

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 541/2019

Date of Institution ... 03.04.2019

Date of Decision ... 28.04.2022

Dr. Mustafa, Medical Officer, Category-C Hospital Khawaza Khila, Swat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary and four others.

... (Respondents)

MALIK AKHTAR ALI KHAN,
Advocate

--- For appellants.

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

--- For respondents.

MR. SALAH-UD-DIN
MR. MIAN MUHAMMAD

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


JUDGMENT:

SALAH-UD-DIN, MEMBER:- This single judgment is aimed at the disposal of the instant as well as connected Service Appeals bearing No. 542/2019 titled "Mohammad Ali Jan Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 543/2019 titled "Dr. Fazal Subhan Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 544/2019 titled "Dr. Jamil Ahmad Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 545/2019 titled "Dr. Bakht Zada Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 546/2019 titled "Dr. Faridoon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 1054/2019 titled "Sardeep Kumar Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others" and 1055/2019 titled



"Dr. Abdul Ghafoor Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", as common questions of law and facts are involved in all the above mentioned appeals.

2. Briefly stated the facts as alleged by the appellants in their appeals are that the appellants namely Dr. Mustafa, Dr. Muhammad Ali Jan, Dr. Fazal Subhan, Dr. Jamil Ahmed, Dr. Bakht Zada and Dr. Sardeef Kumar were appointed as Medical Officers on contract basis in the year 1995, while the appellants namely Dr. Faridoon and Dr. Abdul Ghafoor were also appointed as Medical Officers on contract basis in the year 1999. On promulgation of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, their services were regularized with effect from 01.07.2001, however the intervening period of their contract services till 01.07.2001 was not considered for the purpose of seniority, therefore, the appellants filed Writ Petition No. 3518-P/2017 before the august Peshawar High Court, Peshawar, which was dismissed vide judgment dated 30.10.2018, being not maintainable, however it was observed that petitioners may approach the Services Tribunal for redressal of their grievance, hence the instant service appeals.


3. Notices were issued to the respondents, but they failed to submit reply/comments, despite several opportunities being given to them, therefore, the appeals were fixed ultimately for arguments.

4. Learned counsel for the appellants has contended that the contract period with effect from the date of initial appointment of the appellants till 01.07.2001 is legally required to be counted towards seniority and promotion of the appellants as seniority is reckoned from the date of initial appointment; that the appellants were performing similar duties being performed by the regular appointed Medical Officers, therefore, the period of their contract service shall be counted towards seniority; that according to Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963, the period of contract service shall be counted towards pensionary benefits of the appellants; that in light of numerous judgments

of worthy apex court, contract period shall be considered for the purpose of seniority but the respondents have wrongly and illegally ignored the judgments of worthy apex court; that the contract services of the appellants were without any break, which fact has not been considered by the respondents and resultantly, juniors to the appellants have become their seniors. Reliance was placed on 2018 SCMR 380, 1998 SCMR 969, 1991 SCMR 1765, 1993 SCMR 609, PLD 1970 Quetta 115 and unreported judgment dated 23.09.2020 passed by august Supreme Court of Pakistan in Civil Appeal No. 411 of 2020 titled "Additional Chief Secretary FATA, Peshawar and others Versus Sultan Muhammad and others".

5. On the other hand, learned Assistant Advocate General for the respondents has contended that the services of the appellants were regularized with effect from 01.07.2001 vide Notification dated 17.10.2017, which has not been challenged by the appellants through filing of departmental appeals within the statutory period of 30 days, therefore, the appeals are not at all maintainable; that the departmental appeals were allegedly filed by the appellants in the year 2018 and 2019, which are badly time barred, rendering their service appeals liable to be dismissed on this score alone; that the contract period of services of the appellants could not be counted for the purpose of their seniority as their seniority shall be counted with effect from the date of regularization of their services; that the seniority of the appellants has rightly been reckoned from the date of regularization of their services, therefore, the appeals in hand may be dismissed with costs. Reliance was placed on 2022 SCMR 448 and 2019 PLC (C.S) 740.

6. We have heard the arguments of learned counsel for the appellants as well as learned Assistant Advocate General for the respondents and have perused the record.

7. A perusal of the record would show that some of the appellants were appointed as Medical Officers (BPS-17) on contract basis in the year 1995, while some were appointed as such in the year 1999. In view of sub-section 2 of Section-2 of

the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 and the proviso under sub-section-4 of Section-19 of Civil Servants (Amendment) Act, 2013 as well as judgment dated 18.11.2018 passed by august Peshawar High Court, Peshawar in Writ Petition No. 1510 of 2007, Government of Khyber Pakhtunkhwa Health Department issued Notification dated 17.10.2017, whereby services of the appellants were regularized with effect from 01.07.2001. The core issue requiring determination is that as to whether the period of contract service of the appellants could be counted towards their seniority or not? In order to properly appreciate the controversy in question, it would be advantageous to go through para-1 (a) and (b) of Section-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, which is reproduced as below:-

***"Seniority.---**(1) The seniority inter se of civil servants [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 [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 dates of their continuous regular appointment in the post; provided that civil servant selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se seniority as in the lower post".*

Explanation-I, ---.....

Explanation-II, ---.....

Explanation-III, ---.....

(2).....

[(3).....]

8. While going through clause-b of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules,

1989, it is clear that the period of contract services of the appellants could not be counted for the purpose of seniority. Moreover, Section-8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 also provides that seniority in a post service or cadre to which a civil servant is promoted, shall take effect from the date of regular appointment to that post. It is by now well settled that services rendered by an employee on ad-hoc or contract basis cannot be counted for the purpose of their seniority as the same will be counted from their regular appointment. Wisdom in this respect derived from the judgment of august Supreme Court of Pakistan reported as 2022 SCMR 448. The appellants have themselves mentioned in para-2 of their respective appeals that their appointment on contract basis was a stop gap arrangement. Furthermore, according to para (1) of offer of appointment, the appellants were appointed for a period of one year or till the availability of selectees of Public Service Commission or return of original incumbents from leave/deputation, whichever is earlier. The appellants were not even falling within the category of civil servants prior to their regularization on 01.07.2001. The appellants thus cannot claim their seniority vis-à-vis the Medical Officers, who were appointed on regular basis during the period during which the appellants were serving on contract basis. The judgments relied upon by learned counsel for the appellants are distinguishable and could not in any way foster the claim of the appellants regarding counting of their contractual period of employment for the purpose of their seniority.

9. One of the plea taken by learned counsel for the appellants is that as the period of contract service could be counted towards pensionary benefits in view of rules 2.2 and 2.3 of Pension Rules, therefore, the same has to be considered for the purpose of seniority also. Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963, are reproduced as below:-

" 2.2 Beginning of Service- Subject to any special rules, the service of Government servant begins to qualify for pension when he

takes over charge of the post to which he is first appointed.

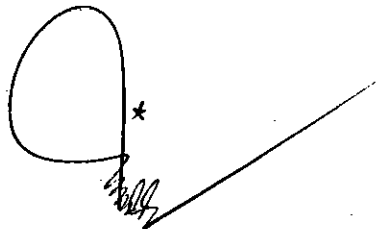
Rule 2.3 Temporary and officiating service —
Temporary and officiating service shall count for pension as indicated below:-

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity".

10. While going through the above mentioned reproduced Pension Rules, it is evident that the period of contract employment could be considered only for the purpose of counting qualifying service for pensionary benefits and not for the purpose of seniority or any other benefits.

11. Consequently, the appeal in hand as well as connected Service Appeals bearing No. 542/2019, 543/2019, 544/2019, 545/2019, 546/2019, 1054/2019 and 1055/2019, being devoid of any merits stand dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.04.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

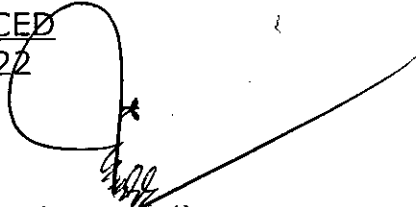
Service Appeal No. 541/2019


O R D E R
28.04.2022

Learned counsel for the appellant present. Mr. Safiullah, Focal Person alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand as well as connected Service Appeals bearing No. 542/2019, 543/2019, 544/2019, 545/2019, 546/2019, 1054/2019 and 1055/2019, being devoid of any merits stand dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.04.2022


(Mian Muhammad)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)

25.04.2022

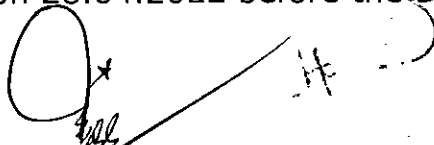
Proper D.B is not available, therefore, case to come up for proper D.B on 27.04.2022.

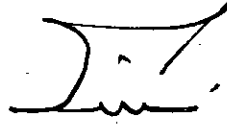

READER

27.04.2022

Syed Noman Ali Bukhari, Advocate for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Syed Noman Ali Bukhari, Advocate stated at the bar that as Mr. Malik Akhtar Ali, Advocate is co-counsel in the instant appeal and he was under the impression that the same will be argued by the said counsel, however the said counsel has informed him that he is unable to appear before the Tribunal today due to illness. Syed Noman Ali Bukhari, Advocate requested that an adjournment may be granted so as to enable him to argue the instant appeal. Adjourned. To come up for arguments on 28.04.2022 before the D.B.


(Mian Muhammad)
Member (E)

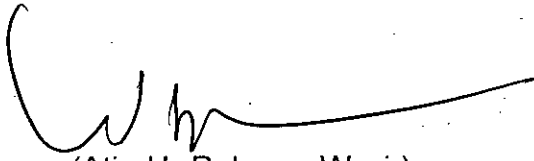

(Salah-ud-Din)
Member (J)

20.10.2021

Counsel for the appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 31.01.2022 before D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

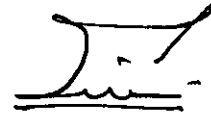
31.01.2022

Learned counsel for the appellant present. Mr. Naseer ud Din Shah Assistant Advocate General for the respondents present.

File to come up alongwith connected Service Appeal bearing No.541/2019 titled Dr. Mustafa Vs. Government of Khyber Pakhtunkhwa on 31.03.2022 before the D.B.



(Rozina Rehman)
Member (J)

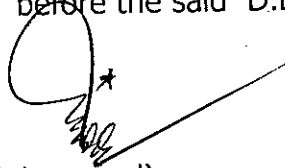


(Salah-Ud-Din)
Member (J)

31.03.2022

Counsel for the appellant and Mr. Muhammad Adeel Addl. A.G for the respondents present.

Learned AAG states that similar nature of appeals have been decided by a Bench comprising of Mr. Salah-ud-Din, learned Member (Judicial) and Mr. Mian Muhammad, learned Member(Executive). Therefore, this appeal is also placed before the said Bench. To come up for arguments on 25.04.2022 before the said D.B.



(Mian Muhammad)
Member(Executive)



Chairman

12-4-21


Due to COVID 19, the case is
adjourned to 28-7-21 for the same.



28.07.2021

Clerk of counsel for the appellant present. Mr. Javed Ullah
Assistant Advocate General for the respondents present.

Clerk of counsel for the appellant stated that learned
counsel for the appellant is unable to attend the Tribunal today
due to strike of Lawyers. Adjourned. To come up for arguments
before the D.B. on 20.09.2021.



(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

20.09.2021

Counsel for the appellant and Mr. Javaidullah, DDA for
the respondents present.

Learned counsel for the appellant seeks adjournment
for preparation and assistance. Request is accorded. To
come up for arguments on 20.10.2021 before the D.B.



(Rozina Rehman)
Member(Judicial)



Chairman

10.09.2020

Counsel for the appellant and Addl. AG alongwith Hazrat Shah, S.O for the respondents present.

The respondents have not furnished reply/comments despite last opportunity granted to them on previous date of hearing. The matter is, therefore, posted to D.B for arguments on 17.11.2020.



Chairman


17.11.2020

Counsel for appellant present.

~~Zara Tajwar, learned Deputy District Attorney,~~ for respondents present.

A request for adjournment was made. Request is acceded. To come up for arguments on 01.02.2021 before D.B.


(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

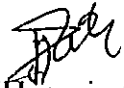
01.02.2021

Due to COVID-19, the case is adjourned to 12.04.2021 for the same.


Reader

06.03.2020

Counsel for the appellant present. Mr. Kabirullah Khattak learned Additional AG alongwith Saleem Javed Litigation Officer for respondent No. 1 to 4 and Sajid Superintendent for respondent No.5 present. Written reply not submitted. Representatives of respondent No. 1 to 5 seeks time to furnish written reply/comments. Adjourned. To come up for written reply/comments on 15.04.2020 before S.B.


(Hussain Shah)
Member

15.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 09.07.2020 for the same. To come up for the same as before S.B.



Reader

09.07.2020

Counsel for the appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Hazrat Shah Superintendent, for the respondents present.

Written reply on behalf of respondents is still awaited. Again, a request was made for adjournment in order to furnish written reply/comments. Last opportunity is granted. To come up for written reply/comments on 10.09.2020 before S.B.


Member (J)

541/19

12.09.2019

Counsel for the appellant present.

Learned counsel states that security and process fee as required on 11.07.2019 could not be deposited due to unavoidable circumstances and submitted an application for extension of time to deposit the same.

Application is allowed. The appellant is required to deposit the requisite fee within further three working days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 25.11.2019 before S.B.


19/9/19
Appellant Deposited
Security & Process Fee

Chairman 

25.11.2019

Junior to counsel for the appellant and Addl. AG alongwith Amjad Ali, Assistant and Muhammad Sajid, Superintendent for the respondents present.

Representatives of the respondents seek time to furnish the reply/comments. Adjourned to 07.01.2020 on which date the requisite reply/comments shall positively be submitted.

Chairman 

07.01.2020

Counsel for the appellant and Addl. AG alongwith Sher Baz, SO for the respondents present.

Representative of the respondents seeks time to furnish reply/comments. Adjourned to 06.03.2020 on which date the requisite reply/comments shall positively be furnished.

Chairman 

11.07.2019

Counsel for the appellant present.

Contends that the appellant was appointed initially on contract basis on 24.11.1995. Subsequently through notification dated 17.10.2017 his service was regularized but with effect from 01.07.2001. In the said manner the intervening period between 24.11.1995 and 01.07.2001 was not counted towards the service benefits in favour of the appellant. Further contends that it has been settled by now that the period of service put in on adhoc or contract basis is to be reckoned for the purpose of seniority and other benefits upon subsequent regularization of a civil servant. Relies on judgment reported as 2018-SCMR-380.

In view of the arguments of learned counsel instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 12.09.2019 before S.B.



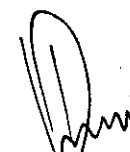

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 541/2019


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/04/2019	<p>The appeal of Dr. Mustafa resubmitted today by Malik Akhtar Ali Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please</p> <p style="text-align: right;"> REGISTRAR 29/4/19</p>
2-	30/04/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/06/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	12.06.2019	<p>Notice be issued to appellant/counsel for rehearing in limine on 11.07.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Dr. Mustafa received today i.e. on 03.04.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- ✓ Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- ✓ Address of the appellant is incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3- ✓ In the memo of appeal places have been left blank which may be filled up.
- 4- ✓ Annexures of the appeal may be attested.
- 5- ✓ Appeal has not been flagged/marked with annexures' marks.
- 6- ✓ In the memo of appeal places have been left blank which may be filled up.
- 7- ✓ Copies of Writ Petition and order passed on writ petition mentioned in para-5 of the memo of appeal are not attached with the appeal which may be placed on it.
- 8- ✓ Order dated 17.10. 2017 is incomplete which may be completed.
- 9- ✓ Copy of impugned order and departmental appeal against it are not attached with the appeal which may be placed on it.
- 10- ✓ Annexures of the appeal are illegible which may be replaced by legible/better one.
- 11- ✓ Appeal containing overwriting is not acceptable-Fair appeal be filed.
- 12- ✓ Seven more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.


No. 587 /S.T.

Dt. 5/4/2019


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Malik Akhtar Ali Adv. Mardan.

Resubmitted . Reposit mated Appeal 12-12-2028. Appeal on Contracted Basis
3.4.2019 - Appeal is with in time . Appointed on 18-12-1998
Regularized . 7-1-2001 - Intending period as e. 7 1995 till
2001 - on Contract Basis is not considered for regularization
Seniority Merit - ever etc


08/4/2019

PTO

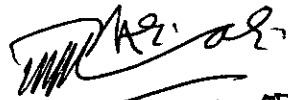
Objections no. 9, 10 & 12 are still stand, Therefore, the appeal in hand is returned again to the counsel for the appellant for completion and resubmission with 15 days.

no. 782 /S.T

dt. 19-4-2019

↓
Registrar

Resubmitted after completion. Appointed order - Regulation order
Dept. memo / appeal. High Court judgment. 7 copies
are placed on file.
The sole question involved in appeal - 5 years contract
Period w.e.f 1995 - 2001. Shall be considered for
Seniority


29.4.2019

BEFORE THE PROVINCIAL SERVICE TRIBUNAL PESHAWAR

Appeal No. 7541 /2019

Dr. Mustafa

Versus

Govt. of KPK Health Department

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Deponent Mustafa

Dr. Mustafa

Identified by

M. Akhtar Ali Khan

Malak Akhtar Ali Khan Advocate
Mardan

11

BEFORE THE PROVINCIAL SERVICE TRIBUNAL PESHAWAR

Appeal No. 541 /2019

*Dr. Mustafa medical officer category
Hospital Manager Khula Sweet*

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 510

Dated 03-4-2019

Versus

1. Govt. of KPK through Chief Secretary.
2. Secretary to Govt. of KPK, Health Department Khyber Pakhtunkhwa, Peshawar.
3. Secretary of Govt. of KPK, Law & Parliamentary Affairs Department Civil Secretariat Peshawar.
4. Secretary of Govt. of KPK, Establishment Department Civil Secretariat Peshawar.
5. Secretary to Finance Department KPK, Civil Secretariat Peshawar.

APPEAL U/S SECTION-4 OF THE SERVICE TRIBUNAL ACT 1974 AGAINST THE DECISION OF RESPONDENTS NO.1-4 WHEREBY THEY HAD NOT CONSIDERED THE CONTRACT PERIOD OF PETITIONER SERVICES W.E.F 1995 TO 2001 WHEREBY THEIR CONTRACT PERIOD ABOUT 5/6 YEARS WERE NOT CONSIDER FOR SENIORITY MOVE OVER IN VIOLATION OF THE JUDGMENT OF HONORABLE SUPREME COURT AS LAID DOWN IN 2008 SCMR PAGE-380.

FACTS:

Filed to-day
[Signature]
Registrar
3/4/19

1. That the appellants No.1 were appointed on contract basis in the Health Department under supervision of Respondent No.1 Medical Officer BPS-17 in the year 25-11-1995

2. That the appointment on contract basis as stop gap arrangement.

Re-submitted to -day and filed.

3. That in Govt. of KPK Civil Secretariat Amendment Act 2013. The appellants were regularization W.E.F 01.07.2001.

[Signature]
Registrar
29/4/19

4. That the intervening period w.e.f 25-11-1995 upto 01.07.2001 were not considered for seniority, more over. To the next grade etc.

(9)

5. That the appellants filed W.P No.35/8/2017 before Peshawar High Court Peshawar, whereby appellants were directed to approach service tribunal for their grievances, which may kindly be considered as department appeal.
6. That the appellants in directions of Honourable Peshawar High Court filed. This appeal on the following grounds inter alia grounds:
 1. That the acts of respondent No.1 is illegal, against wrong & clear violation of authoritative judgment of Honorable Supreme Court needs to strick down.
 2. That respondents No.1 while the intervening period of appellants w.e.f 25/11/1985 till 01.07.2001 for the purpose of seniority is unjustified, illegal as there was no break in their services no adverse remarks. As the appellants were performing the similar duty, same responsibility, same obligation no difference in their duties, responsibility obligation to that of regular employee. Doctors duly appointed by competent authority. Such ignorance of intervening period is not permissible in the eye of law reliance be placed PLD 1970 Quetal 15.
 3. That in view of 2014 SMR 1289 seniority will be reckoned from the initial appointment.
 4. That in view of 2018 SMR 380 that any civil servant works on temporary adhoc contract basis for 10 years in BPS-17 shall be entitled to be promoted to BPS-18. Meaning thereby contract period shall be considered from seniority, moreover etc. but respondents No.10 rais ignored such authoritative judgment of apex court has committed gross illegalities.
 5. That the judgments of Apex court is binding on all organ of the country and are under legal obligation to follow the verdict of Apex court.
 6. That the Appellants seeks leave of this court Honorable Tribunal to agitate further grounds als.

3

It is therefore humbly prayed that on acceptance of this appeal, this Honorable Tribunal may be kindly considered the intervening period w.e.f 25/11/1985 till 2001 for the purpose seniority move over along with back benefits otherwise the junior most will become senior to the appellants.

Appellant: Mustafa
Dr. Mustafa
[Signature]

Through

Malak Akhtar Ali Khan Advocate
Mardan.

AFFIDAVIT

I Dr. Mustafa SMO, Category - C Hospital Khanyala Swab for the appellant do hereby declare on oath that the contents of this review petition are correct and nothing has been concealed from this Honorable Court.

Deponent Mustafa
Dr. Mustafa

Oath Commissioner
Fazal Ghafoor
Advocate
Distt. Courts Mardan
[Signature]
28/11/85

Annexure A

Approved
MM
8/11

DIRECTORATE GENERAL,
HEALTH SERVICES, N.W.F.P., PESHAWAR.

No. 32404/E-I Dated 18/12/1995.

Dr. Mustafa
S/o Babarmand

Subject: OFFER OF APPOINTMENT ON CONTRACT BASIS.

MEMORANDUM:

Reference your application on the above subject for the post of Medical Officer/Women Medical Officer/Dental Surgeon.

1. The competent authority is hereby appoint you as Medical Officer/Women Medical Officer/Dental Surgeon in the Health Department Government of NWFP, on contract basis in EPS-17 for a period of one year or till the availability of Public Service Commission selectee/return of original incumbent from leave/deputation whichever is earlier, on the terms and conditions laid down in the attached Agreement Deed. You shall be posted to BHM CO-ABRAL DIST. KOKHISTAN. This contract appointment is not transferable.
2. This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.
3. If you accept the offer of appointment on contract basis as a Medical Officer/Women Medical Officer/Dental Surgeon, the attached Agreement Deed should be filled in duly signed by you and should report at your own expense.
4. If you fail to report for duty at the station specified in para-3 above, within Ten(10) days, the offer of appointment on contract basis will be deemed to have been withdrawn automatically and no further correspondence shall be entertained in this respect.

mm 7/8
(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH
SERVICES, NWFP, PESHAWAR.

No. /E-I dated Peshawar the /12/1995

Copy forwarded to the:-

1. Secretary to Government of NWFP, Health Department Peshawar. for information with reference to his letter No. SOH-IV/3-18/93 dt: 16.11.95.
2. Medical Superintendent, Abhattabal for information and n/act.
3. Divisional Director Health Services, Kohistan
4. District Health Officer/Agency Surgeon
5. Accountant General NWFP, Peshawar.
6. District/Agency Accounts Officer, Kohistan

for information and necessary action.

mm 7/8
(DR. AZMAT KHAN AFRIDI)
DIRECTOR GENERAL HEALTH
SERVICES, NWFP, PESHAWAR.



Amir B
Amir B

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 17th October, 2017

Amir B
Amir B

NOTIFICATION

NO: SO(E)H-II/3-18/2016: In pursuance of Judgment of Peshawar High Court Peshawar dated 18-11-2008 in Writ Petition No. 1510 of 2007 read with sub section 2 of Section 2 of the Khyber Pakhtunkhwa, Civil Servant (Amendment) Act, 2005 (Khyber Pakhtunkhwa Act no. IX of 2005) and provision under sub section 4 of section 19 of Civil Servant (Amendment) Act 2013 coupled with the regularization order of appellants and similarly placed w-e-f 2005, the services of following doctors (appellants as well as similarly placed) are hereby regularized with effect from dates as mentioned against each:

S. #	Name of Doctor	D.O.B / Domicile	Date of Initial Appointment on contract basis	Date of Regularization under Act 2005
1.	Dr. Bakht Zada S/O Gul Muhammad, MBBS	01.01.1959 / Swat	23.11.1995	01-07-2001
2.	Dr. Dawa Khan S/O Badshah Khan MBBS	01.09.1951 / Swat	23.11.1995	01-07-2001
3.	Dr. Haroon Nasir Khattak S/O Rab Nawaz MBBS	Karak/ 1.3.1966	23.11.1995	01-07-2001
4.	Dr. Yousaf Khan S/O Said Rehman MBBS	Mardan/ 14.3.1968	23.11.1995	01-07-2001
5.	Dr. Riaz Ahmed S/O Rehmatullah MBBS	Mohmand A15.8.1951	23.11.1995	01-07-2001
6.	Dr. Alamgir Khan S/O Darwesh Khan, MBBS	16.04.1962 /Mohmand A	23.11.1995	01-07-2001
7.	Dr. Muhammad Ajmal Khan S/O Zarin Khan MBBS	Mohmand ag 10.04.67	23.11.1995	01-07-2001
8.	Dr. Fazal Rehman S/O Muhammad Amir Khan, MBBS/ MPH	28.04.1966 /Mohmand Agency	23.11.1995	01-07-2001
9.	Dr. Mustafa S/O Behramand, MD	01.03.1961 / Swat	24.11.1995	01-07-2001

Amir B
Amir B
Secretary
Health Department
Government of Khyber Pakhtunkhwa

Amme "C"

(7)

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UMH

To The Secretary to Health Department
Civil Secretariat Peshawar.

Subject: - DEPARTMENTAL APPEAL/REPRESENTATION

Respected Sir,

1. That the appellant was appointed in Health Department as Medical Officer on 25.11.1995 contract basis.
2. That the appellant served the department without any break on contract basis till dated.
3. That there is no adverse remarks are any complaint against the present appellant.
4. That on 01.07.2001 the appellant was regularize with effect from 01.07.2001
5. That the appellant was serving since 25.11.1995 therefore appellant should have been regularized from initial appointment on 01.07.2001.
6. That in view of judgment of APEX Court 2014 SCMR 1289, 2018 SCMR 380 seniority will be reckoned from initial appointment whether that appointment is on adhoc basis, contract basis or temporary basis.

It is therefore humbly prayed that on acceptance on this appeal, the appellant intervening period of contract may kindly be consider for seniority and other benefit available under the law to the petitioner.

Appellant

Dr. Mustafa Senior Medical Officer
Category- C Hospital Khwazakhela Swat.

12-12-2018

6

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 3518-P/2017

Dr. Hanif Afzal and others

Versus

Province of KPK through Chief Secretary Peshwar and others

JUDGMENT.

Date of hearing: 30.10.2013

Petitioner (s): *By: Malik Raza Khan Ali Khan Odehania*

Respondent (s): *By: Mr. Waqar Ahmed Siddiqi*

WAQAR AHMAD SETH, CJ:- Through the

instant Writ Petition, petitioners have prayed for issuance of an appropriate writ with the following prayer:-

"It is therefore humbly prayed that by acceptance of this W.P. respondent No.4 be directed to consider the intervening period (1995-2001) for seniority, promotion movers after approval of Governor KPK to give retrospective effect to their regularization 2001 & it is further prayed that respondent No.4 be restrained from the preparation of Seniority list U/S 8 of Civil Servant Act 1973. Any further relief may deem fit may please be granted".

2. Brief facts of the case are that the petitioners were appointed in Health Department on contract basis in the year, 1995, however, subsequently, when Civil Servant (Amendment) Act, 2005 was promulgated, services of the

ATTESTED
EXAMINER
Peshawar High Court

07 JAN 2019

petitioners were regularized from 2001. According to the petitioners, respondent No.4 is trying to prepare seniority list, in which, their intervening period in between 1995 to 2001 has been ignored for seniority purpose, which will result the junior most will become senior to them although their services are without break. Moreover, the act of respondent No.4 is based on discrimination as Dr. Muhammad Iqbal was appointed on regular basis w.e.f. date of his initial appointment; hence, feeling aggrieved, the petitioner has filed the instant Writ Petition.

3. Arguments heard and record perused.

4. Admittedly, the grievance of petitioners relates to '*terms and conditions*' of their service, the appropriate remedy for seeking their redressal, would surely be the Services Tribunal.

5. This Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 to take cognizance of any matter relating to '*terms and conditions*' of service of a civil servant. The Apex Court in Ali Azhar Khan Baloch's case (2015 SCMR 456), has again laid down that

ATTESTED
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Peshawar High Court

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(8)

the issue relating to the 'terms and conditions' of service cannot be entertained by a High Court either in its constitutional jurisdiction or in its original civil jurisdiction being barred under Article 212 of the Constitution.

6. In view of the above, this Writ Petition being not maintainable is hereby dismissed. However, the petitioners may approach the Services Tribunal for redressal of their grievance.

ANNOUNCED.
Dated: 30.10.2018

Chief Justice

Seal

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CERTIFIED TO BE TRUE COPY

CHIEF JUSTICE
Peshawar High Court, Peshawar
Authorized Under Arts. 5, 7 of
The Qanun-e-Shahadaat Order, 1984

07 JAN 2019

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بعدالت حسبہ کروشن ٹریڈنگ کمپنی پرائیویٹ لمیٹڈ
صوبائی

کورٹ فیس

مورخہ: 20 منجانب اسٹیٹ -

مقدمہ: ڈاکٹر صفی نام حکومت صوبہ سرحد

دعویٰ: ریل -

جرم:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب وہی ذیل کاروائی کا متعلقہ آن مقام لیسٹڈ سے لے کر طے کرنا اور اس پر مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر خلف دینے جواب وہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زراس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمد ہوگی اور منسوخ دائر کرنے کی اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مذکور کے عمل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برداشت منظور قبول ہوگا اور دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا اسکے استحقاق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم _____ ماہ _____ 20ء

العبد گواہ شہدہ العبد

بمقام: کے لئے منظور ہے۔

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