought time for
preparation of arguments. Last opportunity given. To come up
for arguments on the questions formulated in order sheet dated
09.06.2021, on 25.04.2023 before the D.B. P.P given to the
parties.


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

25th April, 2023

25th April has been declared as public holiday on account
of Eid-Ul-Fitr, therefore, the case is adjourned. To come up for
the same on 06.07.2023.


Reader

03.06.2022

Bench is incomplete, therefore, case is adjourned to 22.08.2022 for the same as before.


Reader.

22.08.2022

Learned counsel for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for the respondents present.

After hearing learned counsel for the appellant at certain length, he was asked to address arguments regarding the questions formulated in order dated 19.06.2021 passed by this tribunal, upon which he sought time for preparation. Adjourned. To come up for arguments on 29.09.2022 before the D.B.


(Rozina Rehman)
Member(J)



(Salah-Ud-Din)
Member(J)

29.09.2022

Junior counsel for appellant present.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

File to come up alongwith connected Service Appeal No.5795/2020 titled "Siraj Mehmood Vs. Government of Khyber Pakhtunkhwa" on 01.12.2022 before D.B.


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

15.12.2021

Counsel for the appellant present. Mr. Kabirullah Khattak/
Addl. AG alongwith Mr. Fayyaz Ahmad, Assistant for respondents
present.

Written reply/comments not submitted. Representative of
the respondents seeks time to submit the same on the next date.
Granted but as a last chance. To come up for written
reply/comments on 28.02.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

28.02.2022

Due to retirement of the Worthy Chairman, the
Tribunal is defunct. therefore, case is adjourned to
17.05.2022 for the same as before.

Reader

17.05.2022

Learned counsel for the appellart present. Mr.
Muhammad Adeel Butt, Addl. AG for the respondents
present.

File to come up alongwith connected service
appeal 5795/2020 "titled Siraj Mehmood Versus
Government", on 03.05.2022 for arguments before D.B.


(Mian Muhammad)
Member (E)

12.07.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.



Chairman


Stipulated period passed reply not submitted.

29.07.2021

Mr. Khair-ul-Wahab, Advocate, for the appellant present. Mr. Jaffar Ali, Assistant and Dr. Suleman, Medical Officer alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned Deputy District Attorney sought adjournment for arguments. Adjourned. To come up for arguments before the D.B on 24.09.2021.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

24.09.2021

Appellant present through counsel.

Muhammad Adeel Butt learned A.A.G alongwith Dr. Waleed Litigation Officer for respondents present.

File to come up alongwith connected Service Appeal No.5795/2020 titled Siraj Mehmood Vs. Health Department on 15.12.2021 before D.B.


(Rozina Rehman)
Member (J)


Chairman

In view of the above questions, the appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 29.07.2021 before the D.B.

Appellant Deposited
Security & Process Fee →

7/8/21


Chairman

09.06.2021

Counsel for the appellant present. Preliminary arguments heard.

The appellant seeks relief on the basis of policy reflected in minutes of meeting regarding problems of Class-IV Paramedics Employees which was circulated by the Government of Khyber Pakhtunkhwa Health Department vide letter No. SOH-III/1-79-06(Class-IV) dated 25.07.2006 addressed to different Authorities. It is in the prayer of the appellant that the respondents may be directed to implement the said policy and to promote him as Ward Orderly, Ward Attendant, Chowkidar, Mali or any other Class-IV posts on the basis of seniority.

In view of the peculiar nature of the policy pressed into service and relief sought there-under, some questions are very pertinent to be dealt with in accordance with law, which hereinafter follow:-

1. Whether the policy contained in minutes of meeting dated 12.07.2006 circulated by letter dated 25.07.2006 is valid under Article 8 r/w Article 25 and 27 of the Constitution of Islamic Republic of Pakistan?
2. If the first question is answered in positive, whether the present appeal is maintainable?
3. If the policy in question is held as unconstitutional, whether the judgments so far rendered by this Tribunal on the basis of above mentioned policy will have any binding effect as precedent?

28.09.2020

Counsel for the appellant present.

Appellant has submitted an application for amendment in Appeal No. 5795/2020. It is agitated through the application that respondent No. 2 has decided the departmental appeal after submission of service appeal, therefore, the grounds there against were not initially included in the memorandum of appeal.

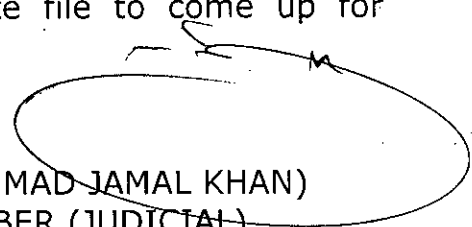
Subject to all just exceptions, the application is allowed. The appellant may submit amended appeal within two weeks. To come up for further proceedings on 25.11.2020 before S.B.



Chairman

25.11.2020

Junior counsel for appellant is present. He requested for adjournment that his senior counsel is not available today. Adjourned to 23.02.2021 on which date file to come up for further proceedings before S.B.



(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

23.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 09.06.2021.



Reader

17.07.2020

Counsel for the appellant present. Preliminary arguments to some extent heard. The appellant was appointed as Muslim Sweeper/Bheshti on 14.06.1993. That on 12.07.2006 Health Department framed a policy that all Health Institutions should promote Muslim Sweeper against the existing vacancy of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts, on the basis of seniority. That Respondent No.3 (District Health Officer/Executive District Health, Tehsil Lahor District, Swabi) has secretly conducted interviews for the appointment of fresh candidates violating the above promotion policy. That there are about 200 vacancies of Class-IV to be filled in the manner devised in the policy dated 12.07.2006 and duly circulated on 25.07.2006. The appellant filed writ petition No. 5032/2019 before the Peshawar High Court, Peshawar which was disposed off on 19.02.2020 treating the writ petition as representation and sent to the respondents to decide the same within thirty days, hence, the instant service appeal. The learned counsel for the appellant also quoted judgment of this Tribunal in Service Appeal No. 639/2017 dated 13.12.2018. Pre-admission notice be issued to learned AAG to assist the court on point of law.

Adjourned to 28.09.2020 before S.B.


(Mian Muhammad)
Member(E)



R

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 5797 /2020

1S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/06/2020	<p>The appeal presented today by Mr. Khair-ul-Wahab Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>17/07/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

SCANNED
PK
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J
K

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. **5797**/2020


Abdur Rashid Khan S/O Farid Khan R/O Lahor,
District Swabi (posted as Muslim Sweeper at Tehsil
Headquarter Hospital (THQ) Lahor, District Swabi)
.....**Appellant**

Versus

Gout of Khyber Pakhtunkhwa through Secretary
Health KPK, Civil Secretariat Peshawar & Others
.....**Respondents**


I N D E X

S#	Description of Documents	Annex	Pages
1.	Service Appeal		1-5
2.	Affidavit		6
3.	Addresses of Parties		7
4.	Copy of Appointment letter	A	8
5.	Copy of the policy	B	9
6.	Copies of this Hon'ble Tribunal Judgments	C	14-21
7.	Copy of judgment dated 19.02.2020 + writ Petition	D	22-30
8.	Wakalatnama		31

Appellant 

Through

Dated: 16.06.2020


Khair Ul Wahab Yousafzai
Advocate, High Court
Peshawar
Cell# 0300-5952824

BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. **5797** / 2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. **5068**

Dated **17/6/2020**

Abdur Rashid Khan S/O Farid Khan R/O Lahor,
District Swabi (posted as Muslim Sweeper at Tehsil
Headquarter Hospital (THQ) Lahor, District Swabi)

.....**Appellant**

Versus

1. Govt of Khyber Pakhtunkhwa through Secretary Health KPK, Civil Secretariat Peshawar.
2. Director General Health Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer/Executive District Officer Health Tehsil Lahor, District Swabi.

.....**Respondents**

APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974.

Filed to day
17/6/2020
Registrar

Prayer in Appeal:-

On acceptance of the instant appeal, the
respondents may kindly be directed to
implement the policy i.e Health

**Department Letter No.SOH-III/1-179/06
(Class-IV) Dated 25th July, 2006, to promote
the petitioner as Ward Orderly/Ward
Attendant, Chowkidar, Mali and other
Class-IV, post on the basis of seniority.**

Respectfully Sheweth:

Brief Facts:-

1. That appellant/petitioner was appointed as Muslim Sweeper/Bheshti on 16.02.2016. **(Copy of Appointment letter is attached as Annexure "A")**.
2. That appellant/petitioner has performed his duties upto the satisfaction of his senior with no complaint on his part.
3. That in the year 25.07.2006 Health Department framed a Policy for the promotion of Class-IV employees working in various hospitals of the Province which was duly circulated to all concerned vide No.SOH-III/1-179/06 (Class-IV) dated 25.07.2006 but respondents failed to implement the same till date. **(Copy of the policy is attached as Annexure "B")**.
4. That respondent No.3 has secretly conducted interviews to appoint other persons/fresh candidates against vacant posts of Ward

Orderlies, Attendants, Chowkidar and other Class-IV ignoring the petitioner.

5. That the respondents are reluctant to promote petitioner from Muslim Sweeper inspite of clear cut policy.
6. That this Hon'ble Service Tribunal has already allowed various appeals on the basis of above mentioned policy. **(Copies of this Hon'ble Tribunal Judgments are attached as Annexure "C")**.
7. That the petitioner/appellant amongst other filed a writ petition No.5032/2019 before Peshawar High Court, Peshawar which was disposed of on 19.02.2020 and was sent as representation to respondents to decide the same representation within 30 days but respondents failed to decide it. *within 90 days.* **(Copy of judgment dated 19.02.2020 is attached as Annexure "D")**.
8. That the petitioner has no other alternate remedy, hence approaches this Hon'ble Tribunal in the instant appeal on the following grounds inter alia:

GROUND S:

- A. That the treatment of the respondents with the appellant is ultra virus of the service Rules and Regulations.

- B. That the treatment of the respondents are colourable and futile exercise of the Department.
- C. That the non action of the respondents are arbitrary, unlawful and against the fundamental rights and judgments of Apex Court and based on discrimination.
- D. That acts and omission of the respondents are contrary to rules laid down by the Supreme Court of Pakistan.
- E. That appellant may also be allowed to rely on additional grounds at the time of arguments please.

Therefore, it is humbly submitted that On acceptance of the instant appeal, the respondents may kindly be directed to implement the policy i.e Health Department Letter No.SOH-III/1-179/06 (Class-IV) Dated 25th July, 2006, to promote the petitioner as Ward Orderly/Ward Attendant, Chowkidar, Mali and other Class-IV, post on the basis of seniority.

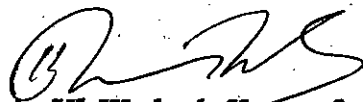
INTERIM RELIEF:-

By way of interim relief, the respondents may be restrained not to appoint any other fresh

candidate on the available vacant posts of Ward Orderly/Attendant, Mali, Chowkidar and other class-IV in different hospitals of District Swabi, till the final disposal of this appeal.

Appellant 

Through



Khair Ul Wahab Yousafzai
Advocate, High Court
Peshawar
Cell#0300-5952824

Dated: 16.06.2020

VERIFICATION:-

It is to certify that no appeal has been submitted on the subject earlier to the instant appeal.


DEPONENT

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No: _____/2020

Abdur Rashid Khan S/O Farid Khan R/O Lahor,
District Swabi (posted as Muslim Sweeper at Tehsil
Headquarter Hospital (THQ) Lahor, District Swabi)

.....**Appellant**

Versus

Govt of Khyber Pakhtunkhwa through Secretary
Health KPK, Civil Secretariat Peshawar & Others

.....**Respondents**

A F F I D A V I T

I, Abdur Rashid Khan S/O Farid Khan R/O Lahor, District Swabi (posted as Muslim Sweeper at Tehsil Headquarter Hospital (THQ) Lahor, District Swabi), do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

A. Rashid

DEPONENT

CNIC#16202-0930340-1

Cell#_0306-5673097

Identified by

Khair Ul Wahab Yousafzai
Khair Ul Wahab Yousafzai
Advocate, High Court
Peshawar



16/06/22

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. _____/2020

Abdur Rashid Khan S/O Farid Khan R/O Lahor,
District Swabi (posted as Muslim Sweeper at Tehsil
Headquarter Hospital (THQ) Lahor, District Swabi)

.....**Appellant**

Versus

Govt of Khyber Pakhtunkhwa through Secretary
Health KPK, Civil Secretariat Peshawar & Others

.....**Respondents**

ADDRESSES OF PARTIES

APPELLANT:

Abdur Rashid Khan S/O Farid Khan R/O Lahor,
District Swabi (posted as Muslim Sweeper at Tehsil
Headquarter Hospital (THQ) Lahor, District Swabi)

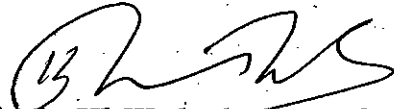
RESPONDENTS:

1. Govt of Khyber Pakhtunkhwa through Secretary
Health KPK, Civil Secretariat Peshawar.
2. Director General Health Khyber Pakhtunkhwa,
Peshawar.
3. District Health Officer/Executive District Officer
Health Tehsil Lahor, District Swabi.

Appellant



Through



Khair Ul Wahab Yousafzai
Advocate, High Court
Peshawar
Cell#0300-5952824

Dated: 16.06.2020



Annexure "A"

OFFICE OF THE DISTRICT HEALTH OFFICER SWABI

Office Tel: 0938-280008 Fax No: 0938-280189

OFFICE ORDER

Consequent upon the recommendation of Selection Committee Meeting held on 6-11-2015, the following appointments in different categories, designation / BPS mentioned against each name is hereby made.

S.No	Name	Father/Mother Name	Designation	BPS	Place of Posting
1	Abdul Rashid	Farid Khan	Behshij /sweeper	BPS-01	THQ Lahor
2	Majid ali	Mumtaz ali	Sweeper	BPS-01	CH K/Khan

Their appointments will be subject to the following terms and conditions.

1. That they will be allowed minimum of the pay scale.
2. That they will be on usual probation period of 01 Year.
3. That their services can be dismissed, without any notice during the probation period if their work and conduct found unsatisfactory.
4. That they will be entitled for gratuity and pension etc as per rules.
5. That their appointments will be subject to production of medical fitness certificate from the Medical Superintendant DHQ Hospital Swabi.
6. That they will be governed by such rules and orders as may be issued by the Government of Khyber Pakhtunkhwa from time to time for the categories of Government Servants to which they belongs.
7. That if they wish to resign at any time, they will resign in written within 30 days notice or forfeit one month pay in lieu thereof and will continue to serve the Government till the acceptance of their resignation by competent Authority.
8. That they will not entitled to claim any TADA for the medical examination and joining of their appointment.
9. That they will be posted anywhere in District Swabi.

If they accept the above terms and conditions, they should report to DHO Office Swabi within 30 days after issuance of this order failing which the order will be considered as withdrawn & cancelled.

ATTESTED

SD/-
District Health Officer
Swabi

No. 768-10 /DHO Swabi

Dated: 16/12/2016

Copy forwarded to the

1. District Accounts Officer Swabi
2. Incharge Of Health Facilities
3. Official Concerned.

District Health Officer
Swabi

9

ANNEXURE

GOVERNMENT OF NWFP
HEALTH DEPARTMENT

No: SOH-III/1-179/06 (Class-IV)
Dated 25th July, 2006

To

- 1) The Director General Health Services, NWFP, Peshawar.
- 2) The Chief Executives, LRIH/KTH/HMC, Peshawar and ATH, Abbottabad.
- 3) Dr. Muhammad Rahim Jan Afridi, Director Admin. Directorate General Health Services, NWFP, Peshawar.
- 4) Dr. Abdus Sabooh Bacha, Medical Supdt., Hayatabad Medical Complex, Peshawar.
- 5) Dr. Iftikhar Ahmad, Deputy Medical Supdt., Ayub Teaching Hospital, Abbottabad.
- 6) Dr. Farman Ali, RMO, Khyber Teaching Hospital, Peshawar.
- 7) Mr. Javed Khan, President, Provl. Paramedical Association, Class-IV Employees, NWFP, Peshawar.

Subject: MINUTES OF MEETING REGARDING PROBLEMS OF CLASS-IV PARAMEDICS EMPLOYEES.

I am directed to refer to the subject and to enclose herewith a copy of minutes of subject meeting held on 12.07.2006, at 10:00 hours, under the chairmanship of Secretary Health, duly signed by all the participants, for further necessary action please.

for

Shahidullah
Section Officer-III

Endst. No. & Date Even.

Copy to PS to Secretary Health.

for

S.
Section Officer-III

ATTACHED

B.P.L. Khan
B.P.L. Khan

ATTACHED

Subject:

(10)

MINUTES OF MEETING REGARDING PROBLEMS
OF CLASS-IV PARAMEDICS EMPLOYEES.

A meeting on the subject was held under the chairmanship of Secretary Health Department in Committee Room of Health Deptt. on 12/07/2006 at 10:00 AM.

- 2- The following attended the meeting:-
- 1) Mr. Abdus Samad Khan, Secretary to Govt. of NWFP Health Deptt.
 - 2) Prof. Abdus Samad Khan, Chief Executive, Govt. Lady Reading Hospital, Peshawar.
 - 3) Dr. Muhammad Rahim Jan Afridi, Director Admn., Directorate General Health Services, NWFP, Peshawar.
 - 4) Dr. Abdus Sabooh Bacha, Medical Supdt., Hayatabad Medical Complex, Peshawar.
 - 5) Dr. Htikhar Ahmad, Deputy Medical Supdt., Ayub Teaching Hospital, Abbottabad.
 - 6) Dr. Farman Ali, RMO, Khyber Teaching Hospital, Peshawar.
 - 7) Mr. Javed Khan, President, Provl. Paramedical Association Class-IV Employees, NWFP, Peshawar.
 - 8) Mr. Naseer Khan, General Secretary, Provl. Paramedical Association Class-IV Employees, NWFP, Peshawar.
 - 9) Mr. Hakim Jan, General Secretary, Provl. Paramedical Association Class-IV Employees, Hayatabad Medical Complex, Peshawar.
- 3- The meeting started with recitation of the Holy Quran.
- 4- The Chair welcomed the participants.
- 5- The demands presented by the Provl. Paramedical Association Class-IV Employees, were discussed in detail and the following decision were taken:-

- i) The Association demanded that service structure for Class-IV paramedical employees, may also be framed.

Decision

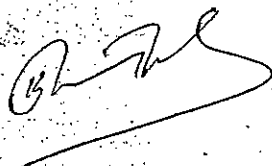
It was decided that the Director General Health Services NWFP will come up with a self-contained case with full justification. The demand will be recommended and will be forwarded to Finance Department.

- ii) The Association demanded that Contract Policy may be implemented in Teaching and all other Health Institution of the Province.

Decision

It was decided that the Director General Health Services, and all the Chief Executives of Health Institutions may be directed to implement the Contract Policy of the provincial Government and all other relevant instructions in letter and spirit.

AKL 18/7/06





(11) (2)

iii) The Association demanded that children of retired Class-IV paramedical employees may be given preference when appointments are made against the vacant posts in Health Institutions.

Decision

It was decided that instructions circulated by the Health Department vide letter No. SOHIII/7-350/95-I dated 01-11-1997, may be followed strictly. The Medical Supdt., Khyber Teaching Hospital, should submit a report within fortnight in this regard.

iv) The Association demanded advance increments on the basis of higher qualifications, for Class-IV paramedical employees.

Decision

It was decided that instructions of Finance Department, in this regard will be implemented strictly, in all Health Institutions.

v) The Association demanded relaxation of science subjects for admission in different health technology courses, for Class-IV paramedical employees.

Decision

It was decided that if any Class-IV paramedical employee has completed the required qualification for admission in different health technology courses, according to the prescribed criteria, may be allowed to participate in the examination of different health technologies, conducted by NWFP, Medical Faculty, after completion of all usual formalities.

vi) The Association demanded that all Class-IV employees may be promoted to Class-III posts, existing in different Health Institutions.

Decision

It was decided that Class-IV employees may be given preference while filling the posts of promotion quota as per rules.

vii) The Association demanded for 33% Selection Grade for Class-IV paramedical employees.

Decision

It was decided that the demand of 33% Selection Grade will be included in revised service structure of Class-IV paramedical employees.

viii) The Association demanded Dress/Washing Allowance for all Class-IV paramedical employees.

18/11/95
[Signature]
[Stamp]

(12) (3)

Decision

It was decided that the Director General Health Services, and all Chief Executive, should submit a self contained case with total strength of Class-IV paramedical employees and propose Dress/Washing Allowance for Class-IV paramedical employees required to be considered, with full justification.

ix) The Association demanded that the Muslim Sweeper in each Health Institution may be promoted to the post of Ward Orderly, Chowkidar, Mah Dai, Aya and other Class-IV posts, on seniority basis. In future, only sweeper may be appointed against the posts of sweeper.

Decision

It was decided that all the Health Institutions should promote the Muslim Sweeper against the existing vacancy of Ward Orderly, Chowkidar, Mah Dai, Aya and other Class-IV posts, on seniority basis, and not appoint Muslim Sweeper against the post of Sweeper in future.

x) The Association demanded that 8 hours duty may be taken from Class-IV paramedical employees as per rules and they may be granted leave according to rules.

Decision

It was decided that Instructions of Government regarding duty hours should be implemented in letter and spirit and requests of Class-IV employees for grant of leave should also be considered on merit and according to rules. However, Heads of all the Health Institutions are advised to keep a vigilant eye on the performance of Class-IV paramedical employees.

6- The meeting ended with a vote of thanks by the Chair.

(PROF. ABDUS SAMAD KHAN)
Chief Executive,
Govt. Lady Reading Hospital,
Peshawar

(DR. MUHAMMAD RAHIM JAN AFRIDI)
Director Adm.,
Directorate General Health Services,
NWFP, Peshawar

(DR. ABDUS SABOON BACHA)
Medical Superintendent,
Hayatabad Medical Complex,
Peshawar

(DR. IFTIKHAR AHMAD)
Deputy Medical Supdt.,
Ayub Teaching Hospital,
Abbottabad

APPROVED
PER: [Signature]

Sweeper
Promotion of Muslim Sweeper

[Handwritten signature]

(13)

Dr. Farman Ali 18/7/06

(DR. FARMAN ALI)
Resident Medical Officer,
Khyber Teaching Hospital
Peshawar

Mr. Javed Khan

(MR. JAVED KHAN)
President,
Provl. Paramedical Association
Class-IV Employees,
NWFP, Peshawar

Mr. Naseer Khan

(MR. NASEER KHAN)
General Secretary,
Provl. Paramedical Association
Class-IV Employees,
NWFP, Peshawar

Mr. Hakim Jan

(MR. HAKIM JAN)
General Secretary,
Provl. Paramedical Association
Class-IV Employees,
Hayalabad Medical Complex, Peshawar

18

Abdus Samad Khan 18/7/06

(MR. ABDUS SAMAD KHAN)
Secretary to Govt. of NWFP,
Health Department

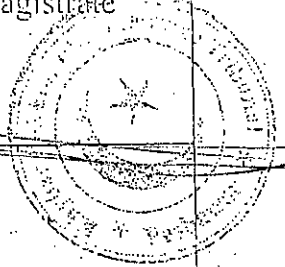
Abdus Samad Khan

ATTACHED
ORIGINAL COPY

Annexure "C"

14

13.12.2018



Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	
<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Service Appeal No. 639/2017</p> <p>Date of Institution 16.06.2017 Date of Decision 13.12.2018</p> <p>Mr. Luft-E-Hakeem, Muslim Sweeper (BPS-01) DHQ Hospital timer Garra, District Dir Lower. Appellant</p> <p align="center">Versus</p> <p>1. The Secretary Government of Khyber Pakhtunkhwa through Secretary Health Department Khyber Pakhtunkhwa Peshawar. 2. Director General Health Department Khyber Pakhtunkhwa Peshawar. 3. The District Health Officer, District Dir Lower. 4. The Medical Superintendent DHQ Hospital Timergara, District Dir Lower. Respondents</p> <p>13.12.2018 Mr. Muhammad Hamid Mughal-----Member (J) Mr. Ahmad Hassan-----Member (E)</p> <p align="center"><u>JUDGMENT</u></p> <p><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Mr. Noor Muhammad, learned counsel for appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.</p> <p>2. This single judgment in the above captioned appeal, shall also dispose of appeals (1). bearing No.640/2017 filed by Rab Nawaz</p>		




Khyber Pakhtunkhwa Service Tribunal, Peshawar

(2). bearing No.641/2017 filed by Sahib Ullah (3). bearing No. 642/2017 filed by Akhtar Rasool (4). bearing No.643/2017 filed by Dilawar Khan (5). bearing No. 644/2017 filed by Hamid ur Rehman (6). bearing No.645/2017 filed by Khyal Muhammad (7). bearing No.646/2017 filed by Siraj ud Din (8). bearing No.647/2017 filed by Bakht Shah Zeb (9). bearing No. 648/2017 filed by Bakhtiar Khan (10). bearing No.649/2017 filed by Gul Saeed Khan (11). bearing No.650/2017 filed by Kifayat Ullah (12). bearing No.651/2017 filed by Sadiq Muhammad (13). bearing No. 652/2017 filed by Said Rehman (14). bearing No.653/2017 filed by Shams ul Islam (15). bearing No.654/2017 filed by Aftab ud Din (16). bearing No. 655/2017 filed by Muhammad Haq (17). bearing No.656/2017 filed by Abdur Rehman (18). bearing No. 724/2017 filed by Ismail Shah (19). bearing No.725/2017 filed by Rehmat Ali Shah (20). bearing No. 726/2017 filed by Gohar Rehman (21). bearing No.727/2017 filed by Miraj ud Din (22). bearing No. 728/2017 filed by Habib Ullah (23). bearing No.729/2017 filed by Umar Hakim. (24). bearing No.730/2017 filed by Shahid Hussain (25). bearing No.731/2017

~~filed by Shah Khalid being identical in nature, having arisen from the same law, facts and circumstances~~

3. The appellant, who was appointed as Sweeper (Muslim) at DHQ Hospital Timergra District Dir Lower in the year 2009 has filed the present service appeal u/s 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 16.02.2017 of the respondent No.1 whereby the respondent department accepted the


 Director
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

right of Muslim Sweepers appointed before 12.07.2006 for their adjustment against the post of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts on seniority basis and thereby deprived the Muslim Sweepers appointed after 12.07.2006 to be adjusted as such. Learned counsel for the appellant mainly argued that the impugned order is a sheer example of discriminatory treatment to Muslim Sweepers appointed as such after 12.07.2006.

4. On the other hand learned Additional Advocate General defended the impugned order on the ground that the appellant himself was appointed as Muslim Sweeper in violation of policy decision dated 12.07.2006.

5. Arguments heard. File perused.

6. The respondent department vide its policy decision dated 12.07.2006 decided that all the Health Institutions should promote the Muslim Sweepers against the existing vacancies of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts, on seniority basis and not to appoint Muslim Sweeper against the post of Sweeper in future.

7. It was due to the violation of policy decision dated 12.07.2006 that many Muslim Sweepers had to knock the door of Hon'ble Peshawar High Court. The violation of policy decision led the respondent department to the issuance of fresh order dated 16.02.2017 made partially impugned in the present service appeal.

8. Upon the examination of the impugned order dated 16.02.2017, this Tribunal came to the conclusion that the same is

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also in violation of policy decision dated 12.07.2006 in as much as according to the policy decision dated 12.07.2006 gradually all the Muslim Sweepers would have to be adjusted against other Class-IV posts.

9. Impugned order dated 16.02.2017 has the effect of depriving the appellant from his adjustment against other Class-IV post just for the reason that he was appointed as Muslim Sweeper after 12.07.2006. This Tribunal is therefore of the considered opinion that discriminatory treatment was met out to the appellant.

10. Resultantly this Tribunal holds that the cut off date i.e. 12.07.2006 as mentioned in the impugned order dated 16.02.2017 shall be treated as expunged. The present service appeal alongwith connected service appeals as mentioned in para-2 of this judgment are accepted in the above terms. The respondent department is directed to take strict disciplinary action against those responsible for inducting Muslim Sweepers in violation of the policy decision dated 12.07.2006. Parties are left to bear their own costs. File be consigned to the record room.

(Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

ANNOUNCED

Date of Presentation of Appeal: 31-1-19

Number of Pages: 1600

Copying Fee: 10

Urgent: 2

Total: 12

Date of Decision of Appeal: 31-1-19

Date of Delivery of Appeal: 31-1-18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 902/2017

Mr. Thayat Ullah, Muslim Sweeper (BPS-1)
DHQ Hospital, Battagram



APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary, Health Department, Khyber Pakhtunkhwa, Peshawar
- 2- The Director General Health Department, Khyber Pakhtunkhwa Peshawar.
- 3- The District Health Officer, District Battagram
- 4- The Medical Superintendent DHQ Hospital Battagram, District Battagram.....

RESPONDENTS

ATTESTED TO
TRUE COPY

[Handwritten Signature]

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 16.02.2017 WHEREBY THE APPELLANT HAS BEEN IGNORED/EXCLUDED FROM PROMOTION/ADJUSTMENT AGAINST ANY OTHER CLASS IV POST AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned Notification dated 16.2.2017 may kindly be modify to the extent that the appellant may be considered for promotion/adjustment against any other Class-IV post in light of the policy dated 25-07-2006 from the date when his other colleagues were promoted/adjusted. Any other remedy which this Honorable Tribunal deems appropriate that may also be awarded in favor of the appellant.

ATTESTED

R/SHEWETH:
ON FACTS:

EXAMINED

1- That appellant is the employee of the respondent Department and is serving as Sweeper (Muslim) for quite considerable time efficiently and upto the entire satisfaction of his superiors. Copy of the appointment order is attached as annexure.....

2- That vide Notification dated 25.7.2006 the respondent Department including autonomous institutions have unanimously decided that all the Health Institutions should promote the Muslim Sweepers against the existing vacancies of Ward Orderly, Chowkidar, Mali, Dayl, Aya and other Class-IV posts on seniority basis and not to appoint Muslim

Re-submitted to and filed

6/8/17

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No: 902/2019

Date of Institution 05.07.2019

Date of Decision 26.06.2019



Mr. Inayat Ullah, Muslim Sweeper (BPS-01) DHQ Hospital, Battagram
(Appellant)

VERSUS

The Director General Health Services, Khyber Pakhtunkhwa Peshawar and
others. (Respondents)

Mr. Mir Zaman Safi,
Advocate.

For appellant

MR. HAMID FAROOQ DURRANI,

CHAIRMAN

JUDGMENT

TESTED TO BE

TRUE COPY

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The prayer of instant appeal is essentially to the effect that the respondents shall consider the appellant for promotion/adjustment against any other Class-IV post while at present the appellant is serving as Sweeper (Muslim) in BPS-01. The appellant has relied on the minutes of meeting dated 12.07.2006 regarding problems of Class-IV Paramedic employees. Inter-alia, the decision was taken in the meeting to promote the Muslim Sweepers against the existing vacancies of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts on seniority basis and not to appoint the Muslim Sweepers against the posts of Sweeper in future. Reliance is also placed on order issued by the Secretary to Government of Khyber Pakhtunkhwa Health Department on 16.02.2017. In the order it is noted that those who were

TESTED

Khyber Pakhtunkhwa
Health Department

appointed as Muslim Sweepers before 12.07.2006 were entitled for adjustment against the aforementioned posts without disturbing the quota reserved under the rules for appointment of Class-IV Government Servants etc. It was, however, provided in the order that those who were appointed as Muslim Sweepers after 12.07.2006 were not covered under the policy.

2. This Tribunal decided a number of appeals through judgments dated 13.12.2018 handed down in Appeal No. 639/2017. (Lutf-E- Hakeem Vs the Secretary Government of Khyber Pakhtunkhwa Health Department and others) in terms that the cut-off date mentioned in the order dated 16.02.2017 and 12.07.2006 shall be treated as expunged. In the said manner the benefit of decision made on 12.07.2006 as well as order dated 16.02.2017 was to be extended to the Muslim Sweepers appointed after 12.07.2006. The issue having been settled once by this Tribunal entails the extension of benefits to employees placed similar to those whose appeals were decided, in affirmative, on 13.12.2018.

3. Learned counsel after arguing the case at some length stated that the appellant would be satisfied at present in case he is considered for promotion to a Class-IV post other than that of Sweeper by the respondents in accordance with law.

4. As the issue of promotion of Muslim Sweeper having been appointed before and after 12.07.2006 has been repeatedly settled by this Tribunal as well as the Honourable Peshawar High Court, the respondents shall consider the appellant for requisite promotion in the order of seniority and his otherwise eligibility under the rules.

ATTESTED

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5. The appeal is accordingly disposed of. File be consigned to the record room.



(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
11.07.2019

Certified to be true copy

E. K. A. M. Khan
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Annexure - "D"

22

1

IN THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 5032 /2019

- 1- Siraj Mehmood S/o Sultan Mehmood -
- 2- Abdur Rashid Khan S/o Farid Khan
- 3- Muhammad Asim S/o Muhammad Aslam
- 4- Noural Amin S/o Abdul Qudoos
- 5- Amin Khan S/o Darwish Khan
- 6- Ikram Ullah khan S/o Said Wali
Muslim Sweepers posted at Tehsil Head Quarter
Hospital (THQ) Lahor, Tehsil and District Swabi.
- 7- Muhammad Farooq S/o Samar Khan Muslim
Sweeper Posted at Rural Health Centre (RHC)
Kunda District Swabi
- 8- Manzar Ali S/o Faiz UR Rehman Muslim Sweeper
Posted at Basic Health Unit (BHU) Jalbai, District
Swabi.

.....Petitioner

V E R S U S

1. The State through Advocate General Khyber
Pakhtunkhwa Peshawar.
2. Secretary to Government, Khyber Pakhtunkhwa
Health Department, Peshawar.
3. Director General Health Services, Khyber
Pakhtunkhwa Peshawar, Office Khyber Road,
Peshawar.
4. District Health Officer/Executive District Officer
Health, Tehsil Lahor, District Swabi.

.....Respondents

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

**ATTESTED TO BE
TRUE COPY**



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2

PRAYER:-

On acceptance of this writ petition Respondent No.4 may kindly be directed to appoint the petitioners as ward orderlies/Ward Attendants as per the policy vide health department letter No.SOH-III/1-179/06 (Class-IV), dated 25.07.2006 and any appointment of the said posts may kindly be declared as void and illegal.

Respectfully Sheweth:

1. That the petitioners No.1 to 6 were appointed and posted as Muslim Sweepers in Tehsil Headquarter Hospital (THQ) Lahor, District Swabi, petitioner No.7 as Muslim Sweeper at Rural Health Centre (RHC) Kunda Tehsil Lahor, District Swabi and petitioner No.8 as Muslim Sweeper at Basic Health Unit (BHU) Jalbai Tehsil Lahor, District Swabi. (Copies of the appointment orders of Petitioners are attached as Annexure "A-1" to A-).
2. That the Respondent No.2 to 4 framed a policy frame work for the promotion of the Class-IV employees working in various hospitals and the same was circulated to the all concerns vide No.SOH-III/1-179/06 (Class-IV), dated 25.07.2006. (Copy of the policy is attached as Annexure "B").

(24)

(3)

3. That it was decided the Muslim Sweepers will be promoted against the vacant vacancies of Ward Orderlies/ Ward Attendants etc.
4. That the respondent No.4 secretly conducted interviews for the posts of Ward Attendants at THQ Hospital Lahor, District Swabi etc dated 08.08.2019 without any advertisement to deprive the petitioners of their valuable rights.
5. That the respondents are reluctant to promote petitioner from Muslim Sweepers to the post of Orderlies/ Ward Attendants etc inspite of clear cut policy.
6. That a writ Petition No.293-9/2013 has already been allowed by this Hon'ble Peshawar High Court, Peshawar on 27.09.2013. **(Copy of the judgment dated 27.09.2013 is attached as Annexure "C")**.
7. That the petitioner is aggrieved of the illegal act of the respondents, hence, filed this writ petition under article 199 of Constitution of Pakistan 1973 on the following grounds inter alia.

GROUND:-

- A. That the non action and non consideration of the respondents is against natural justice, void ab initio and violation of fundamental rights of the

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petitioners enshrined in Constitution of Islamic Republic of Pakistan 1973.

- B. That the policy referred in the impugned Act is not applicable to petitioner hence the illegal act is without jurisdiction and is of no legal effect.*
- C. That the act of the respondents of not appointing the petitioners is illegal, unlawful, without lawful authority and thus of no legal effect, hence needs interference of this Hon'ble Court.*
- D. That the bread and butter of the petitioner and his family is depended upon the job.*
- E. That the appointments on the basis of secret interview dated 8/8/2019 inspite of already working petitioners, is against law and violation of principles and judgment of this Hon'ble Court dated 27.09.2013.*
- F. That appointments made after 25/7/2006 and depriving petitioners is clear cut discrimination on the part of respondents.*
- G. That this Hon'ble Court has got ample jurisdiction to entertain and disposed of the instant writ petition according to the facts and circumstances of the case in hand.*

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H. That any other ground will be raised at the time of argument with the prior permission of this Hon'ble Court.

It is, therefore most humbly prayed that on acceptance of this Writ Petition, the respondent No.4 may kindly be directed to appoint the petitioners as Ward Orderlies/Ward Attendants as per the Policy vide Health Department letter No.SOH-III/1-179/06 (Class-IV), dated 25.07.2006 and interview dated 8/8/2016 for the direct appointment of the said posts may kindly be declared as void and illegal.

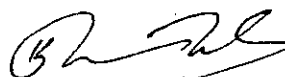
Any other remedy deems fit and appropriate in the circumstance of the case may also be granted in favour of the petitioner.

INTERIM RELIEF

By way of interim relief, the appointments made on the basis of interview dated 8/8/2019 and may subsequent appointments may kindly be suspended till the final decision of the instant writ petition.

Petitioner

Through


Khair Ul Wahab Yousafzai
Advocate, High Court
Cell#0300-5952824

Dated 18/09/2019

(27)

(6)

CERTIFICATE:-

Certified on instructions of my client that petitioner has not previously moved this Hon'ble Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 regarding the instant matter, thus the tilted Writ Petition may kindly be fixed before the Worthy D.B of this Hon'ble Court.


ADVOCATE

LIST OF BOOKS

1. Constitution of Islamic Republic of Pakistan, 1973.
2. Any other law book as per need.


ADVOCATE

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Annexure "D"

1

IN THE PESHAWAR HIGH COURT, PESHAWAR



W.P No. /2019

- 1- Siraj Mehmood S/o Sultan Mehmood
- 2- Abdur Rashid Khan S/o Farid Khan
- 3- Muhammad Asim S/o Muhammad Aslam
- 4- Noural Amin S/o Abdul Qudoos
- 5- Amin Khan S/o Darwish Khan
- 6- Ikram Ullah Khan S/o Said Wali
Muslim Sweepers posted at Tehsil Head Quarter
Hospital (THQ) Lahor, Tehsil and District Swabi.
- 7- Muhammad Farooq S/o Samar Khan Muslim
Sweeper Posted at Rural Health Centre (RHC)
Kunda District Swabi
- 8- Munzar Ali S/o Faiz UR Rehman Muslim, Sweeper
Posted at Basic Health Unit (BHU) Jalbat, District
Swabi.

ATTESTED TO BE TRUE COPY

[Signature]

Petitioner

VERSUS

- 1. The State through Advocate General Khyber Pakhtunkhwa Peshawar.
- 2. Secretary to Government, Khyber Pakhtunkhwa Health Department, Peshawar.
- 3. Director General Health Services, Khyber Pakhtunkhwa Peshawar, Office Khyber Road, Peshawar.
- 4. District Health Officer/Executive District Officer Health, Tehsil Lahor, District Swabi.

Respondents

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

ATTESTED
[Signature]
EXAMINER
Peshawar High Court

(29)

PESHAWAR HIGH COURT, PESHAWAR.

ORDER SHEET



Date of Order/ Proceedings	Order or other Proceedings with Signature of Judge
19/02/2020	<p><u>WP No. 5032-P/2019</u></p> <p>Present: Mr. Khair-ul-Wahab Yousafzai, Advocate, for the petitioners.</p> <p>Mr. Atif Ali Khan, AAG, for the respondents.</p> <p>====</p> <p><u>WAQAR AHMAD SETH, CJ.</u>- Petitioners, Siraj Mehmood and others, through the instant Writ Petition, seeks issuance of an appropriate writ with the following prayer:-</p> <p><i>"It is, therefore most humbly prayed that on acceptance of this Writ Petition, the respondent No.4 may kindly be directed to appoint the petitioners as Ward Orderlies/Ward Attendants as per the Policy vide Health Department letter No. SOH-III/1-179/06 (Class-IV) dated 25.07.2006 and interview dated 8.8.2016 for the direct appointment of the said posts may kindly be declared as void and illegal".</i></p> <p>2. After hearing arguments at length, learned counsel for the petitioners stated at the bar that he would be satisfied if the instant Writ Petition is treated as representation and sent to respondent No.3 for decision in accordance with law.</p> <p>3. In view of the above, office is directed to send the instant Writ Petition to respondent No.3, copy whereof be</p>

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ATTESTED
EXAMINER
Peshawar High Court

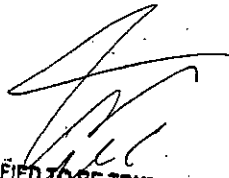
30

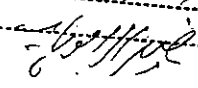
retained in office for the purpose of record, who shall treat the same as representation and decide it by explicit order within thirty (30) days positively as per law.




4. Writ Petition stands disposed of accordingly.


Chief Justice


Judge


CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan 1973
20 FEB 2020

No. 2683
Date of Presentation of Application 19/2/20
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قیمت 50 روپے	48275			
ایڈویکٹ: <u>خیر الوہا روسفزئی</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: <u>10-5388</u>				
رابطہ نمبر: <u>03005952824</u>				

بعدالت جناب: سر جسٹس سید سجاد علی شاہ

منجانب: <u>ایڈووکیٹ</u>	دعویٰ:
<u>عبدالرشید بنام سکریٹری، سٹیٹ بینک و غیرہ</u>	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
 آن مقام کے لیے خیر الوہا روسفزئی کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ 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 وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں لہذا وکالت نامہ لکھ دیا تاکہ سند رہے
 المرقوم: 17-06-20

مقام پشاور کے لیے منظور ہے۔
 Attested and accepted


نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

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

Amended Appeal No.5797 of 2020

Abdur Rasheed

..... Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Health Civil Secretariat Peshawar
2. Director General Health Services Khyber Pakhtunkhwa Peshawar
3. District Health Officer Swabi, District Swabi

..... Respondents

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5.	Govt. of KP Health Department Notification No. SoH-(Lit-1) 1-1/ 2017(Gen: Misc) Dated 08.12.2017 (Anex -B)	07
6.	List of 27 Sweepers (Anex-C)	08


District Health Officer
Swabi

BEFORE THE Khyber Pakhtunkhwa Service Tribunal, PESHAWAR

Amended Service Appeal No. 5797 of 2020

2514

Abdur Rasheed

Appellant

Versus

1. Govt. of Khyber Pakhtunkhwa thorough Secretary Health KPK
- 2 Director General Health Services Khyber Pakhtunkhwa.
3. District Health Officer Swabi

..... **Respondents**

Comments on behalf of Respondents

Respectfully Sheweth;-

PRELIMINARY OBJECTIONS:-

- That the Appellant has no cause of action/locus standi
- That the Appellant has deliberately concealed the material facts from this honorable Tribunal, hence liable to be dismissed.
- That the Appellant has not come to this honorable tribunal with clean hands.
- That the Appellant has filed the instant appeals just to pressurize the respondents.
- That the Appellant has filed the instant appeal on malafide motives.
- That the instant appeal is against the prevailing Law and Rules.
- That the appeal is not maintainable in the present form and also in the present circumstances of the issue.
- That the appeal is bad for mis-joinder and non- Joinder of necessary and proper Parties.

PARA-WISE REPLY ON BRIEF FACTS:-

2. Pertains to record. However, the Appellant was appointed as Behishti cum Sweeper and Not Sweeper.(Annex-A)

2.Pertains to record.

3.In pursuance of Health Department order of even No. Dated 16.02.2017 (Annex-B), it is Clarified that every citizen shall have the right to enter upon any lawful profession or occupation as envisaged under Article-18 of the Constitution of Islamic Republic of Pakistan. Therefore, the Decision taken in the Meeting on 12.07.2006 was repealed. The Reasons behind are that the Decision ibid affected the Hygienic condition of the Health facilities in the province. In Some Areas of the Province, non-Muslim sweepers are not available. Furthermore, the Posts sanctioned in the budget book are sweepers.

There is no separate Category of Muslim Sweepers and non-Muslim Sweepers. (Govt of Khyber Pakhtunkhwa Health Department Notification NO. SOH (Lit-1)

1-1 / 2017 (Gen: Misc) Dated 08.12.2017 (Anex-C). Any vested right accrued in favor of any person in pursuance of decisions already announced by the Honorable Court and attained finality and Health Department order Dated 6.02.2017(Anex-B) shall be implemented.

Moreover, at Present, there are total 27 Muslim Sweepers in various Health Facilities of District Swabi including the Appellant and some appointees are senior from Appellant (Anex D) and in case of their conversion to other posts, the hygienic condition of the health facilities will be badly suffered as no Christian sweepers will be available to be hired.

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4. As explained above
5. As in Pare 3 above
6. Pertains to record, however, appellant is not entitled for any relief.
7. Pertains to record
8. Pertains to record, detail reply is given in Para 3.
9. Pertains to record.
10. The subject appeal is not maintainable on following grounds:-

Para wise reply on Grounds:-

A to D, The appellant was neither discriminated nor any of his fundamental rights violated. The detail reply already given in Para 3 ibid.

E. The Respondents seek permission to raise additional grounds during Arguments.

Prayer:-

In view of the above, it is humbly prayed that this honorable court may graciously be pleased to dismiss the Appeal with costs.

Secretary to the Government of Khyber Pakhtunkhwa Health Department

R.No. 1

Director General Health Services Khyber Pakhtunkhwa

District Health Officer Swabi

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Amended Appeal No.5797 of 2020

Abdur Rasheed

..... Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Health Civil Secretariat Peshawar
2. Director General Health Services Khyber Pakhtunkhwa Peshawar
3. District Health Officer Swabi, District Swabi

.....Respondents

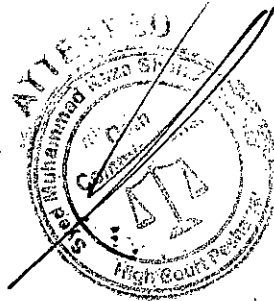
AFFIDAVIT

We the respondents do hereby solemnly affirm and declare that the contents of Para wise comments submitted by the respondents are true and correct to the best of our knowledge, record and that nothing has been concealed from Honorable Court.

Secretary Health KPK Peshawar

Director General Health Services KP

District Health Officer, Swabi



Authority Letter

Mr. Fayaz Ahmad O.A DHO Office Swabi having CNIC NO 17101-04808240-7 is authorized to submit the Para wise comments in Appeal No. 5795 to 5802 of 2020 Titled "Siraj Mehmood & 7 other versus Govt. of Khyber Pakhtunkhwa through Secretary Health and others" on behalf of Respondent No 03.


District Health Officer
Swabi



ORDER.



HEALTH DEPARTMENT.

No.SOH-(Lit-I) 1-1/2017 (Gen: Misc)
Dated Peshawar the 16th February, 2017

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Amr - A

1. WHEREAS attention is invited to the minutes of the meeting dated 12.07.2006 held under the Chairmanship of Secretary Health Khyber Pakhtunkhwa circulated vide Govt of Khyber Pakhtunkhwa Health Department letter No. SOH-III/1-179/06 (Class-IV) dated 25.07.2006. Extract of the decision taken in the meeting is reproduced below:-
Decision:-
"It was decided that all the Health Institutions should promote the Muslim Sweepers against existing vacancies of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts, on seniority basis and not to appoint Muslim Sweepers against the post of Sweepers in future.
2. AND WHEREAS the above decision was also affirmed by the Hon'ble Peshawar High Court Peshawar vide judgment dated 27.09.2013 in Writ Petition No.293-P/2013 - Titled "Noor ul Qamar S/O Shams ul Qamar Muslim Sweeper THQ Hospital Shabqadar, District Charsadda & 9 others versus Govt of Khyber Pakhtunkhwa Health Department & others.
3. NOW THEREFORE in pursuance of the above decision taken/judgment of the Hon'ble Court, it is sufficiently clear that those who were appointed as Muslim Sweepers before 12.07.2006 are entitled for adjustment against the aforementioned posts without disturbing the quotas reserved under the Rules for appointment of Class-IV Govt. Servants and children of Retiring/Incapacitated/deceased civil servants etc. However, those who were appointed as Muslim Sweeper after 12.07.2006 in violation of the above decision/judgment are not covered under the policy.

**SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

Endst No. & Date even.

Copy of the above is forwarded to the:-

1. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
2. The Director Health Services, FATA.
3. All District Health Officers in Khyber Pakhtunkhwa.
4. All Medical Superintendent of Hospitals in Khyber Pakhtunkhwa.
5. All Medical Directors/Hospital Directors of MTIs in Khyber Pakhtunkhwa.
6. PS to Senior Minister Health, Khyber Pakhtunkhwa.
7. PS to Secretary Health, Khyber Pakhtunkhwa.
8. Provincial President Paramedical Class-IV Employees Association, LRH Peshawar

(Bakhtiar Ali)
Section Officer (Lit.I)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 01 December 2017

NOTIFICATION

NE SOHLI/11/17/2017 (Gen. Misc) In pursuance of the Department Order of even No. dated 16-02-2017, it is clarified that every citizen shall have the right to enter upon any law of profession or occupation as envisaged under Article-18 of the constitution of Islamic Republic of Pakistan. Therefore, the decision taken in the meeting on 12-07-2006 reflected below sub-para-x and above sub-para-x of para-5 is hereby repealed. The reasons behind are that the decision ibid affected the hygienic condition of the health facilities in the Province. In some areas of the Province non-Muslim Sweepers are not available. Furthermore, the posts sanctioned in the budget book are all sweepers. There is no separate category of Muslim Sweepers and non-Muslim Sweepers.

2. Any vested right accrued in favour of any person in pursuance of decisions already announced by the Hon'ble court and attained finality and this Department order dated 16-02-2017 shall be implemented.

3. Now therefore, it has been decided that whenever the appointment of sweepers are made, preference shall be given to non-Muslims. Whenever applications/requests are not received as such, the persons belonging to Muslim community shall be appointed as sweepers provided that a certificate of non-availability of non-Muslims candidates will be issued by the concerned Appointing Authority/Selection Committee, or as the case may be. In this regard the person seeking appointment as such, shall submit an affidavit/undertaking on judicial stamp paper duly attested by Oath Commissioner, with no claim of change of caste.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Endst No. & Date even.

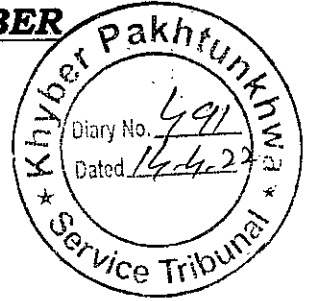
Copy of the above is forwarded to the:-

- Director General Health Services, Khyber Pakhtunkhwa, Peshawar
- Director Health Services, FATA,
- Director General Provincial Health Services Academy, Peshawar.
- Section Officer, Health Department.
- Local Directors/Hospitals, Directors of MTIs in Khyber Pakhtunkhwa.
- District Health Officers in Khyber Pakhtunkhwa.
- Medical Superintendent Hospitals in Khyber Pakhtunkhwa.
- Senior Minister Health, Khyber Pakhtunkhwa.
- Secretary Health, Khyber Pakhtunkhwa.
- Provincial President Paramedical Class/ Employees Association, Peshawar.
- Section Officer, Health Department, Peshawar.

BAKHITRAGI
SECTION OFFICER (H)

1

BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR



C.M No. _____/2022

In

Service Appeal No.5797/2020

Put up to the court

with Mr. P.

Abdur Rashid Khan S/O Farid Khan R/O Lahor, District Swabi (posted as Muslim Sweeper at Tehsil Headquarter Hospital (THQ) Lahor, District Swabi)

.....**Appellant**

14/4/22.

Versus

Govt of Khyber Pakhtunkhwa through Secretary Health KPK,
Civil Secretariat Peshawar & Others

.....**Respondents**

**APPLICATION FOR RESTRAINING THE
RESPONDENT FROM EMPLOYING
NEW/FRESH CANDIDATES AGAINST THE
VACANT POSITIONS OF CLASS-IV STAFF I.E
WARD ATTENDANT, WARD ORDERLY, MALI,
CHOWKIDAR ETC AT DISTRICT HEALTH
OFFICE, SWABI FROM SERIAL NO.01 TO 43
TILL THE FINAL DISPOSAL OF THE MAIN
SERVICE APPEAL.**

Respectfully Sheweth:

1. That the above noted Service Appeal is pending adjudication before this Hon'ble Tribunal, in which next date of hearing is 17.05.2022 .
2. That respondent No.03 has issued a letter No.1609/A-6/DHO Office Swabi dated:09.03.2022 to the Manager Employment Exchange Swabi for provision of the list of Unemployed candidates in Swabi and has stated that different categories of class-IV positions are lying vacant under the control of undersigned from

2

BPS-03 to BPS-04. (Copy of letter dated:09.03.2022 is annexed as Annexure "A").

3. That respondent No.03/DHO Swabi has also provided a list of vacant positions of Class-IV at different hospitals of District Swabi which are going to be filled in near future. (Copy of the list of vacant positions is annexed as Annexure "B").
4. That the appellant has got a good prima facie case in his favour, and is sanguine about its success.
5. That the balance of convenience also lies in favour of the petitioner.
6. That if the respondents are not restrained from employing fresh candidates, then the petitioners would suffer irreparable loss.
7. That the facts and grounds of the application may kindly be read as an integral part of this application.

It is, therefore, respectfully prayed that on acceptance of this application, the Respondent may kindly be restrained from employing fresh/new candidates against the vacant posts of Ward Orderly, Ward Attendant, Chowkidar, Mali and other class-IV till the final decision of the case.

Appellant



Through



Khair Ul Wahab Yousafzai
Advocate, High Court

Peshawar

Cell#0300-5952824

Dated: 12.04.2022

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**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

C.M No. _____/2022
In
Service Appeal No.5797/2020

Abdur Rashid Khan S/O Farid Khan R/O Lahor, District Swabi
(posted as Muslim Sweeper at Tehsil Headquarter Hospital (THQ)
Lahor, District Swabi)

.....**Appellant**

Versus

Govt of Khyber Pakhtunkhwa through Secretary Health KPK, Civil
Secretariat Peshawar & Others

.....**Respondents**

A F F I D A V I T

I, Abdur Rashid Khan S/O Farid Khan R/O Lahor, District Swabi
(posted as Muslim Sweeper at Tehsil Headquarter Hospital (THQ)
Lahor, District Swabi), do hereby solemnly affirm and declare on
oath that the contents of the accompanying **Application** are true
and correct to the best of my knowledge and belief and nothing has
been concealed from this Hon'ble Court.

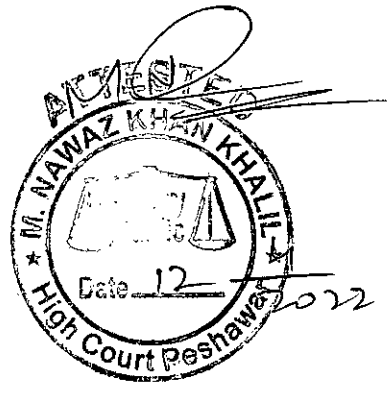
A Rashid

DEPONENT
CNIC#16202-0930340-1
Cell#_0306-5673097

Identified by

[Signature]

Khair-Ul Wahab Yousafzai
Advocate, High Court
Peshawar
Peshawar



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Annexure "A"

OFFICE OF THE DISTRICT HEALTH OFFICER SWABI

1608/A-6

District Office Swabi

Date: 09/13/2022

To

The Manager
Employment Exchange, Swabi

Subj

PROVISION OF UNEMPLOYED CANDIDATES LIST.

It is stated that different categories of Class-IV positions are provided by the undersigned from BPs-03 & BPS 04

You are therefore requested to kindly send the list of unemployed candidates as per criteria registered in your office for employment, within 15 days so as to proceed further in the matter

District Health Officer
Swabi

Dated 09/13/2022

NO 1610-11/A-6
DHO Swabi

Copy Forwarded to the :

- 1 Director General Health Services, Khyber Pakhtunkhwa Peshawar
- 2 PS to Secretary to Government of Khyber Pakhtunkhwa, Health Department Peshawar

For information and necessary action

District Health Officer
Swabi

