

09<sup>th</sup> March, 2023

Appellant alongwith his counsel present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant sought time for preparation of arguments. Adjourned. To come up for arguments on 10.05.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED  
KPST  
Peshawar

(Salah-ud-Din)  
Member (J)

(Kalim Arshad Khan)  
Chairman

10<sup>th</sup> May, 2023

1. Clerk of counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for respondents present.

2. Clerk of counsel for the appellant says that because of law and order situation, learned counsel for the appellant could not come.

Adjourned. To come up for arguments on 20.07.2023 before D.B.

P.P given to the parties.

SCANNED  
KPST  
Peshawar

(Fareeha Paul)  
Member (E)

(Kalim Arshad Khan)  
Chairman

\*Kaleem Ullah\*

20-7-23

Due to public holiday on account of 1st Moharran ul Harm To come up for the year 18-10-23

8718/20

3rd Nov. 2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant seeks adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 16.12.2022 before the D.B.


  
(Fareeha Paul)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

16<sup>th</sup> Dec. 2022

Counsel for the appellant present. Mr. Naseerud Din Shah, Assistant Advocate General for the respondents present. Mrs. Rozina Rehman, learned Member (J) is on leave, therefore, D.B is incomplete. The case is adjourned to 09.03.2023 for arguments before the D.B.

**SCANNED**  
**KPST**  
**Peshawar**

  
(Fareeha Paul)  
Member(E)

16.05.2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, learned Additional Advocate General for respondents No.1 to 4 present. Mr. Usman Assistant, representative of respondents No.5 & 6 present.

File to come up alongwith connected Service Appeal No.8718/2020 titled "Rafi Ullah Vs. Health Department" on 30.06.2022 before the D.B.



(Rozina Rehman)  
Member (J)



(Salah-Ud-Din)  
Member (J)

30.06.2022

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

File to come up alongwith connected Service Appeal No.8718/2020 titled "Rafi Ullah Vs. Health Department" on 11.08.2022 before the D.B.




(Rozina Rehman)  
Member (J)



(Salah Ud Din)  
Member (J)

11.8.2022


Proper DB not available the case  
is adjourned to 3-11-2022

  
Reader

17.11.2021

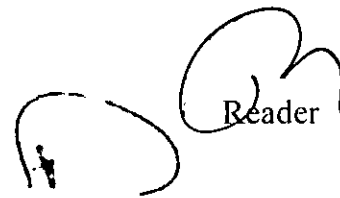
Learned counsel for the appellant present. Mr. Usmar, Assistant alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present.

The learned Member (Judicial) Mr. Salah-ud-Din is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments before the D.B on 04.02.2022.

  
(Mian Muhammad)  
Member (E)

04.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 16.05.2022 for the same as before.

  
Reader

~~Learned counsel for the appellant present. Mr. Usmar, Assistant alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present.~~  
~~The learned Member (Judicial) Mr. Salah-ud-Din is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments before the D.B on 04.02.2022.~~  
~~Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 16.05.2022 for the same as before.~~  
~~Member (E)~~      ~~Member (E)~~

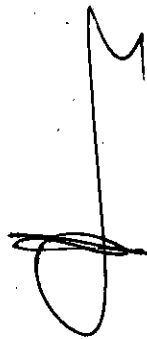
06.07.2021

Appellant in person and Mr. Jafar Ali, Assistant and Naseeb Khan, S.O for respondents No. 2 to 4 alongwith Mr. Kabirullah Khattak, Addl. AG for respondents present.

Respondents No. 2 to 4 have furnished reply/comments. Learned AAG seeks further time on behalf of respondent No. 1, 5 and 6. Learned AAG is required to contact the said to submit reply/comments within 10 days in office, positively. In case the requisite reply is not submitted within the stipulated time, office shall put up the appeal with a report of non-compliance. To come up for arguments before the D.B on 17.11.2021.

*Stipulated period has passed and reply has not been submitted.*

  
Chairman

  
P.S

28.07.2021

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

  
Chairman

8719/2020

05.01.2021

Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned AAG is required to contact the respondents and furnish reply/comments on next date positively.

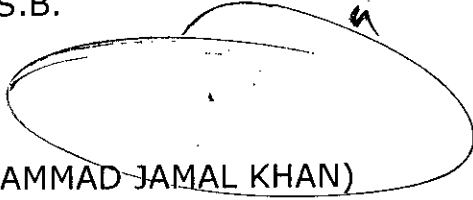
Adjourned to 17.02.2021 before S.B.

  
Chairman

10.02.2021

Junior to senior counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General, for the respondents is also present.

Learned counsel for the appellant submitted application seeking amendment in appeal, the copy of application be handed over to the learned Additional Advocate General and file to come up for reply. The learned Additional Advocate General is required to have a contact with respondents for submission of their reply/comments on 08.04.2021 before S.B.

  
(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

08.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 06.07.2021 for the same as before.

  
READER

18.09.2020

Counsel for the appellant present.

Contends that the appellant was appointed on contract as <sup>Radiographer</sup> ~~Dark Room Assistant~~ on 19.10.1996 in the respondent department. He continued to serve as such till 16.02.1999, when his service was regularized but with immediate effect. As the contract service of appellant was not being reckoned for the purpose of pay protection and pension the appellant preferred Writ Petition No.5236-P/2019 before the Honourable Peshawar High Court which was pleased to dispose of the same on 16.11.2019. The Writ Petition was sent to the departmental appellate authority for considering and deciding the same as a departmental appeal. Despite, initiation of Contempt of Court proceedings, the respondents have still remained at loss in deciding the matter. The inaction on the part of respondents has jeopardized the valuable service rights of the appellant, it was added.

Subject to all just exceptions, instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 16.11.2020 before S.B.

Appellant Deposited  
Security & Process Fee

  
Chairman

16.11.2020

Junior to counsel for the appellant and Addl. AG alongwith Sajid Superintendent for respondents present.

Representative of the respondents seeks time to furnish reply/comments. Adjourned to 05.01.2021 on which date the requisite reply/comments shall positively be furnished.

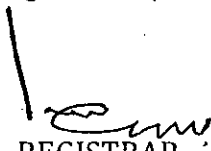

  
Chairman

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 8719 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/07/2020	<p>The appeal of Mr. all-ud-Din presented today by Mr. Lajbar Khan Khalil Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>18/09/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-		



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

Service Appeal No. 8719 /2020


Alla-ud-Din. . . . . **APPELLANT**

**VERSUS**

Govt. of Khyber Pakhtunkhwa & others. . . . . **RESPONDENTS**

**I N D E X**

S.No.	Description of Documents	Annex	Pages
1.	Service Appeal		1-9
2.	Affidavit		10
3.	Addresses of the Parties		11
4.	Copy of the Appointment Order	A	12
5.	Copy of Regularization Order dated 16.02.1999	B	13
6.	Copy of Notification dated 07.10.1998	C	14
7.	Copies of W.P No.5236-P/2019 and Order dated 06.11.2019	D	15-25
8.	Copies of the C.O.C Petition No.125-P/2020 and Order dated 02.06.2020	E	26-31
9.	Copy of the Relevant Rules	F	32
10.	Copy of Judgment dated 09.09.2014 in W.P No.1188-P/2014	G	33-39
11.	Copy of Judgment dated 24.11.2014 in W.P No.361-P/2013	H	40-43
12.	Copy of Judgment dated 01.03.2018 in W.P No.3221-P/2013	I	44-50
13.	Copy of the Judgment Reported in 2012 CLJ 343	J	51-54
14.	Wakalatnama		55

Through  Appellant

**Lajbar Khan Khalil**  
Advocate High Court  
Cell: 0333-9133658

Dated: 28.07.2020

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

Service Appeal No. 8719/2020

Alla-ud-Din S/o Gul Dad Shah, Junior Clinical Technician  
(JCT), Radiology, Hayatabad Medical Complex (HMC),  
Peshawar. . . . . **APPELLANT**

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary, Health Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary, Finance Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. Director General Health, Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar.
5. Chief Executive, Hayatabad Medical Complex (HMC), Peshawar.
6. Senior Manager HR, MTI, Hayatabad Medical Complex (HMC), Peshawar. . . . . **RESPONDENTS**

**SERVICE APPEAL U/S 4 OF THE KHYBER  
PAKHTUNKHWA SERVICES TRIBUNAL  
ACT, 1974 READ WITH ALL OTHER  
ENABLING PROVISIONS ON THE  
SUBJECT.**

**PRAYER:**

On acceptance of this Service Appeal, the respondents may please be directed to allow the period of his service before regularization (from 19.10.1996 to 15.02.1999) by counting the same towards his pay protection and pensionery benefits. Furthermore, appropriate order may please be issued to declare the inaction of the respondents not counting the previous service (w.e.f. 19.10.1996 to 15.02.1999) of the appellant towards pay protection, pensionery benefits and promotion as illegal, unconstitutional, arbitrary and exploitation of the past good service of the appellant to meet the ends of justice, principle of equity or any other remedy deem proper, in the circumstances of the case may please be allowed.

**Respectfully Sheweth:**

Brief facts giving rise to the present appeal are as under;

1. That on 19.10.1996, the appellant was initially appointed as Dark Room Assistant against the sanctioned posts, which was up-graded as Junior Clinical Technicians (JCT) in the year 2005 and since his appointment he is performing his duties upto the entire satisfaction of his superior officers.

**(COPY OF THE ORDER IS ATTACHED AS ANNEX "A").**

2. That on 16.02.1999, it was conveyed to the appellant that the respondents have regularized the services of the appellant vide Notification No.SOH-III/8-53/96 dated 07.10.1998 with immediate effect.

**(COPIES OF THE REGULARIZATION ORDER AND NOTIFICATION ARE ATTACHED AS ANNEX "B" & "C" RESPECTIVELY).**

3. That the appellant is continuously performing his duties upto the entire satisfaction of their high-ups and have more than 2 years contract services at their credit, which were not counted towards his pay and pension protection hence caused huge financial loss to the appellant.
4. That the appellant was initially employed against the sanctioned posts and he was performing his duties without any break in his services.

5. That the appellant has preferred **W.P No.5236-P/2019** before the Hon'ble Peshawar High Court, Peshawar, and the Hon'ble Peshawar High Court, Peshawar was pleased to dispose of the same vide order dated **06.11.2019**, in terms of treating the same as departmental appeal and referred the same to respondent No.4 with the directions to decide the same in accordance with law within a month.

**(COPIES OF WRIT PETITION AND ORDER DATED 06.11.2019 ARE ATTACHED AS ANNEX "D").**

6. That as the respondents failed to decide the departmental appeal within the stipulated period as directed by the Hon'ble Peshawar High Court, Peshawar, therefore, the appellant has filed a C.O.C Petition bearing No.125-P/2020, which was disposed of in terms of the order mentioned therein. It is pertinent to mention here that as per information of the appellant, the respondents failed to decide the departmental appeal till today and therefore, the appellant is approaching this Hon'ble Tribunal.

**(COPIES OF THE C.O.C PETITION AND ORDER DATED 02.06.2020 ARE ATTACHED AS ANNEX "E").**

7. That having no other remedy, the appellant is constrained to file the instant appeal, inter alia, on the following grounds;

**GROUND S:-**

- A. That the inaction of the respondents and not counting their previous services of more than 2 years towards pay and pension protection is against the principle of justice, fair play, equity and equality.
- B. That the respondents themselves have admitted that the appellant has served for more than 2 years on contract basis that is w.e.f 30.09.1996 to 15.02.1999, therefore, the appellant is legally entitled to all the benefits of previous service towards pay and pension fixation.
- C. That as per Rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, the temporary and officiating service followed by confirmation/ regularization will be counted towards pension and pay protection. Rule 2.3 of Rules *ibid* is reproduced for ready reference as under:

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

- (i) Government services borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity....."

**(COPY OF RELEVANT RULES IS ATTACHED AS ANNEX "F").**

D. That this issue was already laid to rest by Hon'ble Superior Courts in so many cases, in case titled ***"Baghi Shah vs. The Govt. of Khyber Pakhtunkhwa through Secretary Finance & two others"*** (Writ Petition No.1188-P/2014 decided on 09.09.2014). It was held that the previous service of employee has to be counted towards his pay protection and pensionery benefits.

**(COPY OF THE JUDGMENT DATED 09.09.2014 IS ATTACHED AS ANNEX "G").**

E. That the same ratio was also decided by the Hon'ble Peshawar High Court in the case titled ***"Muhammad Arif vs. The Secretary to the Govt. of Khyber Pakhtunkhwa Transport Department & others"*** (W.P No.361-P/2013 decided on 24.11.2014). In the said judgment it has held;

"that the period served by the Government Servant on contract basis shall be counted towards his pensionary benefits, after regulation, in accordance with Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963."

(COPY OF THE JUDGMENT DATED 24.11.2014 IS ATTACHED AS ANNEX "H").

F. That a Writ Petition No.3221-P/2013 titled "**Sultan Muhammad & others vs. Government & others**", decided on 01.03.2018, wherein it was held that;

"the facts as well as the legal proposition involved in this case is similar to the one already decided by this court in the above mentioned cases, therefore, this court could not take a different view, therefore, this writ petition is disposed of in the term that the services rendered by the appellant as contract employees shall be considered towards their pay and pension."

(COPY OF THE JUDGMENT DATED 01.03.2018 IS ATTACHED AS ANNEX "I").

G. That while resolving the identical proposition of law in case titled "**Muhammad Farooq vs. Engineer in Chief, ENC Branch, General Headquarters (GHQ), Rawalpindi**" reported in **2012 CLJ 343**, the Hon'ble Lahore High Court has held as follows:

"Government Servant continuously remaining in service without break would after his regularization have the right that the period of his service before regularization be counted towards his pay, pension and promotion."

(COPY OF THE JUDGMENT REPORTED IN 2012 CLJ 343 IS ATTACHED AS ANNEX "J").

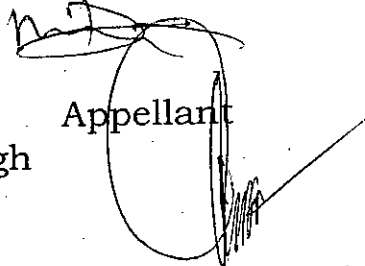


- H. That in view of the above referred case laws on the subject the appellant has not been treated in accordance with law as mandated by Article-4 of the Constitution of Islamic Republic of Pakistan, 1973. The appellant deserves the same treatment under the principle of equity, equality and principle of consistency.
- I. That non-counting of the previous service of the appellant towards pay and pension fixation is violative of Article 2A, 4, 25 & 38 of the Constitution.
- J. That the appellant seeks permission to advance any other grounds and proof at the time of hearing.

It is, therefore most humbly prayed that on acceptance of this Service Appeal, the respondents may please be directed to allow the period of his service before regularization (from 19.10.1996 to 15.02.1999) by counting the same towards his pay protection and pensioner benefits. Furthermore, appropriate order may please be issued to declare the inaction of the respondents not counting the previous service (w.e.f. 19.10.1996 to 15.02.1999) of the appellant towards pay

protection, pensionary benefits and promotion as illegal, unconstitutional, arbitrary and exploitation of the past good service of the appellant to meet the ends of justice, principle of equality or any other remedy deem proper, in the circumstances of the case may please be allowed.

Through

  
Appellant

**Lajbar Khan Khalil**  
Advocate High Court

Dated: 28.07.2020

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

Service Appeal No. \_\_\_\_\_/2020

Alla-ud-Din. . . . . **APPELLANT**

**VERSUS**

Govt. of Khyber Pakhtunkhwa & others. . . . . **RESPONDENTS**

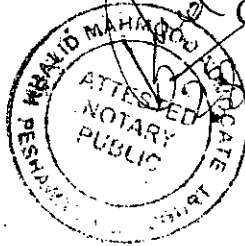
**A F F I D A V I T**

I, Alla-ud-Din S/o Gul Dad Shah, Junior Clinical Technician (JCT), Radiology, Hayatabad Medical Complex (HMC), Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

  
**DEPONENT**

CNIC: 17301-1364415-5

Cell: 0333-2135051



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

Service Appeal No. \_\_\_\_\_/2020

Alla-ud-Din. .... **APPELLANT**

**VERSUS**

Govt. of Khyber Pakhtunkhwa & others. .... **RESPONDENTS**

**ADDRESSES OF THE PARTIES**

**APPELLANT:**

Alla-ud-Din S/o Gul Dad Shah, Junior Clinical Technician (JCT), Radiology, Hayatabad Medical Complex (HMC), Peshawar.

**RESPONDENTS:**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary, Health Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary, Finance Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. Director General Health, Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar.
5. Chief Executive, Hayatabad Medical Complex (HMC), Peshawar.
6. Senior Manager HR, MTI, Hayatabad Medical Complex (HMC), Peshawar.

Through

Appellant

**Lajbar Khan Khalil**  
Advocate High Court

Dated: 28.07.2020

12

ANNEX A

92

6

OFFICE OF THE ADMINISTRATOR, HAWAIIAN MEDICAL COMPLEX, P.O. BOX 1111, HONOLULU, HAWAII

*Alfred...* *6/10* *Ed Dall*

... as *Halt...* ... (RS) ... of ...

*[Signature]*  
ADMINISTRATOR  
HAWAIIAN MEDICAL COMPLEX  
P.O. BOX 1111  
HONOLULU, HAWAII

*2961-1511-19/12/76*

...  
Accountancy General ...  
Accounting Section ...  
Original ...

*[Signature]*  
ADMINISTRATOR  
HAWAIIAN MEDICAL COMPLEX  
P.O. BOX 1111  
HONOLULU, HAWAII

*[Signature]*  
ATTESTED

PA

OFFICE OF THE ADMINISTRATOR HAYAT ABAD MEDICAL COMPLEX, PESHAWAR.

OFFICE ORDER

Mr. Allaudin S/O Gul Dad is hereby appointed as Radiographer, in BPS-6 (Rs. \_\_\_\_\_) on Contract basis for one year, subject to Medical Fitness.

Sd/-  
ADMINISTRATOR  
HAYAT ABAD MEDICAL COMPLEX  
PESHAWAR

No.2961-64/HMC 19/10/96

Copy forwarded to the:-

1. Accountant General NWFP, Peshawar.
2. Account Section Hayat Abad Medical Complex, Peshawar.
3. Official Concerned.
4. Personal File.

Sd/-  
ADMINISTRATOR  
HAYAT ABAD MEDICAL COMPLEX  
PESHAWAR

ATTESTED

ANNEX "B"

(13)

X-ray room

1  
8/3

**OFFICE OF THE ADMINISTRATOR  
HAYAT ABAD MEDICAL COMPLEX, PESHAWAR.**

**OFFICE ORDER**

Consequent upon the recommendation of the Committee constituted vide Government of NWFP Health Department Notification No. SOH-III/8-53/96, dated 07/10/1998, the services of Mr. Allauddin S/O Gul Dad Shah, Radiographer (BPS-6) are hereby regularized with immediate effect on the following terms and conditions:-

- i. He will be on probation for the period of two years.
- ii. His services will be governed by the prevailing rules of the Govt. for the category of the staff to which he belongs.
- iii. If he wishes to resign from service, he will have to submit resignation in writing one month in advance and will continue to serve the Government, till his resignation is accepted or will have to deposit one-month pay in lieu thereof.
- iv. He will be liable to be transferred any where in NWFP.

**ADMINISTRATOR,  
HAYAT ABAD MEDICAL COMPLEX  
PESHAWAR**

No. /HMC dated /1999

Copy forwarded to the:-

- i. Accountant General, NWFP, Peshawar
- ii. Director General Health Services, NWFP, Peshawar
- iii. Addl. Administrator HMC, Peshawar.
- iv. Accounts Officer, HMC, Peshawar.
- v. Official Concerned

For information and necessary action.

**ADMINISTRATOR  
HAYAT ABAD MEDICAL COMPLEX  
PESHAWAR**

(3A)

**OFFICE OF THE ADMINISTRATOR  
HAYAT ABAD MEDICAL COMPLEX, Peshawar**

**OFFICE ORDER**

Consequent upon the recommendation of the Committee constituted vide Government of NWFP, Health Department Notification No.SOH-III/8-53/96, dated 07/10/1998, the services of Mr. Allauddin S/O Gul Dad, Radiographer (BPS-6) are hereby regularized with immediate effect on the following terms and conditions:-

- i. He will be on probation for the period of two years.
- ii. His services will be governed by the prevailing rules of the Govt. for the category of the staff to which he belongs.
- iii. If he wishes to resign from service, he will have to submit resignation in writing one month in advance and will continue to serve the Government, till his resignation is accepted or will have to deposit one-month pay in lieu thereof.
- iv. He will be liable to be transferred any where in NWFP.

Sd/-  
**ADMINISTRATOR  
HAYAT ABAD MEDICAL COMPLEX  
PESHAWAR**

No.1971-75/HMC, dated 16/2/1999.

Copy forwarded to the:-

- i. Accountant General, NWFP, Peshawar.
- ii. Director General Health Services, NWFP, Peshawar.
- iii. Addl: Administrator HMC, Peshawar.
- iv. Accounts Officer, HMC, Peshawar.
- v. Official Concerned.

For information and necessary action.

  
**ATTESTED**

Sd/-  
**ADMINISTRATOR  
HAYAT ABAD MEDICAL COMPLEX  
PESHAWAR**



(14)

ANNEX C

GOVERNMENT OF NWFP  
HEALTH DEPARTMENT

Peshawar the, 7.10.1998

NOTIFICATION.

NO.SOH-III/8-53/96:- The competent authority has been pleased to constitute a committee comprising the following:-

- i. Addl.Secretary(Services), Health Department.
- ii. Administrator, HMC, Peshawar.
- iii. Deputy Secretary-I, Health Department.
- iv. Section Officer-III, Health Department.

2- The Committee shall examine cases of contract employees of the HMC, Peshawar and shall :-

- a. ascertain those employees whose performance are good/satisfactory and deserve to be regularized.
- b. indicate those employees whose performance are average and are expected to improve their work and deserve further extension in contract.
- c. point out those who are below average and have been issued warning/advice and deserve termination.

SECRETARY TO GOVT OF NWFP  
HEALTH DEPARTMENT

ENDS. NO. & DATE EVEN.

Copy to :-

- 1. The Administrator, HMC, Peshawar.
- 2. P.S to Secretary Health NWFP.
- 3. P.S to Addl.Secretary(S) Health Deptt.
- 4. P.A to Deputy Secretary-I, Health Deptt.

F-III

5212  
10.10.98

(ALIK MUHAMMAD)  
SECTION OFFICER(H-III)

TESTED

(14) A

**GOVERNMENT OF NWFP  
HEALTH DEPARTMENT**

Peshawar the, 7.10.1998

**NOTIFICATION**

**NO.SOH-III/8-53/96:-** The competent authority has been pleased to constitute a committee comprising the following:-

- i. Addl. Secretary (Services),  
Health Department.
- ii. Administrator,  
HMC, Peshawar.
- iii. Deputy Secretary-I  
Health Department.
- iv. Section Officer-III,  
Health Department.

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- b. indicate those employees whose performance are average and are expected to improve their work and deserve further extension in contract.
- c. point out those who are below average and have been issued warning/ advice and deserve termination.

**SECRETARY TO GOVT OF NWFP  
HEALTH DEPARTMENT**

**ENDST. NO. & DATE EVEN.**

Copy to:-

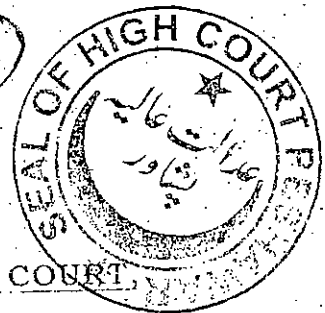
1. The Administrator, HMC, Peshawar.
2. P.S to Secretary Health NWFP.
3. P.S to Addl. Secretary(s) Health Deptt.
4. P.A to Deputy Secretary-I, Health Deptt.

Sd/-  
(ALI MUHAMMAD)  
SECTION OFFICER (H-III)

ANNEX

D

15



BEFORE THE HONOURABLE PESHAWAR HIGH COURT,

PESHAWAR

Writ Petition No. 5236-P/2019

1. Rafiullah S/o Muqarab Shah, Junior Clinical Technician (JCT), Radiology, Hayatabad Medical Complex (HMC), Peshawar.
2. Alla-ud-Din S/o Gul Dad Shah, Junior Clinical Technician (JCT), Radiology, Hayatabad Medical Complex (HMC), Peshawar. . . . . PETITIONERS

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary Health Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Finance Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. Director General Health, Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar.
5. Chief Executive, Hayatabad Medical Complex (HMC), Peshawar.
6. Senior Manager HR, MTI, Hayatabad Medical Complex (HMC), Peshawar. . . . . RESPONDENTS.

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 (AS AMENDED UPTO DATE).

ATTESTED

ATTESTED

EXAMINER  
Peshawar High Court

**Respectfully Sheweth:**

Brief facts giving rise to the present petition are as under;


1. That the petitioners were initially appointed as Dark Room Assistant on 30.09.1996 against the sanctioned posts, which was up-graded as Junior Clinical Technicians (JCT) in the year 2005 and since their appointment they are performing their duties upto the entire satisfaction of their superior officers.

(COPIES OF THE ORDERS ARE ATTACHED AS ANNEX "A").

2. That the respondents have regularized the services of the petitioners vide Notification No.SOH-III/8-53/96 dated 07.10.1998 with immediate effect and conveyed to the petitioners, vide office orders dated 16.02.1999.

(COPIES OF THE REGULARIZATION ORDER AND NOTIFICATION ARE ATTACHED AS ANNEX "B" & "C" RESPECTIVELY).

3. That the petitioners are continuously performing their duties upto the entire satisfaction of their high-ups and have more than 2 years contract services at

  
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EXAMINER  
Peshawar High Court

their credit, which were not counted towards their pay and pension protection hence caused huge financial loss to the petitioners.

- 4. That the petitioners were initially employed against the sanctioned posts and they were performing their duties without any break in their services.
- 5. That having no other remedy, the petitioners are constrained to file the instant writ petition, inter alia, on the following grounds;

**GROUND S:-**

- A. That the inaction of the respondents and not counting their previous services of more than 2 years towards pay and pension protection is against the principle of justice, fair play, equity and equality.
- B. That the respondents themselves have admitted that the petitioners have served for more than 2 years on contract basis that is w.e.f 30.09.1996 to 15.02.1999, therefore, the petitioners are legally entitled to all the benefits of previous service towards pay and pension fixation.

**ATTESTED**

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

C. That as per Rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, the temporary and officiating service followed by confirmation/ regularization will be counted towards pension and pay protection. Rule 2.3 of Rules *ibid* is reproduced for ready reference as under:

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

*(i) Government services borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and*

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

(COPY OF RELEVANT RULES IS ATTACHED AS ANNEX “D”).

*ATTESTED*

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

D. That this august court has already issued orders and the previous service has been counted towards pay and pension protection in case titled "*Baghi Shah vs. The Govt. of Khyber Pakhtunkhwa through Secretary Finance & two others*" (Writ Petition No.1188-P/2014 decided on 09.09.2014). (COPY OF THE JUDGMENT DATED 09.09.2014 IS ATTACHED AS ANNEX "E").

E. That the same ratio was also decided by this Honourable Court in the case titled "*Muhammad Arif vs. The Secretary to the Govt. of Khyber Pakhtunkhwa Transport Department & others*" (Writ Petition No.361-P/2013 decided on 24.11.2014). In the said judgment it has held:

*"that the period served by the Government Servant on contract basis shall be counted towards his pensionary benefits, after regulation, in accordance with Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963."*

(COPY OF THE JUDGMENT DATED 24.11.2014 IS ATTACHED AS ANNEX "F").

ATTESTED

ATTESTED

EXAMINER  
Peshawar High Court

(90)

F. That a Writ Petition No.3221-P/2013 titled "*Sultan Muhammad & others vs. Government & others*", decided on 01.03.2018, wherein it was held that;

*"the facts as well as the legal proposition involved in this case is similar to the one already decided by this court in the above mentioned cases, therefore, this court could not take a different view, therefore, this writ petition is disposed of in the term that the services rendered by the petitioners as contract employees shall be considered towards their pay and pension."*

(COPY OF THE JUDGMENT DATED 01.03.2018 IS ATTACHED AS ANNEX "G").

G. That while resolving the identical proposition of law in case titled "*Muhammad Farooq vs. Engineer in Chief, ENC Branch, General Headquarters (GHQ), Rawalpindi*" reported in 2012 CLJ 343, the Hon'ble Lahore High Court has held as follows:

ATTACHED

ATTESTED  
EXAMINER  
Peshawar High Court



21

*“Government Servant continuously remaining in service without break would after his regularization have the right that the period of his service before regularization be counted towards his pay, pension and promotion.”*

(COPY OF THE JUDGMENT REPORTED IN 2012 CLJ 343 IS ATTACHED AS ANNEX “H”).

- H. That in view of the above referred case laws on the subject the petitioners have not been treated in accordance with law as mandated by Article-4 of the Constitution of Islamic Republic of Pakistan, 1973. The petitioners deserve the same treatment under the principle of equity, equality and principle of consistency.
- I. That non-counting of the previous service of the petitioners towards pay and pension fixation is violative of Article 2A, 4, 25 & 38 of the Constitution.
- J. That the petitioners seek permission to advance any other grounds and proof at the time of hearing.

ATTESTED

ATTESTED  
EXAMINER  
Peshawar High Court

(99)

It is, therefore most humbly prayed that on acceptance of this writ petition, the respondents may please be directed to allow full pay protection and pensionary benefits of the past service w.e.f. 30.09.1996 to 15.02.1999 to the petitioners. Furthermore, appropriate writ may please be issued to declare the inaction of the respondents not counting the previous service (w.e.f. 30.09.1996 to 15.02.1999) of the petitioner towards pay protection and pensionary benefits as illegal, unconstitutional, arbitrary and exploitation of the past good service of the petitioners to meet the ends of justice, principle of equality or any other remedy deem proper, in the circumstances of the case may please be allowed.

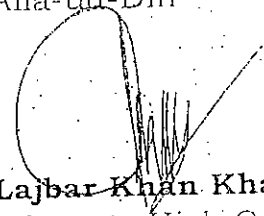
Petitioners

Rafiullah

&

Alla-ud-Din


Through



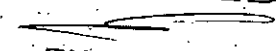
**Lajbar Khan Khalil**  
Advocate High Court

Dated: \_\_\_/09/2019

**ATTESTED**



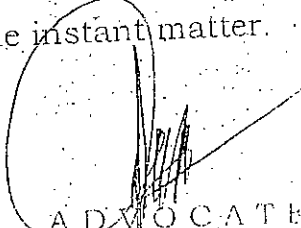
**ATTESTED**



**EXAMINER**  
Peshawar High Court

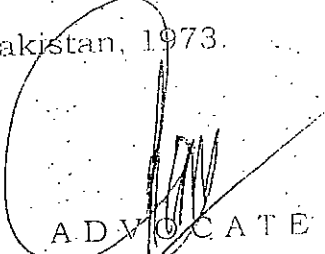
CERTIFICATE:-

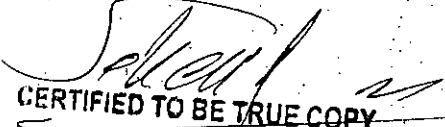
It is certified on the instructions of my clients that no such like Writ Petition has earlier been filed by the petitioners before this Honourable Court regarding the instant matter.

  
ADVOCATE

LIST OF BOOKS

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

  
ADVOCATE

  
CERTIFIED TO BE TRUE COPY

EXAMINER  
Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
The Qanun-e-Shahadat Order 1984

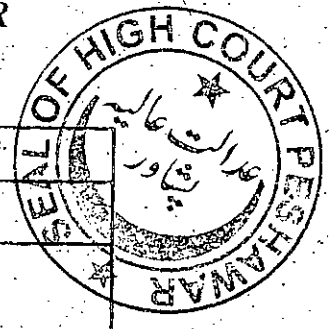
12 FEB 2020

  
ATTESTED

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

94



Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2
<b>ORDER</b> 06.11.2019	<p><u>Writ Petition No.5236-P/2019</u></p> <p>Present: Mr. Lajbar Khan Khalil, Advocate for Rafiullah etc., petitioners.</p> <p>*****</p> <p><b>QAISER RASHID KHAN, J.-</b>The petitioners, through the instant writ petition, have asked for the issuance of an appropriate writ seeking directions to the respondents to count their previous service w.e.f. 30.09.1996 to 15.02.1999 towards pay protection and pensionary benefits.</p> <p>2. At the very outset, the learned counsel for the petitioners frankly submits that being civil servants the petitioners in view of the bar contained under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 cannot seek their remedy before this court but simultaneously requests that this petition be treated as an appeal and sent to the concerned departmental authority to decide the same.</p> <p>Accordingly, we while disposing of this writ petition, treat it as an appeal before the Director</p>

ATTESTED

EXAMINER  
Peshawar High Court

ATTESTED

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General, Health Services, Government of Khyber Pakhtunkhwa, Peshawar and direct him to decide the same in accordance with law within a month. The office is directed to send this petition to the aforesaid authority by retaining a copy thereof for record.

Announced.  
06. 11. 2019

  
SENIOR PUISNE JUDGE

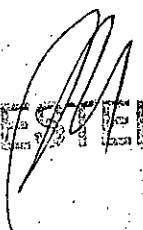
  
JUDGE

  
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EXAMINER  
Peshawar High Court, Peshawar  
Authorized Under Article 8, 7 of  
the Qanun-e-Shahadat Order 1984

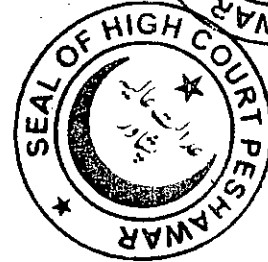
12 FEB 2020

No. 25417  
Date of Presentation of Application 12/2/2020  
No of Pages 11-2  
Copying fee 44  
Total 1  
Date of Preparation of Copy 12/2/2020  
Date of Delivery of copy 12/2/2020  
Received By E. J. I.

  
ATTESTED

(Fayaz)

(D.B.) Justice Qaiser Rashid Khan & Justice Muhammad Naeem Anwar

**BEFORE THE HONOURABLE PESHAWAR HIGH COURT****PESHAWAR**C.O.C.No. 125/P/2020

In

W.P.No.5236-P/2019

1. Rafiullah S/o Muqarab Shah, Junior Clinical Technician (JCT), Radiology, Hayatabad Medical Complex (HMC), Peshawar.
2. Alla-ud-Din S/o Gul Dad Shah, Junior Clinical Technician (JCT), Radiology, Hayatabad Medical Complex (HMC), Peshawar.

**.....PETITIONERS****VERSUS**

1. Mr. Muhammad Yahya Akhunzada.  
Secretary, Health Department,  
Govt. of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.
2. Mr. Tahir Nadeem,  
Director General Health,  
Directorate General Health Services,  
Khyber Pakhtunkhwa, Peshawar.

**FILED TODAY**  
Deputy Registrar  
**13 FEB 2020**

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

**....RESPONDENTS/CONTEMNORS**

(27)

**PETITION UNDER ARTICLE 204 OF THE  
CONSTITUTION OF PAKISTAN, 1973  
R/W SECTION 3, 4 & 5 OF THE  
CONTEMPT OF COURT ORDINANCE,  
2003 FOR INITIATING CONTEMPT OF  
COURT PROCEEDINGS AGAINST THE  
RESPONDENTS / CONTEMNORS FOR  
NOT IMPLEMENTING THE JUDGMENT  
DATED 06.11.2019 OF THIS  
HONOURABLE COURT, PASSED IN WRIT  
PETITION NO.5236-P/2019, AND IF  
THEY ARE FOUND GUILTY THEN THEY  
MAY BE PUNISHED ACCORDINGLY.**

**Respectfully Sheweth:**

1. That the petitioner sought through the said writ petition the directions to the respondents/ contemnors to allow full pay protection and pensionary benefits of the past service w.e.f. 30.09.1996 to 15.02.1999 and this Honourable Court was pleased to issue directions to treat the said writ petition as an appeal before respondent

FILED TODAY

Deputy/Registrar

ATTESTED

13 FEB 2020

EXAMINED  
Peshawar High Court

No.2 and to decide the same according to law within a month, vide order dated 06.11.2019, but the respondents/ contemnors failed to do the needful. **(COPIES OF GROUNDS OF WRIT PETITION AND ORDER DATED 06.11.2019 ARE ATTACHED AS ANNEXURE "A")**.

2. That while disposing of the said Writ Petition, this Honourable Court was pleased to issue the directions, which are never complied with by the respondents. For ready reference the operative para of the order dated 06.11.2019 is reproduced as under: -

***"Accordingly, we while disposing of this writ petition, treat it as an appeal before the Director General, Health Services, Government of Khyber Pakhtunkhwa, Peshawar and direct him to decide the same in accordance with law within a month. The office is directed to send this petition to the aforesaid authority by retaining a copy thereof for record."***

FILED TODAY  
Deputy Registrar  
13 FEB 2020

3. That the petitioners have approached the respondents' office time and again to seek the



implementation of the order of this Honourable Court dated 06.11.2019, but they are avoiding the implementation on one pretext or the other.

4. That respondent No.2 is intentionally and willfully not implementing the judgment of this Honourable Court and today even after the lapse of more than three (03) months, they have not taken a step towards its implementation.
5. That the aforesaid conduct of the respondents/ contemnors amounts to contempt of court and thus through their inaction, they have held themselves liable to be prosecuted under the Contempt of Court Ordinance, 2003.
6. That the inaction/disobedience of the respondent No.2 towards non-implementation of the judgment of this Honourable Court, has lowered the authority of this court in the eyes of public at large in general.

**FILED TODAY**

Deputy Registrar

13 FEB 2020

**ATTESTED**

EXAMINER  
Peshawar High Court

It is, therefore, prayed that by accepting this petition, contempt of court proceedings may please be initiated against the respondents/ contemnors for not implementing the judgment/ order of this Honourable Court dated 06.11.2019 passed in Writ Petition No.5236-P/2019 and if they are found guilty, then they may be punished accordingly and they may also be compelled through all coercive measures to implement the order of this Honourable Court, in its letter and spirit.

Through

Petitioners

**Lajbar Khan Khalil**  
Advocate High Court

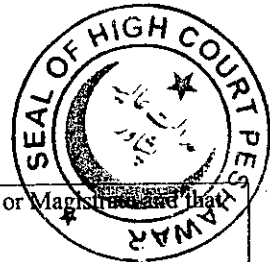
Dated: 13.02.2020

FILED TODAY  
Deputy Registrar  
13 FEB 2020

*[Signature]*  
CERTIFIED TO BE TRUE COPY  
Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 203  
of the Qanun-e-shahadat Order 1988  
27 JUL 2020

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PESHAWAR HIGH COURT, PESHAWAR.  
FORM "A"  
FORM OF ORDER SHEET.



Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	02.06.2020.	<p><u>COC No. 125-P/2020 in W.P.No.5236-P/2019.</u></p> <p><u>Present::</u> Mr.Laj Bar Khan Khalil, Advocate for petitioners.</p> <p>Mr.Rab Nawaz Khan, A.A.G for the respondents.</p> <p><u>LAL JAN KHATTAK, J:-</u> The latter submitted before the court that the order of this court dated 06.11.2019 passed in W.P.No.5236-P/2019 will be acted upon by the respondent No.2 on or before 23<sup>rd</sup> June, 2020.</p> <p>In view of the above commitment of the learned A.A.G, we dispose of this petition by directing the respondent No.2 to live up to his commitment so made by him before the court through the learned A.A.G and comply with the order of this court strictly in accordance with law and rule on the subject without being biased towards the petitioner for his filing this contempt of court petition.</p>

No. 3111  
Date of Presentation of Application 27/7/20  
No of Pages 6/9  
Copying fee .....  
Total 200  
Date of Preparation of Copy 27/7/20  
Date of Delivery of Copy 27/7/20  
Received By [Signature]

[Signature]  
JUDGE

(A. K. KHAN) Court Secretary

HON'BLE MR.J JUSTICE LAL JAN KHATTAK & HON'BLE MR. JUSTICE ISHTIAQ IBRAHIM.

[Signature]  
JUDGE

Authorised Under Article 87 of the Constitution of Pakistan

27 JUL 2020

Note:- No pension shall be admissible to a civil servant who is dismissed or removed from service for reasons of discipline, but Government may sanction compassionate allowance to such a civil servant, not exceeding two third of the pension or gratuity which would have been admissible to him had he been invalidated from service on the date of such dismissal or removal.

Section 19( f) of the Khyber

Pakhtunkhwa Civil Servants Act, 1973

**CHAPTER - II**  
**SERVICE QUALIFYING FOR PENSION**

2.1 **Conditions of Qualifications** - The service of a Government Servant does not qualify for pension unless it conforms to the following three conditions: -

First - The Service must be under Government.

Second - the service must not be Non-pensionable.

Third - the service must be paid by Government from the Provincial Consolidated Fund.

\* **Note - (1)** For the previous service of displaced Government servants which qualifies for pension see Chapter - VII.

\* **Note - (2)** Service rendered after retirement on superannuation pension/retiring pension shall not count for pension or gratuity.

2.2 **Beginning of service** - Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.

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

(i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and

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

2.4 **Service in a temporary post on abolition of a permanent post** - If a permanent post, on which a Government servant holds a lien, is abolished under circumstances entitling him to get a compensation pension or gratuity, his service thereafter in a temporary post under Government qualifies for pension.

\* Note (1) and (2) Substituted vide notification No. SO(SR) V-915/65 Dated 6th May, 1965.

ATTESTED

ANNEX

G

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P.NO. 1188-P/2014

Baghi Shah S/O Alam Shah (Late)  
Village & P.O Urmer Payan,  
Tehsil & District, Peshawar

.....Petitioner

**VERSUS**

1. The Government of KPK through Secretary Finance, Civil Secretariat, Peshawar KPK.
2. The Accountant General Khyber Pakhtunkhwa, Peshawar.
3. The Executive Engineer Highway Division, Peshawar.

..... Respondents

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

PRAYER IN WRIT PETITION:

On acceptance of this writ petition the office order No.  
Pension-11/B-3/2012/W-5/2013-14 Dated 19.02.2014 may  
please be set-aside, and an appropriate writ may please be  
issued directing the respondents to finalize the pension  
case of the petitioner and he be paid his monthly pension  
or any other remedy deem proper, in the circumstances of  
the case may also be allowed.

Attested

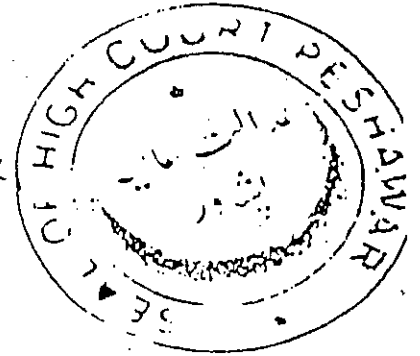
ATTESTED

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JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
PESHAWAR

JUDICIAL DEPARTMENT

W.P. No. 1188 of ..... 2014



JUDGMENT

Date of hearing 09-09-2014

Petitioner Baqhi Shah by Mr. Zaheer Anwar Khan Adv

Respondent The State by Mr. Mujahid Ali AAG

\*\*\*\*\*

NISAR HUSSAIN KHAN, J. Instant petition has

been filed with the following prayer:-

"On acceptance of this writ petition,  
the office order No. Pension-II/B-3/2012-  
BW-5/2013-14/168, dated 19.2.2014  
may please be set aside, and an  
appropriate writ may please be issued  
directing the respondents to finalize  
the pension case of petitioner and he

ATTESTED

Attested

ATTESTED  
EXAMINER  
PESHAWAR HIGH COURT  
20 SEP 2014

be paid his monthly pension, or any other remedy deemed proper, in the circumstances of the case may also be allowed."

2. Petitioner has averred in his petition that he was initially appointed as Cooly on fixed pay in Highway Division Peshawar on 31.12.1995 and his service was regularized with effect from 1.7.2008 and ultimately retired on 6.1.2013 from the Government service on attaining the age of superannuation; that his case for grant of pension was processed but was objected by the Accountant General office with the plea that the petitioner is not entitled for pension due to lack of fulfilment of prescribed length of service as a permanent employee. He maintained that his similarly placed colleagues have been extended the benefit of pension but discriminatory treatment has been meted out to him, hence the instant petition.

ATTESTED  
EXAMINER  
PESHAWAR HIGH COURT  
24 SEP 2014

~~ATTESTED~~

Attested

3. Respondents in Para-5 of their comments have stated that pensionary benefits are not admissible to the petitioner under the Rules because he has only four years, 6 month and 4 days regular service on his credit. So by virtue of Finance Department letter No.B.O.1/FD/1-22/2008-09, dated 30.7.2008, he is not entitled to the pensionary benefits.

4. Learned counsel for petitioner argued that the respondents have wrongly discriminated the petitioner whereas his similarly placed colleagues have been extended the benefits of pension and by virtue of Rule 2.3 of West Pakistan Civil Service Pensionary Rules 1963, he is entitled for pensionary benefits.

5. Learned AAG vehemently opposed the contentions of learned for petitioner and argued that in view of Section 19(2) of NWFP Civil Servants Act, 1973, he is not entitled to pensionary benefits.

*[Signature]*  
**ATTESTED**  
*Attested*

**ATTESTE**  
**EXAMINER**  
Government High Cc  
*[Signature]*  
20 SEP 2014



We have scanned the entire material available on file in the light of the arguments of the learned counsel for the parties.

7. Admitted facts of the case are that petitioner was initially appointed as Cooly on fixed pay in Highway Division, Peshawar on 31.12.1995 and his services were regularized with effect from 1.7.2008, vide Notification No.BO.1/1-22/2007-08, dated 29.1.2008. Later he was retired from service, vide office order No.139/6-E; dated 7.2.2013 with effect from 6.1.2013. After retirement, he filed application for pension and gratuity to the concerned office of Assistant Accountant General on 18.11.2013, which was processed. However, it was returned on the objection of the Finance Department that petitioner did not have prescribed length of service qualifying him for pension and gratuity on his credit, so was not entitled for pensionary benefits, vide their letter No. Pension-II/

ATTESTED Attested

EXAMINER  
Peshawar High Court  
03 SEP 2014

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B-3 /2012-B /W-5/ 2013-14/ 168, dated 19.2.2014, The petitioner has also raised question of discrimination in Para-7 of the writ petition and the same has also not been specifically denied in their comments and simply stated that since it pertains to the record, hence no comments.

8. To resolve the controversy, Rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, is reproduced herein below:-

"Temporary and officiating service—Temporary and officiating service shall count for pension as indicated below:-

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

ATTESTED

ATTESTED

ATTESTED  
EXAMINER  
Roshaw  
9-2-2014

placed are treated alike. The courts, being the custodian, are to safeguard the inalienable rights of the citizens as enshrined in the Constitution. Whenever any such infringement of rights is brought to the notice of the court, that is to be struck down. Here in the instant case, since respondents have not denied discrimination as averred in the petition, so their act of depriving the petitioner of his pensionary benefits is not condonable and is liable to be struck down.

10. Thus by accepting the instant petition, the impugned office order of respondents is set aside and they are directed to finalize the pension case of petitioner within a period of two months positively.

*Subinakar Hussain Khan  
Sd/- Malik Mansoor Hussain*

Office  
15/09/14  
Announced on  
9<sup>th</sup> Sept. 2014.

*[Signature]*  
Attested

ATTESTED

40



**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR**

*ANNEX H*

Writ Petition No. 341 P 2013

Mr. Muhammad Arif (Retd Driver),  
Government Driving Training School,  
Peshawar.

**PETITIONER**

**VERSUS**

1. The Secretary to Government of KPK, Transport Department, Civil Secretariat, Peshawar.
2. The Secretary to Government of KPK, Finance Department, Civil Secretariat, Peshawar.
3. The Secretary to Government of KPK, Industries, Commerce, Min: Development Labour & Tech: Education Department, Civil Secretariat, Peshawar.
4. The Secretary to Government of KPK, Establishment Department, Civil Secretariat, Peshawar.
5. The Director, Transport Directorate, Government of KPK, Civil Secretariat, Peshawar.

**RESPONDENTS**

**ATTESTED**  
**EXAMINER**  
Peshawar High Court.  
10 DEC 2014

WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF PAKISTAN 1973 AS  
AMENDED UPTO DATE.

**RESPECTFULLY SHEWETH :**

Brief Facts giving rise to the present petition are as under:

1. That the petitioner joined the Government Driving Training School on 1.2.1987 and retired from service on 31.01.2010 on attaining the age of superannuation (60 YEARS). Thus, the petitioner has 23 years service at his credit. Order of Retirement and Granting LPR are attached as Annexure-A and B.
2. That ,after retirement, the pension papers of the petitioner were prepared and submitted, but those are still not finalized

*Attested*

**ATTESTED**

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JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT

Writ Petition No. 361-P/2013

JUDGMENT

Date of hearing.....24.11.2014.....

Petitioner(s) by *Mr. Muhammad Asif Yousafzai, Advr*

Respondent(s) by *Mr. Wajid Ahmad, A.A.S*

YAHYA AFRIDI,- Muhammad Arif, the petitioner, seeks the constitutional jurisdiction of this Court praying that

*"It is, therefore, most humbly prayed that on acceptance of this Writ Petition, the inaction of the respondents is finalizing his pension case and not granting pensionary benefits to the petitioner for his 23 years rendered service, is unconstitutional, unlawful, illegal, without lawful authority and violation of the Honorable Supreme Court's directions. The respondents may further please be directed to finalize the pension case of the petitioner and to grant the pensionary benefits to the petitioner without any further delay. Any other remedy, not specifically prayed for, may also be granted in favour of the petitioner."*

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EXAMINER  
Peshawar High Court  
10 DEC 2014

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*[Signature]*  
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2. In essence, grievance of the petitioner is that the respondents did not finalize his pension case, despite the fact, that he has served the department for 23 years and retired from service on 31.1.2010 after attaining the age of superannuation.

3. At the very outset, learned counsel for the petitioner stated that the issue involved herein has already been decided by this Court on 9.9.2014 in Baghi Shah's case (Writ Petition No. 1188-P/2014). The relevant portion of the said judgment is as under:

*"To resolve the controversy, Rule 2.3 of West Pakistan Civil Services Pension Rules, 1963 is reproduced herein below:*

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

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

*It is manifest from the ibid Rule that how temporary and officiating service shall be counted for pension and gratuity. It is elaborated in sub-rule(i) that five years*

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Peshawar High Court  
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continuous temporary service of a civil servant shall count for the purpose of pension and gratuity and by virtue of sub rule(ii) of ibid Rules, temporary and officiating service followed by confirmation shall also count for pension and gratuity".

4. In view of the above clear findings, this Court also follows the same.

5. Accordingly, this Writ Petition is allowed and the respondents are directed to finalize the pension case of the petitioner in terms of the clear finding of this Court in Writ Petition No. 1188-P/2014, stated above, within a period of two months, positively.

DI.24.11.2014.

sd: Yaqoob Afridi  
sd: Mahammad Younis Tahir

*[Signature]*  
JUDGE

\*Nawab Shah\*

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Peshawar High Court, Peshawar  
Authorized Under Article 170 of  
The Constitution of Pakistan  
10 DEC 2014

*[Signature]*  
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ANNEX I

44

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

WRIT PETITION NO. 3221-P 2013.

- 1- Sultan Muhammad, Principal,  
Bajaur Public School Bajaur Agency.
- 2- Khalid Ahmed, SET,  
Bajaur Public School Bajaur Agency.
- 3- Syed Jehanzeb, SET,  
Bajaur Public School Bajaur Agency.
- 4- Liaqat Ali Khan, SET,  
Bajaur Public School Bajaur Agency.
- 5- Nasrum Minallah, SET,  
Bajaur Public School Bajaur Agency.
- 6- Muhammad Rahim Jan, SET,  
Bajaur Public School Bajaur Agency.
- 7- M. Ashfaq Hassan, SET,  
Bajaur Public School Bajaur Agency.
- 8- Ubaidur Rehman, SET,  
Bajaur Public School Bajaur Agency.
- 9- Bahadur Khan, SET,  
Bajaur Public School Bajaur Agency.
- 10- Muhammad Dawood, SET,  
Bajaur Public School Bajaur Agency.
- 11- Purdil Khan, SET,  
Bajaur Public School Bajaur Agency.
- 12- Raiz Hussain, CT,



**ATTESTED**  
EXAMINER  
Peshawar High Court  
19 MAR 2018

FILED TODAY  
Deputy Registrar  
28 NOV 2013

WP3221P2013GROUND

ATTESTED



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**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT**

Writ Petition No.3221-P/2013



**JUDGMENT**

Date of hearing: 01.03.2018

Petitioner(s): By Muhammad Asif Jureffai Advocate

Respondent(s): By Moizuddin Hamayun Mansoor - FAWZ AGGS.

\*\*\*\*\*

**IKRAMULLAH KHAN, J.-** Petitioners have filed instant Constitutional petition for issuance of an appropriate writ with the following prayer:-

*"On acceptance of this writ petition the non-counting of previous service of the petitioners towards pay protection and pensionary benefits by the respondents may be declared as illegal, unconstitutional, arbitrary and exploitation of the past good service of the petitioners. The respondents may further please be directed to give full pay protection with pensionary benefits of the past service rendered by the petitioners to meet the ends of justice and principles of equity. Any other remedy which this august court deems fit and not specifically prayed for that may also be awarded in favour of petitioners."*

2. In essence, petitioners were appointed in the year 1990 and onwards by the Political Agent, Bajaur

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Peshawar High Court

19 MAR 2018

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Agency as Principal, Teachers, Ministerial Staff and Class-IV employees, in the Bajaur Public School and College with the condition that they would be allowed pay scales and other allowances admissible to a Civil Servant in Bajaur Agency. Later on, the Bajaur Public School and College was taken into supervision and control by the Federal Government and services of all the employees appointed by the Political Agent, Bajaur Agency on contract basis were made regularized vide Notification issued by the Governor's Secretariat, Khyber Pakhtunkhwa, Peshawar on March 28, 2013. In para-4 of the Notification, it has been held that all the eligible incumbent teaching and non-teaching staff will be adjusted against the regular sanctioned posts on merit cum seniority in service in the respective scales and categories. As the petitioners were eligible to be regularized, as such, they were adjusted on regular newly created posts with immediate effect vide order dated 20.5.2013, however, the previous services rendered by the petitioners were not counted towards their pay and pension by the respondents, hence, the instant writ petition.

3. Learned counsel for petitioners contended that though the services of petitioners were regularized since 2013 but the respondents have denied

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the benefit of protection of pay and pensionary benefits to the petitioners on the sole ground that the previous services rendered by them were on contract basis, as such, it could not be counted towards the length of their service, which act of respondents is against law.

4. On the other hand, learned counsel for respondents contended that the services of petitioners were not either on contract or adhoc basis, but they were appointed by the Political Agent, therefore, the period of services rendered by the petitioners in the concerned School could not be counted towards their pay and pension, etc.

5. We have heard learned counsel for the parties in light of law and available record.

6. The first appointment orders of the petitioners reveal that though they were appointed by the Political Agent, Bajaur Agency but on the condition that the petitioners will receive all the benefits and allowances admissible under the rules to a Civil Servant. The Notification issued by the worthy Governor, Khyber Pakhtunkhwa itself reveals rather admitted therein that petitioners were on contract basis and their services were regularized. Rule 2.1 of Chapter-II (Service Qualifying for Pension) of Civil

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Servants Act, 1973, prescribes conditions of qualifications for pension, which read as:-

**Rule 2.1. Conditions of Qualifications.**-The service of a Government Servant does not qualify for pension unless it conforms to the following three conditions:-

**First:-** The Service must be under Government.

**Second:-** The Service must not be non-pensionable.

**Third:-** The service must be paid by Government from the Provincial Consolidated Fund.

**Note- (1)** For the previous service of displaced Government Servants which qualifies for pension see Chapter-VII.

**Note- (2)** Service rendered after retirement on superannuation pension / retiring pension shall not count for pension or gratuity.

7. The abovementioned rule admittedly shall be applied to the case of petitioners as they were appointed on the conditions applicable to the Civil Servants. This court in Writ Petition No.1188-P/2014 titled "Baghi Shah Versus The Govt. of KPK through Secretary Finance, Peshawar and two others, decided on 9.9.2014 has held that :-

"The Courts, being the custodian, are to safeguard the inalienable rights of the citizens as enshrined in

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EXAMINER  
Peshawar High Court  
19 MAR 2018

ATTESTED

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the constitution. Whenever any such infringement of rights is brought to the notice of the court that is to be struck down. Here in the instant case, since respondents have not denied discrimination as averred in the petition, so their act of depriving the petitioner of his pensionary benefits is not condonable and is liable to be struck down."

8. Similarly, this court while resolving the identical proposition of law in case titled "Muhammad Arif Versus The Secretary to Government of KPK, Transport Department, Peshawar and other" decided on 24.11.2014 has held : "that the period served by a Government Servant on contract basis shall be counted towards his pensionary benefits, after regulation, in accordance with Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963."

9. Likewise, in case titled "Muhammad Farooq Versus Engineer in Chief, ENC Branch, General Headquarters (GHQ), Rawalpindi reported as (2012 CLJ 343), the Honourable Lahore High Court has held as follows:-

"Government Servant continuously remaining in service without break would after his regularization have

**ATTESTED**  
EXAMINER  
Peshawar High Court  
19 MAR 2018

**ATTESTED**

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the right that the period of his service before regularization be counted towards his pay, pension and promotion."

10. This Court has decided a number of Writ Petitions through its consolidated judgment dated 22.6.2017 delivered in WP No.3394-P/2016 has held: "that the person selected for appointment on contract basis and thereafter his regularization, the period served as a contract employee shall be counted towards his pension, pay and promotion, etc."

11. The facts as well as the legal proposition involved in this case is similar to the one already decided by this court in the above mentioned cases, therefore, this court could not take a different view, therefore, this writ petition is disposed of in the term that the services rendered by the petitioners as contract employees shall be considered towards their pay and pension.

*M. Khramulla*  
*M. Qalaw*

**Announced.**  
**Dated: 01.03.2018**

JUDGE



12710

No. \_\_\_\_\_

Date of Presentation of Application 02/3/18

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Examiner, Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
the Qanun-e-shahadat Order 1984

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ANNEX 'J'  
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5: Furthermore, there is evidence on record that daughter of the petitioner was married to the son of Khuda Bakhsh, respondent No. 1 but the marriage resulted in divorce prior to the filing of the petitioner's suit. This fact in conjunction with the circumstance that the petitioner did not assail the mutation Exh.P/5 for almost ten years despite knowledge of the same, shows that the suit was filed on account of the differences which arose between the petitioner and respondent No. 1 as a result of the evidence above".

It is a well-reasoned order. There is no illegality or infirmity in the impugned order. Even otherwise all the three Courts have given findings of fact against the petitioner, therefore, we are not persuaded to upset the same. This petition is devoid of merit and the same is accordingly dismissed and leave to appeal declined. *Leave Refused.*

2012 CLJ 342

Present: Mr. Justice Mian Saqib Nisar  
Mr. Justice Asif Saeed Khan Khosa  
[Supreme Court of Pakistan]

Civil Review Petition No. 9-L of 2010 in Civil Petition  
No. 728-L of 2006 dismissed on 23.2.2011.  
On review from the order dated 4.3.2010 of this Court passed  
in Civil Petition No. 728-L of 2006)  
TMA BAHAWALPUR CITY, ETC.---Petitioners

versus

Review before Supreme Court---

Review before Supreme Court does not mean re-hearing of the case. Review petition dismissed as submissions made in support of review petition had already been considered by Supreme Court in judgment under review. (P. 343)

Masud Ashraf Sh., ASC for petitioner.

Respondents not represented.

Date of hearing: 23.2.2011.

ORDER

MIAN SAQIB NISAR, J.---Review of the case does not mean re-hearing. The submissions made in support of this petition have already been considered in the judgment under review. The specific reference to section 156 of the Local Government Ordinance for the review has no much relevance and significance for the purposes of this petition. No case is made out. Dismissed. *Review Declined*

2012 CLJ 343

Before Rauf Ahmad Sheikh, J. (Rawalpindi)

Writ Petition No. 2636 of 2010 accepted on 30.1.2012.

MUHAMMAD FAROOQ---Petitioner

versus

1. ENGINEER IN CHIEF, ENC BRANCH, GENERAL HEADQUARTERS (GHQ), RAWALPINDI
2. DIRECTOR WORKS ENGINEER ARMY, GENERAL HEADQUARTERS (GHQ), RAWALPINDI---Respondents

ATTORNEY

(a) Government servant---

Government servant continuously remaining in service without break would after his regularization have the right that the period of his service before regularization be counted towards his pay, pension and promotion but not seniority. Competent authority would act illegally by not counting service before regularization towards pension of petitioner. High Court accepting writ petition with direction to respondents to count service rendered by petitioner prior to his regularization towards his pension. (P. 347,348,349)

(b) Constitution of Pakistan, 1973---

Art. 199. Writ petition filed under Art. 199 would not be bad for non-joinder or mis-joinder of parties as provided in rule 9, Order I, CPC. (P. 348)

(c) Ibid---

Art. 199. Writ petition under Art. 199 would not be barred when appointment letter of petitioner did not show that his service would be governed by Civil Servants Act, 1973 and rules framed thereunder. (P. 347)

(d) Ibid---

Arts. 199, 212. Bar under Art. 212 would not apply when petitioner's right to equal treatment guaranteed under Art. 25 stood infringed and it is proved on record that petitioner was not treated equally in accordance with fundamental right of equality before law guaranteed under

Muhammad Ramzan Khan for petitioner.

Sardar Maqbool Hussain, Standing counsel.

ORDER

RAUF AHMAD SHEIKH, J.--The petitioner has prayed that inaction on part of respondents to consider the service rendered by him *w.e.f.* 17.2.1979 to 8.5.1987 towards his pay and pension be declared as illegal and they be directed to consider the same for the above-mentioned purposes. It was stated that the petitioner was appointed as Casual Labourer under the respondents on 17.2.1979 and throughout his service worked as Oil Engine Driver and his service was upto the mark & satisfaction of his superiors. He was given appointment letter on 27.4.1987 but his previous service was not counted towards pay and pension so he made repeated requests from time to time but the respondents did not accept his genuine demand without giving any response and passing any order. It was contended that Sher Zaman and Musaddaq Khalid, whose services were also regularized like the services of the petitioner, were given the benefit of addition of the service rendered prior to regularization towards pay and pension but in his case the said benefit has been withheld and as such he has not been treated equally with the said employees so his fundamental right as guaranteed under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 has been infringed. With these averments an order as stated above has been prayed for.

2. The respondents contended that the petition was not

~~ATTENDED~~





non-joinder of necessary parties; that the same is not maintainable under Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973; that the petitioner was appointed as casual labourer (RTE) in 1987 so his salary and pension would be determined from the date of joining the service; that his previous appointment *w.e.f.* 17.2.1979 was purely of casual nature so the same cannot be counted towards pension and pay as the same is not verified from the Audit and pay bills; that the petitioner was informed through letter dated 20.7.2009 that his request cannot be acceded to and other points mentioned by him were also repelled; that the case of the persons mentioned in the petition was different from that of the petitioner, who was casual labourer appointed on a project and that under the rules, he could have not been given the benefit prayed for.

3. The learned counsel for the petitioner has reiterated the above contentions and vehemently contended that the petitioner had continuous service to his credit *w.e.f.* 17.2.1979; that there was no break in his service and he has performed the duties satisfactorily throughout his career; that no doubt the seniority cannot be given to him *w.e.f.* 17.2.1979 but he is entitled to pay and pension benefit for the period prior to his regularization as was given to other employees, who also started career as casual labourers but their services were subsequently regularized. In support of the contentions raised reliance is placed on 2005 SCMR 100 and 2002 SCMR 574.

4. In the comments the respondents have contended that the petition is barred under Article 212 of the Constitution

of Islamic Republic of Pakistan, 1973; that the petition is not in proper form and the Federal Government could have been impleaded only through Secretary to the Government of Pakistan Ministry of Defence; that the petitioner cannot take benefit of the services rendered as casual labourer on a project; that Sher Zaman, etc. were working against permanent posts so after regularization they were given the benefit of the previous service and that the petitioner was a daily wager prior to regularization of his service so can claim benefit for the said period.

5. At the outset the learned Standing Counsel has conceded that the service of the petitioner is governed by the Civil Servants Act as was clearly mentioned in his appointment letter Annexure "H" but contended that he had performed his duties as casual labourer before regularization of his service so he cannot take benefit of the service rendered as C.L. The appointment letter does show that his service would be Governed by the Civil Servants Act, 1973 and rules made there-under so the petition is not barred under Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973. It is an admitted fact that he has been performing duties regularly *w.e.f.* 17.2.1979. This fact is fortified from the employment certificate Annexure "E" and certificate Annexure "D". It is not denied that he has been regularly and continuously working *w.e.f.* 17.2.1979. Sher Zaman son of Gul Zaman, who was also working as casual labourer (RTE) was regularized *w.e.f.* March, 1987 and admittedly he has been given benefit of his previous service rendered prior to regularization. If the Government servant without break continuously remains in service then after regularization he has

the right that the same be counted towards pay, pension and promotion but not for seniority. In this respect reliance is placed on 2002 SCMR 574. The learned Standing Counsel has vehemently contended that Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 the writ petition is not maintainable and the petitioner should seek remedy before the Federal Service Tribunal. It is proved on record that the petitioner was not treated equally with Sher Zaman, who was placed under similar circumstances so his right of equal treatment as provided under Article 25 of the Constitution stands infringed and he can invoke the Constitutional jurisdiction of this Court. It is not denied that respondents are the authority and appellate authority of the petitioner. According to him he has been making requests time and again but they have shelved the application without passing any order although this contention appears to be ill-founded in view of letter dated 20.7.2009 but even on rejection of this request, he has cause of action. No petition is bad for misjoinder and non-joinder of parties as provided under Order I, Rule 9, CPC. The concerned authorities, who were competent to pass appropriate order in accordance with law, had failed to perform their duties so the petitioner rightly opted to file a petition against them. It is true that under section 79 of CPC, the Federal Government can sue and be sued as Federal Government of Pakistan through Secretary of the Government but in this case the petitioner has confined his grievance against respondents Nos. 1 and 2 *i.e.* the authority and appellate authority in his case. It is an established law that the technicalities should not hamper the course of justice, and may not be used to create hurdles in way of administration of

substantial justice. The petitioner, who has otherwise proved that he has been treated with discrimination and has illegally been deprived of the benefit, which is due to him for spotless and continuous service of 8 years prior to his regularization should not be non-suited and his petition should not be knocked down for technical reason *i.e.* form of the petition. In this respect reliance is placed on 2003 SCMR 318. For the foregoing reasons, the petition is accepted and respondents are directed to count the service rendered by the petitioner prior to his regularization as has been done in case of Sher Zaman, etc. and all benefits be given to him in the like manner.

*Writ Issued.*

2012 CLJ 349

*Before Ijaz Ahmad, J. (Rawalpindi)*

Writ Petition No/ 226 of 2009 accepted on 24/1.2012.

1. SAJJAD AHMED

2. MUHAMMAD ZAFEER BHATTI---Petitioners

*versus*

1. THE CHAIRMAN, BOARD OF INTERMEDIATE & SECONDARY EDUCATION

2. THE SECRETARY, BOARD OF INTERMEDIATE & SECONDARY EDUCATION---Respondents

(a) Board of Intermediate and Secondary Education (Rawalpindi)---

Junior and senior clerks of the Board appointed as Data Entry Operators after due process would be entitled to BS-11 as allowed to other Data Entry Operators RS-11 cannot be

وکالت نامہ  
 بعدالت محترم جسٹس مسٹر سرفراز گل  
 محترم اور لوگوں کے نام  
 منجانب ریٹائرمنٹ دعویٰ اجرم مسٹر سرفراز گل  
 تھانہ ایف آئی آر / تاریخ /


باعث تحریر آئندہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بہ مقام

لاجر خان خلیل ایڈووکیٹ ہائی کورٹ و فیڈرل شریعت کورٹ آف پاکستان

کو بدین شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا اگر پیشی پر من مظہر حاضر نہ ہوں اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل بیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ ساعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پرداخت صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد ثالثی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم انتہائی یا ترقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا ایگی علیحدہ مختار نامہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا پیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ اتواء پڑے گا۔ وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختار نامہ لکھ دیا کہ سندر ہے مورخہ \_\_\_\_\_ مضمون مختار نامہ من لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

کاملاً لکھن ولد علی حیدر شاہ

ATTESTED & ACCEPTED:  
  
 Lajbar Khan Khalil  
 Advocate High Court  
 &  
 Federal Shariat Court  
 of Pakistan  
 CNIC No. 17301-1573931-1  
 BC No. 10-7631  
 Cell No. 0333-9133651  
 Email: lajbark758@gmail.com

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA**

**SERVICE TRIBUNAL PESHAWAR**

**SERVICE APPEAL NO. 8719 OF 2020**

Alla-ud-Din.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa and others.....Respondents

**Respectfully Sheweth:**

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 2 TO 4**

**Preliminary Objections:-**

1. That the Appellant has got neither cause of action nor did locus standi to file the instant Appeal.
2. That the Appellant has filed the instant Appeal just to pressurize the respondents.
3. That the instant Appeal is against the prevailing Law and Rules.
4. That the Appeal is not maintainable in its present form and also in the present circumstances of the issue.
5. That the Appellant has filed the instant Appeal with mala-fide intention hence liable to be dismissed.
6. That the Appellant has not come to the Tribunal with clean hands.
7. That the Appeal is time barred.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant Appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

**ON FACTS:**

1. In reply to Para No. 1 it is submitted that the Appellant was appointed as Dark Room Assistant on contract basis and not on regular basis. The post of Dark Room Assistant has been re-nomenclatured as Junior Clinical Technician Radiology on 25/08/2006 and not in 2005.
2. In reply to Para No. 2 it is submitted that services of the Appellant has been regularized w.e.f. 16/02/1999 by the then Administrator, HMC Peshawar.
3. Incorrect. The contract services at their credit cannot be counted towards regular service/pension etc.
4. Pertains to record, hence no comments.
5. Correct as per orders of the Honorable Peshawar High Court, Peshawar. The Writ Petition was considered as Departmental Appeal. The Petitioner was called for

personal hearing on 28/04/2020 and the case / appeal has been regretted being not covered under the rules (Annex-A).

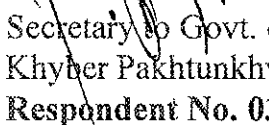
6. Incorrect, as already explained in Para-A of the Grounds.
7. Needs no comments being formal.

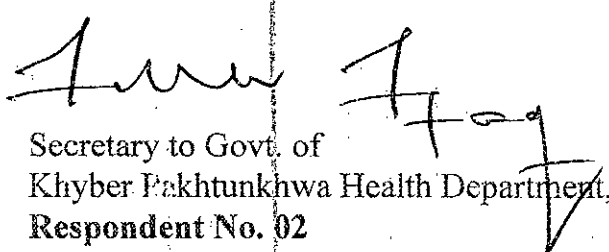
**ON GROUNDS:**

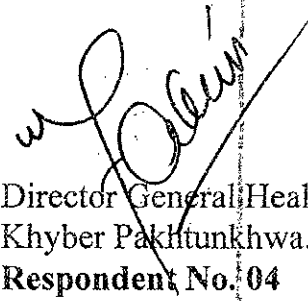
- A. Incorrect. The Appellant is not entitled for counting of his previous contract service for pay & pension.
- B. Incorrect, the Appellant is not entitled for any benefit of his contractual services.
- C. Incorrect, detailed reply has already been given in preceding paras.
- D. Incorrect, the Judgment referred in this para has different facts hence on the basis of this Judgment the Appellant cannot be made entitled for pay protection.
- E. As per preceding para.
- F. Detailed reply has already been furnished in Para-D.
- G. Incorrect, as in preceding paras.
- H. Incorrect. The Appellant has been treated in accordance with law & rules.
- I. Incorrect as already explained in preceding para.
- J. That the respondents seek permission to adduce other grounds during arguments.

**PRAYER:**

It is therefore humbly prayed that on acceptance of the comments, the instant Appeal of the Appellant may very graciously be dismissed with costs.

  
Secretary to Govt. of  
Khyber Pakhtunkhwa Finance Department  
Respondent No. 03

  
Secretary to Govt. of  
Khyber Pakhtunkhwa Health Department,  
Respondent No. 02

  
Director General Health Services,  
Khyber Pakhtunkhwa.  
Respondent No. 04



DIRECTORATE GENERAL HEALTH SERVICES  
KHYBER PAKHTUNKHWA PESHAWAR

All communications Should be Addressed to The Director General  
Health Services Peshawar and not to any official by name  
Office Ph ( 091 - 9210269 Exchange ) 091 - 9210187, 091 - 9210196 Fax ( 091 - 9210230

OFFICE ORDER.

WHEREAS, Mr. Rafiullah Clinical Technician (Radiology) and Mr. Allawddin Clinical Technician (Radiology) attached to HMC Peshawar filed writ petition before. The Peshawar High Court Peshawar for counting grant of 02 years Adhoc service to ward pension and pay.

And WHEREAS, the Peshawar High court Peshawar directed the DGHS KP to decide the case the accordance with law.

And WEREAS, both the above petitioners were personally heard on 28.04.2020 and inform them that the request is not covered under the rules.

The competent authority viz DGHS KP has been pleased to regret the request of the above petitioners being not covered under the rules.

Sd/-

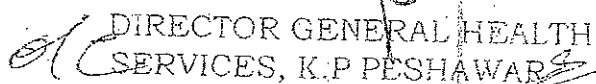
DIRECTOR GENERAL HEALTH  
SERVICES, KP, PESHAWAR.

No. 1966-68 /E.VI, Dated Pesh. The 8 - 7 /2020.

Copy forwarded to the:-

01. Hospital Director, HMC MTI Peshawar.
02. Assistant Director (Lit.) DGHS KP Peshawar.
03. DA-concerned, DGHS Khyber Pakhtunkhwa Peshawar.

For information and necessary action.

  
DIRECTOR GENERAL HEALTH  
SERVICES, K.P. PESHAWAR

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

Misc. Application No. \_\_\_\_\_/2021  
In Service Appeal No.8719/2020

Alla-ud-Din. . . . . **APPLICANT/APPELLANT**

**VERSUS**

Govt. of Khyber Pakhtunkhwa & others. . . . . **RESPONDENTS**

**APPLICATION FOR SEEKING PERMISSION**  
**FOR ADDING/ INSERTING/ AMENDING**  
**ADDITIONAL PRAYER/ GROUNDS IN THE**  
**ABOVE MENTIONED SERVICE APPEAL.**

**Respectfully Sheweth:**

1. That the above mentioned Service Appeal is pending before this Hon'ble Tribunal which is fixed for today i.e. 17.02.2021 for written reply/comments of the respondents.
2. That the circumstances of the case also reveals that the applicant/ appellant is entitled for consideration of the contract period/duration to be counted towards his seniority besides his pay protection pensionery benefits and promotion, therefore, this prayer/ground may also be considered as integral part of the main appeal.
3. That the above mentioned additional relief/ ground was left inadvertently and there is no bar on amending the instant appeal or asserting/inserting of any additional ground.

4. That the relief asked for, in the instant application is by virtue of operation of law and this Hon'ble Tribunal has ample powers to consider the additional prayer of applicant/appellant keeping in view the facts and circumstances of the instant case.
5. That the additional relief sought for is necessary to be considered in the best interest of justice.
6. That since the applicant/appellant is still serving and therefore this extra relief arose out of this situation.

It is, therefore, most humbly prayed that on acceptance of this application, the applicant/appellant may please be allowed to amend the main service appeal and insert the additional prayer/ground thereby counting the previous contract service of the applicant/appellant for the purpose of seniority as well as for the kind consideration of this Hon'ble Tribunal.

Through

Applicant/Appellant

**Lajbar Khan Khalil**  
Advocate High Court

Dated: 17.02.2021

### **AFFIDAVIT**

I, Alla-ud-Din S/o Gul Dad Shah, Junior Clinical Technician (JCT), Radiology, Hayatabad Medical Complex (HMC), Peshawar, do hereby solemnly affirm and declare on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

