

BEFORE THE HONOURABLE SERVICE
TRIBUNAL KPK PESHAWAR
CAMP COURT ABBOTTABAD.

Service Appeal No.1635/2022

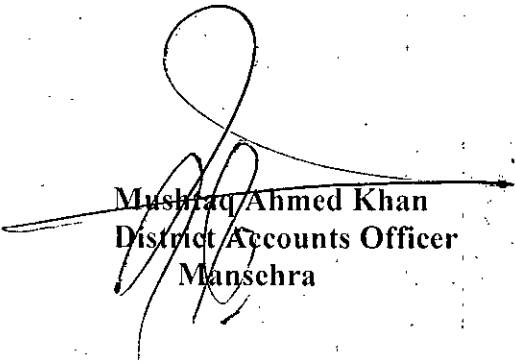
SAIMA NAZ..... (APPELLANT)

VERSUS

3. District Accounts Officer Mansehra etc....RESPONDENTS.

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Mushfiq Ahmed Khan
District Accounts Officer
Mansehra

30-05-2024
A. A. A. A.

BEFORE THE HONOURABLE SERVICE
TRIBUNAL KPK PESHAWAR
CAMP COURT ABBOTTABAD.

Service Appeal No.1635/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12016

Dated 01-04-2024

SAIMA NAZ..... (APPELLANT)

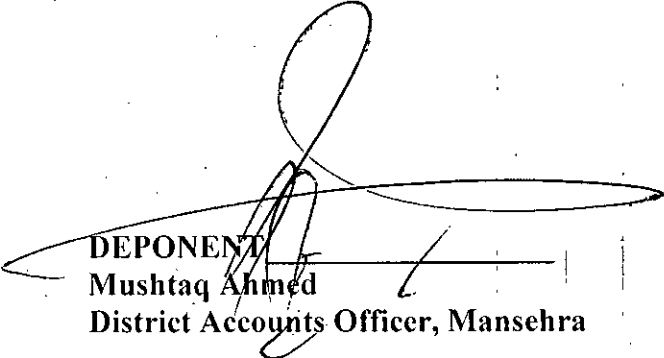
VERSUS

2. District Accounts Officer Mansehra etc....RESPONDENTS.

AFFIDAVIT

I, MUSHTAQ AHMED KHAN DISTRICT ACCOUNTS OFFICER MANSEHRA (REPRESENTATIVE) DO HEREBY SOLEMNLY AFFIRM AND DECLARE ON OATH THAT THE CONTENTS OF FORE-GOING PARA-WISE COMMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND NOTHING HAS BEEN CONCEALED OR SUPPRESSED FROM THIS HONOURABLE TRIBUNAL.

IT IS FURTHER STATED ON OATH THAT THE ANSWERING RESPONDENT, HAVE NEITHER BEEN PLACE EX-PARTE NOR THEIR DEFENSE STRUCK OFF/ LOST.


DEPONENT
Mushtaq Ahmed
District Accounts Officer, Mansehra

ATTESTED

Muhammad Adil

OATH COMMISSIONER

Advocate Mansehra

BEFORE THE HONOURABLE SERVICE

TRIBUNAL KPK PESHAWAR

CAMP COURT ABBOTTABAD.

Service Appeal No.1635/2022

Khyber Pakhtukhwa
Service Tribunal

Diary No. 12016

Dated 01-04-2024

SAIMA NAZ..... (APPELLANT)

VERSUS

1. District Accounts Officer Mansehra etc....RESPONDENTS.

PARA WISE COMMENTS/WRITTEN REPLY ON BEHALF

OF RESPONDENTS 01

PRELIMINARY OBJECTIONS:-

1. That the appellant has got no cause of action and locus standi.
2. That the appellant has concealed material facts from this Honorable Tribunal.
3. That the instant service appeal is based on malafide intentions.
4. That the appellant has not come to this Honorable Tribunal with clean hands.
5. That the appellant is not entitled for any relief from this Honorable Tribunal.
6. That the instant service appeal is against the prevailing law and rules.
7. That the appeal is based on malafide intentions, just to put extra pressure on the Respondents for gaining illegal service benefits.
8. That the instant service appeal is not maintainable in its present form.
9. That the instant service appeal is time barred, hence not maintainable.
10. That the service appeal of the appellant is time barred by law and not maintainable in the eye of Law.
11. That the appeal is bad for mis-joinder & non joinder of necessary & proper parties.

FACTS.

1. Para No.1 pertains to respondent No.03.
2. Para No.2 is incorrect hence denied. The services of appellant were regularized w.e.f 24.09.2009 not 01.01.2009 (clarification of Establishment Department attached as Annexure-A).
3. Para No.3 is correct that this office issued Pay Slip to the appellant which was later on revised with

reference to clarification received from Establishment Department (Annexure-A).

4. Para No.4 is correct.
5. Para No.05 is incorrect as recovery was made on the basic of clarification received (Annexure-A).
6. Para No.6 is correct as this office revised the pay of appellant as per clarification of Establishment Department which is as per rules & regulations (Annexure-A).
7. Para No.7 is correct but clarification regarding date of regularization was received in year 2013.
8. Para No 8 needs no comments.
9. Para No 9 needs no comments as the services of the appellant were regularized under the NWFP Employees (Regularization of Services) ordinance 2009 not NWFP Civil Servants (Regularization of Services)(amendment) bill 2008.
10. Para No 10 is correct.
11. Para No 11 is incorrect hence denied. The services of appellant were regularized w.e.f 24.09.2009 not 01.01.2009.
12. Para No 12 pertains to Respondent No .02.
13. Para No 13 needs no comments.

GROUNDS:-

- a. No Comments.
- b. Para B is incorrect. The services of appellant were regularized w.e.f 24.09.2009 not 01.01.2009.
- c. Para No.3 is correct that this office issued Pay Slip to the appellant which was later on revised with reference to clarification received from Establishment Department.
- d. Para D is incorrect is incorrect as recovery was made on the basic of clarification received.
- e. Para E is incorrect as this office revised the payslip of the appellant in light of clarification received from Establishment Department Khyber Pakhtunkhwa which is not a subordinate office by any mean.
- f. Para F is incorrect. The services of appellant were regularized w.e.f 24.09.2009 not 01.01.2009.
- g. Para G is incorrect hence denied and already replied before.

In light of the above submissions, it is therefore prayed that the appeal in hand may graciously be dismissed with cost being no solid grounds.

Mushtaq Ahmed Khan
District Accounts Officer,
Manshura

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

SAIMA NAZ (PETITIONER)

VERSUS

1. District Accounts Officer Mansehra etc....**RESPONDENTS.**

AUTHORITY LETTER

I Mushtaq Ahmed Khan District Accounts Officer Mansehra do hereby authorized Mr. Shahid Iqbal, Additional District Accounts Officer (BPS-18) of this office to appear before Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar Bench in case Petition No **1635/2022** titled SAIMA NAZ VS District Accounts Officer Mansehra etc.


(Mushtaq Ahmed Khan)

**District Accounts Officer
Mansehra.**



W. J. A.

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Office of the

DISTRICT ACCOUNTS OFFICER, MANSEHRA

NO: PR-I/DAO/Man/2021-22/ 821

Dated 27/06/2022

To

Mrs Saima Naz (SST)
GGCMS Faqirabad, Tajar District Mansehr

*Touqeer
Seraf*

Subject:

UN-EXPLAINED/UN JUSTIFIED RECOVERY/DEDUCTION OF OVER PAYMENT AMOUNTING TO RS.201,237/= ON INSTALLMENTS BASIS RS.13820/= I/R MRS SAIMA NAZ SST GGCM FAQIRABAD TAJAL MANSEHRA (PERSONAL NO.00433110)

Reference: Your Application received to this office vide Diary No.6021 dated 24.06.2022, on the above cited subject.

- 2- Wit reference to your Application, *ibid*, it is inform that;
- a) Your services, being a Contract Employees of the Government of Khyber Paktunkhawa, along with other such employees, was regularized by the Government through Act of Provincial Assembly (Act No.XVI of 2009) w.e.f 24.09.2009. The Provincial Government in Establishment Department vide letter No. SOR-IV(ED)1-4/2013 dated 31.Octobar 2013, addressed to the Accountant General, (Khyber Pakhtunkhawa) Peshawar, issued detailed clarifications on various points arising from the implementation of Act 2009 and endorsed the views/comments of Establishment Department, Law Department and Finance Department on relevant points/queries.
 - b) According to clarification at Sl 17 & 18 (relevant portion of enclosed) all the contract employees of Provincial Government, who were in service as on 31st August 2008, stood regularized as Civil Servant from the date of promulgation of Act No.24.09.2009.
 - c) The grant of Annual Increment to a civil servant is regulated by Rule-7 of the KP Civil Servants Pay Revision Rules 1978, whereunder, at least six(6) month service is required, at the stage of pay, for grant annual increment on 1st December of a calendar year. In the cases, under discussion, the condition of completion of service of six (6) month as civil servant for accrual of annual increment on 1.12.2009 does not fulfill (i.e. from 24.09.2009 to 30.11.2009).
 - d) By virtue of clarifications of provincial government, in the matter of grant of annual increments to those contract employees who had been regularized under Act 2009, explained here above, the Applicant as well as other similar employees, were held not entitled to annual increments on 1.12.2009 which they already drawn.
 - e) The District Accounts Officer being Disbursing Officer of public money is, under obligation vide Rule 213, 214 & 224 of Treasury Rules (Vol-I) read with Rule 10 of the General Financial Rule (Vol-I), to recover the public money over-paid to a civil servant. In order to discharge its duty, as demanded by rules, this office has conveyed /intimated the facts to the Applicant by issuing him a Revise Pay Slip and mentioning clearly therein the amount over-drawn and recoverable from her. Further, to mitigate her hardships, recovery of overpaid amount started in installments instead of in lump sum in terms of Rule 215 of the Treasury Rules.

Mushad

3- By foregoing in view, it would be abundantly clear that this office has acted, in the subject matter, quite in accordance with relevant rules/orders of the government being its legal obligations and no *malafide* has been permitted to the Applicant, as appears from her application under reference.

[Signature]
District Accounts Officer
Mansehra



Government of Khyber Pakhtunkhwa
ESTABLISHMENT DEPARTMENT
(Regulation Wing)

No. SOR.IV(EB)/1-4/2013/
Dated, Peshawar, the Oct: 31, 2013

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So [Signature]

To

The Accountant General,
Khyber Pakhtunkhwa.

**SUBJECT: ANNUAL INCREMENT TO PERSONS APPOINTED ON CONTRACT/
ADHOC BASIS**

Dear Sir,

I am directed to refer to your letter No.HAD/Adhoc/Cont:Apptt:/
Annual Inc./2012 13/1808 dated December 04, 2012, on the above captioned
subject and to state that the issues raised were considered in this Department.
Comments of Finance and Law Departments were also taken in the matter. The
comments of the three departments are forwarded in consolidated form, with
the advice to issue necessary instructions to your field offices to take corrective
measures accordingly.

Yours faithfully,

Encl: As Above

[Signature]
(Ishfaq Ahmad)
Section Officer (R-IV)



Accountant General Khyber Pakhtunkhwa Peshawar
Phone: 091 2211250-51

No.11-24 Other Allowances Master/2013-14/ 2066

Dated 27/11/2013

Copy for information and Compliance to:

1. All DAOs/AAGs in Khyber Pakhtunkhwa.
2. HR Lab
3. All Payroll Sections (Local).
4. CIA CGB

S- AC (reg. execution party)

[Signature]
27/11/13
ACCOUNTS OFFICER (HAD)

Attended [Signature]

27/11/13

36
10/11/13

6	On introduction of contract policy, 2002 most of the DAOs presumed that the 1988 contract policy has (Annex-II) AG Office is required to take	As stated above, the contract policies were discussed in detail in the meeting held on 1/3/2012 and found independent of each other had independent sphere of the other. Accountant General office may examine each case on its own facts & footing.
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S. No.	Points Raised By AG Office	Comments of Establishment Department	Comments of Law Department	Comments of Finance Department
1	2	3	4	5
1	47 Civil Judges were appointed on contract basis in 2007 without break. The period was extended and they were regularized in light of 2009 Act.	Section 3 of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 (Annex-II), provided for regularization of services of the persons appointed on ad-hoc/contract basis pending nominees of the Public Service Commission and holding their posts on 31/12/2008 or till the commencement of the Act. The regularization was given effect from the date of commencement of the previous enactment i.e. Employees (Regularization of Services) Ordinance, 2009. Since services rendered prior to that date have not been regularized, such period of the services is still contractual and are to be treated according to terms & conditions of their appointment. According to section 1 (3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, section 1 and section 25 apply to contract employees while the remaining provisions of the Act including section 3 apply to civil servants. Therefore, the contractual and regular periods of appointment are to be treated independent of each other. Law Department may also comment.	Civil judges were regularized under Section-3 of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 which states as under:- All employees including recommendees of the High Court appointed on contract or ad hoc basis and holding that post on 31st December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post; Provided that the service promotion quota of all service cadres shall not be affected. The regularization was made with effect from (24.9.2009) Promulgation of Ordinance. They were not included in the Ordinance, VII of 2009. Contractual Period of their appointment prior to the said date shall be treated not as regular but as contractual under section 25 of the Civil Servants Act, 1973.	
2	Mr. Akbar Ali Civil Judge appointed on contract on 8/1/2008 was allowed annual increment on 1/12/2008 by DAO Abbottabad. But on transfer of the officer to Haripur he	This particular case was discussed/ decided in the meeting held on 1/3/2012. Terms & conditions of the appointment did not allow annual increment (Annex-II).	Prior to regularization under the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009, Mr. Akbar Ali, Civil Judge was on contract basis and was not allowed to draw annual increment.	

Attended
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[Signature]

entitled for annual increment.

The appointment of EACs/II/Adga-Cazis for Nizam-e-Adal Regulation in Muzakand were made under Section-25 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 independent of any other contractual policy.

19 Whether CP Fund As discussed at deductions and increments allowed to EAC/Adga-Cazis is same as for the Fund of EACs presumed to be same as for the Fund of EACs.

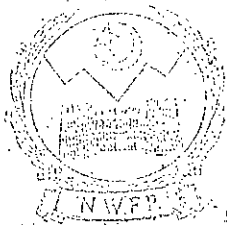
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views of Law Dept

<p>services will be pensionable, what will be the status of police and judiciary.</p> <p><i>Point raised by AG.</i></p>	<p><i>views of Establishment Dept</i></p>	<p>Scheme, however, Civil Servants (Amendment) Act, 2013 has categorically abolished the C.P Fund Schemes for all Provincial Civil Servants including Police, Jail & Judiciary and settled the issue perpetually.</p>	<p><i>Comments of Finance Dept</i></p>
<p>17 The contract employees has been regularized in amendment Act-2009 w.e.f 1/1/2009, whereas Establishment Department has given the effect w.e.f 24/9/2009, it need clarification that whether effect given in Act, can be amended by an office order (i) What will be the status of the employees whose contract period ended on 31/12/2008, and has been regularized without any extension order w.e.f 24/9/2009.</p>	<p>An Ordinance was promulgated on 24/9/2009 for regularization of the services. However, it was subsequently repealed by an Act (the Employees (Regularization of Services) Act, 2009). The Act has been given effect from the commencement of the repealed Ordinance. Hence, the regularization takes effect from that date. As regards the service break, from 31/12/2008 (the last date of contract) to 24/9/2009 (the commencing date), the law is silent. Finance Department will have to comment.</p>	<p>Contract Employees were regularized under Section-3 of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 which states as under: All employees including recommendees of the High Court appointed on contract or ad hoc basis and holding that post on 31st December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post; Provided that the service promotion quota of all service cadres shall not be affected. The regularization was made with effect from (24.9.2009) Promulgation of Ordinance. As regard the service break from 31-12-2008 the last date of contract to 24.9.2009 the commencing day, the Law is silent.</p>	<p>As regard service break, condonation sanction from the competent authority will be obtained.</p>
<p>18 Whether the contract appointees subsequently regularized w.e.f. 24/9/2009 under Amendment Act 2009, are entitled for annual increment as on 1/12/2009.</p>	<p>The issue lies before Finance Department to clarify.</p>	<p>Subsequent to their Regularization, all the employees are entitled for annual increments as prescribed</p>	<p>The contract appointees subsequently regularized w.e.f 29.9.2009, under Amendment Act- 2009 are not entitled to annual increment on 01.12.2009 as regular service of six months is required to make them</p>

Arrested

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Amir F

North-West Frontier Province

Published by Authority

PESHAWAR, THURSDAY, 24TH SEPTEMBER, 2009.

GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE
LAW, PARLIAMENTARY AFFAIRS AND HUMAN RIGHTS
DEPARTMENT

NOTIFICATION

Peshawar, dated the 24th September, 2009.

Legis:1(3)80/8428-33.—The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information:

THE NORTH-WEST FRONTIER PROVINCE
EMPLOYEES (REGULARIZATION OF SERVICES) ORDINANCE, 2009.

(N.-W.F.P. Ord. No. VII of 2009)

AN
ORDINANCE

to provide for the regularization of the services of certain employees appointed on ad-hoc or contract basis.

WHEREAS it is expedient to provide for the regularization of the services of certain employees appointed on ad-hoc or contract basis, in the public interest, for the purposes hereinafter appearing;

AND WHEREAS the Provincial Assembly is not in session and the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 128 of the Constitution of the Islamic Republic of Pakistan, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

1. Short title and commencement.—(1) This Ordinance may be called the North-West Frontier Province Employees (Regularization of Services) Ordinance, 2009.

(2) It shall come into force at once.

Attested

True copy

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Definitions: (1) In this Ordinance, unless the context otherwise requires:-

- (a) "Commission" means the North-West Frontier Province Public Service Commission;
- (b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis, but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies;
- (c) "Government" means the Government of the North-West Frontier Province;
- (d) "Government Department" means any department constituted under rule 3 of the North-West Frontier Province Government Rules of Business, 1985, and does not include any section of a Department or an organization which is federally funded;
- (e) "law or rule" means the law or rule for the time being in force governing the selection and appointment of civil servants; and
- (f) "post" means a post under Government or in connection with the affairs of Government to be filled in on the recommendation of the Commission.

(2) The expressions "adhoc or contract appointment" and "civil servant" shall have the same meanings as respectively assigned to them in the North-West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act No. XVIII of 1973).

3. Regularization of services of certain employees.— (1) Notwithstanding anything contained in any law or rule for the time being in force, but subject to preferential right of appointment of a recommendee of the Public Service Commission, if any, recommended before the promulgation of this Ordinance, all employees holding appointment to a post on adhoc or contract basis and continuing as such till 31st December, 2009, in any Government Department shall be deemed to have been validly selected for appointment on regular basis on the 1st day of January, 2009:

Provided that—

- (a) such employees were appointed against those posts which fall within the ambit of the Commission;
- (b) the services of such employees shall be deemed to have been regularized under this Ordinance only on the publication of their names in the official Gazette;
- (c) such employees possess the qualification and experience prescribed for the posts to which they are appointed on regular basis;

ایمیل خان مومند
سیکرٹری نائب صدر (ایکاد)
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0321-9118543

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- (d) the candidates recommended by the Commission till the date of promulgation of this Ordinance shall have the first right for appointment against the posts instead of employees to be regularized under this Ordinance; and
- (e) such employees were appointed after observance of all codal formalities/criteria.

(2) For the purpose of sub-section (1), the date, on which the recommendation of the Commission is received in the concerned Government Department, shall be deemed to be the date of recommendation of the Commission.

4. Determination of seniority.— (1) The employees whose services are regularized under this Ordinance shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Ordinance, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Ordinance, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.

(2) The seniority *inter se* of the employees, whose services are regularized under this Ordinance within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:

Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

Peshawar,
dated the
12-09-2009.

OWAIS AHMED GHANI
Governor of the North-West Frontier Province

BABSIHAN GUL WAZIR
Secretary to Govt. of the North-West Frontier Province
Law, Parliamentary Affairs and Human Rights
Department

Attested

Printed and published by the Controller,
P.G. & Staty. Deptt., NWFP, Pesh.

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THE NORTH-WEST FRONTIER PROVINCE CIVIL SERVANTS (REGULARIZATION OF SERVICES) (AMENDMENT) BILL, 2008.

A BILL

further to amend to provide for regularization of services of certain civil servants appointed on Ad hoc basis.

Preamble:- WHEREAS it is expedient in the public interest to provide for regularization of the services of certain civil servants appointed on ad hoc basis.

It is hereby enacted as follows:-

1. Short title and commencement:- (1) This Act may be called the North-West Frontier Province Civil Servants (Regularization of Services) (Amendment) Act, 2008.

(2) It shall come into force at once.

2. Amendments of section 3 of NWFP Act No. I of 1968.- In the said Act, in section 3 the word "ad hoc" may be substituted by the word "contract" and the words "commencement of this Act" may be substituted by the words "1st day of July, 2007".

3. Deletion of sub-section (2) of section 5 of NWFP Act No. I of 1968.- In the said Act sub-section (2) of section 5 may be deleted.

STATEMENT OF OBJECTS AND REASONS

There is great unrest amongst the contract employees and in order to save their future, hence this Bill.

Copy - P.m

Abdul Akbar
26/8
ABDUL AKBAR KHAN
Member-in-charge.

Attested

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Minister for Justice
(NWFP)

[Signature]

Minister for Justice
(NWFP)
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0301-9118548

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ایڈول خان پروموتو
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PROVINCIAL ASSEMBLY OF N.-W.F.P.

MINUTES OF THE MEETING OF THE SELECT COMMITTEE
ON NWFP CIVIL SERVANTS REGULARIZATION OF SERVICES
(AMENDMENT) BILL, 2008.

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The third meeting of the Select Committee on NWFP Civil Servants Regularization of Services (Amendment) Bill, 2008 was held under the Chairmanship of Mr. Khushdil Khan Advocate, Deputy Speaker, Provincial Assembly of NWFP on 23rd May, 2009 at 10:30 A.M. in the Conference Room of the Provincial Assembly Secretariat.

2. The following members of the Committee attended the meeting:-

- | | | |
|----|---------------------------|--------------|
| 1. | Mr. Abdul Akbar Khan, MPA | Member/Mover |
| 2. | Mr. Ghani Dad Khan, MPA | Member |
| 3. | Mst. Yasmin Zia, MPA | Member |

3. The following officers attended the meeting:-

- | | |
|----|---|
| 1. | Mian Sahib Jan, Secretary Establishment |
| 2. | Mr. Muhammad Arifeen, Secretary Elementary & Secondary Education. |
| 3. | Mr. Fazeed Qureshi, Special Secretary Establishment |
| 4. | Mr. Hazrat Masood Mian, Additional Secretary Higher Education. |
| 5. | Mr. Abdal Wahab, Additional Secretary Health. |
| 6. | Mr. Farhatullah Khan, Additional Secretary, Law. |
| 7. | Mr. Asghar Shah Khilji, Deputy Secretary, Law. |

4. The meeting commenced with the recitation from the Holy Qur'an.

5. The Chairman, welcomed the participants and gave forum to the mover, who briefly stated that three meetings of the Committee were held on the Bill in question, and he suggested that the Committee should confine its self to the Bill referred to it by the House.

6. He further stated that mainly there are two amendments in the Bill, which provides that in section 3 of the NWFP Civil Servants (Regularization of Services) Act No. 1 of 1988 the word "ad hoc" may be

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Act" may be substituted by the words "1st day of July, 2007". He added that presently all the appointments in the departments are made on the contract basis in contravention of law, as there is no such provision, therefore he brought the amending Bill in question to get all adhoc appointees regularized on one hand, and on the other help the departments regularize their irregular action.

7. The Secretary, Elementary & Secondary Education Department stated that the word contract is not mentioned in the definition of the Civil Servants Act, 1973 and the word adhoc appointment is defined in the said Act. Similarly, appointment under rule 14 of the NWFP (Appointment, Promotion and Transfer) Rules, 1989 provides for appointments on adhoc basis.

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8. Mr. Khushdil Khan Advocate, Deputy Speaker/Chairman said that section 25 of the Civil Servants Act, 1973 provides for appointment on contract basis but the department construes it only to the project post, which has not been envisaged in the said section. He asked the department for Government opinion on the subject Bill. The Secretary, Establishment Department informed the Committee that the Government has not yet finalized its opinion, but he stated that if the said Bill is passed by the Assembly then amendments will also be required in the NWFP Civil Servants Act, 1973, the NWFP Public Service Commission Ordinance, 1978 and the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

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9. The Additional Secretary, Law, Parliamentary Affairs Department said that actually the Provincial Assembly was competent to legislate but it should not be inconsistent to the provision of the Constitution. He further stated that the Supreme Court of Pakistan in human right case 104 of 1992 held in its order 19-01-1993 that converting in adhoc appointments into regular appointments is prima facie the violation of fundamental rights. He was of the view that amendment, if any should be made in Civil Servants Act instead of the proposed legislation.

10. On this occasion the Secretary to Committee stated that the scope of this Committee is confined to the present Bill.

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of the Committee and can not go out of its jurisdiction. In support of his contention he referred to rule 93 of the Provincial Assembly of NWFP Procedure and Conduct of Business Rules, 1988 with further explanation from practice in procedure of Parliament (M.N. Kaul 4th Edition). His views were also supported by Mr. Abdul Akbar, MPA.

11. The Committee unanimously agreed to Bill brought by Mr. Abdul Akbar, MPA/Mover, with the following amendments:-

- i. Long title of the Bill may be rephrased as under:-
"further to amend the NWFP Civil Servants (Regularization of Services) Act, 1988."
- ii. Preamble should be rephrased as follows:-
"Preamble:- WHEREAS it is expedient further to amend the North-West Frontier Province Civil Servants (Regularization of Services) Act, 1988 (N.-W.F.P. Act No. 1 of 1988), for the purposes hereinafter appearing;"
- iii. In clause 2 of the Bill the words and figures "1st day of July, 2007" may be substituted by the words and figures "1st day of January, 2009."
- iv. Clause 3 of the Bill being redundant may be deleted

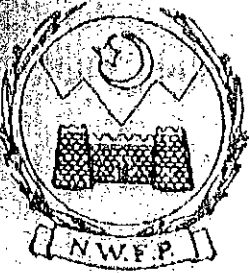
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12. The meeting was adjourned with a vote of thanks from the Chair.

Amir
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[Signature]

(AMANULLAH)
Senior Additional Secretary,
Provincial Assembly of NWFP



GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT

(REGULATION WING)

No. SOR-VI/E&AD/1-13/2009
Dated Peshawar, the 4th November, 2009

Y-37
Amir
P-53

To

1. Additional Chief Secretary, Govt of NWFP, Planning & Development Department.
2. Additional Chief Secretary (FATA), FATA Secretariat Peshawar.
3. Additional Chief Secretary Govt of NWFP Home & Tribal Affairs Department.
4. The Senior Member, Board of Revenue, NWFP.
5. All Administrative Secretaries to Govt. of NWFP.
6. The Secretary to Governor, NWFP.
7. The Principal Secretary to Chief Minister, NWFP.
8. All Divisional Commissioners in NWFP.
9. All Heads of Attached Departments in NWFP.
10. All District Coordination Officers in NWFP and Political Agents in FATA.
11. The Registrar Peshawar High Court, Peshawar.
12. The Registrar, NWFP Service Tribunal, Peshawar.
13. The Secretary, NWFP Public Service Commission, Peshawar.

Tour copy
Singh

Subject: The North West Frontier Province Employees (Regularization of Services) Act, 2009 (NWFP Act No XVI of 2009).

Dir Sir,

I am directed to refer to the subject and to enclose a copy of Gazette Notification No.PA/NWFP/Bills/2009/38472 dated 24-10-2009 regarding the North West Frontier Province Employees (Regularization of Services) Act, 2009 (NWFP Act No XVI of 2009) for information and necessary action.

Yours faithfully,

(KALEEM ULLAH)
SECTION OFFICER (REG-VI)

Attended
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rel. to cases
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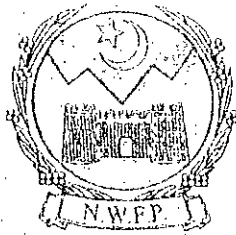
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Copy forwarded to:

1. All Additional Secretaries, Deputy Secretaries and Section Officers in Establishment & Administration Department.
2. Private Secretaries to all Provincial Ministers in NWFP.
3. Private Secretary to Chief Secretary NWFP, Peshawar.
4. Private Secretary to Secretary Establishment Department.
5. Private Secretary to Secretary Administration Department.
6. The Incharge Resource Centre, Estt. & Admn. Department.

PS
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Additional Secretary
E&SE
806

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII

GAZETTE

21
P-54

1-1

North-West Frontier Province

Published by Authority

PESHAWAR, SATURDAY, 24TH OCTOBER, 2009.

PROVINCIAL ASSEMBLY SECRETARIAT
THE NORTH-WEST FRONTIER PROVINCE

NOTIFICATION

Dated Peshawar, the 24th October, 2009.

No.PA/NWFP/Bills/2009/38-472.—The North-West Frontier Province Employees (Regularization of Services) Bill, 2009 having been passed by the Provincial Assembly of North-West Frontier Province on 15th October, 2009 and assented to by the Governor of the North-West Frontier Province on 20th October, 2009 is hereby published as an Act of the Provincial Legislature of the North-West Frontier Province.

THE NORTH-WEST FRONTIER PROVINCE
EMPLOYEES (REGULARIZATION OF SERVICES) ACT, 2009.

(N.-W.F.P. ACT NO. XVI OF 2009)

(First published after having received the assent of the Governor of the North-West Frontier Province in the Gazette of the N.-W.F.P. (Extraordinary), Dated the 24th October, 2009).

*True copy
Said*

AN
ACT

to provide for the regularization of the services of certain employees appointed on adhoc or contract basis.

Preamble.—WHEREAS it is expedient to provide for the regularization of the services of certain employees appointed on adhoc or contract basis, in the public interest, for the purposes hereinafter appearing;

It is hereby enacted as follows:—

Affix
[Signature]

1. **Short title and commencement.**---(1) This Act may be called the North-West Frontier Province Employees (Regularization of Services) Act, 2009.

(2) It shall come into force at once and shall be deemed to have been taken effect at the promulgation of the Ordinance.

2. **Definitions.**---(1) In this Act, unless the context otherwise requires,-

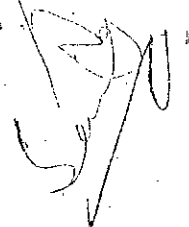
- (a) "Commission" means the North-West Frontier Province Public Service Commission;
- (aa) "contract appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment;
- (b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies;
- (c) "Government" means the Government of the North-West Frontier Province;
- (d) "Government Department" means any department constituted under rule 3 of the North-West Frontier Province Government Rules of Business, 1985;
- (e) "law or rule" means the law or rule for the time being in force governing the selection and appointment of civil servants; and
- (f) "post" means a post under Government or in connection with the affairs of Government to be filled in on the recommendation of the Commission.

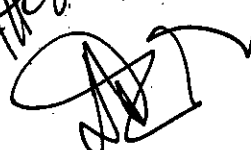
(2) The expressions "adhoc appointment" and "civil servant" shall have the same meanings as respectively assigned to them in the North-West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act No. XVIII of 1973).

3. **Regularization of services of certain employees.**--- All employees including recommendees of the High Court appointed on contract or adhoc basis and holding that post on 31st December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post:

Provided that the service promotion quota of all service cadres shall not be affected.

4. **Determination of seniority.**--- (1) The employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.

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(2) The seniority *inter se* of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:

Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

4A. **Overriding effect**--- Notwithstanding any thing to the contrary contained in any other law or rule for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rule to the extent of inconsistency to this Act shall cease to have effect.

5. **Repeal**--- The North-West Frontier Province Employees (Regularization of Services) Ordinance, 2009 (N.-W.F.P. Ordinance No. VII of 2009) is hereby repealed.

BY ORDER OF MR. SPEAKER,
PROVINCIAL ASSEMBLY OF
NORTH-WEST FRONTIER PROVINCE

AMANULLAH
Secretary,
Provincial Assembly of NWFP

Printed and published by the Manager,
Staty. & Ptg. Deptt., NWFP, Pesh.

True copy
Sent

Attached
[Signature]

TO,

THE SECRETARY,
FINANCE DEPARTMENT,
GOVERNMENT OF KHYBER PAKHTUNKHWA,
PESHAWAR

Annex J
P-57

SUBJECT: DEPARTMENTAL APPEAL AGAINST IMPUGNED LETTER NO.PR-I/DAO/MAN/2021-22 DATED 27/06/2022 ISSUED BY THE DISTRICT ACCOUNT OFFICER MANSEHRA, WHEREBY UNJUSTIFIED RECOVERY/DEDUCTION OF OVER PAYMENT OF AMOUNTING RS.201237/- ON INSTALLMENT BASIS @ RS.13820 PER MONTH IS RESULT OF CAPRICIOUS STOPPAGE OF ANNUAL INCREMENT 2009 GRANTED ON 01/12/2009 IS ARBITRARY, ULTRA VIRES, WITHOUT LAWFUL AUTHORITY, DISCRIMINATORY, RESULT OF MISINTERPRETATION AND MISREADING OF STATUTE AND WHIMSICAL EXERCISE OF POWER.

Respected Sir,

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Brief facts leading to the present departmental appeal are as under: -

1. That, the applicant, was appointed against the post of SST Female (Science-General) B-16 on contract basis as a stop-gap-arrangement by Director E&SE KP, Peshawar vide order No:5139-5197/A-14/SST/MF/Contract one Year dated 25/11/2008, whereas the name of the applicant is at serial No-283 of appointment order. *Copy of appointment order is attached as annexure "A-A7".*
2. That, services of the appellant were regularized against the post of SST (Female) BPS-16 w.e.f 01-01-2009 under the Khyber Pakhtunkhwa Employees (Regularization of Service) Act-2009 vide Directorate of E&SED Ends No: 2472-3956/F.No A-17/SF (F) Contract Appointment 2009) dated 11/12/2009. The name of appellant stood at serial No -235 of regularization order. *Copy of regularization order is attached as annexure "B-B3".*
3. That in pursuance of the Khyber Pakhtunkhwa Employees (Regularization of Service) Act-2009, services of the appellant and other SST (Females) were regularized by the Director of Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar w.e.f 01-01-2009, consequently District Account Officer Manshara issued pay slip in favour of appellant on 19-01-2009 and appellant continuously availed the annual increments due on 1st December of each Calendar years w.e.f 01-12-2009 to 4-9-2019.
4. That, applicant was awarded personal upgradation from BPS-16 to BPS-17 vide Government of Khyber, Pakhtunkhwa, E&SE Department notification No: SO (PE)E&SED/2-6/DPC Meeting 2019 dated 04/09/2019. That, in result of award of upgradation to B-17, District Account Officer Manshara issued revised pay slip on 04/09/2019 with the following entries on the body of pay slip, that are reproduced as below.
"Recovery of over payment amounting to Rs.201237/- up to 08/2020 may be recovered from the pay of the official". Copy of upgradation notification dated 4-9-2019 and revised pay slip dated 04/09/2019 are attached and marked as annexure "C & C1" respectively.
5. That, without any explanation/speaking order District Account Officer Manshara started recovery / deduction from the pay of appellant on monthly basis @ Rs.13820/- hence the appellant approach to the District Account Officer Manshara with the request to refund the recovered amount or issue speaking order / justification regarding unexplained deduction. *Copy of request dated 22-06-2022 and monthly salary statement for the month of November 2020 are attached and marked as annexure "D & D1" respectively*

[Signature]

6. That, in response to the request of the appellant, dated 22-6-2022, regarding unexplained deduction/over payment, District Account Officer Manselra issued the impugned order/letter dated 27-06-2022 in result of some in fructuous proceedings / explanation, of Government Khyber Pakhtunkhwa, arguing, that by-virtue of clarification of Provincial Government, in the matter of grant of annual increments to those contract employee who had been regularized under Act 2009, explained here above, the applicant as well as other similar employees, were held not entitled to annual increment on 01-12-2009 which they already drawn. Copy of impugned letter/order dated 27-6-2022 of DAO Manselra is attached and marked as annexure "E".

7. That Government of Khyber Pakhtunkhwa issued Civil Servants Regularization of services (Amendment Ordinance 2009), whereas section 3 of the said Ordinance is reproduced as below:

"Regularization of services of certain civil servants:- Not withstanding anything contained in any law or rule for the time being in force, but subject to preferential right of appointment of a selectee of the Public Service Commission, if any, selected before commencement of this Ordinance, all employees holding appointment to a post on contract / adhoc basis in any department of Government immediately before the 1st day of January, 2009 shall be deem to have been appointed on regular basis on the 1st day of January 2009." Copy of said ordinance is attached and marked as Annex "F to F9".

8. That, a bill dated 26-8-2008 was presented in Provincial Assembly of Khyber Pakhtunkhwa under the title "Khyber Pakhtunkhwa Civil Servants (Regularization of Services), (Amendments) Bill 2008 under the signature of Abdul Akbar Khan member in-charge. Whereas section 2 of the said bill is reproduced as below.

Amendments of section 3 of Act No.1 of 1988, In the said Act, in section 3 the word Adhoc may be substituted by the word Contract and the words "Commencement of this Act" may be substituted by the words from "1st day of July, 2007". Copy of Bill Dated 26-8-2008 is attached and marked as Annex G

9. That, as per minutes of the meeting of the select committees of the Provincial Assembly on NWFP Civil Servants, regularization of services (Amendment Bill 2008) vide para 11 unanimously agreed to bill brought by Mr. Abdul Akbar Khan / mover.

The amendments made vide para 11 (iii) is reproduced below:

The clause 2 of the bill the words and figures "1st day of July, 2007" may be substituted by the words and figures "1st day of January of 2009". Copy of the minutes of select committee are attached and marked as Annex H, H1. & H2

10. That, later on Government of Khyber Pakhtunkhwa passed Khyber Pakhtunkhwa Employees (Regularization of Service) Act-2009 and services of the certain employees were regularized who were appointed on adhoc or contract basis. Whereas Section-3 provides:-

"Regularization of services of certain employees .-- All employees including recommendees of High Court appointed on contract or adhoc basis and holding that post on 31st December, 2008 or till the commencement of this act shall be be deemed to have been validity appointed on regular basis having the same qualification and experience for a regular post." Copy of said Act is attached and marked as "I".

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Handwritten note: "True copy" with a signature.

Handwritten initials: "P-SE"

J-2

11. That, services of the appellant were regularized against post of SST Female w.e.f 01-01-2009 by the administrative department and appellant availed the annual increment regularly w.e.f 01-12-2009, With holding / stoppage of *annual increment of 2009 in the year 2019* merely in mechanical manner, without applying independent mind is the result of misreading, non-reading and mis-interpretation of statutes.

P-59

Respected Sir,

On acceptance of this departmental appeal, impugned deduction order of District Account Officer Manshehra dated 27-6-2022 and revised pay slip dated 4-9-2019 showing the over payment amounting to RS-201237 may please be set aside, declaring the same as null and void, Ab-initio vide with the direction to the District Account Officer Manshehra not to deduct the annual increment of 2009 from the salary of the appellant and the amount already deducted should be reimbursed to the appellant. As all similar placed employees of the education department are enjoying the said increment throughout the province, to avoid the discrimination under Article 4 and 25 of the constitution of the Islamic Republic of Pakistan 1973.

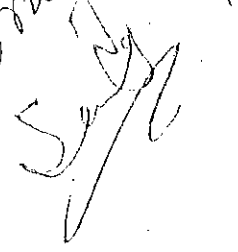
Dated: 25-07-2022

Yours Obediently



Mrs. Saima Naz, SST GGCMS-Faqirabad
Tajal Manshehra (Personal No.00433110)

Attested


True copy


Amex J-3

P-60

GST No. 12-009806 002 79



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MOA PLW
State: 119374

Unit: X26106

Name: MR. SABA
Phone: 0333296769
Address: MANSIRA

Name: KALIA LESTI ESTI-DA
Phone: 03006888888
Address: KPE PI SUWAR

Service Cost	280.0
Fuel Surcharge	0.0
Other Amount	0.0
VAS	0
Insurance CHG	0
GST	41
Premium	0
TOTAL	300.0

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K-61 Himmey K

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

SERVICE APPEAL NO. _____ /2022

SAIMA NAZ d/o MUHAMMAD IRFAN
SECONDARY SCHOOL TEACHER (SST) GOVERNMENT GIRL COMMUNITY
MODAL SCHOOL FAQIR ABAD TAJAL MANSEHRA,

(APPELLANT)

VERSUS

1. DISTRICT ACCOUNT OFFICER MANSEHRA
2. THE SECRETARY, GOVT OF KHYBER PAKHTUNKHWA, FINANCE
DEPARTMENT, PESHAWAR.
3. DIRECTOR ELEMENTARY & SECONDARY EDUCATION, KHYBER
PAKHTUNKHWA, PESHAWAR

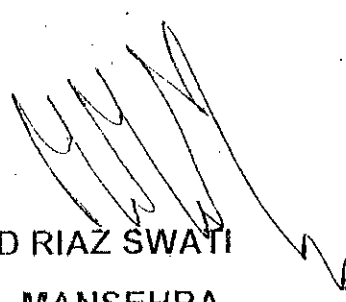
Respondents

I/We, SAIMA NAZ d/o MUHAMMAD IRFAN do hereby appoint and constitute MUHAMMAD RIAZ KHAN SWATI ADVOCATE, MANSEHRA to appear, plead, act compromise, withdraw or refer to arbitration for me/us as my/our counsel/advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated 10/11/2022


CLIENT(S)

ACCEPTED


MUHAMMAD RIAZ SWATI
ADVOCATE, MANSEHRA
Contact # 03335060225

