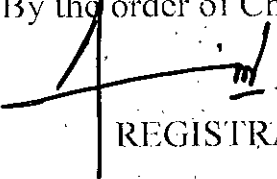


FORM OF ORDER SHEET

Court of _____

Appeal No. 63/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/01/2024	<p>The appeal of Mr. Ziarat Shah resubmitted today by Syed Noman Ali Bukhari Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ . Parcha Peshi is given to counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>


The appeal of Mr. Ziarat Shah son of Khosh Maq. Driver (R) (HW Program Chitra) received today i.e on 16.10.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.



- 1- Copy of proper rejection order of departmental appeal is not attached with the appeal be placed on it.
- 2- Annexure-A of the appeal is illegible.
- 3- The authority whose order is challenged has not been arrayed a party.

No. 3418 /S.T.

DL 17/10 /2023.


 REGISTRAR
 SERVICE TRIBUNAL
 KHYBER PAKHTUNKHWA
 PESHAWAR.

Syed Noman Ali Bukhari Adv.
High Court Peshawar.

R/Sir,

- 1) No spetate order has been issued for rejection of departmental Appeal of the appellant. The remarks written at the corner of the departmental Appeal is rejection of the departmental Appeal
- 2) objection No 2 Et 3 were removed Et re-submitted.

Sir,

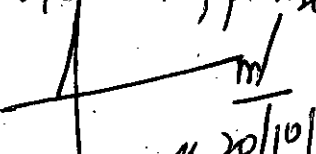
Objection no.1 still stands. The reply of learned counsel is submitted for perusal and appropriate order, please

uz
19-10-2023

Hon'ble Chairman

3446
23/10/23

Objection sustains. The order that is relied by the appellant is not by the appellate authority. Be returned in accord with law w/i 7 days.


 20/10/23

Respected Sir,

most humbly submitted that the appellant file representation for pensionary benefits through proper channel but DHO rejected the same being competent Authority As per Appeal Rules 1986 R-6 & Rule 7 is clear, the competent Authority forward the appeal to Appellate Authority but the competent Authority reject the same and not forwarded the same to Appellate Authority. So, there is no fault lie on the part of appellant, illegality committed by the Authority.

file is submitted for perusal of Dept.
of
25/10/23.

Sir,

Objection No. 1 still stands. The reply of learned counsel is submitted for an appropriate order, please.

Hon'ble Chairman

Object remains.
It returned to
presented as per
accord with law. The
appellant is wasting his
own time, therefore, his
is filed here & received
be of use & received
of filed in account
of law.

30/10/23

3480
31/10/23

30/10/23

Respected Sir,

The appeal was returned on 17-10-23 for the reason that the rejection order has not been passed and Appeal is premature. File was re-submitted after submitting Reply but the reply of the counsel was not considered and objection remain intact as the appeal was again returned. The counsel for the appellant again re-submitted the appeal with cogent reasons, but the same was rejected and objections sustained. and file was returned with direction to file after maturity of appeal or rejection order. So, now the 90 days lapsed on Department appeal and Appeal become mature, therefore re-submitting the same after maturity of appeal.

M. J. J.
3/1/24.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal NO. 63 /2024

Ziaraat Shah VS GOVT OF KPK

APPLICATION FOR FIXATION OF THE ABOVE TITLED Appeal
PRINCIPAL SEAT, PESHAWAR

Respectfully Sheweth:

1. That the above mentioned Appeal is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
2. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.
3. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.
4. That any other ground will be raised at the time of arguments with the permission of this Hon'ble tribunal.

It is therefore prayed that on acceptance of this application the appeal may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Appellant/Applicant

Dated: 16/10/2023

Through

7/10/23
SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 63 /2024

Ziarat Shah

V/S

Health Deptt.

I N D E X

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	----	01-07a
2.	Copy of 1 st appointment order	- A -	08-09
3.	Copy of regularization order	- B -	10
4.	Copy of pay slip	- C -	11
5.	Copy of retirement order	- D -	12
6.	Copy of letter	- E -	13
7.	Copy of departmental appeal	- F -	14
8.	Copy of apex court judgment	-G-	15-29
9.	Copy of tribunal judgment	-II-	30-34
10.	Vakalat Nama	----	35

زیارت شاہ
APPELLANT
Ziarat Shah

THROUGH:

Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.

&
Uzma Syed
UZMA SYED
ADVOCATE HIGH COURT.

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 63 /2024

Mr. Ziarat Shah S/o Khosh-Man, Driver (retired),
Lady Health Worker Program Chitral.

.....APPELLANT

VERSUS

1. The Secretary Health Deptt: Govt of KP, Civil Secretariat Peshawar.
2. The Director General health Service, KP, Peshawar.
3. The District Health Officer Chitral.

4. *The District Health officer chitral upper.*

.....RESPONDENTS

.....

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974,
AGAINST THE LETTER DATED 19/05/2022. and FOR
DIRECTING THE RESPONDENTS TO GRANT COMPLETE
PENSIONARY BENEFITS TO APPELLANT INCLUDING
LPR, ENCASHMENT AND OTHER MONETARY BENEFITS
IN LIGHT OF GOVERNMENT NOTIFICATION AND
PENSION RULES 1963, AFTER PROPER FIXATION OF
STAGES OF PAY SCALE FOR RENDERING HIS MORE
THAN 21 YEARS' SERVICE AND GOT RETIREMENT ON
SUPERANNUATION ON 07.06.2019 BY MODIFYING THE
ORDER DATED 17.06.2019 AS WITH FULL PENSIONARY
BENEFIT, AND AGAINST REJECTION ORDER DATED
18/09/2023 FOR NO GOOD GROUNDS .

.....

2

IT IS THEREFORE, MOST HUMBL Y PRAYED THAT, THIS HONORABLE TRIBUNAL MAY GRACIOUSLY BE PLEASED TO ACCEPT THE APPEAL AS FOLLOWS:-

1. DECLARE THE REJECTION ORDER DATED 18/09/2023 AND LETTER DATED 19/05/2022 AS ILLEGAL AGAINST THE LAW AND RULES AND MAY KINDLY BE SET-ASIDE.
2. DIRECTED THE RESPONDENT TO COUNT THE CONTRACTUAL/ TEMPORARY SERVICE OF THE APPELLANT TOWARDS HIS REGULAR SERVICE FOR THE PURPOSE OF RETIREMENT/PENSIONARY BENEFITS UNDER (RULE 2:3) OF WEST PAKISTAN CIVIL SERVICES PENSION RULES 1963, AND IN THE LIGHT OF PESHAWAR HIGH COURT LARGER BENCH JUDGMENTS DATED 22/06/2017 RENDERED IN WRIT PETITION NO 3394-P/2016 AND W.P NO. 2246-P/2016 AFTER PROPER FIXATION OF STAGES OF PAY SCALE FOR RENDERING HIS MORE THAN 21 YEARS' SERVICE AND GOT RETIREMENT ON SUPERANNUATION ON 07.06.2019, BY MODIFYING THE ORDER DATED 17.06.2019 AS WITH FULL PENSIONARY BENEFIT.
3. THE APPELLANT MAY BE HELD ENTITLED FOR SAME RELIEF GRANTED TO OTHER APPELLANT IN SERVICE APPEAL NO 11471/2020 ON THE RULES OF CONSISTENCY AND LAW OF GOOD GOVERNANCE.
4. ANY OTHER REMEDY WITH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER MAY ALSO BE AWARDED THE FAVOR OF THE APPELLANT.

.....

FACTS:

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

1. That the appellant was appointed by the health deptt as Driver in the year 1998 for Lady Health Worker Program on contract basis. The appellant working with full zeal and zest since appointment. **(copy of order is attached as Annexure-A)**
2. That the services of the appellant was regularized w.c.from 1st July 2012 on Promulgation of "Lady Health Workers Programme and Employees (regularization and Standardization) Act 2014" but the salary of the appellant was started from initial pay stage and ignore all the previous service of the appellant. **(Copy of order and slips is attached as annexure-B & C).**
3. That thereafter, order dated 17.09.2019 was passed by the DHO Chitral whereby the appellant was retired from the serviced on the age of superannuation but without pensionary benefits which is injustice and illegal according to law and rules. **(Copy of order is attached as Annexure-D).**
4. That the appellant aggrieved from the order dated 17/09/2019 filed complaint on citizen portal in response to which DHO wrote letter dated 19/05/2022 wherein he admitted 22 years of service rendered by the appellant but refuse pension. **Copy of letter is attached as annexure-E.**
5. That the appellant aggrieved, filed departmental appeal under appeal rules 1986 for pensionary benefits because the appellant is entitled to the pensionary benefits on the basis of Section 2.3 of Pension Rules 1963, which was directly rejected by the DHO Chitral by giving remarks at the corner of the departmental appeal of the appellant without forwarding the same to appellate authority and handed over the same to appellant which is amount to Corrum-Non-judice. **(Copy of departmental appeal is attached as annexure-F).**

6. That the appellant having no other adequate remedy therefor, come to this august tribunal on the following grounds amongst others.

GROUNDS

A. That the order dated 17.09.2019 and 18/09/2019 to the extent that not awarded pensionary benefits is against the law, rules and norms of justice.

B. That according to Rule 2.3 of the Pension rules 1963: – *“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 shall count such service for the purpose of pension or gratuity; and*

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

Thus the appellant is legally entitled for the pensionary benefits according to law and rules and depriving the appellant from the pension benefits is clear violation of Pension Rules 1963. Hence the order dated 17.09.2019, to the extent that not awarded pensionary benefits are liable to be modified.

C. That the legal heirs of the similar placed civil servants filed writ petition in the Peshawar High Court Peshawar for pensionary benefits and the Peshawar High Court Peshawar held the aggrieved petitioners entitled for the pensionary benefits. So the appellant is also entitled for the pensionary benefits.

D. That depriving the appellant from the legal right of benefits of pay protection and pensionary benefits as against the law rules norms of justice.

E. That the similarly nature service appeal decided by the Federal Service Tribunal in favour of appellant and the Supreme Court

Judgment maintained the same. On the principal of consistency appellant also entitle to the same relief. **Copy of the judgment is attached as Annexure-G.**

- F. That the appellant had been made victim of discrimination demerits, **partiality and favoritism** without any just and reasonable cause there by offending the fundamental rights of the appellant as provided by the Article 25 of the constitution of 1973, hence the impugned orders detailed above are liable to be set naught.
- G. That other colleague of the appellant named Noor-ul-Huda, with the same prayer as that prayed by the appellant in the instant appeal, had filed a service appeal no11471/2020 before this honorable Tribunal and this honorable Tribunal graciously accepted his appeal through judgment dated 13.07.2022. So, under the Rule of Consistency the appeal of the appellant may also be accepted as prayed for as being a similarly placed person, as principal enumerated in Superior Court Judgment cited as 1985 SCMR 1185, 2003 SCMR 1030, 2009 SCMR -1, 2018 SCMR 380, 2015 PLC (C.S) 1406, 2021 SCMR 1313, 2022 PLC (C.S)94 AND 2022 PLC (C.S) 288. **Copy of judgment is attached as annexure-II**
- H. That the appellant is entitled for pensionary benefits of the period which was rendered by the appellant on contract basis under the shelter of west Pakistan Pension rules 2.3.
- I. That the appeal of the appellant was also rejected by the incompetent authority without forwarding the same to appellate authority which is amount to corrum non iudice.
- J. That the appellant was not treated according to the law and rules and was depriving from his legal right in arbitrary manner.
- K. That the appellant seeks permission to advance other ground proof at the time of hearing.

6

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Ziarat Shah
APPELLANT
Ziarat Shah

THROUGH:

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATE, PESHAWAR

7

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____ /2023

Ziarat Shah

V/S

Health Deptt.

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

زیارت شاہ

DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

BEFORE THE KP SERVICE TRIBUNAL PESIAWAR

70

APPEAL NO. _____ /2023

Ziarat Shah

V/S

Health Deptt:

AFFIDAVIT

I, ZIARAT SHAH, (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.

Ziarat Shah
DEPONENT



Better Copy

Office Order

Subject Appointment Order for the post of Driver under Prime Minister's Programme For Family Planning and Primary Health Care.

On the recommendation of selection committee Mr. Ziarat Shah S/o Khosh Man village Mohallah Mastuj Tehsil Mastuj is hereby appointed as Driver at Sup Office Mastuj w.e.f 15-01-97 on the following terms and conditions:-

1. The appointment will be purely on contract basis.
2. The appointment will be initially for one year. However, it is extendable subject to satisfactory performance.
3. He will be paid the salary as per provincial rules for the driver (BPS-04) on monthly basis.
4. The appointment to strictly non-transferable.
5. If he wishes to resign, she will serve one month's notice or will deposit one monthly salary in lieu of notice.
6. He will be maintain a vehicle for field notice of the supervisor. He will be responsible for proper record on log book and maintenance of the vehicle. In case of misuse of vehicle, strict action will be taken against him.
7. In case of any accident, guilty negligence proper recovery will be made from him alongwith appropriate of disciplinary action.
8. No TA/DA will be allowed during field visits within the district of posting.
9. He will be entitled for 20 days casual sick leave in a year. He will obtain sanction of leave from district PIU through his incharge field Supervisor.
10. He will have to produce the medical fitness certificate from Medical Superintendent, DHQ Hospital Chitral.
11. No TA/DA will be allowed on account of joining duty.

Better Copy

12. His services will not be governed under the Civil Servants Act 1993, but will act under the terms and conditions of this contract and on other terms that will be communicated to him from time to time. He will be bound to follow these terms which will be not be challengeable at any forum including courts.
13. He services can be terminated at any time without assigning any reason of notice.
14. If he accepts the offer on the above terms and conditions he is directed to report for duty to the office of District Health Officer CHITRAL within 14 days from the date of issuance of office order failing which the offer will stand cancelled.

No. 275-80/A24

Dated 16/01/1998

District Health Officer
Chitral

1. National Coordinator, Prime Minister's Programme for Family Planning and Primary Health Care, 14-D Feroz Centre, West Blue Area, Islamabad.
2. Provincial Programme Coordinator, Prime Minister's Programme for Family Planning and Primary Health Care.
3. District Coordinator, Prime Minister's Programme for Family Planning and Primary Health Care.
4. The Accountant.
5. Official concerned.

District Health Officer
Chitral

Office Order

A

8

Subject: Appointment Order for the post of Driver under Prime Minister's
Programme for Family Planning and Primary Health Care.

On the recommendation of selection committee, M/s/Mr.

MARAT SAHU SOWHA KRISH MAN

of village/tonnage MARAT J Tansil MARAT J is hereby
appointed as Driver at Sub office, PHE, MASINA on the
following terms and conditions:

1. The appointment will be purely on contract basis.
2. The appointment will be initial for one year, however, it is extendable subject to satisfactory performance.
3. He will be paid the salary as per provincial rules for the driver (BPS-4) on monthly basis.
4. The appointment is strictly non-transferable.
5. If he wishes to resign, he will serve one month's notice or will deposit one month's salary in lieu of notice.
6. He will be maintaining a vehicle for field duties of the supervisor. He will be responsible for proper record on log book and maintenance of the vehicle. In case of misuse of vehicle, strict action will be taken against him.
7. In case of any accident, if the cause of the accident is proper recovery will be made from him along with appropriate disciplinary action.
8. No TA/DA will be allowed during field visits within the district of posting.
9. He will be entitled for 30 days casual leave in a year. He will obtain sanction of leave on the date of his absence in charge field duty.
10. He will have to produce the medical fitness certificate from Medical Superintendent, District Hospital, CANTON.
11. No TA/DA will be allowed on account of joining duty.

B
10

OFFICE TO THE DISTRICT HEALTH OFFICER CHITRAL

NOTIFICATION

In terms of section 4 (1) read with 1st Proviso thereunder, of the Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and Employees (Regularization and Standardization) Act 2014, services of the following Lady Health Workers program employee of District Chitral Khyber Pakhtunkhwa are hereby regularized w.e.f 1st July 2012. Their terms and condition of services will be governed under the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014 and rules to be made thereunder.

Sr. No	Name of Community Embedded Employee	Father Name	Husband Name	Date of Appointment	Designation	PLCF	Name of Catchment Area
1	Sharifa	Abdul Nawaz Khan		1-8-1996	LHS	FHC/Mastuj	RHC/Mastuj
2	Mukhtar Bibi	Surat Nadir		1-7-1995	LHW	BHU Breep	Vill: Rahman Abad Gamlasht
3	Afroze Jamal	Hussain Murad Khan		1-7-1995	LHW	BHU Breep	Vill: Rathani Breep
4	Sultan Ara	Ali Sher Khan	Hussain Wali Khan	1-1-1996	LHW	BHU Breep	Vill: Ali Abad
5	Tahira Bibi	Muhammad Rahim Bajr	Zahir Shah	1-1-1996	LHW	BHU Breep	Vill: Duzgh
6	Shahadat Bibi	Murda Hussain Shah	Syed Inayat Karim Shah	2-5-2002	LHW	BHU Breep	Vill: Kuz Breep
7	Gulbar	Tat Khan	Mir Mast Khan	2-5-2002	LHW	BHU Breep	Vill: Khurz
8	Raihan Jamal	Hazar Khan	Sarwarudin	2-5-2002	LHW	BHU Breep	Vill: Den Breep
9	Milkha Jamal	Munawar Shah	Sahibgar Hussain	2-5-2002	LHW	BHU Breep	Vill: Rahim abad
10	Aziz Jamal	Sharaf Khan	Rehmat Gul	1-12-2004	LHW	BHU Breep	Vill: Istach
11	Shahar Bibi	Sahibgar	Muhammad Ashraf	1-12-2004	LHW	BHU Breep	Vill: Karim abad
12	Ziafat Shah	Khoosh Man		15-1-1998	Driver	BHU Breep	BHU Breep

In exercise of powers conferred under sub section (2) of the Section *ibid*, the above community Embedded Employees are placed in the following pay scales as mentioned against the respective designation.

Name of Post	Basic Pay Scale
Lady Health Supervisor	7
Lady Health Worker	5
Driers	4

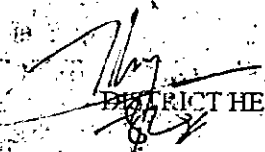
Sd/xx:xx
DISTRICT HEALTH OFFICER
CHITRAL

No. 1875-89 NP/CTL

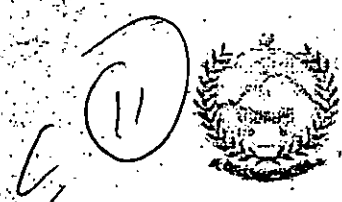
Dated: 25/8 /2014

Copy forwarded to the:-

1. Director General Health Services Khyber Pakhtunkhwa
2. Provincial Coordinator PPIU Peshawar
3. Incharge PLCF
4. All Official Concerned


DISTRICT HEALTH OFFICER
CHITRAL

Dist. Govt. NWFP-Provincial
District Accounts Office-Chitral
Monthly Salary Statement (April-2019)



Personal Information of Mr. ZIARAT SHAH d/w/s of KHOSH MAN

Personnel Number: 00845589 CNIC: 1520264549203 NTN:
 Date of Birth: 07.06.1959 Entry into Govt. Service: 01.07.2012 Length of Service: 06 Years 10 Months 001 Days

Employment Category: Active Permanent

Designation: DRIVER 80001222-DISTRICT GOVERNMENT KHYBE

DDO Code: CL6020

Payroll Section: 001

GPF Section: 001

Cash Center:

GPF A/C No:

Interest Applied: Yes

GPF Balance:

30,767.00

Vendor Number:

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil BPS: 06

Pay Stage: 2

Wage type		Amount	Wage type		Amount
0001	Basic Pay	11,740.00	1000	House Rent Allowance	1,544.00
1210	Convey Allowance 2005	1,932.00	1300	Medical Allowance	1,500.00
1917	UAA-CHITRAL 40%(1-15)	1,700.00	2148	15% Adhoc Relief All-2013	260.00
2199	Adhoc Relief Allow @10%	168.00	2211	Adhoc Relief All 2016 10%	890.00
2224	Adhoc Relief All 2017 10%	1,174.00	2247	Adhoc Relief All 2018 10%	1,174.00

Deductions - General

Wage type		Amount	Wage type		Amount
3006	GPF Subscription Rs 950	950.00	3501	Beneficent Fund	-600.00
4004	RI Benefits & Death Comp	190.00	4200	Professional Tax	-100.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 0.00 Recovered till April-2019: 0.00 Exempted: 0.00 Recoverable: 0.00

Gross Pay (Rs.): 22,082.00 Deductions: (Rs.) -2,340.00 Net Pay: (Rs.): 19,742.00

Payee Name: ZIARAT SHAH		Account Number: 0003820004600501	
Bank Details: HABIB BANK LIMITED, 220382 BUNEY CHITRAL BUNEY CHITRAL			
Leaves:	Opening Balance:	Availed:	Balance:

Permanent Address:

City: 17200 Domicile: NW - Khyber Pakhtunkhwa Housing Status: No Official

Temp. Address:

City: Email:

{34/21/06.05.2019/11:48:25} 2) All amounts are in Pak Rupees 3) Errors & omissions excepted



D. 12

OFFICE OF THE DISTRICT HEALTH OFFICER CHITRAL

Address: DC Office Road Jang Bazaar Chitral

Phone & Fax No. 0943-412734-412754

Email: dhochitral@yahoo.com

Dated Chitral the 17/6/2019

OFFICE ORDER:-

On attaining the age of Superannuation viz 60 years, Mr. Ziarat Shah Driver Lady Health Workers Programme Chitral is hereby relieved from Government Service with effect from 7/6/2019, after completing 6 years 8 months and 6 days un qualified Service.

Date of Birth: 7/6/1959

Date of regularization: 1/7/2012

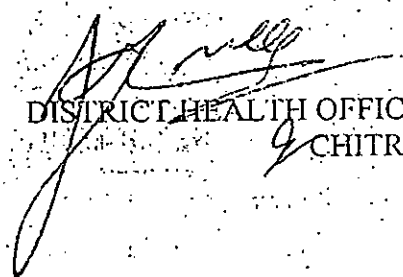
Date of relived: 7/6/2019

Sd/xxxxxx
DISTRICT HEALTH OFFICER
CHITRAL

No. 3964-70 /A.24

Copy forwarded to the:-

1. Provincial Coordinator Lady Health Workers Programme Khyber Pakhtunkhwa, Peshawar.
 2. DAO Chitral
 3. Account Section of this office
 4. Coordinator LHWs Programme Chitral
 5. Field Monitoring Officer
 6. Concerned LHS
 7. Mr. Ziarat Shah Driver
- For information.


DISTRICT HEALTH OFFICER
CHITRAL

E13

OFFICE OF THE DISTRICT HEALTH OFFICER UPPER CHITRAL
Address: A-1/Banoghore Road Krol Junail Dooni
Phone & Fax No. 0943-470566/470567
dhochitralupper@gmail.com

No. 2453 /P-C-P
Dated Chitral No: 19/5/2022

COMPLAINT IN PAKISTAN CITIZEN PORTAL REGARDING DEPRIVATION OF PENSION BENEFITS

With reference to the complaint code, KP210422-89976231, dated 28-Apr-2022 11:00 AM. In this connection under the policy law every Government Employee gets their pension benefits after completion of ten years' regular service. While the regular service of the complainant is 06 years 11 Months and 06 days in total, therefore, the complainant is not entitled the pension benefit according to the government policy law.

Although he served to government for twenty-two years while service regularization is only 06 years 11 month & 6 days.

Date of Birth: 07/06/1959
Date of contract Appointment: 16/01/1998
Date of regularization: 01/01/2012
Date of relived: 07/06/2019

DISTRICT HEALTH OFFICER
CHITRAL UPP

گورنمنٹ ہسپتال صیانتی آفیسر صاحب ایف ڈی ایچ
گورنمنٹ ہسپتال صیانتی آفیسر صاحب ایف ڈی ایچ

گزارش ہے کہ فدوی عمر 22 سال سات ماہ محکمہ
ہیلتھ (KPK) میں بطور ڈرائیو خدمات سرانجام کے لئے 07-06-2019
کو عمر 60 سال تکمل ہونے پر ملازمت سے ریٹائر ہو گیا۔ فدوی
کو لکھنؤ میں ملازمت سے محروم رکھا گیا اور تاحال
مہوار پنشن بھی نہیں دی گئی ہے۔

اس سے قبل فدوی نے پنشن کے حق کے حصول کے لئے
محکمہ صیانتی کے ذمہ داران کو درخواستیں دی ہیں۔ لیکن مختلف
جیلے سالوں میں فدوی کو میرے بنیادی حقوق سے محروم رکھا
جا رہا ہے جو کہ سٹرائیڈ نا انصافی ہے۔

فدوی کو رٹ پیڈنٹ ہوں۔ نا انصافیوں جو کہ میرے
سابقہ ہونے والے ہیں ان کا سچا سچ کر اور بھی زیادہ بیمار ہو
گیا ہوں۔ گھٹا تاہم دوائیاں جو کہ ڈاکٹرز کی ہدایت سے لیا گیا
مجھے ہر مالی لوجھ ناقابل برداشت ہے۔

فدوی انجانا۔ کو ایک عدالتی فیصلے کی کاپی پیش کرنا ہوں جس میں
ملازمت کو حکومت کی طرف سے ترمیم دینے کی مثال
موجود ہے۔

اندرون حالات انجانے سے بیروزگاروں کے نام پر
جو عاجز پر راجم کر کے مہوار پنشن کی ادائیگی کا حکم دیکر عین عمر
میں فرمائیں۔ انکے عین کو از میں ہوگی
فدوی زیارت سناہ ولد خوشنور گورنمنٹ ہسپتال

Dr. Gulshan Samie
Govt. Health Officer
Peshawar

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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCU
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

AFR

Civil Appeal No.1546 of 2019

AND

Civil Petitions Nos.2503 to 2519 & 2660 of 2019

Against judgments dated 15.02.2018 & 23.04.2019 of Federal Service Tribunal, Islamabad, passed in Appeals- No.3622(R)CS of 2017 and 3192(R)CS of 20212, etc.

Secretary, M/o Finance, Islamabad, etc

Appellants (in CA#1546/19)

DG, FDE, Government of Pakistan,
etc

Petitioners (in CSP#2503-2519 & 2660/19)

Versus

Tayyaba Halim Subhani	C.A 1546/2019
Irfan Mehmood & Another	C.P 2503/2019
Tahir Ullah & another	C.P 2504/2019
Javed Iqbal & Another	C.P 2505/2019
Syed Sajjad Ali Shah & Another	C.P 2506/2019
Hafiz Atta Ur Rehman & Another	C.P 2507/2019
Mrs. Khalida Nasim & Another	C.P 2508/2019
Rubina Kausar & Another	C.P 2509/2019
Adeela Tabasum & Another	C.P 2510/2019
Mrs. Sobia Imam & Another	C.P 2511/2019
Mrs. Najma & Another	C.P 2512/2019
Mrs. Attia Kaleem Anwar & Another	C.P 2513/2019
Mrs. Farah Saeed & Another	C.P 2514/2019
Mrs. Lubna Chaudhry & Another	C.P 2515/2019
Mrs. Tahira Akbar & Another	C.P 2516/2019
Mrs. Salama Khatoon & Another	C.P 2517/2019
Saeed ur Rehman & Another	C.P 2518/2019
Syed Tajammal Hussain Bokhari Shah & Others	C.P 2519/2019
Tayyaba Halim Subhani & another	C.P 2660/2019

...Respondents

For the Appellant
/Petitioners:

Mr. Sajid Ilyas Bhatti, Addl.AGP
M. Rehan, AD Legal
M. Ahmed, AD Legal

For the Respondent(s): Respondent-in-Person in CA
1546/2019

Hafiz S.A. Rehman, ^{by ASC} for
Respondent No. 1, and
Mr. M. Sharif Janjua, AOR in all
CPs.

Date of Hearing: 27.01.2021

JUDGMENT

IJAZ UL AHSAN, J.- Through this single judgment, we intend to decide Civil Appeal No. 1546 of 2019 (hereinafter referred to as "CA") and Civil Petitions No. 2503 to 2519 and 2660 of 2019 (hereinafter referred to as "CP") as they involve common questions of law.

2. Through the instant Appeals/Petitions, the Appellants/Petitioners have challenged the Judgment of the Federal Service Tribunal, Islamabad (hereinafter referred to as "Tribunal") dated 15.02.2018 passed in Service Appeal No. 3622(R)CS/2017 and judgment dated 23.04.2019 passed in Service Appeals No. 3192(R)CS to 3196(R)CS of 2012, 3230(R)CS to 3238(R)CS of 2012, 90(R)CS/2013, 91(R)CS/2013, 679(R)CS/2016, and 3622(R)CS/2017 (hereinafter referred to as "Impugned Judgments"). The Tribunal through the Impugned Judgments accepted the Service Appeals filed by the Respondents and ordered the Appellants/Petitioners to provide pay protection to the Respondents by counting the service they had rendered on daily wage basis for pensionary benefits and pay.

3. The necessary facts giving rise to this *lis* are that the Respondents were appointed as teachers/lecturers

against their respective posts. The Respondent in the CA retired upon reaching the age of superannuation w.e.f. 02.06.2017. Before her retirement, she had made a departmental representation through which she had requested her department to count the period for which she had worked on daily wage basis towards the calculation of her pensionary benefits. The Respondents in the CPs were recommended to be regularized by the Federal Public Service Commission w.e.f. 17.08.2010. They made representations to the effect that their previous service rendered on daily wage basis be counted towards their pay and pension benefits but to no avail. Aggrieved of the treatment meted out to the Respondents by the Appellants/Petitioners, they approached the Service Tribunal, which allowed their Service Appeals through the impugned judgments. The Appellants/Petitioners challenged the impugned judgments before this Court.

4. Leave to Appeal was granted by this Court in the CA vide order dated 17.09.2019 which is reproduced below for ease of reference:

"Learned Additional Attorney General relies upon a judgment passed by a 5 member bench of this Court in the case of Chairman, Pakistan Railway, Government of Pakistan, Islamabad and others v. Shah Jehan Shah (PLD 2016 SC 534) to contend that the very issue dealt with by the Tribunal in the impugned judgment has been dealt with by this Court in the reported judgment where the payment of pensionary benefits are admissible to contract employees only after their qualifying regularized service and thus unless such qualifying regular service is rendered, the pensionary benefits could not be granted to the employees.

2. Leave to appeal is granted to consider inter alia the above submissions made by the learned Additional Attorney General."

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5. The learned Additional Attorney General contends that the service rendered on daily wage basis cannot be counted as qualifying service for pension under the relevant rules. As per Article 352 of the CSR, the Respondents cannot claim pay protection or that their daily-wage-service be counted towards pension because the said rule specifically bars the Respondents from making such claim insofar as the Respondents do not fulfil the three conditions mentioned therein i.e. that the service must be under the government, must be substantive and permanent, and, that the service must be paid for by the government. Further, allowing the Respondent's daily wage period to be counted towards pay protection and pensionary benefits would open floodgates of never-ending litigation. Lastly, the Respondents were not working continuously, and, even otherwise, this being a policy matter cannot be interfered with by Courts.

6. The Learned Senior ASC appearing on behalf of the Respondents contends that the act of the Appellants/Petitioners of not giving pay protection to the Respondents and not allowing their service rendered on daily wage to be counted towards their pensionary benefits is discriminatory and exploitative. He adds that an identical order was passed by the Ministry of Education dated 25.01.2006 whereby benefits were allowed to lecturers, therefore, not granting the same to the Respondents who are teachers, represents a policy of discrimination and pick and choose. Further, the Respondents have been performing their duties to the satisfaction of the Government and, by not

allowing them pay protection and by not counting their service rendered on daily wage basis for pensionary benefits is unjust and unfair.

7. We have heard the learned AAG and the learned Senior ASC appearing on behalf of the parties. The issues which fall for consideration of this Court are:-

- i. Could the service rendered by the Respondents on daily wages basis be counted towards their pension?
- ii. Were the Respondents employed as a stop-gap arrangement?
- iii. Could the Respondents be employed on daily wage basis considering the nature of their work?

COULD THE SERVICE RENDERED BY THE RESPONDENTS ON DAILY WAGES BASIS BE COUNTED TOWARDS THEIR PENSION?

8. The learned counsel for the Respondents has relied upon CSR 361 and has argued that, in view of the said Rule, the Respondents were entitled to pension and pay protection. For ease of reference, CSR 361 is reproduced as under:-

"361.- Except as otherwise provided in these Regulations, the service of an officer] does not qualify for pension unless it conforms to the following three conditions: — First.—the service must be under Government. Second.—the employment must be substantive and permanent. Third.—the service must be paid for by Government"

9. We have examined the Education Code 2006 issued by the Federal Directorate of Education. The learned Tribunal has held that the Respondents were being paid out of funds that were approved by the Government. In this

respect, Paragraph 30 of the said Code is relevant which provides that the following:

"Heads of educational institutions shall be empowered to incur expenditure out of Students' Fund as per the upper limit of expenditure prescribed through a notification by the Department Head on the following items:

(v) Payment to daily wage employees (teaching & non-teaching)"

Paragraph 17 of the said Code provides that the Federal Directorate of Education would manage the Federal Government Educational Institution (Schools & Colleges), Islamabad Model Institutions, and Hostels. The learned AAG has not disputed the fact that the Respondents were working in institutions that were admittedly being managed by the Federal Directorate of Education. The Federal Directorate of Education has itself issued a Code which such schools are required to follow to regulate their affairs. The services of the Respondents were utilized by the Appellants/Government to their satisfaction until the time the Respondents asked for pay protection and pension. As such, the learned Tribunal has correctly held that the Government cannot disassociate itself from the entire process and hold that the Respondents were not working under its supervision. It is the Federal Directorate of Education that has issued the said Code, and Paragraph 30 *supra* provides that the Federal Directorate of Education has empowered heads of institutions to manage pays and salaries of daily wage staff. It has not been argued before us that the said heads of institutions could not be delegated this task. The Government is fully empowered to

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delegate some of its tasks for administrative convenience and efficient working as has been done in this case.

10. We have gone through the letter dated 26.08.04 issued by the FDE (Model Colleges Wing). The said letter provides an elaborate mechanism viz selection of teachers on daily wage basis. They are to appear in a test of 50 marks followed by an interview. Following this, their result is approved by a Committee and sent to the Director Colleges, Federal Directorate of Education who in turn seeks confirmation from the Director-General, Federal Directorate of Education. The said letter establishes that the Respondents were not arbitrarily appointed as a stop-gap arrangement. Their services were utilized by the Appellants/Petitioners for years on end till they reached the age of superannuation, their services were substantive and permanent which were paid for on behalf of and with the consent or approval of the Government.

11. We find that although the employment of the Respondents was not permanent within the meaning of CSR 361, the establishment under which they were working was permanent and the fact that they rendered services for years shows that they were not employed on temporary basis as a stop-gap arrangement for short periods of time. Further, that the Federal Public Service Commission by recommending the Respondents for retention into service has confirmed their ability and qualification to hold these posts. It is an admitted fact that the Respondents have been working continuously for more than 5 years. We have gone through the memorandum

dated 25.01.2006 whereby it was stated by the Federal Directorate of Education that service rendered on an Ad Hoc basis could be counted towards pay and pensionary benefits. If the Appellants/Petitioners have allowed the services of Ad Hoc teachers/lecturers to be counted for pay protection and pension, it is hard to understand why the same was cannot be done in the case of the Respondents. The principle of similarly placed persons dictates that the Respondents also deserve to be treated in the same manner as others who were granted the benefits of pay protection and pension from the date of their initial appointment on daily wages basis. The Respondents have been discriminated against which is in violation of their fundamental rights guaranteed to them by the Constitution of the Islamic Republic of Pakistan, 1973.

12. The learned Senior ASC for the Respondents has placed reliance on the case titled *Ikram Bari and 524 others vs National Bank of Pakistan (2005 SCMR 100)* in support of the submission that the service rendered on daily wages basis can be counted for pension and pay. The relevant portion of the judgment *ibid* is reproduced as under for ease of reference:-

"An Islamic Welfare State is under an obligation to establish a society which is free from exploitation wherein social and economic justice is guaranteed to its citizens. The temporary Godown staff and the daily wages employees were continued in service of the Bank on payment of meagre emoluments fixed by the Bank. In most of the cases of these employees, there were artificial breaks in their service so as to circumvent the provisions of the Labour Laws and the Rules of the Bank and to deny them the salaries and other service benefits of regular employees. In some cases, the Bank did not issue formal letters of appointment or termination to the employees so as to preclude them to have access to

justice. There was no equilibrium of bargaining strength between the employer and the employees. The manner in which they had been dealt with by the Bank was a fraud on the Statute. A policy of pick and choose was adopted by the Bank in the matter of absorption/regularization of the employees. By Article 2-A of the Constitution, which has been made its substantive part, it is unequivocally enjoined that in the State of Pakistan principle of equality, social and economic justice as enunciated by Islam shall be fully observed which shall be guaranteed as fundamental right. The principle of policy contained in Article 38 of the Constitution also provide, inter-alia, that the State shall secure the well being of the people by raising their standards of living and by ensuring equitable adjustment of rights between employers and employees and provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood and reduce disparity in income and earnings of individuals. Similarly, Article 3 of the Constitution makes it obligatory upon the State to ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability, to each according to his work. It is difficult to countenance the approach of the Bank that the temporary Godown staff and the daily wages employees should be continued to be governed on disgraceful terms and conditions of service for an indefinite period. In view of section 24-A of the General Clauses Act 1897, the National Bank was required to act reasonably, fairly and justly. An employee being jobless and in fear of being shown the door had no option but to accept and continue with the appointment on whatever conditions it was offered by the Bank.

In addition to the aforementioned excerpt, a direction was passed in the judgment of Ikrum Bari ibid to the effect that the previous service rendered by the Petitioners in the said case shall be counted towards retirement/pensionary benefits. It was held as follows:-

"The Civil Petitions...filed by employees seeking financial back-benefits and waiver of conditions of regularization/reinstatement are disposed of with the direction to the National Bank to regularize/absorb them in service with effect from 15-9-2003, subject to the conditions as laid down in para. 10 of the impugned judgment. The National Bank is directed to issue them appointment letters within one month. Moreover, the previous service rendered by them with the Bank shall be counted towards retirement/pensionary benefits." (Underlining is ours)

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In view of the above position, the argument of the learned AAG that the service period of the Respondents rendered on daily wages could not be counted towards their pension is misconceived. The said period could and should be counted towards pension especially when the Respondents had been working continuously for different periods for the last many years.

WERE THE RESPONDENTS EMPLOYED ON A STOP-GAP ARRANGEMENT?

13. The learned DAG has argued that the contracts of the Respondents were not renewed/extended, but they were offered new contracts from time to time after their previous contracts had expired. The record reveals that such breaks were artificial. The said breaks cannot render the employment of the Respondents to be purely temporary. The Respondents have been performing their duties in their respective schools since long and such artificial breaks in their employment do not negate the fact that the Respondents had been continuously serving the Appellants/Petitioners for a long time. Reliance in this regard is placed on the case titled **Board of Intermediate and Secondary Education, Multan vs Muhammad Sajid (2019 SCMR 233 Supreme Court)** wherein it was held as follows:-

"It is an admitted position that the respondents before us have been working with the petitioner-Board since long, however, in their clumsy attempt to break the continuity of their service, the petitioner has been employing them for 89 days only, and has been re-hiring them for the next 89 days, and thus continued to avail their service for a long period by creating artificial breaks in their service period. The fact that they have, in fact, continuously served the petitioner for a long period of time, albeit the breaks created by the petitioner, as noted above, clearly show that they have been performing the job of a

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permanent nature and have not been serving on casual posts."

It is not the case of the Appellants before us that the Respondents were temporarily working against temporary posts and that such posts no longer exist. The fact that FPSC was approached to test the qualifications and antecedents of Respondents and make its recommendations by itself shows that these posts were permanent in nature.

13. As noted above, the said Principals of the respective Schools where the Respondents were performing services were acting in the aide of the Appellants/Petitioners under an elaborate mechanism/*modus operandi* provided by the Appellants/Petitioners. The powers of the said principals were being exercised on the instructions and under supervision of the Appellants/Petitioners and with their express consent and approval.

14. The learned DAG has stated that there were breaks in the services rendered by the Respondents, however, he has been unable to show from the record where and when there were such breaks in the daily wage services rendered by the Respondents. The only argument advanced by him in this regard is that the Respondents were working on a stop-gap arrangement. We are unable to agree with the learned DAG in this regard. By no stretch of imagination can it be conceived that when the Respondents were working against their respective posts for long periods (in some cases for more than 10 years), the same can by any definition of the word be

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termed as a stop-gap arrangement. A stop-gap arrangement is one where a temporary arrangement is made for a limited time for a few months at the most until something better or more suitable can be found. Such an arrangement is typically made until someone can be hired permanently through the process provided in the law, rules or regulations. The Respondents were admittedly employed for long periods of time running into years and cannot be termed as stop-gap. The definition of "stopgap" provided in Collins Dictionary and as understood by Courts in our country clearly means:-

"A stopgap is something that serves a purpose for a short time, but is replaced as soon as possible"

15. The meaning of a stopgap arrangement was interpreted by this Court in the case titled as Chairman Evacuee Trust Property Board and others vs Khawaja Shahid Nazir (2006 PLC(CS) 1261 Supreme Court) in the following terms:-

"The Tribunal had failed to interpret the notification dated 29-6-2000 in its true perspective by ignoring the clear stipulation contained therein that respondent was appointed as Secretary BPS-19 and such appointment was till further orders. From such stipulation it can be inferred without any doubt that it was not a regular appointment in accordance with section 11(1) of the Act and was by way of stopgap arrangement. This Court in the case of Abdul Majid Sheikh v. Mushafee Ahmed and another PLD. 1965 SC 208 while examining the effect of the phrase "a person holds an appointment till further orders" pronounced that it only means that he holds it till orders are passed terminating his services." (Underlining is ours)

The learned DAG has been unable to show us any document on the record which suggests that the Respondents were employed for a specific period of time subject to the arrival of permanent employees. The only term in this regard

as found from the appointment orders of the Respondents is that there would be no commitment in this regard from either the Respondents or the Appellants/Petitioners. The mere insertion of this vague term in the contracts of the Respondents does not mean that they were employed as a stop-gap arrangement. The Appellants/Petitioners never terminated services of the Respondents. The Respondents retired from their services after they were regularized, that too in most, after more than 10 years of service. Adding artificial breaks to the employment of the Respondents does not convert the employment of the Respondents into a stop-gap arrangement. They were not employed for a short period till the arrival of someone permanent, but, were employed against their respective posts for almost the whole of their professional lives. As such, the argument of the learned DAG in this regard does not hold much water and the employment of the Respondents was to be treated as permanent in nature as correctly held by the Tribunal.

COULD THE RESPONDENTS BE EMPLOYED ON DAILY WAGES BASIS CONSIDERING THE NATURE OF THEIR WORK?

16. Teachers strengthen the foundation of any state as well as play a pivotal role in nation building by imparting education which is necessary to uplift a society consisting of educated and aware citizens who believe in values and strengthen democracy and democratic values. Employing teachers on daily wages basis is not only detrimental to the education sector of Pakistan but is also a discouraging factor

for future teachers who in turn are demotivated and discouraged a profession which is pivotal in the lives of our future generations. It is pertinent to mention that primary education is a fundamental right guaranteed under Article 25-A of the Constitution of the Islamic Republic of Pakistan, 1973. The Universal Declaration of Human Rights also recognizes education as one of the most important rights of children. Article 3 of the Constitution provides that all forms of exploitation shall be eliminated. One of the reasons for which this becomes relevant to the present controversy is that notwithstanding the importance of the services they render to society, which have consequences for generations, the Respondents were made to work under uncertain conditions on the pattern of unskilled and uneducated or semi-educated labour hired on a daily wage basis for seasonal projects expected to last for a limited period. We are appalled at this irresponsible, casual and utterly unprofessional approach of the policy makers towards a matter as important and as serious as education of our future generations. We have no hesitation whatsoever in strongly deprecating the same. These actions of the Appellants/Petitioners are not only contrary to Constitutional dictates but also contrary to the Principles of Policy enshrined in the Constitution which state that there has to be an equal adjustment of rights between employers and employees.

17. The Impugned Judgment of the learned Tribunal is well reasoned, proceeds on the correct factual and legal premises and has correctly applied the relevant law, rules and

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regulations to the facts and circumstances of the cases before us. No legal, jurisdictional defect, error or flaw in the Impugned Judgment has been pointed out to us that may furnish a valid basis or lawful justification to interfere in the same. The Learned AAG has not been able to persuade us to take a view different from the Tribunal in the facts and circumstances of the instant Appeal/Petitions. We accordingly affirm and uphold the Impugned Judgment of the Learned High Court.

18. For the reasons noted above, we find no merit in the Appeal and the same is accordingly dismissed. As for the Petitions, no question of law of public importance in terms of Article 212(3) of the Constitution has been raised. Accordingly, we find no merit in these Petitions and the same are dismissed. Leave to appeal is refused.

Chief Justice

Judge

Judge

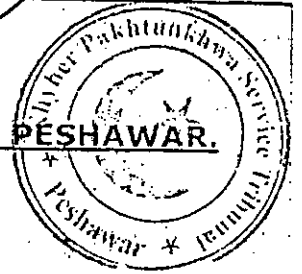
ISLAMABAD, THE27th of January, 2021

Haris LC/

NOT APPROVED FOR REPORTING

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.



Service Appeal No. 11471/2020

Date of Institution ... 01.10.2020

Date of Decision ... 13.07.2021

Mrs. Noor Ul Huda, Ex-Lady Health Worker, R/O House No. 760, Mohalla Qalander Abad, Wazir Bagh Road, Tehsil and District Peshawar.

... (Appellant)

VERSUS

The Secretary Health, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and five others.

... (Respondents)

SYED NOMAN ALI BUKHARI,
Advocate

--- For appellant.

MR. NASEER-UD-DIN SHAH,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

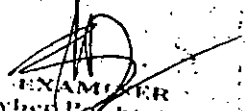
--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the appellant has invoked jurisdiction of this Tribunal with the prayer copied as below:-

"That on acceptance of this appeal, the order dated 08.09.2020 may be set-aside and the respondents may be directed to count the contractual/temporary period of service of the appellant towards her retirement/pensionary benefits under Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963 and in light of the august Peshawar High Court Larger Bench judgments dated 22.06.2017 passed in W.P.No. 3394-P/2016 and W.P No. 2246-9/2016 and any other remedy, which this august Tribunal deems fit and appropriate may also be awarded in favour of the appellant.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

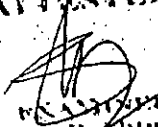
2. Precise facts forming the background of the instant service appeal are that, the appellant was appointed as Lady Health

Correction made vide order dt 02/11/2022
Passed in C.M.A. No 602/2022 MJ

Worker, (LHW) on contract basis vide order dated 31.10.1997 with effect from 01.11.1997. On promulgation of Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and employees (Regularization and Standardization) Act 2014, the services of the appellant alongwith other were regularized vide office order dated 19.09.2014 with effect from 1st July 2012, however on attaining the age of superannuation on 19.02.20219, the appellant was retired from service vide Notification bearing No. 3372-79/DHO.DPIU dated 15.04.2019 without granting her gratuity/pensionary benefits. The appellant approached august Peshawar High Court through Writ Petition No. 4546-P/2019 for considering her contractual period towards her pensionary benefits. Vide judgment dated 02.10.2019, the said Writ Petition of the appellant was transmitted to the concerned Secretary to Government of Khyber Pakhtunkhwa to treat it as departmental appeal and to decide the same strictly in accordance with Civil Servants Pension Rules, 1963. The departmental appeal of the appellant was rejected by Provincial Coordinator Lady Health Worker Programme Khyber Pakhtunkhwa vide order dated 08.09.2020, hence the instant service appeal.

3. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in her appeal.

4. Learned counsel for the appellant has argued that the appellant was though initially appointed as Lady Health Worker on contract basis vide order dated 31.10.1997 with effect from 01.11.1997, however her services were later on regularized vide office order dated 19.09.2014 with effect from 1st 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 benefits; that the appellant has rendered about 21 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

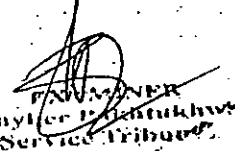
ATTESTED

 Provincial Coordinator
 Lady Health Worker Programme
 Khyber Pakhtunkhwa
 Service Tribunal

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 the appeal of the appellant was sent by august Peshawar High Court to concerned Secretary for decision but the same was decided by Provincial Coordinator Lady Health Worker Programme Khyber Pakhtunkhwa, who was not competent to decide the departmental appeal of the appellant, therefore, the impugned order is *coram-non-judice* and is liable to be set-aside on this score alone; 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. On the other hand, learned Assistant Advocate General 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 stood retired from service on 19.02.2021 and as such, she had performed duties as regular Lady Health Worker only for a period of about 07 years, 01 month and 18 days, while pensionary benefits could be granted to a civil servant, in case of completion of ten years or more regular service; that the appellant was having less than ten years regular service, therefore, she is not entitled to grant of any pensionary benefits; that the contractual period of service of an employee could not be legally counted in his regular service, therefore, the appeal filed by the appellant is liable to be dismissed.

6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. Keeping in view the respective arguments of both the sides, a perusal of the record would show that the appellant was initially appointed as Lady Health Worker on contract basis vide appointment order dated 31.10.1997 with effect from

ATTESTED

 Provincial Coordinator
 Khyber Pakhtunkhwa
 Service Tribunal

01.11.1997, however after promulgation of Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and employees (Regularization and Standardization) Act 2014, the services of the appellant were regularized with effect from 1st July 2012. Vide Notification dated 15.04.2019 issued by District Health Officer Peshawar, the appellant stood retired from service with effect from 19.02.2019 without granting her any pensionary benefits. Now the question, requiring determination is as to whether the contract period of service of the 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:-

" 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".*

8. A bare 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 also derived from the judgment dated 22.06.2017 passed by august Peshawar High Court, Peshawar in Writ Petition No. 3394-P/2016 titled "Amir Zeb Versus District Account Officer Nowshera etc."

9. 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


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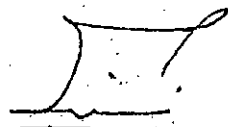
W. M. M. M. M.
Khyber Pakhtunkhwa
Service Tribunal

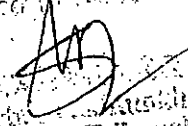
consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant.

10. Consequent upon the above discussion, the appeal in hand is allowed and the respondents are directed to grant pensionary benefits to the appellant by processing and finalizing her pension case within a period of three months of receipt of copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

Correction made ANNOUNCED
vide order dt. 13.07.2021 2022
02/11/2022 passed
in C.M.A. No 602/2022.


(ROZINA REHMAN)
MEMBER (JUDICIAL)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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VAKALAT NAMA

NO. _____/20

IN THE COURT OF KP Sanaullah Khan, Peshawar

Ziaraat Sheli

Appellant
Petitioner
Plaintiff

VERSUS

Health Dept

Respondent (s)
Defendants

(s)

I Ziaraat Sheli (Appellant) do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI Advocate High Court** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct counsel, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE _____/20

[Signature]

(CLIENT)

ACCEPTED

[Signature]
SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT
BC-15-5643

CELL NO: 0306-5109438

[Signature]
Uzma Syed
Advocate High Court