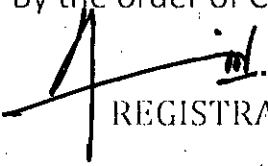


Form- A

FORM OF ORDER SHEET

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

Implementation Petition No. 987/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	21.12.2023	<p>The implementation petition of Mr. Khan Afzal legal heir of Mst. Shahnaz Begum submitted today by Mr. Hamid Ullah Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____ . Original file be requisitioned. AAG has noted the next date. Parcha Peshi is given to the counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>



**BEFORE THE KP SERVICES TRIBUNAL, PESHAWAR.**

Khyber Pakhtunkhwa  
Service Tribunal

Execution Petition No:- 987 /2023

Diary No. 10028

In  
Service Appeal No:- 1402/2022 dated of decision 02/08/2022

Dated 21-12-2023

1. Khan Afzal S/o Fazal-e-Haq
2. Mst: Dardana Manihal
3. Mst; Dardana Ghazal, [minor daughters]
4. Muhammad Abu Huraire, minor son ( through appellant No 1) [all legal heirs of Mst: Shahnaz Begum LHW posted RHC Patwar Bala], all residents of Patwar Bala Ghari Fazal-e-Haq, Peshawar  
..... Appellants

**Versus**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Govt: of KPK, Peshawar.
2. Secretary Health, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Director General Health, Peshawar.
4. District Health Officer (DHO) District Peshawar.
5. District Accounts Officer/ Accountant General, AG Office Peshawar.

..... Respondents



EXECUTION PETITION FOR IMPLEMENTATION OF THE VIDE  
ORDER/JUDGMENT DATED 02/08/2022 OF THIS  
HONOURABLE TRIBUNAL IN APPEAL NO 1402/2022.

***Respectfully Sheweth:-***

1. That the above titled Service Appeal was pending before this Honourable Tribunal, which was allowed vide judgment/order dated 02/08/2022. **(Copy of judgment is attached as annexure "A")**.
2. That after obtaining the attested copy of the order/judgment of this Honourable Tribunal, the petitioner asked the respondents for compliance and implementation of the above said judgment of this Honourable Tribunal within a specified period of 90 days, but they using delaying tactics. **(Copy of application is attached as annexure "B")**
3. That this Honourable Tribunal direct the respondents to issue pension of the predecessor of appellants/petitioners namely Mst. Shehnaz Begum from the date of appointment i.e. 01/11/1997 till her death i.e. 24/11/2021, but the respondents willfully disobeying the order/ judgment of this Honourable Tribunal, they have not implemented the aforesaid order, which act of the respondents are illegal, against the law and facts on the subject.
4. That the respondents are constitutionally bound to give respect to and implement the judgment/order of this Honourable Tribunal in its true letter and spirit.
5. That any other grounds will be raised at the time of arguments with kind permission of this Honourable Court.

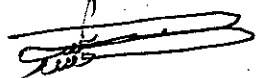
(4)

*It is, therefore, humbly prayed that on acceptance of this execution petition, the respondents may kindly be direct to implement the judgments dated 02/08/2022 passed in Service Appeal No 1402/2022 passed by this Honourable Tribunal in its letter & spirit.*

Dated:- 19/12/2023

Through:-

*Kathun*  
Petitioner/Appellant

  
Hamid Ullah  
Advocate High Court  
Peshawar.

(5)

**BEFORE THE KP SERVICES TRIBUNAL, PESHAWAR.**

Execution Petition No:- \_\_\_\_\_/2023

In

Service Appeal No:- 1402/2022 dated of decision 02/08/2022

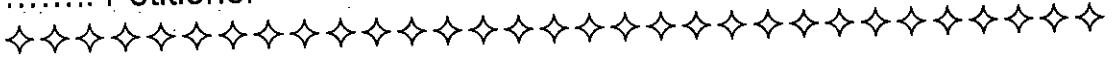
Khan Afzal

**Versus**

Govt: of K.P.K & others

..... Petitioner

..... Respondents



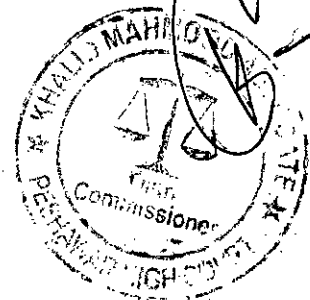
**AFFIDAVIT**

I, Khan Afzal S/o Fazal-e-Haq R/o Patwar Bala Ghari  
Fazal-e-Haq, Peshawar, (The appellant No 1) do hereby solemnly  
affirm and declare on oath that the contents of this accompanying  
service appeal are true and correct to the best of my knowledge  
and belief and nothing has been concealed from this Honourable  
Court.

Identified by

Hamid Ullah  
Advocate High Court

<sup>(Khan)</sup>  
DEPONENT  
CNIC No:-17301-6361843-5  
Cell No:-0313-9930172



23

19/12

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1402/2022



BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

1. Khan Afzal S/O Fazl-e-Haq, Husband, 2. Mst. Dardana Manahil  
3. Mst. Dardana Ghazal daughters and 4. Muhammad Abu Huraira,  
son are legal heirs of Mst. Shehnaz Begum LHW, R/O of Patwar  
Bala Ghari Fazl-e-Haq Peshawar.

.... (Appellants)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
3. Director General Health Services, Peshawar.
4. District Health Officer, Peshawar.
5. District Accounts Officer, AG Office Peshawar.

.... (Respondents)

Mr. Hamid Ullah  
Advocate

For legal heirs

Mr. Asif Masood Ali Shah  
Deputy District Attorney

For respondents

-----

Date of Institution.....26.09.2022  
 Date of Hearing.....02.08.2022  
 Date of Decision.....02.08.2022

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(7)

“On acceptance of instant appeal the pensionary benefits, family pension and gratuity may kindly be granted in favour of appellants.”

2. Brief facts of the case, as given in the memorandum of appeal, are that predecessor of appellant was appointed as Lady Health Worker (LHW) on contract basis vide order dated 01.11.1997. Upon promulgation of Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and employees (Regularization and Standardization) Act 2014, the services of the appellant alongwith others were regularized vide office order dated 19.09.2014 with effect from 1<sup>st</sup> July 2012. During service Mst. Shahnaz Begum died on 24.11.2021. Despite several requests the respondent department has not issued family pension/pensionary benefit and gratuity to the predecessor of appellant. They filed departmental appeal on 12.06.2022 which was not responded within statutory period, hence the instant service appeal

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant has argued that the predecessor of appellant was initially appointed as Lady Health Worker on contract basis vide order dated 01.11.1997, later on her services were on regularized vide office order dated 19.09.2014 with effect from 1<sup>st</sup> July 2012, therefore, in view of Rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, the period of contract service shall be counted for the purpose of pensionary

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

R



benefits; that predecessor of appellant has rendered about 24 years service, therefore, depriving her of pensionary benefits is not only against the fundamental rights of the appellant guaranteed under the Constitution but is also violation of Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963, that same nature issue was raised before the larger bench of august Peshawar High Court in Writ petitions No. 3394-P/2016 and 2246-P/2016, in which the august Peshawar High Court vide judgments dated 22.06.2017 laid down the dictum that the service rendered on fixed pay/contract basis is countable towards pension fixation and retirement benefits; that in view of Notification dated 22.05.2019 issued by the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing), the fixed pay/contract period of service of the appellant was required to have been counted towards pensionary benefits.

5. Conversely, learned Deputy District Attorney for the respondents, has contended that the appellant was initially appointed as Lady Health Worker in the year 1997 on fixed pay/contract basis and her services were regularized vide office order dated 19.09.2014 with effect from 01.07.2012; that the appellant died on 24.11.2021 and as such, she had performed duties as regular Lady Health Worker for a period of about 10 years, that the contractual period of service of an employee could not be legally counted in his regular service.

6. Perusal of record reveals that appellants are legal heirs of deceased Mst. Shahnaz Begum who was appointed as Lady Health Worker on 01.11.1997 on contract basis in Health Department, whose services were

later on regularized in pursuance of the Government of Khyber

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Civil Service Tribunal  
Peshawar

9

Pakhtunkhwa Finance Department notification No. 10158-9 dated 19.09.2014 w.e.f 1<sup>st</sup> July, 2012. Mst. Shehnaz Begum died on 24.11.2021 during service. Despite several requests and filing of departmental appeal, respondents had not issued family pension/pensionary benefits and gratuity to the predecessors of deceased appellant. Now the question, requiring determination is as to whether the contract period of service of the deceased appellant could be counted for granting her pensionary benefits or not? Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963, deal with the issue in question, which are reproduced as below:-

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

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

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

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

7. Perusal of the above mentioned rules make it clear that when a government servant is regularized, his total length of service is to be computed from the date he joined the service, whether temporary or otherwise. In this view of the matter, the length of service of the appellant shall be counted from the date of her initial appointment i.e 01.11.1997 for the purpose of pension and gratuity. Wisdom in this respect is also derived from the judgment dated 22.06.20 17 passed by august Peshawar High Court, Peshawar in Writ Petition No. 3394-P/20 16.

ATTESTED

EXAMINER  
Pakhtunkhwa  
Service Tribunal  
Peshawar

titled "Amir Zeb Versus District Account Officer Nowshera etc."

8. August Supreme Court of Pakistan in its judgment reported as 2015 PLC (C.S) 296 titled "Secretary to Government of Punjab, Finance Department Versus M. Ismail Tayer and 269 others, has graciously held that the pensionary benefits is not a bounty or ex-gratia payment but a right acquired in consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant or her legal heirs.

9. Consequent upon the above discussion, the appeal in hand is allowed and the respondents are directed to grant pensionary benefits to the predecessors of appellant by processing and finalizing pension case within 90 days after receipt of copy of this judgment. Costs shall follow the event. Consign.

10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 2<sup>nd</sup> day of August, 2023.

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah

**Certified to be true copy**

  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 23/8/23  
Number of Pages page 5  
Copying Fee 25/-  
Urgent \_\_\_\_\_  
Total 25/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 14/9/23  
Date of Delivery of Copy 14/9/23

محترم جناب ڈی۔ ایچ۔ او صاحب پشاور

عنوان: درخواست بھراد پست ادا بندی

جناب عالی

مورد بیان گزارشی ہے۔ کہ سائل کی بیوی آئی کے زیر سایہ بطور LHW

خدمات انجام دے رہی تھی۔ جو کہ دوران کروس مورفہ 24-11-2021

کو وفات پائی تھی۔ سائل نے اسی کی پست دیگر بقایا جات کے لیے درخواست کی۔ ان کی پست Date of Regularization سے بنائی گئی۔ جبکہ

سائل کے علم کے مطابق یہ Cases میں پست Date of 1st appointment سے بنائی گئی۔ جس کے لیے سائل نے عدالت سے رجوع کیا۔ عدالت نے فیصلہ سائل کے

حق میں دیا۔ لہذا آپ صاحبان سے گزارش ہے کہ سائل کی بیوی (مورفہ)

کی پست اسی کی پہلی تفاتی بطور LHW سے مورفہ 01/11/1997 سے بنوانے

کے احکامات صادر فرمائیں مشکور فرمائیں۔ سائل اور بچے تاحیات ڈی گور ہو گا۔

(عدالتی فیصلہ سابقہ منسک ہے)

انور الحق

for



مورفہ: 19/09/2023

DHO	
Diary no. 5164	PESHAWAR
Date: 19/9/2023	
R. Date: .....	
* OFFICER OF	

Attested to be true copy

خان افضل شوریہ - شیناز بیگم (مورفہ)

سابقہ بیوی کے طور پر  
RHC, Putwar Bala.

قیمت 50 روپے	پشاور بار ایسوسی ایشن، خمیر پختونخواہ
ایڈویٹ: 19917 محمد اللہ رٹوکیت	PESHAWAR BAR ASSOCIATION
بار کونسل ایسوسی ایشن پختونخواہ 12-35-12	
رابطہ نمبر: 0312-9095135	

بعدالت جناب: سرسید ٹریبونل ایفصل

منجانب: مسٹر /	دعوی: Exemption
خان افضل نمبر	علت نمبر:
بنام	مورخہ:
حصولی ختم پختونخواہ	جرم:
	تھانہ:


### بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ آن مقام ایفصل کیلئے محمد اللہ رٹوکیت کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث فیصلہ برحلف دینے جواب دعوی اقبال دعوی اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت 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 اور بصورت ضرورت مقدمہ مذکورہ کے کل 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 وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا سائنسہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب باہدتہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: / 20

العواہد العواہد

مقام کے لئے منظور ہے۔

Accepted & Witnessed  


خان افضل صدر ضلع سوات سوات ضلع ایفصل