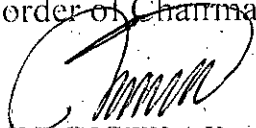


# FORM OF ORDER SHEET

Court of \_\_\_\_\_

**Appeal No. 454/2024**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/03/2024	<p>The appeal of Dr. Mustafa resubmitted today by Malik Akhtar Ali Khan Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on 07.05.2024. Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman  <b>REGISTRAR</b></p>

جیسے کہ

The appeal of Dr. Mustafa received today i.e on 05.03.2024 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. 1&3 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- index of the appeal is incomplete.
- 3- Appeal has not been flagged/marked with annexures marks.
- 4- Annexures/documents referred to in the memo of appeal are not attached with the appeal be placed on it.
- 5- Copy of appointment order attached with the appeal is illegible which may be replaced by legible/better one.
- 6- Three more copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent may also be submitted with the appeal.

No. 519 /S.T.

dt. 6/3 /2024.

*[Signature]*  
6/3/24

REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

*[Signature]*  
Malik Akhtar Ali Adv.  
High Court Mardan.

Resubmitted after removing all objections

*[Signature]*

08/3/2024

22<sup>3</sup> → Resubmitted after filing judgment  
2024  
in Appeal No 541/2019. decided on 22<sup>4</sup> 2022.

*[Signature]*

22/4/2024

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

Service Appeal No. 454 /2024

Dr. Mustafa ..... Appellant

**VERSUS**

Govt of Khyber Pakhtunkhwa & Others ..... Respondents

**INDEX**

S.#	Description of Documents	Annex	Pages
1	Service Appeal	1	5
2	Affidavit		6
3	Address of the Parties		7
4	Copy of Appointment Order		8
5	Copy of Departmental Appeal		9
6	Wakalatnama		11

*Copy of judgment of this Honorable Court*

Through

Appellant

*Malak Akhtar Ali Khan*

Advocate at Mardan

Cell: 0302-8192993

0346-4984757

Dated: \_\_\_\_\_

↓

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

Service Appeal No. 454 /2024

Dr. Mustafa,

Ex-Medical Officer,

Category-C Hospital, Khwaza Khela Swat..... **Appellant**

**VERSUS**

Secretary to Govt of Khyber Pakhtunkhwa, Health Department,  
Civil Secretariat, Peshawar.

..... **Respondents**

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974  
AGAINST THE DECISION OF RESPONDENTS NO.1 TO  
WHEREBY THEY HAD NOT CONSIDERED THE CONTRACT  
PERIOD OF APPELLANT SERVICES W.E.F 18.12.1995 TO  
01.07.2001, WHEREBY HIS CONTRACT PERIOD ABOUT 5/6  
YEARS WAS NOT CONSIDERED FOR PENSIONERY BENEFITS  
AND LENGTH OF SERVICE, IN VIOLATION OF THE JUDGMENT  
OF HONORABLE SUPREME COURT OF PAKISTAN LAID DOWN  
IN 2008 SCMR PAGE-380, 1998 SCMR 969 AND 1993 SCMR  
906.**

**Respectfully Sheweth:**

1. That on 28.12.1995, the appellant was appointed as Medical Officer (BPS-17) on contract basis, in the Health

2

**Respectfully Sheweth:**

1. That on 28.12.1995, the appellant was appointed as Medical Officer (BPS-17) on contract basis, in the Health Department under supervision of respondent No.1.
2. That the appointment on contract basis as stopgap arrangement.
3. That in government of Khyber Pakhtunkhwa Civil Servants Amendment Act, 2013, the appellant was regularized w.e.f 01.07.2001.
4. That the intervening period w.e.f 18.12.1995 upto 01.07.2001 was not considered for pensionery benefits and length of service.
5. That the appellant filed W.P.No.358/2017 before Peshawar High Court Peshawar, whereby, appellant was directed to approach service tribunal for his grievances, which may kindly be considered as departmental appeal.
6. That appeal No. 541 of 2019 decide by this Honorable Court with the direction that the appellant is entitled to

3

the Pensionery benefit for the for the intervening period from 1995 to 2001. (copy of judgment is attached)

**GROUND:**

- A. That the act of respondent No.1 is illegal, against wrong and clear violation of authoritative judgment of Apex Supreme Court of Pakistan, therefore needs to be struck down.
- B. That respondent No.1, while the intervening period of appellant w.e.f 18.12.1995 till 01.07.2001 for the purpose of pensionery benefits and lengthy of service, is unjustified, illegal as there was neither any break in his services neither nor adverse remarks against him. As the appellant was performing the similar duty, same responsibility, and same obligation no different in his duties, responsibility and obligation to that of regular employees/doctors duly appointed by competent authority. Such ignorance of intervening period is not permissible in the eye of law reliance is placed on *PLD 1970 Quetta 115*.

- 4
- C. That in view judgments reported as 1993 SCMR 906 and 1998 SCMR 969, period during which appellant held post on contract / adhoc basis shall be considered for move over pensioner benefits and length of service, but the same was wrongly denied to the appellant.
- D. That in view of 2018 SMCR 380 that any civil servant works on temporary adhoc/ contract basis for 10 years in BPS-17 shall be entitled to be promoted to BPS-18. Meaning thereby contract period shall be considered from seniority move over etc, but respondents by ignoring such authoritative judgment of apex court have committed gross illegalities.
- E. That the judgments of apex court are binding on all organs of the country and are under legal obligation to follow the verdict of apex court.
- F. That is was held in PLD 1970 Quetta 1 that when there is no difference in performing duty of Medical Officer on contract basis as to that compare of regular basis appointment. Because contract and regular Medical Officers perform similar duty, same responsibility and

similar obligation.

- G. That in view of 2021 SCMR 1546, that the appellant is entitled to the pensionary benefits.
- H. That the appellant seeks leave of this Honorable Tribunal to agitate further grounds at the time of hearing.

It is, therefore, most humbly prayed that on acceptance of this appeal, this Honorable Tribunal may be pleased to direct the respondents to consider the intervening period of appellant services w.e.f 18.12.1995 till 01.07.2001 for the purpose of pensionary benefits and length of service alongwith back benefits.

Through

Appellant

*[Signature]*  
Malak Akhtar Ali Khan  
Advocate at Mardan

Dated: \_\_\_\_\_

**CERTIFICATE:**

As per instruction / information provided to me by my client, it is certified that ~~no~~ such like Service Appeal has earlier been filed fore this Honorable Tribunal, on the subject matter. *which was*

*Dismissed*

*copy attached*

*[Signature]*  
ADVOCATE



6

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

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

Dr. Mustafa ..... Appellant

**VERSUS**

Govt of Khyber Pakhtunkhwa & Others ..... Respondents

**AFFIDAVIT**

I, Dr. Mustafa, Ex-Medical Officer, Category-C Hospital, Khwaza Khela Swat, 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 kept concealed from this Honorable Tribunal.



*(Handwritten Signature)*  
DEPONENT

7

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

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

Dr. Mustafa ..... Appellant

**VERSUS**

Govt of Khyber Pakhtunkhwa & Others ..... Respondents

**ADDRESSES OF THE PARTIES**

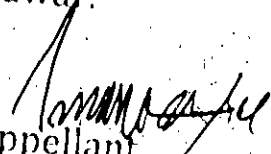
**APPELLANT:**


Dr. Mustafa,  
Ex-Medical Officer,  
Category-C Hospital, Khwaza Khela.

**RESPONDENTS:**

- (1) Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
- (2) Secretary to Govt of Khyber Pakhtunkhwa, Health Department, Civil Secretariat, Peshawar.
- (3) Secretary to Govt of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.

Through

  
Appellant

  
Malak Akhtar Ali Khan  
Advocate at Mardan

Dated: \_\_\_\_\_

Amman A

Amman  
MM  
8/11

8

DIRECTORATE GENERAL,  
HEALTH SERVICES, N.W.F.P., PESHAWAR.  
No. 526/04/E-I Dated 18/12/1995.

Dr. Mustafa  
s/o Babar Ahmad

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.

The competent authority is hereby appoint you as Medical Officer/Women Medical Officer/Dental Surgeon in the Health Department Government of NWFP, on contract basis in PFS-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 BHA C.A.B.R.A.L DIST. KOFISTAN. This contract appointment is not transferable.

This contract appointment is subject to your physical fitness for which you will appear before the Medical Board constituted by the Government.

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.

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.

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

No. /E-I dated Peshawar the 18/12/1995

Copy forwarded to the:-

- Secretary to Government of NWFP, Health Department Peshawar for information with reference to his letter No.SOH-IV/3-18/93 dt:16.11
- Medical Superintendent, Abbottabad for information and n/
- Divisional Director Health Services, Kohistan
- District Health Officer/Agency Surgeon, Kohistan
- Accountant General NWFP, Peshawar.
- District/Agency Accounts Officer, Kohistan

for information and necessary action.

Amman

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

APPEAL BEFORE THE HONORBLE. DIRECTOR HEALTH SERVICES KHYBER PAKHTUNKHWA HEALTH DEPARTMENT PESHAWAR FOR THE UPDATION OF SERVICE RECORD IN THE LIGHT OF KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR; JUDGEMENT ARRIVED IN THE SERVICE APPEAL NO. 541/2019. 9

Through Proper Channel.

Respected Sir,

With great reverence and humble submission I beg to lay down for your kind information that I was initially appointed on 25/11/1995 as Medical Officer (BPS-17) on contract basis. Later under the provision of Khyber Pakhtunkhwa Civil Servants (Amendment) Act 2005 my services were regularized with effect from 1/7/2001, but deprived from the right of seniority for the period from 25/11/1995 till 01/07/2001.

Against such injustice of the department I approached the Honorable Peshawar High Court Peshawar vide writ petition No. 3518-P/2017, but the petition being not maintainable was dismissed vide verdict arrived on 30/10/2018. However I was allowed to approach the NWFP Services Tribunal for the redressal of my cogent and comprehensive grievances.

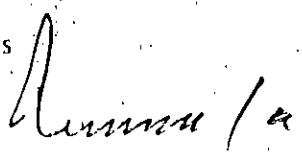
Taking cognizance of the situation I filled Service appeal No. 541/2019 in the NWFP Services Tribunal on 3/4/2019. After threadbare discussion the honorable Services Tribunal only permitted me for the pensioner benefits from the date of my initial appointment i.e (25/11/1995) and not allowed my seniority as is evident from Para 10 of the judgment dated 28/4/2022, (Copy attached for ready reference).

It is pertinent to add here that the Honorable Services Tribunal has granted me the pensioner benefits strictly in accordance with the provision laid down in the Pension Rules 2.2 and 2.3 while dis allow seniority for the period I served in the department on contract basis.

In view of the above explicit exposition, it is requested to kindly direct the concerned quarter of Health Department of District of Swat to maintain and complete my services record and after the grant of annual increments pertaining to the intervening period from 25/11/1995 to 1/7/2001 my pension documents may be prepared, because I have been retired from services on 28/02/2021 and obliged please.

Furthermore preparation and payment of my pension was withheld for want of decision of the Services Tribunal, which has now been arrived, therefore humbly prayed to kindly expedite and considered my request on priority basis enabling me to receive my pension, gratuity and other benefits well in time please.

Obediently Yours

  
(DR. MUSTAFA)  
MEDICAL OFFICER  
CATEGORY-C HOSPITAL  
KHWAZAKHELA-DISTT. SWAT.



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar the 17<sup>th</sup> October, 2017

10

**NOTIFICATION**

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

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

*Signature*

Section Officer  
Health Department  
Govt. of Khyber Pakhtunkhwa

666	Dr. Muhammad Fayyaz S/O Muhammad Ayaz	15.04.1978 / Swat	08.03.2005	08.03.2005
667	Dr. Jehanzeb 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 / 25.02.1979	08.03.2005	08.03.2005
670	Dr. Farhana 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 Qalandar 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	NW Agency / 08.08.1976	08.03.2005	08.03.2005
679	Dr. Nacemullah s/o Abdullahi 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

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.

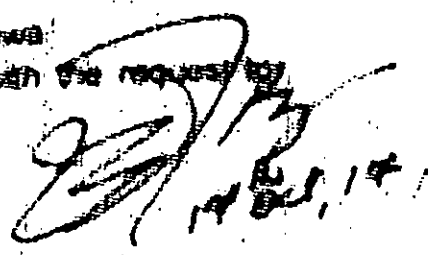
PTO

Section Officer  
Govt. of Khyber Pakhtunkhwa,  
Health Department.

Scanned by CamScanner

1/8

- 7 All Medical Superintendents of all Category Hospitals in Khyber Pakhtunkhwa
- 8 All District Accounts Officers in Khyber Pakhtunkhwa
- 9 Manager Printing Press Khyber Pakhtunkhwa with the request to publish in the official gazette
- 10 PS to Secretary Health, Khyber Pakhtunkhwa



Handwritten signature and date: 14.02.14

(Jithraal Raza)  
Section Officer (E-III)  
General Office  
of Khyber Pakhtunkhwa  
Health Department

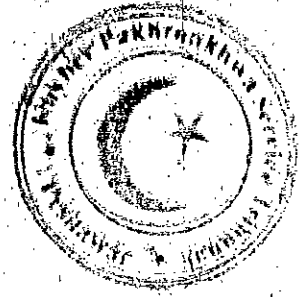
12

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 541/2019

Date of Institution ... 03.04.2019

Date of Decision ... 28.04.2022



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

... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary and four others.

... (Respondents)

MALIK AKHTAR ALI KHAN,  
Advocate

-----  
--- For appellants.

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

--- For respondents.

MR. SALAH-UD-DIN  
MR. MIAN MUHAMMAD

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

**JUDGMENT:**

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

ATTENDED



B

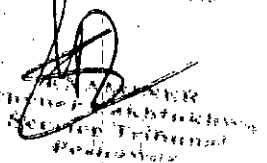
"Dr. Abdul Ghafoor Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", as common questions of law and facts are involved in all the above mentioned appeals.

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

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

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

ATTESTED

  
 Secretary Tribunal  
 Peshawar

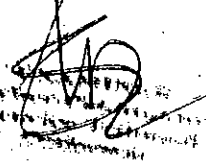
of worthy apex court, contract period shall be considered for the purpose of seniority but the respondents have wrongly and illegally ignored the judgments of worthy apex court; that the contract services of the appellants were without any break, which fact has not been considered by the respondents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

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

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

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

ATTORNEYS



15

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

**"Seniority.---**(1) *The seniority inter se of civil servants [appointed to a service; cadre or post ] shall be determined...*

- (a) *In the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission [or, as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and*
- (b) *In the case of civil servants appointed otherwise, with reference to the dates of their continuous regular appointment in the post; provided that civil servant selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se seniority as in the lower post".*


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

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

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

(2).....

[(3).....]

**ATTESTED**  
  
 SECRETARY  
 KHYBER PAKHTUNKHWA  
 SERVICE COMMISSION

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

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

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

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

ATTESTED

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.

*Object*

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

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

ANNOUNCED  
28.04.2022

(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)

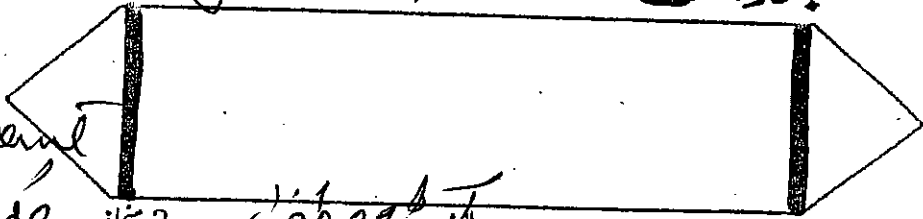
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

Number of... 26/100  
... 26/-  
... 26/-

30/5/22

03/10/22  
03/10/22

بعد الت صوبائی سرپرستی کے ذریعہ



آپ کا نام  
 ڈاکٹر حفیظ  
 2، پنجاب روڈ  
 بنام

موزونہ  
 مقدمہ  
 دعویٰ  
 جرم

### باعث تحریر آئنگے

مقدمہ مندرجہ عنوان والا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ  
 آج مقام حیدرآباد کیلئے حیدرآباد کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثبات ہ فیصلہ بر حلف دیئے جواب دہی اور اقبال و دعویٰ اور  
 بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیا اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
 زرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری کیلئے طرفہ یا اپیل کی برآمدگی اور منسوخی  
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
 کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار  
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ  
 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو فریضہ ہر جانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔  
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
 مذکور کریں۔ لہذا اذکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم \_\_\_\_\_ ماہ \_\_\_\_\_ 20

\_\_\_\_\_ واد العبد \_\_\_\_\_

\_\_\_\_\_ کے لئے منظور ہے۔ \_\_\_\_\_ بمقام