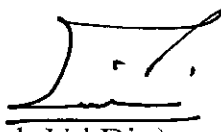
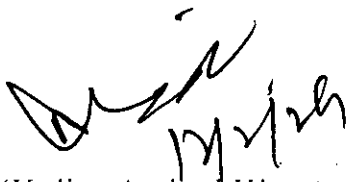


3. Learned counsel for the appellant was confronted with the observation of the Hon'ble Peshawar High Court that writ petition was not hit by Article 212 of the Constitution and until the decision of the Chief Secretary on the appeals of the petitioners, final verdict by the Peshawar High Court was not deemed appropriate in the matter. The Peshawar High Court had, however, directed the Chief Secretary to pass appropriate orders on the appeals of the petitioners keeping in view the qualification and past experience, as per Para-07 of the judgment. Learned counsel for the appellant submitted that the appellant was of the view that as the Peshawar High Court directed the Chief Secretary to decide the appeals of the petitioners of the writ petition, therefore, he could come to the Tribunal against any order passed by the Chief Secretary on the appeals of the petitioners. As the Hon'ble Peshawar High Court has assumed the jurisdiction in this matter, which finding is still intact, therefore, it is not appropriate for the Tribunal to decide this appeal. Therefore, office is directed to return memo and grounds of the appeal to the appellant for adopting proper legal course. Consign.

4. *Pronounced in open Court at Peshawar under our hands and seal of the Tribunal on this 12th day of ^{Feb} January, 2024.*


(Salah Ud Din)
Member (J)


(Kalim Arshad Khan)
Chairman

ORDER

12th Feb. 2024 Kalim Arshad Khan, Chairman. Learned counsel for the appellant present.

Mr. Muhammad Jan, District Attorney for the respondents present.

2. Learned counsel for the appellant started arguments and submitted that appellant and others had earlier approached the Hon'ble Peshawar High Court in Writ Petition No.1795-P/2021 which was decided on 13.10.2022.

The Hon'ble Peshawar High Court in Paragraphs.No.8 & 9 of the judgment found as under:

"8. *The learned AAG appearing on behalf of the respondents also pointed out that petitioners, being civil servants, cannot invoke the jurisdiction of this Court in view of a clear bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan. He, in support of his contention, drawn our attention to the Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1093 and submitted that petitioners after the dissolution of FDA i.e. original department have been adjusted in ST&IT Department and thus have attained the status of Civil Servants for the purpose of ibid Act. They in view of the aforesaid section of the ibid Act are liable to be transferred within or outside the province against any post under the Federal Government, Provincial Government or Local Authority, or a Corporation or body set-up or established by such Government. We have given out serious thought to the aforesaid objection of the learned AAG on the basis of which he is of the view that the instant petition is not maintainable, but we felt not persuaded to agree with it. As it is admitted fact that petitioners have not been transferred in the present department from some other department of KPK, rather, they have been adjusted in the present department on the dissolution of original organization i.e. FATA Development Authority; whereas, they are only seeking directions to the respondents that they be adjusted in the relevant department i.e. Planning & Development Department, in line with the "Surplus Pool Policy", keeping in view their qualification and past experience and thus, the instant petition is not hit by Article 212 of the Constitution of Pakistan.*

9. *It may be observed that petitioners before invoking the extra ordinary jurisdiction of this Court for their proper adjustment, in line with "Surplus Pool Policy" have moved their appeals before the Worthy Chief Secretary, but the same are still pending for his decision. In such view of the matter, it is not appropriate for this Court to give its final verdict, in the matter in hand. Better it be disposed of with the direction to the Worthy Chief Secretary that he may pass an appropriate order on the appeals of the petitions which is pending in his office since long without any decision thereon."*

