

Cost of Rs. 3000/- received in Service Appeal No. 1658/23

Titled Fazal Kanim VS S Welfar

in the office of Assistant ^{supdt} Registrar, Vide Order 18/12/24

submitted on 2/2/2024.

^{supdt}
Assistant Registrar
Registrar
Khyber Pakhtunkhwa
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL No. 1658/2023

Mr. Fazal Karim

.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Directorate of Social Welfare Special Education,
Women Empowerment, Peshawar & Other.

..... Respondents

INDEX

| S. No. | Detail of Documents | Page No. |
|---------------|----------------------------|-----------------|
| 1. | Affidavit | 01 |
| 2. | Reply / Comments | 02 - 05 |
| 3. | Annex-A | 06 |
| 4. | Annex-B | 07 |
| 5. | Annex-C | 08 |
| 6. | Annex-D | 09 |
| 7. | Annex-E | 10 |
| 8. | Annex-F | 11 |
| 9. | Annex-G | 12 |
| 10. | Annex-H | 13 |

12
SUPERINTENDENT
Social Welfare, Special Education & Women
Empowerment Department,
Khyber Pakhtunkhwa Peshawar

BEFORE THE HONORABLE SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 1658/2023

Mr. Fazal Karim..... (Appellant)

VERSUSGovernment of Khyber Pakhtunkhwa through Director Social Welfare, Special Education
and Women Empowerment Peshawar & others**AFFIDAVIT**

I, Muhammad Naeem Khan, Director (BPS-19) Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa Peshawar do hereby solemnly affirm and declare on oath that the contents of the reply on behalf of the respondents are true and correct to the best of my knowledge and belief that nothing has been concealed from this Honorable Tribunal.

DEPONENT


Muhammad Naeem Khan
Director (BPS-19)

Social Welfare, Special Education & Women
Empowerment Khyber Pakhtunkhwa Peshawar

CNIC # 16101-1114700-9
Phone # 091-9224253

Director
Social Welfare Spl. Edu &
Women Empowerment
Khyber Pakhtunkhwa Peshawar

Identified by:

Advocate General,
Service Tribunal Peshawar



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service appeal No. 1658 / 2023

Case No. 10990

Dated 02-07-2024

Mr. Fazal Karim, (Retired) Chowkidar, Darul Aman
Mardan..... **(Appellant)**

VERSUS

1. Director Social Welfare, Special Education and Women Empowerment Department Khyber Pakhtunkhwa Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary to Social Welfare, Special Education and Women Empowerment Department, Peshawar.
3. District Officer, Social Welfare Department, Mardan
4. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar..... **(Respondents)**


PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 4.

That the respondents submit as under:-

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:

1. The appellant has got no cause of action to file the instant appeal.
2. The appeal is not maintainable in its present form.
3. The appeal is based on malafide intentions.
4. The appellant has no locus standi to file the instant appeal.
5. The appeal in hand is badly barred by law and limitation.
6. The appellant has not come to this Honorable Tribunal with clean hands.
7. The appeal is against the prevailing law & rules.



FACTS

1. Correct to the extent that the appellant was initially appointed as Chowkidar (BPS-1) in ADP scheme titled "Darul Aman Mardan" purely on contract basis initially for a period up to 30th June, 2004 (**Annex-A**).
2. Correct to the extent that the services of the appellant were extended on yearly basis till the completion of project life (**Annex- B & C**) and on conversion of the scheme from ADP to regular budget side, the services of the appellant and others were terminated w.e.f 30.06.2007 as per project policy (**Annex-D**). However, the erstwhile District Coordination Officer, Mardan vide his letter dated 19.07.2007 (**Annex-E**) has ordered regarding continuation of services of appellant on contract basis w.e.f 01.07.2007 and was subsequently modified vide order dated 31.01.2008 to the effect of regularization of their services with immediate effect i.e. 31.01.2008 (**Annex-F & G**).
3. Correct to the extent that the appellant was retired on attaining the age of Superannuation w.e.f 01.01.2015 by rendering regular service w.e.f 31.01.2007 to 01.01.2015 (07 years and 06 months). h
4. Incorrect, hence denied. The appellant has been retired having total regular length of services 07 years and 06 months due to which his pension was not released. As far as his application dated nil praying therein counting 04 years' service on ADP side is concerned, it is stated that advice was solicited from Finance Department Khyber Pakhtunkhwa which was opined / advised vide letter dated 04.01.2020 (**Annex-H**) "that since the employee / appellant

4

was appointed in project (ADP Scheme) which is not countable toward pension, therefore, his service before regularization is not possible”.

5. Incorrect, hence denied. The factual position has been explained in para-4 above.

GROUND:

A. Incorrect, hence denied. The factual position has been explained in the preceding paras.

B. Incorrect, hence denied. The respondents are law abiding civil Servant and have not been treated the appellant against the law and rules nor his fundamental rights as enshrined in the constitution and law have been violated.

C. Incorrect, hence denied. Pension Rules 1963 is burden on the shoulders of the appellant to be produced before this Honorable Tribunal as well as respondents where counting of ADP service is countable toward pension.

D. Incorrect, Pertain to record.

E. Incorrect, hence denied. The factual position has been explained in the preceding paras.

F. Incorrect, hence denied. The appellant has been treated in accordance with law and have not been violated his any due rights.

G. Incorrect, hence denied. The appellant has not been discriminated. No such facility/counting of ADP Services have been extended to any other such employees.

H. As explained above, his total length of service on regular side is only 07 year and 06 months and is not entitled for the benefits prayed for.

I. The respondent also seek permission of this Tribunal to raise additional grounds at the time of arguments.

It is therefore humbly prayed that on acceptance of the reply / parawise comments, the instant appeal of the appellant may kindly be dismissed.



SECRETARY to
Govt. of Khyber Pakhtunkhwa for
Social Welfare, Special Education
& Women Empowerment
(Respondent No. 2)
(Dr. Aneela Mahfoz Durrani)

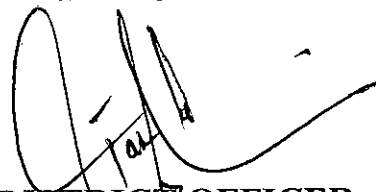


SECRETARY to
Government of Khyber
Pakhtunkhwa
Finance Department
✓ **(Respondent No. 4)**
Amir Sultan Taxeen



DIRECTOR
Social Welfare, Special Education
& Women Empowerment,
Peshawar
(Respondent No. 1)

Muhammad Naeem



DISTRICT OFFICER
Social Welfare, Mardan
(Respondent No. 3)

Jamal Shah

Annex-A 6
①

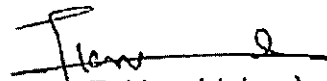
GOVERNMENT OF NWFP
DIRECTORATE OF SOCIAL WELFARE AND
WOMEN DEV: JAMRUD ROAD PESHAWAR.

Dated Peshawar the 25/5/2004

ORDER

No.E-17/65/DSW/8626-34. On the recommendation of Departmental Selection Committee, Mr. Fazal Karim S/O Abdur Rahim Vill & Islamabad, PO Rustam, District Mardan is hereby appointed as Chowkidar in the ADP Scheme of the Department titled " Darul Aman Mardan " on the following terms and conditions:

- I- That this appointment shall be purely on contract basis, initially for the period upto 30th June, 2004, however is likely to be extendable on yearly basis.
- II- That the official shall be entitled to get pay Rs. 3017/- per month.
- III- That the contract can be terminated without assigning any reasons, at one month written notice for either side.
- IV- That this appointment shall automatically be terminated on abolition of the Project.
- V- That no TA/DA shall be admissible for joining the duty.
- VI- That this appointment is subject to medical fitness and verification of antecedents.
- VII- On expiry / completion of the contract / Project, services of the appointee in the Project shall stand terminated and shall not confer on the individual any right of absorption elsewhere or regularization of his services.
- VIII- Rest of the terms and conditions will be the same as mentioned in the agreement deed to be properly executed between the appointee and the Directorate of Social Welfare & Women Development NWFP Peshawar.


(Dr. Fakhr-ul-Islam)

Director
Social Welfare & Women
Development NWFP.

Endst: No. & date even.

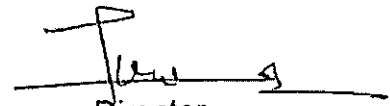
Copy forwarded to:

- 1- The District Accounts Officer, Mardan.
- 2- The District Officer, Social Welfare Deptt: Mardan.
- 3- The Planning Officer, Directorate of Social Welfare NWFP.
- 4- The Section Officer-II, Social Welfare Deptt: w/r to his letter No.SOII (SW)/Vol-23/3062, dated 24.5.2004.
- 5- PS to Minister, Social Welfare & WDD NWFP Peshawar.
- 6- PS to Secretary, Social Welfare & WDD, NWFP Peshawar.
- 7- The Incharge, Darul Aman Mardan.
- 8- The official concerned.



Asstt. Director (Litigation)
Social Welfare, SE and WE,
Knyber Pakhtunkhwa.

2.15/142


Director

Social Welfare & Women
Development NWFP.

Annex- ^B

GOVERNMENT OF NWFP
DIRECTORATE OF SOCIAL WELFARE
AND WOMEN DEVELOPMENT OPP: ISLAMIA
COLLEGE, JAMRUD ROAD, PESHAWAR.

DATED PESH: THE 12/10/2004.

ORDER

NO.E-17/65/DSW/KC-III 3424-29. Services of the following officials of the office of Superintendent, Darul Aman Mardan appointed (on contract basis) vide Directorate of Social Welfare and Women Development, NWFP, order No.E-17/65/DSW/8626-34, dated 25.5.2004 are hereby extended for a further period of one year w.e.f. 1.7.2004 to 30.6.2005 on the terms and conditions contained in their appointment orders. The monthly salary may be read Rs.2700/- instead of 3,017/-.

| <u>S.No.</u> | <u>Name of officials</u> | <u>Designation</u> |
|--------------|--------------------------|--------------------|
| 1. | Mr.Mohammad Rahim | Cook |
| ✓2. | Mr.Fazal Karim | Chowkidar |
| 3. | Mr.Anwar Khan | Sweeper |

sd/-
(DR. FAKHR-UL-ISLAM)
DIRECTOR
SOCIAL WELFARE AND WOMEN
DEVELOPMENT, N.W.F.P.

Endst: No.E-17/65/DSW/KC-III/ 3424-29. Dated Pesh: the 12/10/2004.

Copy to:-

1. The District Accounts Officer, Mardan.
2. The District Officer, Social welfare Mardan w/r to his letter No.2798 dt: 25.9.2004.
3. The Superintendent, Darul Aman Mardan.
4. The Planning Officer, Directorate of Social Welfare & Women Dev: NWFP.
5. The officials concerned.
- ✓6. Personal files.

[Signature]
DIRECTOR
SOCIAL WELFARE AND WOMEN
DEVELOPMENT, N.W.F.P.

[Signature]
Asstt. Director (Planning)
Social Welfare, S. and W.E.
Koyber Pakhtunkhwa.
15/142

Annex - u C 38

GOVERNMENT OF NWFP
DIRECTORATE OF SOCIAL WELFARE
& WOMEN DEVELOPMENT DEPARTMENT
JAMRUD ROAD OPP: ISLAMIA COLLEGE
PESHAWAR

Dated Peshawar the 27/6/8/2005

ORDER

Services of the following officials of the ADP scheme titled " Darul Aman Mardan " appointed (on contract basis) are extended for a further period of one year w.e.f. 01.07.2005 to 30.6.2006 on the terms and conditions contained in their appointment orders and dates mentioned against their names:

| S.No. | Name of official | Appointment order No. and date. |
|-------|---|--|
| 1. | Mst.Nageena Ajmal, Theology Teacher. | No.E-17/65/DSW/1174-78 dated 29.7.2004 |
| 2. | Syed Arif Shah, Key Punch Operator. | No.E-17/65/DSW/1184-88 dated 29.7.2004 |
| 3. | Mst.Saeeda Naz, Assistant Warden. | No.E-17/65/DSW/41-47 dated 12.2.2005 |
| 4. | Mst.Muslehat Begum, Vocational Teacher. | No.E-17/65/DSW/1204-10 dated 2.5.2005 |
| 5. | Mr. Fazle Qadir, Naib Qasid. | No.E-17/65/DSW/122-28 dated 19.2.2005 |
| 6. | Mr.Mohammad Rahim, Cook. | No.E-17/65/DSW/8626-34 dated 25.5.2004 |
| 7. | Mr. Mirzaman, Chowkidar. | No.E-17/65/DSW/115-21 dated 19.2.2005 |
| 8. | Mr. Fazle Karim, Chowkidar. | No.E-17/65/DSW/8626-34 dated 25.5.2004 |
| 9. | Mr. Anwar Khan, Sweeper. | No.E-17/65/DSW/8626-34 dated 25.5.2004 |

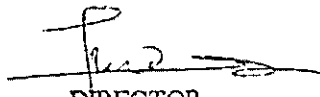
(Dr. FAKHR-UL-ISLAM)
DIRECTOR
SOCIAL WELFARE & WOMEN
DEVELOPMENT, NWFP

Endst.No.E-17/65/DSW/ 3731

Copy to: -

1. The District Accounts Officer, Mardan.
2. The Section Officer-II, Social Welfare NWFP.
3. The District Officer, Social Welfare, Mardan.
4. The Superintendent, Darul Aman, Mardan.
5. The officials concerned.

Asstt. Director (Administrative)
Social Welfare, SE and WE,
Khyber Pakhtunkhwa.


DIRECTOR
SOCIAL WELFARE & WOMEN
DEVELOPMENT, NWFP

Annex-² (D)
49

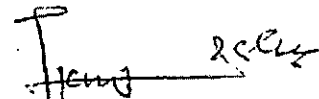
GOVERNMENT OF NWFP
DIRECTORATE OF SOCIAL WELFARE &
WOMEN DEV: PESHWAR

Dated Peshawar, the ___/___/2007

Order

No. _____ Consequent upon conversion to the regular side by the Competent Authority, the services of the following employees of ADP scheme titled "Darul Aman Mardan" are terminated w. e. f. 30.6.2007

| | | |
|----|----------------|------------------|
| 1. | Nagina Ajmal | Theology Teacher |
| 2. | Saeeda Naz | Asstt. Warden |
| 3. | Muslihat Begum | V/Teacher |
| 4. | Fazle Qadir | N/Qasid |
| 5. | Muhammad Rahim | Cook |
| 6. | Mir Zaman | Chowkidar |
| 7. | Fazal Karim | Chowkidar |
| 8. | Khalid Khan | Sweeper |


Director

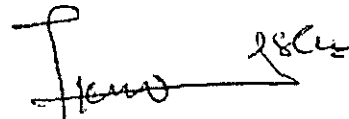
Social Welfare & Women Dev:
NWFP Peshawar.

Endst: No. 6.17/65/4425-29
Copy to:


Dated Peshawar, the 12/5 /2007

- District Accounts office Mardan
- PS to Secretary Social Welfare & Women Development NWFP
- District Officer Social Welfare Mardan
- Supdtt Darul Aman Mardan
- Official concerned

S/c


Director

Social Welfare & Women Dev:
NWFP Peshawar.


Asstt Director (Litigation)
Social Welfare, St and WE,
Khyber Pakhtunkhwa.

Annex - E⁴ S³ 10

OFFICE OF THE
DISTRICT COORDINATION OFFICER
MARDAN.

Dated, Mardan, the 19/2/2007.

OFFICE ORDER.

With reference to letter No. BO-VIII/FD/I-5/2006-07/SNE dated 3-5-2007 of Finance Department NWFP read with notification No. E-17/65/4423-29 dated 12-5-2007 of Director Social Welfare NWFP, the following staff of Dar-ul-Aman Mardan will continue to work on contract basis w.e.f. 1-7-2007 on the terms and conditions below mentioned:-

| S.NO. | Name & Father Name. | Post |
|-------|------------------------------|-------------|
| 1- | Saeeda Naz D/O Niaz Muhammad | Warden. |
| 2- | Fazal Karim S/O Abdul Rahim. | Chowkidar. |
| 3- | M.Rahim S/O Abdul Shakoor. | Cook. |
| 4- | Fazli Qadir S/O Rahmat Gul. | Naib Qasid. |
| 5- | Mir Zaman S/O Syed Afzal. | Chowkidar. |
| 6- | Khalid Khan S/o Sher Alam. | Sweeper. |

24/7/07
7469
ADD

- 1- Their appointment will be purely on contract basis for a period of one Year or till the appointment of regular staff whichever is earlier.
- 2- The Services will be liable to termination at any time without assigning any reason or giving any notice during the incumbency of the contract period.
- 3- If any official wish to quit his Services he will have to submit resignation on prior notice in writing at least one-month earlier failing which one month pay will be forfeited.
- 4- On the expiry of contract period, they will not claim any right of pension / gratuity or regularization of their services.
- 5- Their appointment will be subject to fitness certificates from concerned Medical Superintendent.
- 6- The appointee will execute agreement deed with 10-days on judicial stamp paper failing which their order will be considered as withdrawn.

No. 8878-80 DCO (M)/EA
Copy forwarded to:-

By Order of
District Coordination Officer,
Mardan.

- 1- The Director, Social Welfare NWFP, Peshawar.
- 2- The District Officer, Social Welfare Department Mardan for information & necessary.
- 3- The District Accounts Officer, Mardan.
- 4- Officials concerned.

Asstt. Director, Liaison,
Social Welfare, SE and WE,
Khyber Pakhtunkhwa

17/65

Assistant Coordination Officer,
Mardan

Annex-4 F²

6/11

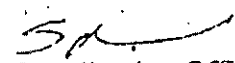
OFFICE OF THE
DISTRICT COORDINATION OFFICER,
MARDAN.

No _____ /DCO (M)EA/SW
Dated Mardan the 31/11 /2008.

OFFICE ORDER

Consequent upon the shifting of Darul Aman Mardan from ADP scheme to regular Budget, the order issued earlier by this office vide No.8878-80/DCO(M)/EA dated 19-7-2007, is partially modified and the services of the existing staff of Darul Aman is hereby regularized except those posts which fall within the purview of public service commission NWFP, with immediate effect

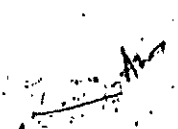
They will be civil servants for all other Govt benefits except pension and gratuity. In lieu of pension they would be entitled to receive contributory Funds as per Govt rules.

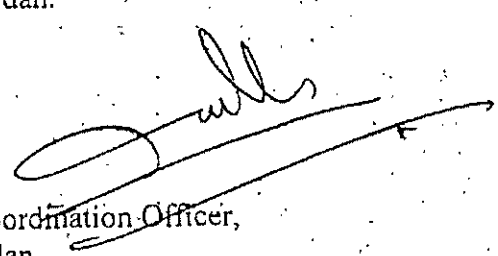

District Coordination Officer,
Mardan


No 616-20 /DCO(M)EA/SW

Copy forwarded to:

1. The Director Social Welfare NWFP, Peshawar.
2. The Section Officer-11 Govt: of NWFP, Zakat Ushr, Social Welfare & Women Development Department Peshawar.
3. The District Social Welfare Officer, Mardan.
4. The District Accounts Officer, Mardan.
5. Officials Concerned


SUPERINTENDENT


Assistant Coordination Officer,
Mardan


Asst. Director II, Division
Social Welfare, SE and WE,
Khyber Pakhtunkhwa.

Annex - G

12

DISTRICT GOVERNMENT
OFFICE OF THE DISTRICT OFFICER
SOCIAL WELFARE DEPARTMENT MARDAN
NO/DO/SW/MRD _____ DATED THE MARDAN _____

Office order

The competent authority is pleased to regularized the following staff of Darul Aman Mardan with effect from 31-1-2008.


| S.No | Name | Father Name | Post and Grade | First Date of Appointment |
|------|----------------|--------------------|-----------------------|---------------------------|
| 1 | Saeeda Naiz | Niaz Mohammad Khan | Assistant Warden (11) | 12-2-2005 |
| 2 | Fazle Qadir | Rahmat Gul | Naib Qasid (2) | 19-2-2005 |
| 3 | Mir Zaman | Said Afzal | Chowkidar (2) | 19-2-2005 |
| 4 | Fazle Karim | Abur Rahim | Chowkidar (2) | 25-2-2005 |
| 5 | Muhammad Rahim | Abul Shakoor | Cook (2) | 25-2-2005 |
| 6 | Khalid Khan | Sher Alam | Sweeper (2) | 28-4-2006 |

District Officer
Social Welfare Department
Mardan


No 1438-43 /DO/SW Mardan

Copy forwarded to :-

- 1 District Coordination Officer Mardan with reference to his letter No No 616-20 Dated 31-1-2008.
- 2 The Director Social Welfare NWFP Peshawar.
- 3 Section Officer -II Govt of NWFP, Zakat Ushar, Social Welfare & Women Development Department Peshawar.
- 4 The District Accounts Officer, Mardan.
- 5 Superintend Darul Aman Mardan.
- 6 Official Concerned


SUPERINTENDENT
Govt: Darul Aman
Mardan F.P.A.


District Officer
Social Welfare Department
Mardan


Asstt. Director (Litigation)
Social Welfare, SE and WE,
Khyber Pakhtunkhwa.



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO.FD/SOSR-II/4-36/2018/61
Dated Peshawar the 04.01.2020

To


The Section Officer-II,
Zakat, Ushr, Social Welfare, Special Education
& Women Empowerment Department, Khyber Pakhtunkhwa.

Subject:- APPEAL TO REVIEW RETIREMENT ORDER IN RESPECT OF MR. FAZAL KARIM, EX-CHOWKIDAR.

I am directed to refer to your letter No. SO-II/SWD/II-53/Official/2020/PC/853-55 dated 06.10.2020 on the subject noted above.

Since the employees was appointed in Project (ADP Scheme) which is not countable towards pension, therefore, his service before regularization is not pensionable.


(Muhammad Ilyas)
SECTION OFFICER (SR.II)


Asstt. Director (Litigation,
Social Welfare, SE and WE,
Khyber Pakhtunkhwa.



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL
EDUCATION & WOMEN EMPOWERMENT, OPPOSITE
ISLAMIA COLLEGE JAMRUD ROAD, PESHAWAR.

No. DSW/Lit/2-78/4820
Dated the Peshawar 21/12/2023

AUTHORITY LETTER

Mr. Nabi Gul, Superintendent (BPS-17) Directorate of Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa Peshawar is hereby authorized to submit reply on behalf of Respondent No. 1 in **Service Appeal No. 1658/ 2023** titled Mr. Fazal Karim **VERSUS** Govt of Khyber Pakhtunkhwa in the Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar. He is also authorized to attest the affidavit on behalf of respondents and attend the Honorable Court on each date of hearing.

DIRECTOR

Social Welfare, Special Education &
Women Empowerment
Khyber Pakhtunkhwa
(Respondent No. 1)

