

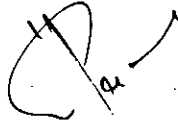
Order

24.09.2019

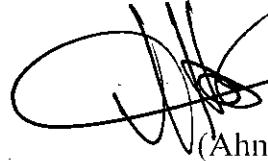
Appellant with counsel present. Mr. Farhaj Sikandar, DDA alongwith Mr. Abbas, Revenue Officer and Mr. Khalil, SI for respondents . Arguments heard and record perused.

This appeal is also dismissed as per detailed judgment of today placed on file in service appeal No. 886/2012 titled "Syed Munir Hussain Shah-vs-The Secretary to Government of Khyber Pakhtunkhwa, Irrigation Department, Peshawar and five others." Parties are left to bear their own cost. File be consigned to the record room.

Announced:
24.09.2019



(Muhammad Hamid Mughal)
Member




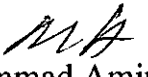
(Ahmad Hassan)
Member
Camp Court D.I.Khan

Service Appeal No. 1071/2016

24.06.2019

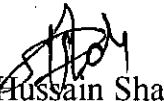
Counsel for the appellant and Mr. Farhaj Sikandar, District Attorney alongwith Mr. Attaullah, S.I (Legal) for the respondents present. Learned counsel for the appellant submitted rejoinder and requested for adjournment for arguments. Adjourned to 26.08.2019 for arguments before D.B at Camp Court D.I.Khan.



(Hussain Shah)
Member
Camp Court D.I.Khan


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

26.08.2019

Appellant in person and Mr. Farhaj Sikandar, District Attorney alongwith M/S Kashif, Inspector and Khalil Ahmad, S.I (Legal) for the respondents present. Due to general strike on the call of Pakistan Bar Council, learned counsel for the appellant is not available today. Adjourned to 24.09.2019 for arguments before D.B at Camp Court D.I.Khan.


(Hussain Shah)
Member
Camp Court D.I.Khan

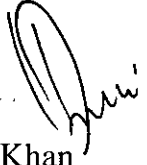

(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

21.01.2019

Appellant in person and Mr. Farkhaj Sikandar, District Attorney alongwith Mr. Muhammad Anwar, Deputy Collector and Mr. Khalid Nawaz, Inspector (Legal) for respondents present.


Due to general strike on the call of Khyber Pakhtunkhwa Bar Council the matter is adjourned to 26.02.2019 for arguments before D.B at camp court, D.I.Khan.



Member


Chairman
Camp Court, D.I.Khan

26.02.2019


Appellant in person present. Learned counsel for the appellant is not in attendance. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Khalid Nawaz, Inspector (Legal) for the respondents present. Appellant seeks adjournment. Adjourn. To come up for arguments on 22.04.2019 before D.B at Camp Court D.I.Khan.



(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan


(M. Hamid Mughal)
Member
Camp Court D.I.Khan

22.04.2019

Learned counsel for the appellant and Mr. Farhaj Sikandar, District Attorney alongwith Mr. Khalid Nawaz Inspector (Legal) for the respondents present. Learned counsel for the appellant seeks adjournment to furnish rejoinder. The present appeal pertains to the year 2016 hence, last opportunity is granted to learned counsel for the appellant for arguments. Adjourn. To come up for rejoinder and arguments on 24.06.2019 before D.B at Camp Court D.I.Khan.

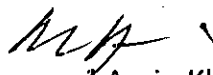

(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan


(M. Hamid Mughal)
Member
Camp Court D.I.Khan

Service Appeal No. 1070/2016

26.11.2018

Appellant in person present. Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Anwar Alam, Deputy Collector for the respondents present. Written reply on behalf of respondent No. 6 has already submitted. Written reply on behalf of respondents No. 1 to 5 submitted today. Copy of the same handed over to the appellant. Adjourned. To come up for rejoinder and arguments on 18.12.2018 before D.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan


18.12.2018


As per direction of the worthy Chairman Khyber Pakhtunkhwa Service Tribunal, D.I.Khan tour dated 18.12.2018 has been rescheduled and the case is re-fixed for 27.12.2018.


Reader

27.12.2018

Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment to furnish rejoinder. Adjourned. To come up for rejoinder and arguments on 21.01.2019 before D.B at Camp Court D.I.Khan.


(Hussain Shah)
Member
Camp Court D.I.Khan


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

28.06.2018

Tour is hereby cancelled, Therefore the case is adjourned for the same on ~~01.08~~ 2018 before S.B.


Reza
Camp Court D.I Khan


~~01.08~~ 2018

Appellant present in person. Tour is hereby cancelled. Therefore the Case is adjourned for the same on ~~10.09~~ 2018 before S.B.


Reza
Camp Court D.I Khan

10.09.2018

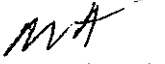
Appellant in person and Mr. Ziaullah, Deputy District Attorney for the respondents present. Representative of the department is not in attendance therefore, fresh notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Adjourned. To come up for written reply/comments on 26.11.2018 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

Service Appeal No. 107/2016


22.02.2018

Appellant in person present. Mr. Usman Ghani, District Attorney alongwith Mr. Anwar Alam, Deputy Collector for the respondents also present. Written reply on behalf of respondent No. 6 has already submitted. Written reply on behalf of respondents No. 1 to 5 not submitted despite last opportunity. Learned District Attorney requested for further adjournment. Another last opportunity granted. Adjourned. To come up for written reply/comments on behalf of respondents No. 1 to 5 on 15.03.2018 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

15.03.2018

Counsel for the appellant and Mr. Ziaullah, DDA alongwith Mr. Kifayat Ullah, Zilladar for respondents present. Written reply not submitted despite last opportunities. Requested for further adjournment. Last opportunity further extended subject to payment of cost of Rs. 500/- which shall be borne by respondents from their own pockets. To come up for written reply on 28.06.2018 before S.B at camp court D.I.Khan.


(Ahmad Hassan)
Member
Camp Court D.I.Khan

30.11.2017

Appellant in person present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muslim Din, SDO for the respondents also present. Written reply on behalf of respondent No. 6 has already submitted. Written reply on behalf of respondents No. 1 to 5 not submitted. Learned District Attorney requested for further adjournment. Adjourned. To come up for written reply/comments on behalf of respondents No. 1 to 5 on 25.01.2018 before S.B at Camp Court D.I.Khan.



(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

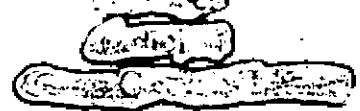
25.01.2018

Appellant in person present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Abbas Ishrat, Inspector for the respondents also present. Written reply on behalf of respondent No. 6 has already submitted. Written reply on behalf of respondents No. 1 to 5 not submitted. Learned District Attorney requested for further adjournment. Last opportunity granted. Adjourned. To come up for written reply/comments on behalf of

~~37.99.2017~~

~~respondents No. 1 to 5, on 22.02.2018 before S.B at Camp Court D.I.Khan. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 30.11.2017 before S.B at Camp Court D.I.Khan.~~


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan



Service Appeal No. 1071/2016

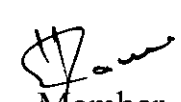
26.07.2017

Appellant in person present. Mr. Farhaj Sikandar, District Attorney for the respondents also present. Representatives of respondent-department are not in attendance, therefore, fresh notice be issued to respondents No. 1 to 6 with the direction to direct the representative to attend the court on the next date positively. Adjourned. To come up for written reply/comments on 27.09.2017 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

27.09.2017 Appellant in person present and Mr. Farhaj Sikandar, District Attorney for the respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 30.11.2017 before S.B. at Camp Court D.I.Khan.


Report
Q. No. 1071/2016


Member
(Judicial)
Camp Court D.I.Khan

25.01.2017

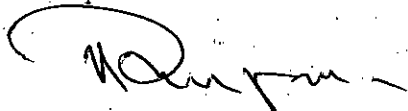
Learned counsel for appellant present. He requested that in other service appeal titled "Munir Hussain Shah-vs-Secretary Irrigation" against the same impugned order the service appeal has been admitted with subject to decide the matter of limitation at the time of final arguments so, the facts of the instant service appeal animating from the same impugned order are similar to the already admitted service appeal and hence may kindly be admitted. The request seems proper. In the interest of justice as the points raised need consideration. The service appeal is admitted subject to clarification of limitation at the time of final arguments. The appellant is directed to deposit the security and process fee within 10 days thereafter notice be issued to the respondents for written reply/comments for 22.02.2017 before S.B at Camp Court D.I.Khan.

Appellant Deposited
Security & Process Fee


ASHFAQUE TAJ
MEMBER
Camp Court D.I.Khan

22.02.2017

Appellant in person and Mr. Anwar Alam, Deputy Director alongwith Mr. Farhaj Sikandar, Government Pleader for respondents present. Representative of respondent-department requested for time for submission of written reply. Request accepted. To come up for written reply/comments on 29.03.2017 before S.B at Camp Court D.I.Khan.


(ASHFAQUE TAJ)
MEMBER
Camp Court D.I.Khan

29.03.2017




Since tour is hereby cancelled, therefore, the case is adjourned for the same on 26.07.2017.


Reader

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1071/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20/10/2016	<p>The appeal of Mr. Khizar Khayat resubmitted today by post through Mr. Muhammad Saeed Bhutta 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>2-</p> <p>This case is entrusted to Touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>28.11.16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>28.11.2016</p> <p>Since D.I.Khan tour dated 28.11.2016 has been cancelled, therefore, case to come up for preliminary hearing on 23.01.2017 before S.B at Camp Court D.I.Khan.</p> <p style="text-align: right;"> Reader</p>

The appeal of Mr. Khizar Hayat son of Allah Diwaya r/o Seger Tehsil and Distt. D.I.Khan received today i.e. on 06.10.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- According to the statement of the appellant recorded in para-5 and 6 in the memo of appeal that appellant made/preferred departmental appeal on dated 6/10/2011(Annexure-E) which was partially accepted on dated 29/8/2011(Annexure-F). How can it possible that decision was made much before preferring the departmental appeal?
- 2- Addressess of respondent no. 5 & 6 are incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3- Law under which appeal is filed is not mentioned.
- 4- Annexures of the appeal may be flagged.
- 5- Sub-rule-3 of rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974 requires that every memorandum of appeal shall be presented to the Tribunal in file covers.

No. 1652 /S.T,

Dt. 07/10 /2016

Registrar
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Saeed Bhutta Adv.
High Court Dera Ismail Khan.

Respected Sir.

*All The objects are meet out.
impugned order is 29-8-2011
by which our departmental
appeal dated 6-10-2011 was
partially accepted in which our*

Service was Regularized but

Right of Pension was denied against

which impugned appeal is Submitted

Dated 18-10-2016 *M. Saeed Bhutta*
Advocate Hkonal

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL, PESHAWAR

In Service Appeal No. 1071 /2016

Khizar Hayat Appellant

Versus

The Secretary to Government of Khyber Pakhtunkhwa,
Irrigation Department, Peshawar and others.

..... Respondents

SERVICE APPEAL

INDEX

S.No.	Description of document	Annexure	Pages
1	Memo and grounds for appeal along with application for condonation of delay	--	1-7
2	Copy of GP/FC No. 199	A	8-9
3	Copy of order dated 11/04/2007	B	10
4	The copies of the LPC, reliving letter and all other relevant documents	C	11-14
5	Copy of departmental appeal	D	15-17
6	Copy of notification dated 29/08/2011	E	18-20
7	Vakalatnama	--	21

Dated: 4 /10/2016

Your Humble Appellant


Khizar Hayat

Through Counsel


Muhammad Saeed Bhutta
Advocate High Court

P. ①

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL, PESHAWAR

In Service Appeal No. 1071/2016

Khizar Hayat Appellant

Versus

The Secretary to Government of Khyber Pakhtunkhwa,
Irrigation Department, Peshawar and others.

..... Respondents

SERVICE APPEAL

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

The appellant humbly submits as under,

1. That the above titled service appeal is being filed before this honourable Tribunal.
2. That in above titled appeal, appellant challenged the virus of the order dated 29/08/2011 bearing No. SO(E)IRR/4-6/2000 passed by the worthy Secretary Govt. of Khyber Pakhtunkhwa, Irrigation Department Peshawar, where appellant services were declared on contract basis and denied the pension benefits in spite of the fact that petitioner was posted as process server in District Judiciary D.I.Khan on the regular basis and during his job in the District Judiciary, appellant applied through proper channel for the post of Patwari BPS-05 in Irrigation Department D.I.Khan and appointed vide order dated 11/04/2007.
3. That after assigning new job in the Irrigation Department, impugned order No. SO(E)IRR/4-6/2000 dated 29/08/2011 was communicated by the Irrigation Department, in which it was stated that appellant's services were regularize but benefits of pensions and gratuity were denied.
4. That feeling aggrieved by the above cited order, ^{Dated} 29/8/2011, appellant preferred departmental appeal before

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P. 2

the worthy Secretary to the Irrigation Department Peshawar through proper channel.

5. That when the appellant conveyed the impugned order cited above appellant preferred his appeal to the respondent No. 1 which is well within time.
6. That the appellant could not cause delay in filing his departmental appeal but the same was done as the impugned order was communicated to the appellant because the said order was not addressed to the appellant but it was addressed to the department. In this context applicant's appeal is well within time and if any delay is occurred on the face of the record if occurred may kindly be condoned.
7. That the acceptance of this application is the interest of justice because appellant's valuable rights are involved in the above titled appeal.

In the light of the above facts and circumstances, the delay (if occurred on the face of the record) may, graciously be condoned in the interest of justice.

Dated: 4 /10/2016

Humble Appellant

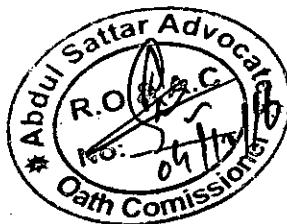

Khizar Hayat
Through Counsel


Muhammad Saeed Bhutta
Advocate High Court

AFFIDAVIT

I, **Khizar Hayat**, the appellant, do hereby solemnly affirm and declare on oath that contents of above application are true & correct to the best of my knowledge and that nothing has been concealed from this Honourable Court.

Dated: 4 -10-2016



DEPONENT



P-3

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA

SERVICES TRIBUNAL, PESHAWAR

Khyber Pakhtukhwa
Service Tribunal

Service Appeal No. 1071/2016

Diary No. 1054

Dated 6/10/2016

Khizar Hayat son of Allah Diwaya r/o Seger, Tehsil &
District Dera Ismail Khan.

.....(**APPELLANT**)

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa, Irrigation Department, Peshawar.
2. The Chief Engineer (South) Irrigation Department, Peshawar.
3. The Chief Engineer North Irrigation Department, Peshawar.
4. The Superintending Engineer Head Quarter South Irrigation Department, Peshawar.
5. The Superintending Engineer, Irrigation Department, office Opposite High Court D.I.Khan.
6. Senior Civil Judge, Dera Ismail Khan through clerk of Court. Office Address Near Govt. Degree College No. 1, Dera Ismail Khan.

Filed to-day

..... (**RESPONDENTS**)

Registrar

APPEAL U/S 4 OF KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER 29/08/2011 BEARING NO.
SO(E)IRR/4-6/2000 PASSED BY THE WORTHY
SECRETARY TO GOVERNMENT OF KHYBER
PAKHTUNKHWA, IRRIGATION DEPARTMENT, PESHAWAR
WHEREBY APPELLANT SERVER WERE DECLARED ON
CONTRACT BASIS, IN SPITE OF THE FACT THE
APPELLANT WAS POSTED AS PROCESS SERVER IN THE
DISTRICT JUDICIARY D.I.KHAN ON REGULAR BASIS AND

Re-submitted to -day
and filed.

Sandesh
20-10-16
Registrar

P.4

THROUGH PROPER CHANNEL AS PATWARI ON 11/04/2007 BUT AS PER IMPUGNED ORDER CITED ABOVE PETITIONER'S SERVICES WAS REGULARIZED BUT BENEFITS OF PENSION AND GRATUITY WAS DENIED.

Respectfully Sheweth, The Appellant humbly submits as under;

1. That the appellant joined service in the District Judiciary D.I.Khan and was appointed as Process Server in District Judiciary D.I.Khan on 26/09/1996, as a permanent Government servant and was also allotted a proper G.P Fund No. GP/FC NO. 199 and was regularly contributing Rs. 100/- per month towards Appellant G.P. Fund accounts. Copy of GP/FC No. 199 are enclosed as **Annexure-A.**

2. That since the appellant was a trained Patwari, therefore, the appellant applied through proper channel to the Executive Engineer, Paharpur Irrigation Division, D.I.Khan for his appointment as Patwari in the Irrigation Department, D.I.Khan and consequently on the recommendations of the Departmental Selection Committee, Appellant appointed as Patwari in the Irrigation Department, D.I.Khan vide order No. 1720-26/118-E, dated 11/04/2007, issued by the Executive Engineer, Paharpur Irrigation Division, D.I.Khan. Copy of order dated 11/04/2007 is enclosed as **Annexure-B.**

3. That in order to join new assignment, the Appellant left the service of the District Judiciary D.I.Khan on 17/04/2007 vide office No. 310-12/SCJ, and joined the service as Patwari Irrigation in the Irrigation Department, D.I.Khan just thereafter. The copies of the LPC, reliving orders and all other relevant documents are enclosed as **Annexure-C.**

P-5

orders and all other relevant documents are enclosed as **Annexure-C.**

4. That since the Appellant was a permanent Government servant and had served the District Judiciary D.I.Khan on permanent basis for a considerable long period of at about 11 years, therefore, the Worthy Executive Engineer, Paharpur Irrigation Division D.I.Khan was legally obliged to have issued the Appellant's appointment orders on permanent basis but he erroneously ordered Appellant's appointment on contract basis and therefore, deprived the appellant from all kinds of service benefits including pension and gratuity.
5. That dissatisfied with the order dated 29/08/2011 of the respondent No. 1, in which appellant's service was regularized but benefits of pension and gratuity denied, Appellant preferred an appeal to the respondent No. 1 through proper channel. Copy of departmental appeal is enclosed as **Annexure-D.**
6. That respondent No. 1 vide order No. SO(E)/IRR/4-6/2000 dated 29/08/2011, was pleased to accept the appeal partially and regularized the service of the appellant as Patwari (BPS-09) of Paharpur Irrigation Division, D.I.Khan w.e.f the commencement of the NWFP Employees (Regularization of Service) Act, 2009 bearing Notification No. PA/NWFP/Bills/2009/38472 dated 24/10/2009. However it was further ordered that service of the Appellant will be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and Rules made there under. Furthermore, appellant's departmental appeal dated 06/10/2011 was partially accepted in result of impugned order dated 29/08/2011 and resultantly the appellant partially aggrieved from the impugned order dated 29/08/2011 and in this respect appellant is going

Fund (C.P.F) along with contributions made, by Government to the Appellant accounts in the said fund, in the prescribed manner. Obviously these observations of respondent No. 1 are highly misconceived and incorrect.

8. That on the misconception of law, the appellant/petitioner submitted application for the impleadment of party in the similar case which is pending before your honour, titled "**Munir Hussain Shah Vs. Govt. of KPK etc**" and in the said titled case appellant challenged the virus of the impugned order but on 26/09/2016, the impleadment application by the appellant was withdrawn. *and due to this reason, now appeal is being filed.*
9. That the record shows that appellant was not a new recruit/employee rather Appellant's service was purely a transferred from one Government Department to another Government Department and Appellant had joined the service in the Irrigation Department in continuation of previous service in the District Judiciary D.I.Khan. Thus the services of the appellant can only be treated under the Khyber Pakhtunkhwa Civil Servants Act, 1973 and not by any other rules and regulations. Thus appellant's service in the District Judiciary D.I.Khan is countable towards all kinds of service benefits including pension and gratuity by the Irrigation Department of Khyber Pakhtunkhwa.

It is, therefore, respectfully prayed that the impugned order No. SO(E) IRR/4-6/2000 dated 29/08/2011 issued by the respondent No. 1 may graciously be reviewed and the observations made by respondent No. 1 in the above cited impugned order may graciously be expunged/deleted and on the acceptance of this appeal the Appellant may please be held entitled to receive pension and gratuity from the dated of his first appointment in

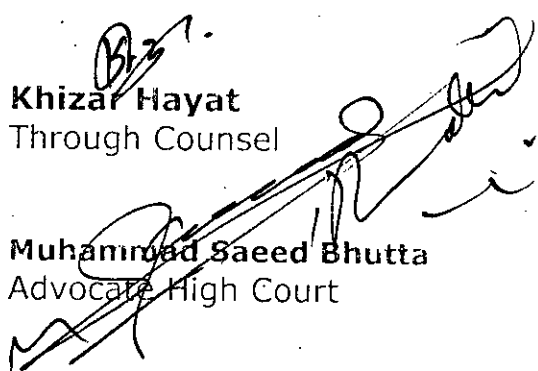
P. ⑦

District Judiciary Department and all matters of appellant service may please be dealt with in accordance with Khyber Pakhtunkhwa Civil Servant Act, 1973, and all the laws applicable to the Civil Servants and Rules made there under as given in Para No. 2 of the impugned order, to meet the ends of justice.

Dated: 4/10/2016

Your Humble Appellant


Khizar Hayat
Through Counsel


Muhammad Saeed Bhutta
Advocate High Court

AFFIDAVIT

I, **Khizar Hayat**, appellant herein, do hereby solemnly affirm on oath that all parawise contents of the accompanying appeal are true and correct to the best of my knowledge, belief and information; that nothing has been concealed or kept secret from this worthy Tribunal, nor anything contained therein is based on exaggeration or distortion of facts.

Dated: 4/10/2016

DEPONENT





Ans (A) 8

Detailed Pay Bill of Permanent Establishment of the

Personal NO:00193475.

OFFICE OF THE SENIOR CIVIL JUDGE, DERA ISMAIL KHAN

For the month of 1/4/2007 to 17/4/2007 20

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<p>Classified Rs. pay.....3060/-</p> <p>Objected Rs. H/Rent....645/-</p> <p>M. Allowance 425/-</p> <p>S.A.A. 311/-</p> <p>SRA..... 380/-</p> <p>A.R..... 380/-</p> <p>D.A.....459/-</p> <p>Total Rs: 3206/-</p> <p>Net amount Rs:-.....3041/-</p>	<p>Reduction</p> <p>1734/-</p> <p>3657/-</p> <p>241/-</p> <p>176/-</p> <p>215/-</p> <p>215/-</p> <p>260/-</p> <p>3206/-</p> <p>3041/-</p>	<p>Head of Service Chargeable</p> <p>03-Public orders and Safety Affairs.</p> <p>031-Law Courts-0311-Law Courts.</p> <p>031101-Courts-Justice-Civil Courtss.</p> <p>(Process Serving Agency).</p> <p>(Deduction).</p> <p>GPFund.... 100/-</p> <p>B.Fund.... 25/-</p> <p>G.I..... 38/-</p> <p>G.I..... 2/-</p>	<p>Pay Rupees ()</p> <p>Cheque No.</p> <p>Auditor</p>	<p>Voucher No.</p> <p>List of payments for that the bill has not been drawn previously.</p> <p>2. Certified that the official has not been allotted any Govt: accomodation.</p> <p>Senior Civil Judge, Dera Ismail Khan</p>
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Name	Pay & acting allowance claimed (separately) for Government servants present on duty	Leave Salary claimed (separately) for absentees	Compensatory allowance	Pay action allowance or leave salary held over for future payments	Fines	Net Charge for each Section	G.P. Fund	Other Funds and miscellaneous reconvenes	Income Tax	Net Amount Payable	Remarks	Acquittance
Ras	3060/-	645/-	425/-	311/-	380/-	380/-	459/-					
1734/-	1734/-	3657/-	241/-	176/-	215/-	215/-	260/-	3206/-	100/-	257/-	38/- 2/-	3041/-

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Large handwritten signature and notes at the bottom of the page.

Name of Section and of Incumbant	Name Post	Pay & acting allowance claimed (separately) for Government servants present on duty	Leave Salary claimed (separately) for absentees	Compansatory allowance	Pay action allowance or leave salary held over for future payments	Fines	Net Charge for each Section	G.P. Fund	Other Funds and miscellaneous reconveries	Income Tax	Net Amount Payable	
		1734/-	365/-	241/-	176/-	2157	2157	260/-	3206/-	100/-	257	
Total.....											387- 21/-	301

Deduct: -- Undisbursed pay refunded, as detailed below

Net sum required for payment (in word and figures)

- Received contents also certified that I have satisfied myself that all emoluments included in bills drawn 1 month, 2 months, and previous to this date with the exception of those detailed below (of which the total has been refunded, by deduction from this bill) have been disbursed to the proper person, & that their receipts have been taken up and acquittance rolls filled in my office, with receipts stamp duly cancelled for every payment in excess of Rs. 20:3 months.
- Certified that no person in superior service has been absent either on deputation suspension or without leave (except on casual leave) during the month.
- Certified that all Officers whose names are omitted from but whose pay has been drawn in this bill have actually been entertained during the month.
- Certified that no leave has been granted until by reference to applicant's book and leave accounts and to the leave rules applicable to him. I had satisfied myself that it was admissible, and that all grants of leave and departure on the returns from leave and all period of suspension and deputation and other events which are required under the rules to be so recorded have been recorded in the service books and leave accounts under my initials.
- Certified that all appointments & permanent promotions & such of the acting promotions as have to be entered in the service book as per columns is the Standard Form No. 1, or have been entered in the service books of the persons concerned under my initials.

Sation

Dated:20

Signature and Designation of Head of Office

Detailed pay of absentees refunded.

Section of Establishment	Name	Period	Amount	Section of Establishment	Name	Period	Amount

Examined and Entered.

Treasury Accountant.

Dated: 20

Treasury Of



Amr (B) P-19

**OFFICE OF THE EXECUTIVE ENGINEER
PAHARPUR IRRIGATION DIVISION DERA ISMAIL KHAN**

No 1727-33/118-E
To

Dated DIKhan the 11/13/2007.

Mr. Khizer Hayat,
S/O Allah Diwaya R/O Segri,
District DIKhan,
C/O Senior Civil Judge DIKhan.

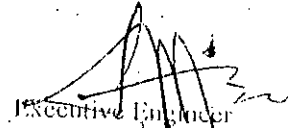
✓
Accepted

Subject: - APPOINTMENT ON THE POST OF PATWARI ON CONTRACT BASIS.

Consequent upon the recommendations of the Departmental Selection Committee issued vide this office order No: 1118/118-E dated 06.3.2007, you are hereby appointed on the subject post on contract basis as per Govt. policy in vogue in BPS-05 (2100-100-5100) plus usual allowances as admissible under the rules with effect from the actual date of arrival for duty on the following terms and conditions.

1. Your services will be on contract basis and will be purely temporary which can be terminated on 02 months notice or 02 months salary in lieu thereof.
2. The contract is initially for a period of three years which can be renewed and shall stand automatically terminated on the expiry of requirements.
3. You have to provide medical fitness certificate from the Medical Superintendent District Headquarter Hospital DIKhan.
4. Your services will be kept on probation period of one year to judge your efficiency.
5. You should produce 01 personal guarantor holding bank guarantee or Moveable/Immoveable property worth Rs: 10,00,000/- or 02 personal guarantors holding bank guarantee up to Rs: 5 Lac (5,00,000/- each or equivalent property on stamp paper as task of recoveries of abiana will be assigned to you in your respective Halqa and the guarantors will then be held responsible for any loss to Govt. of happened due to your actions.
6. Besides the above you must also produce the following documents :-
 - A. Domicile Certificate.
 - B. Qualification certificate.
 - C. National Identity Card.
 - D. Non Dismissal certificate.
 - E. You are also directed to produce your service record i.e. service book etc; within ten days positively. *to be*
 - F. A certificate will have been produced showing no disciplinary action taken against you and non imposing fine in the entire service.
 - G. You are further required to produce an undertaking on stamp paper worth Rs: 10/- duly attested by Oath Commissioner stating therein the acceptance of all the above noted terms and conditions.

If you accept the above mentioned terms and conditions then submit arrival report in this office within seven days of the receipt of this letter.


Executive Engineer
Paharpur Irrigation Division DIKhan

Copy to the:-

1. Chief Engineer (O&M) Irrigation Department N.W.F.P Peshawar.
2. Superintending Engineer, Southern Irrigation Circle Bannu.
3. District Accounts Officer DIKhan.
4. Deputy Collector, Paharpur Irrigation Division DIKhan.
5. Head Clerk (Local) Paharpur Irrigation Division DIKhan.
6. Divisional Accounts Officer (Local) Paharpur Irrigation Division DIKhan.

self
Executive Engineer
Paharpur Irrigation Division DIKhan

Annex C
 Pay stoped
 12-4-07
 1914

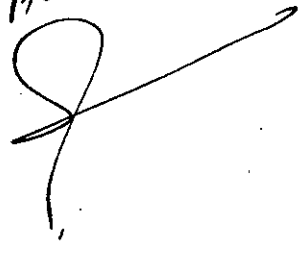
P.No 00193475

LAST PAY CERTIFICATE

1. Last Pay Certificate of Mr. Ichygor Hajari Process Server
 of the Senior Civil Judge Dera
 Proceeding from Transfer to Irrigation Deptt.
 to

2. He has been paid upto 17-04-2007 ✓
 at the following rates :-

Particulars.	Rate
Substantive Pay	3060/- pm
Officiating Pay	645/- "
Exchange Compensation Allowance	425/- "
	311/- "
	380/- "
	380/- "
	459/- "
	5660/- pm

Mustafa


GAFA No. 15-NI-DIK-199-03

3. He made over charge of the Office of the Process server
 on After noon of 17-04-07

- Recoveries are to be made from the pay of the Government servant as detailed on the reverse.
- He has been paid leave salary as detailed below Deductions have been made as noted on the reverse.

Period	Rate	Amount
From _____ to _____	at Rs _____	a month
From _____ to _____	at Rs _____	a month
From _____ to _____	at Rs _____	a month

- He is entitled to draw the following :-
- He is also entitled to joining time for _____ days.
- The detailed to the Income-tax recovered from him up to the date from the beginning of the current year noted on the reverse.

Dated at

(Signature)
 (Designation) Senior Civil Judge
 Dera Ismail Khan

12

REVERSE

Details of Recoveries

Name of recovery NIL

Amounty Rs. NIL

To be recovered in NIL instalments.

Deduesions made from Leave Salary

From - to - on account of - Rs -

From - to - on account of - Rs -

From - to - on account of - Rs -

Signature

Stamp

Name of Months	Pay	Gratuity Fee, etc.	Funds and other deductions	Amount of Income tax recovered	Remarks
July,					
August,					
September,					
October,					
November,					
December,					
Jaunary,					
Februry,					
March,					
April,					
May,					
June,					

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The Xen Irrigation,
Paharpur Division,
D. I. Khan.

Attested
[Signature]

Through Proper Channel.

Subject: - Application for interview for the post of Patwari Irrigation, Paharpur Division.

Respected Sir,

With due respect and most humble submission it is very respectfully submitted that I have come to know through an advertisement published in Daily Newspaper that some post of Patwaris Irrigation in Paharpur Division for which I beg to offer my services for one of the same and hope that my this application will be considered sympathetically and favourably in the interest of justice. I submit some lines for your kind perusal detail of which is given as under:-

- 1- That at present I am working as Process Server in the Court of Learned Senior Civil Judge, D. I. Khan since 26.9.1996 and my service remained satisfactory upto now.
- 2- That I am a young man and in near future there is no any scope for my Promotion as the strength of Process Servers is very huge, no in this very reason I am applying through Proper Channel.
- 3- That I, the applicant is well educated upto F.A. and have the experience of Official duties in all respect. Copy of Certificate is enclosed for your kind perusal please.

Therefore, it is humbly prayed that on acceptance of instant application I may very graciously be allowed to take an interview and may kindly be posted as Patwari Irrigation Paharpur Division, in the interest of justice and obliged please.

Yours Sincerely,

Dated 15.2.2007.

[Signature]
(Khyzar Hayat, Process Server)
to Senior Civil Judge, D.I. Khan
son of Allah Dewaya resident of
Village Segra Tensil Paharpur
District, D. I. Khan.

no. 150 /S.C.J., Dated D.I. Khan the 16/2/2007.
Office of the Senior Civil Judge, D. I. Khan.

Forwarded in original to the Xen Irrigation Paharpur Division, D.I. Khan for favourable consideration and necessary action.

Senior Civil Judge,
D. I. Khan,
Dera Ismail Khan.

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OFFICE OF THE SENIOR CIVIL JUDGE, D.I.KHAN.

No. _____/SCJ.
Dated D.I.Khan the 17/04/2007.

ORDER:

Consequent upon the application dated 14/04/2007, Mr. Khizar Hayat son of Allah Diwaya, posted as Process Server in the establishment of undersigned, is hereby relived from his duties as Process Server with effect from today i.e. 17/04/2007 (afternoon), enabling him to join his new posting/appointment as Patwari in Irrigation Department, D.I.Khan, vide No.1727-33/118-E dated 11/04/2007.

Sd/-
Senior Civil Judge,
Dera Ismail Khan.

Encls: No. 310-12/SCJ. Dated D.I.Khan the 17/04/2007

Copy forwarded to the:

1. The Executive Engineer, Pahalpur Irrigation Division, D.I.Khan.
2. The District Accounts Officer, D.I.Khan.
- ✓ 3. Official concerned.

Senior Civil Judge,
Dera Ismail Khan.

Admission
[Signature]

2064
01/11/11

To
The Secretary,
to Government of Khyber Pakhtunkhwa,
Irrigation Department, Peshawar

Through:- Proper Channel.

Subject:- Representatica.

Anx D
P-15

Respected Sir,

I have the honour to bring it in your kind notice that I was serving as Process Server in the office of Senior Civil Judge, DIKhan and had joined his service on 26/9/1996, as a regular employee of the Judiciary. Since I was a qualified Patwari therefore on the recommendatic of the Departmental Selection Committee I was appointed as Patwari in the Irrigation Departme vide order No. 1727-33/118-E, dated 11/4/2007, issued by the Executive Engineer, Faharpur Irrigation Division, D.I. Khan on contract basis. Copy of the order is enclosed.

Alusi
[Handwritten signature]

2. That in pursuance of the above order I was relieved my service as Process Server on 17.4.2007, by the Senior Civil Judge D.I. Khan vide his office No. 310-12/SCJ, dated 17.4.2007 as is evident from the entry made on my service and thereafter I joined my service as Patwari in the Irrigation Department, DIKhan. The copy of the service book is enclosed please

3. That since I was serving as permanent/regular employee in the Judiciary therefore I preferred an appeal before your kind honour through proper channel for regularization of my service.

4. That your goodself was kind enough to accept my humble appeal/request and vide order No. SO(E)IRR/4-6/2000 dated 29/8/2000 order for the regularization of my service as Patwari (BPS-5) in Faharpur Irrigation Divisi

Secy Irrigation

AS

PR. SPK
[Handwritten signature]

D.I. Khan from the commencement of the NWFP Employees (Regularization of Services) Act, 2009.

5. That although it was invariably mentioned in the said order that my services will be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and Rules made thereunder yet it was further said that though I will be for all intents and purposes a Civil Servant but I will not be entitled for purposes of pension and gratuity and instead will be entitled to receive such amount as would be contributed by me towards Contributory Provident Fund (C.P.F) alongwith the contributions made by Government to my accounts in the said fund in the prescribed manner. Copy of the order is enclosed please.

6. That obviously these observations are misconceived and incorrect and merits reversal on inter alia, the following grounds:-

GRUNDS.

i. That it stands established from the material available on record that I was a regular employee of the judiciary and was having about 11 years qualifying service at my credit.

ii. That it is an admitted fact that I was not a direct recruit but my appointment in the Irrigation Department was from one office to other office and was in continuation of my previous service in the Judiciary having joined through proper channel.

iv. That since my services were required to be dealt with under the Khyber Pakhtunkhwa Civil Servants Act, 1973, therefore, the provisions of NWFP Employees (Regularization of Services) Act, 2009 were not applicable to my case and my services

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Handwritten signature

were required to be regularized since the date of my joining service in the Irrigation Department D.I.Khan in April, 2007 and not from the commencement of the NWFP Employees (Regularization of Services) Act, 2009.

v. That similarly being a Civil Servant and an old permanent employee of the Judiciary having joined it on 26/9/1996, the embargo imposed against me that I will not be entitled to get pension and gratuity and in lieu therefore I will have to receive an amount which I had contributed towards Contributory Provident Fund (C.P.F.) etc is unjust and unfair.

In wake of the above submissions, it is respectfully prayed that on acceptance of this application/representation the impugned order dated 29/3/20011 issued by your kind honour may graciously be nullified/review and my services as Patwari in the Irrigation Department D.I.Khan be regularized from the date of joining my service in April, 2007 and I may please also be allowed pension and other benefits by contributing towards G.P.Fund instead of C.P.F, by applying the provisions of Khyber Pakhtunkhwa Civil Servants Act, 1973 to meet the ends of justice.

Your humble Petitioner

(Khizer Hayat) son of
Allah Dewani r/o Segra Tehsil
Paharpur District DIKhan Patwari
Paharpur Irrigation Divn. DIKhan.

9/-6.10.2011.

Through: -

(Muhammad Saeed Bhutta)
Advocate, High Court, DIKhan.



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Am #E

page

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Dated Peshawar the 29th August, 2011.

ORDER

No. SO(E)/IRR/4-6/2000. In pursuance of the North West Frontier Province Employees (Regularization of Services) Act, 2009 bearing Notification No. PA/NWFP/Bills/2009/38472 dated 24th October, 2009, the Competent Authority is pleased to regularize the services of the following contract appointees, Patwaris (BS-5) of Paharpur Irrigation Division, D. I. Khan, w.e.f the commencement of the above mentioned Act: -

- i. Syed Munir Hussain Shah.
- ii. Syed Maqbool Shah.
- iii. Mr. Khizar Hayat.
- iv. Mr. Azizullah.

Signature

2. under:-

Terms and conditions of their regular appointment will be as

- 1) They will get pay at the minimum of BPS-05 including usual allowances as admissible under the rule. They will also be entitled to annual increment as per existing policy.
- 2) They will be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and Rules made there-under.
- 3) They will, for all intents and purposes, be Civil Servants except for purpose of pension & gratuity. In lieu of pension and gratuity, and will be entitled to receive such amount as would be contributed by his towards Contributory Provident Fund (C.P.F). along-with the contributions made by Government to their accounts in the said fund, in the prescribed manner.
- 4) Their employment in the Small Dams Organization is purely temporary and their services are liable to be terminated without assigning any reason at fourteen (14) days notice or on the payment of 14 days salary in lieu thereof. In case they wish to resign at any time, 14 days notice will be necessary or in lieu thereof 14 days pay will be forfeited.
- 5) They will, initially, be on probation for a period of two years extendable upto 3 years.
- 6) Their seniority will be determined in accordance with relevant rules but subject to Section-4 of the NWFP Employees (Regularization of Services) Act, 2009.

Signature

Secretary to Govt. of Pakhtunkhwa
Irrigation Department

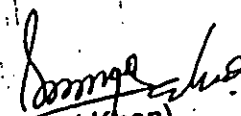
GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT



Endst. Of even no & date

Copy of the above is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
3. The Chief Engineer, (South), Irrigation Department, Peshawar.
4. The Chief Engineer, (North), Irrigation Department, Peshawar.
5. The Superintending Engineer (H/Q) South Irrigation Department, Peshawar.
6. The Superintending Engineer, D. I. Khan Irrigation Circle, D. I. Khan.
7. The Distt: Accounts Officer, D.I. Khan.
8. Officials concerned C/o XEN Paharpur Irrigation Division, D. I. Khan.
9. P.S to Secretary, Irrigation Department.
10. Master File.


(Misal Khan)
Section Officer (Establishment)

P-19

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 986/2012

Syed Munir Hussain Shah

Versus

The Secretary, Govt. of Khyber Pakhtunkhwa etc

[Signature]
[Signature]

SERVICE APPEAL

APPLICATION FOR THE IMPLEADMENT OF THE PETITIONER
AS APPELLANT IN THE ABOVE TITLED APPEAL

Respectfully Sheweth:

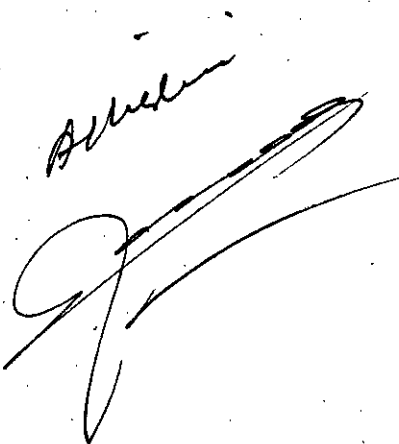
The petitioner humbly submits as under,

1. That the above titled service appeal is pending for adjudication before this honourable Tribunal and is fixed for today.
2. That in above titled appeal, appellant challenged the virus of the order dated 29/08/2011 bearing No. SO(E)IRR/4-6/2000 passed by the worthy Secretary Govt. of Khyber Pakhtunkhwa, Irrigation Department Peshawar, where appellant as well as the petitioner's services were declared on contract basis and denied the pension benefits to the petitioner in spite of the fact that petitioner was posted as process Server in the District Judiciary D.I.Khan on the regular basis and during his job in the District Judiciary petitioner applied for the post of Patwari BPS-05 through proper channel in Irrigation Department D.I.Khan and appointed/join the services in the light of orders mentioned above.
3. That petitioner applied in Irrigation Department through proper channel and posted in Irrigation Department with the permissions of the head of his previous department.


- 4. That the petitioner has submitted his departmental appeal against the order as mentioned above before the competent authority on 29/08/2011. All the relevant record is hereby enclosed.
- 5. That the appellant as well as the present petitioner are aggrieved by the order of worthy Secretary Irrigation Department, KPK, Peshawar dated 29/08/2011, so the cause of action accrued to the petitioner is similar which is pending before you for adjudication. Furthermore, petitioner also got cause of action against the same respondents in the above titled appeal, as prayed for.

In the light of the above facts and circumstances, petitioner may please be impleaded as appellant in the above titled appeal in the interest of justice.

Dated: 29/08/2016

Signature


Humble Petitioner

Khizar Hayat 
 s/o Allah Diwaya
 r/o Segrah Tehsil Paharpur
 District dera Ismail Khan
 Patwari Irrigation, D.I.Khan

Through Counsel

Muhammad Saeed Bhutta
 Advocate High Court



Petitioner's Name: GHULAM SA... (LATE)
 Address: MOHALA... JUYUN USMANIA ST...
 BEH KHAN CITY
 Office Tel: 0604595... Res. Tel: 744712
 Enrolment Date L.C.: 19-12-1998
 Enrolment Date H.C.: 10-03-2005
 Place of Practice: D.I. KHAN
 Date of Birth: 06-05-1972
 Blood Group: AB+VE
 N.I.C. No.: 12101-0110364-9
 N.W.F.P. BAR COUNCIL
 Knowledge Module: Soakrom Square, Peshawar Phone-091-921117
 Email: lawfbarcouncil@hotmail.com


C.E. 31 01 6033 4307277

وکالت نامہ

Advocate

High Court

SAEED
BHUTTA



Secretary's
Signature

The Service Tribunal Peshawar H.P.K.

Appellant ^{مخمس}
Khairan Hyat ^{نام} Secretary Irrigation

Service Appeal

D.I. Khan ^{باعث تحریر آنکھ}
M. Saeed Bhutta Advocate ^{مقدمہ و جواب بالا عنوان میں جوابی طرف واسطے جیڑی اور جواب دی برائے جیڑی یا تقاضیہ مقدمہ نام}

درحسب آن کے سرواڑی وکیل مقرر کیا ہے کہ میں جیڑی پر خود یا ہذا بذریعہ رو برو عدالت حاضر ہوتا رہوں گا اور ہر وقت پکارے جانے مقدمہ چلانی چاہوں
 ہوں وہ تو اطلاع دے کہ حاضر عدالت کروں گا اگر جیڑی پر مقرر حاضر نہ ہو اور مقدمہ میری غیر ماضی کی وجہ سے کسی اور پر سے خلاف ہو گیا تو صاحب
 منصب میں کے کو طرح دسہ وار نہ ہوں گے نیز وکیل صاحب منصب حضور صدر بچہری کے علاوہ یا بچہری کے اوقات سے پہلے یا چھپے یا ہر روز
 جیڑی آئے کے نہ ہرگز ہوں گے اور مقدمہ صدر بچہری کے علاوہ اور جگہ نہ آئے یا ہر روز تفتیش یا بچہری کے اوقات کے آئے یا چھپے جیڑی ہونے
 پر مقرر کو تفتیش چھپے تو ان کے ذمہ وار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا سخت نہ ہونگی کرنے کے بھی صاحب منصب حضور ہر وار نہ ہوں گے
 کو کسی معاوضہ یا صاحب منصب مقرر کرے ذات غور منظور و قبول نہ کرے اور صاحب منصب کو عرض ہوگی یا جواب ہوگی یا درخواست اجراء یا
 تکرار جیڑی میں ہر قسم درخواست ہر قسم کے بیان دینے اور پر ہائی یا دماغی نامہ لکھنے و بھجوانے کہ نہ اقبال ہوگی کا بھی اختیار ہوگا اور صورت مقرر ہوں
 تاریخ جیڑی مقدمہ ہوگا بیرون از بچہری صدر جیڑی مقدمہ مقرر نظر ثانی اچھی و گرائی و نہ کہی مقدمہ یا مستحق و گری یک طرفہ یا درخواست عدم اقبال یا ترقی
 یا دماغی نامہ یا درخواست اگر کسی کن صاحب منصب کو بشرط ادائیگی ایسے اختیار ہوگا اور تمام ماضیہ یا درخواست صاحب منصب حضور
 اور ہر طور و قبول ہوگا اور صورت ضرورت صاحب منصب کو یہ بھی اختیار ہوگا کہ مقدمہ مزکورہ یا ان کے کسی جیڑی کی کارروائی یا صورت نہ ہوں گے
 جیڑی خرابی یا دیگر سبب و مقدمہ مزکورہ کسی دوسرے کنس یا ہر سزا کو اپنے جہانے یا اپنے قرار مقرر کریں اور ایسے شہر قانون کرگی و اس میں ہی اور یہ
 اختیارات حاصل ہوں گے جیسے صاحب منصب کو حاصل ہیں اور دوران مقدمہ میں جو جگہ ہر جہانہ التوا نہ ہوگا نہ صاحب منصب کو قی ہوگا نہ
 صاحب منصب کو پوری نہیں تاریخ جیڑی سے پہلے اپنا نہ کروں گا تو صاحب منصب کو پورا اختیار ہوگا کہ مقدمہ کی بروی نہ کریں اور ایسی صورت
 میں تیسرا کوئی مطالبہ ہی قسم کا صاحب منصب کے برخلاف نہیں ہوگا

High Court

اللہ داد وکالت نامہ گھڑی ہوتا کہ سند ہے

مضمون وکالت نامہ میں لیا ہے اور ایسی طرح آگے لیا ہے کہ منظور ہے

Accepted

خواجہ سید محمد

این دستخط و نامہ مندرجہ بالا کے ساتھ ساتھ عدالت کے پاس پیش کیا جائے گا۔
 (This document and signature above mentioned shall be presented to the court along with this.)

BEFORE THE KHYBER PAKHTUNKWA SERVICE TRIBUNAL PESHAWAR CAMP
COURT DERA ISMAIL KHAN.

Service Appeal No.1071/2016

Khizar Hayat
(Appellant)

Versus

Govt. of KPK etc
(Respondents)

PRELIMINARY OBJECTIONS:

- 1- The appellant has got No cause of action or locus standi to file the instant appeal.
- 2- That the appeal is badly time barred.
- 3- That the appellant is estopped by his own acts of oversight to file the present appeal.
- 4- That the appellant has deliberately concealed the real particulars from the Honorable Tribunal.
- 5- That the appellant has not come to this Honorable Tribunal with clean hands.
- 6- That the instant appeal is not maintainable in its present form.
- 7- The filing of this appeal is unsuccessful exercise and wastage of time of the Honorable Tribunal.

ON FACTS:

- 1- This Para is connected to the personal record of the appellant earlier service.
- 2- This Para is correct. The appellant was offered Canal Patwari seat vide order No.1720-26/118-E dated 11-04-2007, after Departmental Selection Committee finalized his candidature for the vacant post. That the service of the appellant would be governed by the civil servants (Amendments) Act 2005, that for all intents and purpose be Civil Servant Except for purpose of pension or gratuity (**Annexure-A**).
- 3- This Para is correct to the point that the appellant Joined the Irrigation Department on 14-04-2007 as a fresh appointee. But he graciously accepted the terms and conditions of the new service and **did not come through proper channel**.
- 4- The Para No.4 is vehemently denied that Executive Engineer Paharpur Irrigation Division DIKhan was legally bound to issue appointment orders on permanent basis. The department followed strictly the recruitment policy rules and not supposed to deviate from that. The department had to pursue the Civil Servants (Amendment) Act 2005, where by a person selected for appointment on or after the 1st day of July 2001 till the commencement of the said Act, for all intents and purpose be Civil Servant **EXCEPT** for the purpose of pension or gratuity.
- 5- This Para is correct to the point that the Appeal was preferred, but after more than 4 years of joining service.
- 6- This Para is correct, the department accepted the appeal by applying regularization of services act, 2009 (NWFP) Khyber Pakhtunkhwa and that service of the appellant would be Governed by the Khyber Pakhtunkhwa Civil servant Act 1973.

- 7- This Para is Agreed to the point that the appellant was considered as civil servant, but it is incorrect, false and malicious that the department made misconceived observations. The service of the appellant had to be governed through regularization of service Act 2009 (Annexure-B).
- 8- The Para Point already answered, but the appellant was offered the Canal Patwari seat only on the terms and conditions of the **contract** policy prevailing that time (Civil Servant Amendment Act 2005) The appellant was under no compulsion to accept or not to accept the terms of appointment. But the appellant graciously and willingly accepted the terms and condition of the new service without any prejudice.

In light of the above mentioned replies it is therefore humbly prayed that on acceptance of the replies, the appeal may very graciously be dismissed with costs.

Secretary to Govt: of Khyber Pakhtunkhwa
Irrigation Department, Peshawar.
(Respondent No.1)

Chief Engineer (South)
Irrigation Deptt: Peshawar
(Respondent No.2)

Chief Engineer (North)
Irrigation Department Peshawar
(Respondent No.3)

Superintending Engineer (H/Q)
O/O Chief Engineer (South)
Irrigation Department Peshawar
(Respondent No.4)

Superintending Engineer
DIKhan Irrigation Circle, DIKhan.
(Respondent No.5)

vetted subject to corrections as per Appeal No 1072/16 Annexures are attached

Affidavite.

10/9/18

D. District Attorney
Khyber Pakhtunkhwa
Service Tribunal Camp Court
D.I. Khan

23

BEFORE THE KHYBER PAKHTUNKWA SERVICE TRIBUNAL PESHAWAR CAMP
COURT DERA ISMAIL KHAN.

Service Appeal No.1071/2016

Khizar Hayat
(Appellant)

Versus

Govt. of KPK etc
(Respondents)

COUNTER AFFIDAVIT

We, respondents No.1 to 5 do hereby solemnly affirm that the contents of Reply to the appeal are true to the best of our knowledge and nothing has been concealed from this Honorable Tribunal.



Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department, Peshawar.
(Respondent No.1)



Chief Engineer (South)
Irrigation Deptt: Peshawar
(Respondent No.2)



Chief Engineer (North)
Irrigation Department Peshawar
(Respondent No.3)



Superintending Engineer (H/Q)
O/O Chief Engineer (South)
Irrigation Department Peshawar
(Respondent No.4)



Superintending Engineer
DIKhan Irrigation Circle, DIKhan.
(Respondent No.5)

**North-West Frontier Province
Civil Servants (Amendment) Act, 2005
(N.W.F.P. Act No. IX of 2005)**

An Act further to amend the North-West Frontier Province Civil Servants Act, 1973

[Gazette of N.W.F.P., Extraordinary, Page No. 202-203, 23rd July, 2005]

No. PA/NWFP/Legis:1/2005/20440.---The North-West Frontier Province Civil Servants (Amendment) Bill, 2005 having been passed by the Provincial Assembly of North-West Frontier Province on the 5th July, 2005 and assented to by the Governor of the North-West Frontier Province on 12th July, 2005 is hereby published as an Act of the Provincial Legislature of the North-West Frontier Province.

Preamble.---WHEREAS it is expedient further to amend the North-West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act No. XVIII of 1973), for the purpose hereinafter appearing;

It is hereby enacted as follows:--

1. Short title and commencement.---(1) This Act may be called the North-West Frontier Province Civil Servants (Amendment) Act, 2005.

(2) It shall come into force at once.

2. Amendment of section 19 of N.W.F.P. Act No. XVIII of 1973.--- In the North-West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act No. XVIII of 1973), for section 19, the following shall be substituted, namely:

19. Pension and gratuity.---(1) On retirement from service, a civil servant appointed on regular basis in the prescribed manner before the commencement of the North-West Frontier Province Civil Servants (Amendment) Act, 2005 (hereinafter referred to as the said Act), shall be entitled to receive such pension or gratuity as are admissible to him under the West Pakistan Civil Service Pension Rules:

Provided that in the event of the death of such a civil servant, whether before or after retirement, his family shall be entitled to receive such pension, or gratuity or both, as admissible under the said rules.

(2) A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act, but appointment on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on a regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act shall, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a Civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, along with the contributions made by Government to his account in the said fund, in the prescribed manner.

Provided that in the event of death of such a civil servant, whether before or after retirement his family shall be entitled to receive the said amount, if it has already not been received by such deceased civil servant.

(3) No pension to a civil servant, who is otherwise entitled to it, shall be admissible to him, if he 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.

Provided that a civil servant referred to in sub-section (2), in case of such dismissal or removal, may, in addition to his own contributions to the Contributory Provident Fund, be allowed, on account of such compassionate allowance, a sum not exceeding two-third of Government contributions in his account.

(4) If the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualified for pension or gratuity; and any over payment on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family.

North-West Frontier Province Employees
(Regularization of Services) Act, 2009

(Annex B)

Notificaiton

Dated Peshawar, the 24th October, 2009.

No.PA/NWFP/Bills/2009/38472.---The North-West Frontier Province Employees (Regularization of Services) Bill, 2009 having been passed by the Provincial Assembly of North-West Frontier Province on 15th October, 2009 and assented to by the Governor of the North-West Frontier Province on 20th October, 2009 is hereby published as an Act of the Provincial Legislature of the North-West Frontier Province.

THE NORTH-WEST FRONTIER PROVINCE
EMPLOYEES (REGULARIZATION OF SERVICES) ACT, 2009.
(N-W.F.P. ACT NO. XVI OF 2009)

(First published after having received the assent of the Governor of the North-West Frontier Province in the Gazette of the N.-W.F.P. (Extraordinary), Dated the 24th October, 2009).

AN
ACT

to provide for the regularization of the services of certain employees appointed on adhoc or contract basis.

ESTA CODE [Establishment Code Khyber Pakhtunkhwa]

273

Preamble. ---WHEREAS it is expedient to provide for the regularization of the services of certain employees appointed on adhoc or contract basis, in the public interest, for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement. --- (1) This Act may be called the North- West Frontier Province Employees (Regularization of Services) Act, 2005

(2) It shall come into force at once and shall be deemed to have been taken effect at the promulgation of the Ordinance.

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

(a) "Commission" means the North-West Frontier Province Public Service Commission;

(aa) "contract appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment;

(b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies;

(c) "Government" means the Government of the North-West Frontier Province;

(d) "Government Department" means any department constituted under rule 3 of the North-West Frontier Province Government Rules of Business, 1985;

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

(f) "post" means a post under Government or in connection with the affairs of Government to be filled in on the recommendation of the Commission.

(2) The expressions "adhoc appointment" and "civil servant" shall have the same meanings as respectively assigned to them in the North-West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act No. XVIII of 1973).

3. Regularization of services of certain employees.--- All employees including recommendees of the High Court appointed on contract or adhoc basis and holding that post on 31st December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post.

Provided that the service promotion quota of all service cadres shall not be affected.

(Amended 13)

BEFORE THE KHYBER PAKHTUNKWA SERVICE TRIBUNAL PESHAWAR CAMP
COURT DERA ISMAIL KHAN.

Service Appeal No.1071/2016

Khizar Hayat
(Appellant)

Versus

Govt. of KPK etc
(Respondents)

PRELIMINARY OBJECTIONS:

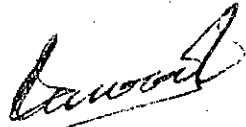
- 1- The appellant has got No cause of action or locus standi to file the instant appeal.
- 2- That the appeal is badly time barred.
- 3- That the appellant is estopped by his own acts of oversight to file the present appeal.
- 4- That the appellant has deliberately concealed the real particulars from the Honorable Tribunal.
- 5- That the appellant has not come to this Honorable Tribunal with clean hands.
- 6- That the instant appeal is not maintainable in its present form.
- 7- The filing of this appeal is unsuccessful exercise and wastage of time of the Honorable Tribunal.

ON FACTS:

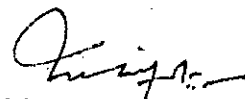
- 1- This Para is connected to the personal record of the appellant earlier service.
- 2- This Para is correct. The appellant was offered Canal Patwari seat vide order No.1720-26/118-E dated 11-04-2007, after Departmental Selection Committee finalized his candidature for the vacant post. That the service of the appellant would be governed by the civil servants (Amendments) Act 2005 that for all intents and purpose be Civil Servant Except for purpose of pension or gratuity (**Annexure-A**).
- 3- This Para is correct to the point that the appellant Joined the Irrigation Department on 14-04-2007 as a fresh appointee. But he graciously accepted the terms and conditions of the new service and **did not come through proper channel**.
- 4- The Para No.4 is vehemently denied that Executive Engineer Paharpur Irrigation, Division DIKhan was legally bound to issue appointment orders on permanent basis. The department followed strictly the recruitment policy rules and not supposed to deviate from that. The department had to pursue the Civil Servants (Amendment) Act 2005, where by a person selected for appointment on or after the 1st day of July 2001 till the commencement of the said Act, for all intents and purpose be Civil Servant **EXCEPT** for the purpose of pension or gratuity.
- 5- This Para is correct to the point that the Appeal was preferred, but after more than 4 years of joining service.
- 6- This Para is correct, the department accepted the appeal by applying regularization of services act,2009 (NWFP) Khyber Pakhtunkhwa and that service of the appellant would be Governed by the Khyber Pakhtunkhwa Civil servant Act 1973.

- 7- This Para is Agreed to the point that the appellant was considered as civil servant, but it is incorrect, false and malicious that the department made misconceived observations. The service of the appellant had to be governed through regularization of service Act 2009 (Annexure-B).
- 8- The Para Point already answered, but the appellant was offered the Canal Patwari seat only on the terms and conditions of the contract policy prevailing that time (Civil Servant Amendment Act 2005) The appellant was under no compulsion to accept or not to accept the terms of appointment. But the appellant graciously and willingly accepted the terms and condition of the new service without any prejudice.

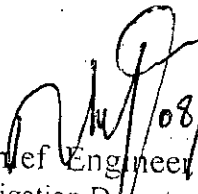
In light of the above mentioned replies it is therefore humbly prayed that on acceptance of the replies, the appeal may very graciously be dismissed with costs.




Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department, Peshawar.
(Respondent No.1)



Chief Engineer (South)
Irrigation Deptt: Peshawar
(Respondent No.2)



Chief Engineer (North)
Irrigation Department Peshawar
(Respondent No.3)

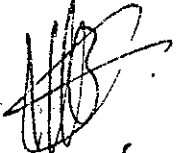


Superintending Engineer (H/Q)
O/O Chief Engineer (South)
Irrigation Department Peshawar
(Respondent No.4)



Superintending Engineer
DIKhan Irrigation Circle, DIKhan.
(Respondent No.5)

needed subject to corrections as per Appendix A No 1072/16
Affidavits



10/9/18

D. District Attorney
Khyber Pakhtunkhwa
Service Tribunal Camp Court
D.I. Khan

BEFORE THE KHYBER PAKHTUNKWA SERVICE TRIBUNAL PESHAWAR CAMP
COURT DERA ISMAIL KHAN.

Service Appeal No.1071/2016

Khizar Hayat
(Appellant)

Versus

Govt. of KPK etc
(Respondents)

COUNTER AFFIDAVIT

We, respondents No.1 to 5 do hereby solemnly affirm that the contents of Reply to the appeal are true to the best of our knowledge and nothing has been concealed from this Honorable Tribunal.

Secretary to Govt: of Khyber Pakhtunkhwa
Irrigation Department, Peshawar.
(Respondent No.1)

Chief Engineer (South)
Irrigation Deptt: Peshawar
(Respondent No.2)

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Chief Engineer (North)
Irrigation Department Peshawar
(Respondent No.3)

Superintending Engineer (H/Q)
O/O Chief Engineer (South)
Irrigation Department Peshawar
(Respondent No.4)

Superintending Engineer
DIKhan Irrigation Circle, DIKhan.
(Respondent No.5)

**North-West Frontier Province
Civil Servants (Amendment) Act, 2005
(N.W.F.P. Act No. IX of 2005)**

An Act further to amend the North-West Frontier Province Civil Servants Act, 1973

[Gazette of N.W.F.P., Extraordinary, Page No. 202-203, 23rd July, 2005]

No. PA/NWFP/Legis:1/2005/20440.---The North-West Frontier Province Civil Servants (Amendment) Bill, 2005 having been passed by the Provincial Assembly of North-West Frontier Province on the 5th July, 2005 and assented to by the Governor of the North-West Frontier Province on 12th July, 2005 is hereby published as an Act of the Provincial Legislature of the North-West Frontier Province.

Preamble.---WHEREAS it is expedient further to amend the North-West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act No. XVIII of 1973), for the purpose hereinafter appearing;

It is hereby enacted as follows:--

1. Short title and commencement.---(1) This Act may be called the North-West Frontier Province Civil Servants (Amendment) Act, 2005.

(2) It shall come into force at once.

2. Amendment of section 19 of N.W.F.P. Act No. XVIII of 1973.--- In the North-West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act No. XVIII of 1973), for section 19, the following shall be substituted, namely:

19. Pension and gratuity.---(1) On retirement from service, a civil servant appointed on regular basis in the prescribed manner before the commencement of the North-West Frontier Province Civil Servants (Amendment) Act, 2005 (hereinafter referred to as the said Act), shall be entitled to receive such pension or gratuity as are admissible to him under the West Pakistan Civil Service Pension Rules:

Provided that in the event of the death of such a civil servant, whether before or after retirement, his family shall be entitled to receive such pension, or gratuity or both, as admissible under the said rules.

(2) A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act, but appointment on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on a regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act shall, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a Civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, along with the contributions made by Government to his account in the said fund, in the prescribed manner.

Provided that in the event of death of such a civil servant, whether before or after retirement his family shall be entitled to receive the said amount, if it has already not been received by such deceased civil servant.

(3) No pension to a civil servant, who is otherwise entitled to it, shall be admissible to him, if he 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.

Provided that a civil servant referred to in sub-section (2), in case of such dismissal or removal, may, in addition to his own contributions to the Contributory Provident Fund, be allowed, on account of such compassionate allowance, a sum not exceeding two-third of Government contributions in his account.

(4) If the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualified for pension or gratuity; and any over payment on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family.

North-West Frontier Province Employees
(Regularization of Services) Act, 2009

(Annex B)

Notificaiton

Dated Peshawar, the 24th October, 2009.

No. PA/NWFP/Bills/2009/38472.---The North-West Frontier Province Employees (Regularization of Services) Bill, 2009 having been passed by the Provincial Assembly of North-West Frontier Province on 15th October, 2009 and assented to by the Governor of the North-West Frontier Province on 20th October, 2009 is hereby published as an Act of the Provincial Legislature of the North-West Frontier Province.

THE NORTH-WEST FRONTIER PROVINCE
EMPLOYEES (REGULARIZATION OF SERVICES) ACT, 2009.
(N-W.F.P. ACT NO. XVI OF 2009)

(First published after having received the assent of the Governor of the North-West Frontier Province in the Gazette of the N.-W.F.P. (Extraordinary), Dated the 24th October, 2009).

AN

ACT

to provide for the regularization of the services of certain employees appointed on adhoc or contract basis.

Preamble. ---WHEREAS it is expedient to provide for the regularization of the services of certain employees appointed on adhoc or contract basis, in the public interest, for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement. --- (1) This Act may be called the North-West Frontier Province Employees (Regularization of Services) Act, 2005

(2) It shall come into force at once and shall be deemed to have been taken effect at the promulgation of the Ordinance.

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

(a) "Commission" means the North-West Frontier Province Public Service Commission;

(aa) "contract appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment;

(b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies;

(c) "Government" means the Government of the North-West Frontier Province;

(d) "Government Department" means any department constituted under rule 3 of the North-West Frontier Province Government Rules of Business, 1985;

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

(f) "post" means a post under Government or in connection with the affairs of Government to be filled in on the recommendation of the Commission.

(2) The expressions "adhoc appointment" and "civil servant" shall have the same meanings as respectively assigned to them in the North-West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act No. XVIII of 1973).

3. Regularization of services of certain employees. --- All employees including recommendees of the High Court appointed on contract or adhoc basis and holding that post on 31st December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post.

Provided that the service promotion quota of all service cadres shall not be affected.

(Annex 13)

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