

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

Service Appeal No. 1284/23

Om Parkash

Versus

Chief Secretary, KPK etc

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 9610

Dated 31/11/23

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Respondent No 26  
M.S. Muhammad Salim  
Respondent 36  
S. Sultan Ali

Through



Zahoor Islam Khattak

Advocate High Court

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

Service Appeal No. 1284/23

**Om Parkash**

Versus

**The Chief Secretary to the Government of KPK, Peshawar etc.**

**WRITTEN REPLY ON BEHALF OF RESPONDENT NO's. 26 & 36**

It is respectfully submitted as under:-

**PRELIMINARY OBJECTIONS AND SUBMISSIONS**

1. That the Appellant is initially appointed on contract basis and consequently he has got no locus standi to claim the seniority on the basis of temporary appointment. Moreover, his services were initially hired upto the expiry/life of the project.
2. That it is pertinent to mention that the Appellant was initially appointed on fixed/contractual basis. Later on, his services were regularized in light of Peshawar High Court verdict in W.P No. 738/2018. However, it is admitted and clear from the record that the Appellant was appointed against a project post by way of a contractual appointment which was for a fixed tenure till the life of the project. The wordings of the appointment order reflects;

***“His service will be upto the life of the project.”***

It clears the position that he was appointed for the purpose of project base only.

3. That the instant service appeal is not maintainable in the eyes of law. The contents of the appeal reflect that the instant service appeal was filed, just for the purported influence exerted on the Respondents to regularize his service from the date of initial appointment, by misconceiving the judgment of Peshawar High Court rendered in Writ Petition No. 1378-P/2018 that he is regularized from the date of initial appointment. Whereas, the judgment only regularized the services of the Appellant, irrespective from date of initial appointment.
4. That it is settled principle of law that the seniority of project employees after regularization shall be reckoned from the date of regular appointment, rather than initial appointment. For the ease, the term regular appointment connotes the meaning “the date

of regularization of employee". Hence, in the instant case, the official respondents did nothing wrong, while preparing the seniority lists.

5. That pertinently, the initial appointment of Appellant by way of contract/project based did not conferred the status of "civil servant", rather he was only the employee of that very project. Thereafter the regularization, the appointment of the Appellant was deemed to be regular appointment. Hence, as per settled law, the seniority of an employee shall be reckoned from the date of the regular appointment, conferring the status of civil servant, rather than from the date of initial appointment.
6. That importantly, the judgment rendered by the Hon'ble Peshawar High Court in W.P No. 1378-P/2018 dated 19.12.2018 only allows the regularization claim of Appellant with the following operative part;

*"In the light of foregoing observations, this Court, by following the ratio of the apex Court in the aforesaid case and of earlier judgment of this Court dated 07.12.2016 passed in Writ Petition No. 926-P/2015, allow the instant petition alongwith the connected petitions bearing No. 2355-P/2016 and No. 2427-P/2016. Consequently, petitioners of this petition and of the connected petitions would be deemed to be regular employees of the Health Services FATA. (Emphasis added)"*

Thus, the judgment also clarified that the services of the Appellant is only regularized. The judgment does not hold any other relief of whatsoever nature. Imperatively, as the law is settled on the principle that the seniority of an employee shall be reckoned from the date of regular appointment, rather than initial appointment. Whereas, in the case of the Answering Respondents, they were appointed as a regular employee from the date of their initial appointment. Thus, the Appellant cannot be placed with the Answering Respondents, as there exists reasonable classification among the Appellant and the Answering Respondents.

7. That the distinction cannot be ruled out that the Appellant is granted with the status of civil servant from the date of his regular appointment through the regularization of his services. Whereas, the Answering Respondents are granted the same from the very first day of their initial appointment in office. Hence, it does not justify the prudent mind that at belated stage, the project/contract employee including the Appellant will supersede the existed employees in seniority list.

#### PARA-WISE REPLY

1. That the contents of para No. 1 pertains to record. Hence, needs no reply.
2. That the contents of para No. 2 are misconceived of legal as well as factual record. The Hon'ble Peshawar Court vide order dated 16.05.2018 in C.M No. 797-P/2018 only allows the C.M to amend the prayer, nor the same was granted to the petitioners including the Appellant. It is imperative to mention that the Judgment passed by the Hon'ble Peshawar High Court in Writ Petition No. 1378-P/2018 vide order dated 19.12.2018 pertains to the regularization of

the employees including the appellant, rather than from the date of initial appointment. Pertinently, no such date has been mentioned in the Judgment rendered by Hon'ble Peshawar High Court. The contents of preliminary objections and submissions are reiterated here.

3. That the contents of para No. 3 are correct to the extent of regularization of Appellant. However, the remaining contents of the paragraph regarding the regularization date are vehemently denied. According to the judgment of Peshawar High Court, neither the date is mentioned nor does the same indicate the regularization from the date of initial appointment of Appellant. Moreover, the contents of preliminary objections and submissions are reiterated here.
4. That the contents of para No. 4 does not pertains to the Answering Respondents. Hence, needs no reply.
5. That the contents of para No. 5 pertains to record. However, the contents of the preliminary objections and submissions are reiterated here.
6. That the contents of para No. 6 are legal in nature and therefore needs no reply.

#### GROUNDS:

- A. That the para under reply is denied. The detailed reply has been given in the Preliminary objections and submissions, which may kindly be read as an integral part of the para under reply.
- B. That the para under reply is denied. The detailed reply has been given in the Preliminary objections and submissions, which may kindly be read as an integral part of the para under reply.
- C. That the para under reply is incorrect as the notification only bears the regularization of the Appellant. Whereas, it is settled law that the seniority of project/contract employees shall always be reckoned from the date of regularization, rather than date of initial appointment. Moreover, in the para under reply, there is self-admission of the Appellant that the seniority shall always be reckoned from the date of regular appointment. Hence, the respondent No. 3 acted as per law by reckoning the seniority of the Appellant from the date of his regular appointment. Moreover, the contents of the preliminary objections and submissions are reiterated here.
- D. That the para under reply is denied. It is settled principle of law and jurisprudence has also been developed by the apex Courts in number of judgments that the seniority of project/contract employees shall always be reckoned from the date of regularization, rather than the date of initial appointment. Hence, the Appellant is not entitled to be placed in the seniority list according to his initial appointment.
- E. That the para under reply does not pertains to the Answering Respondents.

- F. That the para under reply is vehemently denied and misconceived of legal jurisprudence. It is salutary principle of law that the seniority of project/contract employees shall always be reckoned from the date of regularization, rather than the date of initial appointment. Hence, the Appellant wrongly quoted the view of apex Courts and thus does not warrant for correction of the seniority list.
- G. That the para under reply is denied for want of knowledge. Hence, needs no reply.
- H. That the para under reply is incorrect, hence vehemently denied. Rather, it will cause miseries to the officials/Answering Respondents who are senior to the Appellant, by serving the department for more than 30 years, which counts for more than half of their life. Thus, the inclusion of seniority of the Appellant will not only infringe their basic fundamental rights, but will also push them in their seniority. Pertinently, the inclusion of Appellant from the date of initial appointment through the project (even not granted with the civil servant status). Then how the Appellant is entitled to step his shoes in the seniority of the existing civil servants.
- I. That the para under reply is incorrect. Hence, vehemently denied. Neither the Appellant was deprived from his legal rights nor was he placed wrongly in the Impugned Seniority List, issued on 07.12.2023.
- J. That any other ground will be raised at the time of arguments, if required subject to prior permission of the Hon'ble Court.

**PRAYER:**

In view of the foregoing, it is humbly prayed that the service appeal in hand may kindly be dismissed along with costs in the extreme interest of justice, fair play and equity.

Any other order/remedy that this Hon'ble Court deems fit, may also graciously be granted.

Respondent No. 26  
(M.S.) Muhammad Salim

Respondent 36  
Sh. Sultan Ali

Through

  
Zahoor Islam Khattak

Advocate High Court(s)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

Service Appeal No. 1284/23

**Om Parkash**

Versus

**Chief Secretary, KPK etc**

**WRITTEN REPLY ON BEHALF OF RESPONDENT NO's. 26 & 36**

**Affidavit**

I, Muhammad Salim r/o LRH, Peshawar do hereby solemnly affirm and declare on oath:

“That the contents of the accompanied reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.”



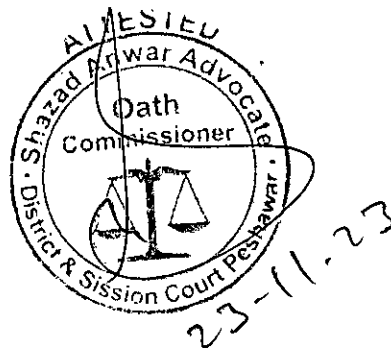
*M. Salim*

DEPONENT

*Muhammad Salim*

**VERIFICATION**

Verified on oath at Peshawar on this \_\_\_\_\_ day of Nov, 2023 that the contents of this affidavit are true and correct to the best of my knowledge and belief. Further, nothing has been concealed from this Honorable court.



*M. Salim*

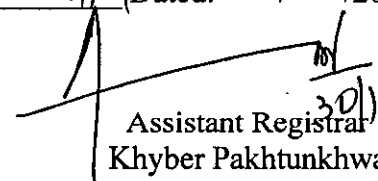
DEPONENT

*Muhammad Salim*

Cost of Rs. 2,000/- received in Service Appeal No. 1284/2023,

Titled Om Parkash vs. Health

in the office of Assistant Registrar, Vide Order 27/10/23, Submitted Dated: 30/11/2023.

  
Assistant Registrar  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar  
30/11/23

ND

01/12/2023