

Form-A

FORM OF ORDER SHEET

Court of Khyber Pakhtunkhwa Service Tribunal Peshawar

Service Appeal No. 343/2024

Sr.No.	Date of order Proceedings	Order or other proceedings with signature of judge
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1.

2.

3.

1.

4/3/2024

The appeal of Habib Ullah Khan resubmitted today by Mr. Hasan U.K Afridi advocate. It is fixed for hearing before Single Bench Bench at Peshawar on 05/03/2024. Parcha Peshi is given to counsel for the applicant.

By the order of Chairman


  
REGISTRAR

The appeal of Mr. Habib Ullah Khan received today i.e on 01.03.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondents no. 2& 5 are un-necessary/improper parties, in light of the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondents.
- 2- Vakalat nama is blank be filled-up.

No. 492 /S.T.

Dt. 01-03 /2024.


 1/3/24

REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Hassan B. K Afridi Adv.  
High Court Kohat.

Re-submitted!

Objection Erased, Put it before  
in court for further proceedings.

 4/02/24

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

Service Appeal No. 343/2024

Habib Ullah Khan ..... **Appellant**

**V E R S U S**

Secretary Health Government of Khyber Pakhtunkhwa,  
Peshawar and others..... **Respondents**

**I N D E X**

S#	Description of Documents	Annex	Pages
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4.	Appointment order dated 22.11.1995		8
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Through Appellant

Dated 19.01.2024

**Hassan U.K. Afridi**  
Advocate  
Supreme Court of Pakistan

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

Service Appeal No. \_\_\_\_\_/2024

Habib Ullah Khan Son of Hamid Ullah Khan  
R/o Pir khel, Jungle Khel, Kohat,  
Ex-PMO, BS-19, at RHC Gumbat Kohat..... **Appellant**

**V E R S U S**

1. Secretary Health Government of Khyber Pakhtunkhwa, Peshawar
2. Director General Health Services, Government of Khyber Pakhtunkhwa, Peshawar
3. District Health Officer, KDA, Kohat
4. Account General, Khyber Pakhtunkhwa, Peshawar
5. Secretary to government of Khyber Pakhtunkhwa, Finance Department, Peshawar.....**Respondents**

**SERVICE APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974, FOR COUNTING THE  
SERVICE FROM 22.11.1995 TO 09.06.2023  
INSTEAD OF 01.07.2001 TO 09.06.2023 FOR  
THE REDRESSAL OF WHICH GRIEVANCE,  
THE APPELLANT FILED A DEPARTMENTAL  
APPEAL ON 27.10.2023 BUT THE SAME IS  
NOT RESPONDED TO DESPITE THE LAPSE OF  
STATUTORY PERIOD OF TIME.**

---

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

Service Appeal No. 343 /2024

Habib Ullah Khan Son of Hamid Ullah Khan  
R/o Pir khel, Jungle Khel, Kohat,  
Ex-PMO, BS-19, at RHC Gumbat Kohat..... **Appellant**

**V E R S U S**

1. Secretary Health Government of Khyber Pakhtunkhwa, Peshawar
2. District Health Officer, KDA, Kohat
3. Account General, Khyber Pakhtunkhwa, Peshawar

.....**Respondents**

**SERVICE APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974, FOR COUNTING THE  
SERVICE FROM 22.11.1995 TO 09.06.2023  
INSTEAD OF 01.07.2001 TO 09.06.2023 FOR  
THE REDRESSAL OF WHICH GRIEVANCE,  
THE APPELLANT FILED A DEPARTMENTAL  
APPEAL ON 27.10.2023 BUT THE SAME IS  
NOT RESPONDED TO DESPITE THE LAPSE OF  
STATUTORY PERIOD OF TIME.**

---

**Prayer in Appeal:-**

On acceptance of this service appeal, the service of the appellant may kindly be considered from 22.11.1995 instead of 01.07.2001 for the purpose of pensionary benefit etc.

Any other relief, deemed fit and necessary in the given circumstances of the case may also be awarded in favour of the appellant was against respondents

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**Respectfully Sheweth:-**

Facts of the case

1. That the appellant was initially appointed in the Health Department as Medical Officer vide dated 22.11.1995 on contract basis in PHC Churlaki, Kohat.
2. That subsequently the appellant was regularized through notification No. SO (E) H-11/3-18/2016 vide dated 17.10.2017 under the Khyber Pakhtunkhwa (Amendment) Act, 2005.
3. That since then the appellant was performing his duties well to the full satisfaction of the authorities.

4. That the appellant was retired through Notification No. SOH (E-V)5-5/2023 vide dated 25.05.2023 with effect from 09.06.2023.
5. That the appellant was awarded the pensionary benefits from 01.07.2001 to 09.06.2023, instead of 22.11.1995, so aggrieved from, the appellant filed departmental appeal which was not responded till statutory period, hence this service appeal on the following amongst other grounds:

**GROUNDS:**

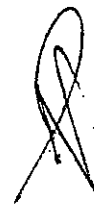
- A. That the denial of the respondents to award the pensionary benefits to the appellant from 22.11.1995 till 09.06.2023 is against the law and rules and highly objectionable.
- B. That the appellant regularly has been performing his duty since 22.11.1995 till retirement date without any break but the period from 22.11.1995 till 01.07.2001 has not been counted in utter violation and negation of the law and rules on the subject.

- C. That the appellant has been discriminated with as in case of other similarly placed persons the serviced is counted from the first entry into service.
- D. That this is a classic case of misuse and abuse of authority by respondents and that too in utter negation of the law, rules and judgments of the Apex Court.
- E. That it is settled law and judgment of the Apex Court, that a person who enters government service has also something to look forward after his retirement to what are called retirement benefits, grant of person being the most valuable of such benefits, and pension like salary is no longer a bounty but a right acquired after putting a satisfactory service.
- F. That the law/rules provided the benefits regarding the pension of the contractual period of the civil servant.
- G. That some other ground may be adduced at the time of arguments with the permission of this Honourable Court.



It is, therefore most humbly prayed on acceptance of this service appeal, the service of the appellant may kindly be considered from 22.11.1995 instead of 01.07.2001 for the purpose of pensionary benefit etc.

Any other relief, deemed fit and necessary in the given circumstances of the case may also be awarded in favour of the appellant was against respondents



Appellant

Through

Hassan U.K. Afridi  
Advocate  
Supreme Court of Pakistan

Dated 29.02.2024

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

Service Appeal No. \_\_\_\_\_/2024

Habib Ullah Khan ..... **Appellant**

**VERSUS**

Secretary Health Government of Khyber Pakhtunkhwa,  
Peshawar and others.....**Respondents**

**AFFIDAVIT**

I, Habib Ullah Khan Son of Hamid Ullah Khan R/o Pir  
khel, Jungle Khel, Kohat, Ex-PMO, BS-19, at RHC Gumbat  
Kohat, do hereby solemnly affirm and declare on oath  
that the contents of the accompanying **Service Appeal**  
are true and correct to the best of my knowledge and  
belief and nothing has been concealed from this Hon'ble  
Court.



**DEPONENT**

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

Service Appeal No. \_\_\_\_\_/2024

Habib Ullah Khan ..... **Appellant**

**V E R S U S**

Secretary Health Government of Khyber Pakhtunkhwa,  
Peshawar and others.....**Respondents**

**ADDRESSES OF PARTIES**

**APPELLANT:**

Habib Ullah Khan Son of Hāmid Ullah Khan  
R/o Pir khel, Jungle Khel, Kohat,  
Ex-PMO, BS-19, at RHC Gumbat Kohat

**R E S P O N D E N T S:**

1. Secretary Health Government of Khyber Pakhtunkhwa, Peshawar
2. Director General Health Services, Government of Khyber Pakhtunkhwa, Peshawar
3. District Health Officer, KDA, Kohat
4. Account General, Khyber Pakhtunkhwa, Peshawar
5. Secretary to government of Khyber Pakhtunkhwa, Finance Department, Peshawar

Appellant

Through

Dated 19.01.2024

**Hassan U.K Afridi**  
Advocate  
Supreme Court of Pakistan

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

Service Appeal No. \_\_\_\_\_/2024

Habib Ullah Khan ..... **Appellant**

**V E R S U S**

Secretary Health Government of Khyber Pakhtunkhwa,  
Peshawar and others.....**Respondents**

**ADDRESSES OF PARTIES**

**APPELLANT:**

Habib Ullah Khan Son of Hamid Ullah Khan.  
R/o Pir khel, Jungle Khel, Kohat,  
Ex-PMO, BS-19, at RHC Gumbat Kohat

**R E S P O N D E N T S:**

1. Secretary Health Government of Khyber  
Pakhtunkhwa, Peshawar
2. District Health Officer, KDA, Kohat
3. Account General, Khyber Pakhtunkhwa, Peshawar

Through Appellant

**Hassan U.K Afridi**

Advocate

Supreme Court of Pakistan

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DIRECTORATE GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

NO. \_\_\_\_\_/E-I,

DATED: /1995.

To,

Dr. Hafizullah S/o  
Hamidullah

ted,

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.

ly

1. The Competent authority is hereby appoint you as Medical Officer/ Women Medical Officer/ Dental Surgeon in the Health Department, Govt. of NWFP, on contract basis in B-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 RHC, Chor Lakei. This contract appointment is not transferable.

*Attested Kohat*

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.

*Attested Kohat*

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.

DISTRICT DIRECTOR  
LIVESTOCK KOHAT

*2* (DR. AZMAT KHAN AFRIDI)  
DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

NO. 28202-5/E-I,

Dated Peshawar, the 27/11/1995.

Copy forwarded to the :-

1. Secretary to Govt. of NWFP, Health Deptt: Peshawar for information with reference to his letter No. SO(H)IV/3-18/93, dated 16th Nov. 1995.
2. Medical Supdt: \_\_\_\_\_ for information & n/action.
3. Divisional Director Health Services Kohat
4. District Health Officer/Agency Surgeon Kohat
5. Accountant General, NWFP, Peshawar.
6. District/Agency Accounts Officer Kohat.

**ATTSTED**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar the 17<sup>th</sup> October 2007

(9)

**NOTIFICATION**

**NO. SO(BH-1/3-18/2010)** In pursuance of judgment of Peshawar High Court Peshawar dated 18-11-2009 in Civil Petition No. 1019 of 2007 read with sub section 2 of Section 2 of the Khyber Pakhtunkhwa Civil Service (Amendment) Act, 2006 (Khyber Pakhtunkhwa Act no. IX of 2006) and provision under sub section 4 of section 19 of Civil Service (Amendment) Act 2006 coupled with the regularization order of appointments and similarly placed thereof 2006, the services of following doctor (appointments 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 2006
1.	Dr. Bakht Zaid S/O Gul Muhammad, MBBS	01.01.1989 / Swat	23.11.1995	01-07-2001
2.	Dr. Dawar 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	Kerat / 1.3.1988	23.11.1995	01-07-2001
4.	Dr. Yousaf Khan S/O Saïd Rehman MBBS	Mardan / 14.3.1938	23.11.1995	01-07-2001
5.	Dr. Riaz Ahmed S/O Rehmatullah MBBS	Mohmand / 15.6.1951	23.11.1995	01-07-2001
6.	Dr. Alamgir Khan S/O Darwesh Khan, MBBS	18.04.1932 / 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	28.01.1986 / Mohmand Agency	23.11.1995	01-07-2001
9.	Dr. Mustafa S/O Benirmand, M.D.	01.03.1981 / Swat	24.11.1995	01-07-2001

Director of Health Department  
Government of Khyber Pakhtunkhwa  
Peshawar

**ATTACHED**

DISTRICT DIRECTOR,  
LIVESTOCK KOHAT

10

10.	Dr. Jamil Ahmad S/O Abdullah, MD	24.04.1967 Swat	24.11.1995	01-07-2001
11.	Dr. Rizwanullah s/o Amanullah Khan, MBBS	20.12.1962 / Peshawar	25.11.1995	01-07-2001
12.	Dr. Munir Hussain S/O Manzoor Hussain	28.08.1968 /Peshawar	25.11.1995	01-07-2001
13.	Dr. Zaffar Iqbal S/O Muhammad Amin	26.02.1964 / Peshawar	25.11.1995	01-07-2001
14.	Dr. Nazir Ahmad Khail S/O Jan Muhammad Khan	08.04.1960 / Peshawar	25.11.1995	01-07-2001
15.	Dr. Javed Iqbal S/O Muhammad Qasim	01.03.1964 / Kohat	26.11.1995	01-07-2001
16.	Dr. Muhammad Zahid s/o Qaiser Ahmad, MBBS	18.5.1964/ Charsadda	26.11.1995	01-07-2001
17.	Dr. Rafiqullah S/O Haji Khan Zada	31.12.1960 /Charsadda	26.11.1995	01-07-2001
18.	Dr. Anwar Saeed S/O Noor Muhammad	27.05.1968 / Charsadda	26.11.1995	01-07-2001
19.	Dr. Muhammad Ikram S/O Haji Abdul Hanan		26.11.1995	01-07-2001
20.	Dr. Zarshad Ahmad S/O Pir Muhammad	24.03.1968 / Charsadda	26.11.1995	01-07-2001
21.	Dr. Imtiaz Ahmad S/O Fazal Karim	23.12.1966 / Charsadda	26.11.1995	01-07-2001
22.	Dr. Shakir Ullah S/O Faqr Hussain M.D	Peshawar/ 11.02.1969	24.12.1985	01-07-2001
23.	Dr. Ali Shah S/O Fazli Ghaffoor	01.04.1962 / Charsadda	26.11.1995	01-07-2001
24.	Dr. Amjad Ali Shah S/O Mian Muhammad Ali Shah	06.05.1960 /Charsadda	26.11.1995	01-07-2001
25.	Dr. Shabir Ahmad S/O Juma Khan	01.04.1963 / Kohat	26.11.1995	01-07-2001

Attested

*[Signature]*

DISTRICT DIRECTOR,  
LIVESTOCK KOHAT

Station Officer,  
Office of the District Director,  
Livestock, Kohat

27	Dr. Abdul Hameed Khan S/O Abdul Majid Khan	08.05.1950 / Kohat	26.11.1995	01-07-2001
28	Dr. Mubarrat Islam Khan S/O Hameed Ghabe Noor	Karak/ 12.05.1957	26.11.1995	01-07-2001
29	Dr. Masood Jaleel S/O Khalid Khan	28.04.1963 / Kohat	26.11.1995	01-07-2001
30	Dr. Shabir Ahmad S/O Gulistan Khan	08.01.1968 / Moh Ag	26.11.1995	01-07-2001
31	Dr. Wazir Akbar S/O Gul Akbar	03.04.1968 / Kohat	26.11.1995	01-07-2001
32	Dr. Aarif Khan S/O Sajjan Khan, MBBS	01.01.1957 / Orakzai A	26.11.1995	01-07-2001
33	Dr. Jehanzeb Khan S/O Inayatullah		26.11.1995	01-07-2001
34	Dr. Syed Riaz Hussain S/O Syed Saeed Hussain	12.12.1957 / Orakzai Ag	26.11.1995	01-07-2001
35	Dr. Mohammad Khan S/O Samiullah Khan, MBBS	01.06.1965 / Bajaur Ag	27.11.1995	01-07-2001
36	Dr. Saifullah Yousaf S/O Yousaf Khan, MBBS	20.4.1960/ Nowshera	27.11.1995	01-07-2001
37	Dr. Mumtaz Elahi S/O Muhammad Khurshid	Pesh/ 10.03.1965	27.11.1995	01-07-2001
38	Dr. Abdul Wahab S/O Abdul Ghafoor MBBS	UDA, Hazal/ 26- 11-69	27.11.1995	01-07-2001
39	Dr. Spin Gul S/O Haji Lal Baz, MBBS	20.01.1961 / FR Kohat	27.11.1995	01-07-2001
40	Dr. Zaffar Ali Shah S/O Said Badshah MBBS	20.4.1961/ Mardan	27.11.1995	01-07-2001
41	Dr. Shahab Khan S/O Wali Khan	10.01.1968 / FR Kohat	27.11.1995	01-07-2001
42	Dr. S. Iqbal S/O S/O M. Iqbal Shahid, MBBS	10.06.1965 / Kohat	27.11.1995	01-07-2001
43	Dr. S. Iqbal S/O S/O M. Iqbal Shahid, MBBS	10.06.1965 / Kohat	27.11.1995	01-07-2001

*Attested*

*[Signature]*

DISTRICT DIRECTOR  
LIVESTOCK KOHAT

*[Signature]*



666	Dr. Muhammad Fayyaz S/O Muhammad Ayaz	15.04.1978 / Swat.	08.03.2005	08.03.2005
667	Dr. Johanzeb s/o Abdul Samad Jan MBBS	Dir(L) 3.12.1973	08.03.2005	08.03.2005
668	Dr. Adil Khan s/o Fazli Subhan MBBS	30.12.1978/ Charsadda	08.03.2005	08.03.2005
669	Dr. Ajab Khan s/o Ismail Khan MBBS	Charsadda/ 26.02.1979	08.03.2005	08.03.2005
670	Dr. Farnana d/o Hussain Ahmad MBBS	L/Dir/ 07.08.1978	08.03.2005	08.03.2005
671	Dr. Muhammad Zubair s/o Muhammad Bashir M.D	Swat/ 01.04.1976	08.03.2005	08.03.2005
672	Dr. Raz Muhammad s/o Badshah Muhammad M.D	Dir(L) 15.3.1977	08.03.2005	08.03.2005
673	Dr. Mushtaq Ahmad s/o Badshahul Mulk M.D	Dir (L)/ 24.10.1978	08.03.2005	08.03.2005
674	Dr. Fazal Wahid S/O Khana Gul, MD	11.02.1971/ Dir	08.03.2005	08.03.2005
675	Dr. Nizamud Din s/o Qalender Khan MBBS	Dir(L)/ 10.3.1971	08.03.2005	08.03.2005
676	Dr. Umar Hakeem s/o Abdul Karim Khan MBBS	Bajaur/ 28.4.1971	08.03.2005	08.03.2005
677	Dr. Nisar Ahmad s/o Amir Muhammad M.D	Dir(L)/ 1.2.1971	08.03.2005	08.03.2005
678	Dr. Sher Muhammad s/o Sakhi Murad MBBS	NVV Agency/ 08.08.1976	08.03.2005	08.03.2005
679	Dr. Naeemullah s/o Abdullah MBBS	01.02.1981/ Swat.	08.03.2005	08.03.2005
680	Dr. Akhtar Ali s/o Sarfaraz Khan MBBS	Swat/ 25.10.1977	08.03.2005	08.03.2005

*Attended*

DISTRICT DIRECTOR  
LIVESTOCK CONTROL

*[Signature]*  
Secretary  
Govt. of Khyber Pakhtunkhwa,  
Health Department.

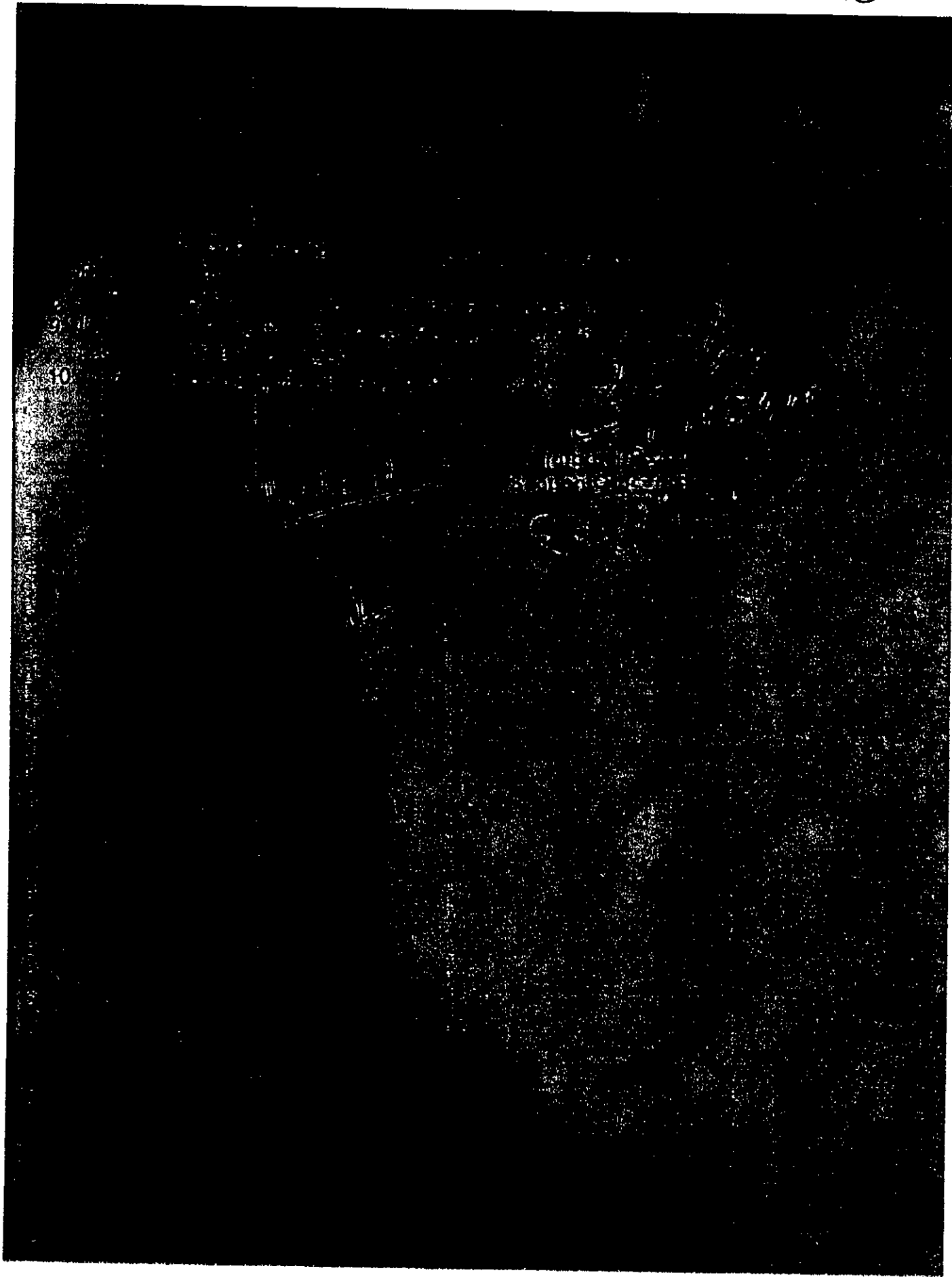
Note: Any omission/error will be rectified after verification.

SECRETARY HEALTH

Endt No of even and date.

1. Registrar, Peshawar High Court Peshawar.
2. Accountant General, Khyber Pakhtunkhwa.
3. Director General, Health Services, Khyber Pakhtunkhwa.
4. PSO to Chief Secretary, Khyber Pakhtunkhwa.
5. Coordinator PMRU, O/O Chief Secretary, Khyber Pakhtunkhwa.
6. All District Health Officers in Khyber Pakhtunkhwa.

*P.T.O.*





14

7

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar the 25<sup>th</sup> May, 2023

**NOTIFICATION**

**NO. SOH (E-V)5-5/2023** In exercise of the powers conferred under Rule-20, Sub Rule (1) of the Khyber Pakhtunkhwa, Civil Servants Revised Leave Rules 1981, instructions from Govt. of Khyber Pakhtunkhwa, sanction is hereby accorded to the grant of Three Hundred & Sixty Five (365) Days Leave Encashment in lieu of L.P.R w.e.f **10.06.2022** to **09.06.2023** in favour of **Dr. Habibullah Khan S/O Hamidullah Khan, Ex-PMO BS-19 attached to RHC Gumbat Kohat.**

Consequent upon the above, in terms of Section-13 of Khyber Pakhtunkhwa Civil Servants, Act 1973, **Dr. Habibullah Khan S/O Hamidullah Khan, Ex-PMO BS-19 attached to RHC Gumbat Kohat** shall stand retire from Government Service w.e.f **09.06.2023** on attaining age of sixtieth (60<sup>th</sup>) year, as his date of birth is **10.06.1963**.

**SECRETARY HEALTH  
GOVT. OF KHYBER PAKHTUNKHWA**

No. 9072-20 even dated:

Copies to the:-

- ✓  
24/05/2023
1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
  2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
  3. District Health Officer, Kohat.
  4. District Accounts Officer, Kohat.
  5. Deputy Director (IT), Health Department, Khyber Pakhtunkhwa, for uploading on official website.
  6. PS to Secretary Health, Government of Khyber Pakhtunkhwa.
  7. Doctor concerned.
  8. Personal file of the doctor concerned.

Attested

DISTRICT DIRECTOR,  
LIVESTOCK KOHAT

(FAZAL AMIN)  
SECTION OFFICER (E-V)

Legible Copy

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**

Dated Peshawar the 25<sup>th</sup> May, 2023

**NOTIFICATION**

**No. SOH (E-V) 5-5/2023:** In exercise of the powers conferred under Rule-20, sub rule (1) of the Khyber Pakhtunkhwa, Civil Servant Revised leave Rules 1981, instructions from Govt. of Khyber Pakhtunkhwa, sanction is hereby accorded to the grant of Three husband & Sixty five (365) Days Leave Encashment in lieu of L.P.R w.e.f. 10.06.2022 to 09.06.2023 In favour of Dr. Habib Ullah Khan S/o Hamid Ullah Khan, Ex-PMO BS-19 attached to RHC Gumbato Kohat.

Consequent upon the above, in terms of Section-13 of Khyber Pakhtunkhwa Civil Servants, Act, 1973, Dr. Habib Ullah Khan S/o Hamid Ullah Khan, Ex-PMO BS-19 attached to RHC Gumbat Khan Kohat shall stand retire from Government Service w.e.f 09.06.2023 on attaining age of sixtieth (60<sup>th</sup>) years, as his date of birth is 10.06.1963.

Sd/-  
SECRETARY HEALTH  
GOVT. OF KHYBER PAKHTUNKHWA

No. 9072-80 even date

Copies to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Director General Health Service, Khyber Pakhtunkhwa, Peshawar
3. District Health Officer, Kohat
4. District Account Officer, Kohat
5. Deputy Director (IT), Health Department, Khyber Pakhtunkhwa, for uploading on official website.
6. PS to Secretary Health, Government of Khyber Pakhtunkhwa
7. Doctor concerned.
8. Personal file of the doctor concerned.

SD/-  
FAZAL AMIN  
SECTOR OFFICER (E-V)

**ATTSTED**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)

Dated Peshawar the 22-05-2019

**NOTIFICATION**

No.FD(SOSR-II)4-36/2017, In pursuance of the judgement of Peshawar High Court Abbottabad Bench in Writ Petition No. 627-A/2018 dated: 18.12.2018 and Judgements of various Lower Courts as well as supersession of Finance Department policy letter No.BO-1/1-22/2007-08/FD dated: 29.01.2008, the Competent Authority has been pleased to accord sanction of regularization of Fixed Pay Class-IV employees appointed between 1992 to 1999 by extending them the status of civil servant as per Civil Servant Act 1973 from the date of their first appointments instead of the date of their regularization w.e.f 01.07.2008 in their respective entities in the best of public interest.

SECRETARY TO GOVERNMENT  
OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

**Endst: No & date even**

Copy for information and necessary action is forwarded to the.

1. The Additional Chief Secretary (P&D), Khyber Pakhtunkhwa
2. The Provincial Police Officer, Khyber Pakhtunkhwa
3. The Accountant General Khyber Pakhtunkhwa
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
6. All Administrative Secretaries Government of Khyber Pakhtunkhwa
7. All Deputy Commissioners in Khyber Pakhtunkhwa
8. All Heads of Attached Departments in Khyber Pakhtunkhwa
9. The Director Treasuries & Accounts Khyber Pakhtunkhwa.
10. The Director Local Fund Audit, Khyber Pakhtunkhwa.
11. Director FMU, Finance Department
12. Budget Officer-XI, Finance Department
13. All District Controller of Accounts Khyber Pakhtunkhwa.
12. All District Account Officers in Khyber Pakhtunkhwa.
13. PS to Chief Secretary, Khyber Pakhtunkhwa
14. PS to Secretary Finance, Khyber Pakhtunkhwa
15. PS to Special Secretary Finance Department, Khyber Pakhtunkhwa
16. PA to Additional Secretary (Regulation), Finance Department.

**ATTACHED**

(MOAZZAM KHAN)  
Section Officer (SR-II)

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4753/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR  
AT CAMP COURT, SWAT.

Service Appeal No. 4753/2021

Date of Institution 05.04.2021  
Date of Decision 04.01.2021

Chiranjeev Reddy, Medical Superintendent Hawaz Sharif Kidney  
Hospital, Mandi Bahauddin, District Swat.

(Appellant)

VERSUS

The Secretary Health Government of Khyber Pakhtunkhwa Peshawar  
and Districts.

(Respondents)

Imdad Ullah  
Advocate ... For appellant.

Munir Ahmad Riaz Khan Paindakhel  
Assistant Advocate General ... For respondents.

Mrs. Rozina Rehman ... Member (J)  
Miss. Farooqa Paul ... Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the  
jurisdiction of this Tribunal through above titled appeal with the  
prayer in brief as below:

"That on acceptance of this appeal, the service of the  
appellant may very kindly be considered from  
18.12.1995 instead of 11.12.1998 for the purpose of  
pensionary benefits".

2. Brief facts of the case are that appellant was appointed in  
Health department as Medical Officer vide order dated 18.12.1995.

ATTIATED

ATTIATED

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**  
**AT CAMP COURT, SWAT**

Service Appeal No.4753/2021

Date of Institution 05.04.2021  
Date of Decision 04.01.2023

Ghulam Rehmani, Medical Superintendent Nawaz Sharif Kidney Hospital,  
Manglawar, District Swat  
(Appellant)

Versus

The Secretary Health Government of Khyber Pakhtunkhwa Peshawar, and  
two others

(Respondents)

Imdad Ullah  
Advocate

.....For-Appellant

Muhammad Riaz Khan Paindakhel  
Assistant Advocate General

.....For respondents

Mrs. Rozina Rehman .... Member (J)  
Mrs. Fareeha Paul .... Member (E)

**JUDGMENT**

**ROZINA REHMAN MEMBER (J)**: The Appellant has invoked  
the jurisdiction of this Tribunal through above tilted appeal with the prayer as  
complied below

**That on acceptance of this appeal, the  
service of the appellant may very kindly be  
considered from 18.12.1995 instead of  
11.12.1998 for the purpose of pensionary  
benefit.**

2. Brief facts of the case are that appellants was appointed in  
Health Department as Medical Officer vide order dated 18.12.1995.

**ATTSTED**


He then applied for regular post through Khyber Pakhtunkhwa Public Service Commission through proper channel and got selected vide order dated 11.12.1998. The appellant was performing his duties to the satisfaction of the authorities and in the meanwhile he got promoted to BPS-19. His retirement was due in the month of April 2021, when in the meanwhile, he came to know that his initial service of about 3 years was not counted for the purpose of pensionary benefits. That as per numerous judgments of Supreme Court of Pakistan it has become a settled principle that the initial service, even it be contract, will be counted for the purpose of calculating pension of the employee but the same was not done in the case of appellant. Feeling aggrieved he submitted departmental appeal but the same was not responded to; hence the present service appeal.

3. We have heard Imdad Ullah, Advocate learned counsel for the appellant and Muhammad Riaz Khan Paindakhel, learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant submitted that the appellant had been regularly performing his duties since his first entry into service i.e 18.12.1995 till date without any break but the period from 18.12.1995 till 11.12.1998 was not counted in utter violation and negation of the law and rules on the subject to the detriment of the appellant. He contended that the appellant was discriminated as similarly placed persons were given benefits of contract period and their contract period was counted for pensionary benefits. It was

ATTESTED

ATTESTED

  
 ATTESTED



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**ATTSTED**

Further argued that the appellant was entitled to the relief claimed as that was a classic case of misuse and abuse of the authority by the respondents

5. Conversely, learned Assistant Advocate General submitted that the appellant was regularly appointed as medical officer on the recommendation of Khyber Pakhtunkhwa Public Service Commission and that being recommended by the commission, appellant was entitled for seniority in accordance with merit assigned by the Khyber Pakhtunkhwa Public Service Commission as per rule 17 (1)(a) of the Khyber Pakhtunkhwa Civil Servant (Appointment, Transfer & Promotion) Rules 1989. However, appellant was not entitled for seniority or other benefits of the service rendered as contract employee. Lastly, it was contended that contract service could not be counted towards pension benefits according to rules.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that appellant was appointed as medical officer on contract basis in (BPS-17) for a period of 1 year or till the availability of Khyber Pakhtunkhwa Public Service Commission selectee on 18.12.1995. He was recommended by the Khyber Pakhtunkhwa Public Service Commission Peshawar for appointment as medical officer in Health Department on regular basis vide order dated 11.12.1998. He got retired on 05.04.2021. Now only question before this bench is as to whether he is entitled to the pensionary benefits right from date of his first appointment i.e 18.12.1995. Pension roll, data sheet and pension

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slip were also produced before this bench which further support the claim of the appellant. In view of Rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, the appellant is to be paid pensionary benefits from the date of his first appointment. It is a well settled law that when any employee on contract is absorbed into regular employment, and there is no break in his service, then period on contract employment has to be considered for counting length of service of pensionary benefits etc. Reliance is placed on 2010 P.L.C 354, wherein, it is held:

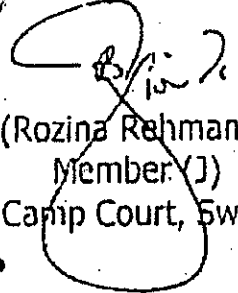
*"When an employee was regularized, his total length of service, was to be computed from the day he joined the service that could be temporary or otherwise. Even period of an employee of daily wages would be counted for the purpose of computing pensionary benefits".*

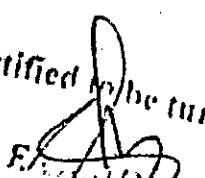
7. While considering the above, we are not inclined to hold a different view, therefore, while accepting this appeal, we direct the respondents to pay all the pensionary benefits to the appellant by counting his service from the date of his initial appointment i.e 18.12.1995. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.  
04.01.2023

ATTSTED

  
(Fayeema Paul)  
Member (E)  
Camp Court, Swat

  
(Rozina Rehman)  
Member (J)  
Camp Court, Swat

*Certified to be true copy*  
  
Khyber Pakhtunkhwa

Slip were also produced before the bench which further support the claim of the appellant, in view of the rule 2.3 of West Pakistan Civil Services Pension Rules, the appellant is to be paid pensionary benefits from the date of his first appointment, It is a well settled law that when any employee on contract is absorbed into regular employment, and there is no break in his service, then period on contract employment has to be considered for counting length of service of pensionary benefits etc. Reliance is placed on 2010 P.L.C 354, wherein, it is held;

*'When an employee was regularized, his total length of service, was to be computed from the day he joined the service that could be temporary or otherwise. Even period of an employee of daily wages would be counted for the purpose of computing pensionary benefits'*

7. While considering the above, we are not inclined to hold a different view, therefore, while accepting this appeal, we direct the respondents to pay all the pensionary benefits to the appellant by counting his service from the date of his initial appointment i.e. 18.12.1995, Parties are left to bear their own costs. File be consigned to the record room.

Announced  
04.01.2023

Sd/-  
Fareeha Paul  
Member (E)  
Camp Court, Swat

Sd/-  
Rozina Rehman  
Member (J)  
Camp Court, Swat

ATTSTED

IN THE PESHAWAR HIGH COURT PESHAWAR

3394-P  
WRIT PETITION No. \_\_\_\_\_/2016



Amir Zeb,  
Widower of Asiya Shafi,  
R/o Fazal Ganj, Siace Mandi,  
Risalpur, District Nowshera.....Petitioner

Versus

1. The District Account Officer,  
District Nowshera.
2. The Accountant General,  
Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female),  
District Nowshera.
4. The Director,  
Elementary & Secondary Education Department,  
Khyber Pakhtunkhwa, Peshawar.
5. The Secretary,  
Govt: of Khyber Pakhtunkhwa,  
Elementary & Secondary Education Department,  
Peshawar.
6. The Secretary,  
Govt: of Khyber Pakhtunkhwa,  
Finance Department, Peshawar.....Respondents

WRIT PETITION UNDER ARTICLE, 199 OF THE  
CONSTITUTION OF THE ISLAMIC REPUBLIC OF  
PAKISTAN, 1973.

FILED TODAY

Deputy Registrar

03 SEP. 2016

Respectfully Sheweth,

WP3394P2016-GROUNDS

ATTESTED  
EXAMINER  
Peshawar High Court

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The concise facts giving rise to the present writ petition are as under:-

1. That petitioner's wife (Late) Asiya Shafi was appointed as PTC on contract basis by an office order dated 28-02-2003 (Annexed-A) passed by the Executive District Officer Nowshera. In pursuance of which she assumed the charge of her duty after completing the requisite codal formalities. The respondent No. 3 had also maintained service book of petitioner's wife therein necessary entries have been made from time to time. Copies of the extracts of service book attached as (Annexed-B).
2. That later on, the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 (IX of 2005) dated 23-07-2005 whereby Section 19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 was substituted according to which all the persons appointed in the prescribed manner to a service or post on or after the 1<sup>st</sup> day of July, 2001 till the commencement of this Amended Act but such appointments made on contract basis shall be deemed to have been appointed on regular basis. Therefore the service/appointment of deceased employee was fully covered by amended law and thus she was the regular employee of the Department.
3. That on 31-07-2015 the wife of petitioner was died during service and in this regard an office order was issued on 31-08-2015 (Annexed-C) by the respondent No. 3. In this connection a death certificate was also issued by the Secretary Union Council Khesghi Payan (36) district Nowshera dated 10-08-2015 (Annexed-D).
4. That petitioner/widower of Asiya Shafi was the legal heir so he applied for obtaining the Certificates of Succession and

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WP3394P2016-GROUNDS

**ATTESTED**  
EXAMINER  
Peshawar High Court

Guardianship which were allowed by the Competent Courts of Law after due process and then he applied for the payment of all admissible retirement amounts due against the department including leave encashment, GP fund, benevolent fund, Group Insurance, gratuity and pension etc. The amount of leave encashment, GP fund and other admissible funds were paid to him but when the papers of pension were prepared by the office of respondent No. 3 and submitted in the office of respondent No.1 that were returned by the respondent No. 2 with the objection that she was not entitled to pensionary benefits being appointed on contract basis vide letter dated 30-11-2015 (Annexed-E).

Hence Petitioner being aggrieved of the impugned letter and finding no adequate and efficacious remedy is constrained to file this petition on the following amongst other grounds:-

**Grounds:**

- A. That respondent No. 1 has misconceived the case of petitioner and unlawfully denied to accept the papers of pension and grant him pensionary benefits which is not sustainable under the law.
- B. That petitioner's wife was regular and permanent employee of the education department and she was entitled to pensionary benefits on her retirement but unfortunately she was died during service and now petitioner is entitled to receive such benefits which was denied on frivolous and baseless grounds by the respondent No.1 which is unfair, unjust, illegal, mala fide and not tenable under law and rules on subject.

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Peshawar High Court

- C. The order of refusal of respondents for not granting the pension along with other benefits is perverse and against the settled principle of law and justice and as such is liable to be set aside.
- D. That in the similar cases this Hon'ble Court has allowed the writ petitions thereby declared the legal heirs of deceased employees entitled to the pensionary benefits on the same point of law. Copies of judgments are attached as (Annexed-F & G).

It is therefore, humbly prayed that this Hon'ble Court may be pleased to:-

- (i) Declare the impugned letter dated 30-11-2015 as illegal, perverse, without lawful authority, of no legal effect, ineffective on the rights of petitioner, mala fide and liable to be set aside.
- (ii) Direct the respondents to entertain the papers of pension of the deceased wife of petitioner and release the pension and other benefits to petitioner/widower without any delay.
- (iii) Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioner.

Through   
**Petitioner**  
**Khush Dil Khan**  
 Advocate,  
 Supreme Court of Pakistan

Dated: 21/09/2016

FILED TODAY  
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 03 SEP 2016

WP3394P2016-GROUNDS

ATTESTED  
 EXAMINER  
 Peshawar High Court



**CERTIFICATE**

Certified on instruction that petitioner has not previously moved this Hon'ble Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 regarding present matter.

Khush Dil Khan  
Advocate, Peshawar

**List of Books**

1. The Constitution of the Islamic Republic of Pakistan, 1973.
2. Services Law.

**NOTE**

1. Three spare copies of the Writ Petition are enclosed in a separate file cover.
2. Memo of addresses is also attached.

Khush Dil Khan  
Advocate, Peshawar

ATTESTED  
EXAMINER  
Peshawar High Court

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03 SEP 2016

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IN THE PESHAWAR HIGH COURT PESHAWAR

3394 P  
W.P. No. \_\_\_\_\_/2016

Amir Zeb,  
Widower of Asiya Shafi,  
R/o Fazal Ganj, Siace Mandi,  
Risalpur, District Nowshera.....Petitioner

Versus

The District Account Officer,  
District Nowshera and others.....Respondents

AFFIDAVIT

I, Amir Zeb, R/o Fazal Ganj, Siace Mandi, Risalpur, District Nowshera, do hereby solemnly affirm and declare on oath that the contents of this writ petition are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.

*Amir Zeb*

Deponent

Identified by

*Khush Dil Khan*  
Advocate, Peshawar

No. .... 6960 ..... Certified that the deponent has verified on solemnly affirmation before me on the ..... 2nd ..... day of ..... Sep ..... 16 ..... at ..... who was identified to me by ..... Who is personally known to me:  <i>2/9/2016</i> Oath Commissioner Peshawar High Court, Peshawar.
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FILED TODAY  
Deputy Registrar  
03 SEP 2016

CERTIFIED TO BE TRUE COPY  
EXAMINER  
Peshawar High Court, Peshawar  
Authorized Under Article 207 of  
the Qanoon-e-Shahadat Act 1984  
18 OCT 2023

30 (26)

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR,**  
**Judicial Department.**

**Writ Petition No.3394-P/2016**

Date of hearing:- 22.06.2017

Petitioner(s):- Amir Zeb Widower of Mst. Asiya Shafi by  
Mr. Khush Dil Khan, Advocate.

Respondent (s):-The District Account Officer, Nowshera & 05  
others by Syed Qaisar Ali Shah, AAG.



**JUDGMENT**

**ROOH-UL-AMIN KHAN, J:-** Through this Common judgment, we, propose to decide the following Constitutional Petitions filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution), as identical questions of law and facts are involved therein and the writ sought by the petitioners is also one and the same.

1. **Writ Petition No.3394-P/2016**  
(Amir Zeb Vs District Account Officers Nowshera etc)
2. **Writ Petition No.2867-P/2016**  
Mst. Akhtar Bibi Vs District Education Officer (M) Kohat etc).
3. **Writ Petition No.3143-P/2014**  
(Muhammad Shah Zaib etc Vs Govt of Khyber Pakhtunkhwa through Chief Secretary and others)
4. **Writ Petition No.2872-P/2014.**  
Hakeem Khan through LRs Vs Govt of KPK through Sectary Elementary & Secondary Education, Peshawar etc)
5. **Writ Petition No.1339-P/2014**  
(Mst. Rani Vs Sub-Division Education Officer etc).
6. **Writ Petition No.55-P/2015**  
(Mst. Bibi Bilqees Vs Govt of KPK through Secretary Finance, Peshawar).

*Amir Zeb*

WP3394P2016-Judgements

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

2. Amir Zeb petitioner in W.P. No.3394-P/2016 is the widower of Mst. Asiya Shafi (late). His grievance is that on 28.02.2003, his wife was initially appointed as PTC on contract basis and, later on, by virtue of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, her service was regularized. On 31.07.2015, during her service, she met her natural death, therefore, he being her widower/LR applied for payment of her all admissible retirement benefits, in pursuance whereof, leave encashment, GP fund and other admissible funds were paid to him by the respondents, but his pension claim was refused by the respondents on the ground of lack of prescribed length of her regular service, excluding the period of her service on contract, hence, this petition.

3. Mst. Akhtar Bibi, the petitioner in Writ Petition No.2867-P/2016, is the widow of (late) Lal Din Class-IV employee. She has averred in her writ petition that her late husband was initially appointed as Chowkidar on 01.10.1995 on contract basis, however, later on, his service was regularized vide Notification No.BO1-1-22/2007-08 dated 05.08.2008. On 15.05.2010, the deceased died during his service, so she applied for her pension but the same was refused to her on the ground that the regular service of the deceased employee was less than the prescribed length of regular service, hence, this petition.

*Handwritten signature/initials*

4. Muhammad Shah Zaib and Muhammad Afnan Alam are the LRs of deceased Fakhar Alam. Their grievance is that their deceased father was appointed as Chowkidar on 13.01.1998 in Mother Child Health Centre Tank, who, later on, during his service was murdered, for which FIR was registered against the accused. Petitioners applied for retirement of the deceased. Vide notification dated 31.12.2013, the deceased was retired from service on account of his death w.e.f. 21.10.2013. The family pension of the deceased was prepared and processed, however, the same was refused to the petitioners, hence, this petition.

5. Petitioners in Writ Petition No.2872-P/2014, are the LRs of deceased Hakeem Khan Class-IV employee, who died during pendency of the instant writ petition. Grievance of the petitioners is that their predecessor was appointed as Chowkidar on fixed pay in Education Department on 24.04.1993. Vide order dated 29.01.2008, service of the deceased alongwith his counterparts was regularized by virtue of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 w.e.f. 30.06.2001. On attaining the age of superannuation, the deceased got retired on 31.12.2012, so petitioner applied for grant of his pension but the same was refused, hence, this petition.

*Chowkidar*

6. Mst. Rani, petitioner in Writ Petition No.1339-P/2014, is the widow of Syed Imtiaz Ali Shah (late) Class-IV employee. She has averred in her writ

33 29

petition that on 15.01.1996 her late husband was appointed as Chowkidar in the respondents department on adhoc basis/fixed pay, whose service was, later on, regularized on 30.07.2008. During his service, the deceased met his natural death on 15.01.2012, hence, the petitioner applied for her pensionary benefits, but the same was refused on the ground that though service of the deceased was regularized but without pension gratuity, hence, this petition.

7. Mst. Bibi Bilqees, petitioner in Writ Petition No.55-P/2015, is the widow of Saif ur Rehman deceased. Her grievance is that her deceased husband was initially appointed as Chowkidar on 09.07.1995 in Public Health Department Nowshera on contract basis, however, his service was regularized on 01.07.2008. The deceased died during his service on 05.05.2012, so when petitioner applied for his pensionary benefits, the same was refused to her on the ground that the deceased was lacking the prescribed length of regular service, hence, this petition.

8. Respondents in the above writ petitions have filed their respective Para-wise comments, wherein they have admitted the fact that the pensions have been refused to the petitioners/LRs of the deceased employees because they were lacking the prescribed length of their regular service, whereas period of adhoc or contract service cannot be counted towards regular service for the purpose of pension.

*Concluded*

**ATTESTED**  
EXAMINER  
Peshawar High Court

The learned Addl. A.G. also questioned the maintainability of the writ petitions on the ground that section 19 (2) of the Khyber Pakhtunkhwa Civil Servant Acts deal with right of pension of deceased civil servant, which squarely falls in Chapter-II, pertaining to terms and conditions of service, therefore, jurisdiction of this Court under Article 212 of the Constitution is barred.

9. Having heard the arguments of learned counsel for the parties, record depicts that undisputedly the deceased employees were the Civil Servants and instant writ petitions have been filed by their LRs qua their pensions. Since the controversy pertains to pension of the deceased employees which according to the contention of worthy Law Officer is one of the terms and conditions of a civil servant under section 19 (2) of the Civil Servants Act, 1973, hence, before determining the eligibility of the deceased employees to the pension or otherwise, we, would like to first meet the legal question qua maintainability of the instant writ petitions on the ground of lack of jurisdiction of this Court under Article 212 of the Constitution. To answer the question, it would be advantageous to have a look over the definition of "Civil Servant" as contemplated under section 2(b) of Khyber Pakhtunkhwa Civil Servants Acts, 1973 and section 2 (a) of Khyber Pakhtunkhwa Service Tribunal Act, 1974. For the sake of convenience and ready reference, definition

*For Law Officer*

**ATTESTED**  
**EXAMINER**  
 Peshawar High Court

given in both the Statute are reproduced below one after the other

"2(b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include---

- (i) A person who is on deputation to the Province from the Federation of any other Province or other authority;
- (ii) A person who is employed on contract or on work charged basis, or who is paid from contingencies; or
- (iii) A person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VII of 1923)".

"S.2(a) "Civil Servant" means a person who is or has been a civil servant within the meaning of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.XVIII of 1973), but does not include a civil servant covered by the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991;]

As per the definitions of a "civil servant" given in the two Statutes referred to above, the petitioners neither holding any civil post in connection with the affairs of the Province nor have been remained as civil servants, thus, do not fall within the definition of "civil servant".

10. Though section 19(2) of the Khyber Pakhtunkhwa Civil Servants Acts, 1972, in the event of death of a civil servant, whether before or after retirement conferred a right of pension on his/her family who shall be entitled to receive such pension or gratuity or both as prescribed by Rules. It is also undeniable fact that pension and gratuity fall within the ambit of terms and conditions of a civil servant, but a legal question would arise as to whether the legal heirs i.e. family of a deceased civil servant would be competent to agitate his/her/their grievance regarding pension before the Service Tribunal, particularly, when

*As per Statute*



he/she/they do not fall within the definition of Civil Servant. The Service Tribunals have been constituted under Article 212 of the Constitution for dealing with the grievances of civil servants and not for their legal heirs. The question regarding filing appeal by the legal heirs of deceased's civil servant and jurisdiction of Service Tribunal, cropped up before the Hon'ble Supreme Court in case titled, "Muhammad Nawaz Special Secretary Cabinet Division through his Legal Heirs Vs Ministry of Finance Government of Pakistan through its Secretary Islamabad" (1991 SCMR 1192), which was set at naught in the following words:-

"A 'civil servant' has been defined in section 2(b) of the Civil Servants Act, 1973. A right of appeal under the Service Tribunals Act, 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 serve. 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, the learned Tribunal, in our view, was correct in holding that the appeal before it stood abated and the same is hereby maintained".

In case titled, "Rakhshinda Habib Vs Federation of Pakistan and others" (2014 PLC (C.S) 247), one Habib ur Rehman Director General in Ministry of Foreign Affairs, aggrieved by his supersession filed appeal before the worthy Service Tribunal, but unfortunately, during pendency of appeal he died, therefore, his appeal before the Federal Service Tribunal Islamabad was abated. Rakhshinda Habib, the widow of

*looked at*

deceased then filed constitution petition No.1021 of 2010 before the Islamabad High Court, but the same was dismissed vide judgment dated 13.06.2013, against which she preferred aforesaid appeal before the Hon'ble Supreme Court, which was allowed and it was held by the worthy apex court that:-

"That civil servant could not be promoted after his death, however, pensionary benefits of promotion could be extended to the legal heirs of the deceased employees".

11. Going through the law on the subject and deriving wisdom from the principles laid down by the Honble apex Court in the judgments (supra), we are firm in our view that petitioners/legal heirs of the deceased employees have locus standi to file these petitions because the pensionary benefits are inheritable which under section 19 (2) of the Khyber Pakhtunkhwa Civil Servant Act, on the demise of a civil servants, devolves upon the legal heirs. The petitioners, as stated earlier, being LRs of the deceased civil servants do not fall within the definition of "Civil Servant", and they having no remedy under section 4 of the Service Tribunal Act to file appeal before the Service Tribunal, the bar under Article 212 of the Constitution is not attracted to the writ petitions filed by them and this Court under Article 199 of the Constitution is vested with the jurisdiction to entertain their petitions. Resultantly, the objection regarding non-maintainability of the petitions stands rejected.

*Justice Saad*

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

12. Adverting to question of entitlement of the deceased employees to the pension, we, would like to reproduce the relevant rules of the West Pakistan Civil Services Pensions Rules, 1963 below, as these would advantageous in resolving the controversy:-

"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.

13. The rules *ibid* reveal that the service of government servant begins to qualify for pension from the very first day of his/her taking over the charge, irrespective of the fact whether his/her appointment and entry in to service was temporary or regular. It is also clear from sub-rule (i) that continuous temporary service of a civil servant shall also be counted for the purpose of pension and gratuity and by virtue of sub rule (ii), temporary and officiating service followed by confirmation shall be counted for pension and gratuity. It is undeniable fact that the NWFP Civil Servant (Amendment Bill), 2005 was passed by the provincial assembly on 5<sup>th</sup> July 2005 and

*Justice Saad*

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assented by the Governor of the Province on 12<sup>th</sup> July 2005 whereby section 19 was amended and all the employees of the Provincial Government selected for appointment in the prescribed manner to the post on or after 1<sup>st</sup> day of July 2001, but on contract basis were deemed to be appointed on regular basis. They were declared Civil Servants, however, were held disentitled for the pensionary benefits. Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013. The text of section 19 (4) (proviso 1 and 2) are reproduced as below:-

*"Provided that those who are appointed in the prescribed manner to a service or post on or after the 1<sup>st</sup> July, 2001 till 23<sup>rd</sup> July, 2005 on contract basis shall be deemed to have been appointed on regular basis:*

*Provided further that the amount of Contributory Provident Fund subscribed by the civil servant shall be transferred to his General Provident Fund."*

14. From bare reading of section 19 of Amendment Act, 2005 and 2013 respectively, it is manifest that the persons 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.

*See Section 19*

15. We deem it appropriate to mention here that question of interpretation and true import of the term pension was raised before the august Supreme Court of Pakistan in case titled "Government of NWFP through Secretary to Government of NWFP Communication & Works Department, Peshawar Vs Muhammad Said Khan and others (PLD 1973 Supreme Court of Pakistan 514) wherein it was held that:

*"It must now be taken as well settled that a person who enters government service has also something to look forward after his retirement to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well settled that pension like salary of a civil servant is no longer a bounty but a right acquired after putting a satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."*

16. In case titled "Secretary to Govt: of the Punjab, Finance Department Vs M. Ismail Tayer and 269 others" 2015 PLC (CS) 296, the august Supreme Court of Pakistan was pleased to held that the pensionary benefits is not a bounty or ex-gratia payment but a right acquired in consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant.

*Looked Same*

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17. For what has been discussed above, we by allowing these writ petitions, issue a writ to the respondents departments to pay pension of the deceased employees to the petitioners/LRs of the deceased.

Announced:  
22.06.2017  
Sraaj Afridi P.S.

Look Sam  
JUDGE  
JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY  
EXAMINER  
Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
the Qanoon-e-Shahadat Act 1984  
18 OCT 2023

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Prepared By: U. Afridi

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Dairy No. 11522  
Date 7/11/23  
Health Department

To,  
The Secretary Health  
Khyber Pakhtunkhwa Peshawar

Through: Proper Chanel

Subject: DEPARTMENTAL APEAL

Respected Sir,

It is stated that I was appointed as Medical Officer on 22/11/95 on contract basis in health department. Then my service was regulated w.e from 01/07/2001 under 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 9Amendment) ACT 2013 vide Notification No So (E) H-11/3-18/2016 dated 17/10/2017 and there was no gap between my contract and regular service.

Now I got retired from my service on 10/06/2023 as Principal Medical Officer (PMO) but the period of contract employment from 22/11/95 to 01/07/2001 is not counted in my service and similarly pensionary benefits are not given to me.

Therefore I please accept my humble request (Appeal) on Priority basis enabling me to receive my pension benefit from the date of my contract appointment i.e 22/11/95 as decided by Khyber Pakhtunkhwa Civil Service Tribunal Peshawar ordered on 04/01/2023.

Copy attached:

- 1. Copy of court decision of Khyber Pakhtunkhwa Civil Service Tribunal

(Dated: 17 October 2023)

*Addressed*  
27/10/2023

Obediently Yours,  
Dr. Habib Ullah Khan  
Ex. PMO Health Kohat

*Handwritten signature*

ATTACHED

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6C-10-4342  
1000-6151563

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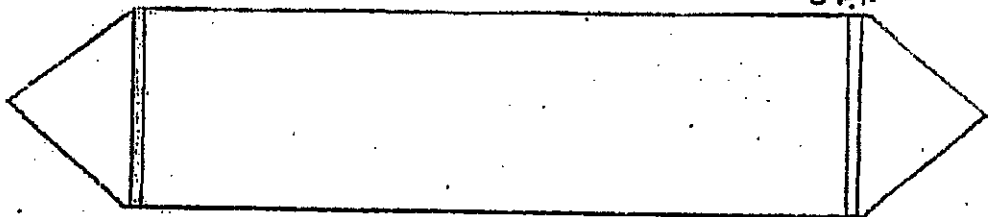
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### اسماء

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