

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR**

**SERVICE APPEAL NO. 1742/2023**

Siyara Begum.....Appellant

Versus

Government of Khyber Pakhtunkhwa & others .....Respondents

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Director Litigation  
Directorate General Health Services  
Peshawar

**DR. M. SOHAIL**  
Director Litigation  
Director, General  
Services, Khyber Pakhtunkhwa

18-1-24

Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**

**PESHAWAR**

**Service Appeal No. 1742/2023**

Mst. Siyara Begum W/O Muhammad Hashim Khan R/O Bar Kandy  
Chaghar Matti , District, Peshawar

.....Appellant  
Khyber Pakhtunkhwa  
Service Tribunal

**VERSUS**

Secretary Health, Government of Khyber Pakhtunkhwa & others

Diary No. 10607

Dated 17-1-2024

.....Respondents.

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No 01,02,03& 06,07**

**Respectfully Sheweth:**

**Preliminary Objections.**

- I. The appellant has got no cause of action or locus standi to file the instant appeal.
- II. The instant appeal is not maintainable in its present form.
- III. That the appellant has deliberately concealed material facts from the Hon'ble Service Tribunal Peshawar, hence liable to be dismissed.
- IV. That the appellant has filed the instant appeal with mala-fide motives.
- V. That the appeal is not maintainable in its present form and also in the present circumstance of the issue.
- VI. The appellant has not come to the Hon'ble Tribunal with clean hands and hit by laches.
- VII. That the appeal is bad due to non- joinder of necessary and mis- joinder of unnecessary parties.
- VIII. That the appeal is barred by law and limitation.
- IX. That the appellant is not civil servant and is public servant with the meaning of S.9 of the Khyber Pakhtunkhwa Regularization of Lady Health workers program and employees (Regularization and standardization ) Act 2014 and. Hence the Honourble Tribunal has no jurisdiction.

**FACTS**

1. Pertains to record.
2. Correct to the extent of regularization Act 2014 however, under section 9 of the ibid Act 2014 the appellant is a public servant and not civil servant.
3. Pertains to record. However, appellate was regularized under the
  - i. *directions of Hon'ble Supreme Court of Pakistan on 03-10-2012, in Cr. Original Petition No 15 and 73 of 2021 in Human Rights Case No 16360 of 2009 and Constitution Petition No 36 of 2112 "Bushra Arain Vs. Jahanzaib Khan, Secretary Health and Others. As per judgment of Hon'ble Supreme Court of Pakistan and in view of The Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees(Regularization and Standardization) ACT 2014 appellant was also regularized*

w.e.f 1<sup>st</sup> July 2012 as her initial appointment as Lady Health Worker in BPS 05 (Annex-A),

- ii. All LHSs, LHWs Account Supervisors and Drivers will be regularized from 1<sup>st</sup> July 2012 as initial appointed and calculation of financial implication to be borne by Federal Government shall be made accordingly on the basis of employees' strength as on 30<sup>th</sup> June 2011 including cost of total cost of the project. (Annex-B).

Therefore, under the judgment of Hon'ble Supreme Court of Pakistan, appellant was regularized w.e.f 1<sup>st</sup> July 2012 as her initial appointment as Lady Health Worker in BPS 05 and as appellant served as a regular government employee only for 09 years approximately (i.e from 1<sup>st</sup> July 2012 till 01 July 2021) therefore appellant after attaining the age of superannuation was relieved and her services were made stand retired from 01 July 2021 (Annex - C), therefore, appellant is not entitled for any pensionary benefits on the plea that pension liability will accrue after ten years from the date of regularization i.e June 30, 2022, as prescribed in Council of Common Interest (CCI) decision.

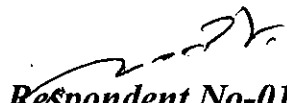
4. Pertains to record. However, under the Khyber Pakhtunkhwa Civil Servant Pension Rules 2021 the appellant is not entitled for counting of contract service towards pension.
5. Pertains to record. However, under the Khyber Pakhtunkhwa Civil Servant Pension Rules 2021 the appellant is not entitled for counting of contract service towards pension.
6. Pertains to record. However, there is no final order (Original or appellate) therefore, the instant service appeal is not maintainable.
7. Incorrect. The appellant is not an aggrieved person as no vested right of the appellant has been violated by the replying respondents.


#### REPLY ON GROUNDS.


- A. Incorrect. Already explained in paras 03 and 04 of the facts.
- B. Incorrect. Already explained in para 05 of the facts.
- C. Incorrect. Already explained in para 05 of the facts.
- D. Incorrect. Already explained in the preceding paras.
- E. As per para 05 of the facts.
- F. The replying respondents also seek permission of this honorable Tribunal to adduce other grounds during final hearing of the case.


**PRAYER:**


In the view of above, it is humbly prayed that the instant appeal being devoid of merit may very graciously be dismissed with cost.

  
**Respondent No-01**  
Secretary Health  
Khyber Pakhtunkhwa Peshawar  
(Mehmood Aslam)

  
**Respondent No-02**  
Director General Health Services  
Khyber Pakhtunkhwa Peshawar  
(Dr. Shaukat Ali)

  
**Respondent No-04**  
District Health Officer  
Peshawar  
(Dr. Syed Muhammad Adrees)

  
**Respondent No-06**  
District Coordinator LHWs Program  
Peshawar  
(Dr. Haroon)

  
**Respondent No-07**  
Provincial Coordinator LHWs Program  
(Dr. Arshad)

**IN THE SUPREME COURT OF PAKISTAN**  
(Original Jurisdiction)

Annexure - A

**Present**

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.  
Mr. Justice Jawwad S. Khawaja  
Mr. Justice Khilji Arif Hussain

Crl. Original Petition No.15 and 73 of 2012

In

Human Rights Case No.16360 of 2009

And

Constitution Petition No.36 of 2012

(Regarding the Regularization of Service  
of Lady Health Supervisor/Workers)

Bushra Araen (In Crl.O.P.15/12)  
Dr. Pir Ghulam Hussain and others (In Crl.O.P.73/12)

...Petitioners

**Versus**

Mr. Jahanzeb Khan, Secretary Health and others ... Respondents

**In Attendance:** Ms. Bushra Araen, LHS (Crl.O.P.15/12)  
Ms. Rukhsana Anwar, LHS (in Cont. P.36/12)  
Ms. Shafaq, Programme Officer  
Ms. Farhat Sultana, LHS  
Ms. Saeeda Shaheen, LHS  
Ms. Maryam Sultana, LHS  
Dr. Pir Ghulam Hussain,  
Field Monitoring Coordinator (Crl.O.P.73/12)

**For the Federation:** Raja M. Aleem Abbasi, DAG

**For Govt. of Punjab:** Mr. Javed Hassan, AAG

**For Govt. of Sindh:** Mr. M. Qasim Mir Jat, AAG, Sindh  
Mr. Saeed Qureshi,  
Focal Person to Secretary Health

**For Govt. of KPK:** Syed Arshad Hussain Shah, AAG, KPK  
Mr. Asmatullah Qureshi, S.O.

**For Govt. of Balochistan:** Mr. M. Azam Khan Khattak, AAG, Balochistan

**Date of hearing:** 03.10.2012.

**ORDER**

The learned DAG stated that the in pursuance of the policy funds have been released for the distribution of salaries etc. to the Provinces till the month of September, 2012. According to his instructions on the completion of codal formalities from the Finance Ministry this amount is likely to be transferred in the shortest possible time so that the respective Provinces may reimburse the amount to the staff working in various projects relating to health. Mst. Bushra Araen, LHS and others stated that the Federa

**ATTESTED**

Superintendent  
Supreme Court of Pakistan

and the Provincial Governments may take interest to disburse their salaries well in time particularly before the Eid-ul-Azha. Learned DAG stated that his efforts shall be made to do the needful. We expect that the Chief Secretaries of the respective Provinces and the Commissioner ICT shall also take steps in this behalf

2. Dr. Pir Ghulam Hussain, Field Monitoring Coordinator stated that the Officers and Staff of Programme Monitoring Units (PMUs) approximately 167 in numbers have been left at the disposal of Provinces for the purpose of confirmation yet they are working at par with the LHWs and LHSs on the Federal strength, since 1996, therefore, their services may also be regularized by the Federation. The learned DAG has stated that this decision has been taken in a meeting duly represented by the representatives of the respective Provincial Governments. He has referred to the summary sent to the Prime Minister, relevant paragraphs of the same are reproduced as under:-

- "iv. All LHSs, LHWs Account Supervisors and Drivers will be regularized from 1<sup>st</sup> July, 2012 as initially appointed and calculation of financial implication to be borne by Federal Government shall be made accordingly on the basis of employees' strength as on 30<sup>th</sup> June, 2011 including cost of medicine and operational costs not exceeding 10% of the total cost of the project.
- v. Staff of the PMUs of concerned provinces shall be regularized by the respective Provinces. The Provinces shall be responsible for the payment of liabilities accruing on this account."

We observed that if it is mutually agreed between Federal and Provincial Governments, they must undertake exercise to regularize the employees as early as possible without any discrimination. If the Lady Health Supervisors (LHSs) and Lady Health Workers (LHWs) are confirmed by the Federal Government then again another issue of discrimination in respect of regularization of PMUs Staff will arise. The Chief Secretaries of the respective Provinces and the Commissioner ICT is required to submit a progress report in this behalf on the next date of hearing. It is requested on behalf of the Federation that four weeks time may kindly be granted in order to regularize the aforesaid employees. The request is allowed. The matter shall be listed for hearing after

*Handwritten signature*

DR. M. SOHAIL KHATTAK  
Director Litigation  
Director, General Health  
Services, Khyber Pakhtunkhwa



*sd/-affidavit Muhammad Chaudhry, c.  
sd/-Jawwad S. Khawaja, J  
sd/-Khalji Arif Hussain, J*

Certified to be True Copy  
*Handwritten signature*  
Superintendent

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**W.P No.289-M/2021**

**Muhammad Saeed Vs. Govt. of Khyber Pakhtunkhwa  
through Chief Secretary and others**

**Present:** *Petitioner in person.*

*Khwaja Salah-ud-Din, A.A.G for official Respondents.*

**Date of hearing:** 04.04.2023

**JUDGMENT**

**MUHAMMAD NAEEM ANWAR, J.-** Muhammad Saeed, the widower/ husband of late Mst. Saeed Bibi, by invoking the writ jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has filed the instant petition with the prayer that the respondents may be directed to grant and provide all back benefits of late Mst. Saeeda Bibi in the shape of family pension etc. on the ground that his late wife Mst. Saeeda Bibi was incipiently appointed as LHW in Health Department on 06.10.2010 on contract basis/fixed pay, however, her services were later on regularized vide office order dated 20.09.2014 but w.e.f. 1<sup>st</sup> July, 2012 and then she died during service on 20.09.2020.

2. Though Mr. Momin Khan, Advocate who is representing the petitioner has submitted an application for adjournment, however, the petitioner present in person before the Court stated at the bar that he has not only submitted written arguments but will also assist the Court in accordance with the directions of this Court incorporated in order sheet dated 27.09.2022. He submitted that his deceased wife Mst. Saeeda Bibi was on the role of Health

Sabz Ali/ (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR  
HON'BLE MR. JUSTICE DR. KHURSHID IQBAL

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Services, Khyber Pakhtunkhwa

Attested  


department in permanent establishment under the Government of Khyber Pakhtunkhwa and continuously served w.e.f. 06.10.2010 till 30.06.2012 (01-year 08-months and 21-days) and after her regularization till her death for 08-years 02-months and 14-days, hence, the total length of service of the deceased employee from her initial appointment till her death was 09-years 11-months and 14-days. He added that in accordance with the provisions of rules 2.2 & 2.3 of the West Pakistan Civil Service Pension Rules, 1963, he is entitled for pensionary benefits of deceased Mst. Saeeda Bibi, being her husband/widower. He further added that under Family Pension Rules, article 358, 361, 361-A and 423 (i) of Civil Service Regulation (CSR) in juxtaposition with judgment titled "Sher Afzal Khan Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education and others" (PLC 2019 CS 1065), W.P No.269-M/2019, "Secretary Ministry of Finance, Islamabad and others Vs. Tayyaba Halim Subhani and others" (2022 SCMR 77), "WAPDA through Chairman and another Vs. Mst. Parizada" (2018 SCMR 1542), "Amir Zeh widower of Mst. Asia vs. The District Account Officer Nowshera and 5 others" (Writ Petition No. 3394-P of 2016) decided on 22.06.2017 and LHW Regularization Act, 2014 and Rules 2015, the status of the deceased employee was of a regular/confirmed employee. Lastly, he submitted that for the purpose of pensionary benefits, the period for which Mst. Saeeda Bibi served on contractual side/ fixed pay shall be counted towards her regular

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Attested  
[Signature]

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services for completing the eligibility criteria of 10 years qualifying service as held by this Court in numerous cases.

3. On the other hand, the learned A.A.G representing the official respondents submitted that since the deceased has rendered 08-years 02-months and 19-days service after her regularization and having not crossed the eligibility criteria of qualifying service for pension under the pension rules, thus, was not entitled for pensionary benefits. He prayed for dismissal of the instant petition, being not maintainable.

4. Arguments heard and record perused.

5. During the course of arguments, on 27.09.2022, this Court has framed certain points/ issues and directed both the parties to assist this Court in consonance with the law as reflected in the said order sheet. The questions and law, on which, the assistance of the parties was required in the matter in hand, are reproduced as under:

- 1) Whether without completion of 10 years qualifying service, the service on fixed pay or contract followed by regularization could be counted for pensionary benefits?
- 2) Whether the provisions of pension rules or Article 371-A of Civil Service Regulations (C.S.R.) would be beneficial only if the employee was otherwise entitled for pensionary benefits on completion of qualifying service?
- 3) Whether the word "count" could be interpreted to add the length of qualifying service to hold entitled a civil or Government servant for pensionary benefit when he otherwise has not completed qualifying service?

Learned counsel for petitioner and learned Advocate General are directed to assist this Court in the light of the principle

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enunciated by the Hon'ble Supreme Court as well as by this Court in the cases of:

- (i) Muhammad Nawaz Special Secretary Cabinet Division through his legal heirs vs. Ministry of Finance Government of Pakistan through its Secretary Islamabad (1991 SCMR 1192);
- (ii) Mst. Rashida Khatoon and 2 others Vs. District Education officer (Male) and 3 others (2016 PLC(CS) 308).
- (iii) Mudassar Termizi and others vs. Peshawar High Court through Registrar, Peshawar and others (2021 PLC(CS) 441);
- (iv) Secretary, Ministry of Finance, Islamabad and others vs Tayyaba Halim Subhani and others (2022 SCMR 77) & 2022 P L C (C.S.) 514;
- (v) Ministry of Finance through Secretary and others Vs Syed Afroz Akhtar Rizvi and others [2022 PLC (CS) 22, Peshawar];
- (vi) Mst. Islam-Bibi Vs. Government of Pakistan through Secretary State and Frontier Regions Division, Islamabad and 3 others [2022 PLC (CS) 1196 of the Larger Bench of this Court]; and
- (vii) Amir Zeb widower of Mst. Asia vs. The District Account Officer Nowshera and 5 others (Writ Petition No. 3394-P of 2016) dated 22.06.2017.

Office is directed to issue notice to the petitioner, Mr. Momin Khan, Advocate & learned AAG for 20<sup>th</sup> of December 2022."

6. Insofar as the question of maintainability of the instant petition filed by the widower/husband of namely Mst. Saeeda Bibi, who was a regular civil servant is concerned, in the case of "Muhammad Nawaz Special Secretary Cabinet Division through his legal heirs vs. Ministry of Finance Government of Pakistan

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through its Secretary Islamabad" (1991 SCMR 1192), it was held by the apex Court that:

"A right of appeal under the Service Tribunals Act of 1973 has been given to a civil servant aggrieved by any final order whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his service. The appellants admittedly are the legal heirs of the deceased civil servant and there being no provision in the Service Tribunals Act of 1973 to provide any remedy to the successors-in-interest of a civil servant, of the learned Tribunal, in our view, was correct in holding that the appeal before it stood abated and the same is hereby maintained."

Thus, the petitioner, being the husband/legal heir of deceased civil servant could not seek his remedy from the Tribunal constituted under the provisions of Khyber Pakhtunkhwa Services Tribunal Act, 1974 and as such, the petition in hand was rightly filed before this Court. In the case of "Mst. Islam Bibi Vs. Government of Pakistan through Secretary State and Frontier Regions Division, Islamabad and 3 others" [2022 PLC (CS) 1196], this Court has held that: "legal heirs of civil servant can validly file a writ petition before the High Court for pensionary benefits of his/her predecessor in interest, who was a civil servant". Reliance may also be placed on the case of "Mst. Rashida Khatoon and 2 others Vs. District Education officer (Male) and 3 others [2016 PLC(CS) 308]. Hence, the objection of the learned A.A.G regarding maintainability of the instant writ petition before this Court being filed by husband of late Mst. Saeeda Bibi, the civil servant, is misconceived and accordingly, it

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is held that the instant petition was competently filed by the petitioner before this Court for the relief claimed therein.

7. The pivotal question for determination in the instant petition is as to whether in accordance with rules 2.2 & 2.3 of the Pension Rules in juxtaposition article 371-A of CSR, the services rendered on contractual side/ fixed pay by the late civil servant could be calculated towards her regular service for completing qualifying service for the purpose of pensionary benefit. In order to determine the above formulated question, at first instance, the matter was heard by the apex Court in the case of "Mir Ahmad Khan Vs. Secretary to Government and others" (1997 SCMR 1477), wherein it was held that:

"Admittedly, the appellant put in more than ten years' temporary service before his services were terminated, he was, therefore, entitled to pensionary benefits under Regulation 371-A(i) of Civil Service Regulations. It appears that this provision of the Civil Service Regulation was not cited before the Tribunal otherwise the observation to the contrary could not have been made in the impugned judgment. Resultantly, the appellant and similarly placed other employees of the Afghan Refugees Organization, being Government civil servants, are held entitled to pensionary benefits if their cases are covered by Regulation No. 371-A of Civil Service Regulations. We allow this appeal, set aside the impugned judgment of the Federal Service Tribunal with no order as to costs."

The afore-mentioned principle laid down in Mir Ahmad Khan' case (*supra*) was revisited by a five-member Bench of the apex Court in the case of "Chairman Pakistan Railway

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Government of Pakistan Islamabad and others Vs. Shah Jehan Shah" (PLD 2016 SC 534), where the judgment in the case of Mir Ahmad Khan (*supra*) has been declared as *per incuriam* by holding that:

"7. It is not disputed that the respondent rendered continuous temporary service and that his length of service was continuous and for more than five years. However, the question that needs to be answered is whether he was working in a "temporary establishment" or not. "Temporary establishment" has not been defined in the CSR, the Fundamental and Supplementary Rules issued by the Government of Pakistan, the ESTA Code or the Compendium of Pension Rules and Orders. In this context Article 369 of the CSR mentions temporary establishment but only explains what it is not and thus is not very helpful. Therefore, as mentioned earlier in the opinion, as per the settled rules of interpretation, the dictionary meaning of the words has to be resorted to. The Concise Oxford Dictionary (6th Ed.) has defined "temporary" as "lasting, meant to last, only for a time", and "establishment" as an "organized body of men maintained for a purpose". Chambers 21st Century Dictionary defines "temporary" as "lasting, acting or used, etc for a limited period of time only", and "establishment" as "a public or government institution". Oxford Advanced Learner's Dictionary of Current English (7th Ed.) defines "temporary" as "lasting or intended to last or be used only for a short time; not permanent" and "establishment" as "an organisation, a large institution..." In light of the above dictionary meanings, "temporary establishment" can be said to mean an organisation or institution which is not permanent, rather effective for a certain period only. Admittedly the respondent was serving in Pakistan Locomotive Factory Risalpur, Pakistan Railways, which does not in any way fall within the meaning and purview of "temporary establishment". Thus, the respondent could not rely upon Article 371-A of the CSR. Besides, if hypothetically speaking Pakistan Locomotive Factory Risalpur was a temporary establishment,

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even then the respondent would not be able to take the benefit of Article 371-A (supra) as he otherwise does not qualify for pensionary benefits having wit been subsequently taken into permanent employment, which is sine qua non for the grant thereof.

8. Adverting to the law laid down in the case of Mir Ahmad Khan (supra) wherein it was held: -

"Admittedly the appellant put in more than ten years' temporary service before his services were terminated, he was, therefore, entitled to pensionary benefits under Regulation 371-A(i) of Civil Service Regulations."

In light of the discussion in paragraph No.6, the judgment delivered in Mir Ahmad Khan's case (supra) is declared to be per incuriam."

Thus, the Hon'ble Supreme Court in explicit terms has held that without completion of 10 years qualifying service, the services rendered by an employee on contract/fixed pay could not be counted for pensionary benefits. It was also ruled that a civil servant has to complete 10-year regular qualifying service for pension and thereafter, his services whatever it may be, on contract or daily wages or fixed pay, shall be counted for determination of pensionary benefits but without completion of 10-years qualifying service, the service of an employee rendered on contract or fixed pay could not be added to the service after regularization to complete qualifying 10-year regular service. Since, there were judgments of Division Bench of this Court, whereby the services rendered on contract basis or fixed pay were held to be counted for pensionary benefits in order to complete the qualifying service i.e., eligibility criteria for pensionary benefits and in the series of those

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cases, a larger Bench was constituted by this Court and in the case of W.P No.3394-P/2016 titled "Amir Zeb Vs. The District Accounts Officer Nowhsera and 05 others" decided on 22.06.2017, while interpreting proviso 2 & 3 of section 19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 as added by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013, it was held by this Court that:

"It is manifest that the person selected for appointment on contract basis shall be deemed as regular employee and subsequently were held entitled for pensionary benefits. The deceased employees have completed the prescribed length of service as their service towards pension shall be counted from the first day of their appointment and not from the date of regularization of their service."

However, in the case of "Ministry of Finance through Secretary and others Vs. Syed Afroz Akhtar Rizvi and others" (2021 SCMR 1546), it has been held by the apex Court that:

"In case, an employee had served a government department for the duration of the period qualifying him to receive pension, the period spent as a contractual employee may be added to his regular qualifying service only and only for the purpose of calculating his pension and for no other purpose. The provisions of Article 371-A of Civil Service Regulations (C.S.R.) started with a non obstante clause which meant that the said Article did not relate to the question entitlement or eligibility to receive pension. It was clearly and obviously restricted to counting the period of a minimum of five years which had been rendered by a temporary contractual employee to be taken into account with the object of calculating the quantum of his pension and not more. The non-obstante clause in Article 371-A of C.S.R. did not allow

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those who did not fulfill the requisite conditions for qualifying for pension to bypass such conditions and add up regular and contractual periods of employment for the purpose of meeting the eligibility criterion of ten years of service. Such an interpretation would create absurd situations and would render other provisions and Articles of C.S.R. redundant, unnecessary and surplus. Therefore, Article 371 of C.S.R. did not allow Government Servants rendering temporary service in a temporary establishment for more than 5 years to be entitled for grant of pension rather such period could be counted towards calculation of pension only if otherwise entitled to pension by meeting the criteria of qualifying service."

More-so, this Court in the case of "Inayat Khan Vs. Government of Khyber Pakhtunkhwa through Secretary Frontier Education and others" (W.P No.833-M/2018) decided on 14.02.2023 has held that:

"Being based upon the interpretation of Article 371-A of C.S.R made by the apex Court; it is concluded that the service rendered on contract followed by regularization could only be counted for pensionary benefits provided the civil servant has completed qualifying ten years' service independently. Thus, the contention of learned counsel for petitioner for addition of service of the petitioner rendered on contractual side in the service rendered by him after his regularization for pensionary benefits is misconceived."

8. Admittedly, the deceased wife of the petitioner has not fulfilled the eligibility criteria i.e., 10 years qualifying service for pensionary benefits independently till her death after her regularization, therefore, for fulfilling the threshold of 10-years qualifying service for pensionary benefits, the services rendered by her on contractual side/ fixed pay, could not be added to her

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regular service, as such, contention of the petitioner that there are judgments of this Court, whereby the benefits were extended to those who have not completed 10-years independent service on regular side by addition of services rendered on contract, after the decision of the apex Court in supra case reported as 2021 SCMR 1546, is of any help to the petitioner.

9. Thus, for the reasons discussed above and in view of the principle laid down by the apex Court, it is held that:

- i. Mst. Saeeda Bibi, the deceased wife of petitioner has not completed 10-years qualifying service for pensionary benefits from the date of her regularization till her death;
- ii. Services rendered by the deceased employee on contract/ fixed pay without independently qualifying the eligibility criteria of 10-year service could not be added to her regular service for pensionary benefits; and
- iii. Article 371-A of CSR and rules 2.2 & 2.3 of the Pension Rules shall be interpreted and followed by the Courts in terms of dicta laid down by 2021 SCMR 1546 in juxta position with article 189 of the Constitution of Islamic Republic of Pakistan 1973.

10. When so, the instant petition, being devoid of force, stand dismissed.

Announced.  
04.04.2023.

  
JUDGE

  
JUDGE

DR. M. SOHAIL KHATTAK  
Director Litigation  
Director, General Health  
Services, Khyber Pakhtunkhwa

Office  
6/4/2023  
7/4/2023  
Sabbir Ali /<sup>a</sup> (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAZEM ANWAR  
HON'BLE MR. JUSTICE Dr. KHURSHID IQBAL

FOR THE EXTRAORDINARY GAZETTE ISSUE OF  
THE KHYBER PAKHTUNKHWA

PROVINCIAL ASSEMBLY SECRETARIAT  
KHYBER PAKHTUNKHWA

Annexure-B

NOTIFICATION

Dated Peshawar, the 2 /07/2014.

No.PA/Khyber Pakhtunkhwa/Bills/2014/ 351 The Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Bill, 2014 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 24<sup>th</sup> June, 2014 and assented to by the Governor of the Khyber Pakhtunkhwa on 29<sup>th</sup> June, 2014 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

**THE KHYBER PAKHTUNKHWA REGULATION OF LADY HEALTH  
WORKERS PROGRAM AND EMPLOYEES (REGULARIZATION  
AND STANDARDIZATION ) ACT, 2014**

**(KHYBER PAKHTUNKHWA ACT NO. XXVI OF 2014)**

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa. (Extraordinary), dated the 02/07/2014).

(Here print as in the accompaniment).

*Nuneeh*

SECRETARY,

Provincial Assembly of Khyber Pakhtunkhwa.

No. and date (as per notification above).

A copy of the above notification with the accompaniment is forwarded to the Manager, Government Stationery and Printing Department, Peshawar, with the request to publish the same in the extraordinary issue of the Khyber Pakhtunkhwa Government Gazette of today's date and distribute copies thereof immediately in accordance with the list given overleaf.

Proof should be sent to this Secretariat before publication.

*Nuneeh*

SECRETARY,

Provincial Assembly of Khyber Pakhtunkhwa

E.No. PA/Khyber Pakhtunkhwa /Bills/2014/ 352-56 Dated 2/07/2014

A copy of the above is forwarded to :-

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. The Secretary to Government of Khyber Pakhtunkhwa, Health Department.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department.
4. The Director Information, Khyber Pakhtunkhwa.
5. The Director I.T/ Special Secretary Provincial Assembly of Khyber Pakhtunkhwa.

*Nuneeh*

SECRETARY,

Provincial Assembly of Khyber Pakhtunkhwa

**DR. M. SOHAIL KHATTAK**  
Director Litigation  
Director, General Health  
Services, Khyber Pakhtunkhwa

AN  
ACT

*to regulate the status of Lady Health Workers Program in the Province of the Khyber Pakhtunkhwa and to regularize and standardize the services of employees of the said program*

**WHEREAS** in pursuance of the Constitution (Eighteenth Amendment) Act, 2010, the subject of Health has been devolved to the Provinces and as such Lady Health Workers Program run by Federal Government for supporting the family planning and primary health care was devolved to the Provinces accordingly;

**AND WHEREAS** in the Lady Health Workers Program, the community based workers have a special nature of job, for the execution of which they have to remain continuously embedded with their local catchment population;

**AND WHEREAS** it is obligatory to maintain the original concept and design of the Lady Health Workers Program, to ensure the presence of community embedded employees for effective service delivery to the people of the area;

**AND WHEREAS** it is expedient to regulate the status of Lady Health Workers Program in the Province of the Khyber Pakhtunkhwa and to regularize and standardize the services of the employees of the said program.

It is hereby enacted as follows:-

**1. Short title, application and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014.

(2) It shall apply to all persons employed or to be employed in Lady Health Workers Program, in the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once except section 4, which shall come in to force on 1<sup>st</sup> July, 2012.

**2. Definitions.**---In this Act, unless there is anything repugnant in the subject or context,-

- (a) "catchment population" means the local population for which a Community Embedded Employee of the Program is appointed or posted and regularly resides therein;
- (b) "Community Embedded Employee" means a Program employee residing and working within his defined catchment population for which he was appointed or posted;
- (c) "District Program Implementation Unit" means the Management Unit of the Program at District level;
- (d) "Government" means the Government of the Khyber Pakhtunkhwa;
- (e) "prescribed" means prescribed by rules;
- (f) "Program" means the Lady Health Workers Program devolved to the Province and which was previously run by the Federal Government under the name of the National Program for Family Planning and Primary Health Care;
- (g) "Program employee" means an employee of the Program, whose service is regularized under this Act and includes persons to be appointed after the commencement of this Act;

*Handwritten signature*

**DR. M. SOHAIL KHATTAK**  
Director Litigation  
Director, General Health  
Services, Khyber Pakhtunkhwa

- (h) "Province" means the Province of the Khyber Pakhtunkhwa;
- (i) "Provincial Program Implementation Unit" means the Management Unit of the Program at Provincial level; and
- (j) "rules" mean rules made under this Act.

3. **Status of Program.**---(1) On commencement of this Act, the National Program for Family Planning and Primary Health Care, shall be deemed to be a Program of Government, to be known as the Lady Health Workers Program.

(2) The purpose of the Program shall be to provide preventive, curative, rehabilitative and promotive health care services to the catchment population in the Province.

(3) The Program shall continue for such a period as Government may determine.

(4) After coming into force of this Act, Government may appoint persons to various posts in the Program on contract basis and there shall be no regular appointment in the Program.

(5) The appointment under sub-section (4) shall be made in accordance with the criteria and manner as may be prescribed.

4. **Regularization.**---(1) On commencement of this Act, all the Program employees, who were appointed in the Program on contract or fixed monthly stipend basis before 1<sup>st</sup> July 2012, and holding the said post till the commencement of this Act, shall stand regularized with effect from 1<sup>st</sup> July, 2012:

Provided that the services of such Program employees shall be deemed to have been regularized under this Act only on the publication of their names in the official Gazette:

Provided further that the posts of the Program fallen vacant on account of death, retirement, resignation, dismissal, termination or otherwise shall be filled-in on contract basis.

(2) The Program employees regularized under this Act shall be placed in the relevant Pay Scales corresponding to the civil servants or as may be determined by Government.

(3) The seniority of the Program employees regularized under this Act shall be determined in a manner as may be prescribed.

(4) A Program employee, whose services are regularized under this Act, shall retire from service, on the option of the Program employee and on such date as requested by the Program employee, after completion of twenty five years of qualifying service or on the completion of sixtieth year of age.

(5) A Program employee, whose service is regularized under this Act, shall be entitled to such pensionary and retirement benefits as may be determined by Government.

5. **Mechanism of recruitment for Community Embedded Employees.**---(1) For filling a post of Community Embedded Employee, the appointing authority shall cause to verify and ensure in the prescribed manner that person, who is to be appointed against such post, shall be a regular resident of his catchment population.

(2) The Provincial Program Implementation Unit shall oversee and monitor the process and finding of the verification, carried out by the appointing authority under sub-section (1), before a person is appointed against post of Community Embedded Employee.

(3) The Community Embedded Employee shall perform his duties within the catchment population of his residence; provided that Government may adjust a Community Embedded Employee in another area in certain circumstances to be prescribed.

DR. M. SOHAIL KHATTAK  
Director Litigation  
Director, General Health  
Services, Khyber Pakhtunkhwa

(4) Notwithstanding anything contained in other provisions of this Act, the services of the Community Embedded Employees, whose services are regularized under this Act, or other Community Embedded Employees to be appointed after the commencement of this Act, shall be liable to termination, if the employee-

- (a) has unlawfully ceased to be a regular resident within or has become a non-resident for his catchment population; or
- (b) is involved in any other engagement or a practice which is not in accordance with the laid down and approved policy of the Program; or
- (c) has ceased to be efficient in the performance of official duties; or
- (d) has proved guilty of gross misconduct.

(5) A Community Embedded Employee, whose service is terminated under sub-clause (a) or (b) of sub-section (4) of this Act may be reinstated into service in a manner as may be prescribed:

Provided that this opportunity of reinstatement shall not be given more than once throughout the tenure of a Community Embedded Employee's service:

Provided further that-

- (a) no salary or allowances shall be paid to the re-instated employee for the period spent under termination; and
- (b) payment made, if any, to the terminated employee being re-instated, which was not allowed during or for the period spent under termination, is recovered from the employee.

6. Posting, transfer and adjustment of Program employees.---Notwithstanding anything contained in other provisions of this Act, the Program employees, except the Community Embedded Employees, may be transferred to perform duty anywhere in the Province.

7. Disciplinary action.---Disciplinary cases against the Program employees shall be dealt with in a manner as may be prescribed.

8. Application of Government rules.---The Program employees shall be dealt in accordance with the provisions of this Act and rules; provided that if no specific rules are available on any matter, the Government rules shall be applicable to such Program employees.

9. Public servants.---All Program employees shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

10. Power to make rules.---Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

11. Saving.--- Any rules, orders or instructions in respect of any terms and conditions of services of Program employees duly made or issued by an authority competent to make them and in force immediately before the commencement of this Act shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act.

12. Removal of difficulties.---If any difficulty arises in giving effect to any of the provisions of this Act, Government may make such order, not inconsistent with the provisions of this Act, as may appear to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from the commencement of this Act.

*Attended*  
*[Signature]*

**DR. M. SOHAIL KHATTAK**  
Director Litigation  
Director, General Health  
Services, Khyber Pakhtunkhwa

13. Repeal--- The Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Ordinance, 2014 (Khyber Pakhtunkhwa Ord. No. VI of 2014) is hereby repealed.

**BY ORDER OF MR. SPEAKER  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA**

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**(AMANULLAH)**  
Secretary  
Provincial Assembly of Khyber Pakhtunkhwa



**DR. M. SOHAIL KHATTAK**  
Director Litigation  
Director, General Health  
Services, Khyber Pakhtunkhwa

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Annex (C)

GOVERNMENT OF KHYBER PAKHTUNKHWA  
DISTRICT HEALTH OFFICER PESHAWAR

Dated Peshawar the 20/10/2021  
No. 15018-24 /DHO.DPIU

NOTIFICATION

NO.PA/Khyber PakhtunKhwa/Bills/2014/351. In terms of provision of The Khyber PakhtunKhwa Regulation of Lady Health Workers Program & employees (regularization & standardization) Act, 2014, (Para (4) Sub-Para (4) & (5) if the Khyber PakhtunKhwa Civil Servants Revised Leave Rules 1981 and instructions there under issued from time to time, sanction is hereby accorded to the grant of 365 days leave encashment in lieu of LPR in respect of Mr/Mst. Ghazala Yasmeen W/o Sher Afzal BPS-05 as Lady Health Worker attached to BHU Hazar Khawani/District Health Officer Peshawar.

2. In terms of Section-13 of the Khyber PakhtunKhwa Civil Servants Act 1973, the official shall stand retire from service on 01/07/2021 AN on attaining the age of superannuation.

Sd/-XXXXXXXXXXXXX  
District Health Officer  
Peshawar

A Copy is forwarded to the:-

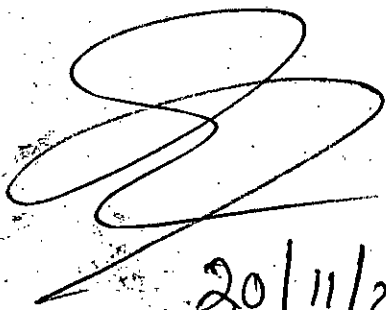
1. Accountant General Khyber PakhtunKhwa Peshawar.
  2. Provincial Coordinator LIHWs Program Khyber PakhtunKhwa Peshawar.
  3. District Coordinator LIHWs Program Peshawar.
  4. Litigation Officer DHO Office Peshawar.
  5. Office Assistant.
  6. Establishment section to update the retired personnel list.
  7. Account section
- For information an n/action.

  
ATTESTED

  
District Health Officer  
Peshawar

DR. M. SOHAIL KHATTAK  
Director Litigation  
Director, General Health  
Services, Khyber PakhtunKhwa

KATANYI JAHOD M. J.  
DIREKTOR JERAMBA  
KEMENTERIAN KESEHATAN  
REPUBLIC OF INDONESIA



20/11/2023



**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR**

**SERVICE APPEAL NO. 1742/2023**

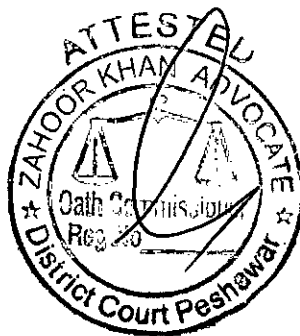
Siyara Begum.....Appellant

**Versus**

Government of Khyber Pakhtunkhwa & others .....Respondents.

**Affidavit**

I, Dr. Shaukat Ali, Director General Health Services, Khyber Pakhtunkhwa, Peshawar, under the directions of the Competent Authority, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Court. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off / costs.



  
Deponent

**DR. M. SOHAIL KHATTAK**  
Director Litigation  
Director, General Health  
Services, Khyber Pakhtunkhwa



**DIRECTORATE GENERAL HEALTH SERVICES  
KHYBER PAKHTUNKHWA PESHAWAR**

*All communications should be addressed to the Director General Health Services  
Peshawar and not to any official by name  
Office # 091-9210269 Fax # 091-9210230*

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**AUTHORITY LETTER**

Muhammad Yousaf Jamal Focal Person Litigation Section Directorate General Health Services Khyber Pakhtunkhwa is hereby authorized to file / submit parawise comments in Service Appeal No. 1742/2023 titled Siyara Begum versus Govt. of Khyber Pakhtunkhwa & others on behalf of the undersigned before the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar.

**Director General Health Services  
Khyber Pakhtunkhwa, Peshawar**