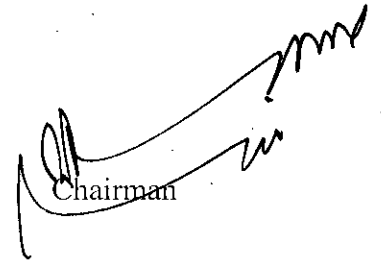


08.1.20178

Counsel for the appellant and Addl. AG for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today in connected service appeal No. 1001/2014 entitled "Mst. Samina Begum Vs. The Secretary, Government of Khyber Pakhtunkhwa Health Department, Peshawar and two others". Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman

ANNOUNCED
08.01.2018

24.08.2017

Clerk to counsel for the appellant and Adll: AG for respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 02.11.2017 before D.B.

(Gul Zeb Khan)
Member

(Ahmad Hassan)
Member

02.10.2017

Counsel for the appellant and Kabeerullah Khattak, Addl. AG for the respondents present. Counsel for the appellant seeks adjournment. To come up for arguments on 03.01.2018 before the D.B.

Member

Chairman

03.01.2018

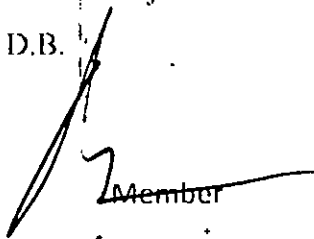
Counsel for the appellant present. Mr. Muhammad Jan, DDA for respondents present. Counsel for the appellant stated before the court that similar nature of appeals have been fixed before D.B on 08.01.2018, therefore the same may also be clubbed with the said appeal. Request accepted. To come up for arguments on 08.01.2018 before D.B alongwith connected appeals.

(Ahmad Hassan)
Member(E)

(M.Amin Khan Kundi)
Member (J)

15.08.2016


Agent to counsel for the appellant and Mr. Yar Gul, Senior Clerk alongwith Mr. Usman Ghani, Sr.GP for respondents present. Agent to counsel for the appellant requested for adjournment. Adjourned for arguments to 20.12.16 before D.B.

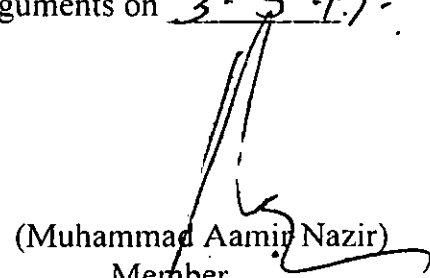

Member


Member

20.12.2016

Clerk to counsel for the appellant and Mr. Ziaullah, GP for respondents present. Clerk to counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 3.5.17.


(Ashfaq Taj)
Member


(Muhammad Aamir Nazir)
Member

03.05.2017

Agent to counsel for the appellant and Mr. Muhammad Adeel Butt, Additional: AG for the respondents present. Agent to counsel for the appellant his stated that senior counsel was busy before the swat camp court and requested for adjournment. Request accepted. To come up for final hearing on 24.08.2017 before D.B.


Member


Chairman

9

14.07.2015

Agent of counsel for the appellant and Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 1.9.2015 before S.B.


Chairman

10

01.09.2015

Agent of counsel for the appellant and Mr. Yar Gul, Senior Clerk for respondent No.2 alongwith Assistant A.G for all respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 23.11.2015 before S.B.


Chairman

23.11.2015

Agent of counsel for the appellant and Mr. Yar Gul, Senior Clerk alongwith Addl: A.G for respondents present. Written reply submitted by respondents No. 1 and 2. The Learned Addl: AG relies on the same on behalf of respondent No. 3. The appeal is assigned to D.B for rejoinder and final hearing for 12.4.2016.


Chairman

12.04.2016

Clerk to counsel for the appellant and Addl: AG for respondents present. Clerk to counsel for the appellant requested for adjournment. To come up for rejoinder and arguments on 15.08.2016.

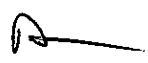

Member


Member

6.

20.02.2015

Counsel for the appellant present, and requested for adjournment. Request accepted. To come up for preliminary hearing on 26.03.2015.



Member

7.

26.03.2015

Counsel for the appellant present. Learned counsel for the appellant argued that in respect of identical issue appeal No. 571/2013 has already been admitted to regular hearing which is fixed for 16.04.2015.

In view of the above, this appeal is also admitted to regular hearing. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 16.04.2015 before S.B to be heard alongwith the afore-stated appeal.

Appellant Deposited Security & Process Fee



Chairman

16.04.2015

Agent of counsel for the appellant and Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 14.7.2015 before S.B.



Chairman



3.

Reader Note:

10.11.2014

Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 26.01.2015 for preliminary hearing.


Reader

4.

26.01.2015

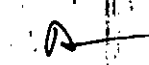
Counsel for the appellant present and stated that similar nature of appeals titled Rehmat Pas and others in service appeals No. 571 to 577 have already been admitted and pending before the learned bench-II, therefore the same may also be admitted and clubbed with the said appeal. The above mentioned service appeals may be requisition^{ed} To come up for further preliminary hearing on 09.02.2015.


Member

5.

09.02.2015

Counsel for the appellant present, and requested for adjournment. Request accepted. To come up for preliminary hearing on 20.02.2015.



Member

The appeal of Mst. Saeeda Naz Charge Nurse received today i.e. on 08.07.2014 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

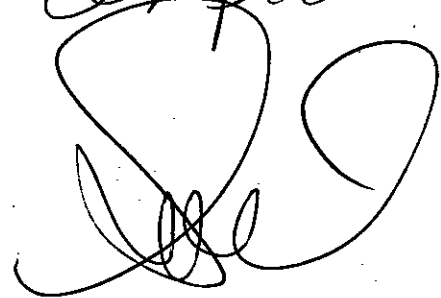
- 1- Copy of appointment order of the appellant as Charge Nurse mentioned in para-5 of the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Annexure-F of the appeal is illegible which may be replaced by legible/better one.
- 3- Annexures of the appeal may be attested.

No. 1048 /S.T,

Dt. 08/7 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Khaled Rehman Adv. Pesh.

*In
Resubmitted and
Completed*


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1009 /2014

Maeeda Naz

The Govt. and others

Versus

.....Appellant

.....Respondents

INDEX

Description of Documents	Date	Annexure	Pages
Memo of Service Appeal			1-7
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District Cadre Policy	15.01.2002	C	0-10
Regularization Act, 2005		D	11-12
Circular letter	10.08.2005	E	13-14
2 nd appointment order	31.05.2008	F	15
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Departmental Representation		I	34-36
Wakalat Nama			37.

Through

Appellant

Khaled Rahman
 Advocate, Peshawar
 3-D, Haroon Mansion
 Khyber Bazar, Peshawar
 Off: Tel: 091-2592458
 Cell # 0345-9337312

Dated: 21 /7/2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1009 /2014

Mst. Saeeda Naz,
Charge Nurse, DHQ Hospital, SwabiAppellant

964
08/7/2014

Versus

1. The Secretary,
Govt. of Khyber Pakhtunkhwa
Health Department, Civil Secretariat.
Peshawar.
2. The Director General,
Health Service, Khyber Pakhtunkhwa,
Peshawar.
3. The District Health Officer,
District SwabiRespondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR REGULARIZATION OF THE SERVICES OF THE APPELLANT W.E.F. 14.02.2005 TILL 31.05.2008 ON THE BASIS OF EQUALITY AND EQUAL PROTECTION OF LAW IN THE LIGHT OF THE JUDGMENT RENDERED BY THE AUGUST PESHAWAR HIGH COURT, PESHAWAR IN W.P. NO.1662/2007, 1166/2008 & 1160/2008 DECIDED ON 14.01.2010 AND UPHELD BY THE AUGUST SUPREME COURT OF PAKISTAN VIDE C.P. NO.170-P TO 172-P & 668-P OF 2010 FOR WHICH APPELLANT PREFERRED DEPARTMENTAL REPRESENTATION TO RESPONDENT NO.1 BUT THE SAME WAS NOT

8/7/14

re-submitted to
and filed.

8/7/14

DISPOSED OF WITHIN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER:

On acceptance of the instant appeal, appropriate directions be issued to the Respondents to regularize the services of appellant w.e.f. 14.02.2005 till 31.05.2008 in the light of judgment rendered by the Hon'ble Peshawar High Court, Peshawar with all back benefits on the basis of rule of consistency and equality before law.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That in the year 2003 an advertisement (*Annex:-A*) was floated through Press, inviting applications for Charge Nurses. Appellant being qualified in terms of advertisement applied for the same and after going through selection process, the Departmental Selection Committee recommended her and finally she was appointed as Charge Nurse (BPS-14) by the then Executive District Officer (Health), Swabi on the approval of the then DCO vide order dated 14.02.2005 (*Annex:-B*). It will not be out of context to mention here that vide letter dated 15.01.2002 (*Annex:-C*) issued by the Govt. all the Provincial Cadre Posts in BPS-15 & below of the Health Department were converted into District Cadres.
2. That in pursuance of the order *ibid*, appellant assumed the charge of her duties at DHQ Hospital Swabi, thereafter appellant started performing her

duties to the entire satisfaction of high-ups. Moreover, Respondents also maintained her Service Book wherein necessary entries were also entered from time to time and she was also allowed all the facilities and privileges as admissible to other regular employees.

3. That in the year 2002 the Government had introduced a Contract Policy and hence all the appointments thereafter were made under the same Policy similarly the appellant was also appointed under the same Contract Policy and it was specifically mentioned in the appointment order that the appointment of appellant would be governed under the same Contract Policy. It will not be out of context to mention that neither in the advertisement nor in the appointment order there is mention of the fact that the post against which appellant was appointment was a project post.
4. That in the year 2005 the Govt. decided to grant regularization to all those employees who were appointed under the Contract Policy of 2002 and in this respect the Provincial Assembly passed an Act i.e. the NWFP Civil Servants (Amendment) Act, 2005 (*Annex:-D*) whereby Section-19 of the NWFP Civil Servants Act, 1973 was substituted and accordingly all those employees who were appointed in the prescribed manner on or after the 1st July, 2001 till the commencement of the Act were declared to be regular civil servants for all intents and purposes except for the purpose of Pension & Gratuity and copy of the letter dated

10.08.2005 (*Annex:-E*) issued by the Govt. Thus under the Act *ibid*, all the employees selected and appointed on Contract basis stood automatically regularized by operation of law.

5. That since the date of her appointment, appellant had regularly performed her services to the entire satisfaction of her superiors, however, later on, the appellant was told that her appointment was under the ADP Scheme and that appellant should appear before the Public Service Commission for the post. In the meanwhile the posts were advertised by the Public Service Commission and thus appellant was compelled to apply for the same and after undergoing the selection process, she was recommended and appointed as Charge Nurse vide order dated 31.05.2008 (*Annex:-F*) and continued her service at the same post without termination.
6. That in identical case under similar circumstances, the Male/ Female Nurses of District Dir Lower and Malakand who were also terminated under the same ground of Project employment and who were similarly appointed the way back in the 2003 & 2004, approached the august Peshawar High Court, Peshawar in *W.P. No.1662/2007, 1166/2008 & 1160/2008* which were allowed vide Judgment dated 14.01.2010 (*Annex:-G*) on the strength of similar other Judgment in Writ petition No.475/2006 titled "*Miss Shagufta Sayed...Vs... The Govt. of NWFP and others*" decided on 11.07.2007 and the same was subsequently upheld by the august Supreme Court of Pakistan vide

C.P.170-P to 172-P & 668-P of 2010 decided on 15.03.2011 (*Annex:-H*).

7. That accordingly all the terminated Male/Female Nurses were not only reinstated into service but also declared regular employees under the Act IX of 2005 and they were also allowed back benefits by the Department. As the case of appellant was identical in nature, therefore, when the appellant came to know about the decision, she also preferred Departmental Representation (*Annex:-I*) to Respondent No.1 but the same was not disposed of within the statutory period, hence this service appeal inter-alia on the following grounds:

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully refused to regularize the services of the appellant, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That appellant was unaware of the Judgments aforesaid and just now she came to know about the same. As the case of appellant is identical on all fours with that of other employees of the Department working in similar manner who were granted relief by the august Peshawar High Court, Peshawar therefore, appellant is also entitled to the same relief under the principle of consistency and

equality as laid down in the case of "*Hameed Akhtar Niazi...Vs...The Secretary, Establishment Division, Govt. of Pakistan and others*" reported in 1996 SCMR 1185 and *Tara Chand and others...Vs...Karachi Water and Sewerage Board, Karachi and others*" reported in 2005 SCMR 499 and another Judgment reported in 2009 SCMR 1.

- C. That the appellant has been discriminated because similarly placed employees serving in identical circumstances have been regularized with all back benefits whereas the appellant has been refused the same benefit which is violative of Article 4 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973.
- D. That appellant was appointed on Contract basis under the Contract Policy of 2002 and stood regularized by the operation of law and therefore, she was entitled for regularization of her previous service on the analogy of other colleagues similarly regularized.
- E. That appellant all along during her previous service has been treated as a regular employee, she has been extended all the facilities of a regular employee and furthermore, her contract period was not further extended after the promulgation of the Act-IX of 2005 which by itself reflects that the services of appellant were regular and not of any project.

F. That appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.



Appellant

Through

Khaled Rahman,
Advocate, Peshawar.

Dated: 2 / 07/ 2014



A 2000 A (8)

ذرائع صوبائی ڈسٹرکٹ ہیڈ کوارٹر اسپتال صوبائی میں خالی آسامیوں پر مزید حکومتی یا نجی کے تحت کنٹریکٹ کی بنیاد پر

کئیے موزوں ٹیسٹل امیدواروں سے درخواستیں مطلوب ہیں صوبائی سے تعلق رکھنے والی امیدواروں کو ترجیح دی جائے گی۔

نمبر شمار	نام آسامی	بی۔ بی۔ ایس۔	تعداد آسامیاں	عمر	تقابلیت
1	چارچ ٹرس	14	30	18 تا 30 سال	1۔ صوبہ سرحد نرسنگ کونسل سے چارج نرس ڈپلومہ نڈویٹری کا ڈپلومہ نیز پاکستان نرسنگ کونسل اسلام آباد سے رجسٹریشن

درخواستیں سادہ کاغذ پر تحریر ہوں سہ ماہی نام درج ذیل، ذیلی شاخیں کارڈ، ڈویسائل سہریٹیکٹ، میٹرک سرٹیفکیٹ، تالیف پرائز وغیرہ کا تذکرہ صاف اور واضح الفاظ میں درج ہونا اسناد کی تصدیق شدہ لفظوں کے ساتھ متعلقہ آسامی کا سرٹیفکیٹ نمبر ایک کرنا لازمی ہے۔ (2) درخواستیں مورخہ 15-11-2003 تک آنی چکیں اور ڈسٹرکٹ آفیسر (ہیلتھ) صوبائی دفتر میں دفتری اوقات کار میں جمع کرانے جاسکتے ہیں۔ (3) ڈسٹرکٹ اور انٹرویو مورخہ 22-11-2003 کو ضلعی انتظامی آفس (صحت) صوبائی کے دفتر ہتھام شاہ منصور کیمپس میں ہوگی۔ (4) ناکمل اور تاخیر سے موصول ہونے والی تقابلیت، تجربہ کے حامل نہ ہونے والے درخواستوں پر کوئی غور نہیں کیا جائے گا۔ (5) ڈسٹرکٹ اور انٹرویو کیلئے آنے والوں کو سفر خرچ نہیں دیا جائے گا۔ (6) ڈسٹرکٹ اور انٹرویو کے دن اصل اسناد ساتھ لانا لازمی ہوگی۔

F/M/139

ذرائع صوبائی ڈسٹرکٹ ہیڈ کوارٹر اسپتال

ذرائع صوبائی ڈسٹرکٹ ہیڈ کوارٹر اسپتال

Handwritten signature and the word "ATTESTED" in bold capital letters.

Handwritten signature and the name "روزنامہ سحر خاں" in Urdu script.

OFFICE OF THE EXECUTIVE DISTRICT OFFICER HEALTH SWABI

OFFICE ORDER

Consequent upon the recommendation of selection committee in its meeting held on 25-11-2004 and duly approved and signed by the District Coordination Officer Swabi (Competent Authority) vide his letter No. 247/12/DCO (Health) dated 08/02/2005, the following are hereby appointed as Charge Nurses (DPS-14, Rs. 3100-240-10300) plus usual allowances as admissible under the contract policy 2002 :-

9

Amx B

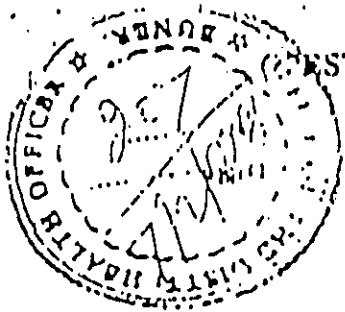
KTH

1. ✓ Hamida Gul D/O Gulab Khan (Moh:- Shantsha Khel Swabi.)
2. - Naveed Said D/O Umar Said (Muslim Abad Vill: Dala Ghari Mardan).
3. ✓ Fozia Sohrab D/O Muhammad Sohrab (Moh:- Karami Khel Swabi).
4. - Hamida D/O Zar Khan (Vill:- Jalbai Swabi).
5. Gulshan Ara D/O Nimatullah (Vill:- Kalabat Swabi).
6. X Sabia D/O Fazal Rehman (Vill:- Karnal Sher Killi Swabi.)
7. Samrat D/O Jaber Khan (Vill:- Maneri Bala Swabi).
8. ✓ Aqila Naz D/O Hamid Shah (Moh:- Inayat Khel Swabi).
9. ✓ Guizara Begum D/O Sardar Wali (Vill:- Sheikh Dheri Swabi).
10. Samina D/O Shamas Khan (Vill: Lahor Swabi).
11. Irshad Bibi D/O Ghufuranullah (Vill: Tordher Swabi).
12. Yasmeen D/O Sherin Khan (Vil: Maneri Payan Swabi).
13. ✓ Almaree D/O Zamin (Kabal Distt: Swat).
14. Shaheen D/O Zardul (Vill: Asota Sharif Swabi).
15. Maryam Bibi D/O Fazli Rehman (Vill; Tano Tehsil: Lahor Swabi).
16. Parveen D/O Muhammad Shah (Eid Ghah Road Distt: Mardan).
17. Sadaqat D/O Mahabat Khan (Vill: Shewa Swabi).
18. Nighat Bibi D/O Bakht Nawaz (Vil: Kohi Barmol Distt: Mardan).
19. Dilhara D/O Sardar Wali (Vill: Sheikh Dheri Swabi).
20. Nazish Begum D/O Dilawar Shah (Vil: Ziarat Kaka Salib Distt: Noshetra).
21. Shaheen D/O Hazrat Mir (Moh: Toor Khel Swabi).
22. Saeeda Naz D/O Amir Bahader (Vill: Marghuz Swabi).
23. Shaheen Nawaz D/O Amir Nawaz (Distt: Bannu).
24. Sariat Jehan D/O Muhammad Qamer (Vill; Dagai Swabi).
25. Intiaz Gul D/O Muhammad Shah (Eidgah Road Distt: Mardan).
26. ✓ Anjuman Begum D/O Abdul wadood (Vill: Gumbat Tehsil Timergara Dir).
27. ✓ Nusrat Khan D/O Nawar Khan (Vill: Dagai Swabi).
28. ✓ Bibi Amina D/O Aminul Haq (Vill: Aladand Battchla).

Your appointment will be subject to the following terms and conditions:-

1. That your appointment is purely on contract basis for a period of three years and your services are liable to be terminated at any time without any notice or reasons being assigned.
2. That you are declared medically fit for Government Service.
3. The post is non transferable.

all



GOVERNMENT OF NWFP,
ESTABLISHMENT & ADMIN. DEPARTMENT.
(REGULATION WING).

Dated Peshawar, the 15th January, 2002.

Amx C (10)

NOTIFICATION

No.SOR.II(E&AD)I(20)/98.V.III. The Governor, NWFP is pleased to convert Provincial Cadre Posts in BS-15 and below of the Provincial Health Department into the District Cadres with immediate effect on the following terms and conditions:-

- a) Permanent transfer to the Districts will be made on domicile and seniority basis.
- b) In case of the personnel of that particular district being more than the sanctioned strength, the deployment will be on the basis of seniority and the junior most over-flow will be posted temporarily to the adjacent districts till such time vacancy occurs in the District of their domicile.
- c) All such employees of the above status working in FATA but belonging to settled districts will be adjusted as per their seniority in the cadre and the over-flow will continue working in FATA till such time a vacancy occurs in their districts of domicile.
- d) The domicile of the female officials will be counted under the wedlock policy and such employees will be given one time, irreversible choice to opt for the districts of their spouse or their own. In case of spouse being a Government Employee and his transfer to another district, inter-district transfers of the female officials will be allowed subject to availability of vacancy in the desired district.
- e) The tertiary hospitals will be allowed to opt once for retention of staff of their choice which, in light of the autonomy rules, would be absorbed in their service. It will be incumbent upon the tertiary hospitals and Provincial Institutions who retain such employees to carry out all subsequent recruitment at the Provincial level in line with the zonal allocation policy of the Provincial Government.
- f) Subsequent to the conversion of BS-15 and below staff to the districts, further inter-district transfers and service matters, including appointments, shall be made by the District Government in light of the "District Government Rules of Business, 2001".
- g) All cases of transfer from one district to another will be decided and ordered upon by the Director-General Health Services, albeit with the prior consultation of the District concerned.

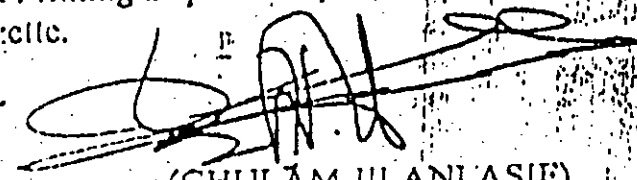
District Cadre Circular

Handwritten signature and stamp

SECRETARY TO GOVT. OF NWFP
ESTABLISHMENT DEPARTMENT

Copy forwarded for information to:

1. All Administrative Secretaries to Govt. of NWFP.
2. The Secretary to Governor, NWFP.
3. The Director-General, Health Services, NWFP, Peshawar.
4. The Director, Health, FATA, NWFP, Peshawar.
5. All District Coordination Officers/Political Agents in NWFP.
6. All Executive District Officers (Health) in NWFP.
7. The Registrar, Peshawar High Court, Peshawar.
8. The Secretary, NWFP Public Service Commission, Peshawar.
9. The Director, Anti-Corruption Establishment, NWFP, Peshawar.
10. The Registrar, NWFP Service Tribunal Peshawar.
11. All Chief Executives of Autonomous Medical Institutions in NWFP (Lady Reading Hospital, Khyber Teaching Hospital, Hayatabad Medical Complex Peshawar and Ayub Hospital Complex Abbottabad).
12. Headquarters 11 Corps, Peshawar Cantt.
13. The Manger, Govt. Stationary and Printing Department, Peshawar for publication in the next official gazette.


(GHULAM JILANI ASIF)
DEPUTY SECRETARY (REG.I)

Amo D' 11

No. PA/NWFP/Legis/90/3199.---The North-West Frontier Province Employees on contract Basis (Regularization of Services) (Amendment) Bill, 1990 having been passed by the Provincial Assembly of the North-West Frontier Province on the 21st February, 1990, and assented to by the Governor of North-West Frontier Province on the 24th February, 1990 is hereby published as an Act of the Provincial Legislature of the North-West Frontier Province.

Preamble.---WHEREAS it is expedient to amend the North-West Frontier Province Employees on Contract Basis (Regularization of Services) Act, 1989 (N.W.F.P Act No. VIII of 1989), 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 on contract Basis (Regularization of Services)(Amendment) Act,1990.
(2) It shall come into force with effect from 13th November,1989.

2. Substitution of Section 4 of NWFP Act No. VIII of 1989.---In the North-West Frontier Province Employees on Contract basis (Regularization of Services) Act,1989 (N.W.F.P Act No. VIII of 1989), section 4 shall be substituted by the following new section and shall always be deemed to have been so substituted:--

4. (1) Notwithstanding anything contained in any law for the time being enforce, any Civil Servant, who is or has been appointed or deemed to have been appointed against any post in any Government Department under section 3 of this Act shall be deemed to have been regularly appointed from the date of his continuous officiation, subject to eligibility, according to the service rules applicable to the post, verified by the administrative Secretary of the Department concerned.

Provided that if any Civil servant is aggrieved regarding his eligibility, he shall have one right of appeal to the Chief Secretary, Government of North-West Frontier Province, and his decision in the case shall be final;

Provided further that if there is any gap in service of any Civil Servant between this enactment and the date of appointment under section 3 of this Act, due to termination of contractual service only, the same shall be deemed to have been condoned as extraordinary leave without pay.

(2) The inter se seniority of the Civil Servants under this Act shall be determined by the Government, according to the service rules in vogue.

**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 Servant 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:

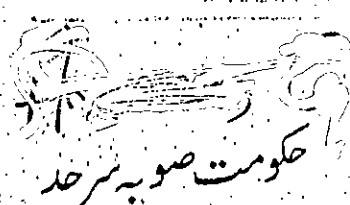
Provided that in the event of death of such a civil servant, whether before or after retirement his family shall be entitled to receive the said amount, if it has already not been received by such deceased civil servant.

(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.

Handwritten signature



حکومت صوبہ سرحد

ٹ اینڈ ایڈمنسٹریشن ڈیپارٹمنٹ
(ریگولیشن ونگ)

That then the impugned No. major penalty of compulsory appellant hence appellant bei departmental appeal before following grounds:-

13

Amux E

نمبر افسر صفیہ ضو اباطا (ای اینڈ ایڈمنسٹریشن) ۱۳/۱۳/۲۰۰۵

مورخہ پشاور ۱۰ اگست ۲۰۰۵ء

بخدمت

- ۱۔ تمام انتظامی و معتمدین حکومت صوبہ سرحد
- ۲۔ معتمد برائے گورنمنٹ صوبہ سرحد
- ۳۔ معتمد برائے وزیر اعلیٰ صوبہ سرحد
- ۴۔ معتمد صوبائی اسمبلی سکریٹریٹ
- ۳۔ تمام ڈسٹرکٹ و سیشن جج، صوبہ سرحد
- ۵۔ رجسٹرار پشاور ہائی کورٹ پشاور
- ۶۔ معتمد پبلک سروس کمیشن صوبہ سرحد
- ۷۔ رجسٹرار سروسز ٹرانزیشن پشاور
- ۸۔ اکاؤنٹنٹ جنرل صوبہ سرحد پشاور
- ۹۔ تمام سربراہان ملحقہ منگہ جات صوبہ سرحد
- ۱۰۔ تمام سربراہان خود مختار/ٹیم خود مختار ادارہ جات صوبہ سرحد
- ۱۱۔ تمام شاہی رابطہ افسران ریٹائرڈان سیاسی صوبہ سرحد

شمال مغربی سرحد کی صوبہ کی سول ملازمین مجرہ ۱۹۷۳ء ترمیم ایکٹ ۲۰۰۵ء کا نفاذ

تذکرہ:-

صوبائی کابینہ نے سال ۲۰۰۲ء کا بجٹ منظور کرتے ہوئے فیصلہ لیا کہ آئندہ تمام بقاعدہ آسامیوں پر تعیناتی بذریعہ کنٹریکٹ کی جائے گی۔ تاکہ پنشن کی مد میں بڑھتے اخراجات سے چھٹکارا پایا جائے۔ واضح رہے کہ پراجیکٹ پوسٹوں، تھوڑے عرصے والے آسامیوں، انتظامی مصارف (Contigent paid staff) سے نکلنے والے افراد، دوبارہ تعیناتی اور کمیشن کے ذریعے زیر التوا آسامیوں پر تعیناتی پہلے بھی بذریعہ کنٹریکٹ کی جاتی تھی اور آئندہ بھی جاری رہے گی۔ یکم جولائی ۲۰۰۱ء سے قبل کنٹریکٹ پر تعیناتی پبلک سروس کمیشن کے دائرہ اختیار میں نہیں تھی۔ پبلک سروس کمیشن کے دائرہ میں ترمیم کے ذریعے انہیں اختیار دیا گیا۔

ATTESTED

صوبائی حکومت میں تمام باقاعدہ آسامیوں کو ہڈ کرنے کیلئے کنٹریکٹ پالیسی جاری نہیں۔ کنٹریکٹ پالیسی کا عملی جامہ زیبایا گیا۔ اور صوبائی کابینہ کی منظوری سے سول سروسٹ ایکٹ نمبر ۱۹۷۳ء کی شق نمبر ۱۹ میں ترمیم کی منظوری دی گئی۔ ترمیمی ایکٹ ۲۰۰۵ء کی کاپی شملک ہے۔ مذکورہ ترمیم کے مطابق یکم جولائی ۲۰۰۷ء سے لیکر اس قانون کے نافذ ہونے تک مجوزہ طریقہ کار کے مطابق مجاز فورم کی سفارشات پر وہ تمام افراد جو باقاعدہ منظور شدہ آسامیوں پر تمام قانونی لوازمات پوری کرنے کے بعد کنٹریکٹ پر تعینات کیے گئے تھے سول سروسٹ تصور کیے جائیں گے۔ اور وہ تمام مراعات کے حقدار ہونگے جو کہ سول سروسٹ ایکٹ میں پہلے سے موجود ہیں۔ ماسوائے پنشن کے۔ یہ افراد پنشن کی بنیاد پر شراکتی کیفیت شعاری فنڈ (CP FUND) کے حقدار ہونگے جس کے لیے متعلقہ ملازم اور حکومت دونوں بحساب دس فیصد ادائیگی کریں گے۔

۳۔ وہ تمام ملازمین جو باقاعدہ سول سروسٹ تعینات ہیں وہ بدستور پنشن کے حقدار ہونگے۔ اور تمام کنٹریکٹ ملازمین جو کہ مجاز فورم کی سفارشات یا مجوزہ طریقہ کار کے مطابق بھرتی نہیں ہوئے یا پراجیکٹ پوسٹوں، عارضی آسامیوں یا اتفاقی مصارف سے فٹنسڈ تنخواہ پر تعینات افراد جو کنٹریکٹ کی بنیاد پر تعینات کیے گئے تھے وہ بدستور کنٹریکٹ ملازمین رہیں گے اور ان کی ملازمت کے شرائط و قواعد وہی ہونگے جنکی بنیاد پر انکی بھرتی کی گئی تھی۔ واضح رہے کہ مجاز فورم سے مراد صوبائی پبلک سروس کمیشن اور نکلانہ چناؤ کمیٹیاں ہیں۔ جنکے ذریعے تعیناتی کی سفارشات کی جاتی ہیں۔ جو آسامیاں پبلک سروس کمیشن کے دائرہ اختیار میں آتی ہیں ان کے لیے پبلک سروس کمیشن ہی مجاز فورم ہے۔ اور جو آسامیاں پبلک سروس کمیشن کے دائرہ اختیار میں نہیں آتی ہیں ان کے لئے نکلانہ چناؤ کمیٹیاں مجاز فورم ہیں۔ بشرطیکہ دیگر تمام لوازمات کو ملحوظ خاطر رکھا گیا ہو۔

۴۔ مندرجہ بالا قانون کے نفاذ کے بعد آئندہ تمام باقاعدہ منظور شدہ آسامیوں پر مجوزہ طریقہ کار کے مطابق اور مجاز فورم کی سفارشات پر باقاعدہ بھرتی بحیثیت سول سروسٹ کی جائیں گی۔ تاہم پیشکش ملازمت (Offer of appointment) میں یہ واضح طور پر لکھا جائے گا کہ یہ افراد پنشن کی بجائے حکومت کے مقرر کردہ شراکتی کیفیت شعاری فنڈ کے حقدار ہوں گے۔ لہذا تمام محکمہ جات کو ہدایت کی جاتی ہے کہ یکم جولائی ۲۰۰۷ء سے لیکر مندرجہ بالا قانون کے نفاذ تک باقاعدہ آسامیوں پر مجاز فورم کی سفارشات اور مجوزہ طریقہ کار کے ذریعے بھرتی کئے گئے کنٹریکٹ ملازمین کی ریگولر ایشن کیلئے متعلقہ مجاز فورم سے منظوری حاصل کی جائے۔ خالصہ جات میں اس بات کی تصدیق کی جائے کہ مذکورہ آسامی ایک باقاعدہ آسامی ہے۔ اور اس پر بھرتی مجوزہ طریقہ کار اور مجاز فورم کی سفارشات پر تمام قانونی تقاضے پورے کرنے کے بعد لائی گئی تھی۔

مندرجہ بالا ہدایات پر سختی سے عمل درآمد کی درخواست کی جاتی ہے۔ اس خط کی موصولی کی قسمہ تین کی جائے۔

۵

محمد ہمایون
(محمد ہمایون)
معتد خصوصی (ضوابط)

14

نقل برائے اطلاع:-

- ۱- حساب دار عمومی صوبہ سرحد
- ۲- تمام سٹیشن و انسپشن آفیسران حساب داری صوبہ سرحد
- ۳- ذاتی معتد برائے وزیر اعلیٰ صوبہ سرحد
- ۴- ذاتی معتد برائے گورنر صوبہ سرحد
- ۵- ذاتی معتد برائے قائد اعلیٰ صوبہ سرحد
- ۶- ذاتی معتد برائے سیکرٹری صوبہ سرحد
- ۷- تمام ذاتی معتدین برائے سوبائی و زاراء۔

حسین شاہ
(حسین شاہ)
نائب معتد (ضوابط)

نقل برائے اطلاع:-

نقل برائے اطلاع:-

- ۱- تمام اضافی معتدین رٹائیب معتدین محکمہ انسپشن اور ایڈمنسٹریشن صوبہ سرحد پشاور
- ۲- ناظم سٹاف ٹریننگ انسٹیٹیوٹ میٹروپولیٹن فنڈ بلڈنگ پشاور صدر
- ۳- تمام سٹیشن آفیسران رٹائیب آفیسر محکمہ انسپشن اور ایڈمنسٹریشن صوبہ سرحد پشاور۔
- ۴- ذاتی معتد برائے معتد محکمہ انسپشن صوبہ سرحد پشاور
- ۵- اسٹنٹ معتد میٹروپولیٹن فنڈ بلڈنگ اور ایڈمنسٹریشن صوبہ سرحد پشاور
- ۶- منقسم کتب خانہ محکمہ انسپشن اور ایڈمنسٹریشن صوبہ سرحد پشاور

محمد فقیر
(مستار محمد فقیر)
افسر صحیفہ (ضوابط - ۶)

AT 55 50

DIRECTORATE GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

OFFICE ORDER.

On the recommendation of NWFP Public Service Commission the following Nurses are hereby appointed as Charge Nurses in BPS-16 i.e. Rs.5050-390-16750. plus usual allowances as admissible under the rules, on regular basis and posted against the vacant post in the Hospitals mentioned against their names :-

S.No.	Name	Place of Posting	Remarks
01	Farhana Naz D/O Nisar Muhammad	DHO Hospital, Swabi	Against the vacant post
02	Samiat D/O Jabir Khan	DHO Hospital, Swabi	Against the vacant post
03	Nasreen Bano D/O Muhammad Sadiq Khan	DHO Hospital, Swabi	Against the vacant post
✓04	Irshad Bibi D/O Ghulamulali	DHO Hospital, Swabi	Against the vacant post
✓05	Bibi Maryam D/O Amir Ghawas	DHO Hospital, Swabi	Against the vacant post
06	Khatida D/O Mira Khan	DHO Hospital, Swabi	Against the vacant post
✓07	Saeeda Naz D/O Amir Bahadar	DHO Hospital, Swabi	Against the vacant post
✓08	Yasmin D/O Shereen	DHO Hospital, Swabi	Against the vacant post
09	Shahida D/O Shereen	DHO Hospital, Swabi	Against the vacant post
✓10	Samina Begum D/O Shamas Khan	DHO Hospital, Swabi	Against the vacant post

Their appointment in the Health Department, Govt. of NWFP will be subject to the following terms and conditions:-

01. They will be on probation initially for a period of two years extendable for a further period not exceeding one year.
02. Their Services can be dispensed with during the probation period, if their work and conduct found unsatisfactory.
03. Their appointment will be subject to medical fitness and verification of character and antecedents-Educational qualification etc.
04. They will not be entitled to any TADA for medical examination and joining the first appointment.
05. They will be governed by such Rules and orders as may be issued by the Government for the category of Government Servant to which they belong.

15A

They shall for all intents and purposes be Civil Servant, except for the purpose of Pension and Gratuity. In lieu of the same they will be entitled to receive Contributory provided Fund. For the said fund 10% contribution will be made by the provincial Govt. and 10% by the Civil Servant concerned in the prescribed manner. Provided further that in the event of death of the Civil Servant whether before or after retirement, their family shall be entitled to receive the said amount if it has already not been received by concerned deceased Civil Servant.

07 They are liable to serve anywhere in the NWFP/FATA.

08 They will complete normal tenures at their places of 1st posting.

09 They will submit an undertaking on judicial stamp paper that the documents submitted are genuine and not fake. Moreover they have not been dismissed from service by any Govt. or semi Govt. organization.

10 If they wish to resign from Service they shall resign in writing by giving prior notice of one month OR deposit one month pay in lieu of one month advance money in the Government treasury. However they will continue to serve the Govt. till their resignation is accepted by the competent authority.

If the above terms and conditions are acceptable to them they should report in the institutions mentioned against their names for duty within (14) days of receipt of this order.

Sd/-
DIRECTOR GENERAL HEALTH
SERVICES, NWFP, PESHAWAR.

No. 15952-67 A.E.H. Dated Pesh. The 31-05/2008.
Copy forwarded to the:-

- 01. Secretary to Govt. of NWFP Health Department Peshawar letter No. SOH-III/2-1/07(Nurses), dated 22.05.2008.
- 02. Secretary NWFP, Public Service Commission, Peshawar for information.
- 03. Executive District Officer (Health), Swabi.
- 04. Medical Supdt. DHQ Hospital, Swabi.
- 05. District Accounts Officer, Swabi
- 06. Charge Nurses concerned.
- 07. DA-concerned, DGHS NWFP Peshawar.

For information and action.

DR. SAHIDA WAHEDI
DIRECTOR GENERAL HEALTH
SERVICES, NWFP, PESHAWAR.

31/5/08

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
PESHAWAR
JUDICIAL DEPARTMENT



W.P. No. 1662 of 2007

JUDGEMENT

Arms 9 (16)

Date of hearing 14-1-2010

Appellant/s (Inayat-ul-Haq etc) by Mr. Abdul Aziz Afridi and Wahid

Respondent/s (F.D.O etc) by Mr. Danish Raza District A.P.O. Rahmen Advocate

ABDUL AZIZ KUNDI.J.- Vide our detailed judgment in W.P.No.1662/2007 (Inayat-ul-Haq etc.. Vs.. The Secretary, Government of NWFP, Health Department, Peshawar), this writ petition is allowed.

Dt: 14.1.2010.


sdl - Dost Muhammad Khan
sdl - Abdul Aziz Kundi - J

Please Issue

Addl. Registrar J
27/1/10

M. Gul

CERTIFIED TO BE TRUE COPY


Peshawar High Court Peshawar
Authorized Under Section 75 Acts Order

31-3-10

ATTESTED

This
26/1

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
PESHAWAR
JUDICIAL DEPARTMENT

17

W.P. No. 1160 of 2008

JUDGEMENT

Date of hearing 14-1-2010

Appellant/s (Raj Mohammad etc) by Mr. M. Isa Khan Advocate

Respondent/s (E.D.O etc) by Mr. Baiser Rashid A.A.C.

ISSUE

ABDUL AZIZ KUNDI, J. Pursuant to an advertisement appearing in Dally "Aaj" Peshawar dated 25.5.2004, the petitioners Raj Muhammad and 12 others being eligible applied for the post of Nurses and after due process of test and interview, they were appointed as Male Nurses (BPS-14) vide orders dated 16.8.2004, issued by District Co-ordination Officer, Buner (respondent No.2). Their appointment was on contract basis initially for a period of three years and liable to automatic termination. However, in case the job is required to be continued, a fresh contract was to be executed.

M. Isa Khan

2. Later on the case of the petitioners was considered for regularization of their service and ultimately DCO Buner vide his order dated 19.04.2007 pursuant to

ATTESTED
EXAMINER
Peshawar High Court

Government of NWFP E&A Department
Circular letter No.SO-VI/E&AD/1-13/2005
dated 10.8.2003, regularized the services of
the petitioners with effect from 17.8.2004.

18

3. It appears that some correspondence took place between the official respondents and a stand was taken that the petitioners have been appointed against a scheme "Improvement and Standardisation of DHQ Hospital, Daggar, Buner" and it was proposed that the petitioners be adjusted against the newly approved posts.

4. Notwithstanding the fact that the petitioners were regular employees of the department, respondent No.3 i.e. Director General (Health) NWFP, Peshawar, vide his letter dated 7.7.2008 directed that the employees appointed against the post created under ADP scheme stand automatically terminated on completion of the scheme and on receipt of this letter Medical Supdt: DHQ Hospital, Buner i.e. respondent No.5 treated this as a termination letter of the petitioners and accordingly he endorsed the same to the petitioners for their information and compliance.

Mishal

ATTESTED
BUNER
District Health Officer

5. This forced the petitioners to approach this court through this writ petition and as an interim relief the following relief was prayed for :-

"Graciously, the respondents may be restrained from filling the vacancies till final disposal of the writ petition."

6. The writ petition was taken up for hearing on 30.7.2008, and while ordering clubbing of the same with W.P.No.1662/2007, status quo was ordered to be maintained.

7. In their comments, respondents 1 and 2 have taken the plea that the petitioners had been appointed under the ADP Scheme posts and since the D.G. Health Services had directed termination of services of those appointed against the said posts, therefore petitioners were endorsed the said directions for information and compliance.

8. While the petitioners were still working as contract employees, when the Government of NWFP through NWFP, Civil Servants (Amendment) Act, 2005 (IX of 2005) substituted the original section 19 of the said Act by the following new section:-

"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

ATTESTED
EXAMINER
Peshawar High Court

18

21

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:

20

Provided that in the event of 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 appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on 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, alongwith 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.

Mirza

(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 civil servants, not exceeding two-third of the pension or gratuity which would have been admissible to him had he been

ATTESTED

EXAMINER

Mahmood High Commr

al

invalidated from service on the date of such dismissal or removal.

21

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."

9. Petitioners' case is that on no point of time the official respondents treated them as employees of a project or under the ADP Scheme; that the posts were advertised on contract basis and so were they appointed on contract and then vide order dated 19.4.2007 regularized with effect from 17.08.2004 and were since then holding regular posts and treated as such; that even if the said orders are taken out of consideration, then with the promulgation of N.W.F.P., Civil Servants (Amendment) Act, 2005 (Act IX of 2005) they

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ATTESTED

EXAMINER
Department of Public Administration

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like other employees of other departments of the Provincial Government of N.W.F.P. automatically became regular employees and that the subsequent actions of the respondents and ultimate termination of the petitioners was an act based on malafide, without lawful authority and jurisdiction.

22

10. There is no denial of the fact that petitioners are appointees after the target date of 1st July, 2001 on contract basis and were in active service when the amendment aforesaid was brought in the relevant law.

11. In somewhat similar circumstances this Court has vide judgment dated 11/7/2007 passed in writ petition No.1731/2006 titled "Ms. Shagufta Syed and three others Vs. Government of N.W.F.P. and three others" exhaustively dealt with this proposition and issued writs. The said judgment has been consistently followed and there is no reason to deviate from the same.

12. Consequently, this W.P. No.1160 of 2008 is allowed, the impugned actions and orders of the respondents are declared to be without lawful authority and jurisdiction. Petitioners are declared to be regular employees on their respective posts both

M. I. Qureshi

ATTESTED

EXAMINER
Peshawar High Court

W

under the orders issued by competent authority and in terms of sub-section 2 of section 19 of N.W.F.P. Civil Servants Act, 1973 (as it was amended vide Act LX of 2005). Parties to bear their own costs.

23

Dt. 14.1.2010.

sdt- Dost Muhammad Khan
sdt- Abdul Aziz Kundi - 0

File
2
26/1

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court Peshawar
Authorized Under Section 76 Acts Ordinance

"M. Gul"

22-1-11
Please advise

Adil Kayash
28/1

No. 20347
Date of Presentation of Application 22-1-11
No of Pages 24
Copying Fee /
Urgent Fee /
Total 16.00
Date of Preparation of Copy 22-1-11
Date of Delivery of Copy 22-1-11
Received By [Signature]

[Signature]

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE AMIR HAN MUSEUM

CIVIL PETITION NOS. 170-P TO 172-P AND 668-P OF 2010
(on appeal from the judgments of Peshawar High Court dated 14.01.2010
passed in W.Pa. No. 1160/08, 1062/07, 1166 of 2008, and dated
27.05.2010 passed in W.P. No. 1800 of 2010)

Government of NWFP (now KPK)
through Secretary Health & others (in all cases)
... Petitioners

VERSUS

Raj Mohammad & others (in CP 170-P/10)
Inayatul Haq & others (in CP 171-P & 172-P/10)
Fouzia Khan (in CP 668-P/10)
... Respondents

For the Petitioners: Mr. Lal Jan Khattak, AAG, KPK.

For the Respondents: Mr. Esa Khan, ASC.

Date of Hearing: 15.03.2011

JUDGMENT

NASIR-UL-MULK, J.- The Government of Khyber
Pakhtunkhwa has called into question the judgment of Peshawar
High Court, Peshawar dated 14.01.2010 whereby the Writ Petitions of
the respondents were allowed and the order dated 07.07.2008, which
resulted in their removal from service on the ground that all those
employees who had been appointed under the ADP Scheme stood
automatically terminated on completion of the project/scheme.
Whatever may be the consequences of office order dated 19.01.2007,
it cannot affect the Respondents, whose services were regularized
without reference to any project or scheme. This Court in MUSRAT

MUSRAT v. THE GOVERNMENT OF NWFP AND OTHERS (CIVIL
PETITION NO. 326-P OF 2009), decided on 31.12.2010 had in

STED
Registrar
of Pakistan
15/11/11

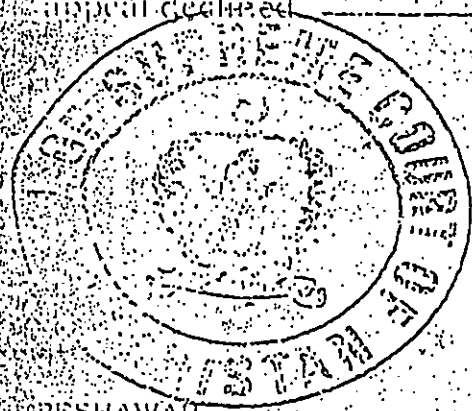
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similar circumstances set aside termination of an employee of the Health Department.

This petition fails and therefore dismissed and leave to appeal declined.



Sd/- Nasser-ul-Mulk J
Sd/- Amir Hameed Muslim J

Certified to be true copy
Assistant Registrar
Supreme Court of Pakistan
Peshawar

PESHAWAR
15th March, 2011

Mudassar
17/3/11

G.R. No.	339-P/2011
Date of presentation	
Application No.	29/03/2011
No. of Writs	600
No. of Parties	8
Request	500
Copy fee	372
Court fee	972
Date of court	31-03-2011
Date of decision	24/4/2011 (24/2011)
Compared by	Amir Hameed Muslim
Received by M.	Amir Hameed Muslim
Total Amount	
Advance Rs.	
Balance	

C
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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT
MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE TARIQ PARVEZ

CIVIL PETITION NO. 326-P OF 2009
(On appeal from the judgment of the
N.W.F.P. (now K.P.K.) Service Tribunal,
dated 20.4.2009 passed in Appeal No. 1337
of 2008)

Miss Nusrat

Petitioner

Versus

The Government of N.W.F.P. through Chief Secretary,
Peshawar and others

Respondents

For the Petitioner: Mr. Wiqar Ahmed Seth, ASC
Mr. Mir Adam Khan, AOR

For the Respondents: Mr. Lal Jan Khattak, Addl. A. G. K.P.K. with
Mr. Jabbar Shah, D.C.O and
Dr. Fida Muhammad, Dy. E.D.O. Health.

Date of Hearing: 31st December, 2010 ✓

JUDGMENT

* NASIR-UL-MULK, J. In response to an advertisement published in the newspaper on behalf of the Executive District Officer, Health, Swabi, inviting applications for the vacant posts of Charge Nurses (BPS-14) on contract basis, in accordance with the Contract Policy 2002, the petitioner was one of a number of other applicants who applied for it. The petitioner, along with 27 others, was selected on the recommendations of the selection committee, duly approved and signed by the District Coordination Officer, Swabi (the competent authority) and was appointed by office order dated 08.2.2005. In the

APPEARED

Registrar
Supreme Court of Pakistan
Peshawar

(Signature)

Act, 1973 as amended by the Civil Servants Amendment Act, 2005.

For the sake of facility, the same is reproduced as under:-

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"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, in the prescribed manner."

It will be seen that the above provision has been made expressly for those government employees employed on contract basis, provided, their selection was made after the 1st July, 2001 and in the prescribed manner. This provision was incorporated to grant the status of civil servants to those employees in the service of Provincial or the Local Government appointed on contract basis under policy of the Government to make appointments on contract only. It is not disputed that the petitioner's appointment was on contract basis and that she was appointed after the 1st July, 2001 before the amendment. The only issue that was debated before us was whether the petitioner was selected in the prescribed manners. According to the Service Tribunal, the prescribed manner was selection through the Public Service

ATTESTED

Assistant Registrar
Court of Palki
Pashapur

Commission. This is disputed by the learned counsel for the petitioner,

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light of general up-gradation of the post of Charge Nurse, the petitioner was up-graded from BPS-14 to BPS-16. By the office order issued by the Medical Superintendent, District Headquarter Hospital, Swabi, with reference to the letter dated 30.6.2008, issued by the Director General, Health Services, N.W.F.P. Peshawar, the petitioner along with 10 other Nurses were relieved from their services. Against the termination of her services, the petitioner filed appeal before the Provincial Service Tribunal. The appeal was dismissed by the impugned judgment dated 20.4.2009 on the ground that the petitioner was a contract employee and that she had not being employed in the prescribed manner, that is through the Public Service Commission.

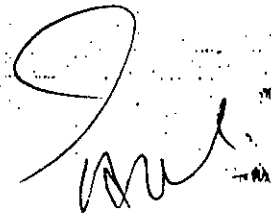
2. The case came up for hearing on 29.12.2010 and notices were issued to the respondents in view of the following submissions made by the learned counsel for the petitioner:-

"It is alleged that the petitioner having been appointed on 14.2.2005, in BPS-14 and subsequently up graded to BPS-16 on 11.4.2007, though on contract basis, had stood regularized as Civil Servant on the basis of Civil Servants (Amendment) Act, 2005 promulgated on 23.7.2005, whereby, section 19 of the Civil Servants Act was amended. That, having become regular Civil Servant, she could not have been relieved/removed on 30.6.2008. The points deserve consideration. Notice to the respondents be issued for a date to be fixed by the office."

The moot question in this case is, therefore, whether the petitioner's services stood regularized under Section 19(2) of the Civil Servants

ATTESTED

Assistant Registrar
Supreme Court of Pakistan

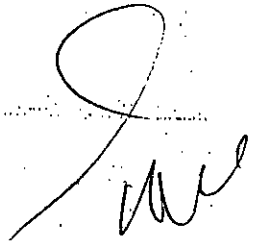


who submitted that the post to which the petitioner was appointed was a District Cadre Post and according to the Rules then in force, the competent authority, who was empowered to make appointments in scales 11-15, was the District Coordination Officer, which is also reflected in the petitioner's letter of appointment. In this context, the learned counsel referred to the N.W.F.P. District Government Rules of Business, 2001. Mr. Lal Jan Khattak, learned Additional Advocate General, referred to letter dated 30.6.2008 by the Director General Health Services N.W.F.P. in pursuance whereof the petitioner's services were terminated and took the stand that the petitioner was appointed under the Annual Development Programme Scheme and was relieved from her services upon completion of the said scheme. He, however, produced a notification dated 15.1.2002 categorizing the petitioner's post at the relevant time as a District Cadre Post.

3. The reliance of the Additional Advocate General on the letter dated 30.6.2008 is misplaced. Neither the advertisement dated 26.10.2003 issued by the Executive District Officer Health, Swabi, inviting applications for the post, nor the appointment order dated 08.2.2005 states that the posts in question were under the Annual Development Programme Scheme. The terms and conditions of the petitioner's employment were to be regulated in accordance with the terms of the advertisement and the appointment order. The advertisement and the appointment order clearly shows that the post to which the petitioner was appointed, was of District Cadre. This is now

ATTESTED

Assistant Registrar
Supreme Court of Pakistan
Peshawar



confirmed by the notification dated 15.1.2002 produced by the learned Additional Advocate General.

4. The Service Tribunal had held that since the appellant was not selected by the Public Service Commission, the selection was not in the prescribed manner. However, Section 7 of the N.W.F.P. Public Service Commission Ordinance, 1978, which describes the functions of the Commission expressly, excludes from the purview of the Commission recruitments in PBS-11 to 15 for the district cadre posts. On the other hand Rule 6(b) of the N.W.F.P. District Government Rules of Business, 2001 empowers the District Coordination Officer to appoint officer/officials in BPS-1 to BPS-15. The order of appointment of the petitioner was expressly issued with the approval of the District Coordination Officer, Swabi. Thus, the petitioner was appointed in the prescribed manner under the law prevailing at the time of her appointment. The petitioner fulfills the requirements of Section 19(2) of the Civil Servants Act, having been selected and appointed in the 'prescribed manner'. The Tribunal had fallen into error by holding that the prescribed manner was selection through the Public Service Commission.

5. In view of the above, the petitioner's services stood regularized under Section 19(2) of the Civil Servants Act as she fulfills all the conditions stipulated therein. The petition is, therefore, converted into appeal and allowed. The petitioner's services shall be deemed to have been regularized as civil servant under the said statutory provision. Consequently, the impugned judgment of the

ATTESTED

Assistant Registrar
Supreme Court of Pakistan
Peshawar.

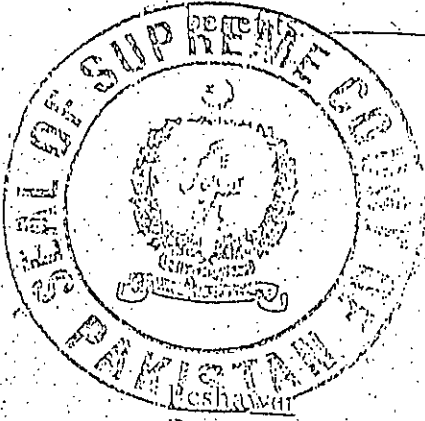
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C.P.No. 326-P of 2009

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Service Tribunal and the order of the petitioner's removal from service dated 30.6.2008 are set aside. She is reinstated in service with all back



December 31, 2010,
Shirazi/

9/12/11

sd/- Nasir-ul-Mulk, J
sd/- Tariq Parvez, J

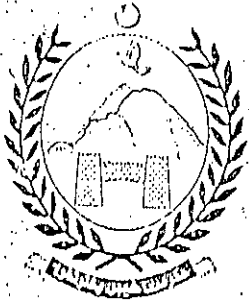
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Assistant Registrar
Supreme Court of Pakistan
Peshawar

"NOT APPROVED FOR REPORTING"

G.R. No. 05-P/2011
 Date of presentation of Application 01-01-2011
 No of Words 1819
 No of Folios 18
 Requisition Fee 5.00
 Copying Fee 11.16
 Court Fee stamp 16.16
 Date of completion 15-01-2011
 Date of Delivery 17-01-2011
 Compared by Copy
 Received by M.I. Adam Khan AM
 Total Amount 32.32
 Advance Fee 32.32
 Balance

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DIRECTORATE
GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR

All communications should be addressed to the Director General Health Services Peshawar and not to any official by name.

E-Mail Address: nwfdghs@yahoo.com
Office Ph# 091-9210260
Exchange# 001-9210187, 9210190
Fax # 001-9210230

OFFICE ORDER.

In Pursuance of Peshawar High Court Peshawar order dated 30/11/2011 in COC No. 234/2011 in COC No. 109 of 2010 in Writ Petition No 1160/2008, the following Male Nurses whose services have already been regularized in light of judgment of Peshawar High Court Peshawar dated 14/01/2010 and Supreme Court of Pakistan Judgment dated 15/03/2011, under sub Section-2 of Section 19 of Khyber Pakhtunkhwa Civil Servant Act 1973 (as amended vide Act IX of 2005), vide this Directorate office order bearing Endst; No 22241-47/E-II dated 06/09/2010 and No.1102-12/E.II dated 10-01.2012 are hereby allowed back benefits w.e.f 23/07/2005.

Subsequently the period mentioned against their names in column 04 to column 05 below is hereby treated as period on duty :-

S.No	Names	Place of Posting	From	To
01	Raj Mohammad S/O Amir Akbar Khan	DHQH Daggar Bunner	01.07.2008	13.09.2010
02	Muhammad Imran S/O Shah Zada	DHQH Daggar Bunner	01.07.2008	13.09.2010
03	Fazal Raziq S/O Hazrat Said	DHQH Daggar Bunner	01.07.2008	13.09.2010
04	Sher Dali Khan S/O Umar Dad	DHQH Daggar Bunner	01.07.2008	13.09.2010
05	Zamir Khan S/O Samar Khan	DHQH Daggar Bunner	01.07.2008	13.09.2010
06	Abdul Jalil S/O Amir Mohammad Khan	DHQH Daggar Bunner	01.07.2008	13.09.2010
	Fazal Raziq S/O Mohammad Rasool Khan	DHQH Daggar Bunner	01.07.2008	13.09.2010
08	Mula Dad S/O Noor Said	DHQH Daggar Bunner	01.07.2008	13.09.2010
09	Umer Farooq S/O Ghulam Ahmad	DHQH Daggar Bunner	01.07.2008	13.09.2010
10.	Irshadullah S/O Ihsanullah	DHQH Daggar Bunner	01.07.2008	13.09.2010
11	Meraj Khan S/O Amreen Khan	DHQH Daggar Bunner	01.07.2008	13.09.2010
12	Sahib Zaman S/O Noor Wahid	DHQH Daggar Bunner	01.07.2008	13.09.2010
13	Anwar Zaib S/O Amroz Khan	DHQH Daggar Bunner	01.07.2008	13.09.2010

Sd/-
DIRECTOR GENERAL HEALTH
SERVICES KPK PESHAWAR

33

No. 2-4986-92 /E-II

Dated Pesh. The 12/09/2012

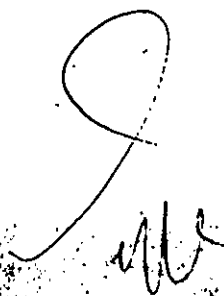
Copy forwarded to the :-

1. Secretary to Govt. of Khyber Pakhtunkhwa Health Department, Khyber Pakhtunkhwa Peshawar with reference to the letter No. SOF111/3-5/2012 (Raj Mohammad) dated 04/07/2012.
2. Addl. Registrar Peshawar High Court Peshawar with reference to the letter No. 15829/Judl: dated 10/12/2011.
3. EDO (Health), Buner.
4. Medical Supdt: DHQ Hospital Daggat (Buner).
5. DAO, Buner.
6. DA-concerned, DGHS office Peshawar.
7. P/files.

For information and necessary action please.


DIRECTOR GENERAL HEALTH
SERVICES, KHYBER PAKHTUNKHWA
PESHAWAR

7/10/12



To

The Secretary,
Govt. of Khyber Pakhtunkhwa,
Health Department, Civil Secretariat,
Peshawar.

dated 24-3-14
Diary No. 3897
Sec. Health Pesh.

Annex I

34

Subject: Departmental Representation for regularization of the services of the appellant w.e.f. 14.02.2005 till 31.05.2008 on the basis of equality and equal protection of law in the light of the Judgment rendered by the august Peshawar High Court, Peshawar in Writ petition No.1662/2007, 1166/2008 & 1160/2008 decided on 14.01.2010 and upheld by the august Supreme Court of Pakistan vide C.P.170-P to 172-P & 668-P of 2010.

Respected Sir,

I have the honour to submit the departmental Representation for your favourable consideration on the following facts and grounds:

1. That in the year 2003 the Executive District Officer, Health, District Swabi, floated an advertisement through Press, inviting applications for Charge Nurses. Appellant being qualified in terms of advertisement applied for the same and after going through selection process, the Departmental Selection Committee recommended her and finally she was appointed as Charge Nurse (BPS-14) by Executive District Officer (Health), Swabi on the approval of the DCO vide order dated 14.02.2005. It will not be out of context to mention that vide letter dated 15.01.2002 issued by the Govt. all the Provincial Cadre Posts in BPS-15 & below of the Health Department were converted into District Cadres.
2. That in pursuance of the order *ibid*, appellant assumed the charge of her duties at DHQ Hospital Swabi, thereafter appellant started performing her duties to the entire satisfaction of high-ups. Moreover, Respondents also maintained her Service Book wherein necessary entries were also entered from time to time and she was also allowed all the facilities and privileges as admissible to other regular employees.
3. That in the year 2002 the Government had introduced a Contract Policy and hence all the appointment thereafter were made under the same Policy similarly the appellant was also appointed under the same Contract Policy and it was

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specifically mentioned in the appointment order that the appointments of appellant would be governed under the same Contract Policy. It will not be out of context to mention that neither in the advertisement nor in the appointment order there is mention of the fact that the post against which appellant was appointed was a project post.

4. That in the year 2005 the Govt. decided to grant regularization to all those employees who were appointed under the Contract Policy of 2002 and in this respect the Provincial Assembly passed an Act i.e. the NWFP Civil Servants (Amendment) Act, 2005 (hereinafter referred to as Act-IX of 2005) whereby Section-19 of the NWFP Civil Servants Act, 1973 was substituted and accordingly all those employees who were appointed in the prescribed manner on or after the 1st July, 2001 till the commencement of the Act were declared to be regular civil servants for all intents and purposes except the Pension & Gratuity and copy of the letter dated 10.08.2005 issued by the Govt. Thus under the Act all the employees selected and appointed on Contract basis stood automatically regularized by operation of law.
5. That since the date of her appointment, appellant had regularly performed her services to the entire satisfaction of her superiors, however, later on, the appellant was told that her appointment was under the ADP Scheme and that appellant should appear before the Public Service Commission for the post. In the meanwhile the posts were advertised by the Public Service Commission and thus appellant was compelled to apply for the same and after undergoing the selection process, she was recommended and appointed as Charge Nurse vide order dated 31.05.2008 and continued on the same post without termination of the services.
6. That in identical case under similar circumstances, the Male/Female Nurses of District Dir Lower and Malakand who were also terminated under the same ground of Project employment and who were similarly appointed the way back in the 2003 & 2004 alongwith the appellant approached the august Peshawar High Court, Peshawar in *Writ petition No.1662/2007, 1166/2008 & 1160/2008* which were allowed vide Judgment dated 14.01.2010 on the strength of similar other Judgment in Writ petition No.475/2006 titled "*Miss Shagufta Sayed...Vs... The Govt. of NWFP and others*" decided on 11.07.2007 and the same was subsequently upheld by the august Supreme Court of Pakistan vide C.P.170-P to 172-P & 668-P of 2010 decided on 15.03.2011.



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7. That accordingly all the terminated Male/Female Nurses were not only reinstated into service but also declared regular employees under the Act IX of 2005 and they were also allowed back benefits by the Department. As the case of appellant was identical in nature, therefore, she is also entitled to the same relief under the rule of consistency and equality.
8. That appellant was unaware of the Judgments aforesaid and just now she came to know about the same. As the case of appellant is identical on all fours with that of other employees of the Department working in similar manner who were granted relief by the august Peshawar High Court, Peshawar therefore, appellant is also entitled to the same relief under the principle of consistency and equality as laid down in the case of "*Hameed Akhtar Niazi...Vs...The Secretary, Establishment Division, Govt. of Pakistan and others*" reported in 1996 SCMR 1185 and *Tara Chand and others...Vs...Karachi Water and Sewerage Board, Karachi and others*" reported in 2005 SCMR 499 and another Judgment reported in 2009 SCMR 1.

It is, therefore, requested that on acceptance of this departmental Representation, the services of the appellant may graciously be regularized w.e.f. 14.02.2005 till 31.05.2008 in the light of the Judgments delivered by the august Peshawar High Court, Peshawar cited above with all back benefits.

Yours faithfully

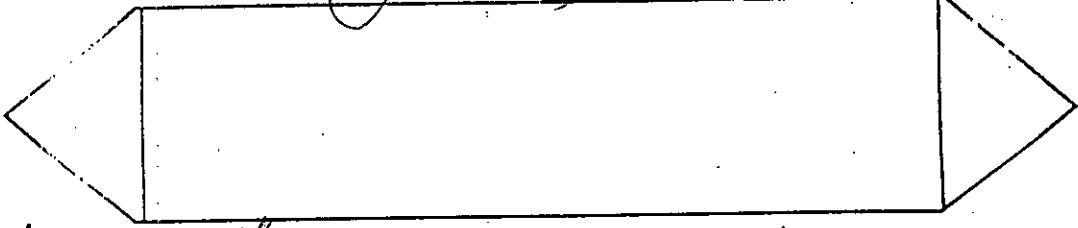
Saeeda Naz

Saeeda Begum,

Charge Nurse, DHQ Hospital,
Swabi.

Dated: _____/03/2014

بعدالت سرور واپس



20 بجانب رہا
سندھ بنا م حکومت

موزہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ
آن مقام کیلئے صاحب کارروائی
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوفہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بمسورت ڈگری کرنے اجراء اور سولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے نکل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ
پراختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تارق پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا وکالت نامہ لکھد یا کہ سند ہے۔

المرقوم _____ ماہ _____ 20

کے لئے منظور ہے۔

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

APPEAL NO. 1009/2014

Miss. Saeeda Naz D/O Amir Bahadar Charge Nurse DHQ Hospital Swabi.
R/O Village Marghuz Teh & Distt. Swabi..... (Appellant)

VERSUS

1. The Secretary, Govt: of Khyber Pakhtunkhwa, Health Department, Peshawar
 2. The Director General Health Services Khyber Pakhtunkhwa, Peshawar
 3. The District Health Officer, District Swabi
- Respondents)

**WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS PRELIMINARY
OBJECTIONS**

Respectfully Sheweth:

1. That the appellant has no cause of action/ locus stand.
2. That the appellant has deliberately concealed the material facts from this Honorable Tribunal, hence liable to be dismissed.
3. That the appellant has not come to this tribunal with clean hands.
4. That the appellant has files the instant appeal just to pressurize the respondents.
5. That the appellant has not filed the instant appeal on malafide motives.
6. That the instant petition is against the prevailing Law and Rules.
7. That the appeal is not maintainable in the present form and also in the present circumstances of the issue.
8. That the appeal is time barred.
9. That this honorable tribunal has got no jurisdiction to entertain this appeal.

FACTS:

1. Correct, to the extent that on recommendation of the District Selection Committee Miss. Amina Naz Charge Nurse was appointed as Charge Nurse BPS-14 on contract basis for three years vide EDO Health office letter No.827-59/EDO Health Swabi dated.14.02.2005. She submitted her arrival report on 18.02.2005. The list of the para is incorrect.
2. Correct. She assumed the charge and necessary entries done/maintained in her Service Book.
3. Correct to the extent that her appointment was made under contract policy 2002 under ADP Scheme w.e.f. 14.02.2005 for three years specially mentioned in the appointment order, but there was no mention of ADP Scheme in the advertisement. Moreover she received her salaries from ADP Scheme and not from regular budget.
4. Incorrect, she was appointed under ADP Scheme for three years and on the expiry of her tenure she was relieved on the directives of Director General Health Services KPK Peshawar vide letter No.19383/E-II dated.30.06.2008 by Medical Superintendent DHQ Hospital Swabi vide letter No.1723-40/G-CH dated 30-06-2008.

In the response of an the appeal of applicant Director General Health Services clarified that under civil servant act 2005, employees appointed against the post created under ADP Scheme cannot be adjusted on regular post, vide letter No. 23743-50/E-II dated 07/05/2008.

5. It is correct that on the expiry of her tenure she was relieved from services. Meanwhile she appeared in Public Service Commission which recommended her for the post of Charge Nurse (BPS-16), due to which she was appointed on the same post by DGHS vide letter No.30913-992/E.II Dated 21/10/2008. She took the charge on 24.10.2008.
6. Incorrect, as after completing of her three years contract service on 30.06.2008 on the recommendation of the Public Service Commission she was again appointed on the post of Charge Nurse (BPS-16) by Health Department on 21.10.2008. However, case of the appellant is different from those mentioned is

21.10.2008. However, case of the appellant is different from those mentioned is that some who approached the Honorable Peshawar High Court were reinstated.

7. Correct to the extent that only those petitioners who took the matter to the Honorable Court were given relief but she was not included in the appellants.

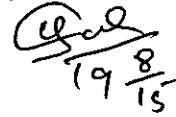
OBJECTION TO GROUNDS:

- A. Incorrect. As 1st she was appointed by District Selection Committee on contract basis on the post of Charge Nurse (BPS-14) for a period of three years under ADP Scheme and after the expiry of her contract period she was relieved by DGHS according to the rules. She took benefits of contract policy at that time. After the recommendation of Public Service Commission she was appointed on the post of Charge Nurse (BPS-16) by Health Department and since then she is receiving benefits of regular service employee. Thus no violation of constitution of Islamic Republic of Pakistan 1973 has been done.
- B. Incorrect. According to various judgments of Supreme Court each case is to be decided on its own merits has the case of appellant is totally different from those mentioned in this Para's.
- C. Incorrect. No discrimination has been committed by the respondent and the appellant was dealt according to the law.
- D. As she was appointed under ADP Scheme for three years therefore, she was not regularized and was relieved according to the rules.
- E. As in Para D.
- F. The respondents also seek formation of this Honorable Tribunal to adder further grounds during arguments.


**SECRETARY to GOVT; OF
KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT PESHAWAR**


**DIRECTOR GENERAL HEALTH SERVICES,
KHYBER PAKHTUNKHWA, PESHAWAR**


**DISTRICT HEALTH OFFICER,
SWABI**


19/8/15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1009 /2014

Mst. Saeeda Naz..... Appellant

Versus

The Govt. and others..... Respondents

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO REPLY FILED BY RESPONDENTS.

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. The appellant has got cause of action and for that matter locus standi to file the instant appeal. The Tribunal has got jurisdiction in the matter. The estoppel has no relevance in the instant issue and moreover, the appellant has approached the Hon'ble Tribunal with a bonafide claim. All the necessary parties have been arrayed as Respondents. The appeal is in its correct form and shape and also within time.

Facts:

- 1&2. Paras-1 & 2 of the appeal have been admitted as correct needing no rejoinder.
3. Reply to Para-3 of the appeal is incorrect hence denied. The posts were advertised regularly and so was the appointment order of the appellant where there was no mention of the project or for that matter ADP. The appointment was under the contract policy of 2002 which got regularized subsequently in 2005.
4. Reply to Para-4 of the appeal is incorrect hence denied. The appointment of the appellant was regular against a sanctioned post and even if it was an ADP, the same was subsequently converted to regular side. Moreover, the appointment of the appellant was made on regular basis. The letter dated 07.05.2008 was not according to law hence not considered by the High Court as well as by this Tribunal.
5. Para-5 of the appeal being admitted needs no rejoinder.
6. Reply to Para-6 of the appeal is also incorrect hence denied. The case of the appellant is identical with the case of writ petitioners in the cited case. Moreover, this Hon'ble Tribunal also passed a Judgment dated 03.12.2015 in Service

Appeals No.1815/2011, No. 1325/2013, No.1905/2010 and No.1907/2010 filed by the colleagues of the appellant wherein the cases were remanded to the Department to examine the case under the law on touchstone of the Judgments passed by the Hon'ble Supreme Court of Pakistan.

7. Reply to Para-7 of the appeal is misconceived. Under the law all the similarly placed are entitled to the relief whether they litigated or not.

Grounds:

A. Reply to Ground-A of the appeal is incorrect hence denied. The appellant was not treated according to law. The contract employees were subsequently regularized but the appellant was ignored.

B. Reply to Ground-B of the appeal is misconceived. The case of appellant is identical with the case already decided by the Peshawar High Court, Peshawar upheld by the Supreme Court of Pakistan.

C&D. Replies to Grounds-C&D of the appeal are incorrect hence denied.

E. Ground-E of the appeal is not replied hence admitted.

F. Reply to Ground-F of the appeal needs no rejoinder.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

Khaleq Rahman
Advocate, Peshawar

Dated: 15/8/2016

Verification

Verified as per instructions of my client, that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Counsel