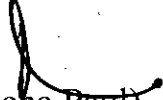



23rd May, 2023

1. Mr. Mir Zaman Safi, Advocate present and submitted Vakalatnama on behalf of the appellant. Mr. Fazal Shah Mohmand, Additional Advocate General for respondents present.
2. Learned counsel for appellant requested for adjournment being newly engaged in the instant case. Adjourned. To come up for arguments on 16.08.2023 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar

Kaleem ullah



(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman.

16.08.2023

SCANNED
KPST
Peshawar

1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand learned Additional Advocate General for the respondents present.
2. Due to summer vacations D.B is not available, therefore, case is adjourned. To come up for arguments on 06.12.2023 before D.B. P.P given to parties.


(Rashida Bano)
Member (J)


KaleemUllah

27.10.2022

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

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is indisposed of today. Adjourned. To come up for arguments before the D.B on 02.12.2022.

SCANNED
KPST
Peshawar



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

2-12-22

Deleted from list to come up on the next date 20-2-23

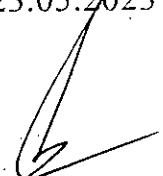
20.02.2023

Appellant present through counsel. Naseer Ud Din Shah, Learned Assistant Advocate General for the respondents present.



Mrs. Rozina Rehman, Learned Member (Judicial) is on leave, therefore, case is adjourned to 23.05.2023 for arguments before D.B.

SCANNED
KPST
Peshawar

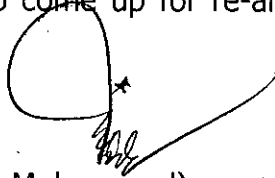


(Muhammad Akbar Khan)
Member (E)

16.09.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Further legal assistance on certain points is needed, therefore, to come up for re-arguments on 21.09.2022 before the D.B.



(Mian Muhammad)
Member (E)

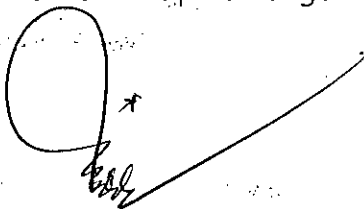


(Salah-Ud-Din)
Member (J)

21.09.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested that as connected Service Appeal bearing No. 7799/2021 titled "Dr. Muhammad Ali Versus Government of Khyber Pakhtunkhwa through Secretary Health Department Peshawar and others" is fixed for arguments on 27.10.2022, therefore, the appeal in hand may also be fixed for arguments on the said date. Adjourned. To come up for arguments on 27.10.2022 before the D.B.



(Mian Muhammad)
Member (Executive)

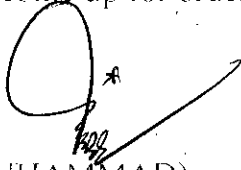


(Salah-Ud-Din)
Member (Judicial)

22.06.2022

Appellant alongwith his counsel Mr. Fazal Shah Mohmand, Advocate present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Arguments heard. Order could not be announced due to rush of work
Adjourned. To come up for order ^{on} 24.06.2022 before the D.B.



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

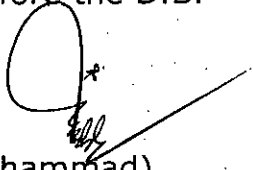


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

24.06.2022

Mr. Fazal Shah Mohmand, Advocate for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Further arguments heard. To come up for order on 08.07.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

8-7-2022

Due to Holidays of Eid Ul Aizha the case is adjourned to 6-9-2022

Reader

06.09.2022

Appellant present through counsel.

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

File to come up alongwith connected Service Appeal No.7590/2021 titled "Dr. Muhammad Taimoor Shah Vs. Government of Khyber Pakhtunkhwa" on 16.09.2022 before D.B.



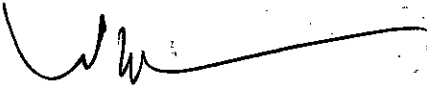
(Fareeha Paul)
Member(E)




(Rozina Rehman)
Member(J)

25.01.2022 Appellant in person present. Mr. Muhammad Adeel Butt,
Addl. AG for respondents present.

File to come up alongwith connected service appeal No.
7590/2021 titled Dr. S.M Taimoor Shah Versus Secretary
health, before the S.B on 23.02.2022.


(Atiq-Ur-Rehman Wazir)
Member (E)


23.02.2022 Due to retirement of the Hon'able Chairman, the case is
adjourned to 10.05.2022 for the same before D.B.


Reader

10.05.2022 Appellant present through counsel.

Muhammad Adeel Butt, learned Additional
Advocate General alongwith Jaffar Ali Assistant for
respondents present.

Representative of respondents submitted
reply/comments. Copy of the same is handed over to
learned counsel for appellant. To come up for rejoinder,
if any, and arguments on 22.06.2022 before D.B.


(Rozina Rehman)
Member (J)

15.11.2021

Counsel for the appellant present. Preliminary arguments have been heard.

Learned counsel for the appellant contended that the instant service appeal has been filed against the non-counting of previous contractual service of the appellant w.e.f 27.11.1995 to 31.06.2001 and no response given or decision made on his departmental appeal so far despite lapse of the statutory period of 90 days. Background and brief facts, as per arguments of the learned counsel for the appellant, are that the appellant was initially appointed as Medical Women Median Officer/~~Medical~~ Dental Surgeon (BS-17) on contract basis vide order of appointment dated 26.11.1995, his contract appointment had to be extended on yearly basis. He was appointed as Medical Officer on regular basis subsequent to the recommendation of Public Service Commission, vide notification 07.09.2007. He filed Writ Petition No.1510/2007 in Peshawar High Court, Peshawar which was allowed vide its judgement dated 18.11.2008. The respondent-department did not regularize his services and the appellant again approached the Peshawar High Court in writ petition No. 1647-P/2013 which was disposed of on 09.02.2017 by remitting the case. His services were regularized with effect from 21.07.2001 instead of the date of his initial contractual appointment (1995) vide notification dated 17.10.2017. It was vehemently argued that the appellant is entitled to be given the benefits of previous service for the purpose of pay protection and pension etc. His departmental appeal dated 16.06.2021 was not responded within statutory period hence, the instant service appeal instituted in the Service Tribunal on 14.10.2021.

Appellant Deposited
Security & Process Fee

21/11/21

The appeal is admitted to regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for submission of reply/comments. To come up for reply/comments on 25.01.2022 before S.B.



(Mian Muhammad)
Member(E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7591 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/10/2021	<p>The appeal of Dr. Amjid Ali Shah presented today by Mr. Fazal Shah Mohmand 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>
2-		<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put up there on <u>17/12/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

8

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service appeal No. 7591 /2021

Dr. Amjid Ali Shah.....Appellant.

V E R S U S

Govt. & others.....Respondents

I N D E X

S. No	Description of documents	Annexures	Pages
1.	Service Appeal with affidavit		1-4
2.	Copy of Notification dated 17-10-2017 & Order dated 26-09-2019	A & B	5-12
3.	Copy of Departmental Appeal	C	13-14
4.	Copy of Judgment dated 01-03-2018 passed in Writ Petition No 3221-P/2013, Judgment dated 03-02-2016 passed in Civil Petition No 1536/2013 and Judgment dated 01-08-2011 passed in Service Appeal No 38/2011	D	15-27
5.	Wakalat Nama		28


Dated:-06-10-2021


Appellant

Through


FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.

&


RABIA MUZAFFAR
ADVOCATE, PESHAWAR

OFFICE:-

Cantonment Plaza Flat# 3/B
Khyber Bazar Peshawar.
Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service appeal No. _____/2021

Dr. Amjad Ali Shah S/O Mian Muhammad Ali Shah DMS Store & Maintenance, Institute of Kidney Disease, Hayatabad Peshawar.....**Appellant.**

V E R S U S

1. Govt. of Khyber Pakhtunkhwa through Secretary, Health Department Peshawar.
2. Director, General Health Services Khyber Pakhtunkhwa Peshawar.
3. Govt. of Khyber Pakhtunkhwa through Secretary, Finance Department Peshawar.
4. Chief Secretary, Govt. of Khyber Pakhtunkhwa Peshawar.

.....**Respondents**

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE NON-COUNTING THE PERVIOUS CONTRACT SERVICE W.E.F 26-11-1995 TO 31-06-2001 OF THE APPELLANT AND AGAINST WHICH DEPARTMENTAL APPEAL OF THE APPELANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

On acceptance of this appeal the respondents may kindly be directed to count the previous contract service w.e.f 26-11-1995 to 31-06-2001 rendered by the appellant for the purpose of pay protection and pension etc. with all back benefits.

Respectfully Submitted:-

1. That the appellant was appointed after the posts were duly advertised, the appellant passed through the recruitment process and finally upon the recommendation of Departmental Selection Committee, the appellant was appointed as Medical Officer (BPS-17) in Health Department KP vide Order dated 26-11-1995, which contract was extended from time to time till the KP Civil Servants Act was amended on 23-07-2005, after which

the services of the appellant stood regularized however the appellant was not extended the benefits, after which the appellant along with others was forced to approach the honorable Peshawar High Court Peshawar by filing Writ Petition.

2. That respondents even then were not ready to regularize the appellant, however finally the services of the appellant along with others were regularized vide Notification dated 17-10-2017 w.e.f 01-07-2001 instead from the date of their initial appointment, against which the appellant along with others again filed Writ Petition which was dismissed on 26-09-2019, and against which the appellant has approached the Apex Court. **(Copy of Notification dated 17-10-2017 & Order dated 26-09-2019 is enclosed as Annexure A & B).**

1. That the appellant is entitled to be given the benefit of previous service for the purpose of Pay Protection & Pension and for which purpose the appellant along with other approached the Peshawar High Court by filing Writ petition No 3337-P/2020 but as the matter related to the terms and conditions of service so the same was withdrawn on 27-05-2021.

2. That the department is reluctant to count the contract service of the appellant for the purpose of pay protection and pension etc. which is violation of the law, rules and numerous Judgments of the honorable High Court as well as the Apex Court of the Country. Even the appellant filed a departmental appeal on 16-06-2021 for the purpose which was duly forwarded however the same has not been responded so far despite the lapse of more than ninety days and to no avail till date. **(Copy of Departmental Appeal is enclosed as Annexure C).**

1. That this action of the department of not counting the contract service of the appellant w.e.f 27-11-1995 to 31-06-2001 for the purpose of pay protection and pension etc. is against the law, facts and principles of justice on grounds inter-alia as follows:-

GROUND:-

A. That the omissions and commissions of the respondents are illegal and void ab initio.

B. That mandatory provisions of law are badly violated by the respondents who are not ready to treat the appellant according to law and rules being his fundamental right guaranteed in the Constitution of Pakistan.

- C. That the Pension Rules 1963 as well as the Civil Service Regulations are very much clear on the point which gives protection to such contract service for the purpose of pay protection and pension etc.
- D. That the appellant is entitled to be given the benefit of previous contract service rendered by the appellant as per the CSR-371-A and pension rules.
- E. That in the recent Judgment dated 08-02-2021 passed in Civil Petition No 1641-L/2018 it has been held by the Apex Court that regularization is a step up and must provide better terms of service and cannot make the employee worse. Even the law and rules are very much clear on the subject which also allows such benefits. A number of Judgments rendered by the honorable Tribunal, honorable Peshawar High Court as well as the Apex Court of the Country have also given protection to such service to be counted for the purpose of pay protection and pension. **(Copy of Judgment dated 01-03-2018 passed in Writ Petition No 3221-P/2013, Judgment dated 03-02-2016 passed in Civil Petition No 1536/2013 and Judgment dated 01-08-2011 passed in Service Appeal No 38/2011 is enclosed as Annexure D).**
- F. That even otherwise not giving the appellant the benefit of service rendered by him amounts to exploitation in violation of the Constitution and law of the land.
- G. That the Appellant has been deprived of his due rights without any omission or commission on his part in violation of the principles of natural justice.
- H. That accrued rights of the appellant has been snatched sane without any fault on his part.
- I. That the appellant has more than 25 years of service career with unblemished service record.
- J. That the appellant seeks the permission of this honorable Court for additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Any other relief deemed appropriate and not asked for may also be granted in favour of the appellant.

Dated:-06-10-2021



Appellant

Through



FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.

&


RABIA MUZAFFAR
ADVOCATE, PESHAWAR

LIST OF BOOKS

- 1. Constitution 1973
- 2. Service laws.
- 3. Other Books as per need

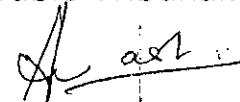
Certificate

Certified that as per instructions of my clients, no Service Appeal on the same subject and between the same parties has been filed previously or concurrently before this honorable Court.


ADVOCATE

AFFIDAVIT

I, Dr. Amjad Ali Shah S/O Mian Muhammad Ali Shah DMS Store & Maintenance, Institute of Kidney Disease, Hayatabad Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.


DEPONENT

"A" S-

No. 19593 /E-1,
Dated 23/6 / 1996.

Dr. Arif Ali Shah

S/o Muhammad Ali Shah

SUBJECT:- OFFER OF APPOINTMENT ON CONTRACT BASIS.

Memorandum

Reference your application on the above subject for the post of Medical Officer/Woman Medical Officer.

1. The Competent Authority will hereby appoint you as Medical Officer/Woman Medical Officer in the Health Department, Govt; of NWFP, on contract basis in SPS-17 for a period of one year or till the availability of Public Service Commission selectee/return of original incumbent from leave/deputation, whichever is earlier, on the terms and conditions laid down in the attached Agreement Deed. You shall be posted to

M.O BAH AKHON DHER, CHARSAIDA

This contract appointment is not transferable.

2. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.

3. If you accept the offer of appointment on contract basis as an Medical Officer/Woman Medical Officer the attached Agreement Deed should be signed in duly signed by you and should report at your own expense.

4. If you fail to report to duty at the station specified in para above within ten (10) days, the offer of appointment on contract basis will be deemed to have been withdrawn automatically and no further correspondence shall be entertained in this respect.

Dr. Azmat Khan Afridi
DR. AZMAT KHAN AFRIDI
DIRECTOR GENERAL HEALTH SERVICES NWFP; PESHAWAR.

No. 19594-97 /E-1, Dated Pesh; the 22/6/1996.

Copy forwarded to the:-

1. Secretary to Govt; of NWFP Health Department Peshawar, for information with reference to his letter No. SC(II) IV/3-18/86 & No. SCHIV/HD/3-18/96, dated 2.6.96.
2. Medical Superintendent, _____
3. Divisional Director Health Services, _____
4. District Health Officer/Agency Surgeon, _____
5. Accountant General, NWFP, Peshawar.
6. District/Agency Accounts Officer, _____

for information and necessary action please.

ATTESTED TO BE TRUE COPY

Dr. Azmat Khan Afridi
Director General Health Services, NWFP, Peshawar

DIRECTORATE GENERAL HEALTH
SERVICES, NWFP, PESHAWAR.

No. 19593/E-1,

Dated 23/06/1996

To.

Dr. Amjad Ali Shah
S/o Mian Muhammad Ali Shah

SUBJECT: OFFER OF APPOINTMENT ON CONTRACT BASIS

NEMORANDUM:

Reference your application on the above subject for the post of Medical Officer/ Women Medical officer/ Dental Surgeon.

9. The Competent authority is hereby appoint you as Medical Women Median Officer/Dental Surgeon in the Health, Department, Govt. of NWFP, on contract basis in B-17 for a period of one year or till the availability of Public Service Commission Selectee/ return of original incumbent free leave/deputation was which even in earlier, on the terms and conditions laid down in the attached Agreement Deed. You shall be posted to MO BHM Akhoon Dhei, Charsadda. This contract appointment is not transferable.
10. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
11. Medical Officer/Women Medical Officer/Dental Surgeon, the attached agreement deed should be filled in duly signed by you and should report at your own expense.
12. If you fail to report for duty at the station specified in para-3 above, within Ten (10) days, the offer of appointment on contract basis will be directed to have been withdrawn automatically and no further correspondence shall be entertained in this respect.

(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH
SERVICES, NWFP, PESHAWAR

No. 19594-07/E-1, Dated Peshawar, the 27/06/1996

Copy forwarded to the :-

13. Secretary to Govt. of NWFP, Health Deptt: Peshawar for information with reference to his letter No.SO(S)IV/3-18/86 & SOHIV/HD/3-18/96 ated 2.6.96
 14. Medical Supdt: _____ for information & n/action.
 15. Divisional Director Health Services Peshawar
 16. District Health Officer/Agency Surgeon Charsadda
 17. Accountant General NWFP Peshawar
 18. District/Agency Account Officer Charsadda
- , For information and n/action please.

(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH
SERVICES, NWFP, PESHAWAR



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

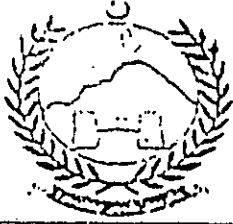
Dated Peshawar the 17th October, 2017

NOTIFICATION

NO. SO(E)H-II/3-18/2016: In pursuance of Judgment of Peshawar High Court Peshawar dated 18-11-2008 in Writ Petition No. 1510 of 2007 read with sub section 2 of Section 2 of the Khyber Pakhtunkhwa, Civil Servant (Amendment) Act, 2005 (Khyber Pakhtunkhwa Act no. IX of 2005) and provision under sub section 4 of section 19 of Civil Servant (Amendment) Act 2013 coupled with the regularization order of appellants and similarly placed w-e-f 2005, the services of following doctors (appellants as well as similarly placed) are hereby regularized with effect from dates as mentioned against each:

S. #	Name of Doctor	D.O.B / Domicile	Date of Initial Appointment on contract basis	Date of Regularization under Act 2005
1.	Dr. Bakht Zada S/O Gul Muhammad, MBBS	01.01.1959 / Swat	23.11.1995	01-07-2001
2.	Dr. Dawa Khan S/O Badshah Khan MBBS	01.09.1951 / Swat	23.11.1995	01-07-2001
3.	Dr. Haroon Nasir Khattak S/O Rab Nawaz MBBS	Karak / 1.3.1966	23.11.1995	01-07-2001
4.	Dr. Yousaf Khan S/O Said Rehman MBBS	Mardan / 14.3.1968	23.11.1995	01-07-2001
5.	Dr. Riāz Ahmed S/O Rehmatullah MBBS	Mohmand A15.8.1951	23.11.1995	01-07-2001
6.	Dr. Alamgir Khan S/O Darvesh Khan MBBS	16.04.1962 / Mohmand A	23.11.1995	01-07-2001
7.	Dr. Muhammad Ajmal Khan S/O Zarin Khan MBBS	Mohmand ag / 10.04.67	23.11.1995	01-07-2001
8.	Dr. Fazal Rehman S/O Muhammad Amir Khan MBBS/MPH	28.04.1966 / Mohmand Agency	23.11.1995	01-07-2001
9.	Dr. Mustafa S/O Behramand MD	01.03.1961 / Swat	24.11.1995	01-07-2001

Special Officer-I,
Health Department,
Government of Khyber Pakhtunkhwa



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 17th October, 2017

NOTIFICATION

NO. SO(E)H-II/3-18/2016: In pursuance of Judgment of Peshawar High Court Peshawar dated 18-11-2008 in Writ Petition No. 1510 of 2007 read with sub section 2 of Section 2 of the Khyber Pakhtunkhwa, Civil Servant (Amendment) Act, 2005 (Khyber Pakhtunkhwa Act no. IX of 2005) and provision under sub section 4 of section 19 of Civil Servant (Amendment) Act 2013 coupled with the regularization order of appellants and similarly placed w-e-f 2005, the services of following doctors (appellants as well as similarly placed) are hereby regularized with effect from dates as mentioned against each:

S. #	Name of Doctor	D.O.B / Domicile	Date of Initial Appointment on contract basis	Date of Regularization under Act 2005
1.	Dr. Bakht Zada S/O Gul Muhammad, MBBS	01.01.1959 / Swat	23.11.1995	01-07-2001
2.	Dr. Dawa Khan S/O Badshah Khan MBBS	01.09.1951 / Swat	23.11.1995	01-07-2001
3.	Dr. Haroon Nasir Khattak S/O Rab Nawaz MBBS	Karak / 1.3.1966	23.11.1995	01-07-2001
4.	Dr. Yousaf Khan S/O Said Rehman MBBS	Mardan / 14.3.1968	23.11.1995	01-07-2001
5.	Dr. Riaz Ahmed S/O Rehmatullah MBBS	Mohmand / 15.8.1951	23.11.1995	01-07-2001
6.	Dr. Alarngir Khan S/O Darvesh Khan, MBBS	16.04.1962 / Mohmand A	23.11.1995	01-07-2001
7.	Dr. Muhammad Ajmal Khan S/O Zarin Khan MBBS	Mohmand ag / 10.04.67	23.11.1995	01-07-2001
8.	Dr. Fazal Rohman S/O Muhammad Amir Khan, MBBS/ MPH	28.04.1966 / Mohmand Agency	23.11.1995	01-07-2001
9.	Dr. Mustafa S/O Behramand MD	01.03.1951 / Swat	24.11.1995	01-07-2001

Director Office-II,
Health Department,
Government of Khyber Pakhtunkhwa

10	Dr. Jamil Ahmad S/O Abdullah, MD	24.04.1957 Swat	24.11.1995	01-07-2001
11	Dr. Rizwanullah s/o Amanullah Khan, MBBS	20.12.1962 / Peshawar	25.11.1995	01-07-2001
12	Dr. Munir Hussain S/O Manzoor Hussain	28.06.1968 /Peshawar	25.11.1995	01-07-2001
13	Dr. Zaffar Iqbal S/O Muhammad Amin	25.02.1964 / Peshawar	25.11.1995	01-07-2001
14	Dr. Nazir Ahmad Khalil S/O Jan Muhammad Khan	09.04.1960 / Peshawar	25.11.1995	01-07-2001
15	Dr. Jayed Iqbal S/O Muhammad Qasim	01.03.1964 / Kohat	26.11.1995	01-07-2001
16	Dr. Muhammad Zahid s/o Caiser Ahmad, MBBS	18.5.1964/ Charsadda	26.11.1995	01-07-2001
17	Dr. Rafiullah S/O Haji Khan Zada	31.12.1960 /Charsadda	26.11.1995	01-07-2001
18	Dr. Anwar Saeed S/O Noor Muhammad	27.05.1968 / Charsadda	26.11.1995	01-07-2001
19	Dr. Muhammad Ikram S/O Haji Abdul Hanan		26.11.1995	01-07-2001
20	Dr. Zarshad Ahmad S/O Pir Muhammad	24.03.1966 / Charsadda	26.11.1995	01-07-2001
21	Dr. Imtiaz Ahmad S/O Fazal Karim	23.12.1965 / Charsadda	26.11.1995	01-07-2001
22	Dr. Shakir Ullah S/O Faqr Hussain M.D	Peshawar/ 11.02.1959	24.12.1995	01-07-2001
23	Dr. Ali Shah S/O Fazli Ghaffoor	01.04.1962 / Charsadda	26.11.1995	01-07-2001
24	Dr. Amjad Ali Shah S/O Mian Muhammad Ali Shah,	06.05.1960 /Charsadda	26.11.1995	01-07-2001
25	Dr. Shabir Ahmad S/O Juma Khan	01.04.1963 / Kohat	26.11.1995	01-07-2001
26	Dr. Habibullah Khan S/O Hamidullah Khan	10.06.1963 / Kohat	26.11.1995	01-07-2001

Secretary
Government of Punjab
Health Department

666	Dr. Muhammad Fayyaz s/o Muhammad Ayaz	15.04.1978 / Swat	08.03.2005	08.03.2005
667	Dr. Jehanzeb s/o Abdul Samad Jan MBBS	Dir(L) 3.12.1973	08.03.2005	08.03.2005
668	Dr. Adil Khan s/o Fazl Subhan MBBS	30.12.1978/ Charsadda	08.03.2005	08.03.2005
669	Dr. Ajab Khan s/o Ismail Khan MBBS	Charsadda 25.02.1979	08.03.2005	08.03.2005
670	Dr. Farzana s/o Hassan Ahmad MBBS	U/Dir/ 07.08.1973	08.03.2005	08.03.2005
671	Dr. Muhammad Zubair s/o Muhammad Bashir M.D	Swat/ 01.04.1976	08.03.2005	08.03.2005
672	Dr. Raz Muhammad s/o Badshah Muhammad M.D	Dir(L) 15.3.1977	08.03.2005	08.03.2005
673	Dr. Mushtaq Ali s/o Badshahul M.D M.D	Dir (L)/ 24.10.1978	08.03.2005	08.03.2005
674	Dr. Fazal Wahid s/o Khana Gul MD	11.02.1971/ Dir	08.03.2005	08.03.2005
675	Dr. Nizamud Din s/o Calandar Khan MBBS	Dir(L)/ 10.3.1971	08.03.2005	08.03.2005
676	Dr. Umar Hakeem s/o Abdul Karim Khan MBBS	Bajaur/ 28.4.1971	08.03.2005	08.03.2005
677	Dr. Nisar Ahmad s/o Amir Muhammad M.D	Dir(L)/ 1.2.1971	08.03.2005	08.03.2005
678	Dr. Sher Muhammad s/o Sakhi Murad MBBS	NW Agency/ 08.08.1976	08.03.2005	08.03.2005
679	Dr. Naeemullah s/o Abdullah MBBS	01.02.1981/ Swat.	08.03.2005	08.03.2005
680	Dr. Akhtar Ali s/o Sarfaraz Khan MBBS	Swat/ 25.10.1977	08.03.2005	08.03.2005

[Signature]
Section Officer
Dept. of Khyber Pakhtunkhwa
Health Department

Note: Any omission/error will be rectified after verification.

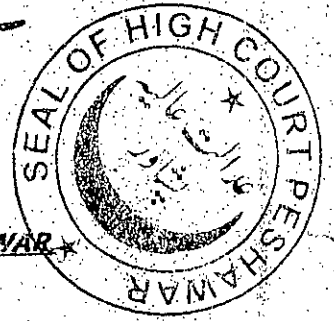
SECRETARY HEALTH

Endt No of oven and date.

1. Registrar, Peshawar High Court Peshawar.
2. Accountant General, Khyber Pakhtunkhwa.
3. Director General, Health Services; Khyber Pakhtunkhwa.
4. PSO to Chief Secretary, Khyber Pakhtunkhwa.
5. Coordinator PMRU, O/O Chief Secretary, Khyber Pakhtunkhwa.
6. All District Health Officers In Khyber Pakhtunkhwa.

"B"

-9-8-



Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT.

JUDGMENT

W.P. No. 851-P/2018.

Date of hearing 26.09.2019.

Dr. Syed Luqman Shoaib versus Abid Saeed.

Petitioner by Mr. Mian Mohiuddin Waka Lohel Attard.
Respondents by Mr. Syed Qaiser Ali Shah 2204.

WAQAR AHMAD SETH CJ:- Vide our detailed consolidated judgment in connected **COC 421-P/2017** in **COC No. 242-P/2015** in **W.P. No. 1647-P/2013** titled **Dr. Syed Luqman Shoaib**, instant petition is hereby dismissed, with cost of Rs. 10,000/-

CHIEF JUSTICE

JUDGE

ANNOUNCED.
26.09.2019

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorised Under Article 8.7 01
The Qanun-e-Shahadat Order 1984

14/11/19

(DB) Hon'ble Mr. Justice Waqar Ahmed Seth, Chief Justice and Mr. Justice Muhammad Naeem Anwar, JJ.
Aamir Bashir Awan, Senior Court Secretary.

-10- -b-

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT.



JUDGMENT

COC No. 421-P/2017 in COC No. 242-P/2015 in W.P. No. 1647-P/2013.

Date of hearing 26.09.2019.

Dr. Syed Luqman Shoaib versus Abid Saeed.

Petitioner by Mr. Mian Mohtib Ullah Khan Khel - Dinnwala
Respondents by Mr. Syed Qasim Ali Ullah DDU.

WAQAR AHMAD SETH CJ:- Through this consolidated judgment this Court will disposed of COC 421-P/2017 in COC No. 242-P/2015 in W.P. No. 1647-P/2013 titled Dr. Syed Luqman Shoaib versus Abid as well as W.P. No. 851-P/2018 titled Dr. Syed Luqman Shoaib versus Government of Khyber Pakhtunkhwa, being out come of the same matter/reasons.

a. This instant contempt petition under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have made a prayer that:-

"On acceptance of this application, this Honourable Court may initiate contempt of Court proceedings against the above mentioned contemnors and he be punished severely in accordance with law.

This Honourable Court may also initiate contempt of Court proceedings against any other person found involved in committing contempt of the orders of this Honourable Court.

Any other order deemed appropriate in the circumstances of the case, may also be passed. The petitioner may be allowed put forward any other arguments/document at the time of hearing of this application."

b. On acceptance of this writ petition this Honourable Court may direct that the services of the petitioners shall be

(DB). Hon'ble Mr. Justice Waqar Ahmad Seth, Chief Justice and Mr. Justice Muhammad Naeem Anwar, JJ.
Aamir Bashir Awan, Senior Court Secretary.

ATTESTED
EXAMINER
Peshawar High Court

regularized from the year 1995 with all back benefits of seniority, pay and privileges.

Any other order deemed appropriate in the circumstances of the case may also be passed. The petitioners may be allowed to put forward any other argument/document at the time of hearing of this writ petition.

2. Brief but relevant facts of the instant contempt petition are that in first round of litigation, petitioners alongwith other writ petitions have also filed W.P. No. 1510/2007 titled Dr. Rizwanullah and other versus Government of N.W.F.P through Chief Secretary, Peshawar, for their regularization. In due course of process all the writ petitions were allowed vide consolidated judgment dated 18.11.2008. Thereafter petitioners approached the respondents for its implementation, but failed to get any premium in their favour. Thus they filed contempt petition No. 242-P/2015, wherein they questioned the very act of the respondents. In due course of process this Court granted interim status quo vide order dated 24.06.2013. Consequently W.P. No. 1647-P/2013, with I.R, was decided on 09.02.2017, with the "remarks" that "So far as COC No. 242-P/2015, is concerned, suffice it to say, that it is directed against an interim status-quo order passed in W.P. No. 1647-P/2013. Since the main writ petition has been disposed of, as such, this petition having become redundant stands dismissed."

3. It is pertinent to mention that vide above referred order dated 09.02.2017, time frame was given to the contemnors, but, they failed to comply with the instructions of this Court. Hence the instant contempt petition.

4. Arguments heard and record perused anxiously.

5. Perusal of record reveals that petitioners joined the service with the respondents/departments as Medical Officer in 1995, on contract basis through Departmental Selection Committee. It is pertinent to mention that it was stopgap arrangement. There services were renewed time to time till the promulgation of Khyber Pakhtunkhwa Civil Servants

(DB), Hon'ble Mr. Justice Waqar Ahmad Sethi, Chief Justice and Mr. Justice Muhammad Naeem Anwar, JJ.
Asstt. Bashir Awan, Senior Court Secretary.

ATTESTED

EXAMINER
Peshawar High Court

(Amendment), Act, 2005, (N-W.F.P Act No IX of 2005). Thereafter, relevant law with regard to appointments on contract basis was adopted throughout the Province; however, after the commencement of ibid law, the law of appointment on regular basis was restored w.e.f. 23.07.2005. Thereafter several non-regularized employees approached the Court of competent jurisdiction by filing W.P. No. 1510/2007, ~~filed~~, Dr. Rizwanullah and others versus Government and others, which in due course of process was allowed and ultimately, services of the petitioners were regularized accordingly w.e.f. 23.07.2005 i.e. from the date of commencement of ibid act.

6. Record further suggests that earlier contempt petition No. 242-P/2015, was declared redundant vide this Court order dated 09.02.2017 in W.P. No. 1647-P/2013.

7. Thus what has been discussed above, contempt petition in hand is disposed of accordingly being not maintainable as the earlier contempt petition has already been declared redundant.

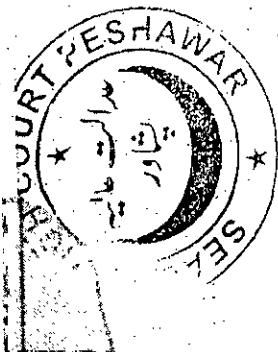
8. NOW coming to connected W.P. No. 851/2018 titled Dr. Syed Luqman Shoaib versus Government of Khyber Pakhtunkhwa and others, it is significant to note with great concern that petitioner of the instant constitutional petition has already filed another writ petition followed by contempt petition, then, why petitioner questioned the same set of agonies/same cause of action through another instant petition which amount to res-judicata.

9. In this view of the matter W.P. No. 851-P/2018 is hereby dismissed with cost of Rs. 10,000/-

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 8.7.01
The Qanun-e-Shahadat Order 1984

ANNOUNCED
26.09.2019



CHIEF JUSTICE

ATTESTED
EXAMINER
Peshawar High Court

-13- "C"

20802

BEFORE THE CHIEF MINISTER KHYBER PAKHTUNKHWA
PESHAWAR

Dated: 16/6/21

Subject:- Departmental appeal for counting the previous contract service rendered by the appellant for the purpose of Pay Protection and Pension.

Respectfully Submitted:-

1. That the appellant was appointed after the posts were duly advertised, the appellant passed through the recruitment process and finally upon the recommendation of Departmental Selection Committee, the appellant was appointed as Medical Officer (BPS-17) in Health Department KP vide Order dated 26-11-1995, which contract was extended from time to time till the KP Civil Servants Act was amended on 23-07-2005, after which the services of the appellant stood regularized however the appellant was not extended the benefits, after which the appellant along with others was forced to approach the honorable Peshawar High Court Peshawar by filing Writ Petition.
2. That respondents even then were not ready to regularize the appellant, however finally the services of the appellant along with others were regularized vide Notification dated 17-10-2017 w.e.f 01-07-2001 instead from the date of their initial appointment, against which the appellant along with others again filed Writ Petition which was dismissed on 26-09-2019, and against which the appellant has approached the Apex Court. **(Copy of Notification dated 17-10-2017 is enclosed as Annexure A).**
3. That the appellant is entitled to be given the benefit of previous service for the purpose of Pay Protection & Pension and for which purpose the appellant along with other approached the Peshawar High Court by filing Writ petition No 3337-P/2020 but as the matter related to the terms and conditions of service so the same was withdrawn on 27-05-2021. **(Copy of Order dated 27-05-2021 is enclosed as Annexure B).**
4. That the appellant is entitled to be given the benefit of previous service for the purpose of Pay Protection & Pension but he is kept deprived of the same in violation of law, rules and principles of justice, on grounds inter-alia as follows:

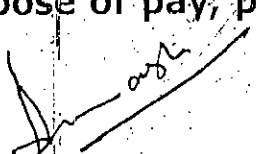
GR OUNDS:-

- A. That the appellant is entitled to be given the benefit of previous contract service rendered by the appellant as per the CSR-371-A and pension rules.

- B. That the Apex Court, the Peshawar High Court Peshawar and even the honorable KP Service Tribunal, Peshawar has allowed the like cases and the appellant as such too is entitled to be given such benefit and should not be discriminated.
- C. That in the recent Judgment dated 08-02-2021 passed in Civil Petition No 1641-L/2018 it has been held by the Apex Court that regularization is a step up and must provide better terms of service and cannot make the employee worse. Even the law and rules are very much clear on the subject which also allows such benefits.
- D. That even otherwise not giving the appellant the benefit of service rendered by him amounts to exploitation in violation of the Constitution and law of the land.

It is therefore prayed that on acceptance of this appeal, the previous service rendered by the appellant on contract w.e.f. 02-06-1996 to 31-06-2001 may kindly be given protection for the purpose of pay, pension and seniority with all back benefits.

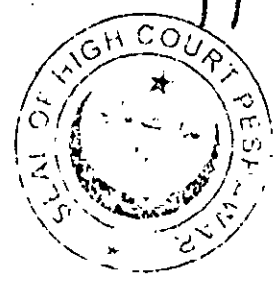
Dated: - 16 -06-2021


Dr Amjad Ali Shah,
DMS Store and Maintenance,
Institute of Kidney Diseases
Hayatabad Peshawar.
Cell #0333-9152711

-15- "D" "9"

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

WRIT PETITION NO 32 P 2013



- 1. Muhammad, Plaintiff
Bajaur Public School Bajaur Agency
- 2. Khalid Ahmed, SET,
Bajaur Public School Bajaur Agency.
- 3. Syed Jehanzeb, SET,
Bajaur Public School Bajaur Agency.
- 4. Ishaq 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,

REGISTRAR
PESHAWAR
2013

ATTESTED
EXAMINER
Peshawar High Court

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No. 3221-P/2013

-16-



JUDGMENT

Date of hearing: 01.03.2018

Petitioner(s): By Muhammad Asif Jodhrai Advocate

Respondent(s): By Moinuddin Hanif Khan Mansoori - FATA A.S.

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.

ATTESTED

EXAMINER
Peshawar High Court

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-17-

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

ATTESTED
 EXAMINER
 Peshawar High Court



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~~5~~

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-11 (Service Qualifying for Pension) of Civil

M

ATTESTED
EXAMINER
Peshawar High Court

-19- -33- -96-
~~53~~

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.

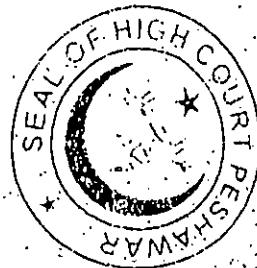
7. The abovementioned rule admittedly shall be applied to the case of petitioners as they were appointed on the conditions applicable to the Civil Servants. This court in Writ Petition No. 1188-P/2014 titled "Baghi Shah Versus The Govt. of KPK through Secretary Finance, Peshawar and two others, decided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

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

ATTESTED

EXAMINER
Peshawar High Court

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.

Announced
Dated: 01/03/2018

JUDGE

JUDGE

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EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 174 of
The Constitution of Pakistan

17 JUL 2020

No. 1944
Date of Presentation of Application 16/7/22
No of Pages 7
Copying fee 16
Total 28 + 26 = 54
Date of Preparation of Copy 17/7/22
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-73-22

ANNEXURE

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

~~88~~



Present:
Mr. Justice Mushir Alam
Mr. Justice Maqbool Baga

Civil Appeal No. 1536 of 2013
Against Judgment dated 09.5.2013 of
Islamabad High Court, Islamabad, passed in
Writ Petition No. 39 of 2013.

Ministry of Communication & another

Appellant(s)

VERSUS

Muhammad Waseem Khan & another

Respondent(s)

For the Appellant(s): Mr. Abdul Rashid Awan, DAG
Malik Shakeel Ur Rehman, ASC

For Respondent No. 1: In person

For Respondent No. 2: Ex. Parte

Date of Hearing: 03.02.2016

JUDGMENT

Mushir Alam, J. Through this appeal, the appellants have impugned the judgment dated 09.05.2013 passed by a learned Single Judge in Chambers in the High Court, whereby Writ Petition No. 39 of 2013 filed by respondent No. 1 Muhammad Waseem Khan was accepted to the extent that "the period spent on duty in any capacity with the respondent be counted for the purpose of pension".

2. The respondent Muhammad Waseem Khan while working as an Assistant Enumerator (BS-5) in National Transport Research Centre, Planning & Development Division, Government of Pakistan, Islamabad, along with others was sent on forced leave without pay by the department for delay in release of funds by NHA vide letter dated 26.12.1993. Some of them were later on adjusted by the appellants in one way or the other, however, the respondent despite his request was not

ATTESTED

[Handwritten Signature]

Court Associate
Supreme Court of Pakistan

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Mushir Alam
Mr. Justice Maqbool Baqar

Civil Apperl No.1536 of 2013

Against Judgment dated 09.5.2013 of Islamabad High Court,
Islamabad, passed in Writ Petition No.39 of 2013.

Ministry of Communication & another Appellant(s)
VERSUS
Muhammad Waseem Khan & another Respondent(s)

For the Appellent (s): Mr. Abdul Rashid Awan, DAG
Malik Shakeel Ur Rehman, ASC

For Respondent No.1: In person

For Respondent No.2: Ex. Parte

Date of Hearing: 03.02.2016

JUDGMENT

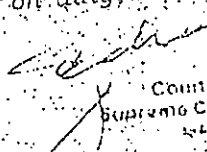
Mushir Alam J.- Through this appeal, the appellants have impugned the judgment dated 09.05.2013 passed by a learned Single Judge in Chambers in the High Court, whereby Writ Petition No.39 of 2013 filed by respondent No.1 Muhammad Waseem Khan was accepted to the extent that "*the period spent on duty in any capacity with the respondent be counted for the purpose of pension*".

2. The respondent Muhammad Waseem Khan while working as an Assistant Enumerator (BS-5) in National Transport Research Centre, Planning & Development Division, Government of Pakistan, Islamabad, alongwith others, was sent on forced leave without pay by the department for delay in release of funds by NHA, vide letter dated 26.12.1993. Some of them were later on adjusted by the appellants in one way or the other, however, the respondent despite his request was not

He moved the learned High Court through Writ
Petition No. 3448 of 2011 and a learned Single Judge in
Chambers in the High Court accepting his Writ Petition directed
the appellants to consider him for appointment in the light of
letter dated 11.8.2008, whereby certain officials were directed to
be reinstated into service in view of a judgment of this Court. In
compliance of the said order of the High Court, the appellants
issued letter dated 26.12.2012 appointing him afresh on regular
basis as an Assistant Enumerator (BS-5), however, with certain
terms and conditions. The respondent, feeling dissatisfied with
clause (g) of the letter of appointment, dated 26.12.2012, which
provided that "the period spent on contract by you if any will not
count for any purpose like promotion, pension and seniority etc"
again moved the High Court through Writ Petition No. 39 of
2013, which was accepted to the extent that "the period spent
on duty in any capacity with the respondent be counted for the
purpose of pension" vide impugned judgment dated 9.05.2013.
Hence, this Appeal with leave of the Court.

3. We have heard the learned Law Officer as well as
respondent No. 1 in person. We find that offer of appointment
was made pursuant to an order of the High Court, passed in
Writ Petition No. 3448 of 2011, dated 12.11.2012, which does
not provide for any term or condition injurious to the interest of
the respondent and clause (g) of the appointment letter, referred
to above, *prima facie* seems to be repugnant one. The learned
High Court did not commit any illegality or infirmity while
observing that "the period spent on duty in any capacity with the
respondent be counted for the purpose of pension" and instead it
was in consideration of Article 371-A of Civil Servants
Regulations, which *inter alia* provides that "any government
servant borne on temporary and officiating service followed by
confirmation which does not qualify for pension under the rules in
this section shall also count for pension or gratuity subject to the
exclusion of the broken periods of temporary or official service, if
any". We see that the learned Single Judge did not allow the
entire relief as claimed by the respondent through his prayer
clauses, but only to the extent of "the period spent on duty, in

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- 23 -

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

accommodated. He moved the learned High Court through Writ Petition No.3448 of 2011 and a learned Single Judge in Chambers in the High Court accepting his Writ Petition directed the appellants to consider him for appointment in the light of letter dated 11.8.2008, whereby certain officials were directed to be reinstated into service in view of a judgment of this Court. In compliance of the said order of the High Court, the appellants issued letter dated 26.12.2012 appointing him afresh on regular basis as an Assistant Enumerator (BS-5), however, with certain terms and conditions. The respondent feeling dissatisfied with clause (s) of the letter of appointment, dated 26.12.2012, which provided that the period spent on contract by you if any will not count for any purpose like promotion, pension and seniority etc" again moved the High Court through Writ Petition No.39 of 2013, which was accepted to the extent that "the period spent on duty in any capacity with the respondent be counted for the purpose of pension" vide impugned judgment dated 9.05.2013. Hence, this Appeal with leave of the Court.

3. We have heard the learned Law Officer as well as respondent No.1 in person. We find that offer of appointment was made pursuant to an order of the High Court, passed in Writ Petition No.3448 of 2011, dated 12.11.2012, which does not provide for any term or condition injurious to the interest of the respondent and clause (g) of the appointment letter, referred to above, prima facie seems to be repugnant one. The learned High Court did not commit any illegality or infirmity while observing that the period spent on duty in any capacity with the respondent be counted for the purpose of pension and instead it was in consideration of Article 371-A of Civil Servants Regulations, which inter alia provides that "any government servant borne on temporary and officiating service followed by confirmation which does not qualify for pension under the rules in this section shall also count for pension or gratuity subject to the exclusion of the broken periods of temporary or official service, if any". We see that the learned Single Judge did not allow the entire relief as claimed by the respondent through his prayer clauses, but only to the extent of the period spent on duty in

~~24~~ - 24 - 3

in the ~~any~~ capacity with the respondent be counted for the purpose of
ents to cons pension which does not call for any interference by this Court.

11.8.2008
ed into s 4. Furthermore, no substantial question of law of
of the public importance within the meaning of Article 212(3) of the
r date Constitution of Islamic Republic of Pakistan, 1973 has been
Ass raised. Accordingly, the appeal lacking in merits stands
con dismissed.

Sd/- Mushir Alam, J
Sd/- Maqbool Baqar, J
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12-2-16
Court Associate
Supreme Court of Pakistan
Islamabad

2652/1
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Compared by / s/ _____
Received by / s/ M. Shukkat, ASC

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- 24 -
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any capacity with the respondent be counted for the purpose of pension which does not call for any interference by this Court.

4. Furthermore, no substantial question of law public importance within the meaning of Article 212(3) of the of Constitution of Islamic Republic of Pakistan, 1973 has been raised. Accordingly, the appeal lacking in merits stands dismissed.

Sd/ - Mushir Alam, J.
Sd/ - Maqbool Baqar, J.

ISLAMABAD THE
3rd February, 2016

~~Regular Service Protected for~~
~~General Employees etc~~

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-42

BEFORE THE KHYBERPAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No 38/2011

Date of institution - 07.01.2011
Date of decision - 01.08.2011



Arshad Alam, Additional Government Pleader, Law Department, Khyber Pakhtunkhwa, Peshawar, Presently Assistant Director (Legal), Anti Narcotics Force, Peshawar (on deputation)..... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Law, Parliamentary Affairs & Human Rights Department Civil Secretariat, Peshawar.
2. Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
3. Secretary, Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar..... (Respondent)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR ISSUING APPROPRIATE DIRECTIONS TO THE RESPONDENTS TO COUNT THE SERVICE OF THE APPELLANT RENDERED IN PAKISTAN AIR FORCE TOWARDS THE PRESENT SERVICE AT LAW DEPARTMENT FOR THE PURPOSES OF PAY, PENSION/C.P FUND, GRATUITY AND OTHER ATTACHED SERVICE BENEFITS FOR WHICH APPELLANT FILED DEPARTMENTAL TO THE COMPETENT AUTHORITY ON 14.05.2010 BUT THE SAME WAS REJECTED AND COMMUNICATED TO APPELLANT VIDE LETTER DATED 08.12.2010.

Mr. Khalid Rehman Advocate..... For appellant
Mr. Sher Afgan Khattak, A.A.G..... For respondents

SYED MANZOOR ALI SHAH..... MEMBER.
MR KHALID HUSSAIN..... MEMBER.

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER:- This appeal has been filed by

the appellant for issuing directions to the respondents to count his service rendered in Pakistan Air Force towards the present service at Law Department for the purposes of pay, pension, C.P Fund, Gratuity and other attached service benefits.

Brief facts of the case are that the appellant joined the service of Law

Department as Additional Government Pleader on adhoc basis on 1.12.2005

ATTESTED
Khyber Pakhtunkhwa Service Tribunal
Peshawar

ATTESTED



Subsequently he was regularly appointed as such on 20.5.2009. He has served in Pakistan Air Force as Commissioned Officer (BPS-17) w.e.f. 28.7.2003 and retired on 30.9.2008. Under the law, the appellant is entitled for counting of his service performed in the Pakistan Air Force towards the present service in Law Department for service benefits. Therefore, the appellant preferred a departmental appeal but the same was rejected vide letter dated 8.12.2010. Hence, the instant appeal.

3. Arguments heard and file perused.

4. The learned counsel for the appellant argued that the respondents have not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully refused to count the previous service of appellant rendered in the Pakistan Air Force for the purpose of service benefits towards the present service in the Law Department, which is unjust, unfair and hence not sustainable in the eye of Law. Before joining the Law Department, the Pakistan Air Force had issued proper NOC to the appellant which was received by the Law Department, therefore, legally Respondents were required to count the Air Force service towards the service in Law Department but the Respondents have unlawfully refused to extend the benefits of the PAF service which has adversely affected the service career of appellant. Under Article 356 (a) of Civil Service Regulations (C.S.R), service so rendered by a person is to be considered for the purposes of Pay, Pension/C.P. Fund and Gratuity after joining the new service of the Government but the respondents have unlawfully refused the same, which cannot be sustained under the law. In support of his arguments he relied on 2008-PLC- (C.S) 482.

5. The A.A.G argued that the appellant was appointed on as-hoc basis vide order dated 01-12-2005 and later on was recommended by Khyber Pakhtunkhwa Public Service Commission vide Notification dated 31.05.2007. The appellant retired from Air Force and after retirement appointed on ad-hoc/contract basis as Asst. Government Pleader on 01-12-2008. The law provides continuity of service for reckoning the previous service for the purpose of financial benefits. Since appointment of the appellant lacks continuity, therefore he is not entitled to take advantage of his previous service.

ATTESTED
Khyber Pakhtunkhwa
Public Service Commission

ATTESTED
Khyber Pakhtunkhwa
Public Service Commission

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6. Keeping in view the facts and circumstances of the case the Tribunal while agreeing with the arguments put forth by the learned counsel for the appellant, accepts the appeal, sets aside the impugned order and directs the respondent department to count his PAF service with present service from 28.7.2003 for the purpose of pay, pension and other attached retirement benefits in light of Civil Service Regulation (C.S.R) No. 420 (h), 422 and 365 (a). The appellant will remit the amount of gratuity to the PAF, if received. The two months will be considered as leave without pay. The parties are, however, left to bear their own costs. File be consigned to the record.

ANNOUNCED
01.08.2011

(KHALID HUSSAIN)
MEMBER

(SYED MANZOOR ALI SHAFI)
MEMBER

Certified to be a true copy
Khalid Hussain
Secretary Tribunal,
Peshawar

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2021

Dr. Amjad Ali ShahAppellant

VERSUS

Growth & othersRespondent(s)

I, the undersigned, do hereby appoint and constitute,

Fazal Shah Mohmand Advocate Supreme Court & Rabia Muzaffar Advocate. To act, appear and plead in the above-mentioned matter and to withdraw or compromise the said matter or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said matter and to receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said matter.

1. To draft and sign files at necessary pleadings, applications, objections, affidavits or other documents as shall be deemed necessary and advisable for the prosecution of the said matter at all its stages.
2. To employ any other Legal Practitioner, authorizing him to exercise the power as conferred on the undersigned Advocate, wherever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the above matter. I also hereby agree not to hold the Advocate or his substitute responsible for the result of the said matter in consequence of his absence from the Court when the said matter is called up for hearing. I further hereby agree that in the event for the whole or any part of the fee to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the above matter. Received by me on 06/10/21

CLIENT(S) Dr. Amjad Ali Shah

Dr. Amjad Ali Shah

ACCEPTED BY:

Fazal Shah Mohmand
ADVOCATE,
SUPREME COURT OF PAKISTAN,

&

ACCEPTED BY:

Rabia Muzaffar
ADVOCATE PESHAWAR

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2023

Dr. Anjied Ali Shah

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Department

(RESPONDENT)
(DEFENDANT)

I/We Dr. Anjied Ali Shah

Do hereby appoint and constitute **MIR ZAMAN SAFI, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 22 / 05 / 2023



CLIENT


ACCEPTED
MIR ZAMAN SAFI
ADVOCATE

OFFICE:

Room No.6-E, 5th Floor,
Rahim Medical Centre, G.T Road,
Hashtnagri, Peshawar.
Mobile No.0333-9991564
0317-9743003

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

SERVICE APPEAL NO. 7591/2021

Dr. Amjid Ali Shah.....Appellant

Versus

Government of Khyber Pakhtunkhwa & others Respondents

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2	Affidavit		3

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

SERVICE APPEAL NO. 7591/2021

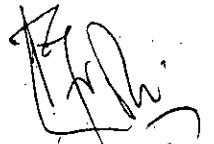
Dr. Amjid Ali Shah.....Appellant

Versus

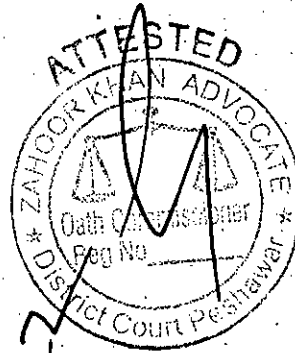
Government of Khyber Pakhtunkhwa & othersRespondents.

Affidavit

I, Jaffar Ali, Assistant (Litigation Section) office of the Director General Health Services, Khyber Pakhtunkhwa, Peshawar, under the directions of the Competent Authority, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondent are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Court.



Deponent



10/5/22

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
SERVICE APPEAL NO. 7591 OF 2021

Dr. Amjid Ali Shah.....Appellant

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 4

Respectfully Sheweth:

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 this Honorable Tribunal with clean hands.
7. That the appeal is barred by law and limitation.
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.
10. That the Honorable Service Tribunal has already dismissed similar nature appeals vide its judgment dated 12/11/2019 in Service Appeals Nos 318/18 titled Alif khan & others vs Govt. hence the instant appeal is hit by Rule 23 of the Khyber Pakhtunkhwa Service Tribunal Rules.

ON FACTS:

1. Pertains to record.
2. Pertains to record. However it is worth mentioning that the appellant was regularized according to the judgment of the Peshawar High court. However if he was aggrieved from the regularization Notification he should have filed COC before the court.

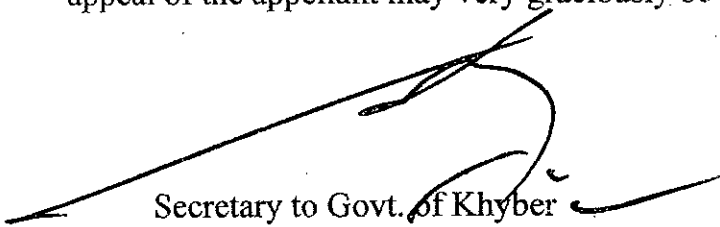
- 3. Pertains to record.
- 4. The appellant was appointed as Medical Officer (BPS-17) on contract basis on 26/11/1995. His services were regularized under Khyber Pakhtunkhwa Civil Servant (Amendment) Act, 2005 read with Act 2013 w.e.f. 01/07/2001. As regard his contract service from 26/11/1995 to 30/06/2001 is concerned it cannot be regularized for the purpose of pension / seniority, as per existing rules.
- 5. As in preceding para.

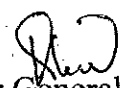
ON GROUNDS:

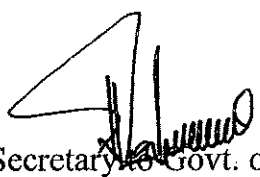
- A. Incorrect no illegal action has been taken by the replying respondents.
- B. Incorrect. No violation of Law and rules has been done in the instant case.
- C. As per paras Above.
- D. Incorrect. Already explained in para 4 above.
- E. Already replied in preceding para.
- F. Incorrect. No violation of the Constitution of Islamic Republic of Pakistan, 1973 and law of the land have been committed by the replying respondents.
- G. Incorrect as stated in above paras.
- H. Incorrect. No right of the appellant has been snatched.
- I. Incorrect. The services of the appellant has been regularized w.e.f. 01/07/2001 and not yet completed 25 years of regular services.
- J. Answering respondent also seek prior permission of this Honorable Court to adduce additional grounds at the time of arguments.

PRAYER:

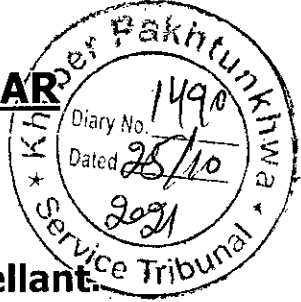
It is therefore humbly prayed that on acceptance of the comments, the instant appeal of the appellant may very graciously be dismissed with costs.


 Secretary to Govt. of Khyber
 Pakhtunkhwa Health Department
 Respondent No. 01 & 04


 Director General Health Services
 Khyber Pakhtunkhwa
 Respondent No. 02


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

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR



S. A. No. 7591 /2021

Dr Amjid Ali ShahApplicant/Appellant.

VERSUS

Govt. of KP and othersRespondents.

APPLICATION FOR EARLY HEARING OF THE TITLED SERVICE APPEAL.

Respectfully Sheweth;

1. That the above titled service appeal is filed before this August Tribunal and is fixed for preliminary hearing on 17.12.2021.

2. That case of the appellant is an old issue and the date fixed for hearing is too far.

3. That, appellant is at the verge of retirement and by fixing the hearing in a too far date would definitely effect the nature of the case

4. That fixing an early date is in interest of justice and there is no hurdle in fixing an early date in the above titled appeal, besides if any early date is not fixed in the titled appeal, the service appeal would lose its purpose and would become infructuous.

It is therefore, prayed, that on acceptance of this application, the above titled service appeal may kindly be fixed for an early date.

DATED: 25-10-2021

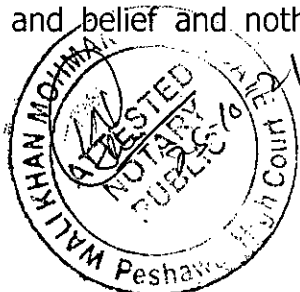
APPLICANT/ APPELLANT

THROUGH:

**FAZAL SHAH MOHMAND
ADVOCATE SUPREME COURT**

AFFIDIVAT

I, **Dr Amjid Ali Shah (applicant/ appellant)**, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



DEPONENT

Put up to the worthy chairman with appeal.

Length
Fix in 2nd week of Nov, 2021