

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1630-A/2022

1. Asim Khan, Deputy Electric Inspector,
Regional Electric Inspectorate, District Nowshera.

.....Appellant

VERSUS

1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Energy & Power Department Civil Secretariat, Peshawar.

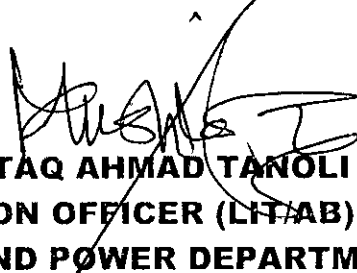
.....Respondents

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RESPONDENTS

THROUGH:


MUHSTAQ AHMAD TANOLI
SECTION OFFICER (LIT/AB)
ENERGY AND POWER DEPARTMENT

DATED: 14/11/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1630-A/2022

1. Asim Khan, Deputy Electric Inspector,
Regional Electric Inspectorate, District Nowshera.

.....Appellant

VERSUS

1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Energy & Power Department Civil Secretariat, Peshawar.

.....Respondents

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RESPONDENTS

THROUGH:


MUHSTAQ AHMAD TANOLI
SECTION OFFICER (LIT/AB)
ENERGY AND POWER DEPARTMENT

DATED: 14 / 12 / 2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1630-A/2022

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 10562

Dated 15-1-2024

1. Asim Khan, Deputy Electric Inspector,
Regional Electric Inspectorate, District Nowshera.

.....Appellant

VERSUS

1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Energy & Power Department Civil Secretariat, Peshawar.

.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 & 02

Respectfully Sheweth,

Preliminary Objections:

- A. That the appellant has got no locus standi and cause of action to file the instant service appeal.
- B. That the instant service appeal is not maintainable in the present form.
- C. That the plea of the appellant in respect of inclusion of his name in the seniority list of permanent employees is misleading because Civil Review Petition against the judgment passed by the August High Court in Writ Petition No. 3516-P/2017 of the appellant is pending for adjudication before the Hon'ble Supreme Court of Pakistan.
- D. That neither seniority of the Appellant has been affected nor any mala-fide act has been done thereto by the respondents. The appellant has misstated and is misleading the facts of the case. The petitioner has been conditionally regularized through a court order subject to final decision in the Civil Review Petition pending before the Apex Court of Pakistan for adjudication as services of similar colleagues of the Appellant have been terminated following judgement dated 19-01-2023 of the Hon'ble Supreme Court of Pakistan in CPLA No.295 titled "Govt of KPK vs Muhammad Zakariya and Others".

Facts:

- 1-2 These Paras need no comments.

3 Contents of this Para are correct to the extent of decision of the Hon'ble Peshawar High Court, Peshawar. However, the contents of this Para regarding the decision of Supreme Court are misleading. It is submitted that the respondents have filed Civil Review Petition which is pending for adjudication before the Supreme Court of Pakistan.

(Copies of judgment dated 24-04-2019 and copy of CRP is at Annex-A)

4 This Para is correct and needs no comments.

5-7 These Paras are incorrect in respect of inclusion of the Appellant in the seniority list of permanent employees because provisions under Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 do not provide for inclusion of conditionally regularized employees in such seniority list. However, seniority of the appellant has not been affected and is intact in accordance with the judgement dated 24-04-2019 of the Hon'ble Peshawar High Court Peshawar whereas the matter of inclusion of the appellant in the seniority list shall be dealt with after final decision in the Civil Review Petition pending before the Hon'ble Supreme Court of Pakistan filed by the respondents against the aforementioned judgment in Writ Petition of the appellant as services of similar colleagues of the appellant have been terminated following judgment dated 19-01-2023 of the Apex Court in CPLA titled "Govt of KPK vs Muhammad Zakariya and others".

(Copy of Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer Rules, 1989 and Judgment dated 19-01-2023 of the Supreme Court are at Annex-B)

Grounds:

- A) The seniority list issued on 10-01-2022 has been issued in accordance with the relevant provisions under Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules 1989 and the Khyber Pakhtunkhwa Civil Servant Act, 1973. There has been nothing done against the Rules/law, norms of justice nor any mala-fide intention has been there behind.
- B-C) The contents of these Paras are incorrect, misleading and misstated. Rule 17 of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules 1989 does not provide for inclusion of the conditionally regularized employees in the

seniority list. Furthermore, seniority of the appellant has not been affected and is intact in accordance with the judgment dated 24-04-2019 of the Hon'ble Peshawar High Court Peshawar. However, the matter of inclusion of the appellant in the seniority list shall be dealt with after final decision of the Hon'ble Supreme Court of Pakistan in Civil Review Petition pending therebefore as services of similar colleagues of the appellant have been terminated following judgment dated 19-01-2023 of the Apex Court in CPLA titled "Govt of KPK vs Muhammad Zakariya and others".

D-I:) The contents of these Paras are incorrect. Issuance of seniority of the Appellant is subject to the final decision of the Apex Court of Pakistan. Furthermore, the Inclusion of conditionally regularized employees in the seniority list is against the prescribed rules / laws.

F) The contents of this Para are incorrect. As per opinion of the Law Department, the Appellant may be included in the upcoming seniority list subject to the final outcome of Supreme Court of Pakistan and the seniority of existing Deputy Electric Inspectors (BPS-18) working on regular basis prior to the conditional regularization of the Appellant shall not be affected in accordance with the judgment of the Hon'ble Peshawar High Court, Peshawar. It is also added that the Establishment department has also advised in case of inclusion of similar conditionally regularized Assistant Electric Inspectors into seniority lists that the final decision of the Hon'ble Supreme Court may be awaited in the respective Civil Review Petitions pending therebefore.

(Copy of the Establishment Department Advice is at Annexure-C)

G) The contents of this Para are incorrect and misleading. The seniority list was issued properly in accordance with the law/rules and a panel of two senior most serving officers was placed before the Provincial Selection Board (PSB) in accordance with sub clause (ii) of clause III of the Khyber Pakhtunkhwa Promotion Policy 2009 whereunder a panel of two senior most officers is required to be placed before PSB for promotion to BPS-18 and BPS-19.

(Copy of sub clause (ii) of clause III of the Khyber Pakhtunkhwa Promotion Policy 2009 is at Annex-D)

H-I) The contents of these Paras are incorrect and not based on the truth of facts. The seniority list was issued in accordance with prescribed rules under the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules 1989 and

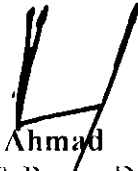
the Khyber Pakhtunkhwa Civil Servant Act, 1973 applicable to the regular civil servants.

- K-I.) The contents of these Paras are incorrect. The service of the Appellant is subjudice and the matter of issuance of seniority of the appellant may be kept pending till final outcome of the Supreme Court of Pakistan in Civil Review Petition pending therebefore seniority position of the appellant has not been affected.
- M) That any other evidentiary documents which need to be required will be provided at the time of arguments.

Prayer:

In view of the above, it is, therefore, most humbly prayed that on acceptance of above joint Parawise comments on behalf of Respondents 1 and 2, the instant Service Appeal may kindly be dismissed accordingly in the best interest of justice, please.

Respondent No. 1 & 2



Nisar Ahmad
Secretary Energy & Power Department
Khyber Pakhtunkhwa Peshawar.

Secretary
Government of Khyber Pakhtunkhwa
Energy & Power Department

Dated: 14 / 12 / 2023



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ENERGY & POWER DEPARTMENT**

1st Floor, Block-A, Abdul Wali Khan Multiplex, Civil Secretariat, Peshawar

AUTHORITY LETTER

Mr. Mushtaq Khan, Section Officer (Litigation) (BPS-17), Energy & Power Department, is hereby authorized to file Joint Parawise Comments in Appeal No. 1630 of 2022 titled Asim Khan VS Govt. of Khyber Pakhtunkhwa before Khyber Pakhtunkhwa Service Tribunal, Peshawar on behalf of Respondents.

**Nisar Ahmad
SECRETARY**

Energy & Power Department
Government of Khyber Pakhtunkhwa

Secretary
Government of Khyber Pakhtunkhwa
Energy & Power Department

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1630-A/2022

1. Asim Khan, Deputy Electric Inspector,
Regional Electric Inspectorate, District Nowshera.

.....Appellant

VERSUS

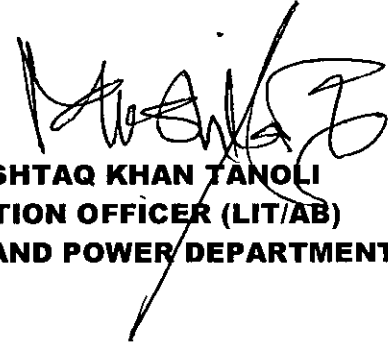
1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Energy & Power Department Civil Secretariat, Peshawar.

.....Respondents

AFFIDAVIT

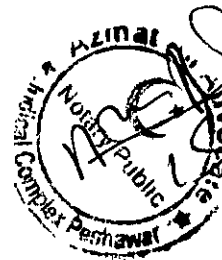
I, Mushtaq Khan Tanoli, Section Officer (Lit/AB) do hereby solemnly affirm and declare that all the contents of the Para-wise written reply / comments in the above Service Appeal are correct and true to the best of my knowledge and nothing have been concealed from this Hon'ble court.

Deponent:



**MUSHTAQ KHAN TANOLI
SECTION OFFICER (LIT/AB)
ENERGY AND POWER DEPARTMENT**

ATTESTED



JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No.3516-P/2017

Mehnaz Pari and others
Vs
Secretary to Government of Khyber Pakhtunkhwa
Energy & Power Department, Peshawar etc



JUDGMENT

Date of hearing 24.4.2019

Petitioner(s) by: Mr. Muneer Ahmad Advocate

Respondent(s) by: Mr. Muhammad Asif Yousofji Adv.
Mr. Abdul Rashid Jadoon Advocate
Mr. Mujahid Ali Khan A.A.A.

IKRAMULLAH KHAN, I. We intend to decide all
the followings Constitutional petitions through the
instant consolidated judgment as, similar
proposition of law is common to all the petitions.

- 1) W.P.No. 4433-P/2017
Rafiq Ullah etc Vs Secretary to
Government of KPK Energy & Power
Department, Peshawar etc.
- 2) W.P.No. 3516-P/2017
Mehnaz Pari etc Vs Secretary to
Government of KPK Energy & Power
Department, Peshawar etc.
- 3) W.P.No. 3416-P/2017
Alij Said etc Vs Government of KPK
through Chief Secretary etc.
- 4) W.P.No. 3430-P/2017
Fawad Anwar etc Vs Government of
KPK through Chief Secretary etc.
- 5) W.P.No. 5978-P/2018
Najim-Jalal Vs Government of KPK
through Chief Secretary etc.

2. In W.P.No.3516-P/2017 & WP
No.4433-P/2017, petitioners have prayed for as:

That by acceptance of this writ
petition-
The respondents may kindly be
directed to adjust/regularize the

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petitioners on the said posts (as mentioned above) as per the Finance Notification and (regularization act promulgated from time to time in other departments regularizing employees of other departments) and in light of the Writ Petition already allowed in other cases with all back benefits instead of fresh appointments. Any other remedy which deems fit by this Hon'ble Court may also be granted in favour of petitioners.

In W.P.3416-P/2017 &

W.P.No.3430-P/2017, petitioners seek the following relief:-

that on acceptance of this writ petition, the august Court may be pleased to declare:

The non-inclusion of the posts of petitioners in the impugned SNE by the respondents is illegal, unlawful, unconstitutional, discriminatory, violation of spirit & objectives of the PC and also against the principles of equity, equality, fair play; therefore, the impugned SNE for the year 2017-18 is liable to be set aside and ineffective upon the rights of the petitioners.

To direct the respondents to create the regular posts of petitioners as per spirit of PC-1 and being appointed on merit after observing all codal formalities, the petitioners are entitled to be regularized against those posts by treating them at par with the other regularized employees of other depts.

In W.P.No.5978-P/2018, petitioner

has prayed for the following relief:-

that on acceptance of this writ petition, the august Court may be pleased to declare:

The inaction/omission of respondents for not regularizing the petitioner against the post which is now converted onto non-developmental side/regularly created is illegal, unlawful, unconstitutional, discriminatory, violation of spirit of judgments of this and august Supreme Court of Pakistan. Therefore, such inaction/omission is not legally sustainable.

To direct the respondents to regularize the petitioner against the post of Asstt. Electric Inspector after

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conversion of her post onto non-developmental side/regularized from the date of conversion with all back and consequential benefits.

3. In essence, petitioners were employed by the respondents on different posts, well mentioned in every independent writ petition on contract basis at different occasions, in accordance with the Project Policy (PC-1) in project launched by the Provincial Government of Khyber Pakhtunkhwa in the year 2008 known as "Khyber Pakhtunkhwa Policy Regulating appointment to posts in Development Projects" petitioners contract were extended time and again, where in the meanwhile the project under consideration was converted to regular budgetary side/non-development side vide Notification dated 25.4.2017. However, the contract employees including the petitioners were not regularized. Therefore, they have approached this Court for issuance of appropriate direction for regularization of their services.

4. Respondents have contested those petitions on the grounds that petitioners have no any vested right that their services are to be regularized only on the ground that as the project has been regularized their services will also be regularized. That not only it is clearly mentioned in

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Peshawar High Court

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the project policy of the Provincial Government but also well mentioned in clause-V of appointment orders of petitioners that their services be terminated on expiry of their respective appointment contract and they would not claim any right of regularization; that the appointment on regular/permanent basis, falling within the definition of various BPS, well mentioned in Public Service Commission Regulation, such posts shall be filled up by the Public Service Commission.

5. We have heard learned counsel for the parties in light of available record and judgments of various jurisdictions of Hon'ble Courts including this court and gone through the available record.

6. It could not be denied rather an admitted fact that the project under consideration is converted into regular budgetary non-development side keeping in view its efficacy by the Provincial Government of Khyber Pakhtunkhwa.

7. The available record reveals that posts on which petitioners are serving had already been sanctioned by the Finance Department as regular Budgetary posts and in order to appoint regular employees on these posts, respondents had also

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(14)

invited applications for the purpose (copies of various advertisement in this regard are placed on record).

8. The record further reveals that respondents had already regularized various employees serving on different posts on contract basis, in pursuance to the judgment of this Court rendered in W.P.No.3516-P/2014 title "Amjad Ali and others Vs. Government of Khyber Pakhtunkhwa through Chief Secretary etc." The Notification, dated 03.03.2017 is available on record, whereby at least 18-employees from BPS-2 to 17 were regularized.

9. The Chief Minister, Khyber Pakhtunkhwa keeping in view the Government Policy of regularization of services of employees on contract basis has already issued directions to all departments to submit the formal summary in regard to all concerned employees which reads as:-

CHIEF MINISTER'S SECRETARIAT KHYBER PAKHTUNKHWA

No. SA(C)/OAS/KPK/2017
Dated Peshawar 13th August
2017/1115 1039

To
The Chief Secretary,
Government of Khyber
Pakhtunkhwa.

SUBJECT: REGULARIZATION / REGULARIZATION OF VARIOUS POSTS IN ALL PROVINCIAL GOVERNMENT DEPARTMENTS OF KHYBER PAKHTUNKHWA.

Dear Sir,

I am directed to refer to the subject noted above and to convey that Hon'ble Chief

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Minister, Khyber Pakhtunkhwa has been pleased to direct that a consolidated case regarding regularization of all posts filed hitherto through NTS/BTEA etc. in all Provincial Government Departments be submitted to this Secretary of the first instance through a summary along with financial implications.

I am further directed to convey that case for all pending up-gradation of various posts in all Departments with financial implications, be also submitted alongside for consideration/order of Hon'ble Chief Minister through a summary en-route to Finance & Establishment Department in light of earlier exercise which had been made in this context.

Necessary action may please be taken for compliance of above directive of Hon'ble Chief Minister, Khyber Pakhtunkhwa at the earliest please.

Your faithfully

Sd/-

Hina

Section Officer (Confidential).

10. Similar writ petition pertaining to regularization of contract employees who were serving in different departments on its conversion to regular budgetary side, were filed by contract employees for regularization of their services, which were accepted by this Court in the following cases:-

- i. WP No.2722-P/2017
- ii. WP No.686-P/2017
- iii. WP No.2084-P/2016.
- iv. WP No.320-D/2014.

11. The Provincial Government filed various appeals against the judgments of this Court rendered particularly against the Writ Petition No.2722-P/2017 before the apex Court wherein the judgment of this Court were upheld.

12. It is persistent view of this Court that whenever posts were sanctioned on regular side,

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in any project or department, by the concerned authorities or government, the contract employees were also regularized on those sanctioned posts against which contract employees were serving to the entire satisfaction of the concerned department/institution. For reference Judgment of this Court in W.P.No.320-D/2014, whereby at least 18 writ petitions were decided and all the contract employees who were appointed thereafter fulfillment of codal formalities and were eligible insofar as their qualification was concerned were regularized accordingly.

13. The judgment of this Court dated 18.4.2017 rendered in the above mentioned W.P.No.320-D/2014 is also upheld by the apex Court while deciding the Civil Petition No.1676, 1807 to 1819 decided on 23.11.2017.

14. As all contract employees who otherwise, fulfilled the threshold of eligibility to be appointed on regular posts, as per the rules made in that regard are already regularized by the Provincial Government and in this regard, Khyber Pakhtunkhwa Employees (Regulation of Services) Act, 2018, is also promulgated. The cases of petitioners are as per with all other employees

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Peshawar High Court

whose services were regularized in pursuance to the Act *ibid* and judgments of the Apex Court as well as keeping in view the principle of law settled by the Apex Court in C.P. No.134-P of 2013 decided on 24.2.2016 wherein, it is held that:-

"30. It is also an admitted fact that the respondents were appointed on contract basis on Project posts but the Projects, as conceded by the learned Additional Advocate General, were funded by the Provincial Government by allocating regular Provincial Budget prior to the promulgation of the Act. Almost all the Projects were brought under the regular Provincial Budget Schemes by the Government of KPK and summaries were approved by the Chief Minister of the KPK for operating the Projects on permanent basis. The "On Farm Water Management Project" was brought on the regular side in the year 2006 and the Project was declared as an attached Department of the Food, Agriculture, Livestock and Co-operative Department. Likewise, other Projects were also brought under the regular Provincial Budget Scheme. Therefore, services of the respondents would not be affected by the language of Section 2 (aa) and (b) of the Act which could only be attracted if the Projects were abolished on the completion of their prescribed tenure. In the cases in hand, the Projects initially were introduced for a specified time whereafter they were transferred on permanent basis by attaching them with Provincial Government departments. The employees of the same project were adjusted against the posts created by the Provincial Government in this behalf.

ATTESTED

~~EXAMINER~~
Peshawar High Court

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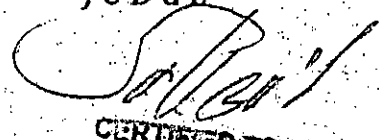
15. For what has been discussed above, all the above mentioned writ petitions are admitted and allowed. Respondents are directed to move the formal summary to the concerned quarters for the regularisation of petitioners as soon as possible but not later than 60 days as a whole. The services of the petitioners would deem to be regularized, from the date of announcement of this judgment in order to not affect the seniority of already appointed regular employees of the respondents. The connected C.Ms. are also disposed of in the above mentioned terms.

Announced.
24.04.2019

JUDGE

SI
JUDGE

JUDGE



CERTIFIED TO BE TRUE COPY

EXAMINER
Cashew High Court, Peshawar
Authorized Under Article 87 of
the Constitution of Pakistan Order 1984

16 SEP 2020

No. 6371
Date of Presentation of Application 16/9/2020
No of Pages 107
Copying fee 120
Date of Preparation of Copy 16/9/2020
Date of Delivery of Copy 16/9/2020
Received By Asim

16

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

C.M.A. No. _____/2023

In

Civil Review Petition No. 736 to 740 of 2019.

In

CPLA NO. 552-P to 556-P of 2019

Govt. of Khyber Pakhtunkhwa, through Secretary Energy & Power Department,
Peshawar and others,.....Petitioners

VERSUS

Mehnaz Pari & others.....Respondents

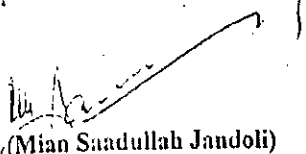
NOTICE

To

1. Mehnaz Pari law officer Restructuring Strengthening of Electric Inspectorate of Energy & Power Department Benevolent Fund Building Peshawar.
2. Sultan Mehmood, Account officer Restructuring Strengthening of Electric Inspectorate of Energy & Power Department Benevolent Fund Building Peshawar.
3. Asim Khan, Regional Electric Inspector Restructuring/Strengthening of Electric Inspectorate of Energy & Power Department Benevolent Fund Building Peshawar.

Please take notice Registered A/D post to the effect that I am filing application for de-clubbing in the above titled case before the Supreme Court of Pakistan in its Branch Registry at Peshawar

Dated this


(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government of KPK

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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

C.M.A. No. _____/2023

In

Civil Review Petition No. 736 to 740 of 2019.

In

CPLA NO. 552-P to 556-P of 2019

Govt. of Khyber Pakhtunkhwa, through Secretary Energy & Power Department,
Peshawar and others,.....Petitioners.

VERSUS

Mehnaz Pari & others.....Respondents

AFFIDAVIT OF SERVICE

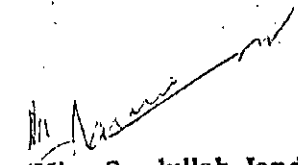
I, Mian Saadullah Jandoli, Advocate-On-Record for the Government of Khyber Pakhtunkhwa do hereby solemnly affirm and declare as under:-

That I did serve the respondents with Notice Registered A/D post to the effect that I am filing application for de-clubbing in the above titled case in the Supreme Court of Pakistan in its branch registry at Peshawar.

SWORN
Dated this the day

AT

PESHAWAR


(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government of KPK

14

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

C.M.A. No. _____/2023

In

Civil Review Petition No. 736 to 740 of 2019.

In

CPLA NO. 552-P to 556-P of 2019

Govt. of Khyber Pakhtunkhwa, through Secretary Energy & Power Department,
Peshawar and others,.....**Petitioners.**

VERSUS

Mehnaz Pari & others.....**Respondents**

AFFIDAVIT OF FACTS

I, Mian Saadullah Jandoli, Advocate-On-Record for the Government/ Petitioners do hereby solemnly affirm and declare as under:-

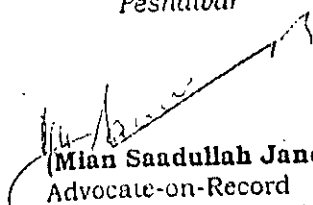
- 1- That the contents of the accompanying application for de-clubbing on behalf of Petitioners/Govt are true and correct to the best of my knowledge and belief.
- 2- That the facts have been obtained by perusal of the case and information furnished by the respondents.

SWORN

Dated this the day

AT

Peshawar


(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government of KPK



GOVERNMENT OF KHYBER PAKHTUNKHWA
Energy & Power Department

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Dated Peshawar, the 09th March, 2023

NOTIFICATION

No. SO(E-I)/E&P/2-1/Restructuring of E-I/2022/ : In pursuance of the order dated 19.01.2023 of the Honorable Supreme Court of Pakistan in CMA No. 5326/2020, CP. No. 295-P/2020, CP 296-P/2020 and CP No. 297-P/2020, the competent authority is pleased to withdraw this department's notifications No. SO (E-I)/E&P/5-7/2021/Vol-VI dated 02-06-2021 and No.SO(E-I)/E&P/5-7/2021/Vol-VI/560-20 dated 01-09-2021 regarding conditional regularization of the following officers/officials of Electric Inspectorate Provincial with immediate effect.

| S.No | Name of officers/officials | Designation with BPS |
|------|----------------------------|---------------------------------------|
| 1. | Muhammad Zakarela | Deputy Electric Inspector (BPS-18) |
| 2. | Javid Iqbal | Assistant Electric Inspector (BPS-17) |
| 3. | Tariq Saif Ullah | Electric Sub Inspector (BPS-12) |
| 4. | Umar Khan | Chowkidar (BPS-03) |
| 5. | Ferid Khan | Naib Qasid (BPS-03) |
| 6. | Zahoor Ahmad | Naib Qasid (BPS-03) |
| 7. | Hameed Ullah | Driver (BPS-06) |
| 8. | Waseem Jahangir | Electric Sub Inspector (BPS-12) |
| 9. | Sohail Ahmad | Electric Sub Inspector (BPS-12) |
| 10. | Zakir Khan | Electric Sub Inspector (BPS-12) |
| 11. | Faiz Muhammad Khan | Electric Sub Inspector (BPS-12) |
| 12. | Abdul Khaliq | Computer Operator (BPS-16) |
| 13. | Muhammad Shahid | Chowkidar (BPS-03) |
| 14. | Amad Ud Din | Naib Qasid (BPS-03) |
| 15. | Mobeen Akhtar | Naib Qasid (BPS-03) |
| 16. | Sudeer Ahmad | Naib Qasid (BPS-03) |
| 17. | Muhammad Riaz | Driver (BPS-06) |
| 18. | Waqar Ahmad | Driver (BPS-06) |

Sd/-
SECRETARY
ENERGY & POWER DEPARTMENT

Endst: No. & Date Even:

Copy is forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. PS to Secretary Finance Department, Khyber Pakhtunkhwa.
3. PS to Secretary Energy & Power Department.
4. PS to Special Secretary, Energy & Power Department.
5. PA to Add: Secretary (Power) Energy & Power Department.
6. PA to Deputy Secretary (Power) Energy & Power Department.
7. The Chief Manager, State Bank of Pakistan, Field Office Peshawar.
8. Electric Inspector Provincial, Khyber Pakhtunkhwa Peshawar.
9. Deputy Electric Inspector, concerned.
10. District Account Officer, concerned.
11. Officers/Officials concerned.

Section Officer (E-I)

12

Project cannot be regularized. This view has been affirmed by the two un-reported orders of this Court i.e. Civil Appeal No.1625 of 2019 titled Government of KPK thr. Chief Secretary Peshawar and others v. Salman Ahmed and others, decided on 21.01.2020; and Civil Appeals No.652 and 653 of 2020 titled Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others v. Muhammad Asif and others decided on 23.11.2020. The contention of the learned counsel for the respondents that their colleagues have been granted same relief cannot be considered as review in those cases is pending before this Court.

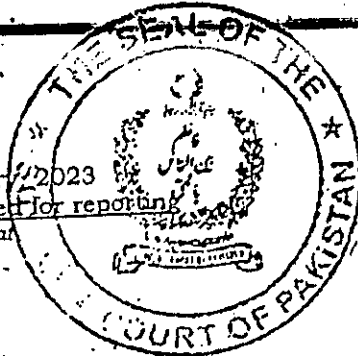
4. For the above reasons we are of the view that the High Court could not have ordered for regularization of the services of the respondents and, thus, the judgment of the High Court cannot be sustained. These petitions are, therefore, converted into appeals and allowed.

5. The listed C.M.A, seeking same relief as the respondents, is disposed of in the light of the above.

SA
SA
SA

Islamabad,
19th January 2023
Not approved for reporting
Asif & Sadagar

26/1/23



Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad

(11)

challenged the said judgment on the ground that the respondents officers could not have been regularized because the Project they were working for does not constitute a project for the purpose of regularization under the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 ("Act"). He submits that unless the project is reflected in the Schedule to the Act its employees cannot be considered for regularization and the Project in question is not a part of the Schedule.

2. On the other hand, learned counsel for the respondents submit that some colleagues of the respondents working in the Project have already been regularized by the High Court and the said judgment was upheld by this Court. Learned counsel for the petitioners adds that against the said judgment of this Court a review petition (Civil Review Petition No.736/2019) has been filed, which is pending.

3. We have heard the learned counsel for the parties and have examined the record of the case. We have gone through sections 2(1)(h) and 4 of the Act, which are reproduced hereunder for convenience:-

2. Definitions. (1)...

(a)-(g) ...

(h) "project" means a perpetual nature project, the continuation on which and conversion to regular budget is essential for service delivery duly identified by the Departments and reflected in the Schedule; (emphasis supplied)

4. Regularization of services of project employees....

Notwithstanding anything contained in any law or rules, the employees at sub-clause (ii) of clause (e) of sub-section (1) of section 2 of this Act, appointed on contract basis against project posts and holding such project posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department:

The above shows that a project for the purpose of section 4 of the Act has to be a project which is reflected in the Schedule to the Act. In this case the project in question i.e. "Restructuring/Strengthening of Electric Inspectorate" is not reflected in the Schedule to the Act,

UNTESTED

(10) 12/23

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-V:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Shahid Waheed

C.M.A.5326/2020, C.Ps.295-P TO 297-P/2020

(Against the judgment dated 05.03.2020 of the Peshawar High Court, Peshawar, passed in Writ Petitions No.3454-P, 3472-P and 3552-P of 2019)

- CMA.5326 of 2020 Jamshed-ur-Rehman and others Vs. Muhammad Zakariya and others
- ✓ CP.295-P of 2020 Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs. Muhammad Zakariya
- CP.296-P of 2020 Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs. Waseem Jehangir and others
- CP.297-P of 2020 Secretary to Government of Khyber Pakhtunkhwa Energy and Power Department, Peshawar and others Vs. Javed Iqbal and others

For the applicant(s): Mr. Zulfiqar Khalid Maluka, ASC

For the petitioner(s): Mr. Zahid Yousaf Qureshi, Addl. AG
Mukhtar Khan, SO
Asif Jamal, AD

For the respondent(s): Mr. Asif Yousafzai, ASC
Mian Abdul Rauf, ASC
Mr. Asghar Ali, ASC
Faiz Muhammad, In person

Date of Hearing: 19.01.2023

ORDER

Syed Mansoor Ali Shah, J.- Brief facts of the case are that respondents were contractually appointed to various posts in the project of "Restructuring/Strengthening of Electric Inspectorate" of the Government of Khyber Pakhtunkhwa ("Project"). While working for the Project the respondents approached the High Court for regularization of their services. The High Court allowed the petition

ATTESTED

(LEGIBLE COPY)

Civil Petition No. 1017 of 2019

2

(9)

before this court. He therefore requests that the listed review petitions may be fixed and heard alongwith the aforesaid review petition. We are informed that a five member Bench of this court has already been constituted to hear the review petition in Adnanullah's case. It is also informed that the learned Advocate General, Khyber Pakhtunkhwa himself has to argue this case but on account of his engagement in a Reference being given in the honour of an outgoing Judge of Peshawar High Court, Peshawar, he is not available in Islamabad today.

2. Let all these cases be clubbed and fixed together alongwith Civil Review petition No. 301 of 2016, etc. on a date to be fixed by the office.

Senior Court Associate
Supreme Court of Pakistan
Islamabad

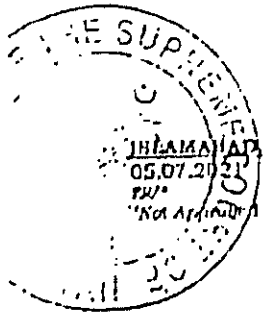
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before this Court. He therefore requests that the listed review petitions may be fixed and heard alongwith the aforesaid review petition. We are informed that a five member Bench of this Court has already been constituted to hear the review petition in Adnanullah's case. It is also informed that the learned Advocate General, Khyber Pakhtunkhwa himself has to argue this case but on account of his engagement in a Reference being given in the honour of an outgoing Judge of Peshawar High Court, Peshawar he is not available in Islamabad today.

2. Let all these cases be clubbed and fixed together alongwith Civil Review Petition No.301 of 2016, etc on a date to be fixed by the office.

Sd/-HCJ
 Sd/-J
 Sd/-J
 Certified to be True Copy.

Senior Counsel
 Supreme Court
 Islamabad



Masood

| | |
|-------------|-------|
| Mr. Justice | _____ |
| Mr. Justice | _____ |
| Mr. Justice | _____ |
| Mr. Justice | _____ |
| Mr. Justice | _____ |
| Mr. Justice | _____ |
| Mr. Justice | _____ |
| Mr. Justice | _____ |
| Mr. Justice | _____ |
| Mr. Justice | _____ |
| Mr. Justice | _____ |
| Mr. Justice | _____ |
| Mr. Justice | _____ |

2/2

(REVIEW JURISDICTION)

PRESENT:

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

CIVIL REVIEW PETITION NO.729 to 741 OF 2019.

Secretary to Government of Khyber Pakhtunkhwa Through
Agriculture, Livestock & Cooperative Department, Peshawar &
Others

...Petitioner(s)

Versus

Jamil Ahmad & others

...Respondent(s)

For the Petitioner(s): Mr. Aatif Ali Khan, Additional AG, KP
Mr. Zahid Yousaf Qureshi, Additional AG, KP
Mr. Shumail Aziz, Additional AG, KP
Mr. Fazal Gul, AD E&P Department KP.
Dr. Muhammad Jaffar, Focal Person, Litigation
Cell Live Stock Department, KP
Dr. Noor Badshah, Focal Person, Litigation Cell.
Mr. Jameel Ahmed Qureshi, AD Litigation.
Mr. Muhammad Ibrar, Law Assistant.
Dr. Fakhar ul Islam, Principal Research Officer,
Livestock Khyber Pakhtunkhwa.
Dr. Reider Ali, MDO, Live Stock
Department, Khyber Pakhtunkhwa
Mr. Usman Khan, S.O, E&P
Department Khyber Pakhtunkhwa.

For the Respondents: Syed Qalb-e-Hassan, ASC
Mr. Muhammad Asif Yousafzai, ASC
Mr. Masood Iqbal, ASC
Raf Azhar Iqbal Kharal, ASC
Mr. Nazir Ahmed Bhutta, ASC
Mr. Zulfiqar Khalid Maluka, ASC

Date of Hearing: 05.07.2021

ORDER

Syed Qalb-e-Hassan Shah, learned ASC for the
Respondents contends that a review petition against a
Judgment of this Court reported as Government of Khyber
Pakhtunkhwa v. Adnanullah (2016 SCMR 1375) is pending

ATTESTED

Senior Court Judge
Supreme Court of Pakistan
Islamabad

CRPs 729 of 2019

The reason that they were employed in the project in the year 2013-2017 and in terms of section 3 of the Act of 2009, it was to apply only to the contract of Adhoc employees holding the post on 31st December, 2008 or till the commencement of the Act of 2009 and not beyond that. He further contends that the principle laid down in the case of Government of Khyber Pakhtunkhwa through Secretary Agriculture and others VS Adnanullah (2016 SCMR 1375), was also not applicable to the case in hand.

2. Notice.

CIVIL MISC. APPLICATION NO. 2272 OF 2020 IN C.R.P NO. NIL OF 2020 IN CIVIL PETITION NO. 552-P OF 2019

3. By this CMA, the applicant has sought permission to file the Civil Review Petition. The review petition, which is not registered yet, is barred by 62 days No application for petition of delay has been filed. Even otherwise, the review petitioner lacks locus standi to file the present review petition

Dismissed as such.

Senior Court Associate
Supreme Court of Pakistan
Islamabad

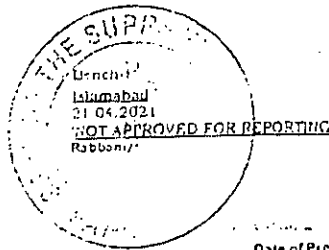
the reason that they were employed in the project in the years 2013-2017 and in terms of Section 3 of the Act of 2009, it was to apply only to the contract or ad hoc employees holding the post on 31st December, 2008 or till the commencement of the Act of 2009 and not beyond that. He further contends that the principle laid down in the case of Government of Punjab v. Punjab Bankers through Secretary Agriculture and others vs. Qudusullah (2016 SCMR 1375), was also not applicable to the case in hand.

2. Notice.

**CIVIL MISC. APPLICATION NO. 2772 OF 2020 IN
C.R.P. NO. 111 OF 2020 IN CIVIL PETITION NO. 572 P OF 2019**

3. By this CMA, the applicant has sought permission to file the Civil Review Petition. The review petition, which is not registered yet, is barred by 62 days. No application for condonation of delay has been filed. Even otherwise, the review petitioner lacks *locus standi* to file the present review petition. Dismissed as such.

Handwritten signature/initials



Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad

| | |
|----------------------|----------|
| Case No. | 202-9/21 |
| Date of Presentation | 29.04.21 |
| No of Words | 900 |
| No of Pages | 3 |
| Registration Fee | 5.20 |
| Copy Fee | 5.50 |
| Court Fee | 10.50 |
| Date of Court Order | 01/05/21 |
| Date of Delivery | |
| Compared By | |
| Received By | |

Pakhtunkhwa Energy & Power Department and others Vs. Mehnaz Pari and others

CRP.737 of 2019 Government of Khyber Pakhtunkhwa through Chief Secretary and others Vs. Ali Said and others

CRP.738 of 2019 Government of Khyber Pakhtunkhwa through Chief Secretary and others Vs. Fawad Anwar and others

CRP.739 of 2019 Secretary to Government of Khyber Pakhtunkhwa Energy & Power Department and others Vs. Rafiullah and others

CRP.740 of 2019 Government of Khyber Pakhtunkhwa through Chief Secretary and others Vs. Nagin Jalal

CRP.741 of 2019 Government of Khyber Pakhtunkhwa through Chief Secretary and others Vs. Dr. Haider Ali and others

CMA.2272 of 2020 Abdul Haseeb and others Vs. Mehnaz Pari and others

For the Petitioner(s) : Barrister Qasim Wadood, Additional Advocate General, KP Dr. Jaffar and Dr. Noor Badshah (both veterinary officer)

For Respondent (s) : N.R. (in CRPs No.729-741/2019)

For the Applicant (s) : Mr. Zulfiqar Khalid Maluka, ASC Mr. Muhammad Sharif Janjua, AOR (in CMA No.2272/2020)

Date of Hearing : 21.04.2021

ORDER

GULZAR AHMED, C.J.- C.R.Ps No.729-741-P of 2019.

Learned Additional Advocate General, KP contends that Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 (the Act of 2009) was not applicable to the private respondents,

ATTESTED

Senior Court Associate Supreme Court of Pakistan Islamabad

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SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan

**CIVIL REVIEW PETITIONS NO.729 TO 741 OF 2019 IN CIVIL
PETITIONS NO.137-P OF 2017, 647-P, 825-P OF 2018, 39-P,
278-P, 542-P, 551-P TO 556-P, 879-P OF 2019**

AND

CIVIL MISC. APPLICATION NO.2272 OF 2020

[Application under Order XXXIII Rule 6 of Supreme Court
Rules, 1980, seeking permission to appear and argue the
subject matter of the instant proceedings]

IN

C.R.P. NO,NIL OF 2020 IN CIVIL PETITION NO.552-P OF 2019

CRP.729 of 2019 Government of Khyber Pakhtunkhwa
through Secretary Agriculture, Live Stock
& Co-operative Department, Peshawar
and others Vs. Jamil Ahmad and others

CRP.730 of 2019 Government of Khyber Pakhtunkhwa
through Chief Secretary and others Vs.
Muhammad Afzal and another

CRP.731 of 2019 Director, Livestock & Dairy Development,
FATA and others Vs. Muhammad
Lugman and others

CRP.732 of 2019 Government of Khyber Pakhtunkhwa
through Chief Secretary and others Vs.
Muhammad Afzal and others

CRP.733 of 2019 Government of Khyber Pakhtunkhwa
through Secretary Agriculture, Livestock
& Co-operative Department, Peshawar
and others Vs. Asif Hussain

CRP.734 of 2019 Government of Khyber Pakhtunkhwa
through Chief Secretary and others Vs.
Masood Khan

CRP.735 of 2019 Government of Khyber Pakhtunkhwa
through Chief Secretary and others Vs.
Syed Solrab Ali Shah and others

✓
↙ CRP.736 of 2019 Secretary to Government of Khyber

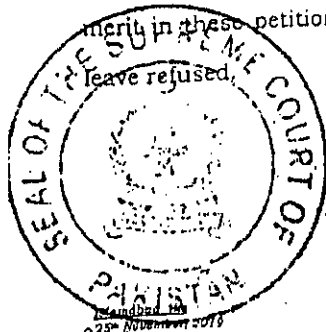
ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

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when come before this Court, has been upheld, in that, the directions were passed for regularization of the employees appointed on contract in GIS and other Projects. He however, contends that among the cases, which are fixed today, there are the cases where the projects are still on going and they have not been taken to the regular budget and that some of the Project have commenced after the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 was enacted, which was applicable to the employees who have already employed prior to promulgation of the said Act. Learned Addl. AG also contends that in Adnanullah's case (supra), which has been decided by this Court on the points as are raised in the present case, a review petition is pending. If that be so, merely due to pendency of a review petition, this Court cannot withhold its decision in deciding the present petitions for that the order under review squarely covers all the situations, as are contended by the learned Addl. AG. In the impugned judgment reference has been made to the judgment dated 24.03.2011, passed in CA Nos.150-P and 151-P/2009, which has made further reference to the judgment passed by this Court in CAs No. 834-P & 837-P/2010. Besides, the impugned judgment has also relied upon judgments of this Court passed in CA No. 134-P/2013 titled as Government of KP through Secretary Agriculture Livestock and others vs. Adnanullah (2016 SCMR-1375) & CA No.605/2015 titled as Rizwan Javed and others vs. Secretary Agriculture Livestock etc. [2017 PLC (CS) 712]. Thus, there is no merit in these petitions. Accordingly, the same are dismissed and leave refused.



Sd/-J
 Sd/-J
 Certified to be True Copy
 Senior Counsel Associate
 Supreme Court of Pakistan
 Jettunahad

(3)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

Mr. Justice Gulzar Ahmed
Mr. Justice Maqbool Baqar

**Civil Petitions No. 137-P/17, 647-P/18, 825-P/18, 35-P/19,
278-P/19, 542-P/19, 551-P to 556-P & 579-P/2019**

(Against the judgments dated 26.01.2017, 31.05.2018, 30.10.2018, 29.11.2018,
13.02.2019, 30.05.2019, 21.05.2019, 24.04.2019, 13.06.2019 of the PHC,
Peshawar passed in WPs/RP No. 2668-P/13, 3678-P/17, 346-B/13, 209-P/18,
3333-P/17, 5071-P/18, 203-P/19, 2516-P/17, 3416-P/17, 3430-P/17, 4433-
P/17, 5978-P/18, 535-P/17)

Secretary to Government of KPK thr.
Agricultural, Live Stock & Co-operative
Department, Peshawar and others

Petitioner(s)

Versus

Jamil Ahmad and others
Muhammad Afzal & another
Muhammad Luqman & others
Asif Hussain
Masood Khan
Syed Sohrab Ali Shah & others
Mehnaz Pari & others
Alif Said & others
Fawad Anwar & others
Rafiullah & others
Nagin Jalal
Dr. Haider Ali & others

Respondent(s)

For the Petitioner(s) : Barrister Qasim Wadood, Addl. AG KP
(in all CPs)

For the Respondent(s) : Syed Wusat ul Hassan Taqvi, ASC
Syed Rifaqat Hussain Shah, AOR
(in CP 278-P/2019)

Not Represented (in all other CPs)

Date of Hearing : 25.11.2019

ORDER

Justice Ahmed Ali Wrote the judgment and
Additional Advocate General, KP. He contends that although
similar matters, as present one, have already been decided time
and again by the learned Peshawar High Court and its judgment

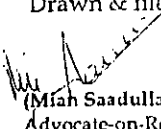
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Senior Court Associate
Supreme Court of Pakistan
Islamabad

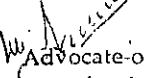
- 2-
4. That the above mentioned Civil Review Petitions No. 736 to 740 of 2019 were fixed on 05-07-2021 and the august Court was pleased to order for clubbing the above mentioned Civil Review Petitions with Civil Review Petition No. 301 of 2016-Secretary Agriculture & live Stock Department, Khyber Pakhtunkhwa & others Versus Adanullah having no nexus & relation on question of Law and facts, which are fixed before the larger bench.

It is, therefore prayed that on acceptance of this CMA on behalf of Govt. of Khyber Pakhtunkhwa., through Secretary Energy & Power Department, & others Versus Mehnaz Pari and others Civil Review Petitions No. 736 to 740 of 2019 may kindly be de clubbed from the Civil Review Petition No. 301 of 2016-Secretary Agriculture & live Stock Department, Khyber Pakhtunkhwa & others Versus Adanullah in the interest of justice & fair play being having no common question of law & facts.


Drawn & filed by:


(Miah Saadullah Jandoli)
Advocate-on-Record,
Supreme Court of Pakistan
Govt. of KPK

CERTIFICATE: Certified that all the legible copies of the illegible documents attach with this CMA have been compared word to word with original and found correct in all respect.


Advocate-on-Record

CERTIFICATE: Certified that all the documents attach with the CM are related to the case and the Government of Khyber Pakhtunkhwa are filing the attach CMA.


Advocate-on-Record

①

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

C.M.A. No. _____/2023

In

Civil Review Petition No. 736 to 740 of 2019.

In

CPLA NO. 552-P to 556-P of 2019

Govt. of Khyber Pakhtunkhwa, through Secretary Energy & Power Department,
Peshawar and others.....Petitioners.

VERSUS

Mehnaz Pari & others.....Respondents

APPLICATION FOR DE-CLUBBING THE ABOVE
MENTIONED CIVIL REVIEW PETITIONS NO. 736
TO 740 OF 2019 FROM CIVIL REVIEW PETITION
NO. 301 OF 2016 HAVING NO NEXUS AND
RELATION WITH EACH OTHER'S

RESPECTFULLY SHEWETH:

1. That the above noted Civil Review Petitions are subjudice before this august at Principal Seat Islamabad which were noticed on 21-04-2021.
2. That the mentioned Civil Review Petitions are the outcome of CP No. 552-P of 2019 to CP No. 556-P. of 2019 which were dismissed on 25-11-2019. Therefore the petitioners filed the above noted CRPs.
3. That on the same analogy the Peshawar High Court allowed the Writ Petition No. 3454-P of 2019, Writ Petition No. 3552-P of 2019 and Writ Petition No. 3472-P of 2019 of the same project which were impugned in CP NO. 295-P to 297-P of 2020 and the same were allowed by this august Court vide order dated 19-01-2023 by setting aside the order of High Court Peshawar. Therefore the petitioner withdrew the conditional regularization orders of their employees

**IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)**

C.M.A. No. _____/2023

In

Civil Review Petition No. 736 to 740 of 2019.

In

CPLA NO. 552-P to 556-P of 2019

Nature of Document(s) filing application for de-clubbing.

Filed on behalf of : Govt. of Khyber Pakhtunkhwa.

Filed on : 30-05-2023

Govt. of Khyber Pakhtunkhwa, through Secretary Energy & Power Department,
Peshawar and others,.....**Petitioners.**

VERSUS

Mehnaz Pari & others.....**Respondents**

AOR for the Appellants:

ASC for the Appellants:

AOR for the Respondents.

ASC for the Respondents.

Mian Saadullah Jandoli, (AOR)

Advocate General, KP.

(Nil)

INDEX

| S. No. | Description of documents. | Dated | Pages | Purpose of filing of this document |
|--------|---|------------|-------|---|
| 01- | application for de-clubbing | 30-05-2023 | 01-02 | |
| 02- | Order of Supreme Court of Pakistan in CP NO. 552 to 556-P of 2019 | 25-11-2019 | 03-04 | Whereby the CPLA under review have been dismissed. |
| 03- | Order of Supreme Court of Pakistan in Civil Review Petition 736 to 740 of 2019 | 21-04-2021 | 05-07 | The Civil Review petitioners were notice through order dated 21-04-2021 |
| 04- | Order of Supreme Court of Pakistan in Civil Review Petition 729 to 741 of 2019. | 05-07-2021 | 08-09 | Through the instant order Civil Review petitioners were clubbed with Civil Review Petition No. 301 of 2016. |
| 05- | Order of Supreme Court of Pakistan in CP NO. 295-P to 297-P of 2020. | 19-01-2023 | 10-12 | Through this order the CPs of the same project were allowed. |
| 06- | Notification. | 09-03-2023 | 13 | Withdrawal order of conditional Regularization order of project Employees |
| 07- | Affidavits | 30-05-2023 | 14-15 | |
| 08- | Notice | 30-05-2023 | 16 | |

(Mian Saadullah Jandoli)

Advocate-on-Record

Supreme Court of Pakistan

For Government of KPK

**IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)**

C.M.A. No. _____/2023
In
Civil Review Petition No. 736 to 740 of 2019.
In
CPLA NO. 552-P to 556-P of 2019
**Nature of Document(s) filing application for
de-clubbing.**
Filed on behalf of: Govt. of Khyber Pakhtunkhwa.
Filed on: 30-05-2023

Govt. of Khyber Pakhtunkhwa, through Secretary Energy & Power Department,
Peshawar and others,.....**Petitioners.**

VERSUS

Mehnaz Pari & others.....**Respondents**

AOR for the Appellants:
ASC for the Appellants:


*Mian Saadullah Jandoli, (AOR)
Advocate General, KP.*

AOR for the Respondents.
ASC for the Respondents.

(Nil)

INDEX

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| 04- | Order of Supreme Court of Pakistan in Civil Review Petition 29 to 741 of 2019. | 05-07-2021 | 08-09 | Through the instant order Civil Review petitioners were clubbed with Civil Review Petition No. 301 of 2016. |
| 05- | Order of Supreme Court of Pakistan in CP NO. 295-P to 297-P of 2020. | 19-01-2023 | 10-12 | Through this order the CPs of the same project were allowed. |
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| 08- | Notice | 30-05-2023 | 16 | |


(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government of KPK

**THE ¹KHYBER PAKHTUNKHWA CIVIL SERVANTS
(APPOINTMENT, PROMOTION & TRANSFER) RULES, 1989**

PART-I

GENERAL

1. **Short title and commencement:** - (1) These rules may be called the ²[Khyber Pakhtunkhwa] Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

(2) They shall come into force at once.

2. **Definitions:-**(1) In these rules, unless the context otherwise requires:-

(a) "Appointing Authority" in relation to a post, means the persons authorized under rule 4 to make appointment to that post;

(b) "Basic Pay Scale" means the Basic Pay Scale for the time being sanctioned by Government, in which a post or a group of posts is placed;

(c) "Commission" means the ³[Khyber Pakhtunkhwa] Public Service Commission;

⁴(d) "Departmental Promotion Committee" means a committee constituted for making selection for promotion or transfer to such posts under a Department, or offices of Government, which do not fall within the purview of the Provincial Selection Board;

⁵(dd) "Departmental Selection Board" means a Board constituted for the purpose of making selection for initial recruitment /appointment to posts under a Department or office of Government in Basic Pay Scale 17 not falling within the purview of the Commission:

Provided that more than one such committees may be constituted for civil servants holding different scales of pay".

(e) "Departmental Selection Committee" means a committee constituted for the purpose of making selection for initial appointment to posts under a department, or office of Government [in Basic Pay Scale 17 and below not falling within the purview of the Commission];

(f) "Post" means a post sanctioned in connection with the affairs of the Province, but not

¹ For the words "NWFP" or "North-West Frontier Province", wherever occurred, the words "Khyber Pakhtunkhwa" substituted by the Khyber Pakhtunkhwa Laws (Amendment) Act, 2011 (Khyber Pakhtunkhwa Act No. IV of 2011) published in the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 2nd April, 2011

² Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

³ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁴ Substituted by Clause (d) of sub-rule (1) of Rule 2 vide Notification No. SOR-I (S&GAD) 4-1/80 (Vol-II) dated 14-01-92.

⁵ Clause (dd) added by Notification No. SOR-III (S&GAD) 2-7/86, dated 8-12-1994

PROBATION AND CONFIRMATION

⁴⁷15. **Probation.** ----- (1) Persons appointed to posts by initial recruitment, promotion or transfer shall be on probation for a period of one year.

(2) The appointing authority, if considers necessary, may extend the probation period for one year as may be specified at the time of appointment.

⁴⁸(3) On the successful completion of probation period, the appointing authority shall, by specific order terminate the probation of the officer or official concerned within two months after the expiry of probation period prescribed in sub-rule(1):

Provided that if no specific order regarding termination of the probation period of the official or officer concerned is issued within two months, the period of probation shall be deemed to have been extended under sub-rule (2):

Provided further that if no specific order is issued on the expiry of the extended period of probation, the period of probation shall be deemed to have been successfully completed.”

16. **Confirmation:-**After satisfactory completion of the probationary period, a civil servant shall be confirmed; provided that he holds a substantive post, provided further that a civil servant shall not be deemed to have satisfactorily completed his period of probation, if he has failed to pass an examination, test or course-or has failed to complete successfully a training prescribed within the meaning of sub-section (3) of Section 6 of the ⁴⁹[Khyber Pakhtunkhwa] Civil Servants Act, 1973.

PART-VI

SENIORITY

17. **Seniority :-**(1) the seniority inter se of civil servants ⁵⁰(appointed to a service, cadre or post) shall be determined:-

- (a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission ⁵¹[or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and
- (b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post.

⁴⁷ Rule-15 substituted vide Notification No. SOR-VI/E&AD/1-3/2009/Vol-VIII dated 16-2-2010.

⁴⁸ Sub rule (3) substituted vide Notification No. SOR-VI (E&AD)1-3/2012 dated 28-12-2012.

⁴⁹ Subs.by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁵⁰ Substituted for the words appointment to a post in the same basic pay scale in a cadre by Notification No. SOR-I(S&GAD)4-1/80, dated 17-05-1989.

⁵¹ The words inserted by Notification No. SOR-I(S&GAD)4-1/80/II, dated 04-02-1996.

retain their inter se seniority as in the lower post.

Explanation-I:- If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely effect the interest of his seniors in fixation of his seniority in the higher post.

Explanation-II:- If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incomplete record or for any other reason not attributing to his fault or demerit.

Explanation-III:- A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

⁵²(3) In the event of merger/restructuring of the Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.

⁵³(4) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.

Provided that if the date of regular appointment of two or more civil servants in the lower post is the same, the civil servant older in age, shall be treated senior.

18. General Rules: - In all matters not expressly provided for in these rules, civil servants shall be governed by such rules as have been or may hereafter be prescribed by Government and made applicable to them.

19. Repeal:- The ⁵⁴[Khyber Pakhtunkhwa] Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, are hereby repealed.

(Authority; No. SOR(S&GAD)4-1/80, dated 13th May, 1989)

⁵² Sub-rule (3) of Rule 17 added vide Notification No. SOR-I(E&AD)4-1/80/IV, dated 28-5-2002.

⁵³ Sub-rule (4) of Rule 17 added vide Notification No. SOR-VI (E&AD) 1-3/2008 dated 19-11- 2009.

⁵⁴ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

12/03

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-V:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Shahid Waheed

C.M.A. 5326/2020, C.Ps. 295-P TO 297-P/2020

(Against the judgment dated 05.03.2020 of the Peshawar High Court, Peshawar, passed in Writ Petitions No. 3454-P, 3472-P and 3552-P of 2019)

CMA.5326 of 2020 Jamshed-ur-Rehman and others Vs. Muhammad Zakariya and others

CP.295-P of 2020 Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs. Muhammad Zakariya

CP.296-P of 2020 Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs. Waseem Jehangir and others

CP.297-P of 2020 Secretary to Government of Khyber Pakhtunkhwa Energy and Power Department, Peshawar and others Vs. Javed Iqbal and others

For the applicant(s): Mr. Zulfiqar Khalid Maluka, ASC

For the petitioner(s): Mr. Zahid Yousaf Qureshi, Addl. AG
Mukhtar Khan, SO
Asif Jamal, AD


For the respondent(s): Mr. Asif Yousafzai, ASC
Mian Abdul Rauf, ASC
Mr. Asghar Ali, ASC
Faiz Muhammad, In person

Date of Hearing: 19.01.2023

ORDER

Syed Mansoor Ali Shah, J.- Brief facts of the case are that respondents were contractually appointed to various posts in the project of "Restructuring/Strengthening of Electric Inspectorate" of the Government of Khyber Pakhtunkhwa ("Project"). While working for the Project the respondents approached the High Court for regularization of their services. The High Court allowed the petition and thereby regularized the services of the respondents through the

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

impugned judgment dated 05.3.2020. The Government of KPK has

challenged the said judgment on the ground that the respondents officers could not have been regularized because the Project they were working for does not constitute a project for the purpose of regularization under the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 ("Act"). He submits that unless the project is reflected in the Schedule to the Act its employees cannot be considered for regularization and the Project in question is not a part of the Schedule.

2. On the other hand, learned counsel for the respondents submit that some colleagues of the respondents working in the Project have already been regularized by the High Court and the said judgment was upheld by this Court. Learned counsel for the petitioners adds that against the said judgment of this Court a review petition (Civil Review Petition No.736/2019) has been filed, which is pending.

3. We have heard the learned counsel for the parties and have examined the record of the case. We have gone through sections 2(1)(h) and 4 of the Act, which are reproduced hereunder for convenience:-

2. Definitions. (1)...


(a)-(g) ...

(h) "project" means a perpetual nature project, the continuation on which and conversion to regular budget is essential for service delivery duly identified by the Departments and reflected in the Schedule; (emphasis supplied)

4. Regularization of services of project employees.-- Notwithstanding anything contained in any law or rules, the employees at sub-clause (ii) of clause (e) of sub-section (1) of section 2 of this Act, appointed on contract basis against project posts and holding such project posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department:

The above shows that a project for the purpose of section 4 of the Act has to be a project which is reflected in the Schedule to the Act. In this case the project in question i.e. "Restructuring/Strengthening of Electric Inspectorate" is not reflected in the Schedule to the Act, therefore, it does not constitute a project for the purposes of Section 4 of the Act, and the services of the employees working in the said

WITNESSED


Court Associate
Sindh Court of Pakistan
Islamabad

Project cannot be regularized. This view has been affirmed by the two un-reported orders of this Court i.e. Civil Appeal No.1625 of 2019 titled Government of KPK thr. Chief Secretary Peshawar and others v. Salman Ahmed and others, decided on 21.01.2020, and Civil Appeals No.652 and 653 of 2020 titled Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others v. Muhammad Asif and others decided on 23.11.2020. The contention of the learned counsel for the respondents that their colleagues have been granted same relief cannot be considered as review in those cases is pending before this Court.

4. For the above reasons we are of the view that the High Court could not have ordered for regularization of the services of the respondents and, thus, the judgment of the High Court cannot be sustained. These petitions are, therefore, converted into appeals and allowed.

5. The listed C.M.A, seeking same relief as the respondents, is disposed of in the light of the above.

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S
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Islamabad,
19th January 2023
~~Not approved for reporting~~
Asif & Sadagan

26/1/23



Certified to be True Copy

[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad



GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMIN. DEPARTMENT
(REGULATION WING)

No. Ke. SO(E&M)E&AD/8-1/Misc/2023
Dated Peshawar, the 16th October, 2023

To

✓ The Secretary to Govt. of Khyber Pakhtunkhwa,
Energy & Power Department.

Subject

TENTATIVE SENIORITY LIST OF ASSISTANT ELECTRIC
INSPECTORS (HS-17) ELECTRIC INSPECTORATE, KHYBER
PAKHTUNKHWA FOR THE YEAR 2023.

Dear Sir,

1. I am directed to refer to your Department letter No. SO(E-I/E&P/1-2/PS/D/2022/425-2 dated 22.08.2023 on the subject noted above and to state that Rule-17(2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 stipulates that the seniority in various cadres of civil servants appointed by initial recruitment vis-a-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre.

2. Since the regular appointment of the conditionally regularized officers are subjudice in the Supreme Court of Pakistan, therefore, the seniority of the said officers may be kept pending for the time being till outcome of the final decision of the Supreme Court of Pakistan, please.

Yours faithfully,

SECTION OFFICER (O&M)

Encls: No. & date even.

Copy to the:-

1. PS to Secretary, Establishment Department.
2. PS to Special Secretary (Regulation), Establishment Department.
3. PA to Additional Secretary (Reg-II), Establishment Department.
4. PA to Deputy Secretary (Policy), Establishment Department.
5. Master File.

Secretary
Government of Khyber Pakhtunkhwa
Energy & Power Department

SO(E-1)

SECTION OFFICER (O&M)

Director (SO)

GOVT: OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMIN: DEPARTMENT
(REGULATION WING)

NO. Ke.SO(O&M)EAD/8-1/Misc:/2023
Dated Peshawar, the 16th October, 2023



To

The Secretary to Govt: of Khyber Pakhtunkhwa,
Energy & Power Department.

Subject: TENTATIVE SENIORITY LIST OF ASSISTANT ELECTRIC
INSPECTORS (BS-17) ELECTRIC INSPECTORATE, KHYBER
PAKHTUNKHWA FOR THE YEAR 2023.

Dear Sir,

I am directed to refer to your department letter No. SO(E.I)/E&P/1-2/PSB/2022/425-2 dated 22-08-2023 on the subject noted above and to state that Rule-17(2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 stipulates that the seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre.

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5. Master File.

SECTION OFFICER (O&M)

- Mid-Career Management Course at National Institute of Management (NIM) for promotion to BS-19
- Senior Management Course at National Management College, Lahore for promotion to BS-20
- National Management Course at National Management College, Lahore for promotion to BS-21

(b) This condition will not be applicable to civil servants in specialized cadres such as Doctors, Teachers, Professors, Research Scientists and incumbents of purely technical posts for promotion within their own line of specialization as envisaged in the existing Promotion Policy.

(c) The qualifying thresholds of quantification of PERs for nomination to these trainings are as under:

| | |
|------|----|
| MCMC | 60 |
| SMC | 70 |
| NMC | 75 |

(d) There will be no exemptions from mandatory trainings. An officer may, however, request for temporary exemption in a particular moment in time but grant of such exemption would be at the discretion of the competent authority. No such request with regard to an officer would be made by the Government Departments concerned.

(e) Three officers shall be nominated for each slot of promotion on the basis of their seniority. Those unwilling to attend will be dropped at their own expense without prejudice to the rights of others and without thwarting or minimizing the chance of improving the quality of service.

(f) Officers failing to undergo mandatory training in spite of two time nominations for a training shall stand superseded if such failure was not for the reasons beyond the control of the officers concerned.

III. Development of Comprehensive Efficiency Index (CEI) for promotion:

(a) The Comprehensive Efficiency Index to be maintained for the purpose of promotion is clarified as under:

(i) The minimum of aggregate marks for promotion to various grades shall be as follows:

| Basic Scale | Aggregate marks of Efficiency Index |
|-------------|-------------------------------------|
| 18 | 50 |
| 19 | 60 |
| 20 | 70 |
| 21 | 75 |

- (ii) A panel of two senior most officers shall be placed before the Provincial Selection Board for each vacancy in respect of promotion to BS-18 & 19. Similarly, a panel of three senior most officers shall be submitted to the Provincial Selection Board for each position in respect of promotion to BS-20 and 21 and the officer with the requisite score on the Efficiency Index shall be recommended for promotion.
- (iii) The senior most officer(s) on the panel securing the requisite threshold of the Efficiency Index shall be recommended by the Provincial Selection Board for promotion unless otherwise deferred. In case of failure to attain the requisite threshold, he (she)/they shall be superseded and the next officer on the panel shall be considered for promotion.

(b) Marks for quantification of PERs, Training Evaluation Reports and Provincial Selection Board evaluation shall be assigned as under:-

| S. No. | Factor | Marks for promotion to BS-18 & 19 | Marks for promotion to BS-20 & 21 |
|--------|--|-----------------------------------|-----------------------------------|
| 1. | Quantification of PERs relating to present grade and previous grade(s) @ 60% : 40% | 100% | 70% |
| 2. | Training Evaluation Reports as explained hereafter. | -- | 15% |
| 3. | Evaluation by PCB | -- | 15% |
| | Total | 100% | 100% |

(c) A total of fifteen (15) marks shall be allocated to the Training Evaluation Reports (Nine marks @ 60% for the training in the existing BPS and Six marks @ 40% in the preceding BS). Evaluation of the reports from the Training Institutions shall be worked out as under:-

- (i) It shall be on the basis of Grade Percentage already awarded by the National School of Public Policy (National Management College and Senior Management Wing) and its allied Training Institutions as provided in their reports.
- (ii) Previous reports of old Pakistan Administrative Staff College and old NIPAs where no such percentage has been awarded,