


FORM OF ORDER SHEET

Court of _____

Appeal No. 1913/2023

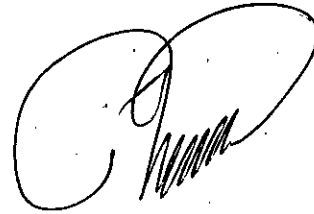
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/09/2023	<p>The appeal of Mr. Jamal Shah resubmitted today by Mr. Zartaj Anwar Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>22-09-2023</u>.</p> <p>By the order of Chairman  REGISTRAR</p>

The appeal of Mr. Jamal Shan son of Malik Wali Khan Medical Officer BHO Wazir Garhi District Nowshera received today i.e on 11.09.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of appointment order mentioned in para-1 of the memo of appeal (Annexure-A) is not attached with the appeal.
- 2- Copy of retirement order mentioned in para-4 of the memo of appeal (Annexure-D) is not attached with the appeal.

No. 1411 /S.T.

Dt. 12/9 /2023.



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Zartaj Anwar Adv.
High Court Peshawar.

*Re Submitted files complete
Please put in the court*

*Jamal -
Adv
20/9/23*

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1913/2023

Jamal Shah S/O Malik Wali Khan, Medical Officer BPS-17
BHU Wazir Garhi District Nowshera.

(Appellant)

VERSUS

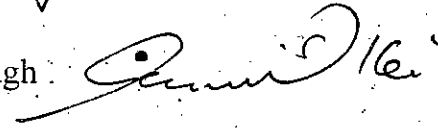
Government of Khyber Pakhtunkhwa through Secretary, Health
department Khyber Pakhtunkhwa Peshawar and others.

(Respondents)

INDEX

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Appellant

Through: 

ZARTAJ ANWAR
Advocate Supreme Court of
Pakistan
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Bilour Plaza Peshawar Cantt.
Cell.0331-9399185
E.mail Zartaj9@yahoo.com

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1912/2023.

Jamal Shah S/O Malik Wali Khan, Medical Officer BPS-17
BHU Wazir Garhi District Nowshera.

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Health department Khyber Pakhtunkhwa Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary, Finance department Khyber Pakhtunkhwa Peshawar.
3. Director General, Health Department Khyber Pakhtunkhwa Peshawar.
4. District Health Officer Nowshera.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the inaction of the respondents by not adding contractual service toward regular service of the appellant for qualifying service of pension, against which the appellant filed departmental appeal on 08.06.2023 before the competent authority which is still not responded even after laps of statutory period on 90 days.

Prayer in Appeal: -

On acceptance of this appeal the contractual service of the appellant i.e. from initial appointment, may please be counted/added towards his regular service for the purpose of adding it to the qualifying service for pension, the respondents may further be directed to enter necessary entries in their service record to this effect, or any remedy deem just and

proper under the circumstances may also be allowed in favour of the appellant and against the respondents.

Respectfully Submitted:

1. That initially the appellant was appointed on the post of Medical Officer BPS-17 in BHU Wazir Garhi District Nowshera on contract basis vide office order dated 09.07.2008 *(Copy of the appointment order dated 09.07.2008 is attached as annexure A).*
2. That since his appointment the appellant has performed his duties with great zeal and devotion and to the entire satisfaction of his superiors without any complaint whatsoever regarding his performance.
3. That while serving in the said capacity the appellant along with other colleagues filed a Writ Petition No 945-P/2017 before the Honourable Peshawar High Court Peshawar for their regularization. The writ petition was allowed in favor of the petitioners and their services were regularized vide order & judgment dated 08.03.2017. *(Copy of the Writ Petition, order and judgment dated 08.03.2017 are attached as annexure B & C).*
4. That while serving in the same capacity retired from service by attaining the age of superannuation i.e. 60 years on 12.07.2023, and served the department for more than 2 decades, the health care facilities were honestly diligently and with entire devotion to the community in Rural area of district Nowshera KPK. *(Copy of the retirement order is attached as annexure D).*
5. That Soon after his retirement like all other civil servants submit application for pension for his long devoted service but refused the same on ground that you have completed qualifying service for pension, thereafter the appellant has submitted his departmental appeal vide dated 08.06.2023, before the competent authority by requesting that his temporary service may be count towards his regular service for the purpose of adding it to regular service for pension, which is not yet

responded even after the laps of statutory period of 90 days
(*Copy of the departmental appeal is attached as annexure E*).

6. That being aggrieved from the acts and omission of the respondents, the appellant has filed this Service Appeal on the following grounds inter alia

GROUND OF SERVICE APPEAL:

- A. That the Appellant has not been treated in accordance with law and his rights secured and guaranteed under the law have been badly violated.
- B. That the appellant remained contractual employee of the respondents department, which was regularized in the year 2017 thus in view of the provision contained in Article 371-A of the CSR the appellant is also entitled that his service shall be counted for the purpose of pension.
- C. That as per the recent judgment of August Supreme Court of Pakistan in Civil appeal No. 1072/2005 decided on 14.4.2016, the larger bench of august Supreme Court of Pakistan has specifically held that temporary service followed by confirmation count for the purpose of pension, thus the appellant is entitled for the grant of monthly pension by counting his service w.e.f the date of his initial appointment.
(*Copy of the judgment and order dated 14.4.2016 is attached as annexure F*).
- D. That there are a number of judgments of the Honourable Peshawar high Court in identical cases, therefore the Respondents are bound to have followed the same and should have acted in accordance with law and the judgment of the August Supreme Court of Pakistan reported as 1996 SCMR 1185, 2009 SCMR Page 1.
- E. That according to the West Pakistan Civil Service Pension Rules chapter II, service qualifying for pension, according to rule 2.3, temporary and officiating service :

Temporary and Officiating service shall count for pension:

- I. Government servants borne on temporary establishment who have rendered more than 5**

years continues temporary service shall count such service for purpose of pension or gratuity and

II. Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

F. That the temporary service followed by confirmation/regular appointment gave the appellant a right that his service be carry forward and added to the present service.

G. That the appellant seek the permission of this Honourable Tribunal to rely on additional grounds at the hearing of the instant Appeal.

On acceptance of this appeal the contractual service of the appellant i.e. from initial appointment, may please be counted/added towards his regular service for the purpose of adding it to the qualifying service for pension, the respondents may further be directed to enter necessary entries in their service record to this effect, or any remedy deem just and proper under the circumstances may also be allowed in favour of the appellant and against the respondents.

[Signature]
Appellant

Through

[Signature]
ZARTAJ ANWAR
Advocate Supreme Court
Of Pakistan

&

IMRAN KHAN
Advocate High Court

Certificate

Certified that no Service Appeal on the same subject and between the same parties has been filed previously or concurrently.

Appellant

[Signature]

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. _____/2023

- Jamal Shah S/O Malik Wali Khan, Medical Officer BPS-17
BHU Wazir Garhi District Nowshera.
(Appellant)

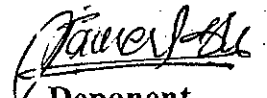
VERSUS

Government of Khyber Pakhtunkhwa through Secretary, Health
department Khyber Pakhtunkhwa Peshawar and others.

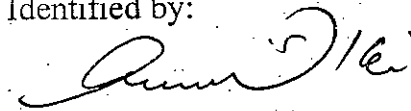
(Respondents)

AFFIDAVIT

I, Jamal Shah S/O Malik Wali Khan, Medical Officer BPS-17 BHU Wazir Garhi District Nowshera, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.


Deponent

Identified by:

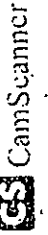


ZARTAJ ANWAR,
Advocate, Peshawar.



Approved A
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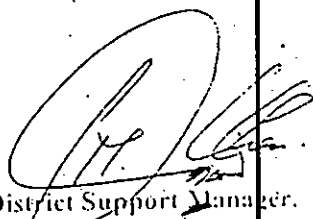
People's Primary Healthcare Initiative (PPHI)
District Support Unit Nowshera



Letter No. 649-21/MON/DSU/NSR Dated: 9th July 2008

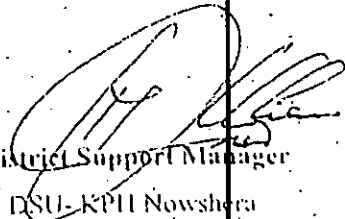
Office Order

No: 649-21/MON/DSU/NSR. On the recommendation of the selection committee and upon the acceptance of the offer of appointment given by KPH/DSU Nowshera, Mr. Jamal Shah is hereby appointed as Medical Officer in BHU Wazir Garhi District Nowshera according to the terms & conditions of the contract signed by him with this office with immediate effect in the public interest.


District Support Manager,
DSU-KPH Nowshera

Copy to:

1. Program Director, PPHI NWFP/FATA.
2. District Coordination Officer, Nowshera.
3. Executive District Officer (Health) Nowshera.
4. Personal Secretary to District Nazim (Nowshera)
5. Executive (F&A) DSU Nowshera.
6. Official Concerned.


District Support Manager,
DSU-KPH Nowshera

Attached to Sarhad Rural Support Program (Regd. under section 42 of Companies Ord., 1984)
Village Papat Nowshera
Telephone No. 0923-580414, Fax No. 0923-580978
E-mail: dsu_nsr@yahoo.com

7 - Admiss. B.

IN THE PESHAWAR HIGH COURT, PESHAWAR



W.P No. 9457 /2017

3259

1. Dr. Muhammad Shafiq S/o Khasita Gul R/o BHU Galiara District Mardan.
2. Dr. Imran Bahadar S/o Khan Bahadar R/o BHU Sawal Dher District Mardan
3. Abdul Wahid S/o Khan Bahadar R/o BHU Bcbuzai District Mardan
4. Haider Shah S/o Abdul Badshah R/o BHU Ghalci Dher District Mardan
5. Reshaz Gul S/o Resham Gul R/o BHU Kot Ismailzai District Mardan
6. Muhammad Riaz S/o Habib ur Rehman R/o BHU Babeni District Mardan
7. Dr. Jamal Shah S/o Malik Wali Khan, BHU, Wazir Ghari, District Nowshera
8. Dr. Javed Akhtar S/o Ghulam Sarwar, BHU Mera Misri Banda District Nowshera
9. Muhammad Ikram S/o Sheikh Faqir, Ward Orderly, BHU, Charbanda District Mardan.
10. Salman S/o Khadi Khan, Behishti, BHU, Mian Kalay District Mardan
11. Zaman Khan S/o Hanfi Khan BHU Jehangira
12. Mr. Muhammad Adil S/o Said Maluh, BHU Taru Jabba
13. Miss Bushra D/o Tila Muhammad, Lady Health Visitor, BHU, Chashmai

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3259/11/2017

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SCANNED

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Deputy Registrar

28 FEB 2017

14. Zabit Khan S/o Taseem Khan, BHU, Sala Khana
15. Falak Niaz S/o Sher Muhammad, BHU, Dagai
16. Muhammad Arif S/o Shahmat Khan, BHU Mohdcori
17. Bilal Ahmad S/o Mumtaz Ahmad, BHU Aman kot
18. Sumbal Naeem D/o Muhammad Naeem, BHU, Tara Jaba
19. Fakhare Alam S/o Rustam Gul, BHU Inzari
20. Anjum Sohail S/o Taj Muhammad, Medical Technician, BHU, Wazir Gharai, District Nowshera
21. Mr. Zeshan Ahmad S/o Riaz Ahmad, Medical Technician, BHU Manahi District Nowshera
22. Mrs. Basmeena D/o Minhar ud Din, LHV, BHU, Sheikhi District Nowshera
23. Ms. Samrin Tariq D/o Mr. Atiq ur Rehman, Medical Technician, District Nowshera
24. Ms. Muzaffia D/o Sher Khan, Dai in BHU Manna Khel District Nowshera
25. Tehseen Ullah, Medical Technician, BHU, Jalsai,
26. Touheed Bibi wife of Syed Nabi Shah, LHV at BHU Kohi Barmol
27. Nushad Begum D/o Gul Zareen, LHV, BHU Kohi Barmol
28. Ms. Naheed Akhtar, Medical Technician in BHU Manna Khel District Nowshera
29. Khair Ul Amin S/o Muhammad Amin, Medical Technician, BHU Adezai, Maryamzai
30. Muhammad Naeem BHU, Bekh Swabi

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28 FEB 2017

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31. Ashaq Nab., BHU, Qadra Swabi
32. Zahid Ullah., BHU, Zarbobi Swabi
33. Husain, BHU, Fathima Mardan
34. Saidan Shah, BHU, Kundkhawar Mardan
35. Saeed Ahmad, BHU, Alo Mardan
36. Tariq Zaman, BHU, Sarobi Swabi
37. Baz Muhammad, BHU Sawad Dher, Mardan
38. Rukhsana, BHU, Mainkaly Mardan
39. Abida, BHU Dherylakpany, Mardan
40. Kalsoom, BHU, Machi Mardan
41. Raheela, BHU, Gujjer Ghar Mardan
42. Muhammad Arif, BHU, Machi Mardan
43. Mr. Mushtaq Ahmad, BHU, Kata Khat Mardan
44. Mehnaz Malik W/o Bakht Mu nir, LHV, BHU, Mardan
45. Abbas Khan S/o Sher Zada, BHU, Mian kale Mardan
46. Mst. Salma Begum, Dai, BHU, Kata Khat Mardan
47. Jehan Ali, M.T, Machi, District Mardan
48. Zarshad Ali, M.T, BHU Garhi Ismail Zai, District Mardan
49. Nasir Khan, M.T, BHU, Garyab, District Mardan
50. Imitaz, M.T, BHU, Wartair District Malakand
51. Ijaz Ali, M:T BHU, Pirkheel, District Mardan

ATTENDED
EXAMINER
Peshawar High Court

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- Amit*
52. Malak ~~Amit~~ Muhammad, MT, BHU, Mekhbanc District Malakand.
 53. Naveed Akhtar, M.T, BHU Brah District Malakand.
 54. Alamgir Khan, M.T, BHU, Shengray, District Malakand
 55. Tariq Anwar, M.T, BHU, Brah District Malakand
 56. Akmal Khan, M.T, BHU, Gli Khel, District Malakand
 57. Saddam Hussain, M.T, BHU, Mishta, District Malakand
 58. Ibniami, M.T, BHU Totay District Malakand.
 59. Ubaid Ullah, MT, BHU, Tandgund, District Malakand.
 60. Muhammad Asghar, M.T, BHU Anzargar, District Malakand.
 61. Nighat Bibi, LHV, BHU, Tutai District Malakand.
 62. Hazrat Amin, BHU, Khaar District Malakand
 63. Asif Khan S/o Sabzar Khan, Chowkidar, BHU, Anzary District Nowshera.
 64. Bibi Quresha D/o Muhammad Rafiq, Dai, BHU Anzary District Nowshera.
 65. Sameena Begum W/o Shahid Khan, Dai, BHU, Mera Misri Banda District Nowshera.
 66. Tahira Naaz, W/o Arshad Khan, Dai, BHU, Pir Sabaaq District Nowshera.
 67. Aman Zeb S/o Janas Khan, Ward Orderly, BHU, Mandooni District Nowshera,
 68. Imran Nadeem S/o Hazrat Ghulam, M.T, BHU Anzary, District Nowshera.



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69. Shaheen D/o Chan Badshah, LHV, BHU, Anzay, District Nowshera
70. Sorya W/o Naisb Daraz, LHV, BHU, District Nowshera
71. Saista W/o Syed Jehanzeb Ali Shah, BHU Misri Banda District Nowshera.
72. Ambreen W/o Zakir Khan, BHU, Kaahi District Nowshera.
73. Sajjad Ali S/o Abdur Raziq, BHU Dag Baisood, District Nowshera
74. Muhammad Haroon S/o Abdul Qadoos, M.T, BHU Khushmaqam District Nowshera.
75. Zaver Said S/o Bahadar Said, Watchman, BHU, Jahangira
76. Noor Rehman S/o Malik Aman, M.T. BHU, Badrashie
77. Muhammad Sabir S/o Muhammad Aslam, M.T. BHU, District Peshawar.
78. Majid Gul S/o Rehman Gu, M.T, BHU, District Nowshera
79. Tahir Zeb S/o Anwar Zeb, M.T, BHU, District Peshawar
80. Furaanullah S/o Gul Rauf Khan, M.T BHU, District Peshawar.
81. Imran Khan S/o Safeerullah, M.T, BHU, District Peshawar
82. Ibrahim S/o Fazal Malik, Behisiti BHU, Jogani, Peshawar
83. Tahir Khan S/o Faqir Muhammad, MT. BHU, Sorizai Bala District Peshawar

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- 84. Miss Najma Khatoon Mushtaq, LHV, BHU, Bazid Khel,
- 85. Muhammad Ibrahim, M.T, BHU, Ganderi, District Nowshera.
- 86. Janat Mir S/o Mir Shah, Behishi, LHU, Sheikni, District Nowshera.
- 87. Nasir Khan S/o Abdul Waheed, , M.T, BHU, Shakh No.06 District Charsadda
- 88. Mst. Farzana Shah D/o Syed Sabir Shah, M.T. BHU, Mashokhel, District Peshawar
- 89. Uzma Ara D/o Naimatullah, , BHU, Qadra, (FMT)
- 90. Fozia Gul W/o Asif Khan, BHU Menzai (LHV).
- 91. Uzma Yaqoob D/o Yaqoob Khan, LHV, BHU, Jehangira
- 92. Farah Naz W/o Akhtar Ali, LHV, BHU Pani Pir
- 93. Saila D/o Faheema Dad, (FMT), BHU Dairi, Zakaria.
- 94. Bakht Said S/o Ghulam Mohi ud Din, M.T, BHU, Shah Mansoor
- 95. Dr. Habeeb ur Rehman, S/o Khaitab Gul, MO, BHU, Qadra
- 96. Muhammad Kamran S/o Gul Zameen, Khan, MT, BHU, Batakhara tehsil Topi District Swabi
- 97. Dr. Muhammad Rashid S/o Hamdullah R/o Mohallah Khamal Khel Village Maneri Bala P.O District Swabi,
- 98. Dr. Asrar Iqbal S/o Badshah Gul R/o Hathian, P.O Khas Tehsil Takht Ehai District Mardan.

WP/135/14

WP/333

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- 99. Dr. Abdul Wali S/o Abdul Hakeem R/o Mohallah Mehmood Khel, Mohib Banda Tehsil & District Mardan
- 100. Dr. Syed Waqas Ali Shah S/o Syed Wali Shah Badshah R/o BHU Pudina District Mardan
- 101. Ali Gohar S/o Mirza Khan R/o BHU Mian Kalay, District Mardan
- 102. Shams ul Arafreen S/o Mutabar Khan R/o BHU Khazano Dheri District Mardan
- 103. Reshaz Gul S/o Resham Gul R/o BHU Kot Ismailzai District Mardan
- 104. Muhammad Riaz S/o Habib ur Rehman R/o BHU Babeni District Mardan
- 105. Muhammad Shabir Ahmad MT, BHU, Kohi Barnol
.....petitioners

VERSUS

- 1. Government of Khyber Pakhtunkhwa, through Secretary Health, Civil Secretariat, Peshawar
- 2. The Director General Health Department, Khyber Road, Peshawar
- 3. District Health Officer, District Mardan at Mardan
- 4. District Health Officer, District Nowshera
- 5. District Health Officer, District Malakand
- 6. District Health Officer, District Mardan Swabi
- 7. District Support Manager (PPH), DS & M, Mardan Khyber PakhtunkhwaRespondents



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14

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

PRAYER-IN-WRIT-PETITION

On acceptance of this Writ Petition, an appropriate writ may please be issued declaring the petitioners were fit and eligible having the required qualification and experience gone through all the rigors of selection process and when found fit and eligible by the departmental selection committee recommended for appointment and were appointed accordingly, ever since, their performance, treating the petitioners as project employees and not regular employee of the Health Department is thus illegal, unlawful, without lawful authority and of no legal effect, the respondents are bound to follow the law and to treat the petitioners handedly by giving them their due rights, the petitioners have got prior in the matter of regularization, similarly the respondents are bound to allow regularization from the date when his colleagues/juniors were regularized or allowed regular appointment.

Any other remedy proper not specially asked for many also be allowed.

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Respectfully Sheweth:-

1. That the petitioners are the local residence of different District of Khyber Pakhtunkhwa and a law abiding citizens of Pakistan.
2. That the government of Khyber Pakhtunkhwa in the year of 2007 launch a Comprehensive Medical Programme at primary level in the name of "People Primary health Care Initiative" at different BHU's, administered by the Provincial Government for which regular sanctioned posts were created for which different advertisement's Made and the application's were sought from eligible and qualified candidates.
3. That through this Programme basic health facilities were extended to the public at primary level and for this purpose the provincial government made an agreement with the SRSP to run affairs of different BHU's.
4. That the petitioners holding the basic and prescribed qualification being qualified and eligible for the post applied by fulfilling all the legal and code formalities, and gone through all the rigors of selection process, were dully recommended by the Departmental Selection Committee and were appointed in different BHUs of Khyber Pakhtunkhwa. (Copy of Appointment letters are attached as annexure "A").



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5. That the petitioners since their appointments correctly mention against their name at the heading of the there respective BHUs, were performing their duties with Zeal and devotion to the entire satisfaction of their superiors till date without any complain whatsoever.
6. That it is pertinent to bring into notice of this Honourable Court in most of Districts of the Province, the similarly placed employees were regularized by the order of this Honourable Court and the implemented by Department by issuing regularization notification and eyeing the benefits of regular civil servant.
7. That the Honourable Court allowed various of writ petition very much similar to the petitioner's performing in the same District at various BHUs in capacity of Medical Technicians class-iv and which is implemented by the respondent Department and enjoying the benefits of regular employees. (Copy of Order & judgments are attached as annexure "B").
8. That the petitioners working in so-called project scheme declared as regular/brought on regular budget by the Health Department, moreover their appointments have been made through proper procedure fulfilling all the legal and codal formalities.



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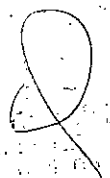
9. That an agreement was executed in between PPHI and petitioner and according to class-II the employees were to be governed by such rules/regulations and orders as may be issued by PPHI, Provincial Government/Federal Government from time to time and the petitioners after their selection in appointment was adjusted against the vacant/ sectioned post's.
10. That in different cases of project employees this Honourable Court declared them regular employees by giving them the advantage of regularization Act 2009 and the judgment was upheld by Supreme Court.
11. That the petitioners were appointed against the post of permanent nature and have rendered their services without any break and were eligible/qualified for the said post and there is no likelihood of any abolition of post.
12. That the orders and judgments of the Honourable Court pasted in different writ petitions mentioned above implemented by the respondents department, but refused to the present petitioners being not part of those very petitions.
13. That the petitioners having no other adequate remedy came to this Honourable Court in constitutional petition, inter alia on the following grounds amongst others:

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GROUND S:

- A. That the petitioners have not been treated in accordance with law and their right secured and guaranteed under the law have been violated.
- B. That the petitioners were fit and eligible for the subject post and were duly recommended for appointment by the appropriate departmental selection committee and the competent authority issued the order of their appointment, therefore they have every right to be regularized.
- C. That the inaction on the part of the respondents are adversely affecting their careers, they would become overage for fresh appointment, hence the propriety demands that the petitioners should be allowed to regularized.
- D. That it is pertinent to point out her that similar placed employee appointed alongwith the petitioners were regularized, while the petitioners were discriminated and now been terminating form service, this s sheer discrimination and violative of article 25 of the constitution.
- E. That the petitioners were fit and eligible for the Posts against which they serving, they were duly recommended for appointment by the appropriate Departmental selection committee and the



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competent authority issued their orders of appointment.

F. That the action of the respondent is against the principle of legitimate expectancy as the petitioners service are being wasted without any reason and rhyme, whereas it is an established principle of law that adhoc temporary employment is limited for specific period and the petitioners have served for a considerable longtime have now become overage and cannot seek appointment, therefore the petitioners cannot be deprived of their valuable rights.

G. That the petitioners have performed their duties as regular employees and no difference could be created amongst the employees who are performing their duties regularly and with responsibilities and especially when the along and considerable time has been passed. Therefore the petitioners cannot be left at the mercy of the respondents without protecting their valuable rights a reference is made to the judgment of August Supreme Court of Pakistan in (2005-SCMR 100).

H. That the acts of the respondents is based on exploitation which is highly unjustified, illegal and against the provision of article 37 and 38 of the constitution of Pakistan. The same is not permissible in



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Deputy Registrar

28 FEB 2017

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the eyes of law as held in, Abdul Sattar and another...Versus...Suit Northern Gas Pipelines limited and others (2001 SCMR 1935).

- I. That in accordance with the constitution of Islamic Republic, Pakistan, 1973, the state is bound to element all forms of exploitation and to apply merit in all forum of service and appointments, the respondent being a prestigious institution established for with a purpose thus violating the due rights of the petitioners is infact against the fundamental of this institution and illegal.
- J. That the petitioners already filled W.P. No.2120/2016 and W.P. No.2241/2016 before this Hon'ble Court against the same respondents for extension in service.
- K. That the Writ petition of similarly place employees allowed by the Hon'ble high Court Peshawar which was challenged by the respondents department before the Hon'ble August Supreme Court of Pakistan in C.A No.1870/2016 titled Govt. of KPK Versus Anwar Shed & others, C.A No.1871/2016 titled Govt. of KPK Versus Anwar Shed & othe, C.A No.1872/2016 Government of KPK Versus Asif Khan, which was dismissed by the Hon'ble August Supreme Court of Pakistan and maintained the judgment passed by the Hon'ble Peshawar High Court,

FILED TODAY

Deputy Registrar

28 FEB 2017

Peshawar in favour of the present petitioners for their regularization.

L. That the petitioner seeks the permission of this Honourable Court to rely additional grounds at the time of hearing of this writ petition.

It is, therefore on acceptance of this Writ Petition, an appropriate writ may please be issued declaring the petitioners were fit and eligible having the required qualification and experience gone through all the rigors of selection process and when found fit and eligible by the departmental selection committee recommended for appointment and were appointed accordingly, ever since, their performance, treating the petitioners as project employees and not regular employee of the Health Department is thus illegal, unlawful, without lawful authority and of no legal effect, the respondents are bound to follow the law and to treat the petitioners handedly by giving them their due rights, the petitioners have got prior in the matter of regularization, similarly the respondents are bound to allow regularization from the date when his colleagues/juniors were regularized or allowed regular appointment. OR.

Any other remedy proper not specially asked for many also be allowed.

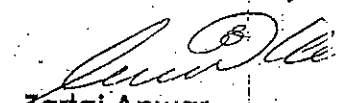
FILED TODAY
Deputy Registrar
28 FEB 2017

INTERIM RELIEF

The respondent may please be restrained from taking any adverse action to the service career of the petitioners, till the decision of the writ petition.


Petitioners

Through


Zaraf Anwar
Advocate High Court

Dated 27.05.2016

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 titled Writ petition may kindly be fixed before the Worthy D.B of this Hon'ble Court.


ADVOCATE

NOTE:

Identical case is fixed for 01.03.2017, so the titled Writ petition may also be clubbed with.


ADVOCATE

LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan, 1973.
2. Any other law books according to need


ADVOCATE

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28 FEB 2017

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Amir C

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Judgment.
**BEFORE PESHAWAR HIGH COURT,
PESHAWAR.**

Judicial Department.



Writ Petition 945-P. of 2017.

Dr. Muhammad Shafiq & others.....Petitioners.

Vs

Government of KPK through Secretary Health & others...Respondents.

Date of hearing.....8th March, 2017.....

Petitioner(s) by Mr. Zartaj Anwar Khan, advocate.

Respondent(s) by Mr. Moin ud Din Hamayun, AAG.

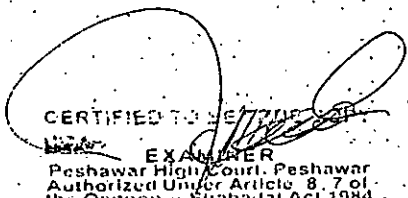
WAQAR AHMAD SETH, J. :- Vide our detailed

judgment of even date, placed on connected writ petition bearing No. 2050-P. of 2016, this writ petition is allowed.

Announced.
8th March, 2017.
Tariq Jan.


JUDGE


JUDGE


CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 8, 7 of
the Qanun-e-Shahadaat Act, 1984.
10 JUL 2023

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Judgment.
BEFORE PESHAWAR HIGH COURT,
PESHAWAR.

Judicial Department.

Writ Petition 2050-P of 2016.

Dr. Arab Khan & others.....Petitioners.

Vs

Government of KPK through Secretary Health & others... Respondents.

Date of hearing.....8th March, 2017.....

Petitioner(s) by Mr. Ali Gohar Durrani, advocate.

Respondent(s) by Mr. Moin ud Din Hamayun, AAG.

WAQAR AHMAD SETH, J.:- Through this

single judgment we intend to decide the instant writ petition as well as connected writ petitions bearing No. 2225-P, 2260-P, 2416-P, 4810-P of 2016 & 945-P of 2017, as common question of law and facts are involved.

2. Facts relevant for the disposal of this writ petition are that, in pursuance to the advertisement, petitioners applied and after codal formalities appeared before the Selection Committee, duly constituted for the purpose and accordingly, they were appointed as Medical Officer on contract basis and

WP2050-P-2016

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Page 12

posted against their respective units. On 12.5.2016/23.5.2016, through impugned notices bearing endorsement No. PPHI/DSU/MON/CHD 10267-16, they were informed that due to closure of PPHI operation of SRSP and non-availability of funds, the service / contract will stand terminated w.e.f 30th May, 2016.

Writ Petition No. 2225-P/2016.

In this writ petition, the petitioner was appointed as Medical Technician vide offer appointment-dated 16.2.2012 on contract basis for a period eleven months, initially and on 23rd May, 2016 through impugned notice terminated his service / contract with effect from 30th June, 2016.

Writ Petition No. 2260-P of 2016.

The petitioners of this writ petition were appointed as Medical Officer on contract basis by duly constituted Selection Committee and were posted against their respective units and on 26.5.2016 through the impugned notice their services were terminated with effect from June 30th, 2016.

Writ Petition No. 2416-P of 2016.

WP2050-P-2016

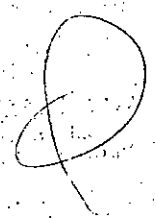
The petitioners of instant writ petition were appointed on different posts in the category of Class-IV by duly constituted selection committee and were posted against their respective posts. On 13.5.2016, the impugned notices were issued to them and their services were terminated with effect from 30.6.2016.

Writ Petition No. 4810-P/2016.

The petitioner of this writ petition was appointed as Behishti / Sweeper against the vacant post in BHU Parashai District Kohat for a period of eleven months, vide order of appointment dated 29.9.2009, but were terminated from service through the impugned notice dated 29.9.2016.

Writ Petition No. 945-P/2017.

The petitioners of this writ petition seeks regularization of their services with the prayer that they have been appointed by duly constituted departmental selection committee against the sanctioned vacant posts and they have the every right to be considered regular employee of the health department as the project has been converted to regular side and their colleagues / juniors were regularized.



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3. Comments were called from respondents which they furnished, denied the assertion of petitioners and states that Sarhad Rural Support Program (SRSP) is a Company registered under the Companies Ordinance, 1984. A memorandum of understanding (MoU) was signed between the Government of Khyber Pakhtunkhwa and SRSP on 3.1.2013 and clause/para-6 of MoU provides that whereas both the parties have learnt lessons and gained valuable experience of working in partnership with each other during the past few years while the second party was engaged in management contract with the First party regarding service delivery through selected districts of the province under the package named Peoples Primary Healthcare Initiative (PPHI). Last para of the preamble reflects on page-1 of the MoU dated 3.1.2013 that "therefore, now both the parties agree" to enter into this MoU, under which improved arrangements will be made in the overall environment and spirit, of, and to achieve the purpose of approved Health Sector Strategy of the Government of Khyber Pakhtunkhwa, to hand over the management of Health Facilities under the agreement in the selected districts of the province of Khyber Pakhtunkhwa by the First party (Health Department) to the Second Party (SRPS). Whereas clause A reflects on page that mutually



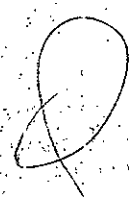
agreed overall strategic objectives of this arrangement in the districts to be listed later on in the agreement. That according to agreement second party i.e (SRSP) shall ensure to appoint duly qualified doctors/paramedics meeting the standards / criteria set by the first party as far as qualification, training and skills are concerned, second party will have sole discretion over the employing, posting, removing, remuneration and customary managerial prerogative over staff that is recruited by it. Staff recruited by the second party SRSP shall have no claim against the first party i.e Health Department upon conclusion of this agreement. That the second party has the authority to hire the services of Medical Staff through advertisement or any other sources, and on their self request to receive back the management of BHUs, the district administration concerned was directed accordingly. It is further submitted that arbitration clause having been provided in the contract / agreement deed for resolution of any dispute or difference arising out of the deed, therefore, this constitutional petition is not maintainable. The Government of Khyber Pakhtunkhwa has no-concern with the matters, terms and condition of service of the petitioners as they have been appointed by a Company and serving with it under the principal of master and servant. If, the petitioners

have any claim provided under any law, they may sui against the company under the provision of relevant laws at proper forum. That this Court has already dilated upon the issue in writ petition bearing No. 3359-P of 2014 against the petitioners that in the manner as, Since, the petitioners are contract employees of a private company having no nexus with the Government department for the purpose of appointment, thus no writ can be issued in the circumstances; hence dismissed in limine" requested for dismissal of the writ petition.

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

5. Petitioners in all the connected writ petitions were appointed on different posts i.e. Medical Officers, Medical Technicians, Bahesties, Sweepers & Class IV employees, but all related to Health Services within different BHU's of the Provincial Government i.e. Health Department, Khyber Pakhtunkhwa. In all the categories the posts were advertised and offer of appointment was floated as:-

The District Government Swabi with the prior endorsement of Government of Khyber Pakhtunkhwa has assigned the management of Basic Health Units (BHU's) in Swabi District to People's Primary Healthcare Initiative (PPHI) / Surhad Rural Support Program (SRSP).



An agreement to this effect has been signed between District Government Swabi and PPHI /SRSP. On the recommendation of the Selection Committee you are hereby offered appointment on contract basis as Medical Officer in District Swabi on following terms and conditions.

6. According to the said offer of appointment, the duration of contract was initially for a period of 11 months and the posting was in all the BHU's throughout the Province. Subsequently, letter of appointment was issued on the recommendations of Selection Committee. Admittedly, the salaries were paid from the funds provided by the Health Department with the concurrence of Finance department. On 11th of May 2016, the Deputy Secretary Admn, Government of Khyber Pakhtunkhwa, addressed letter to the Deputy Commissioners of almost of all the Districts of Khyber Pakhtunkhwa with the subject of closure of (PPHI) People's Primary Healthcare Initiative, operation of Surhad Rural Support Program, (SRSP) which reads as under:-

To

The Deputy Commissioners;
Peshawar, Kohat, Nowshera, Swabi, Karak, Upper Dir,
Chitral, Charsadda, Mardan, Haripur, Malakand,
Swat, Shangla, Abbottabad, Mansehra, Bannue and
Lalddi Marwat.

Subject: CLOSURE OF PPHI OPERATIONS OF SRSP

Dear Sir,

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I am directed to refer to the subject noted above and to state that, as you are aware, Basic Health Units (BHUs) in your respective District are being managed by the Sarhad Rural Support Program (SRSP) for the PPHI. As per decision, SRSP is to return the management of these BHUs to the respect District Health Officer w.e.f June 30, 2016. Accordingly, it is most important to ensure that the take-over is undertaken in any orderly manner and subject to fulfillment of all codal formalities.

- 2. It is proposed that:
 - a. The Deputy Commissioner may please constitute Committee under his Chairmanship, comprising the District Health Officer, District Officer Finance and the District Manager of PPHI, to ensure the smooth take-over of BHUs in the District as per prescribed legal procedure.
 - b. The Committee may please ensure that representatives are deputed to physically examine the buildings, equipment, furniture, fixture, stores (including medicines etc) and duly check the same with relevant register / record books of the respective BHUs. Proper Landing and taking over the above referred components be ensured under the signature, names and stamp of the responsible officer duly witnessed by the responsible officers.
 - c. Funds remaining with the District Office of PPHI at the end of June, 30, 2016 shall be deposited back in the Government Treasury in the respective Head subject to fulfillment of all codal formalities and in a manner as advised by Finance Department.
 - d. Accounts of PPHI shall be audited by duly appointed statutory auditors of SRSP immediately after 1st July, 2016 and district wise audit report, thereof shall be shared by them with the Health Department.

It is once again requested that the entire exercise must be completed subject to the fulfillment of all codal formalities and well in-time, please.

7. It is important to mention that simultaneously Government of Khyber Pakhtunkhwa / Health Department / Director General Health Services, Khyber Pakhtunkhwa floated an advertisement dated 23.5.2016, for filling up these posts on adhoc basis, copy of the said advertisement is at page-27 of the writ petition. This advertisement clears the position that the

posts are still in existence and these posts were of the Health Department and the salaries were being paid by the Health Department, but under a camouflage system of People's Primary Healthcare Initiative and for that matter Surhad Rural Support Program. Even in the comments it has not been clarified and denied that these posts were not in all the government institutions, non permanent posts and their salaries were not provided from the budget / grant of the Provincial Government. The general plea of the respondents is that the Surhad Rural Support Program (SRSP) is a Company, who had memorandum of understanding with the Government and the said Surhad Rural Support Program under the package named Peoples Primary Healthcare Initiative (PPHI) provided the services of all the employees.

8. This Court has already discussed the conduct of Surhad Rural Support Program (SRSP) and the People's Primary Healthcare Initiative (PPHI) with the Government of Khyber Pakhtunkhwa under a settlement / understanding, in number of judgments which are upheld by the apex Court.



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In writ petition bearing No. 3880-P of 2015 titled Asif

Khan & others vs Government of KPK etc; it has been held

as under:-

The appointment orders of the petitioners would reveals that they were appointed by the Competent Authority i.e District Support Manager, PPHI, DSU, Mardan on the recommendations of Selection Committee after proper test and interview, in response to advertisement, since 2019. The contract period was extended from time to time and even in the comments there is nothing regarding the closure or winding of the office / department where petitioners are employed. Record is suggestive that alongwith the petitioners other employees were also engaged in different district of the Province under the same advertisement by PPHI and this court in WP No.292/2011 vide judgment dated 19.06.2014; W P No. 4335/2010 vide judgment dated 19.03.2013 and WP No. 1670/2010 with exactly similar circumstances and similarly placed employees have regularized their services from the date of their initial appointment, with all back benefits.

The Peoples Primary Health Care, initiative (hereinafter referred as PPHI Project), is a continuous and ongoing project / department and petitioners are still working against the post since their appointments notwithstanding the fact that in similar situation, in 13 District out of 24 District of Khyber Pakhtunkhwa, not only the post have been regularized but the employees there in have also been regularized with all the benefits like civil servants. Law requires treatment of similarly placed employees, in one manner and nowhere in the comments respondents have stated that the post against which petitioners performing their functions is quite different in nature then the one which have been regularized, hence on the strength of the judgment and order dated 22.01.2012 passed by a Division Bench of this Court in WP No. 1670/2010 titled Nijat

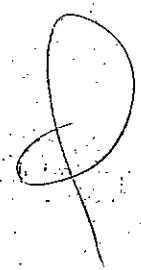
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Ali & other Vs. Government of KPK through Chief Secretary and others duly supported by the Federal Government and the subsequent judgment and order dated 19.09.2013 of a Division Bench at Dara-ul-Qaza (Swat Bench) involving identical points in WP No. 4335/2010 titled Rahimullah etc Vs. Government of KPK etc regularizing the contract employees/petitioners of different categories in both the petitions by the respondents-department of KPK in line with their approved policy, we are inclined to accede to the prayer made by the petitioners in this petition. For the above reasons, we allow this constitutional petition and direct the respondents-department that the petitioners be regularized against the posts from the date of their appointment with all back benefits.

In view of above this writ petition is allowed, respondents-department is directed to regularize the petitioners against the posts of their initial appointments with all back benefits.

In writ petition No. 992-P of 2015, titled Waseem Jan & others vs Govt. of KPK, in exactly similar circumstances, it was held that:-

Record is suggestive that petitioner No.1 was appointed by Executive District Officer (Health) Peshawar upon the retirement of his father against the quota of Employee son on 18.8.2011, whereas rest of the petitioners were appointed on the recommendation of the selection committee on contract basis for a period of 11 months but on 13.3.2015 the impugned conclusion of service order was issued, probably on the instructions of Director General Health Services, as the copy of the said impugned order was sent to the same office alongwith District Health Officer, Peshawar. The contents of conclusion of service letter clearly reflects that there is a memorandum of understanding (MOU) between the People's Primary Healthcare



Initiative program and the Health Department, Government of Khyber Pakhtunkhwa and according to said MOU the regular staff would be appointed by the Health Department and thereafter services of the contract employees / petitioners would be dispensed with. Petitioners have served the department continuously since 2011 and there is no adverse order in this respect, against the petitioners. There is no plea of retrenchment etc; rather it is an admitted fact that the posts are there and the selectees of the Health Department would be adjusted against the same. There is nothing regarding their eligibility.

CM No. 1290-P of 2015, filed by six applicants for implementation shows that they are subsequent appointees against the quota of retired / deceased son employees and were appointed vide order dated 27.3.2015, 4.7.2015, 8.4.2015 confirming that it is the Health Department through District Health Officer, who used to appoint employees against the posts at BHU's, which were previously filled in through People's Primary Healthcare Initiative. There is nothing on record to show that the posts, against which petitioners were appointed, have been abolished, or were of temporary nature.

The impugned conclusion of service notice is dated 13.3.2015, is with the reason of appointment of regular staff by the Health Department whereas the appointments orders of the annexed with CM No. 1290-P of 2015 are of 27.3.2015, 7.4.2015 & 8.4.2015, showing that the reasons mentioned in the impugned order were not correct and lawful. This Court in number of writ petitions regularized the services of all most all the projects initiated through Sarhad Ruler Support Program (SRSP) and People's Primary Healthcare Initiative Program. We have before us, the agreement so signed between the Government of Khyber Pakhtunkhwa, Health Department and Sarhad Ruler Support Program, which is the internal understanding between the Government and Private Limited Company. Petitioners were appointed against their post which they are holding continuously; on the recommendations of Departmental



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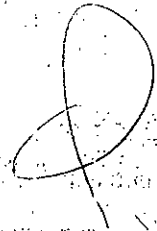
Selection Committee and the post against which they are working still exists; therefore, they have the right to continue their jobs, as prayed for.

In view of the above, without touching the appointment of applicants or CM No. 1290-P of 2015, who are appointed against the deceased son / retired son employee's quota, the writ petition of present petitioners is allowed as prayed for.

9. The subsequent advertisement for filling up the posts by Health Department confirms that all these posts were of the Provincial Government with permanent status. Even otherwise the government / department has the prerogative to terminate the employment, in case of closure of BHU's but only applying the principle of last come first go. Since, it was a game hatched by the political figures under which People's Primary Healthcare Initiative was provided a source of income otherwise, all the BHU's and the posts therein are supposed to be filled in by the Health Department as the BHU's are of the Government and not private institutions.

In case titled Naseem Ijaz etc vs Govt. of KPK, bearing writ petition No. 2091-P of 2015, it has been held as under:-

Brief facts of the case are that the respondents advertised various posts in different District of the Province and the petitioners being fit and eligible for the posts, also applied through prescribed manner and on the recommendation of the Selection Committee they were appointed



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as Medical Technician and are serving with zeal and devotion to the satisfaction of their superior's that in most of the District, the similarly placed employees were regularized who was enjoying the benefit of regular civil servant; that this Hon'ble Court allowed writ petitions No. 292/2011 & 388-P of 2015 decided on 19.6.2014, writ petition No. 4335/2010 decided on 19.3.2013 and writ petition No. 1670/2010 filed by the similar placed employees and the respondents were directed to regularize the petitioners therein against the posts from the date of their initial appointment with all back benefits; that the petitioners working in so called project schemes declared as Regular / brought on record Budget by the Health Department moreover, their appointments have been made through proper procedure fulfilling all the requirements and that even in thirteen district, the said practice is restricted only to the extent of Basic health Units whereas the other Units like Civil Dispensaries, Mother Health Units, District Headquarters, Hospital, Tehsil Headquarters, Hospital; Rural Health Centers even situated in the remote area of the District area treated as regular employees and are extended all the benefits of a regular civil servant like increments, pension etc, that the judgments / orders passed by this Court in the different writ petitions of similar nature have been implemented by the respondents department but refused to the present petitioners being not part of those very petition, hence, the petitioners having no other adequate remedy approached this Court through the instant constitutional petition.

At the very outset, learned counsel for the petitioners stated that the issue involved herein has already been decided by this Court on 21.5.2015 in Asif Khan and others case (writ petition No. 3880-P/2015), relevant portion whereof reads that; The Peoples Primary Health Care initiative (hereinafter referred as PPHI Project), is a continuous and ongoing project / department and petitioners are still working against the post since their appointments notwithstanding the fact that in similar situation, in 13 District out of 24 District of Khyber Pakhtunkhwa, not only the post have been regularized but the employees there in have also been regularized with all the benefits like civil servants. Law requires treatment of similarly placed employees, in one manner and nowhere in the comments respondents

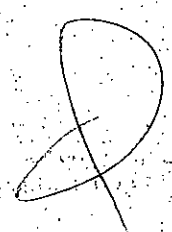
have stated that the post against which petitioners performing their functions is quite different in nature than the one which have been regularized, hence on the strength of the judgment and order dated 22.01.2012 passed by a Division Bench of this Court in WP No. 1670/2010 titled Nisar Ali & other Vs. Government of KPK through Chief Secretary and others duly supported by the Federal Government and the subsequent judgment and order dated 19.09.2013 of a Division Bench at Dara-ul-Qaza (Swat Bench) involving identical points in WP No. 4335/2010 titled Rahimullah etc Vs. Government of KPK etc regularizing the contract employees/petitioners of different categories in both the petitions by the respondents-department of KPK in line with their approved policy, we are inclined to accede to the prayer made by the petitioners in this petition. For the above reasons, we allow this constitutional petition and direct the respondents-department that the petitioners be regularized against the posts from the date of their appointment with all back benefits.

In view of above this writ petition is allowed, respondents-department is directed to regularize the petitioners against the posts of their initial appointments with all back benefits.

In view of above clear findings, this court also follows the same. The learned Additional Advocate General has got no objection on acceptance of instant writ petition in light of judgment dated 21.5.2015 passed by this Court in writ petition No. 3880-P/2015.

Accordingly, this writ petition is allowed and the respondents-department is directed to regularize the petitioners against the posts of their initial appointments with all back benefits. However, the COC No. 480-P/2015 has become in fructuous dismissed as such.

10. In writ petition No.3359 some of the present petitioners were also party, which was dismissed, as by that time the project was continue but they claim for regularization under the Regularization Acts 2005 & 2009 and the defence of



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respondents was on the understanding between the Company and the Government with no record of the same and non applicability of Regularization Acts. This time they have got the fresh cause of caution whereunder vide impugned orders of so called Surhad Rural Support Program / People's Primary Healthcare Initiative project has been asked for closure has been called in question and as such, the petitioners have fresh cause of action. Moreover, these petitioners in all the connected writ petitions are seeking their regularization on the basis of similarly placed employees on the touch stone of discrimination.

11. For the reasons recorded hereinabove this and the connected writ petitions are allowed, as prayed for.

Announced.
8th March, 2017.
 Tariq Jan.

[Signature]
JUDGE

[Signature]
JUDGE

1147
 02/07/2023
 Date of Presentation of Application
 No of Pages 247
 Copying fee 136/-
 Total
 Date of Preparation of Copy 10-07-2023
 Date of Delivery of Copy 10-07-2023
 Received By *[Signature]*

CERTIFIED TO BE TRUE COPY
 EXAMINER
 Peshawar High Court, Peshawar
 Authorized Under Article 5, 7 of
 the Qanoon-e-Shahadat Act 1984
 10 JUL 2023

40 Approved D

OFFICE OF THE DISTRICT HEALTH OFFICER NOWSHERA

Phone & Fax: 0923-580759

E-Mail: nowshera.edoh@gmail.com

No. 8906 / DHO NSR

Date: 15 / 07 / 2023

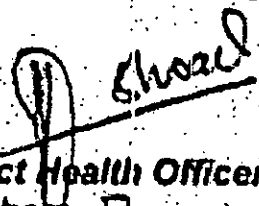


To

The Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

Subject: **RETIREMENT**
Sir.

Enclose please find herewith an application in R/O Dr. Jamal Shah (Medical Officer) BPS-17 attached to BHU Wazir Garhi Nowshera, wherein he has requested for issuance of his retirement order on attaining the age of superannuation i.e 11-07-2023 for further proceeding.


District Health Officer
Nowshera

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Hoathd: E
District Health Officer
Nowshehra.

Subject: **DEPARTMENTAL APPEAL FOR ADDING UP TEMPORARY SERVICE TOWARDS
REGULARIZATION FOR QUALIFYING SERVICE FOR PENSION.**

Respected Sir,

It is stated that PPHI Nowshehra appointed me as Medical Officer in BHU Wazir Garhi Vide No.649-21 dated: 09/07/2008.

After wind up PPHI the honorable High Court Peshawar reinstate the Services of all doctors worked under PPHI in light of Honorable high court decision the Secretary to Govt Khyber Pakhtoonkhwa Peshawar Office Order No. SOH(E-II) 3-18/2016PPHI Doctors dated: 01/08/2017 and the District Health Officer Nowshehra adjust me as a medical Officer BPS-17 VIDE No. 9667-67 Dated: 07/08/2017.

The health department partially adjusted me against the vacant post of Medical Officer BPS-17 But submitted appeal to Honorable Supreme Court of Pakistan and now the trail is running and waiting for decision.

Now my age is 59 years and 11 months my retirement date is 12/07/2023
So please kindly accept my appeal and give me approval for drawing LPR Encashment payment and commutation payment and other relevant funds.

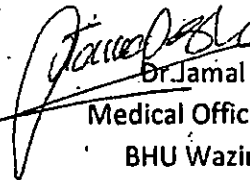
I will be give you undertaking on judicial stamp paper that if the decision of honorable Supreme Court of Pakistan comes against us I will be liable to return whole payment i.e. commutation, LPR Encashment Payment etc.

I will be thankful to you for you're this kindness.

Thanks

Note: All Orders photocopy are attached.

You're obediently



Dr. Jamal Shah
Medical Officer BPS-17
BHU Wazir Garhi
District Nowshehra

42
OFFICE OF THE DISTRICT

Phone & Fax: 0923-580759

E-Mail: nowshera.edoh@gmail.com



HEALTH OFFICER NOWSHERA

No. 7800 /DHO NSR

Date. 08/06/2023

To

The Director General Health Services
Khyber Pakhtunkhwa Peshawar

Subject:

**DEPARTMENTAL APPEAL FOR ADDING UP TEMPORARY
SERVICE TOWARDS REGULARIZATION FOR QUALIFYING
SERVICE FOR PENSION.**

Sir,

Enclosed please find herewith an application along with necessary documents, submitted by Dr. Jamal Shah Medical Officer BPS-17 working under the control of undersigned at BHU Wazir Garhi Nowshera, which is self-explanatory for further necessary action please.

Enval
District Health Officer
Nowshera

43

Appl Ex F

Cas Judgement

<http://www.plsbeta.com/LawOnline/law/casedescription.asp?cas...>

P L D 2016.Supreme Court 534

Present: Anwar Zaheer Jamali, C.J.; Mian Saqib Nisar, Amir Hani Muslim, Iqbal Elameedur Rahman and Khilji Arif Hussain, JJ

Civil Appeal No.1072/2005

CHAIRMAN, PAKISTAN RAILWAY, GOVERNMENT OF PAKISTAN, ISLAMABAD and others—
Appellants

Versus

SHAH JEHAN SHAH—Respondent

(On appeal against the judgment dated 29-12-2003 passed by the Federal Service Tribunal, Islamabad in Appeal No. 6(P)/CS/2003)

Civil Appeal No.686/2012

Mst. ROOLNA SHAAHEEN---Appellant

Versus

DIRECTOR EDUCATION (E&SC) KHYBER PAKHTUNKHWA and others---Respondent

(On appeal against the judgment dated 9-4-2012 passed by the KPK Service Tribunal, Peshawar, in Appeal No.1539/2009).

Civil Appeals Nos. 1 of 2005 and 686 of 2012, decided on 14th April, 2016.

(a) Interpretation of statutes ---

---When a word had not been defined in the statute, its ordinary dictionary meaning was to be looked at.

(b) Words and phrases ---

---"Count"---Definition.

Chambers 21st Dictionary and Oxford Advanced Learner's Dictionary of Current English 7th Edn. ref.

(c) Civil Service Regulations (CSR)---

---Art. 371-A---Pensionary benefits---Government servants rendering temporary service in a temporary establishment for more than five years---Entitlement to grant of pensionary benefits within the meaning of Art.371-A of the Civil Service Regulations (CSR)---Scope---Article 371-A of the Civil Service Regulations (CSR) would not ipso facto or simpliciter allow government servants rendering temporary service in a temporary establishment for more than five years to be entitled to grant of pension, rather such period would only be counted towards such government servants' pension if otherwise entitled to pension. Mir Ahmad Khan v. Secretary to Government and others (1997 SCMR 1477) declared to be per incuriam]

Service rendered for more than five years as contemplated by Article 371-A of the Civil Service Regulations (CSR) would only be added, included, or taken into account for the purposes of pensionary benefits, and not make such government servant qualify for pension per se. Article 371-A of Civil Service Regulations (CSR) by itself did not provide for the entitlement for the purposes of pension, rather, it was restricted to the counting of the period of a minimum of five years which had been rendered by the temporary employee that once he was appointed on a permanent basis, such period (of five years) shall be taken into account for the object of calculating his entitlement to pension with respect to the requisite minimum period under the law.

Mir Ahmad Khan v. Secretary to Government and others 1997 SCMR 1477 declared to be per incuriam

Article 371-A cannot be used as a tool to bypass the conditions for qualifying service of pensionary benefits, and such government servant had to fulfill the minimum number of years for grant of pension. This was due to the use of the word "count" as opposed to "qualify" or "eligible" in Article 371-A of the Civil Service Regulations (CSR).

It was absurd, ludicrous and inconceivable that a government servant, who was in regular employment, would become entitled to pension after serving the minimum years of qualifying service as prescribed by the law, whereas while interpreting Article 371-A of the Civil Service Regulations (CSR), a government servant who had served as a temporary employee could be given preference over a regular employee, and after a minimum service of only five years would automatically become entitled to pension. Holding so would be against the object and spirit of the concept of pension.

PLD 2013 SC 829 ref.

(d) Civil Service Regulations (CSR)---

---Art. 371-A---Pensionary benefits---Government servants rendering temporary service in a temporary establishment---"Temporary establishment"---Meaning---Temporary establishment could be said to mean an organisation or institution which was not permanent, rather effective for a certain period only.

Hafiz S.A. Rehman, Senior Advocate Supreme Court for Appellants (in C.A. No.1072 of 2005).

Riaz Sherpao, Advocate Supreme Court and Mir Adam Khan, Advocate-on-Record for Appellant (in C.A. No.686 of 2012).

Abdur Rehman Siddiqui, Advocate Supreme Court for Respondent (in C.A. No.1072 of 2005).

Ijaz Anwar, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Respondent No.5 (in C.A.No.686 of 2012).

Waqar Ahmed Khan, Addl. A.G. (on behalf of Khyber Pakhtunkhwa).

Dates of hearing: 14th and 15th March, 2016.

JUDGMENT

MIAN SAQIB NISAR, J:- These appeals, by leave of the Court, involve a similar question of law, hence are being disposed of together. The key question involved herein is whether persons who have rendered more than five years' service in a temporary establishment are entitled to the grant of pensionary benefits within the meaning of Article 371-A of the Civil Service Regulations (CSR), and a re-visitation of the judgment of this Court reported as Mir Ahmad Khan v. Secretary to Government and others (1997 SCMR 1477).

Civil Appeal No.1072/2005:

2. This appeal entails the facts in that the respondent was appointed as an Assistant Executive Engineer (BPS-17) in Pakistan Locomotive Factory Risalpur, Pakistan Railways on 11.7.1989 on an ad hoc basis whereafter his employment was converted into a contract employment for two years with effect from 1.9.2000. Subsequently, due to the respondent's failure to qualify for regularization before the Federal Public Service Commission, his services were terminated on 4.9.2002. He filed a departmental appeal on 8.10.2002 for the grant of pensionary benefits which (departmental appeal) was dismissed vide order dated 9.1.2003. Subsequently, the respondent approached the learned Federal Service Tribunal (Tribunal) challenging not the termination of his services or the conversion of services from ad hoc to contractual, rather only non-payment of pensionary benefits. The learned Tribunal while relying upon the case of Mir Ahmad Khan (supra) accepted the respondent's service appeal on 29.12.2003 through the impugned judgment holding as follows:-

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"7. In view of the clear provision available in Civil Service Regulations as CSR 371-A(i) and in the light of the judgment of Honourable Supreme Court, reproduced below, there is no ambiguity that the Appellants who have put in more than 10 years of uninterrupted service were entitled to pension as per rules

9. In view of the rulings of Honourable Supreme Court, we accept the appeals, set aside the impugned orders and direct the respondents to give pension to the Appellants as admissible to them under CSR 371-A (i). They are also entitled to receive their other legal dues like General Provident (GP) Fund etc. However, Respondents would be at liberty to deduct any valid/legal dues outstanding against them from amount payable to them."

Aggrieved of the above order, the appellants approached this Court, and leave was granted on 15.9.2005 in the following terms:-

" Since interpretation of a number of provisions of Civil Service Regulations as to entitlement to pension of the government servants, which will have impact on a large number of cases, is involved leave is granted to consider whether temporary service rendered by the three respondents qualified for pension?"

Subsequently, this Court on 21.2.2012 was of the view that a larger bench should hear the matter for the following reason(s):-

"...The learned counsel for the appellant states that admittedly respondent is not a Civil Servant and he cannot claim pensionary benefits thus the judgment in the case of Mir Ahmed Khar (ibid) needs to be revisited in that if such wide interpretation is given to Regulations 371-A all contractual and temporary employees working in the Government Department would become entitled to pensionary benefits on termination of their employment, without being regularly employed. Since Mir Ahmed Khan's case was decided by three members' Bench, the matter be placed for consideration of the Hon'ble Chief Justice for placing the case before a larger Bench."

3. The basic argument of the learned counsel for the appellants was that Article 371-A was an enabling, as opposed to charging provision, and that the use of the word "count" in Article 371-A of the CSR, as opposed to "eligible" or "qualify", does not mean that government servants who have rendered more than five years' continuous temporary service in a temporary establishment are entitled to the grant of pension, rather that such period of service would only be counted/added for the purposes of calculating pension, which the government servant has to nevertheless qualify for by fulfilling the three conditions of qualification for pension as provided in Article 361 of the CSR. In support of his arguments, he made reference to various Articles of the CSR and Fundamental Rules (FR). Learned counsel attempted to buttress his submissions by drawing an analogy with the judgment reported as Federation of Pakistan and others v. Rair Khan (1993 SCMR 609), in which it was held that the period of ad hoc service followed by regular service in the same scale shall be counted towards length of service prescribed for promotion or move-over in the next higher scale, thus in the same manner, the period of temporary service of more than five years would be counted towards pension if it was followed by regular service.

4. On the other hand learned counsel for the respondent argued that the word "count" can be used interchangeably with "qualify" or "eligible", and in fact "count" is more often than not the precise word used for the purposes of pensionary benefits. Further, the appellants' interpretation of Article 371-A of the CSR that the period of temporary service of more than five years would be counted towards pension if it was followed by regular service would only be true if the said article specifically provided "temporary followed by permanent service", but this is not the case. Further, the words "except as otherwise provided" in Article 368 of the CSR gives sanction to the grant of pensionary benefits to temporary employees. In support of his arguments, learned counsel placed reliance upon two office memorandums issued by the Ministry of Finance at Serial Nos.5 and 6 of Chapter V of Section VI of the Compendium of Pension Rules and Orders.

5. Heard. Before resolving the proposition at hand, we find it expedient to reproduce the relevant articles of the CSR which read as under:-

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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 by Government.

These three conditions are fully explained in the following Articles.

368. Except otherwise provided in these Regulations services does not qualify unless the officer holds a substantive office on a permanent establishment.

369. An establishment, the duties of which are not continuous, but are limited to certain fixed periods in each year, is not a temporary establishment. Service in such an establishment, including the period during which the establishment is not employed, qualifies; but the concession of counting as service the period during which the establishment is not employed does not apply to an officer who was not on actual duty when the establishment was discharged, after completion of its work, or to an officer who was not on actual duty on the first day on which the establishment was again re-employed.

370. An officer transferred from a temporary to a permanent appointment can count his service in the temporary office, if, though at first created experimentally or temporarily, it eventually becomes permanent.

371. An officer, without a substantive appointment officiating in an office which is vacant, or the permanent incumbent of which does not draw any part of the pay or count service, may, if he is confirmed without interruption in this service, count his officiating service.

371-A. Notwithstanding anything contained in Articles 355(b), 361, 368, 370 and 371 of these Regulations, temporary and officiating service, in the case of Government servants who retired on or after the 1st January, 1949, or who joined service thereafter, shall count for pension according to the following rule:-

(i) Government servants borne on temporary establishments who have rendered more than 5 years continuous temporary service shall count such service for the purpose of pension or gratuity excluding broken periods of temporary service, if any, rendered previously, and

(ii) Continuous temporary and officiating service of less than five years immediately followed by confirmation shall also count for gratuity or pension, as the case may be." (Emphasis supplied)

We begin with the basics. The CSR pertains to salary, leave, pension and travelling allowance of those serving in the civil departments. Despite the nomenclature used, i.e. Civil Service Regulations, the application of the CSR is not restricted to "civil servants" as defined in the Civil Servants Act, 1973 (Act), but also applies to "government servants". Interestingly, "government servants" has neither been specifically defined in the Act nor in the CSR. However, we are not treading those waters, rather leaving it for an appropriate case, as the applicability of the CSR to the respondent is not disputed in the instant matter. Although we would like to observe that whether or not a particular Article of the CSR applies only to a civil servant or extends to the broader pool of government servants would ultimately depend on the particular wording of the article under consideration. The CSR classifies pension into four basic types:- compensation pension, invalid pension, superannuation pension and retiring pension. In order to be able to claim pensionary benefits, one must fulfill the three conditions of qualifying service for pension stipulated in Article 361 of the CSR:- (i) the service must be under the Government; (ii) the employment must be substantive and permanent; and (iii) the service must be paid by the Government. An interpretation of the provisions pertaining to the second condition is relevant to the matter at hand. Article 368 of the CSR provides that the officer must hold a substantive office or a permanent establishment. Articles 370 and 371 of the CSR in essence allow for temporary and officiating services respectively, to be counted towards an officer's service if such service (temporary or officiating) becomes

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permanent.

6. Article 371-A(i) allows for governments servants who have rendered temporary service for more than five years at a temporary establishment to count such service for the purposes of their pension (or gratuity), but the temporary service must be continuous, and excludes broken periods of temporary service rendered previously. By way of example, Article 371-A(i) would attract to a government servant who rendered continuous temporary service at a temporary establishment for six years and was subsequently confirmed at the end of his temporary service, those six years would be counted towards his service for the purposes of pensionary benefits. The said article would also encompass the situation where a government servant rendered continuous temporary service at a temporary establishment for six years but was not confirmed at the end of his temporary service, rather two years after his temporary service ended he was taken back and confirmed, then again those six years would be counted towards his service for the purposes of pensionary benefits, excluding the broken period of two years (the interregnum). On the other hand, Article 371-A(ii) provides that government servants who have rendered temporary and officiating service for less than five years immediately followed by confirmation shall also count for gratuity or pension (as the case may be), which (service) must also be continuous. By way of illustration, where a government servant rendered continuous temporary or officiating service for three years and was subsequently immediately confirmed, those three years would be counted towards his service for the purposes of pension. However, due to the inclusion of the word "immediately" and the omission of the words "excluding broken periods of temporary service" in clause (ii) of the Article 371-A, in a situation where a government servant rendered continuous temporary or officiating service for three years but was not confirmed at the end of his temporary service, rather two years after his temporary service ended he was taken back and subsequently confirmed, then those three years would not be counted towards his pensionary benefits. However, it is important to note that Article 371-A presupposes that such a government servant, whether falling under clause (i) or (ii), is otherwise entitled to pension (or gratuity, as the case may be). In other words, Article 371-A cannot be used as a tool to bypass the conditions for qualifying service of pensionary benefits, and such government servant has to fulfill the minimum number of years for grant of pension. This is due to the use of the word "count" as opposed to "qualify" or "eligible"; as rightly argued by the learned counsel for the appellant. As per the settled rules of interpretation, when a word has not been defined in the statute, the ordinary dictionary meaning is to be looked at. Chambers 21st Dictionary defines "count" as "to find the total amount of (items), by adding up item by item; to include". Oxford Advanced Learner's Dictionary of Current English (7th Ed.) defines "count" as "to calculate the total number, of people, things, etc. in a particular group; to include sb/sth when you calculate a total; to consider sb/sth in a particular way; to be considered in a particular way". Thus in light of the above, service rendered for more than five years as contemplated by Article 371-A would only be added, included, or taken into account for the purposes of pensionary benefits, and not make such government servant qualify for pension per se. This interpretation is bolstered by logic, reason and common sense. If we were to accept the reasoning of the learned Service Tribunal in the impugned judgment and the arguments of the learned counsel for the respondents, it would create a bizarre and anomalous situation, where a government servant who has rendered temporary service in a temporary establishment for, let us say, seven years, would be entitled to pensionary benefits, and on the other hand, a government servant rendering services as a regular employee for fifteen years would not (yet) have completed the requisite number of years to qualify for grant of pension. It is absurd, ludicrous and inconceivable that a government servant, who is in regular employment, would be entitled to pension after serving the minimum years of qualifying service as prescribed by the law, whereas while interpreting Article 371-A, a government servant who has served as a temporary employee could be given preference over a regular employee, and after a minimum service of only five years would automatically become entitled to pension. Holding so would be against the object and spirit of the concept of pension which has been discussed by this Court in Regarding pensionary benefits of the Judges of Superior Courts from the date of their respective retirements, irrespective of their length of service as Judges (PLD 2013 SC 829) as follows:-

"...pension is not the bounty from the State/employer to the servant/ employee, but it is fashioned on the premise and the resolution that the employee serves his employer in the days of his ability and capacity and during the former's debility, the latter compensates him for the services so rendered. Therefore, the right to pension has to be earned and for the accomplishment thereof, the condition of length of service is most relevant and purposive." (Emphasis supplied)

Thus, we are not inclined to interpret Article 371-A in such a way so as to render the provisions stipulating minimum years for grant of pensionary benefits superfluous and redundant. As far as the provisions of Article

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371-A are concerned, which is a non-obstante clause to Articles 355(b), 361, 368, 370 and 371 stipulated therein, suffice it to say that such article by itself does not provide for the entitlement for the purposes of pension, rather, at the cost of repetition, it is restricted to the counting of the period of a minimum of five years which has been rendered by the temporary employee that once he is appointed on a permanent basis, such period shall be taken into account for the object of calculating his entitlement to pension with respect to the requisite minimum period under the law. Therefore we are not persuaded to hold the words "Notwithstanding anything contained in Articles 355(b), 361, 368, 370 and 371 of these Regulations..." in Article 371-A to allow those who do not fulfill the requisite conditions for qualifying for pension to bypass such conditions, so as to render the articles of the CSR providing for such conditions unnecessary and surplus. Therefore, we are of the candid view, that Article 371-A of the CSR would not ipso facto or simpliciter allow government servants rendering temporary service, in a temporary establishment for more than five years to be entitled to grant of pension, rather such period would only be counted towards such government servants pension if otherwise entitled to pension.

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

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

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

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

9. In view of the foregoing, we find that the respondent was not entitled to the grant of pensionary benefits in terms of Article 371-A of the CSR, and the learned Service Tribunal had erroneously allowed him pension by wrongly relying upon the case of Mir Ahmad Khan (supra) which is declared to be per incuriam.

10. The above are the detailed reasons for our short order of even date whereby the appellants' appeal was accepted and the impugned judgment was set aside, which reads as follows:-

"We have heard the arguments of learned ASCs for the parties. For the reasons to be recorded later this appeal is allowed, the impugned judgment of the Federal Service Tribunal dated 29.12.2003 is set aside and the service appeal preferred by the respondent is dismissed."

Civil Appeal No.686/2012:

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11. The brief facts of the instant appeal are that the appellant was a Professional Teaching Certification (PTC) Teacher in the Commissionerate for Afghan Refugees, Peshawar (Commissionerate) from 28.2.1987 to 17.1.2005, i.e. approximately 18 years. During her employment at the Commissionerate, she applied for two months leave on 20.1.2004, after which she was appointed as a PTC Teacher in the Schools and Literacy Department, Government of Khyber Pakhtunkhwa (department) and she assumed charge of her post on 25.1.2004 and tendered her resignation with the Commissionerate on 10.1.2005. Thereafter she filed a departmental appeal to respondent No.1 claiming that her 18 years' service with the Commissionerate be counted for the purposes of her pension, which (departmental appeal) was accepted vide order dated 24.6.2008. However, the said order stated that her 10 years' service be counted towards calculation of her pension, as opposed to 18 years, which the appellant was dissatisfied with thus she filed a corrigendum application for correction of the said mistake. However, in response, the department on 20.7.2009 informed the appellant that her prior service with the Commissionerate could not be counted towards her pension. Aggrieved, the appellant filed an appeal before the learned Khyber Pakhtunkhwa Service Tribunal which was dismissed vide the impugned judgment dated 9.4.2012 whereafter she approached this Court. Leave was granted on 5.7.2013 in the following terms:-

".....Prima facie, it is difficult to understand that admittedly when the petitioner had served for a period of about 18 years in the Commissionerate and thereafter joined the Education Department and initially the Education Department had also accepted her claim allowing computing of her previous service for the purpose of pension then what prevailed with the department subsequently in disallowing continuity. In view of the judgment cited by the learned counsel in the case of Zafar Shah (2003 SCMR 686) in such like circumstances, continuity for the purpose of extending the benefit of pension is permissible.

3. Inter alia, to examine this aspect of the case, leave to appeal is granted in this case. ..."

Subsequently on 19.9.2013, it was decided that this case was to be heard along with Civil Appeal No.1072/2005 before the larger bench as they both involved similar questions of law.

12. Learned counsel for the appellant primarily submitted that the time spent at the Commissionerate is to be counted towards her pension in terms of Article 371-A of the CSR.

13. On the other hand, learned counsel for the respondents stated that due to the special facts and circumstances prevalent at that time, the decision rendered in the case of Mir Ahmad Khan (supra) is good law, however in the instant matter, the appellant is not entitled to inclusion of the period she spent as an employee of the Commissionerate for the purposes of pensionary benefits for the reason that she was in fact a project employee of a non-governmental organisation called Basic Education for Afghan Refugees (BEF/Re), and not an employee of the Federal Government, and that she had resigned from the Commissionerate on 10.1.2005 after which she joined the department.

14. Learned Additional Advocate General, KPK adopted the arguments of Mr. Hafiz S. A. Rehman, learned counsel for the appellants in Civil Appeal No.1072/2005.

15. Heard. The appellant's main grievance is that the eighteen years she spent at the Commissionerate be counted towards her service at the department for the purposes of the grant of pensionary benefits as per Article 371-A of the CSR, suffice it to say that the Commissionerate for Afghan Refugees does not in any way fall within the meaning of "temporary establishment" as defined in Civil Appeal No.1072/2005 above to mean an organisation or institution which is not permanent, rather effective for a certain period only as described. Even otherwise, the appellant's service with the department was temporary and on a contract basis, and there is nothing on the record which suggests that she was subsequently confirmed or made permanent within the department. Therefore keeping in view the interpretation of Article 371-A of the CSR explained above with regard to Civil Appeal No.1072/2005 in that the said article would not ipso facto allow government servants rendering temporary service in a temporary establishment for more than five years to be entitled to grant of pension, rather such period would only be counted towards such government servants' pension if otherwise entitled to pension, we are of the opinion that the appellant is not entitled to pensionary benefits as claimed by her.

16. In light of the above, we find no infirmity in the impugned judgment warranting interference by this Court.

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<http://www.plsbeta.com/LawOnline/aw/casedescription.asp?cased>

therefore this appeal is dismissed as being devoid of merit.

MWA/C-6/S

Appeal dismissed.

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR



W.P.No. 292 /2011

1. Anwar Shed S/o Kashmali Khan
Clinical Primary Health Care Technician
(Multipurpose) BHU Bandai
2. Imran Ali S/o Gran Khan
Clinical Primary Health Care Technician (Multipurpose)
BHU Sawni.
3. Arshad Ali S/o Aqal Mand Khan
Clinical Primary Health Care Technician (Multipurpose)
BHU Hattan Dara.
4. Wazir Muhammad S/o Bashir Muhammad
Clinical Primary Health Care Technician (Multipurpose)
BHU Kakad.
5. Miss Nadia Amin D/o Amin-ul-Haq
Female Clinical Primary Health Care Technician
(Multipurpose) BHU Pashta.
6. Niaz Muhammad S/o Taza Khan
Clinical Primary Health Care Technician (Multipurpose)
BHU Pataw.
7. Akbar Zada S/o Khaist Rehman
Clinical Primary Health Care Technician (Multipurpose)
BHU Kakad.
8. Miss Sadia Sultan
Clinical Primary Health Care Technician (MCH)
BHU Darora.
9. Miss Bibi Attiya D/o Khalil-ur-Rehman
Clinical Primary Health Care Technician (MCH)
BHU Jelfar.
10. Mehboob Rabbani S/o Pajnda Jan
Dispenser BHU Barikot.

FILED TODAY
Deputy Registrar
22 JAN 2011

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Peshawar High Court

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT

WP NO. 292 OF _____ 2001



JUDGMENT

Date of hearing 19-6-2014

Appellant Attested by Advocate N. S. Sethi

Respondent Adv. by S. A. Qureshi, M. S. Chah

WAQAR AHMAD SETHI, J.- Petitioners, being Male/Female/Lady Clinical Primary Health Care Technicians and Dispenser at Basic Health Unit in District Upper Dir (hereinafter called as the posts), have instituted this Constitutional petition praying therein that the respondents may be directed to declare them as regular employees of their department and that all the benefits provided under the North West Frontier Province Employees (Regularization of Service Act, 2009) may also be extended in their favour.

2. We have heard the learned counsel for the parties at length and examined the available documents on file. Since pre-admission has been issued to the respondents, therefore, in the interest of justice we are inclined to admit this writ petition for regular hearing and decide the same today on merits.

3. The record reveals that in consequence of Advertisement published in 'Daily Aaj' on 07-06-2007

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Peshawar High Court

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the petitioners applied for the vacant posts and after the requisite test/interview they were appointed on contract basis for the fixed salary of Rs.9454/- per month for a period of one year which was extendable subject to satisfactory performance vide Office Order dated 01-08-2007. The petitioners are still working on contract basis against the posts since their appointments notwithstanding the fact that in similar matters in eleven Districts out of twenty four Districts of KPK not only the posts have been regularized but the employees thereon have also been regularized with all the benefits like civil servants whereas in thirteen District the Peoples Primary Health Care Initiative (hereinafter referred to as PPHI Project) are continuously going on since then.

4. On the strength of the judgment and order dated 22-01-2012 passed by a Division Bench of this Court in W.P.No.1670/2010 titled Nijat Ali and others Vs. Government of KPK through Chief Secretary and others duly supported by the Federal Government and the subsequent judgment and order dated 19-09-2013 of a Division Bench at Dara-ul-Qaza (Swat Bench) involving identical points in W.P. No.4335/2010 titled Rahimullah etc Vs. Government of KPK etc regularizing the contract employees/petitioners of different categories in both the petitions by the respondents-department of KPK in line with their approved policy, we are inclined to accede to the prayer made by the petitioners in this petition.

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5. For the above reasons, we allow this Constitutional petition and direct the respondents-department that the petitioners be regularized against the posts from the date of their initial appointment with all back benefits.

[Signature]
JUDGE

[Signature]
JUDGE

Announced
19-06-2014

CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Constitution of Pakistan Act 1984
05 AUG 2023

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Date of Presentation of Application: 05-08-2023
No of Pages: 15
Copying fee: 60-00
Date of Preparation: 05-08-2023
Date of Delivery: 05-08-2023

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE MAGBOOL BAQAR

CIVIL APPEAL NO. 1870 TO 1872 OF 2016

(Against the judgments dated 19.06.2014 & 21.05.2015 of the Peshawar High Court, Peshawar passed in WPs No. 292/2011 & 300-P/2015)

Programme Director Peoples Primary Health Care Appellant(s)
Initiative 3, another

Govt. of KPK, Mr. Secretary Health Department
Peshawar & others

VERSUS

Anwar Shad and others
Asif Khan and others

Respondent(s)

For the Appellant(s)

Mr. Faridullah Khan Kundli, ASC
(in CA 1870/2016)
Mian Arshad Jan, Addl. AG, KPK
(in CA 1871 & 1872/2016)
Haji M. Zahir Shah, AGR

For Respondents No. 1-7, 9-16,
18-21

Mr. Munammad Iqbal Khan, ASC
(in CA 1870/2016)
Mr. Ejaz Anwar, ASC
(in CA 1871/2016)

For Respondents No. 1-4 in
(CA 1872/2016)
For KPK Govt.

Mr. Ghulam Nabi Khan, ASC

Mian Arshad Jan, Addl. AG, KPK

Date of Hearing

22.02.2017

ORDER

MUSHIR ALAM, J.

CMA No. 002-P/2014 in CA 1870/2016

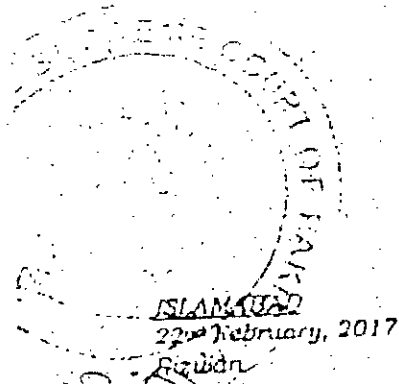
Leave was granted on 16.08.2016 subject to limitation. We have perused the application for condonation of delay. Though no plausible explanation is set out, however, other two civil appeals arises out

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of identical orders on similar facts and circumstances, were filed within time, therefore delay is condoned.

2. Pursuant to advertisement dated 07.06.2007, respondents were appointed on contract for one year on 01.08.2007. Contract was extended from time to time. Consequent upon promulgation of NWFP (now KPK) Employees (Regularization of Service Act, 2009) many contract employees were regularized. Respondents who were denied such entitlement filed writ petitions, subject matter of instant appeals, on the strength of earlier judgments rendered in writ petitions, as mentioned in para 4 of the impugned judgment, were allowed.

3. Heard the arguments of the learned counsel for the appellants. He was not able to point out any factual or legal infirmity in the judgment of the learned Tribunal, we do not find any merit in these appeals which are accordingly dismissed.



Amir
2/3/17

Sd/- Mushtaq Alam, J
Sd/- Dost Mohammad Khan, J
Sd/- Masood Baig, J
Chairman of the Bench

[Signature] 2/3/17
Chairman of the Bench
Islamabad

3118 / 17

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IN THE PESHAWAR HIGH COURT PESHAWAR

3394P (3)

WRIT PETITION No. /2016

Amir Zeb,
Widower of Asiya Shafi,
R/o Fazal Ganj, Siace Mandi,
Risalpur, District Nowshera.....Petitioner

Versus:

- 1. The District Account Officer,
District Nowshera.
- 2. The Accountant General,
Khyber Pakhtunkhwa, Peshawar.
- 3. The District Education Officer (Female),
District Nowshera.
- 4. The Director,
Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.
- 5. The Secretary,
Govt. of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department,
Peshawar.
- 6. The Secretary,
Govt. of Khyber Pakhtunkhwa,
Finance Department, Peshawar.....Respondents

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

FILED TODAY
Deputy Registrar
03 SEP 2016

ATTESTED
EXAMINER
Peshawar High Court

Respectfully Sheweth,

WP3394P2016-GROUNDS



**IN THE PESHAWAR HIGH COURT,
PESHAWAR,
Judicial Department.**

Writ Petition No.3394-P/2016

Date of hearing:- 22.06.2017

Petitioner(s):- Amir Zeb Widower of Mst. Asiya Shafi by
Mr. Khush Dil Khan, Advocate.

Respondent (s):-The District Account Officer, Nowshera & 05
others by Syed Qaisar Ali Shah, AAG.

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through this Common judgment, we, propose to decide the following Constitutional Petitions filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution), as identical questions of law and facts are involved therein and the writ sought by the petitioners is also one and the same.

1. Writ Petition No.3394-P/2016
(Amir Zeb Vs District Account Officers Nowshera etc)
2. Writ Petition No.2867-P/2016
Mst. Akhtar Bibi Vs District Education Officer (M) Kohat etc).
3. Writ Petition No.3143-P/2014
(Muhammad Shah Zaib etc Vs Govt of Khyber Pakhtunkhwa through Chief Secretary and others)
4. Writ Petition No.2872-P/2014.
Hakeem Khan through LRs Vs Govt of KPK through Sectary Elementary & Secondary Education, Peshawar etc)
5. Writ Petition No.1339-P/2014
(Mst. Rani Vs Sub-Division Education Officer etc).
6. Writ Petition No.55-P/2015
(Mst. Bibi Bilqees Vs Govt of KPK through Secretary Finance, Peshawar).

Nowshera

WP3394P2016-Judgements

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2. Amir Zeb petitioner in W.P. No.3394-P/2016 is the widower of Mst. Asiya Shafi (late). His grievance is that on 28.02.2003, his wife was initially appointed as PTC on contract basis and, later on, by virtue of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, her service was regularized. On 31.07.2015, during her service, she met her natural death, therefore, he being her widower/LR applied for payment of her all admissible retirement benefits, in pursuance whereof, leave encashment, GP fund and other admissible funds were paid to him by the respondents, but his pension claim was refused by the respondents on the ground of lack of prescribed length of her regular service, excluding the period of her service on contract, hence, this petition.

3. Mst. Akhtar Bibi, the petitioner in Writ Petition No.2867-P/2016, is the widow of (late) Lal Din Class-IV employee. She has averred in her writ petition that her late husband was initially appointed as Chowkidar on 01.10.1995 on contract basis, however, later on, his service was regularized vide Notification No.BO1-1-22/2007-08 dated 05.08.2008. On 15.05.2010, the deceased died during his service, so she applied for her pension but the same was refused to her on the ground that the regular service of the deceased employee was less than the prescribed length of regular service, hence, this petition.

4. Muhammad Shah Zaib and Muhammad Afnan Alam are the sons of deceased Fakhar Alam. Their grievance is that their deceased father was appointed as Chowkidar on 13.01.1993 in Mother Child Health Centre Tank, who, later on, during his service was murdered, for which FIR was registered against the accused. Petitioners applied for retirement of the deceased. Vide notification dated 31.12.2013 the deceased was retired from service on account of his death on 21.12.2013. The family pension of the deceased was granted and processed, however, the same was refused to the petitioners, hence, this petition.

5. Petitioners in Writ Petition No.2872-P/2014, are the LRs of deceased Haroon Khan Class-IV employee, who died during pendency of the instant writ petition. Grievance of the petitioners is that their predecessor was appointed as Chowkidar on fixed pay in Education Department on 14.04.1993. Vide order dated 29.01.2008, service of the deceased alongwith his counterparts was regularized by virtue of Ministry Paktunkhwa Civil Servants (Amendment) Act, 2012 w.e.f. 20.06.2001. On attaining the age of superannuation, the deceased got retired on 31.12.2013, so petitioner applied for grant of his pension but the same was refused, hence, this petition.

6. Mat. Ben. petitioner in Writ Petition No.1339-P/2014 is the widow of Syed Imtiaz Ali Shah (late) Class-VI employee. She has averred in her writ

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petition that on 15.01.1996 her late husband was appointed as Chowkidar in the respondents department on adhoc basis/fixed pay, whose service was, later on, regularized on 30.07.2008. During his service, the deceased met his natural death on 15.01.2012, hence, the petitioner applied for her pensionary benefits, but the same was refused on the ground that though service of the deceased was regularized but without pension gratuity, hence, this petition.

7. Mst. Bibi Bilqees, petitioner in Writ Petition No.55-P/2015, is the widow of Saif ur Rehman deceased. Her grievance is that her deceased husband was initially appointed as Chowkidar on 09.07.1995 in Public Health Department Nowshera on contract basis, however, his service was regularized on 01.07.2008. The deceased died during his service on 05.05.2012, so when petitioner applied for his pensionary benefits, the same was refused to her on the ground that the deceased was lacking the prescribed length of regular service, hence, this petition.

8. Respondents in the above writ petitions have filed their respective Para-wise comments, wherein they have admitted the fact that the pensions have been refused to the petitioners/LRs of the deceased employees because they were lacking the prescribed length of their regular service, whereas period of adhoc or contract service cannot be counted towards regular service for the purpose of pension.

The learned Addl. Adm. Officer questioned the maintainability of the writ petitions on the ground that section 19 (2) of the Khyber Pakhtunkhwa Civil Servants Acts deal with right of pension of deceased civil servant, which squarely falls in Chapter-II, pertaining to terms and conditions of service, therefore, jurisdiction of this Court under Article 212 of the Constitution is barred.

9. Having heard the arguments of learned counsel for the parties, record depicts that undisputedly the deceased employees were the Civil Servants and instant writ petitions have been filed by their LRs qua their pensions. Since the controversy pertains to pension of the deceased employees which according to the contention of worthy Law Officer is out of the terms and conditions of a civil servant under section 19 (2) of the Civil Servants Act, 1973, hence, before determining the eligibility of the deceased employees to the pension or otherwise, we, would like to first raise the legal question qua maintainability of the instant writ petitions on the ground of lack of jurisdiction of this Court under article 212 of the Constitution. To answer the question, it would be advantageous to have a look over the definition of "Civil Servant" as contemplated under section 2(b) of Khyber Pakhtunkhwa Civil Servants Acts, 1973 and section 2 (a) of Khyber Pakhtunkhwa Service Tribunal Act, 1974. For the sake of convenience and ready reference, definition

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given in both the Statute are reproduced below one after the other

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"2(b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include--

- (i) A person who is on deputation to the Province from the Federation of any other Province or other authority;
- (ii) A person who is employed on contract or on work charged basis, or who is paid from contingencies; or
- (iii) A person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VII of 1923)".

"S.2(a) "Civil Servant" means a person who is or has been a civil servant within the meaning of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), but does not include a civil servant covered by the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991.]"

As per the definitions of a "civil servant" given in the two Statutes referred to above, the petitioners neither holding any civil post in connection with the affairs of the Province nor have been remained as civil servants, thus, do not fall within the definition of "civil servant".

10. Though section 19(2) of the Khyber Pakhtunkhwa Civil Servants Acts, 1972, in the event of death of a civil servant, whether before or after retirement conferred a right of pension on his/her family who shall be entitled to receive such pension or gratuity or both as prescribed by Rules. It is also undeniable fact that pension and gratuity fall within the ambit of terms and conditions of a civil servant, but a legal question would arise as to whether the legal heirs i.e. family of a deceased civil servant would be competent to agitate his/her/their grievance regarding pension before the Service Tribunal, particularly, when

As per Law

he/she/they, do not fall within the definition of Civil Servant. The Service Tribunals have been constituted under Article 212 of the Constitution for dealing with the grievances of civil servants and not for their legal heirs. The question regarding filing appeal by the legal heirs of deceased's civil servant and jurisdiction of Service Tribunal, cropped up before the Hon'ble Supreme Court in a case titled, "Muhammad Nawaz Special Secretary Cabinet Elevs on through his Legal Heirs Vs Ministry of Finance Government of Pakistan through its Secretary Islamabad" (1991 SCMR 1192), which was set at naught in the following words:-

"A 'civil servant' has been defined in section 2(b) of the Civil Servants Act, 1973. A right of appeal under the Service Tribunals Act, 1973 has been given to a civil servant aggrieved by any final order whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his service. The appellants admittedly are the legal heirs of the deceased civil servant and there being no provision in the Service Tribunals Act of 1973 to provide any remedy to the successors or interest of a civil servant, the learned Tribunal, in our view, was correct in holding that the appeal before it stood abated and the same is hereby maintained".

In case titled, "Rahimshah Habib Vs Federation of Pakistan and others" (2014 PLD (C.S) 247) one Habib ur Rehman Director General Ministry of Foreign Affairs, aggrieved by his supersession filed appeal before the worthy Service Tribunal, but unfortunately during pendency of appeal he died, therefore, his appeal before the Federal Service Tribunal Islamabad was abated. Rashidra Habib, the widow of

deceased then filed constitution petition No.1021 of 2010 before the Islamabad High Court, but the same was dismissed vide judgment dated 13.06.2013, against which she preferred aforesaid appeal before the Hon'ble Supreme Court, which was allowed and it was held by the worthy apex court that:-

"That civil servant could not be promoted after his death, however, pensionary benefits of promotion could be extended to the legal heirs of the deceased employees".

11. Going through the law on the subject and deriving wisdom from the principles laid down by the Honble apex Court in the judgments (supra), we are firm in our view that petitioners/legal heirs of the deceased employees have locus standi to file these petitions because the pensionary benefits are inheritable which under section 19 (2) of the Khyber Pakhtunkhwa Civil Servant Act, on the demise of a civil servants, devolves upon the legal heirs. The petitioners, as stated earlier, being LRs of the deceased civil servants do not fall within the definition of "Civil Servant", and they having no remedy under section 4 of the Service Tribunal Act to file appeal before the Service Tribunal, the bar under Article 212 of the Constitution is not attracted to the writ petitions filed by them and this Court under Article 199 of the Constitution is vested with the jurisdiction to entertain their petitions. Resultantly, the objection regarding non-maintainability of the petitions stands rejected.

assented by the Governor of the Province on 12th July 2005 whereby section 19 was amended and all the employees of the Provincial Government selected for appointment in the prescribed manner to the post on or after 1st day of July 2001, but on contract basis were deemed to be appointed on regular basis. They were declared Civil Servants, however, were held disentitled for the pensionary benefits. Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013. The text of section 19 (4) (proviso 1 and 2) are reproduced as below:-

"Provided that those who are appointed in the prescribed manner to a service or post on or after the 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis:

Provided further that the amount of Contributory Provident Fund subscribed by the civil servant shall be transferred to his General Provident Fund."

14. From bare reading of section 19 of Amendment Act, 2005 and 2013 respectively, it is manifest that the persons selected for appointment on contract basis shall be deemed as regular employee and subsequently were held entitled for pensionary benefits. The deceased employees have completed the prescribed length of service as their service towards pension shall be counted from the first day of their appointment and not from the date of regularization of their service.

M. J.
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15. We deem it appropriate to mention here that question of interpretation and true import of the term pension was raised before the august Supreme Court of Pakistan in case titled "Government of NWFP through Secretary to Government of NWFP, Communication & Works Department, Peshawar vs Muhammad Said Khan and others" (GLB 1973 Supreme Court of Pakistan 514) wherein it was held that:

"It must now be taken as well settled that a person who enters government service has also something to look forward after his retirement to what are called retirement benefits grant of pension being the most valuable of such benefits. It is equally well settled that pension like salary of a civil servant is no longer a bounty but a right acquired after putting a satisfactory performance for the prescribed minimum period. A fortiori it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."

16. In case titled "Secretary to Govt of the Punjab, Finance Department vs Iqbal Tayer and 269 others" 1945 PLD (OS) 396, the august Supreme Court of Pakistan was pleased to hold that the pensionary benefits is not a bounty or gratuity payment but a right acquired in consideration of past services. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant.

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17. For what has been discussed above, we by allowing these writ petitions, issue a writ to the respondents departments to pay pension of the deceased employees to the petitioners/LRs of the deceased.

Announced:
22.06.2017
Sudhakar P.S.

Edy Roohul Amir Koli
JUDGE

Edy Ralamdar Ali
JUDGE

Edy S.M. AHIRAJUR Sahy
JUDGE

[Signature]
CERTIFIED TO BE TRUE COPY
EXAMINER
MUMBAI HIGH COURT, MUMBAI
Authorised Under Article 217 of
The Constitution of India
01 FEB 2022

No. 52969
Date of Presentation of 01/02/22
No of Pages 13
Copying fee 50
Total 50
Date of Preparation of Copy 01/02/22
Date of Delivery of Copy 01/02/22
Received by [Signature]




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People's Primary Healthcare Initiative (PPHI)
District Support Unit Nowshera

Letter No: 649-21/MON/DSU/NSR Dated: 9th July 2008

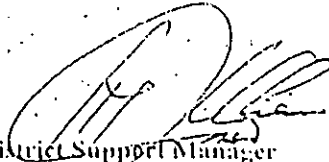
Office Order

No: 649-21/MON/DSU/NSR. On the recommendation of the selection committee and upon the acceptance of the offer of appointment given by KPH/DSU Nowshera, Mr. Jamal Shah is hereby appointed as Medical Officer in BHU Wazir Garhi District Nowshera according to the terms & conditions of the contract signed by him with this office with immediate effect in the public interest.


District Support Manager,
DSU-KPH Nowshera

Copy to:

1. Program Director, PPHI NWFP/FATA.
2. District Coordination Officer, Nowshera.
3. Executive District Officer (Health) Nowshera.
4. Personal Secretary to District Nazim (Nowshera)
5. Executive (F&A) DSU Nowshera.
6. Official Concerned.


District Support Manager
DSU-KPH Nowshera

Attached to Sarhad Rural Support Program (Regd. under section 42 of Companies Ord., 1984)

Village Papat Nowshera
Telephone No: 0923-580414, Fax No: 0923-580978
E-mail: dsu_nsr@yahoo.com



**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

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All communications should be addressed to the Director General Health Services
Peshawar and not to any official by name. E-Mail Address K.P.Kdhs@khyber.gov.pk
Office # 091-9210269 Exchange # 091-9210187, 9210196 Fax # 091-9210230

NO. 8/61

/E-1

Dated: 13/07/2023

To

The Secretary to Government of
Khyber Pakhtunkhwa Health Department,
Peshawar.

65/12
13-7-23

Subject -

DEPARTMENTAL APPEAL FOR ADDING UP TEMPORARY SERVICE TOWARDS
REGULARIZATION FOR QUALIFYING SERVICE FOR PENSION.

Enclosed please find herewith a copy of letter No. 7300/DHO-NSR dated 08.06.2023, received from DHO Nowshera alongwith application in respect of Dr. Jamal Shah S/O Malik Wali Khan MO (BPS-17) attached to Wazir Garhi District Nowshera, requesting for adding up temporary service towards regularization for qualifying service for pension, for the reasons mentioned in his application, for further necessary action.

It is stated that the doctor concerned was working under PPHI and his case for regularization is under trial at Supreme Court of Pakistan, but decision still awaited, however he is going to be retired from service on 12.07.2023.

It is therefore requested that, further orders of the Govt. may please be conveyed in the matter.

ADD: Director General HRM)
Directorate General Health Services
Khyber Pakhtunkhwa Peshawar

[Handwritten signature]
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- SSH (E&A)
- AS - ESTT
- AS - MTI
- DS - Admin
- DS - Legal
- DS - ESTT

[Handwritten signature]
13/07/23

POWER OF ATTORNEY

In the Court of KPK Service Tribunal Peshawar
Jamal Shah

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of KPK & others

} Defendant
} Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/W, the undersigned, do hereby nominate and appoint

ZARAJ ANWAR & IMRAN KHAN ADVOCATES. my true and lawful attorney, for me in my same and on my behalf to appear at _____ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions, An appeal, statements, accounts, exhibits, Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.


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

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year

Executant/Executants _____
Accepted subject to the terms regarding fee _____



IMRAN KHAN
Advocate High Court
Mob: 0345-9090648



ZARAJ ANWAR
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