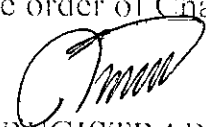


FORM OF ORDER SHEET

Court of

Appeal No. 1652 /2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/08/2023	<p>The appeal of Mr. Hayat Muhammad Khan presented today by Syed Noman Ali Bukhari Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: center;">  REGISTRAR </p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1652/2023

Hayat Muhammad Khan

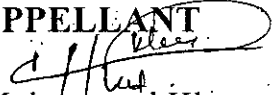
V/S

Transport Deptt:


INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-05
2.	Affidavit	-----	06
3.	Copy of 1 st appointment order	- A -	07
4.	Copy of regularization Act	- B -	08-11
5.	Copy of regularization order	- C -	12-15
6.	Copy of pay slip	- D -	16
7.	Copy of deptt appeal	- E -	17
8.	Copy of notification	- F -	18-19
9.	Copy of apex court judgment	- G -	20-34
10.	Vakalat Nama	-----	35

APPELLANT


Hayat Muhammad Khan

THROUGH:


(M. ASIF YOUSAFZAI)
ASC

& 
(SYED NOMAN ALI BUKHRI)
ADVOCATE HIGH COURT.

Room No. FR-08, 4th Floor,
Bilour Plaza, Peshawar Cantt:
Cell # 03129103240

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 1652 /2023

①

Hayat Muhammad Khan, Accountant BPS-14
Directorate of Transport Khyber Pakhtunkhwa, Peshawar.

APPELLANT

VERSUS

1. The Chief Secretary to Govt: Of KP, Civil Secretariat, Peshawar.
2. The Secretary to Govt: of KP, Transport and Mass Transit Deptt: Civil Secretariat, Peshawar.
3. The Director, Of Transport Deptt: At Directorate of Transport Khyber Pakhtunkhwa, Peshawar.
4. The Secretary Finance Deptt: KP Civil Secretariat, Peshawar.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, '1974 AGAINST INACTION AND OMISSION OF THE RESPONDENTS TO CONSIDER THE APPELLANT'S CONTRACT PERIOD FOR THE BENEFITS OF PAY PROTECTION AND PENSION W.E.F THE FIRST APPOINTMENT TILL REGULARIZATION AND AGAINST NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITH IN STATUTORY PERIOD OF 90 DAYS.

PRAYER

ON THE ACCEPTANCE OF THIS SERVICE APPEAL RESPONDENT MAY PLEASE BE DIRECTED TO CONSIDER THE TEMPORARY SERVICE PERIOD W.E.F FROM THE FIRST APPOINTMENT i.e 2003 TILL REGULARIZATION OF THE APPELLANT FOR THE BENEFITS OF PAY

PROTECTION AND PENSION TILL DATE AND ONWARD. ANY OTHER REMEDY WITH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER MAY ALSO BE AWARDED THE FAVOR OF THE APPELLANT.

2

RESPECTFULLY SHEWETH

FACTS

1. That the appellant was initially appointed as Accountant on work charge basis in Vehicular Emission Testing Station Peshawar vide order dated 18.07.2003, since appointment the appellant has been performing his duties upto the entire satisfaction of his superior Officers. **Copy of appointment order is attached as Annexure-A.**
2. That in meantime the Government of Khyber Pakhtunkhwa, passed the Khyber Pakhtunkhwa employees of Transport and Mass Transit Department (Regularization of services) Act 2019. **Copy of the regularization Act is attached as annexure-B.**
3. That the services of the appellant was regularized w.e.from commencement of act dated 08/10/2019 vide Khyber Pakhtunkhwa employees of Transport and Mass Transit Department (Regularization of services) Act 2019 but the salary of the appellant was started from initial pay stage and ignore all the previous service of the appellant. Despite that the appellant is continuously performing his duties upto the entire satisfaction of his superior's officers from the date of initial appointment i.e 2003. **Copy of regularization order and salary slip are attached as Annexure-C & D.**
4. That since the appellant has more than 16 Years temporary services at his credit which was not counted towards his pay and pension protection which cost huge financial loss to the appellant.
5. That the appellant made several request but in vain therefore he filed departmental appeal but not responded within statutory period of 90 days. **(Copy of departmental appeal is attached as annexure-E).**
6. That now the appellant constraint to file this service appeal in August Tribunal on the following grounds amongst others.

GROUND

- A. That depriving the appellant from the legal right of benefits of pay protection and pensionary benefits as against the law rules norms of justice.

- B. That the depriving the appellant from the benefits of pay protection is the violation of the superior Court judgments and Pension Rules.
- C. That since the appellant has more than 16-Years temporary services at their credit which was not counted towards their pay and pension protection which cost huge financial loss to the appellant.
- D. That the inaction of the respondents and not counting their previous service of more than 16 years toward pay and pension protection is against the principle of justice fair play equity and equality.
- E. That as per pension rules 2.3 the temporary and officiating service followed by confirmation/regularizations will be counted towards pension and pay protection.
- F. That this august Court has already decided writ petition No. 1188-P/2014 and 361-P/2013 wherein the previous service has been ordered to be counted towards pay and pension protection.
- G. That even in and other writ petition No. 3221-P/2013 this august Court as directed the respondents to count the previous service towards pay and pension fixation by allowing the writ petition.
- H. That the august Court has also decided a similar writ petition bearing No. 5585-P/2018 on 04.09.2019. Thus the appellant are also entitled for the same relief.
- I. That the appellant are not treated in accordance with law and rules keeping in view the above referred judgments the appellant also deserve same treatment under the principle of equity and equality and consistency.
- J. That the pay protection was given to the some colleagues of the appellant but the same was denied to the appellant which was also discriminatory attitude of the department towards the appellant.
- K. That the inaction and not counting the previous service of the appellant toward pay and pension fixation protection, is against the principle of Article-2A, 9, 25 and 38 of the Constitution.
- L. That the appellant is entitled for pensionary benefits of the period which was rendered by the appellant on contract basis under the shelter of West Pakistan Pension rules 2.3 and under finance notification dated 06/02/2014. **Copy of notification is attached as annexure-F.**
- M. That the similarly nature service appeal decided by the Federal Service Tribunal in favor of appellant and the Supreme Court

(4)

Judgment maintained the same. On the principal of consistency appellant also entitle to the same relief. **Copy of judgment is attached as annexure-G.**

- N. That the appellant was treated according to the law and rules and was depriving from his legal right in arbitrary manner.
- O. That the appellant seeks permission to advance other ground proof at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT

Hayat Muhammad Khan
Hayat Muhammad Khan

THROUGH:

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)
ASC

Syed Noman Ali Bukhri
&
(SYED NOMAN ALI BUKHRI)
ADVOCATE HIGH COURT.

5

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2023.

Hayat Muhammad Khan

V/S

Transport Deptt:

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

DEPONENT

LIT OF BOOKS:

1. Constitution of Islamic Republic of Pakistan, 1973.
2. The ESTA ()
3. Any other cases for per need.


(SYED NOMAN ALI BUKHARD)
ADVOCATE HIGH COURT

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2023

Hayat Muhammad Khan

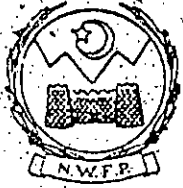
V/S

Transport Deptt.:

AFFIDAVIT

I, Hayat Muhammad Khan, (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.


DEPONENT



A-7 (112) 13

Environmental Protection Agency
Environment Department
Govt. of N.W.F.P.

No. EPA/VETS/GS/533

Dated: 18-7-03

OFFICE ORDER

The Director General Environmental Protection Agency Govt of NWFP has been pleased to appoint Mr. Hayat Muhammad Khan S/O Dr. Shukker Khan, resident of House No. 1, Civil Colony, Ghallani, FATA, Muhammad Agency as an Accountant on purely work charge basis in Vehicular Emission Testing Station Peshawar with effect from 12/7/2003.

His appointment shall be subject to the following terms and conditions.

1. He will be paid a fixed salary of Rs. 5000/- per month inclusive of all kinds of allowances subject to the availability of funds.
2. His appointment will be initially for a period of one year, which could be extended for another year subject to satisfactory performance.
3. His services will be liable to termination at any time without assigning any reason and without giving any notice.
4. He shall be governed by the NWFP Govt. servant (Efficiency & Discipline) Rules 1973 and Govt conduct rules 1987 and any other instruction issued by the Govt of NWFP time to time.
5. He shall not be entitled to any TA/DA for joining the duty.
6. His services will be placed at the disposal of VETS/EPA NWFP for self-sustainable VETS at Chamkani Mor, G.T Road Peshawar.

If the above terms and conditions are acceptable to him he should report to the Director General EPA NWFP within a one week of the issuance of this appointment letter.

Assistant Director (Admn)

C.C

✓ PS to Director General EPA NWFP

Mr. Hayat Muhammad Khan S/O Dr. Shukker Khan

Accountant VETS Peshawar.

Personal file of the Official concerned

3rd Floor, Old Courts Building, Khyber Bazar Road, Peshawar Cantt.
Tel: 92(91) 9210421- 9210148 Fax: 92 (91) 9210280

26
2/12



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 8th OCTOBER, 2019.

PROVINCIAL ASSEMBLY SECRETARIAT KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 8th October, 2019.

No. PA/Khyber Pakhtunkhwa/Bills-49/2019/8843.— The Khyber Pakhtunkhwa Employees of Transport and Mass Transit Department (Regularization of Services) Bill, 2019 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 27th September, 2019 and assented to by the Governor of the Khyber Pakhtunkhwa on 4th October, 2019 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA EMPLOYEES OF TRANSPORT AND MASS TRANSIT DEPARTMENT (REGULARIZATION OF SERVICES) ACT, 2019. (KHYBER PAKHTUNKHWA ACT NO. XXXVI OF 2019)

*(First published after having received the assent of the Governor of the
Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa,
(Extraordinary), dated the 8th October, 2019).*

AN
ACT

*to provide for appointment and regularization of services of
Motor Vehicle Examiners, appointed on adhoc basis and certain
employees of Vehicular Emission Testing Stations appointed on
fixed pay basis in the Directorate of Transport and
Mass Transit, Khyber Pakhtunkhwa.*

WHEREAS it is expedient to provide for appointment and regularization of services of Motor Vehicle Examiners, appointed on adhoc basis and certain employees of Vehicular Emission Testing Stations appointed on fixed pay basis in the Directorate of Transport and Mass Transit, Khyber Pakhtunkhwa, in the public interest;

It is hereby enacted as follows:

1. Short title, application and commencement.—(1) This Act may be called the Khyber Pakhtunkhwa Employees of Transport and Mass Transit Department (Regularization of Services) Act, 2019.

(2) It shall be applied to the employees, mentioned in clause (f) of sub-section (1) of section 2 of this Act.

(2) It shall come into force at once.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(a) "appointment" means the appointment of a duly qualified person, for a specific period, made against posts on adhoc basis or fixed pay basis, in the prescribed manner;

(b) "Commission" means the Khyber Pakhtunkhwa Public Service Commission;

(c) "Departmental Selection Committee" means a Departmental Selection Committee, constituted for the purpose of making selection for initial recruitment to posts, under a Government Department or office of Government;

(d) "Directorate" means the Directorate of Transport and Mass Transit, Khyber Pakhtunkhwa;

(e) "Government" means the Government of the Khyber Pakhtunkhwa; and

(f) "employees" mean duly qualified,—

(i) Motor Vehicle Examiners, appointed, on adhoc basis, w.e.f. 06.02.2014 to 27.02.2014 (both days inclusive), and holding posts till the commencement of this Act, in the Directorate of Transport and Mass Transit, Khyber Pakhtunkhwa;

(ii) persons appointed on fixed pay in the Vehicular Emission Testing Stations, w.e.f. 30.04.1997 to 05.01.2018 (both days inclusive), and holding posts till the commencement of this Act, in the Directorate of Transport and Mass Transit, Khyber Pakhtunkhwa; and

(g) "law or rule" means the law or rule for the time being in force governing the selection and appointment of civil servants.

(2) The expression "ad hoc appointment" shall have the same meaning as is assigned to it in the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973).

3. **Regularization of services of employees.**—Notwithstanding anything contained in any law or rule, for the time being in force, the employees, appointed on ad hoc basis or on fixed pay basis, as the case may be, and holding such posts, till the commencement of this Act, shall be deemed to have been so validly appointed on regular basis from the date of commencement of this Act, subject to the verification of their qualifications and other credentials by the Transport and Mass Transit Department:

Provided that the employees on their regularization shall be on the strength of Directorate for their further posting.

4. **General conditions for regularization.**—For the purpose of regularization of the employees under this Act, the following general conditions shall be observed:

- (i) the service promotion quota of the service cadres shall not be affected;
- (ii) the employees shall possess the same qualification and experience as are required for a regular post;
- (iii) the employees have not resigned from their services or terminated from service on account of misconduct, inefficiency or any other ground before the commencement of this Act; and
- (iv) the services of such employees shall be deemed to have been regularized only on the publication of their names in the Official Gazette.

5. **Determination of seniority.**—(1) The employees, whose services are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission or Departmental Selection Committee, as the case may be, made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.

(2) The seniority inter-se of the employees, whose services are regularized under this Act, within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:

Provided that if the date of continuous officiation, in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

6. **Removal of difficulties.**—If any difficulty arises in giving effect to any provision of this Act, Chief Minister may make such order not inconsistent with the provisions of this Act as may appear to it to be necessary for the purpose of removing such difficulty.

7. **Overriding effect.**—Notwithstanding anything to the contrary contained in any other law or rules, 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 this Act shall cease to have effect.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF K. HYBER
PAKHTUNKHWA

(NASRULLAH KHAN KHATTAK)
Secretary,
Provincial Assembly of Khyber Pakhtunkhwa

Printed and published by the Manager,
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Peshawar.



Directorate of Transport & Mass Transit Khyber Pakhtunkhwa

Ground Floor Benevolent Fund Building, Peshawar Cantt. ☎ 091-9214185 ☎ 091-9214186

ORDER

Dated: 26-05-2021

No. Dir/TPT/2-26/Regularization-VETS&MVEs/ 3760-3815.

WHEREAS, the following Vehicle Emission Testing Station employees were appointed on adhoc/fixed pay basis, and

WHEREAS, Provincial Assembly of Khyber Pakhtunkhwa passed an Act namely "The Khyber Pakhtunkhwa Employees of Transport and Mass Transit Department (Regularization of Services) Act, 2019 (Khyber Pakhtunkhwa Act NoXXXVI of 2019)" dated: 8th October, 2019, and

WHEREAS, under Section 3 of the above referred Act, the Government of Khyber Pakhtunkhwa Transport & Mass Transit Department notified a scrutiny committee vide letter No.SO(E)/TD/3-11/Reg:MVEs/VETS/2019-20 dated: 27-07-2020, and

WHEREAS, the scrutiny committee held its deliberation in the light of the above referred Act, relevant rules and available record, and submitted its recommendations to the Government of Khyber Pakhtunkhwa, Transport & Mass Transit Department vide letter No. Dir/TPT/2-26/Regularization/26035 dated: 13-10-2020, and

WHEREAS, the Government of Khyber Pakhtunkhwa, Transport & Mass Transit Department approved the recommendations of the scrutiny committee and communicated vide letter No. SO(E)/3-10/2019-20/MVEs&VETS Reg/939-41 dated: 11-02-2021, and

WHEREAS, upon the creation of posts by Finance Department, Government of Khyber Pakhtunkhwa vide letter No. BO-II/FD/4-5/TPT/SNE/2020-21 dated: 21-05-2021, and

NOW THEREFORE, in the light of the recommendations of the scrutiny committee and consequent upon its approval, the competent authority is pleased to appoint the following employees of Vehicle Emission Testing Station with effect from the date of commencement of the Act i.e. 8th October, 2019, subject to verification of academic credentials and antecedents and will be on probation in terms of Rule 15 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

S. N	NAME	FATHER NAME	DESIGNATION
1.	Zahid Hussain	Abdur Rahim	Technical Officer (BPS-16)
2.	Fawad Ahmad	Javed Muhammad	Technical Officer (BPS-16)
3.	Imtiaz Ahmad	Amir Mohammad	Technical Officer (BPS-16)
4.	Sofia Jadoon	Irshad Khan	Technical Officer (BPS-16)
5.	Muhammad Luqman	Muhammad Nawaz Khan	Technical Officer (BPS-16)
6.	Murad Ali	Barkat Shah	Technical Officer (BPS-16)
7.	Muhd Shoaib Yousaf	Muhd Yousaf	Technical Officer (BPS-16)
8.	Muhammad Ali	Haji Muhd. Kishwar	Technical Officer (BPS-16)
9.	Muhd. Yousaf	Malik Muhd. Jan	Technical Officer (BPS-16)
10.	Hayat Muhammad Khan	Shukker Khan	Accountant (BPS-14)
11.	Muhammad Idrees	Fazal Khaliq	Office Assistant (BPS-14)
12.	Muhammad Hafeez	Muhammad Sarwar	Computer Operator (BPS-14)
13.	Feroz Shah	Wazir Shah	Technician (BPS-14)
14.	Asim Abedin	Zain Ul Abedin	Technician (BPS-14)
15.	Imran Khan	Karim Jan	Technician (BPS-14)
16.	Fazle Majid	Abdul Ghafoor	Technician (BPS-14)
17.	Iftikhar Ali	Amir Zada	Technician (BPS-14)
18.	Asfandiyar	Haji Imtiaz Pervaiz	Technician (BPS-14)
19.	Zaheer Ahmad	Noor Muhammad	Technician (BPS-14)
20.	Hidayat Ullah	Hanif Ullah	Technician (BPS-14)
21.	Abdur Rehman	Hayat Ullah Khan	Technician (BPS-14)

22.	Zohaib	Wahid Zaman	Technician (BPS-14)
23.	Shafiq Ur Rehman	Wali Ur Rehman	Technician (BPS-14)
24.	Shahid Ullah	Amin Ullah	Driver (BPS-06)
25.	Ahmad	Fateh Khan	Driver (BPS-06)
26.	Syed Fakhar Alam Shah	Syed Munawar Shah	Driver (BPS-06)
27.	Syed Mubarak Ali Shah	Syed Ishaq Ali Shah	Driver (BPS-06)
28.	Rizwan Ullah Khan	Alta Ullah Khan	Driver (BPS-06)
29.	Noman Ullah	Ihsan Ullah	Driver (BPS-06)
30.	Irfan Ullah	Noor Ali Khan	Driver (BPS-06)
31.	Muhammad Sadiq	Qadir Baksh	Technical Helper (BPS-04)
32.	Noor Zeb Shah	Shah Nazar	Technical Helper (BPS-04)
33.	Saqib Khan	Nawaz Khan	Technical Helper (BPS-04)
34.	Muhammad Fawad	Gul Faraz	Naib Qasid (BPS-03)
35.	Muhammad Fawad	Muneef Khan	Naib Qasid (BPS-03)
36.	Usman Ali	Muhammad Saleem Abbasi	Naib Qasid (BPS-03)
37.	Ikram Ullah	Haq Nawaz	Naib Qasid (BPS-03)
38.	Muhammad Pervez	Muhammad Baseer	Chowkidar (BPS-03)
39.	Akhtar Gul	Gul Faqir	Chowkidar (BPS-03)
40.	Khalid Qayum	Abdul Qayum	Chowkidar (BPS-03)
41.	Haroon Ali	Ghulam Qadir	Chowkidar (BPS-03)
42.	Khuram Khan Jadoon	Munsif Khan Jadoon	Chowkidar (BPS-03)
43.	Muhammad Imra	Alta Muhammad	Chowkidar (BPS-03)
44.	Naseeb Zada	Gul Hasan	Chowkidar (BPS-03)
45.	Ibrahim	Gul Faqir	Sweeper (BPS-03)

The terms and conditions mentioned in the above referred Act will remain intact.

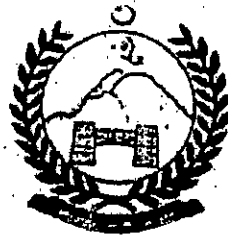
Ashraf
 Director 26/5/21
 Transport & Mass Transit
 Khyber Pakhtunkhwa

Endst: No & Date Even: 3760-3815

A copy is forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. PSO to Chief Secretary, Government of Khyber Pakhtunkhwa.
4. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
5. Secretary, Provincial Assembly, Government of Khyber Pakhtunkhwa.
6. The Manager, Government Printing Press Department, Khyber Pakhtunkhwa for publication in the Official Gazette.
7. PS to Minister Transport & Mass Transit, Khyber Pakhtunkhwa.
8. PS to Secretary, Transport & Mass Transit Department, Govt. of Khyber Pakhtunkhwa.
9. Budget Officer-II, Finance Department, Govt. of Khyber Pakhtunkhwa.
10. Officials concerned.

Ashraf
 Director
 Transport & Mass Transit
 Khyber Pakhtunkhwa



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, THURSDAY, 27th MAY, 2021.

Directorate of Transport & Mass Transit Khyber Pakhtunkhwa

NOTIFICATION

Dated Peshawar, the 26th May, 2021

No. Dir/TPT/2-26/Regularization-VETS&MVE/3760-3815—WHEREAS, the following Vehicle Emission Testing Station employees were appointed on adhoc/fixed pay basis, and

WHEREAS, Provincial Assembly of Khyber Pakhtunkhwa passed an Act namely "The Khyber Pakhtunkhwa Employees of Transport and Mass Transit Department (Regularization of Services) Act, 2019 (Khyber Pakhtunkhwa Act No. XXXVI of 2019)" dated: 8th October, 2019, and

WHEREAS, under Section 3 of the above referred Act, the Government of Khyber Pakhtunkhwa Transport & Mass Transit Department notified a scrutiny committee vide letter No. SOE/VT/3-11/Reg: MVEs/VETs/2019-20 dated: 27-07-2020, and

WHEREAS, the scrutiny committee held its deliberation in the light of the above referred Act, relevant rules and available record, and submitted its recommendations to the Government of Khyber Pakhtunkhwa, Transport & Mass Transit Department vide letter No. Dir/TPT/2-26/Regularization/26035 dated: 13-10-2020, and

WHEREAS, the Government of Khyber Pakhtunkhwa, Transport & Mass Transit Department approved the recommendations of the scrutiny committee and communicated vide letter No. SOE/VT/3-10/2019-20/MVEs&VETs Reg/939-41 dated: 11-02-2021, and

WHEREAS, upon the creation of posts by Finance Department, Government of Khyber Pakhtunkhwa vide letter No. BO-II/FID/4-5/TPT/SNE/2020-21 dated: 21-05-2021, and

NOW THEREFORE, in the light of the recommendations of the scrutiny committee and consequent upon its approval, the competent authority is pleased to appoint the following employees of Vehicle Emission Testing Station with effect from the date of commencement of the Act i.e. 8th October, 2019, subject to verification of academic credentials and antecedents and will be on probation in terms of Rule 15 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

S. N.	NAME	FATHER NAME	DESIGNATION
1.	Zahid Hussain	Abdur Rahim	Technical Officer (BPS-16)
2.	Fawad Ahmad	Javaid Muhammad	Technical Officer (BPS-16)
3.	Imtiaz Ahmad	Amir Mohammad	Technical Officer (BPS-16)
4.	Sofia Jadoon	Irshad Khan	Technical Officer (BPS-16)
5.	Muhammad Luqman	Muhammad Nawaz Khan	Technical Officer (BPS-16)
6.	Murad Ali	Barkat Shah	Technical Officer (BPS-16)
7.	Muhammad Shoaib Yousaf	Muhammad Yousaf	Technical Officer (BPS-16)
8.	Muhammad Ali	Haji Muhd. Kishwar	Technical Officer (BPS-16)

9.	Mulid Yousuf	Mulik Abdul Jan	Technical Officer (BPS-16)
10.	Hayat Muhammad Khan	Shukhrat Khan	Assistant (BPS-14)
11.	Muhammad Idrees	Fazal Khalid	Office Assistant (BPS-14)
12.	Muhammad Hafeez	Muhammad Sarwar	Computer Operator (BPS-14)
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14.	Asim Abedin	Zain Ul Abedin	Technician (BPS-14)
15.	Imran Khan	Karim Jan	Technician (BPS-14)
16.	Fazle Majid	Abdul Wahid	Technician (BPS-14)
17.	Hikmat Ali	Amir Zada	Technician (BPS-14)
18.	Asfandiyar	Haji Imtiaz Pervez	Technician (BPS-14)
19.	Zahoor Ahmad	Muhammad	Technician (BPS-14)
20.	Hidayat Ullah	Hanif Ullah	Technician (BPS-14)
21.	Abdur Rehman	Hayat Ullah Khan	Technician (BPS-14)
22.	Zohaib	Wahid Zaman	Technician (BPS-14)
23.	Shafiq Ur Rehman	Wali Ur Rehman	Technician (BPS-14)
24.	Shahid Ullah	Amin Ullah	Driver (BPS-06)
25.	Ahmad	Jaleel Khan	Driver (BPS-06)
26.	Syed Fakhar Alam Shah	Syed Munawar Shah	Driver (BPS-06)
27.	Syed Mubarak Ali Shah	Syed Irtihad Ali Shah	Driver (BPS-06)
28.	Rizwan Ullah Khan	Alta Ullah Khan	Driver (BPS-06)
29.	Noman Ullah	Ihsan Ullah	Driver (BPS-06)
30.	Irfan Ullah	Muhammad Ali Khan	Driver (BPS-06)
31.	Muhammad Sadique	Qadir Baksh	Technical Helper (BPS-04)
32.	Noor Zeb Shah	Shah Nazir	Technical Helper (BPS-04)
33.	Saqib Khan	Nawaz Khan	Technical Helper (BPS-04)
34.	Muhammad Fawad	Gul Feroz	Naib Qaid (BPS-03)
35.	Muhammad Fawad	Munir Khan	Naib Qaid (BPS-03)
36.	Usman Ali	Muhammad Saleem Abbasi	Naib Qaid (BPS-03)
37.	Iqram Ullah	Hay Nawaz	Naib Qaid (BPS-03)
38.	Muhammad Pervez	Muhammad Pervez	Chowkidar (BPS-03)
39.	Akhtar Gul	Gul Faqir	Chowkidar (BPS-03)
40.	Khalid (Jayun)	Abdul Qayum	Chowkidar (BPS-03)
41.	Heroon Ali	Ghulam Qadir	Chowkidar (BPS-03)
42.	Khuram Khan Judom	Munir Khan Judom	Chowkidar (BPS-03)
43.	Muhammad Jinnat	Alta Muhammad	Chowkidar (BPS-03)
44.	Naseeb Zada	Gul Hasan	Chowkidar (BPS-03)
45.	Ibrahim	Gul Faqir	Sweeper (BPS-03)

The terms and conditions mentioned in the above referred Act will remain intact.

Sd/-
Director
Transport & Mass Transit
Khyber Pakhtunkhwa

**Government of Khyber Pakhtunkhwa
Accountant General Khyber Pakhtunkhwa, Peshawar
Monthly Salary Statement (July-2023)**

D-16 

Personal Information of Mr HAYAT MUHAMMAD KHAN d/w/s of SHUKKER KHAN

Personnel Number: 00977028 CNIC: 2140695844853 NTN:
Date of Birth: 01.07.1979 Entry into Govt. Service: 08.10.2019 Length of Service: 03 Years 09 Months 025 Days

Employment Category: Active Temporary

Designation: ACCOUNTANT 80004039-GOVERNMENT OF KHYBER PAKH
DDO Code: PR5122-Directorate of Transport Khyber Pkhtunkhwa.
Payroll Section: 008 GPF Section: 004 Cash Center:
GPF A/C No: GPF Interest applied **GPF Balance:** 75,326.00 (provisional)
Vendor Number: 30550144 - HAYAT MUHAMMAD KHAN 11061-00-8 BOK
Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 14 Pay Stage: 3

Wage type		Amount	Wage type		Amount
0001	Basic Pay	27,750.00	1004	House Rent Allow 45% KP21	8,640.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
2315	Special Allowance 2021	3,500.00	2341	Dispr. Red All 15% 2022KP	2,628.00
2347	Adhoc Rel AI 15% 22(PS17)	2,628.00	2378	Adhoc Relief All 2023 35%	9,712.00

Deductions - General

Wage type		Amount	Wage type		Amount
3014	GPF Subscription	-3,900.00	3501	Benevolent Fund	-1,200.00
3609	Income Tax	-231.00	4004	R. Benefits & Death Comp:	-600.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 2,764.31 Recovered till JUL-2023: 231.00 Exempted: 0.65- Recoverable: 2,533.96

Gross Pay (Rs.): 59,214.00 Deductions: (Rs.): -5,931.00 Net Pay: (Rs.): 53,283.00

Payee Name: HAYAT MUHAMMAD KHAN
Account Number: 11061-00-8
Bank Details: THE BANK OF KHYBER, 080010 GT ROAD BRANCH RAHIM MEDICAL CENTRE. GT ROAD BRANCH RAHIM MEDICAL C, PESHAWAR

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address:

City: PESHAWAR Domicile: - Housing Status: No Official
Temp. Address:
City: Email: hayatvets@gmail.com

To

✓
The Secretary
Transport & Mass Transit Department
Government of Khyber Pakhtunkhwa

Diary No. 292 E-1
Dated 17/4/2023
P.S To Secretary Transport
Deptt Khyber Pakhtunkhwa

Subject: Counting of Previous Service for Pension & Pay Protection.

R/Sir,

Kindly it is stated that I am an employee of Directorate of Transport and have been working since 18-07-2003 on fixed pay Annex-A. Repeated verbal and written request were made to the quarter concerned to regularize my services but to no avail. Finally through Act of provincial assembly Khyber Pakhtunkhwa in October, 2019 the services of the employees were regularized under the Khyber Pakhtunkhwa Employees of Transport & Mass Transit Department (Regularization of Services) Act, 2019 (Khyber Pakhtunkhwa Act No.XXXVI of 2019), though from the date of the enactment i.e 8th October, 2019 Annex-B vide Directorate of Transport Notification No. Dir/TPT/2-26/Regularization-VETS&MVEs/3760-3815 dated 26-05-2021 Annex-C.

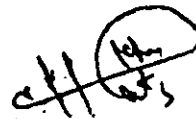
As a step forward to solution of the long standing problem, I am thankful to the Provisional Government as well as Provincial Legislator for looking in to my genuine problem. However the same has hardly solved my problem.

Rather I have been deprived of my pensionary benefits. It is a sorry state of affairs as i have given best time of my life to the service rendered in the department. Naturally, the best time given to the Department must not go to waste when my liabilities have filed up and multiplied in my old age.

More so, the Superior Courts have also decided such issues and directed the concerned quarters to count Re-Regularization services for the purpose of Pension & Pay Protection. This being sincerely placed persons; the applicant also deserves the same treatment.

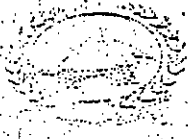
I therefore humbly request that please consider my previous service for my Pension & Pay Protection with all back and consequential benefits. I have the honor to be.

With Regards



Hayat Muhammad Khan
Accountant (BPS-14)

- Copy forwarded to the Director Transport, Peshawar Khyber Pakhtunkhwa.



F 18

Handwritten initials and marks: (S), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), (M), (N), (O), (P), (Q), (R), (S), (T), (U), (V), (W), (X), (Y), (Z)

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD. (SOSR-1) 12-7/2014
Dated Peshawar the 6th February, 2014

- To:
1. The Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
 2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
 3. The Secretaries to Govt. of Khyber Pakhtunkhwa.
 4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
 5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
 6. The Secretary Finance PATA, PATA Secretariat, Peshawar.
 7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
 8. All Divisional Commissioners in Khyber Pakhtunkhwa.
 9. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa.
 10. The Registrar, Peshawar High Court, Peshawar.
 11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
 12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
 13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

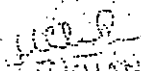
Subject: PROTECTION OF PAY OF CONTRACT EMPLOYEES ON
REGULARIZATION / APPOINTMENT ON REGULAR BASIS.

Dear Sir,

In pursuance to the Finance Division's Office Memorandum No. 703R-1/2012 dated 31st May, 2013, the competent authority is pleased to allow the pay protection to non-Gazetted contract employees on their regularization / appointment on regular basis with immediate effect subject to the following conditions:-

- i) That the contract appointment has been made on standard terms and conditions, circulated by this Provincial Government as amended from time to time.
- ii) That the contract employee has applied through proper channel and has been properly received by the appointing authority. This condition shall not apply in case of regularization on the same post.
- iii) That regularization / regular appointment has been made with the approval of competent authority.
- iv) That there is no break / interruption between contract service and regular service.
- v) That the service rendered on contract basis shall not qualify for pension / gratuity.
- vi) That in case of regular appointment in lower grade, pay shall not be protected.

Yours faithfully,


(RAZAULLAH KHAN)
Addl. Secretary (Regulation)

P.T.O

Endst: No. FD (SOSR-1) 12-7 /2014

Dated 6th Feb. 2014

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Copy for information & necessary action to the:-

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
2. All the District Comptroller of Accounts in Khyber Pakhtunkhwa.
3. The Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
4. The Director, FMU, Finance Department.
5. The Treasury Officer, Peshawar.
6. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
7. All the District & Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.

(MASOOD KHAN)
Deputy Secretary (Reg-II)

Endst: No. & Date Even

Copy for information is forwarded to:-

1. All the Section Officers / Budget Officers in Finance Department, Khyber Pakhtunkhwa, Peshawar
2. The Private Secretary to Senior Minister for Finance, Khyber Pakhtunkhwa.
3. The Private Secretary to Secretary / P.As to Special Secretary / Additional Secretaries / Deputy Secretaries in Finance Deptt.

(Wazir Muhammad Afgar)
Section Officer (SR-1)

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

AFR

Civil Appeal No.1546 of 2019

AND

Civil Petitions Nos.2503 to 2519 & 2660 of 2019

Against judgments dated 15.02.2018 & 23.04.2019 of Federal Service Tribunal, Islamabad, passed in Appeals No.3622(R)CS of 2017 and 3192(R)CS of 2012, etc.

Secretary, M/o Finance, Islamabad, etc

Appellants (in CA 1546/19)

DG, FDE, Government of Pakistan,
etc

Petitioners (in CPs 2503-2519 & 2660/19)

Versus

Tayyaba Halim Subhani	C.A 1546/2019
Irfan Mehmood & Another	C.P 2503/2019
Tahir Ullah & another	C.P 2504/2019
Javed Iqbal & Another	C.P 2505/2019
Syed Sajjad Ali Shah & Another	C.P 2506/2019
Hafiz Atta Ur Rehman & Another	C.P 2507/2019
Mrs. Khalida Nasim & Another	C.P 2508/2019
Rubina Kausar & Another	C.P 2509/2019
Adeela Tabasum & Another	C.P 2510/2019
Mrs: Sobia Imam & Another	C.P 2511/2019
Mrs. Najma & Another	C.P 2512/2019
Mrs. Attia Kaleem Anwar & Another	C.P 2513/2019
Mrs. Farah Saeed & Another	C.P 2514/2019
Mrs. Lubna Chaudhry & Another	C.P 2515/2019
Mrs. Tahira Akbar & Another	C.P 2516/2019
Mrs. Salaria Khatoon & Another	C.P 2517/2019
Saeed ur Rehman & Another	C.P 2518/2019
Syed Tajammal Hussain Bokhari Shah & Others	C.P 2519/2019
Tayyaba Halim Subhani & another	C.P 2660/2019

...Respondents

For the Appellant
/Petitioners:

Mr. Sajid Ilyas Bhatti, Addl.AGP
M. Rehan, AD Legal
M. Ahmed, AD Legal

For the Respondent(s):

Respondent-in-Person: in CA
1546/2019Hafiz S.A. Rehman, ^{sr. ASC} for
Respondent No. 1 and
Mr. M. Sharif Janjua, AOR in all
CPs.

Date of Hearing:

27.01.2021

JUDGMENT

IJAZ UL AHSAN, J. Through this single judgment, we intend to decide Civil Appeal No. 1546 of 2019 (hereinafter referred to as "CA") and Civil Petitions No. 2503 to 2519 and 2660 of 2019 (hereinafter referred to as "CP") as they involve common questions of law.

2. Through the instant Appeals/Petitions, the Appellants/Petitioners have challenged the Judgment of the Federal Service Tribunal, Islamabad (hereinafter referred to as "Tribunal") dated 15.02.2018 passed in Service Appeal No. 3622(R)CS/2017 and judgment dated 23.04.2019 passed in Service Appeals No 3192(R)CS to 3196(R)CS of 2012, 3230(R)CS to 3238(R)CS of 2012, 90(R)CS/2013, 91(R)CS/2013, 679(R)CS/2016, and 3622(R)CS/2017 (hereinafter referred to as "Impugned Judgments"). The Tribunal through the Impugned Judgments accepted the Service Appeals filed by the Respondents and ordered the Appellants/Petitioners to provide pay protection to the Respondents by counting the service they had rendered on daily wage basis for pensionary benefits and pay.

3. The necessary facts giving rise to this *lis* are that the Respondents were appointed as teachers/lecturers

against their respective posts. The Respondent in the CA retired upon reaching the age of superannuation w.e.f. 02.06.2017. Before her retirement, she had made a departmental representation through which she had requested her department to count the period for which she had worked on daily wage basis towards the calculation of her pensionary benefits. The Respondents in the CPs were recommended to be regularized by the Federal Public Service Commission w.e.f. 17.08.2010. They made representations to the effect that their previous service rendered on daily wage basis be counted towards their pay and pension benefits but to no avail. Aggrieved of the treatment meted out to the Respondents by the Appellants/Petitioners, they approached the Service Tribunal, which allowed their Service Appeals through the impugned judgments. The Appellants/Petitioners challenged the impugned judgments before this Court.

4. Leave to Appeal was granted by this Court in the CA vide order dated 17.09.2019 which is reproduced below for ease of reference:

"Learned Additional Attorney General relies upon a judgment passed by a 5 member bench of this Court in the case of Chairman, Pakistan Railway, Government of Pakistan, Islamabad and others v. Shah Jehan Shah (PLD 2016 SC 534) to contend that the very issue dealt with by the Tribunal in the impugned judgment has been dealt with by this Court in the reported judgment where the payment of pensionary benefits are admissible to contract employees only after their qualifying regularized service, and thus unless such qualifying regular service is rendered, the pensionary benefits could not be granted to the employees.

2. Leave to appeal is granted to consider inter alia the above submissions made by the learned Additional Attorney General."

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5. The learned Additional Attorney General contends that the service rendered on daily wage basis cannot be counted as qualifying service for pension under the relevant rules. As per Article 352 of the CSR, the Respondents cannot claim pay protection or that their daily-wage-service be counted towards pension because the said rule specifically bars the Respondents from making such claim insofar as the Respondents do not fulfil the three conditions mentioned therein i.e. that the service must be under the government, must be substantive and permanent, and, that the service must be paid for by the government. Further, allowing the Respondent's daily wage period to be counted towards pay protection and pensionary benefits would open floodgates of never-ending litigation. Lastly, the Respondents were not working continuously, and, even otherwise, this being a policy matter cannot be interfered with by Courts.

6. The Learned Senior ASC appearing on behalf of the Respondents contends that the act of the Appellants/Petitioners of not giving pay protection to the Respondents and not allowing their service rendered on daily wage to be counted towards their pensionary benefits is discriminatory and exploitative. He adds that an identical order was passed by the Ministry of Education dated 25.01.2006 whereby benefits were allowed to lecturers, therefore, not granting the same to the Respondents who are teachers, represents a policy of discrimination and pick and choose. Further, the Respondents have been performing their duties to the satisfaction of the Government and, by not

allowing them pay protection and by not counting their service rendered on daily wage basis for pensionary benefits is unjust and unfair.

7. We have heard the learned AAG and the learned Senior ASC appearing on behalf of the parties. The issues which fall for consideration of this Court are:-

- i. Could the service rendered by the Respondents on daily wages basis be counted towards their pension?
- ii. Were the Respondents employed as a stop-gap arrangement?
- iii. Could the Respondents be employed on daily wage basis considering the nature of their work?

COULD THE SERVICE RENDERED BY THE RESPONDENTS ON DAILY WAGES BASIS BE COUNTED TOWARDS THEIR PENSION?

8. The learned counsel for the Respondents has relied upon CSR 361 and has argued that, in view of the said Rule, the Respondents were entitled to pension and pay protection. For ease of reference, CSR 361 is reproduced as under:-

"361:- Except as otherwise provided in these Regulations, the service of an officer] does not qualify for pension unless it conforms to the following three conditions: — First.—the service must be under Government. Second.—the employment must be substantive and permanent. Third.—the service must be paid for by Government"

9. We have examined the Education Code 2006 issued by the Federal Directorate of Education. The learned Tribunal has held that the Respondents were being paid out of funds that were approved by the Government. In this

respect, Paragraph 30 of the said Code is relevant which provides that the following:

"Heads of educational institutions shall be empowered to incur expenditure out of Students' Fund as per the upper limit of expenditure prescribed through a notification by the Department Head on the following items:

*(v) Payment to daily wage employees (teaching & non-teaching)**

Paragraph 17 of the said Code provides that the Federal Directorate of Education would manage the Federal Government Educational Institution (Schools & Colleges), Islamabad Model Institutions, and Hostels. The learned AAG has not disputed the fact that the Respondents were working in institutions that were admittedly being managed by the Federal Directorate of Education. The Federal Directorate of Education has itself issued a Code which such schools are required to follow to regulate their affairs. The services of the Respondents were utilized by the Appellants/Government to their satisfaction until the time the Respondents asked for pay protection and pension. As such, the learned Tribunal has correctly held that the Government cannot disassociate itself from the entire process and hold that the Respondents were not working under its supervision. It is the Federal Directorate of Education that has issued the said Code, and Paragraph 30 *supra* provides that the Federal Directorate of Education has empowered heads of institutions to manage pays and salaries of daily wage staff. It has not been argued before us that the said heads of institutions could not be delegated this task. The Government is fully empowered to

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delegate some of its tasks for administrative convenience and efficient working as has been done in this case.

10. We have gone through the letter dated 26.08.04 issued by the FDE (Model Colleges Wing). The said letter provides an elaborate mechanism viz selection of teachers on daily wage basis. They are to appear in a test of 50 marks followed by an interview. Following this, their result is approved by a Committee and sent to the Director Colleges, Federal Directorate of Education who in turn seeks confirmation from the Director-General, Federal Directorate of Education. The said letter establishes that the Respondents were not arbitrarily appointed as a stop-gap arrangement. Their services were utilized by the Appellants/Petitioners for years on end till they reached the age of superannuation, their services were substantive and permanent which were paid for on behalf of and with the consent or approval of the Government.

11. We find that although the employment of the Respondents was not permanent within the meaning of CSR 361, the establishment under which they were working was permanent and the fact that they rendered services for years shows that they were not employed on temporary basis as a stop-gap arrangement for short periods of time. Further, that the Federal Public Service Commission by recommending the Respondents for retention into service has confirmed their ability and qualification to hold these posts. It is an admitted fact that the Respondents have been working continuously for more than 5 years. We have gone through the memorandum

dated 25.01.2006 whereby it was stated by the Federal Directorate of Education that service rendered on an Ad Hoc basis could be counted towards pay and pensionary benefits. If the Appellants/Petitioners have allowed the services of Ad Hoc teachers/lecturers to be counted for pay protection and pension, it is hard to understand why the same was cannot be done in the case of the Respondents. The principle of similarly placed persons dictates that the Respondents also deserve to be treated in the same manner as others who were granted the benefits of pay protection and pension from the date of their initial appointment on daily wages basis. The Respondents have been discriminated against which is in violation of their fundamental rights guaranteed to them by the Constitution of the Islamic Republic of Pakistan, 1973.

12. The learned Senior ASC for the Respondents has placed reliance on the case titled *Ikram Bari and 524 others vs National Bank of Pakistan (2005 SCMR 100)* in support of the submission that the service rendered on daily wages basis can be counted for pension and pay. The relevant portion of the judgment *ibid* is reproduced as under for ease of reference: -

"An Islamic Welfare State is under an obligation to establish a society which is free from exploitation wherein social and economic justice is guaranteed to its citizens. The temporary Godown staff and the daily wages employees were continued in service of the Bank on payment of meagre emoluments fixed by the Bank. In most of the cases of these employees, there were artificial breaks in their service so as to circumvent the provision of the Labour Laws and the Rules of the Bank and to deny them the salaries and other service benefits of regular employees. In some cases, the Bank did not issue formal letters of appointment or termination to the employees so as to preclude them to have access

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justice. There was no equilibrium of bargaining strength between the employer and the employees. The manner in which they had been dealt with by the Bank was a fraud on the Statute. A policy of pick and choose was adopted by the Bank in the matter of absorption/regularization of the employees. By Article 2-A of the Constitution, which has been made its substantive part, it is unequivocally enjoined that in the State of Pakistan principle of equality, social and economic justice as enunciated by Islam shall be fully observed which shall be guaranteed as fundamental right. The principle of policy contained in Article 38 of the Constitution also provide, inter alia, that the State shall secure the well being of the people by raising their standards of living and by ensuring equitable adjustment of rights between employers and employees and provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood and reduce disparity in income and earnings of individuals. Similarly, Article 3 of the Constitution makes it obligatory upon the State to ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability, to each according to his work. It is difficult to countenance the approach of the Bank that the temporary Godown staff and the daily wages employees should be continued to be governed on disgraceful terms and conditions of service for an indefinite period. In view of section 24-A of the General Clauses Act 1897, the National Bank was required to act reasonably, fairly and justly. An employee being jobless and in fear of being shown the door had no option but to accept and continue with the appointment on whatever conditions it was offered by the Bank."

In addition to the aforementioned excerpt, a direction was passed in the judgment of Ikram Bari ibid to the effect that the previous service rendered by the Petitioners in the said case shall be counted towards retirement/pensionary benefits. It was held as follows:-

"The Civil Petitions... filed by employees seeking financial back-benefits and waiver of conditions of regularization/reinstatement are disposed of with the direction to the National Bank to regularize/absorb them in service with effect from 15-9-2003, subject to the conditions as laid down in para 10 of the impugned judgment. The National Bank is directed to issue them appointment letters within one month. Moreover, the previous service rendered by them with the Bank shall be counted towards retirement/pensionary benefits. (Underlining is ours)

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In view of the above position, the argument of the learned AAG that the service period of the Respondents rendered on daily wages could not be counted towards their pension is misconceived. The said period could and should be counted towards pension especially when the Respondents had been working continuously for different periods for the last many years.

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(S)

WERE THE RESPONDENTS EMPLOYED ON A STOP-GAP ARRANGEMENT?

13. The learned DAG has argued that the contracts of the Respondents were not renewed/extended, but they were offered new contracts from time to time after their previous contracts had expired. The record reveals that such breaks were artificial. The said breaks cannot render the employment of the Respondents to be purely temporary. The Respondents have been performing their duties in their respective schools since long and such artificial breaks in their employment do not negate the fact that the Respondents had been continuously serving the Appellants/Petitioners for a long time. Reliance in this regard is placed on the case titled

Board of Intermediate and Secondary Education, Multan vs Muhammad Sajid (2019 SCMR 233 Supreme Court)

wherein it was held as follows:-

"It is an admitted position that the respondents before us have been working with the petitioner-Board since long, however, in their clumsy attempt to break the continuity of their service, the petitioner has been employing them for 89 days only, and has been re-hiring them for the next 89 days, and thus continued to avail their service for a long period by creating artificial breaks in their service period. The fact that they have, in fact, continuously served the petitioner for a long period of time, albeit the breaks created by the petitioner, as noted above, clearly show that they have been performing the job of a

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permanent nature and have not been serving on casual posts."

It is not the case of the Appellants before us that the Respondents were temporarily working against temporary posts and that such posts no longer exist. The fact that FPSC was approached to test the qualifications and antecedents of Respondents and make its recommendations by itself shows that these posts were permanent in nature.

13. As noted above, the said Principals of the respective Schools where the Respondents were performing services were acting in the aid of the Appellants/Petitioners under an elaborate mechanism/*modus operandi* provided by the Appellants/Petitioners. The powers of the said principals were being exercised on the instructions and under supervision of the Appellants/Petitioners and with their express consent and approval.

14. The learned DAG has stated that there were breaks in the services rendered by the Respondents, however, he has been unable to show from the record where and when there were such breaks in the daily wage services rendered by the Respondents. The only argument advanced by him in this regard is that the Respondents were working on a stop-gap arrangement. We are unable to agree with the learned DAG in this regard. By no stretch of imagination can it be conceived that when the Respondents were working against their respective posts for long periods (in some cases for more than 10 years), the same can by any definition of the word be

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termed as a stop-gap arrangement. A stop-gap arrangement is one where a temporary arrangement is made for a limited time for a few months at the most until something better or more suitable can be found. Such an arrangement is typically made until someone can be hired permanently through the process provided in the law, rules or regulations. The Respondents were admittedly employed for long periods of time running into years and cannot be termed as stop-gap. The definition of "stopgap" provided in Collins Dictionary and as understood by Courts in our country clearly means:-

"A stopgap is something that serves a purpose for a short time, but is replaced as soon as possible"

15. The meaning of a stopgap arrangement was interpreted by this Court in the case titled as Chairman Evacuee Trust Property Board and others vs Khawaja Shahid Nazir (2006 PLC(CS) 1261 Supreme Court) in the following terms:-

"The Tribunal had failed to interpret the notification dated 29-6-2000 in its true perspective by ignoring the clear stipulation contained therein that respondent was appointed as Secretary BPS-19 and such appointment was till further orders. From such stipulation it can be inferred without any doubt that it was not a regular appointment in accordance with section 11(1) of the Act and was by way of stopgap arrangement. This Court in the case of Abdul Majid Sheikh v. Mushafee Ahmed and another PLD. 1965 SC 208 while examining the effect of the phrase "a person holds an appointment till further orders" pronounced that it only means that he holds it till orders are passed terminating his services." (Underlining is ours)

The learned DAG has been unable to show us any document on the record which suggests that the Respondents were employed for a specific period of time subject to the arrival of permanent employees. The only term in this regard

as found from the appointment orders of the Respondents is that there would be no commitment in this regard from either the Respondents or the Appellants/Petitioners. The mere insertion of this vague term in the contracts of the Respondents does not mean that they were employed as a stop-gap arrangement. The Appellants/Petitioners never terminated services of the Respondents. The Respondents retired from their services after they were regularized, that too in most, after more than 10 years of service. Adding artificial breaks to the employment of the Respondents does not convert the employment of the Respondents into a stop-gap arrangement. They were not employed for a short period till the arrival of someone permanent, but, were employed against their respective posts for almost the whole of their professional lives. As such, the argument of the learned DAG in this regard does not hold much water and the employment of the Respondents was to be treated as permanent in nature as correctly held by the Tribunal.

COULD THE RESPONDENTS BE EMPLOYED ON DAILY WAGES BASIS CONSIDERING THE NATURE OF THEIR WORK?

16. Teachers strengthen the foundation of any state as well as play a pivotal role in nation building by imparting education which is necessary to uplift a society consisting of educated and aware citizens who believe in values and strengthen democracy and democratic values. Employing teachers on daily wages basis is not only detrimental to the education sector of Pakistan but is also a discouraging factor

for future teachers who in turn are demotivated and discouraged a profession which is pivotal in the lives of our future generations. It is pertinent to mention that primary education is a fundamental right guaranteed under Article 25-A, of the Constitution of the Islamic Republic of Pakistan, 1973. The Universal Declaration of Human Rights also recognizes education as one of the most important rights of children. Article 3 of the Constitution provides that all forms of exploitation shall be eliminated. One of the reasons for which this becomes relevant to the present controversy is that notwithstanding the importance of the services they render to society, which have consequences for generations, the Respondents were made to work under uncertain conditions on the pattern of unskilled and uneducated or semi-educated labour hired on a daily wage basis for seasonal projects expected to last for a limited period. We are appalled at this irresponsible, casual and utterly unprofessional approach of the policy makers towards a matter as important and as serious as education of our future generations. We have no hesitation whatsoever in strongly deprecating the same. These actions of the Appellants/Petitioners are not only contrary to Constitutional dictates but also contrary to the Principles of Policy enshrined in the Constitution which state that there has to be an equal adjustment of rights between employers and employees.

17. The Impugned Judgment of the learned Tribunal is well reasoned, proceeds on the correct factual and legal premises and has correctly applied the relevant law, rules and

regulations to the facts and circumstances of the cases before us. No legal, jurisdictional defect, error or flaw in the Impugned Judgment has been pointed out to us that may furnish a valid basis or lawful justification to interfere in the same. The Learned AAG has not been able to persuade us to take a view different from the Tribunal in the facts and circumstances of the instant Appeal/Petitions. We accordingly affirm and uphold the Impugned Judgment of the Learned High Court

18. For the reasons noted above, we find no merit in the Appeal and the same is accordingly dismissed. As for the Petitions, no question of law of public importance in terms of Article 212(3) of the Constitution, has been raised. Accordingly, we find no merit in these Petitions and the same are dismissed. Leave to appeal is refused.

Chief Justice

Judge

Judge

ISLAMABAD, THE

27th of January, 2021

Haris LC/

NOT APPROVED FOR REPORTING

VAKALAT NAMA

NO. _____/2023

IN THE COURT OF 1st Service Tribunal, Peshawar

Hayat Muhammad Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Transport Depto (Respondent)
(Defendant)

I/We, Hayat Muhammad Khan

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court of Pakistan & Syed Noman Ali Bukhari, Advocate High Court & Hilal Zubair Advocate** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us.

Dated _____/2023

H. Khan
(CLIENT)

ACCEPTED

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
OF PAKISTAN.
(BC No. 10-7327)

S. Noman Ali Bukhari
(S. NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT,

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